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borrower to enter into formal contractual arrangements whenever possible to do so.

(c) *Borrower does not retain ownership of the security.* The security may be transferred to another approved applicant or sold in accordance with applicable procedure.

(d) *Borrower abandons the security or fails to make satisfactory arrangements.* This paragraph does *not* apply to borrowers with FO, SW, RL, OL, EE, EM, SL, EO, ST and/or RHF loans. Those borrowers should be sent exhibit A and the appropriate attachments as outlined in subpart S of part 1951 of this chapter. When a borrower abandons the security or fails to make satisfactory arrangements for maintenance of the security and payment of taxes, insurance, and installments on the loan, the County Supervisor will send a complete report on the case to the State Director. The report will include all the information that can be obtained regarding the borrower's plans for the security and any evidence to indicate that abandonment has, in fact, taken place. In these instances, it must be recognized that the borrower may have entered into verbal arrangements for the care of the security without properly advising the County Supervisor. Whether such cases may be construed to be in violation of the provisions of the mortgage, so as to support foreclosure by order of the Court under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, will need to be determined on an individual case basis by the State Director and OGC. Clear-cut abandonment cases or instances in which the borrower fails to take action to transfer or sell the property, while evidencing no interest in it or desire to retain it, will be processed in accordance with applicable procedures.

(e) *Statement of account.* Borrowers entering the armed forces who retain ownership of the security will be requested to designate mailing addresses for the delivery of statements of account. Any changes in addresses will be processed on Form FmHA or its successor agency under Public Law 103–354 450–10 with appropriate explanations.

[45 FR 43152, June 26, 1980, as amended at 50 FR 45764, Nov. 1, 1985; 52 FR 26134, July 13, 1987; 55 FR 40646, Oct. 4, 1990]

§ 1950.105 Interest rate.

(a) The Soldiers and Sailors Relief Act requires that the effective interest rate charged a borrower who enters active military duty after a loan is closed will not exceed 6 percent. This applies only to full-time active military duty and does not include military reserve status or National Guard participation.

(b) As soon as the County Supervisor verifies that a borrower is on active duty, the County Supervisor will send the borrower a letter which states that the interest rate on the borrower's FmHA or its successor agency under Public Law 103–354 loans will not exceed 6 percent. At the same time, the County Supervisor will send the Finance Office a memorandum which states that the borrower is on active duty and that interest of not more than 6 percent should accrue on the borrower's loans, effective as of the date of the memorandum or as of the date of the last payment, whichever is later, until further notice. If a borrower's interest rate on any loan is less than 6 percent, the loan will continue to accrue interest at the lower rate. The assistance under this section may not be retroactively applied.

(c) As soon as the County Supervisor verifies that a borrower is no longer on active duty, the County Supervisor will send the Finance Office a memorandum advising them to terminate the 6 percent interest rate. The rate will revert to the note rate (or the payment assistance rate), effective with the next scheduled payment. The 6 percent interest rate will not be cancelled retroactively.

(d) Additional directions for handling Single Family Housing Loans are contained in subpart G of part 1951 of this chapter.

[52 FR 26134, July 13, 1987, as amended at 60 FR 55122, Oct. 27, 1995]

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1951.1000 OMB control number.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1932 Note, 7 U.S.C. 1989, 42 U.S.C. 1480.

EDITORIAL NOTE: Some of the exhibits referenced in this part 1951 are not published in the Code of Federal Regulations. Exhibits are available in any FmHA or its successor agency under Public Law 103–354 office.

Subpart A—Account Servicing Policies

SOURCE: 50 FR 45764, Nov. 1. 1985, unless otherwise noted.

§ 1951.1 Purpose.

This subpart sets forth the policies and procedures to use in servicing Farmer Program loans (FP) which include Softwood Timber (ST), Operating Loan (OL), Farm Ownership (FO), Soil and Water (SW), Recreation Loan (RL), Emergency Loan (EM), Economic Emergency Loan (EE), Special Livestock Loan (SL), Economic Opportunity Loan (EO), and Rural Housing Loan for farm service buildings (RHF) accounts. This subpart also applies to Rural Rental Housing Loan (RRH), Rural Cooperative Housing Loan (RCH), Labor Housing Loan (LH), Rural Housing Site Loan (RHS), and Site Option Loan (SO) accounts not covered under the Predetermined Amortization Schedule System (PASS). Loans on PASS will be administered under subpart K of part 1951 of this chapter. Cases involving unauthorized assistance will be serviced under Subparts L and N of this part. Cases involving graduation of borrowers to other sources of credit will be serviced under Subpart F of this part.

[52 FR 26134, July 13, 1987]

§ 1951.2 Policy.

Borrowers are expected to pay their debts to the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) in accordance with their agreements and ability to pay. They will be encouraged to pay ahead of schedule, consistent with sound financial management. When borrowers have acted in good faith and have exercised due diligence in an effort to pay their indebtedness but cannot pay on schedule because of circumstances beyond their control, servicing actions will be consistent with the best interests of the borrower and the Government. It is the policy of this agency to service borrower loan account without regard to race, color, religion, sex, marital status, national origin, age, physical or

mental handicap (borrower must possess the capacity to enter into a legal contract for services).

§ 1951.3 Authorities and responsibilities.

County Supervisors and District Directors are responsible for servicing all FmHA or its successor agency under Public Law 103–354 accounts serviced by the County and District Offices as prescribed by this subpart under the general guidance and supervision of District Directors and State Office personnel. Full use will be made of the County Office Management System in account servicing. For the purposes of this Subpart, all references to ''County Supervisor'' shall be construed to mean ''District Director'' for all loans serviced by the District Office.

§§ 1951.4—1951.5 [Reserved]

§ 1951.6 Handling payments.

(a) *Payments on Rural Housing (RH) loans.* Payments on RH loans will be handled in accordance with subparts B and G of this part.

(b) *Payments for other than RH, FO and SW loans.* These payments will be handled in accordance with part 1951, subpart B.

(c) *Payments for FO and SW loans.* (1) Payments made through the County Office without direct payment coupons for FO and SW loans will be handled in accordance with part 1951, subpart B.

(2) Payments for FO and SW individual loans made through the County Office with Form FmHA or its successor agency under Public Law 103–354 370–46A, Expanded Direct Payment Coupon, will be handled as follows:

(i) County Supervisors may put FO and SW individual borrowers on the Expanded Direct Payment Coupon system if the borrower only needs limited credit counseling or only makes one annual installment payment per year on the loan.

(ii) For new loans, the County Supervisor will indicate by checking the appropriate block on Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request For Obligation of Funds,'' that for selected borrowers Expanded Direct Payment Coupons are to be mailed to the County Office.

(iii) An existing loan borrower may be put on or taken off this Expanded Direct Payment Coupon system by filling out Form FmHA or its successor agency under Public Law 103–354 1951–34, ''Direct Payment Plan Change,'' in accordance with the Forms Manual Insert (FMI) and entering it via the field office terminal system.

(iv) Payments must be made by check or money order payable to the Farmer Home Administration. If a field office is on concentration banking, the checks and/or money orders are deposited in the concentrator bank. The coupons are forwarded directly to the Finance Office in accordance with concentration banking procedures. If a field office is not on concentration banking, the coupons and checks and/or money orders are placed in one envelope and mailed to the Finance Office with any other items being mailed that day.

(v) The Finance Office, upon receipt of the payment coupon and check or money order, will credit the borrower's account with payment as of the date the payment is received in the field office.

(vi) When the Finance Office received payment coupon number 10, a new supply of coupons will be mailed to the County Office. All 12 payment coupons should be used before using the new supply.

(3) Direct payment for FO and SW loans mailed directly to the Finance Office by the borrower are handled as follows:

(i) The County Supervisor will select the FO and SW borrowers who, in the Supervisor's opinion, are capable of making direct payments to the Financing Office. The County Supervisor will not select borrowers who (A) will need frequent credit counseling, (B) because of the lack of education or other reasons, are not capable of assuming responsibility for making payments directly to the Finance Office, or (C) have payments directly assigned to FmHA or its successor agency under Public Law 103–354, such as milk assignments. The fact that a borrower does not maintain a checking account will not, however, prevent selection for direct payments.

(ii) For new loans the County Supervisor will indicate on Form FmHA or its successor agency under Public Law 103–354 1940–1 the selected borrowers by checking the appropriate box. The payment coupon packet will be forwarded to the County Office at the time the loan is obligated. It will be delivered to the borrower at loan closing, at which time the use of the payment coupons will be explained to the borrower.

(iii) For Assumption Agreements, the packet will be mailed to the borrower at the time the Assumption Agreement is processed in the Finance Office.

(iv) The payment coupons and pre-addressed envelopes, together with instructions on how to use the coupons and a record keeping card, will be asembled into an envelope in which the borrower may retain the records. The Form FmHA or its successor agency under Public Law 103–354 370–46, ''Direct Payment Coupon,'' will be numbered 1–12, even though the borrower may have less or more than 12 payments scheduled during the year.

(v) The Finance Office, upon receipt of Form FmHA or its successor agency under Public Law 103–354 370–46 and a check or money order, will credit the borrower's account with payment as of the date the payment is received by the Finance Office.

(vi) When the Finance Office receives Form FmHA or its successor agency under Public Law 103–354 370–46 for payment number 10, a new supply of Forms FmHA or its successor agency under Public Law 103–354 370–46 will be prepared and mailed to the borrower. All 12 copies of Form FmHA or its successor agency under Public Law 103–354 370–46 should be used before using the new supply.

(vii) If a borrower is on direct payment and receives a subsequent FO or SW loan, the Finance Office will send a set of Form FmHA or its successor agency under Public Law 103–354 370–46 with ''FO'' or ''SW'' in the loan number block. This indicates the borrower has more than one loan of the particular type. The borrower will be instructed by the County Office to send a Form FmHA or its successor agency under Public Law 103–354 370–46 showing the amount and a check or money order for the total payment.

(d) *County Office handling of direct payment accounts.* Form FmHA or its successor agency under Public Law 103–354 1905–1, ''Management System Card—Individual,'' and Form FmHA or its successor agency under Public Law 103–354 1905–1, ''Management System Card—Individual (Rural Housing only),'' will be used in the County Office Management System Box. These forms and the transaction records will be maintained as prescribed in FmHA or its successor agency under Public Law 103–354 Instruction 1905–A (available in any FmHA or its successor agency under Public Law 103–354 office). In addition, an orange signal will be placed to the left of Position A on Form FmHA or its successor agency under Public Law 103–354 1905–1 to denote that the borrower is on the direct payment system. If a borrower fails to make payments as agreed, or becomes delinquent in taxes or insurance so that it is necessary for FmHA or its successor agency under Public Law 103–354 to pay taxes or insurance by voucher, the County Supervisor may request the Finance Office to remove the borrower from the direct payment method. If this decision is made, the County Supervisor will contact the borrower and collect the remaining supply of Forms FmHA or its successor agency under Public Law 103–354 370–46 which will be destroyed. The borrower will be informed that payments after that date should be made to the County Office. If at a later date the borrower is making payments on schedule, the County Supervisor may request the Finance Office to put the borrower back on the direct payment method and provided a new set of Forms FmHA or its successor agency under Public Law 103–354 370–46. These changes are made by filling out Form FmHA or its successor agency under Public Law 103–354 1951–34 in accordance with the FMI and entering it via the field office terminal system.

(e) *Account servicing actions retained by the County Office.* For those borrowers who make direct payments to the Finance Office, the County Supervisor will continue to handle the following servicing actions:

(1) Any regular payments a borrower is to make prior to receiving the packet of payment coupons will be made through the County Office in the usual manner.

(2) All payments other than regular payments will be made through the County Office in the usual manner.

(3) The County Supervisor will counsel with borrowers concerning questions they have about their account. If assistance is needed, the County Supervisor will contact the State or Finance Office as appropriate.

(4) If an uncollectible item is received, the Finance Office will reverse the amount from the borrower's account. The uncollectible item with a transmittal memorandum will be sent to the County Office. The County Office will return the uncollectible check to the borrower after it is fully redeemed. The borrower will make payment by sending a new check and a new payment coupon to the Finance Office. There will also be a noninterest accruing administrative cost charged to the borrower's account for uncollectible items due to insufficient funds. (The amounts of any such administrative charges are available from any FmHA or its successor agency under Public Law 103–354 office.) Therefore, the borrower's payment for the uncollectible item should be for the regular payment amount plus the administrative cost.

(f) *Borrowers receiving other type loans.* If a borrower is on direct payment and subsequently receives another type loan, the original loan may remain on the direct payment system.

(g) *Borrowers with RRH, RCH, or LH, loans on a Predetermined Amortization Schedule System (PASS).* Loans or PASS will be administered under Subpart K of this part.

(h) *Borrowers with RRH, RCH, LH, RHS and SO loans administered under this subpart.* RRH, RCH, LH, RHS and SO loans on a daily interest accrual system (DIAS) for applying payments administered under this subpart are subject to the direct billing and payment requirements in §1951.506 of Subpart K of this part. All payments are due on the first day of the months following the date shown on the promissory note, except loans with principal and interest bonds issued before May 1, 1985. All payments are considered delinquent for reporting purposes on the 15th day of the month following the payment due date if the unpaid portion of the payment exceeds $15.00.

[50 FR 45764, Nov. 1, 1985, as amended at 52 FR 29175, Aug. 6, 1987; 54 FR 46844, Nov. 8, 1989]

§1951.7 Accounts of borrowers.

(a) *Accounts of active borrowers.* The foundation for proper and timely debt payment is sound farm and home planning or budgeting, including plans for debt payment, supplemented by effective followup management assistance. Account servicing, therefore, must begin with initial planning and must be an integral part of analysis and subsequent planning, as well as follow-up management assistance.

(b) *Accounts of collection-only borrowers.* (1) Collection-only borrowers are expected to pay debts to FmHA or its successor agency under Public Law 103–354 in accordance with their ability to pay. Efforts to collect such debts, including use of collection letters and account servicing visits, must be coordinated with other program activities. If these borrowers are unable to pay in full, appropriate debt settlement policies should be promptly applied.

(2) Envelopes addressed to collection-only borrowers will bear the legend ''DO NOT FORWARD.'' When an envelope is returned indicating the borrower has moved, appropriate steps will be taken to determine the borrower's correct address.

(3) Regular County Office employees are generally expected to service the collection-only caseload when it is of moderate size. State Directors may assign additional employees to County Offices having large collection-only caseloads when necessary to service such cases to a prompt conclusion. State Directors may inform the National Office of the need for employing special collection personnel in urban areas having large collection-only caseloads when employees are not available to assign to such areas.

(4) The following actions will be taken in servicing accounts owed by collection-only borrowers:

(i) District Directors will review, yearly, all collection-only cases in each County Office with the County Supervisor as early in *each* fiscal year as possible. They will jointly agree on the actions to take and will complete Form FmHA or its successor agency under Public Law 103–354 451–27, ''Review of Collection-Only Accounts.''

(ii) District Directors will establish with County Supervisors a systematic plan for collecting the accounts or initiating appropriate debt settlement actions during the year.

(iii) County Supervisors will include in their monthly calendars plans for servicing these accounts.

(iv) On visits to County Offices, District Directors will review the progress being made by County Supervisors to insure that goals will be reached.

(v) For collection-only accounts in District Offices, the State Director will review the accounts as required in paragraphs (b)(4)(i) through (b)(4)(iv) of this section and the District Director will service the account.

(c) *Notifying borrowers of payments.* County Supervisors will notify borrowers of the dates and amounts of payments that have been agreed on for all types of accounts. Form FmHA or its successor agency under Public Law 103–354 451–3, ''Reminder of Payment to be Made,'' or similar form approved by the State Director, will be used. The form will not contain any language indicating that an account is delinquent. These notices will be timed to reach borrowers immediately before the receipt of the income from which the payments should be made or before the installment due date on the note, as appropriate, and may include other pertinent information such as a reference to agreements reached during the year and sources of income from which the payment was planned. Such notices need not be sent when frequent payments are scheduled and the borrower customarily makes the payments when due.

(d) *Subsequent servicing.* (1) When a Farmer Program borrower fails to make a payment as agreed, the County Supervisor will notify the borrower in accordance with subpart S of part 1951 of this chapter.

(2) When a borrower other than a Farmer Program borrower fails to make a payment as agreed, the County Supervisor will contact the borrower to discuss the reasons why the payment was not made and to develop specific plans, for making the payment. Form FmHA or its successor agency under Public Law 103–354 451–32, ''Notice of Payment Due,'' may be used to notify borrowers who make payments directly to the Finance Office that their payment has not been received. Form FmHA or its successor agency under Public Law 103–354 450–13, ''Request for Assignment of Income From Trust Property,'' may be used when other methods of loan collection fail and debt repayment is possible from trust income. In the event the borrower refuses to make the payment when income is available, or if it is determined that income will not be available to make the payment within a reasonable length of time and will not be available to make future payments, action will be taken to protect the Government's interest in accordance with applicable regulations. Followup actions of subsequent servicing will be noted on appropriate Management System Cards.

(e) *Maintaining records of accounts in County Offices.* Records of the accounts of FmHA or its successor agency under Public Law 103–354 borrowers will be maintained in the County Office on Forms FmHA or its successor agency under Public Law 103–354 1905–1, FmHA or its successor agency under Public Law 103–354 1905–5, FmHA or its successor agency under Public Law 103–354 1905–10, ''Management System Card-Association,'' as provided in FmHA or its successor agency under Public Law 103–354 Instruction 1905–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(f) *Inquiry for Multiple Family Housing (MFH) loans.* Inquiry for all RRH, RCH, LH, RHS and SO loans and grants will be made through field terminals using procedures in the ''MFH Users Procedures'' manual or by contacting the MFH Unit in the Finance Office.

(g) *Inquiry for other than Multiple Family Housing (MFH) loans.* Inquiry for these loan programs will be made

through field terminals using procedures in the ''Automated Discrepancy Processing System (ADPS)'' manuals.

(h) *Loan Summary Statements.* Upon request of a borrower, FmHA or its successor agency under Public Law 103–354 issues a loan summary statement that shows the account activity for each loan made or insured under the Consolidated Farm and Rural Development Act. The field office will post on the bulletin board a notice informing the borrower of the availability of the loan summary statement. See Exhibit A for a sample of the required notice.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards a copy of Form FmHA or its successor agency under Public Law 103–354 1951–9, ''Annual Statement of Loan Account,'' to field offices to be retained in borrower files as a permanent record of borrower activity for the year.

(2) Quarterly Forms FmHA or its successor agency under Public Law 103–354 1951–9 are retained in the Finance Office on microfiche. These quarterly statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. If a borrower requests a loan summary statement with data through the most recent quarter, county supervisors may request copies of these quarterly or annual statements by sending Form FmHA or its successor agency under Public Law 103–354 1951–57, ''Request for Loan Summary Statement,'' to the Finance Office.

(3) When a loan summary statement is requested by the borrower, the field office will copy the applicable annual or quarterly Forms FmHA or its successor agency under Public Law 103–354 1951–9. A copy(ies) of Form FmHA or its successor agency under Public Law 103–354 1951–9; a copy of Form FmHA or its successor agency under Public Law 103–354 1951–58, ''Basis for Loan Account Payment Application for Farmer Program Loans;'' and a copy of the promissory note showing borrower installments will constitute the loan summary statement provided to the borrower.

[50 FR 45764, Nov. 1, 1985, as amended at 52 FR 11457, Apr. 9, 1987; 53 FR 35716, Sept. 14, 1988; 54 FR 10269, Mar. 13, 1989]

§ 1951.8 Types of payments.

(a) *Regular payments.* Regular payments are all payments other than extra payments and refunds. Usually, regular payments are derived from farm income, as defined § 1962.4 of subpart A of part 1962 of this chapter. Regular payments also include payments derived from sources such as Agricultural Stabilization and Conservation Service payments (other than those referred to in paragraph (b) of this section), off-farm income, inheritances, life insurance, mineral royalties and income from mineral leases (see § 1965.17 (c) of subpart A of part 1965 of this chapter), including income from leases or bonuses. Regular payments in the case of a Section 502 RH loan to an applicant involved in a mutual self-help project will include loan funds advanced for the payment of any part of the first and second installments. All payments to the lock box facility(s) by direct payment borrowers are considered regular payments.

(b) *Extra payments.* Extra payments are payments derived from:

(1) Sale of chattels other than chattels which will be sold to produce farm income or real estate security, including rental or lease of real estate security of a depreciating or depleting nature.

(2) Refinancing of the real estate debt.

(3) Cash proceeds of real property insurance as provided in subpart A of part 1806 of this chapter (FmHA or its successor agency under Public Law 103–354 Instruction 426.1).

(4) A sale of real estate not mortgaged to the Government, pursuant to a condition of loan approval.

(5) Agricultural Conservation Program payments as provided in subpart A of part 1941 of this chapter.

(6) Transactions of a similar nature which reduce the value of security other than chattels which will be sold to produce farm income.

(c) *Refunds.* Refunds are payments derived from the return of unused loan or grant funds, except that the term ''refunds'' as used in Form 1940–17, ''Promissory Note,'' will be construed to mean the return of funds advanced

for capital goods, when a loan is made for operating purposes.

[50 FR 45764, Nov. 1. 1985, as amended at 51 FR 4137, Feb. 3, 1986; 53 FR 35717, Sept. 14, 1988; 58 FR 52646, Oct. 12, 1993]

§ 1951.9 Distribution of payments when a borrower owes more than one type of FmHA or its successor agency under Public Law 103–354 loan.

''Distribution'' means dividing a payment into parts according to the rules set out in this section. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan'') and Form FmHA or its successor agency under Public Law 103–354 1962–1, ''Agreement for the Use of Proceeds/Release of Chattel Security.''

(a) *Distribution of regular payments.* (1) When a borrower owes more than one type of FmHA or its successor agency under Public Law 103–354 loan, regular payments received from *each crop year's income* will be distributed in accordance with the following priorities:

(i) *First,* to an amount equal to any advances made by FmHA or its successor agency under Public Law 103–354 for the crop year's living and operating expenses. If no advances were made, distribute the payment according to paragraph (a)(1)(ii) of this section. If the amount of the payment was greater than the amount of any advances, the excess should be distributed according to paragraph (a)(1)(ii) of this section.

(ii) *Second,* to FmHA or its successor agency under Public Law 103–354 loans in proportion to the approximate amounts due on each for the year. In determining the amounts due for the year, deduct an amount equal to any advances for the year's living and operating expenses. If the amount of the payment exceeds the amount of any advances *plus* the amount due on each loan for the year, the excess should be distributed according to paragraph (a)(1)(iii) of this section.

(iii) *Third,* to FmHA or its successor agency under Public Law 103–354 loans in proportion to the delinquencies existing on each. If the amount of the payment exceeds the amount of any advances *plus* the amount due on each loan for the year *plus* any delinquencies, the excess should be distributed according to paragraph (a)(1)(iv) of this section.

(iv) *Fourth,* as advance payments on FmHA or its successor agency under Public Law 103–354 loans. In making such distribution consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(2) When the County Supervisor determines it is reasonable to expect that the income which will be available for payment on FmHA or its successor agency under Public Law 103–354 debts will be sufficient to pay the installments scheduled for the year under the first and second priorities, collections may be distributed so as to avoid unnecessary delinquencies, and regular payments derived from rental or lease of real estate security after approval of foreclosure or voluntary conveyance will be distributed to the real estate lien of the highest priority.

(3) Payments will be distributed differently than the priorities provided in this section if accounts are out of balance or a different distribution is needed to protect the government's interest.

(4) Any income received from the sale of softwood timber on marginal land converted to the production of softwood timber must be applied on the ST loan(s).

(b) *Distribution of extra payments.* Extra payments will be distributed first to the FmHA or its successor agency under Public Law 103–354 loan having highest priority of lien on the security from which the payment was derived. When the payment is in excess of the unpaid balance of the FmHA or its successor agency under Public Law 103–354 lien having the highest priority, the balance of such payment will be distributed to the FmHA or its successor agency under Public Law 103–354 loan having the next highest priority.

(c) *Application of payments.* After the decision is reached as to the amount of each payment that is to be distributed to the different loan types, application

of the payment will be governed by §§ 1951.10 or 1951.11 of this subpart as appropriate.

[50 FR 45764, Nov. 1, 1985, as amended at 52 FR 26134, July 13, 1987; 53 FR 35717, Sept. 14, 1988]

§ 1951.10 Application of payments on production type loan accounts.

Employees receiving payments on OL, EO, SW codes ''24,'' EM for subtitle B purposes, EE operating-type, and other production-type loan accounts will select, in accordance with the provisions of this section, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be credited first to any administrative costs, then to noncapitalized interest, then to the amount of accrued deferred interest, and then to principal. All payments on all other loans including OL and EM loans approved after December 31, 1971, will be credited first to any administrative costs, then to noncapitalized interest, then to the amount of accrued deferred interest, then to interest accrued to the date of the payment and then to principal, in accordance with the terms of the note. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA or its successor agency under Public Law 103–354 431–2) and Form FmHA or its successor agency under Public Law 103–354 1962–1.

(a) *Rules for selection of accounts.* The following rules will govern the selection of accounts and installments to which payments will be applied. As used in this section, ''recoverable costs'' are those which the loan agreement documents say the borrower is primarily responsible for paying and which the government can charge to the borrower's account.

(1) Payments from farm income or from assignments of income will be applied first to accounts with small balances, including recoverable costs, to remove such accounts from the records. Any balance will be applied on debts secured by the lien in the following order:

(i) To amounts due or falling due on loans made in connection with the current year's operations, except:

(A) When funds loaned for the purchase of capital goods were used to meet the current year's operating expenses, payments will be applied first to the final unpaid installments to the extent of the loan funds so used. These payments will be treated as extra payments.

(B) When installments on loans previously made fall due before the installment on the loan for the current year's operations or when such loans are delinquent and it is anticipated that sufficient income will be received to meet the installment on the current year's operations when due, collections may be applied first to installments on loans made in previous years.

(ii) To accounts having the oldest delinquencies, or if no delinquencies, to the oldest unpaid account, except that the amount available for payment on OL and EM loan accounts will be prorated between the two accounts on the basis of:

(A) The delinquent amount owed on each, or

(B) The total amount owed on each if there are no delinquencies.

(2) Non-farm income and payments derived from the sale of real estate security, will be applied to the earliest account secured by the earliest lien covering such security. The amount to be applied to principal will be applied to the final unpaid installment(s).

(3) On partial refunds of loan advances, the amount to be applied to the principal will be applied to the final unpaid installment on the note which evidences such advance; however, a refund of an advance for current farm and home expenses repayable within the year may be applied to the principal on the first unpaid installment on such note as a regular payment.

(4) Total refunds of loan advances will be applied to the notes which evidence such advances.

(5) In applying payments from sources other than those in paragraphs (a)(2), (3), and (4) of this section the borrower has the right to select the loan account or accounts on which such payments will be applied. In the absence of the borrower's selection,

such payments generally will be applied in the following order:

(i) To accounts with small balances, including recoverable costs.

(ii) To accounts with the oldest unsecured note(s).

(iii) To accounts with the oldest delinquencies.

(iv) To accounts with the oldest secured note or notes.

(6) Employees receiving collections are authorized to make exceptions to paragraphs (a)(1), (2), and (6) of this section when it is necessary to apply a part of a payment to delinquent accounts to prevent the Federal Statute of Limitations from being asserted as a defense in suits on FmHA or its successor agency under Public Law 103–354 claims.

(b) *Payments in full.* Errors of a significant amount in computation or collection will be called to the attention of the collection official by the Finance Office. The borrower's note will not be returned until the balance on the loan account is paid in full. Claims by or on behalf of the borrowers that the amounts owed have been computed incorrectly will be referred to the Finance Office.

[50 FR 45764, Nov. 1, 1985, as amended at 53 FR 35717, Sept. 14, 1988; 54 FR 46844, Nov. 8, 1989; 57 FR 18680, Apr. 30, 1992]

§ 1951.11 Application of payments on real estate accounts.

(a) *Regular payments.* If a borrower owes more than one type of real estate loan, or has received initial and subsequent real estate loans on which separate accounts are maintained, payments on such accounts should be applied so as to maintain the note accounts approximately in balance at the end of the year with respect to installments due on the notes, other charges, and delinquencies.

(b) *Refunds and extra payments.* (1) Refunds will be applied to the note representing the loan from which the advance was made.

(2) Extra payments will be applied to the note secured by the earliest mortgage on the property from which the extra payment was obtained.

(3) Funds remaining from an RH grant or a combination loan and grant, after completion of development, will be refunded. If the borrower received a combination loan and grant, the remaining funds up to the amount of the grant are considered to be grant funds.

(c) *County Office actions.* (1) The collecting official will complete Form FmHA or its successor agency under Public Law 103–354 451–1, ''Acknowledgment of Cash Payment,'' in accordance with the FMI when cash or money orders are received as a payment.

(2) The collection official will complete Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittances,'' in accordance with the FMI.

(d) *Finance Office handling.* (1) Regular payment will be handled as follows.

(i) Payments will be applied first to satisfy any administrative costs such as a charge for an uncollectible check. (The amounts of any such charges are available from any FmHA or its successor agency under Public Law 103–354 office.)

(ii) Amounts paid on direct loan accounts will be credited to the borrower's account as of the date of Form FmHA or its successor agency under Public Law 103–354 451–2 or for direct payments the date payment is received in the Finance Office, and will be applied first to a portion of any interest which accrues during the deferral period, second to interest accrued to the date received and third to principal, in accordance with the terms of the note.

(iii) Amounts paid on insured loan accounts will be credited to the borrower's account as of the date of Form FmHA or its successor agency under Public Law 103–354 451–2 or for direct payments the date payment is received in the Finance Office, and will be applied in the following order:

(A) Advances from the insurance funds as shown on the latest *Form FmHA or its successor agency under Public Law 103–354 389–404,* ''Analysis of Accounts Maturing.'' (If the collection is intended for final payment of the loan, or to pay the insurance account in connection with an assumption agreement, the collection will be applied first to the interest accrued on the advance to the date of the payment.)

(B) Principal advanced from the insurance fund.

(C) Unamortized costs.

(D) Amount due for amortized costs for taxes and insurance.

(E) Unpaid loan insurance charges, including the current year's charge, when applicable.

(F) First to a portion of any interest which accrues during the deferral period, second to accrued interest to the date of the payment on the note account and then to the principal balance of the note account in accordance with the terms of the note.

(2) Extra payments and refunds will be credited to the borrower's note account as of the date of Form FmHA or its successor agency under Public Law 103–354 451–2 and will be applied first to a portion of any interest which accures during the deferral period, second to interest accrued to the date of the receipt and third to principal in accordance with the terms of the note. The amount to be applied to principal will be applied to the final unpaid installment(s). Extra payments and refunds will not affect the schedule status of a borrower except indirectly in connection with the amortization of a direct loan.

(3) The Finance Office will remit final payments promptly to lenders. Other collections (regular, extra, and refunds) applied to a borrower's insured note will be accumulated until the annual installment due date, and will be remitted along with any advances from the insurance fund to the lender within 30 days after the installment due date. All payments to a lender will be credited first to interest to the date of the Treasury check and then to principal. Since the application of a payment to a borrower's account with the Government and the Government's account with a lender is of a different effective date, the balance owed by a borrower to the government and by the Government to a lender ordinarily will not be the same.

[50 FR 45764, Nov. 1, 1985, as amended at 54 FR 46845, Nov. 8, 1989]

§ 1951.12 Changes in the application of loan payments.

(a) *Authority to change payments.* County Supervisors and Assistant County Supervisors are hereby authorized to approve requests for changes in the application of payments between loan accounts when payments have been applied in error and such requests conform to the policies expressed in this Subpart. However, no change will be made if the payment applied in error resulted in the payment in full of any FmHA or its successor agency under Public Law 103–354 loan and the canceled note or notes have been returned to the borrower.

(b) Form FmHA or its successor agency under Public Law 103–354 1951–7, ''Request for Change in Application.'' Requests for changes in application of payments will be made on Form FmHA or its successor agency under Public Law 103–354 1951–7. For requests which County Supervisors or Assistant County Supervisors are authorized to approve, the County Supervisor or Assistant County Supervisor will sign the original of Form FmHA or its successor agency under Public Law 103–354 1951–7 and forward it to the Finance Office. The Finance Office will send Form FmHA or its successor agency under Public Law 103–354 451–26 to the County Office when the change is made on Finance Office records.

(c) *Changes by the Finance Office in application of remittances.* (1) When reapplication of collection is made by the Finance Office Form FmHA or its successor agency under Public Law 103–354 451–8, ''Journal Voucher for Loan Account Adjustments,'' will be prepared. Form FmHA or its successor agency under Public Law 103–354 451–26 will be forwarded to the County Office to show the reapplication.

(2) When necessary, the Finance Office will correct Form FmHA or its successor agency under Public Law 103–354 451–2 as prepared by the County Office.

[50 FR 45764, Nov. 1, 1985, as amended at 54 FR 18883, May 3, 1989]

§ 1951.13 Overpayments and refunds.

(a) The Finance Office will mail any overpayment refund check to the County Supervisor, who will verify that the refund is due before delivering the check.

(b) Borrower requests for overpayment refunds must be in writing. Borrowers will be discouraged from requesting refunds when the County Office records show that a refund is not

due, however, the County Supervisor will forward any request to the Finance Office. Finance Office computations will control in determining the amount of any refund.

(c) Underpayments or overpayments of less than $10 will not be collected or refunded (except as provided in paragraph (b) of this section) since the expense of processing the action would be more than the amount involved.

§ 1951.14 Recoverable and nonrecoverable cost charges.

(a) The County Supervisor will:

(1) Prepare vouchers for recoverable and nonrecoverable cost charges according to the applicable instruction for the type of advance being made. (''Recoverable costs'' is defined in § 1951.10(a) of this subpart).

(2) If a recoverable cost, show on the voucher the fund code to which the advance is to be charged.

(3) If the cost item relates to security for more than one type of account, show the code for the loan secured by the earliest promissory note (if lien secures more than one note).

(b) The Finance Office will forward Form FmHA or its successor agency under Public Law 103–354 451–26, to the County Office when the recoverable cost charge is processed.

§ 1951.15 Return of paid-in-full or satisfied notes to borrower.

(a) *Notes not held in County Office.* When the original of the note is not held in the County Office the County Supervisor will request the Finance Office to acquire and forward the note to the County Office.

(b) *Return of notes after collection.* When a note (or loan-type account) evidencing an OL, EM, EE, EO, special livestock (SL), SW loan coded ''24'', or other production-type loan has been satisfied by payment in full, the County Supervisor will examine the borrower's records in the County Office and determine that the account has been satisfied before delivering the note to the borrower (See § 1962.27 of subpart A of part 1962 on the satisfaction of chattel security instruments). The note(s) will be returned to the borrower immediately except that:

(1) When the final payment is made in a form other than currency and coin, Treasury check, cashier's check, certified check, Postal or bank money order, bank draft, or a check issued by a responsible lending institution or a responsible title insurance or title and trust company, the note or notes will not be surrendered until 30 days after the date of final payment, and

(2) When notes are needed in making marginal releases or satisfactions or security instruments, the notes will be held until the instruments are satisfied.

(c) *Surrender of notes to effect collection.* (1) County Supervisors are authorized to surrender notes to borrowers when final payment of the amount due is made in the form of currency and coin, Treasury check, cashier's check, certified check, Postal or bank money order, bank draft, or a check issued by a responsible lending institution or a responsible title insurance or title trust company.

(2) The amount due on the note(s) to be surrendered will be confirmed with the Finance Office. County Supervisors will request the original note(s) from the Finance Office if it is not in the County Office.

(d) *Return of notes reduced to judgment.* Notes which have been reduced to judgment are a part of the court records and ordinarily cannot be withdrawn and returned to the borrower even after satisfaction of the judgment. Therefore, no effort will be made to obtain and return such notes except on the written request of the judgment debtor or debtor's attorney. Such requests will be referred to the Office of the General Counsel (OGC).

(e) *Debt settlement case.* See subparts B or C of part 1956 of this chapter for the handling of notes in debt settlement cases.

(f) *Lost notes.* (1) All promissory notes dated on or after 11–1–73 are held in the County Office. A few notes (with the exception of OL notes) are still held by investors. If a note dated prior to 11–1–73 cannot be located in the County Office and it is needed for servicing the case, the County Supervisor will write a memorandum to the Finance Office explaining why the note is needed. The request should give the name and case

number of the borrower, date and original amount of the loan, type of loan and loan code.

(2) If a promissory note is lost in the County Office and it is needed for servicing a case, the State Director may authorize the County Supervisor to execute an appropriate affidavit regarding the lost note. The form of such an affidavit will be provided by OGC.

[50 FR 45764, Nov. 1, 1985, as amended at 51 FR 45432, Dec. 18, 1986; 53 FR 13100, Apr. 21, 1988; 56 FR 10147, Mar. 11, 1991]

§ 1951.16 Other servicing actions on real estate type loan accounts.

(a) *Installment on note and other charges*—(1) *Direct loan accounts.* For a borrower with a direct loan, the term ''installation on note and other charges,'' as used in this Subpart, will be the sum of the following:

(i) Annual installment for the year as provided in the promissory note(s).

(ii) Any recoverable cost charges paid for the borrower during the year. (''Recoverable costs'' is defined in § 1951.10(a) of this Subpart.)

(2) *Insured loan accounts.* ''Loan insurance charge'' means a separate insurance charge applying to FO and SW insured loans evidenced by promissory note forms bearing a form date before January 8, 1959. For all insured loans evidenced by note forms bearing a form date of January 8, 1959, or later, the insurance charge is called ''annual charge'' and is included in the interest position of the annual installment in the note. For a borrower with an insured loan, the term ''Installment on note and other charge'' means the sum of the following:

(i) Annual installment for the year as provided in the promissory note.

(ii) Amounts owed the Agricultural Credit Insurance Fund. These amounts are covered by the general term ''Insurance Account'' and consist of the following:

(A) Unpaid loan insurance charges from prior years.

(B) Loan insurance charge for the current year. The loan insurance charge is computed on the basis of the amount of the unpaid principal obligation as of the installment due date and is due and payable on or before the next installment due date.

(C) Any unpaid balance on advances from the insurance fund, including any recoverable cost charges paid for the borrower during the year.

(D) Any accrued interest on advances from the insurance fund.

(iii) The amounts owned on the insurance account must be paid by regular payments each year whether or not the note account is ahead of schedule.

(b) *Schedule status.* For direct and insured loans, a borrower will be on schedule when the sum of regular payments through the last preceding due date of the note equals the sum of installments on the note and other charges due through the same date. Such a borrower will be ahead of schedule or behind schedule when the sum of such regular payments is larger or smaller, respectively, than the sum of such installments on the note and other charges.

(c) *Real estate payments.* A borrower may make regular payments ahead of schedule at any time and use them later to forego payments or to supplement the amount available during any year for payment on the annual installment on the note and other charges. Refunds and extra payments will not be used in this way.

§§ 1951.17—1951.24 [Reserved]

§ 1951.25 Review of limited resource FO, OL, and SW loans.

(a) *Frequency of reviews.* OL, FO, and SW loans will be reviewed each year at the time the analysis is conducted in accordance with subpart B of part 1924 of this chapter and any time a servicing action such as consolidation, rescheduling, reamortization or deferral is taken. The interest rate may not be changed more often than quarterly.

(b) *Method of review.* (1) Each loan will be considered on its own merit.

(2) The County Supervisor should consider:

(i) The borrower's income and repayment record during the preceding years;

(ii) The projections shown on the most recent Farm and Home Plan or other similar plan or operation acceptable to FmHA or its successor agency under Public Law 103–354, in light of the previous year's projected figures

and actual figures; (See subpart B of part 1924 of this chapter)

(iii) Whether improved production practices have been or need to be implemented;

(iv) The borrower's progress as a farmer; and

(v) All other factors which the County Supervisor believes should be considered.

(3) The Farm and Home Plan projections for the coming year must show that the ''balance available to pay debts'' exceeds the amount needed to pay debts by at least 10 percent before an increase in interest rate is put into effect. Borrowers that continually purchase unplanned items without the County Supervisor's approval will have the interest rate on their loans increased to the current rate for that loan type. Borrowers that fail to provide the County Supervisor with the information needed to conduct the analysis required in subpart B of part 1924 of this chapter will have their interest rate on their loan increased to the current rate for the OL, FO, or SW loan as applicable. The rate may increase in increments of whole numbers to the current regular interest rate for borrowers. In the borrower's case file, the County Supervisor must document the unplanned purchases and the failure to provide information in a timely manner. The County Supervisor must write the borrower a letter which sets out the facts documented in the case file and advises the borrower that the interest rate will be increased unless the unplanned purchases cease or unless the borrower provides information in a timely manner. Whenever it appears that the borrower has a substantial increase in income and repayment ability or ceases farming, either the interest rate may be increased to the current rate for FO, OL or SW loans, as applicable, or the borrower will be graduated from the program as provided in subpart F of this part.

(4) The County Office will be responsible for scheduling and completing the reviews.

(5) Borrowers who have received a deferral under Subpart S of this part will not have the interest rate increased on their limited resource loans during the deferral period.

(c) *Processing.* (1) If, after the review, the interest rate is to remain the same, no further action needs to be taken.

(2) When the interest rate is increased to the current rate, the loan will be recorded as a regular loan and will no longer be considered a limited resource loan. The borrower must be notified in writing at least 30 days prior to the date of the change. Exhibit B of this subpart may be used as a guide. The effective date of the change in interest rate will be the effective date on Exhibit B. The borrower must be informed of the following for each loan:

(i) The authorization for the change,

(ii) Reason for change (repayment ability, etc.),

(iii) The effective date and rate of the increase in interest,

(iv) Amount of the new installments and dates due,

(v) Right to appeal.

(3) It is not necessary to obtain a new promissory note for this change in interest rate.

[50 FR 45764, Nov. 1, 1985, as amended at 53 FR 35717, Sept. 14, 1988; 56 FR 3395, Jan. 30, 1991; 58 FR 15074, Mar. 19, 1993]

§§ 1951.26—1951.49 [Reserved]

§ 1951.50 OMB control number.

The collection of information requirements in Subpart A of part 1951 have been approved by the Office of Management and Budget and assigned OMB control number 0575–0075.

[52 FR 26137, July 13, 1987]

EXHIBITS TO SUBPART A

EXHIBIT A—NOTICE TO FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 BORROWERS

FmHA or its successor agency under Public Law 103–354 borrowers with farmer program and community program loan types made under the Consolidated Farm and Rural Development Act may request a loan summary statement which shows the calendar year account activity for each loan. Interested borrowers may request these statements through their local FmHA or its successor agency under Public Law 103–354 office.

[54 FR 10270, Mar. 13, 1989]

EXHIBIT B—NOTICE OF CHANGE IN INTEREST RATE

(insert date)

Notice of Change in Interest Rate

(insert borrower's address)
Re: ☐☐
Fund code
☐☐
Loan number
☐☐
Kind code

Dear (*insert borrower's name and case number*): Your promissory note dated _____, for the original amount of _____ dollars ($_____) provides for a change in interest rate for a limited resource loan in accordance with the Farmers Home Administration or its successor agency under Public Law 103–354 regulations.

Effective (insert date) the interest rate on this loan will be ___ percent (%) on the unpaid principal balance. Your installment due January 1, 19 , will be _____ dollars ($_____). This change in interest rate is for the reason indicated below.

☐ Increase in repayment ability as per Farm and Home Plan dated _____.
☐ *(insert reason if other than above for increase in interest rate).*

You may appeal this action by writing to (*hearing officer*), (*address*), within 30 calendar days of the date of this letter, giving the reason why you believe this matter should be decided differently. This time may be extended if you cannot notify the hearing officer within 30 days for reasons beyond your control.

[56 FR 3396, Jan. 30, 1991]

Subpart B—Collections

SOURCE: 53 FR 26591, July 14, 1988, unless otherwise noted.

§ 1951.51 General.

This subpart prescribes the policies and procedures of the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) for collection of loan payments and depositing payments through the Concentration Banking System (CBS). Under CBA, FmHA or its successor agency under Public Law 103–354 field offices select a local financial institution to maintain a Treasury Limited Account (TLA) for depositing FmHA or its successor agency under Public Law 103–354 loan collections. Deposits to these accounts are withdrawn daily by the concentrator bank for transfer to the Treasury. Under these procedures, the local FmHA or its successor agency under Public Law 103–354 office will deposit the daily office collections in a participating local financial institution and report the amount deposited to a data service facility that is under contract to the concentrator bank. The data service facility will inform the concentrator bank of the amount available in each local financial institution and the concentrator bank will use this information to transfer the funds to the concentrator bank and then to the Treasury.

§§ 1951.52—1951.53 [Reserved]

§ 1951.54 Authority.

The provisions of this subpart are applicable to FmHA or its successor agency under Public Law 103–354 employees who are authorized to receive collections. Employees listed in Exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) are hereby authorized to receive, receipt for, exchange for money orders or bank drafts, and transmit collections or deposit collections in a TLA.

§ 1951.55 Receiving and processing collections.

FmHA or its successor agency under Public Law 103–354 offices receive borrower payments either through the mail or in person in the form of checks, money orders, and cash. Payments are recorded on the appropriate accounting forms which are Form FmHA or its successor agency under Public Law 103–354 451–2, Form FmHA or its successor agency under Public Law 103–354 1944–9, Form FmHA or its successor agency under Public Law 103–354 1951–55, or a payment coupon. Forms FmHA or its successor agency under Public Law 103–354 451–2 and FmHA or its successor agency under Public Law 103–354 1944–9 are used to transmit accounting information to the Finance Office. Form FmHA or its successor agency under Public Law 103–354 1951–55 is used to assemble payment information which the

District Offices use to transmit MFH account information through field office terminals. In addition, the FmHA or its successor agency under Public Law 103–354 office records payments on a management system card, a servicing card, or a payment tracking form, as appropriate.

[56 FR 28038, June 19, 1991]

Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

§ 1951.101 General.

The Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982, the Deficit Reduction Act of 1984, and the Debt Collection Amendments Act of 1996 provides for the use of administrative, salary, and Internal Revenue Service (IRS) offsets by government agencies, including the Farm Service Agency (FSA), Rural Housing Service (RHS), Rural Utility Service (RUS) for its water and waste programs, and Rural Business-Cooperative Service (RBS), herein referred to collectively as ''USDA Agency,'' to collect delinquent debts. Any money that is or may become payable from the United States to a individual or entity indebted to a USDA Agency or other individual or entity indebted to a USDA Agency may be subject to offset for the collection of a debt owed to a USDA Agency. In addition, money may be collected from the debtor's retirement payments for delinquent amounts owed to the USDA Agency if the debtor is an employee or retiree of a Federal agency, the U.S. Postal Service, the Postal Rate Commission, or a member of the U.S. Armed Forces or the Reserve. Amounts collected will be processed as regular payments and credited to the borrower's account. USDA Agencies will process requests by other Federal agencies for offset in accordance with §1951.102 of this subpart. This subpart does not apply to direct single family housing loans.

[62 FR 41798, Aug. 1, 1997]

§ 1951.102 Administrative offset.

Action to effect administrative offset to recover delinquent claims may be taken in accordance with the procedures in 7 CFR part 3, subpart B.

[62 FR 41799, Aug. 1, 1997]

§§ 1951.103—1951.110 [Reserved]

§ 1951.111 Salary offset.

Salary offset may be used to collect debts arising from delinquent USDA Agency loans and other debts which arise through such activities as theft, embezzlement, fraud, salary overpayments, under withholding of amounts payable for life and health insurance, and any amount owed by former employees from loss of federal funds through negligence and other matters. Salary offset may also be used by other Federal agencies to collect delinquencies or debts owed to them by employees of the USDA Agency, excluding County Committee members. Administrative offset, rather than salary offset, will be used to collect money from federal employee retirement benefits. Salary offset will not be initiated until after other servicing options available to the borrower have been utilized. In addition, for Farm Loan Programs loans, salary offset will not be instituted if the federal salary has been considered on the Farm and Home Plan, and it was determined the funds were to be used for another purpose other than payment on the USDA Agency loan. When salary offset is used, payment for the debt will be deducted from the employee's pay and sent directly to the creditor agency. Not more than 15 percent of the employee's disposable pay can be offset per pay period, unless the employee agrees to a larger amount. The debt does not have to be reduced to judgment or be undisputed, and the payment does not have to be covered by a security instrument. This section describes the procedures which must be followed before the USDA Agency can ask a Federal agency to offset any amount. Decisions made under this section are subject to the appeal procedures of 7 CFR part 11.

(a) *Authorities.* The following authorities are granted to USDA Agency employees in order that they may initiate and implement salary offset:

(1) Certifying Officials are authorized to certify to the debtor's employing

agency that the debt exists, the amount of the delinquency or debt, that the procedures in USDA Agency and United States Department of Agriculture's (USDA's) regulations regarding salary offsets have been followed, that the actions required by the Debt Collection Act have been taken; and to request that salary offset be initiated by the debtor's employing agency. This authority may not be redelegated.

(2) Certifying Officials are authorized to advise the Finance Office to establish employee defalcation accounts and non-cash credits to borrower accounts in cases involving other debts, such as those arising from theft, fraud, embezzlement, loss of funds through negligence, and similar actions involving USDA Agency employees.

(3) The Finance Office is authorized to establish defalcation accounts and non-cash credits to borrower accounts upon receipt of requests from the Certifying Officials.

(b) *Definitions*—(1) *Certifying Officials.* State Directors; State Executive Directors; the Assistant Administrator, Finance Office; and the Deputy Administrator for Management, National Office.

(2) *Debt or debts.* A term that refers to one or both of the following:

(i) *Delinquent debts.* A past due amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(ii) *Other debts.* An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable due to the employee's negligent, willful, unauthorized or illegal acts, including but not limited to:

(A) Theft, misuse, or loss of Government funds;

(B) False claims for services and travel;

(C) Illegal, unauthorized obligations and expenditures of Government appropriations;

(D) Using or authorizing the use of Government owned or leased equipment, facilities supplies, and services for other than official or approved purposes;

(E) Lost, stolen, damaged, or destroyed Government property;

(F) Erroneous entries on accounting record or reports; and,

(G) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the proximate cause for a loss of Government funds.

(3) *Defalcation account.* An account established in the Finance Office for other debts owed the Federal government in the amount missing due to the action of an employee or former employee.

(4) *Disposable pay.* Pay due an employee that remains after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits, and such other deductions required by law to be withheld.

(5) *Hearing Officer.* An Administrative Law Judge of the USDA or another individual not under the supervision or control of the USDA, designated by the Certifying Official to review the determination of the alleged debt.

(6) *Non-cash credit.* The accounting action taken by the Finance Office to credit and make a borrower's account whole for funds paid by the borrower but missing due to an employee's or former employee's actions.

(7) *Salary Offset.* The collection of a debt due to the U.S. by deducting a portion of the disposable pay of a Federal employee without the employee's consent.

(c) *Feasibility of salary offset.* The first step the Certifying Official must take to use this offset procedure is to decide, on a case by case basis, whether offset is feasible. If an offset is feasible, the directions in the following paragraphs of this section will be used to collect by salary offset. If the official making this determination decides that salary offset is not feasible, the reasons supporting this decision will be documented in the borrower's running case record in the case of delinquent debts, or the ''For Official Use Only''

file in cases of other debts. Ordinarily, and where possible, debts should be collected in one lump-sum; but payments may be made in installments. Installment deductions can be made over a period not greater than the anticipated period of employment. However, the amount deducted for a pay period will not exceed 15 percent of the disposable pay from which the deduction is made. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in approximately 3 years. Based on the Comptroller General's decisions, other debts by employees cannot be forgiven. If the employee retires or resigns, or if employment ends before collection of the debt is completed, final salary payment, lump-sum leave, etc. may be offset to the extent necessary to liquidate the debt. Salary offset is feasible if:

(1) The cost to the Government of collecting salary offset does not exceed the amount of the debt. County Committee members are exempt from salary offset because the amount collected by salary offset would be so small as to be impractical.

(2) There are not any legal restrictions to the debt, such as the debtor being under the jurisdiction of a bankruptcy court, or the statute of limitations having expired. The Debt Collection Act of 1982 permits offset of claims that have not been outstanding for more than 10 years.

(d) *Notice to debtor.* (1) After the Certifying Official determines that collection by salary offset is feasible, FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 should be sent within 15 calendar days after that determination. This Guide Letter will notify the debtor of intended salary offset at least 30 days before the salary offset begins. FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 will be personally delivered to the debtor or sent certified mail, Return Receipt Requested, with a copy sent by regular mail on the same day. If the certified mail receipt is returned, the date the debtor received the letter will be established and the time limits set out in FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 will run from that date. If delivery by certified mail is not accomplished, FmHA or its successor agency under Public Law 103–354 will assume that the debtor received the letter by regular mail on the day the certified mail was refused or was unable to be delivered.

(2) The Debt Collection Act of 1982 requires that the hearing officer issue a written decision not later than 60 days after the filing of the petition requesting the hearing; thus, the evidence upon which the decision to notify the debtor is based, to the extent possible, should be sufficient for FmHA or its successor agency under Public Law 103–354 to proceed at a hearing, should the debtor request a hearing under paragraph (f) of this section.

(e) *Notice requirement before salary offset.* Salary offset will not be made unless the employee receives 30 calendar days written notice. This Notice of Intent (FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4) will be addressed to the debtor or the debtor's representative. The Notice of Intent must be modified if it is addressed to the debtor's representative. In either case, the Notice of Intent will state:

(1) It has been determined that the debt is owed, the amount of the debt, and the facts giving rise to the debt;

(2) The cost to the Government of collecting salary offset does not exceed the amount of the debt;

(3) There are not any legal restrictions that would bar collecting the debt;

(4) The debt will be collected by means of deduction of not more than 15 percent from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(5) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(6) An explanation of the requirements concerning interest, penalties and administrative costs, unless such payments are waived;

(7) The employee's right to inspect and request a copy of records relating to the debt;

(8) The employee's right to voluntarily enter into a written agreement for a repayment schedule with the agency different from that proposed by

FmHA or its successor agency under Public Law 103–354, if the terms of the repayment proposed by the employee are agreeable with the agency;

(9) That the employee has a right to a hearing conducted by an Administrative Law Judge of USDA or a hearing official not under the supervision or control of the Secretary of Agriculture, concerning the agency's determination of the existence or amount of the debt and the percentage of disposable pay to be deducted each pay period, if a petition for a hearing is filed by the employee as prescribed by FmHA or its successor agency under Public Law 103–354;

(10) The timely filing of a petition for hearing will stay the collection proceedings;

(11) That a final decision will be issued at the earliest practical date, but not later than 60 calendar days after the filing of petition requesting the hearing;

(12) That any knowingly false or frivolous statements may subject the employee to disciplinary procedures, or penalties, under the applicable statutory authority;

(13) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(14) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee unless there are provisions to the contrary;

(15) The method and time period for requesting a hearing; and

(16) The name and address of an official of USDA to whom communications should be directed.

(f) *Debtor's request for records, offer to repay, request for a hearing or request for information concerning debt settlement.*

(1) If a debtor responds to FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 by asking to review and copy FmHA or its successor agency under Public Law 103–354's records relating to the debt, the Certifying Official will promptly respond by sending a letter which tells the debtor the location of the debtor's FmHA or its successor agency under Public Law 103–354 files and that the files may be reviewed and copied within the next 30 days. Copying costs (see subpart F of part 2018 of this Chapter) will be set out in the letter, as well as the hours the files will be available each day. If a debtor asks to have FmHA or its successor agency under Public Law 103–354 copy the records, a copy will be made within 30 days of the request.

(2) If a debtor responds to FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 by offering to repay the debt, the offer may be accepted by the Certifying Official, if it would be in the best interest of the government. FmHA or its successor agency under Public Law 103–354 Form Letter 1951–8 will be used if a repayment offer for an FmHA or its successor agency under Public Law 103–354 loan or grant is accepted. Upon receipt of an offer to repay, the Certifying Official will delay institution of a hearing until a decision is made on the repayment offer. Within 60 days after the initial offer to repay was made, the Certifying Official must decide whether to accept or reject the offer. This decision will be documented in the running case record or the ''For Official Use Only'' file, as appropriate, and the debtor will be sent a letter which sets out the decision to accept or reject the offer to repay. The decision to accept or reject a repayment offer should be based upon a realistic budget or farm and home plan and according to the servicing regulations for the type of loan(s) involved.

(3) If a debtor responds to FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 by asking for a hearing on FmHA or its successor agency under Public Law 103–354's determination that a debt exists and/or is due, or on the percentage of net pay to be deducted each pay period, the Certifying Official will notify the debtor in accordance with paragraph (g)(3) of this section and request the debtor's case file or the ''For Official Use Only'' file.

(4) If a debtor is willing to have more than 15 percent of the disposable pay sent to FmHA or its successor agency under Public Law 103–354, a letter prepared and signed by the debtor clearly

stating this must be placed in the debtor's case file or the ''For Official Use Only'' file.

(5) If a debtor who is an FmHA or its successor agency under Public Law 103–354 borrower requests debt settlement, the account must be in collection-only status or be an inactive account for which there is no security. The Certifying Official must inform the borrower of how to apply for debt settlement. Any application will be considered independently of the salary offset. A salary offset should not be delayed because the borrower applied for debt settlement.

(6) The time limits set in FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 and in paragraphs (f) (1), (2), and (3) of this section run concurrently. In other words, if a debtor asks to review the FmHA or its successor agency under Public Law 103–354 file and offers to repay the debt, the debtor cannot take 30 days to ask to review the file and then take another 30 days to offer to repay. The request to review the file and the offer to repay must both be made within 30 days of the date the debtor receives the notification letter.

(7) If an employee is included in a bargaining unit which has a negotiated grievance procedure that does not specifically exclude salary offset proceedings, the employee must grieve the matter in accordance with the negotiated procedure. Employees who are not covered by a negotiated procedure must utilize the salary offset proceedings as outlined in FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4. The employee must be informed, in writing, which procedure to follow and, as appropriate, reference should be made to the appropriate sections of the negotiated agreement.

(g) *Hearings.* (1) A hearing officer must be a USDA Administrative Law Judge or a person who is not a USDA employee. In order to ensure that a hearing officer will be available promptly when needed, Certifying Officials need to make appropriate arrangements with officials of nearby federal agencies for the use of each other's employees as hearing officers.

(2) Not later than 30 days from the date the debtor receives the Notice of Intent (FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4), the employee must file with the Certifying Official issuing the notice, a written petition establishing his/her desire for a hearing on the existence and amount of the debt or the proposed offset schedule. The employee's petition must fully identify and explain all the information and evidence that supports his/her position. In addition, the petition must bear the employee's original signature and be dated upon receipt by the Certifying Official.

(3) Certifying Officials are responsible for determining if the employee's petition for a hearing has been submitted in a timely fashion. Petitions received from employees after the 30-day time limitation expires will be accepted only if the employee can show the delay was because of circumstances beyond his/her control or because of failure to receive notice of the time limitation. Certifying Officials are required to provide written notification to the employee of the acceptance or non-acceptance of the employee's petition for hearing.

(4) For those petitions accepted, FmHA or its successor agency under Public Law 103–354 will arrange for a hearing officer and notify the employee of the time and place of the hearing. The hearing location should be convenient to all parties involved. The employee will also be notified that the acceptance of the petition for hearing will stay the commencement of collection proceedings. Any payments collected in error due to untimely or delayed filing beyond the employee's control will be refunded unless there are applicable contractual or statutory provisions to the contrary.

(5) The hearing will be based on written submissions and documentation provided by the debtor and FmHA or its successor agency under Public Law 103–354 unless:

(i) A statute authorizes or requires consideration of waiving the debt, the debtor requests waiver of the debt, and the waiver determination turns on an issue of credibility or truth.

(ii) The debtor requests reconsideration of the debt and the hearing officer determines that the question of the indebtedness cannot be resolved by a review of the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or truth.

(iii) The hearing officer determines that an oral hearing is appropriate.

(6) Oral hearings may be conducted by conference call at the request of the debtor or at the discretion of the hearing officer. The hearing officer's determination that the offset hearing is on the written record is final and is not subject to review.

(7) The hearing officer will issue a written decision not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the Certifying Official grants a delay in the proceedings. The written decision will state the facts supporting the nature and origin of the debt, the hearing officer's analysis, findings and conclusions as to the amount and validity of the debt, and repayment schedule. Both the employee and FmHA or its successor agency under Public Law 103–354 will be provided with a copy of the hearing officer's written decision on the debt.

(h) *Processing delinquent debts.* (1) Form AD–343, ''Payroll Action Request,'' and FmHA or its successor agency under Public Law 103–354 Form Letter 1951–6 will be prepared and submitted by the Certifying Official to the National Office, FMAS, for coordination and forwarding to the debtor's employing agency if:

(i) The borrower does not respond to FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 within 30 days.

(ii) The borrower responds to FmHA or its successor agency under Public Law 103–354 Guide Letter 1951–C–4 within 30 days and

(A) Has had an opportunity to review the file, if requested,

(B) Has received a hearing, if requested, and

(C) A decision has been made by the hearing officer to uphold the offset.

(2) A copy of Form AD–343 and the Form letter 1951–6 will be sent to the Finance Office, St. Louis, MO 63103, Attn: Account Settlement Unit.

(3) If the debtor is an FmHA or its successor agency under Public Law 103–354 employee, Form AD–343 will be sent to the National Office, FMAS, and a copy to the Finance Office, St. Louis, MO, Attn: Account Settlement Unit. This form can be signed for the Certifying Official by an employment officer, an Administrative Officer, or a personnel management specialist, or signed by the Certifying Official.

(4) If the debtor has agreed to have more or less than 15 percent of the disposable pay sent to FmHA or its successor agency under Public Law 103–354, a copy of the debtor's letter (FmHA or its successor agency under Public Law 103–354 Form Letter 1951–8) authorizing this must be attached to Form AD–343.

(5) Field offices will be notified of payments received from salary offset by receipt of a transaction record from the Finance Office.

(i) *Deduction percentage.* (1) Generally, installment deductions will be made over a period not greater than the anticipated period of employment. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in approximately 3 years. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. Certifying Officials are responsible for determining the size and frequency of the deductions. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(2) Deductions will be made only from basic pay, incentive pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay. If there is more than one salary offset, the maximum deduction for all salary offsets against an employee's disposable pay is 15 percent unless the employee has agreed in writing to a greater amount.

(j) *Agency/NFC responsibility for other debts.* (1) FmHA or its successor agency under Public Law 103–354 will inform NFC about other indebtedness by transmitting to NFC an AD–343. NFC will process the documents through the Payroll/Personnel System, calculate the net amount of the adjustment and generate a salary offset notice. This notice will be sent to the employee's employing office along with a duplicate copy for the FmHA or its successor agency under Public Law 103–354's records. FmHA or its successor agency under Public Law 103–354 is responsible for completing the necessary information and forwarding the employee's notice to the employee.

(2) Other indebtedness falls into two categories:

(i) An agency-initiated indebtedness (i.e. personal telephone calls, property damages, etc.).

(ii) An NFC-initiated indebtedness (i.e. duplicate salary payments, etc.). NFC will send the salary offset notice to the employing office.

(k) *Establishing employees or former employees defalcation accounts and non-cash credits to borrower accounts.* In cases where a borrower made a payment on an FmHA or its successor agency under Public Law 103–354 account(s) and, due to theft, embezzlement, fraud, negligence, or some other action on the part of an FmHA or its successor agency under Public Law 103–354 employee or employees, the payment is not transmitted to the Finance Office for application to the borrower's account(s), certain accounting actions must be taken by the Finance Office to establish non-cash credits to the borrower's account and an employee defalcation account.

(1) The Certifying Official will advise the Assistant Administrator, Finance Office by memorandum to establish a defalcation account. The memorandum must state the following information:

(i) Employee's name (or former),

(ii) Social Security Number,

(iii) Present or last known address,

(iv) Date of Payment, and

(v) Amount of the defalcation account.

(2) If a non-cash credit to a borrower's account(s) is required, the letter to the Finance Office will include:

(i) Borrower's name and case number,

(ii) Fund Code and Loan Code,

(iii) Date and amount of missing payment,

(iv) Copy of receipt issued for the missing payment, and

(v) Name of employee who last had custody of the missing funds.

(3) To assist and assure proper accounting for defalcation accounts and non-cash credits, the request should be made at the same time. Should requests be made separately, be sure to identify appropriately.

(4) The Certifying Official shall furnish a copy of the memorandum and supporting documentation for paragraphs (k) (1) and (2) of this section to the Deputy Administrator for Management for distribution to the Financial and Management Analysis Staff (FMAS) and Employee Relations Branch, Personnel Division.

(l) *Application of payments, refunds and overpayments.* (1) If a debtor is delinquent or indebted on more than one FmHA or its successor agency under Public Law 103–354 loan or debt, amounts collected by offset will be applied as specified on Form AD–343, based on the advantage to agency or debtor. The check date will be used as the date of credit in applying payments to the borrower's accounts.

(2) If a court or agency orders FmHA or its successor agency under Public Law 103–354 to refund the amount obtained by salary offset, a refund will be requested promptly by the Certifying Official in accordance with the order by sending FmHA or its successor agency under Public Law 103–354 Form Letter 1951–5 to the Finance Office. Processing FmHA or its successor agency under Public Law 103–354 Form Letter 1951–5 in the Finance Office will cause a refund to be sent to the debtor through the county office or other appropriate FmHA or its successor agency under Public Law 103–354 office. The debtor is not entitled to any payment of interest, on the refunded amount.

(3) If a debtor does not request a hearing within the required time and it is later determined that the delay was due to circumstances beyond the debtor's control, any amount collected before the hearing decision is made will be refunded promptly by the Certifying

Official in accordance with paragraphs (l) (1) and (2) of this section.

(4) If FmHA or its successor agency under Public Law 103–354 receives money through an offset but the debtor is not delinquent or indebted at the time or the amount received is in excess of the delinquency or indebtedness, the entire amount or the amount in excess of the delinquency or indebtedness will be refunded promptly to the debtor by the Certifying Official in accordance with paragraphs (l) (1) and (2) of this section.

(m) *Cancellation of offset.* If a debtor's name has been submitted to another agency for offset and the debtor's account is brought current or otherwise satisfied, the Certifying Official will complete Form AD–343 and send it to the National Office, FMAS. FMAS will notify the paying agency with Form AD–343 that the debtor is no longer delinquent or indebted and to cancel the offset. A copy of the cancellation document will be sent to the debtor and the Finance Office, Attn: Account Settlement Unit.

(n) *Intra-departmental transfer.* When an FmHA or its successor agency under Public Law 103–354 employee who is indebted to one agency in USDA transfers to another agency within USDA, a copy of the repayment schedule should be forwarded by the agency personnel office to the new employing agency. The NFC will continue to make deductions until full recovery is effected.

(o) *Liquidation from final checks.* Upon the determination that an employee owing a debt to FmHA or its successor agency under Public Law 103–354 is to retire, resign, or employment otherwise ends, the Certifying Official should forward a telegram with the appropriate employee identification and amount of the debt to the NFC. The telegram should request that the debt be collected from final salary/lump sum leave or other funds due the employee, and, if necessary, to put a hold on the retirement funds. The telegram information should be confirmed by completion of Form AD–343. Collection from retirement funds will be in accordance with Departmental Administrative Offset procedures (7 CFR Part 3, Subpart B, § 3.32).

(p) *Coordination with other agencies.* (1) If FmHA or its successor agency under Public Law 103–354 is the creditor agency but not the paying agency, the Certifying Official will submit Form AD–343 to the National Office, FMAS, to begin salary offset against an indebted employee. The request will include a certification as to the determination of indebtedness, and that FmHA or its successor agency under Public Law 103–354 has complied with applicable regulations and instruction for submitting the funds to the Finance Office. (See FmHA or its successor agency under Public Law 103–354 Form Letter 1951–6).

(2) When an employee of FmHA or its successor agency under Public Law 103–354 owes a debt to another Federal agency, salary offset may be used only when the Federal agency certifies that the person owes the debt and that the Federal agency has complied with its regulations. The request must include the creditor agency's certification as to the indebtedness, including the amount, and that the employee has been given the due process entitlements guaranteed by the Debt Collection Act of 1982. When a request for offset is received, FmHA or its successor agency under Public Law 103–354 will notify the employee and NFC and arrange for offset. (See FmHA or its successor agency under Public Law 103–354 Form Letter 1951–7).

(q) *Deductions by the National Finance Center (NFC).* The NFC will automatically deduct the full amount of the delinquency or indebtedness if less than 15 percent of disposable pay or 15 percent of disposable pay if the delinquency or indebtedness exceeds 15 percent, unless the creditor agency advises otherwise. Deductions will begin the second pay period after the 30-day notification period has expired unless FmHA or its successor agency under Public Law 103–354 issues the notice. If FmHA or its successor agency under Public Law 103–354 issues the notice, the NFC will begin deductions on the first pay period after receipt of the Form AD–343.

(r) *Interest, penalties and administrative costs.* Interest and administrative

costs will normally be assessed on outstanding claims being collected by salary offset. However, penalties should not be charged routinely on debts being collected in installments by salary offsets, since it is not to be construed as a failure to pay within a given time period. Additional interest, penalties, and administrative costs will not be assessed on delinquent loans until FmHA or its successor agency under Public Law 103–354 publishes regulations permitting such charges.

(s) *Adjustment in rate of repayment.* (1) When an employee who is indebted receives a reduction in basic pay that would cause the current deductions to exceed 15 percent of disposable pay, and the employee has not consented in writing to a greater amount, FmHA or its successor agency under Public Law 103–354 must take action to reduce the amount of the deductions to 15 percent of the new amount of disposable pay. Upon an increase in basic pay which results in the current deductions to be less than the specified percentage, FmHA or its successor agency under Public Law 103–354 may increase the amount of the deductions accordingly. In either case, when a change is made the employee will be notified in writing.

(2) When an employee has an existing reduced repayment schedule because of financial hardship, the creditor agency may arrange for a new repayment schedule.

[52 FR 18544, May 18, 1987, as amended at 53 FR 44178, Nov. 2, 1988; 54 FR 26945, June 27, 1989; 62 FR 41799, Aug. 1, 1997]

§§ 1951.112—1951.120 [Reserved]

§ 1951.121 Internal Revenue Service (IRS) offset.

The IRS can reduce a taxpayer's overpayment of tax by the amount of any legally enforceable debt owed to a Federal agency. This subpart establishes procedures to implement IRS offsets. Borrowers referred to IRS for offset will continue to be serviced as required by § 1951.312 of subpart G of part 1951 of this chapter.

[54 FR 966, Jan. 11, 1989]

§ 1951.122 Finance Office screening.

The FmHA or its successor agency under Public Law 103–354 Finance Office will screen the accounts of all borrowers potentially eligible for IRS Offset. FmHA or its successor agency under Public Law 103–354 field offices will further screen these accounts based on the following ineligibility criteria. The Finance Office will determine the appropriate date for this screening based on IRS deadlines.

(a) *General.* All past due single family housing (SFH) and farmer program (FP) accounts are eligible for IRS Offset unless they meet one or more of the following criteria:

(1) Account has been referred to OGC for foreclosure and, based on the legal opinion required by § 1951.103(c), a collection by offset would jeopardize the litigation under State law. Existence of a foreclosure action pending flag is not a determining factor.

(2) Account has been discharged in bankruptcy or is under the jurisdiction of a bankruptcy court and the debt has not been reaffirmed. Existence of a bankruptcy action pending flag is not a determining factor.

(3) Account has a suspend code.

(4) Account has been assigned to a collection agency.

(5) Account is past due by less than $25, or if the borrower has multiple loans, the net amount past due is less than $25.

(6) Borrower is a Federal employee and collection is feasible under salary offset.

(7) Borrower was indebted to FmHA or its successor agency under Public Law 103–354 prior to entering full time active duty military service and the account is being serviced in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 1950–C.

(8) Account is current under a subject to approved adjustment (SAA).

(b) *Single Family Housing Borrowers.* In addition to the criteria set forth in § 1951.122(a), the following criteria are for delinquent SFH borrowers:

(1) Borrower has one loan and it is less than 3 monthly payments delinquent (or, if annual borrower, the

equivalent of less than 3 monthly payments for annual payments past due) or more than 9 years delinquent.

(2) Borrower has multiple loans, and the net amount past due is less than 3 monthly payments on the delinquent loans (or the equivalent of 3 monthly payments for annual payment borrowers).

(3) Account is under a moratorium.

(4) Account has an Additional Payment Agreement (APA) in effect and payments under the APA are less than 3 months past due.

(c) *Farmer Program Borrowers.* In addition to the criteria set forth in §1951.122(a), the following criteria are for delinquent FP borrowers:

(1) Borrower is a partnership or corporation and/or is identified in the accounting system by an employer Identification Number (EIN rather than a Social Security Number (SSN).

(2) Account is less than 90 days past due.

(d) *Servicing Condition Requirements for Farmer Program Borrowers.* The FP accounts remaining after screening from §1951.122 (a) and (c) are eligible for IRS offset only if either of the following servicing conditions takes place, whichever comes first:

(1) Borrower has received any combination of Attachments 3 through 10 of Exhibit A of subpart S of this part; and the borrower did not request an appeal of the decision; any appeal has been concluded; or

(2) Borrower's account(s) has been accelerated.

[55 FR 38035, Sept. 17, 1990, as amended at 55 FR 52037, Dec. 19, 1990]

§1951.123 Field office screening.

Accounts determined by computer screening in the Finance Office to be potentially eligible will be referred to the IRS and to the appropriate FmHA or its successor agency under Public Law 103–354 County Office for review. If the County Office is aware that any account should be removed for any of the reasons set forth in §1951.122, the County Office will remove the account in accordance with the instructions accompanying the list, ''Borrowers Eligible for Offset (prior to 60-day notice).'' Borrowers who are removed by the County Office will not receive an offset letter, and no further action is necessary concerning borrowers removed. The Finance Office will remove those accounts identified as ineligible by County Offices and provide this information to IRS in accordance with IRS deadlines and procedures.

[54 FR 967, Jan. 11, 1989, as amended at 55 FR 38036, Sept. 17, 1990]

§1951.124 Notice to borrowers.

The Finance Office will send FmHA or its successor agency under Public Law 103–354 Form Letter 1951–6 to each borrower who still appears to be eligible for IRS offset after County Office screening and a computer screening using the latest account information that is available. This letter must be mailed to ensure that borrowers receive their letters no later than October 15. Borrowers will have 60 days from the date of receipt to provide evidence in writing to the County Supervisor that their debt is less than 3 months delinquent or that the debt is not legally enforceable. Borrowers who reduce their debt to less than 3 months past due during this 60-day period will not be offset.

[54 FR 967, Jan. 11, 1989, as amended at 55 FR 38036, Sept. 17, 1990]

§1951.125 Processing borrowers' requests not to exercise IRS offset.

If a borrower responds to FmHA or its successor agency under Public Law 103–354 Form Letter 1951–C–6 within 60 days from the date of receipt, the County Supervisor will review the borrower's reasons for believing that the debt is either less than 3 months delinquent or is not legally enforceable. After such determination, the County Supervisor will send the borrower FmHA or its successor agency under Public Law 103–354 Form Letter 1951-C-9 advising the borrower if offset will be exercised.

[55 FR 38036, Sept. 17, 1990, as amended at 55 FR 52037, Dec. 19, 1990]

§1951.126 Final referral to IRS.

All accounts not eliminated will be sent to IRS for offset and Report Code 865, Borrower Accounts Submitted to IRS for Offset Report, sent to each appropriate County Office. Each County

Office will review the list on Report Code 865 upon receipt, and each week thereafter. This weekly review will continue until September 1 for the previous year's submission, or until action has been taken on each account (offset or removal). If any of the events listed under § 1951.122 of this subpart occurs, immediately submit Form FmHA or its successor agency under Public Law 103–354 1951–43, ''Adjustment of Accounts Referred for IRS Offset,'' in accordance with the FMI for that form. All accounts referred to the IRS for offset will be reported to a credit bureau by the Finance Office.

[55 FR 38036, Sept. 17, 1990, as amended at 55 FR 52037, Dec. 19, 1990]

§ 1951.127 Processing of amounts offset.

After IRS effects an offset, IRS will notify the Finance Office. The Finance Office may deduct an amount equal to IRS' processing costs from the amount offset to reimburse the Agency for the cost of processing the offset, will credit the borrower's account for the amount required and will notify the appropriate County Office. The County Supervisor will review Report Code 222–C, Weekly Offset Report (Cash Collections IRS Offset), to ensure that any borrower who would have been eliminated from offset due to the provisions of § 1951.122 of this subpart was not subjected to an offset. If the offset was not correct, the County Supervisor will immediately notify the Finance Office of any such offsets using FmHA or its successor agency under Public Law 103–354 Form Letter 1951–5. This Form Letter will be processed by the Finance Office and a refund, including the processing fee, will be sent to the borrower. If the offset is correct, Finance and County Office records will be adjusted accordingly.

[54 FR 967, Jan. 11, 1989, as amended at 55 FR 38036, Sept. 17, 1990]

§ 1951.128 Receipt of Finance Office/IRS offset reports and listings.

The Finance Office will provide a copy of the reports or listings in § 1951.129 through § 1951.135 of this subpart to each servicing county. County Supervisors are responsible for ensuring the field offices review each report and respond to the timeframes as indicated.

[55 FR 38036, Sept. 17, 1990]

§ 1951.129 Borrowers eligible for offset (prior to 60-day notice).

This listing includes borrowers eligible for offset after Finance Office screening. The field office will screen all borrowers in accordance with § 1951.122 of this subpart. Borrowers meeting any of the ineligibility criteria must be eliminated by drawing a line through the borrower's name. When all borrowers have been reviewed for offset eligibility, the original list must be sent to the Chief, Computer Resources Branch, mail code FC–353, in the Finance Office. These lists must be received no later than 1 month after the date of receipt, since the Finance Office will use the information provided to generate letters to borrowers informing them of potential IRS offset. No borrowers may be added to this list by the field office. A copy of this list should be retained by each field office. If a borrower is ineligible for IRS offset due to any of the exclusion criteria in § 1951.122 and that borrower's account does not reflect that exclusion criteria in the accounting system, the field offices must ensure that the account be updated immediately.

[55 FR 38036, Sept. 17, 1990]

§ 1951.130 Borrowers sent due process notices for IRS/Credit Bureau referrals.

This listing includes those borrowers remaining eligible for offset after field office screening and who were sent notices of the intent to offset their tax refund. The notice advises the borrower that they have 60 days from the date of receipt of the letter in which to provide written information to their FmHA or its successor agency under Public Law 103–354 County Supervisor to show that offset should not be exercised. A borrower who has provided written notification and it has been determined the he/she meets the criteria under § 1951.122 of this subpart must be eliminated by drawing a line through the borrower's name on the listing. When all borrowers have been reviewed for offset eligibility, the original must be

sent to the Chief, Computer Resources Branch, mail code FC–353, in the Finance Office. These lists must be received no later than 2 months after the date of receipt, since the Finance Office will use the information provided on these lists to create the IRS annual certification tape. No borrowers may be added to this list by the field office. A copy of this list should be retained by each field office. If a borrower is ineligible for IRS offset due to any of the exclusion criteria in §1951.122 and that borrower's account does not reflect that exclusion criteria in the accounting system, the field offices must ensure that the account be updated immediately.

[55 FR 38037, Sept. 17, 1990]

§1951.131 Form FmHA or its successor agency under Public Law 103–354 389–833, Borrower Accounts Submitted to IRS for Offset Report, RC 865.

This report lists borrowers remaining eligible for offset after the 60-day notice period and who were referred to IRS for offset. This report should be retained by the field office and referred to when decreasing an amount referred for offset or deleting a borrower from IRS offset using Form FmHA or its successor agency under Public Law 103–354 1951–43.

[55 FR 38037, Sept. 17, 1990]

§1951.132 Form FmHA or its successor agency under Public Law 103–354 389–760, Annual Unprocessable Report IRS Offset, RC 822–C.

This report lists those borrowers who were referred to IRS for offset, but were returned by IRS as evidenced by the applicable error code. These borrowers will *not* be offset by IRS. This report should be retained by each field office. It is not necessary to complete Form FmHA or its successor agency under Public Law 103–354 1951–43 for borrowers listed on this report.

[55 FR 38037, Sept. 17, 1990]

§1951.133 Form FmHA or its successor agency under Public Law 103–354 389–761, Annual No Match Report IRS Offset, RC 822–D.

This report lists those borrowers who were referred to IRS for offset, but were returned by IRS as evidenced by the applicable error code. These borrowers will *not* be offset by IRS. This report should be retained by each field office. It is not necessary to complete Form FmHA or its successor agency under Public Law 103–354 1951–43 for borrowers listed on this report.

[55 FR 38037, Sept. 17, 1990]

§1951.134 Form FmHA or its successor agency under Public Law 103–354 389–764, Weekly Offset Report (Cash Collections) IRS Offset, RC 222–C.

This report lists those borrowers whose income tax refund was offset by IRS and the amount offset. Except for a minimal processing fee that may be deducted, all monies collected from an offset will be applied toward the borrower's delinquent loan(s). If an offset does not repay all of the delinquent amount, the borrower is subject to additional offsets if more than one tax year return is filed.

This report should be retained by each field office and referred to if it has been determined a borrower has been erroneously offset. The field office should use the amount offset from this report when following the instructions outlined in §1951.127 for refunding the offset to the borrower.

[55 FR 38037, Sept. 17, 1990]

§1951.135 Form FmHA or its successor agency under Public Law 103–354 389–763, Weekly Claims Report IRS Offset, RC 222–D.

This report lists those borrowers whose spouses were issued a refund by IRS. These borrowers filed a joint tax return and incurred the debt separately from their spouses who had no legal responsibility for the debt and who had income and withholding and/or estimated tax payments. The report shows the actual amount offset for the borrower only. The spouses' portion of the income tax refund was not offset. It is not necessary to prepare FmHA or its successor agency under Public Law 103–354 Form Letter 1951–5 for these borrowers since the borrower's spouse has already received a refund from IRS. Upon receipt of this report, field offices should annotate on RC 222–C (§1951–134)

the actual amount offset for those borrowers listed in this report. This report should be retained by each field office.

[55 FR 38037, Sept. 17, 1990]

§§ 1951.136—1951.149 [Reserved]

§ 1951.150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0119.

[51 FR 42821, Nov. 26, 1986]

Subpart D—Final Payment on Loans

SOURCE: 57 FR 774, Jan. 9, 1992, unless otherwise noted.

§ 1951.151 Purpose.

This subpart prescribes authorizations, policies, and procedures of the Farm Service Agency (FSA), Rural Housing Service (RHS), Rural Utility Service (RUS) for its water and waste programs, and Rural Business–Cooperative Service (RBS), herein referred to as ''Agency,'' for processing final payment on all loans. This subpart does not apply to direct single family housing customers of the RHS.

[61 FR 59778, Nov. 22, 1996]

§ 1951.152 Definition.

As used in this subpart:

Mortgage. Includes real estate mortgage, deed of trust or any other form of security instrument or lien on real property.

§ 1951.153 Chattel security or note-only cases.

(a) If a loan secured by both real estate and chattels is paid in full, the chattel security instrument will be satisfied or released in accordance with subpart A of part 1962 of this chapter.

(b) When a loan is evidenced by only a note and the note is paid in full, FmHA or its successor agency under Public Law 103–354 will deliver the note to the borrower in the manner prescribed in § 1951.155(c) of this subpart.

§ 1951.154 Satisfaction and release of documents.

(a) *Authorization.* FmHA or its successor agency under Public Law 103–354 is authorized to execute the necessary releases and satisfactions and return security instruments and related documents to borrowers. Satisfaction and release of security documents takes place:

(1) Upon receipt of payment in full of all amounts owed to the Government including any amounts owed to the loan insurance account, subsidy recapture amounts, all loan advances and/or other charges to the borrower's account;

(2) Upon verification that the amount of payment received is sufficient to pay the full amount owed by the borrower; or

(3) When a compromise or adjustment offer has been accepted and approved by the appropriate Government official in full settlement of the account and all required funds have been paid.

(b) [Reserved]

(c) *Lost note.* If the original note is lost FmHA or its successor agency under Public Law 103–354 will give the borrower an affidavit of lost note so that the release or satisfaction may be processed.

§ 1951.155 County and/or District Office actions.

(a) *Funds remaining in supervised bank accounts.* When a borrower is ready to pay an insured or direct loan in full, any funds remaining in a supervised bank account will be withdrawn and remitted for application to the borrower's account. If the entire principal of the loan is refunded after the loan is closed, the borrower will be required to pay interest from the date of the note to the date of receipt of the refund.

(b) *Determining amount to be collected.* FmHA or its successor agency under Public Law 103–354 will compute and verify the amount to be collected for payment of an account in full. Requests for payoff balances on all accounts will be furnished in writing in a format specified by FmHA or its successor agency under Public Law 103–354 (available in any FmHA or its successor agency under Public Law 103–354 office).

(c) *Delivery of satisfaction, notes, and other documents.* When the remittance which paid an account in full has been processed by FmHA or its successor agency under Public Law 103–354, the paid note and satisfied mortgage may be returned to the borrower. If other provisions exist, the mortgage will not be satisfied until the total indebtedness secured by the mortgage is paid. For instance, in a situation where a rural housing loan is paid-in-full and there is a subsidy recapture receivable balance that the borrower elects to delay repaying, the amount of recapture to be repaid will be determined when the principal and interest balance is paid. The mortgage securing the RHS, RBS, RUS, and/or FSA or its successor agency under Public Law 103–354 debt will not be released of record until the total amount owed the Government is repaid. To permit graduation or refinancing by the borrower, the mortgage securing the recapture owed may be subordinated.

(1) If FmHA or its successor agency under Public Law 103–354 receives final payments in a form other than cash, U.S. Treasury check, cashier's check, certified check, money order, bank draft, or check issued by an institution determined by FmHA or its successor agency under Public Law 103–354 to be financially responsible, the mortgage and paid note will not be released until after a 30-day waiting period. If other indebtedness to FmHA or its successor agency under Public Law 103–354 is not secured by the mortgage, FmHA or its successor agency under Public Law 103–354 will execute the satisfaction or release. When the stamped note is delivered to the borrower, FmHA or its successor agency under Public Law 103–354 will also deliver the real estate mortgage and related title papers such as title opinions, title insurance binders, certificates of title, and abstracts which are the property of the borrower. Any water stock certificates or other securities that are the property of the borrower will be returned to the borrower. Also, any assignments of income will be terminated as provided in the assignment forms.

(2) Delivery of documents at the time of final payment will be made when payment is in the form of cash, U.S. Treasury check, cashier's check, certified check, money order, bank draft, or check issued by an institution determined by FmHA or its successor agency under Public Law 103–354 to be responsible. FmHA or its successor agency under Public Law 103–354 will not accept payment in the form of foreign currency, foreign checks or sight drafts. FmHA or its successor agency under Public Law 103–354 will execute the satisfaction or release (unless other indebtedness to FmHA or its successor agency under Public Law 103–354 is covered by the mortgage) and mark the original note with a paid-in-full legend based upon receipt of the full payment balance of the borrower's account(s), computed as of the date final payment is received. In unusual cases where an insured promissory note is held by a private holder, FmHA or its successor agency under Public Law 103–354 can release the mortgage and deliver the note when it is received.

(d)–(e) [Reserved]

(f) *Cost of recording or filing of satisfaction.* The satisfaction or release will be delivered to the borrower for recording and the recording costs will be paid by the borrower, except when State law requires the mortgagee to record or file satisfactions or release and pay the recording costs.

(g) *Property insurance.* When the borrower's loan has been paid-in-full and the satisfaction or release of the mortgage has been executed, FmHA or its successor agency under Public Law 103–354 may release the mortgage interest in the insurance policy as provided in subpart A of part 1806 of this chapter (FmHA or its successor agency under Public Law 103–354 Instruction 426.1).

(h) [Reserved]

(i) *Outstanding Loan Balance(s).* FmHA or its successor agency under Public Law 103–354 will attempt to collect any account balance(s) that may result from an error by FmHA or its successor agency under Public Law 103–354 in handling final payments according to paragraph 1951.155(b) of this section. If collection cannot be made, the debt will be settled according to subpart B of part 1956 of this chapter or reclassified to collection-only. A deficiency judgment may be considered if the balance is a significant amount

($1,000 or more) and the borrower has known assets.

57 FR 774, Jan. 9, 1992, as amended at 60 FR 55145, Oct. 27, 1995]

§§ 1951.156—1951.200 [Reserved]

Subpart E—Servicing of Community and Direct Business Programs Loans and Grants

SOURCE: 55 FR 4399, Feb. 8, 1990, unless otherwise noted.

§ 1951.201 Purposes.

This subpart prescribes the Rural Development mission area policies, authorizations, and procedures for servicing Water and Waste Disposal System loans and grants; Community Facility loans and grants; Rural Business Enterprise/Television Demonstration grants; loans for Grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Direct Business loans; Economic Opportunity Cooperative loans; loans to Indian Tribes and Tribal Corporations; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; Water and Waste Disposal Technical Assistance and Training grants; Emergency Community Water Assistance grants; System for Delivery of Certain Rural Development Programs panel grants; section 306C WWD loans and grants; and Rural and Cooperative Development Grants in subpart F of part 4284 of this title. Rural Development State Offices act on behalf of the Rural Utilities Service, the Rural Business-Cooperative Service, and the Farm Service Agency as to loan and grant programs formerly administered by the Farmers Home Administration and the Rural Development Administration. Loans sold without insurance to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

[62 FR 33510, June 19, 1997, as amended at 62 FR 42387, Aug. 7, 1997]

§ 1951.202 Objectives.

The purpose of loan and grant servicing functions is to assist recipients to meet the objectives of loans and grants, repay loans on schedule, comply with agreements, and protect FmHA or its successor agency under Public Law 103–354's financial interest. Supervision by FmHA or its successor agency under Public Law 103–354 includes, but is not limited to, review of budgets, management reports, audits and financial statements; performing security inspections and providing, arranging for, or recommending technical assistance; evaluating environmental impacts of proposed actions by the borrower; and performing civil rights compliance reviews.

§ 1951.203 Definitions.

(a) *Approval official.* An official who has been delegated loan and/or grant approval authorities within applicable programs, subject to the dollar limitations of exhibits A, B, and C of subpart A of part 1901 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(b) *Assumption of debt.* The agreement by one party to legally bind itself to pay the debt incurred by another.

(c) *CONACT.* The Consolidated Farm and Rural Development Act, as amended.

(d) *Eligible applicant.* An entity that would be legally qualified for financial assistance under the loan or grant program involved in the servicing action.

(e) *Ineligible applicant.* An entity or individual that would not be considered eligible for financial assistance under the loan or grant program involved in the servicing action.

(f) *Nonprogram (NP) loan.* An NP loan exists when credit is extended to an ineligible applicant and/or transferee in connection with loan assumptions or sale of inventory property; any recipient in cases of unauthorized assistance; or a recipient whose legal organization has changed as set forth in § 1951.220(e)

of this subpart resulting in the borrower being ineligible for program benefits.

(g) *Servicing office.* The State, District, or County Office responsible for immediate servicing functions for the borrower or grantee.

(h) *Transfer fee.* A one-time nonrefundable application fee, charged to ineligible applicants for FmHA or its successor agency under Public Law 103–354 services rendered in the processing of a transfer and assumption.

§ 1951.204 Nondiscrimination.

Each instrument of conveyance required for a transfer, assumption, or other servicing action under this subpart will contain the following covenant.

The property described herein was obtained or improved with Federal financial assistance and is subject to the nondiscrimination provisions of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and other similarly worded Federal statutes, and the regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age, or sex in programs or activities receiving Federal financial assistance. Such provisions apply for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended, for so long as the purchaser owns it, whichever is later.

§ 1951.205 Redelegation of authority.

Servicing functions under this subpart which are specifically assigned to the State Director may be redelegated in writing to an appropriate sufficiently trained designee.

§ 1951.206 Forms.

Forms utilized for actions under this subpart are to be modified appropriately where necessary to adapt the forms for use by corporate recipients rather than individuals.

§ 1951.207 State supplements.

State supplements developed to carry out the provisions of this subpart will be prepared in accordance with subpart B of part 2006 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office) and applicable State laws and regulations. State supplements are to be used only when required by National Instructions or necessary to clarify the impact of State laws or regulations, and not to restate the provisions of National Instructions. Advice and guidance will be obtained as needed from the Office of the General Counsel (OGC).

§§ 1951.208—1951.209 [Reserved]

§ 1951.210 Environmental requirements.

Servicing activities such as transfers, assumptions, subordinations, sale or exchange of security property, and leasing of security will be reviewed for compliance with subpart G of part 1940 of this chapter. The appropriate environmental review will be completed prior to approval of the servicing action. When National Office approval is required, the completed environmental review will be included with other information submitted.

§ 1951.211 Refinancing requirements.

In accordance with the CONACT, FmHA or its successor agency under Public Law 103–354 requires for most loans covered by this subpart that if at any time it shall appear to the Government that the borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan. Applicable requirements are set forth in subpart F of part 1951 of this chapter. A civil rights impact analysis is required.

[55 FR 4399, Feb. 8, 1990, as amended at 63 FR 16089, Apr. 2, 1998]

§ 1951.212 Unauthorized financial assistance.

Subpart O of part 1951 of this chapter prescribes policies for servicing the loans and grants covered under this subpart when it is determined that a

borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, subsidy, or any other direct financial assistance.

§ 1951.213 Debt settlement.

Subpart C of part 1956 of this chapter prescribes policies and procedures for debt settlement actions for loans covered under this subpart when it is determined that a debt is eligible for settlement except as provided in §§ 1951.216 and 1951.231.

§ 1951.214 Care, management, and disposal of acquired property.

Property acquired by Government or its successor agency under Public Law 103–354 will be handled according to subparts B and C of part 1955 of this chapter.

[55 FR 4399, Feb. 8, 1990, as amended at 63 FR 16089, Apr. 2, 1998]

§ 1951.215 Grants.

No monitoring action by FmHA or its successor agency under Public Law 103–354 is required after grant closeout. Grant closeout is when all required work is completed, administrative actions relating to the completion of work and expenditure of funds have been accomplished, and FmHA or its successor agency under Public Law 103–354 accepts final expenditure information. However, grantees remain responsible in accordance with the terms of the grant for property acquired with grant funds.

(a) *Applicability of requirements.* Servicing actions relating to FmHA or its successor agency under Public Law 103–354 grants are governed by the provisions of this subpart, the terms of the Grant Agreement and, if applicable, the provisions of 7 CFR parts 3015, 3016, and 3017.

(1) Servicing actions will be carried out in accordance with the terms of the ''Association Water or Sewer System Grant Agreement,'' and RUS Bulletin 1780–12, ''Water and Waste Grant Agreement'' (available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500). Grant agreements with a revision date on or after January 29, 1979, require that the grantee request disposition instructions from the Agency before disposing of property which is no longer needed for original grant purposes.

(2) When facilities financed in part by FmHA or its successor agency under Public Law 103–354 grants are transferred or sold, repayment of all or a portion of the grant is not required if the facility will be used for the same purposes and the new owner provides a written agreement to abide by the terms of the grant agreement.

(3) 7 CFR 3015 first became effective on November 10, 1981; 7 CFR parts 3016 on October 1, 1988; and 7 CFR 3017 on March 18, 1989. Grants made on or after those dates are subject to the provisions of those regulations except to the extent of the express provisions of the Grant Agreement.

(b) *Authorities.* Subject to the requirements of § 1951.215(a), authority to approve servicing actions is as follows:

(1) For water and waste disposal grants, the State Director is authorized to approve any servicing actions needed, except that prior approval of the Administrator is required when property acquired with grant funds is disposed of in accordance with §§ 1951.226, 1951.230, or 1951.232 of this subpart and the buyer or transferee refuses to assume all terms of the grant agreement.

(2) All other grants will be serviced in accordance with the Grant Agreement and this subpart. Prior approval of the Administrator is required except for actions covered in the preceding paragraph.

[55 FR 4399, Feb. 8, 1990, as amended at 63 FR 16089, Apr. 2, 1998]

§ 1951.216 Nonprogram (NP) loans.

Borrowers with NP loans are not eligible for any program benefits, including appeal rights. However, FmHA or its successor agency under Public Law 103–354 may use any servicing tool under this subpart necessary to protect the Government's security interest, including reamortization or rescheduling. The refinancing requirements of subpart F of part 1951 of this chapter do not apply to NP loans. Debt settlement actions relating to NP loans must be

handled under the Federal Claims Collection Act; proposals will be submitted to the National Office for review and approval. Any exception to the servicing requirements of NP loans under this subpart must have prior concurrence of the National Office.

§ 1951.217 Public bodies.

Servicing actions involving public bodies will be carried out to the extent feasible according to the provisions of this subpart. With prior National Office approval, the State Director is authorized to vary from such provisions if necessary and approved by OGC, provided such variation will not violate other regulatory or statutory provisions. To request approval, the case file, including copies of applicable documents, recommendations, and OGC comments, will be forwarded to the Administrator, Attention: (appropriate program division).

§§ 1951.218—1951.219 [Reserved]

§ 1951.220 General servicing actions.

(a) *Payment in full.* Payment in full of a loan is handled according to subpart D of part 1951 of this chapter. When a loan is paid in full, the servicing official will:

(1) Notify the company providing fidelity bond coverage in writing that the government no longer has an interest in the bond if the government is named co-obligee on the bond.

(2) Release FmHA or its successor agency under Public Law 103–354's interest in insurance policies according to applicable provisions of subpart A of part 1806 (FmHA or its successor agency under Public Law 103–354 Instruction 426.1).

(3) Release FmHA or its successor agency under Public Law 103–354's interest in any other security as appropriate, consulting with OGC if necessary.

(b) *Loan summary statements.* Upon request of a borrower, FmHA or its successor agency under Public Law 103–354 will issue a loan summary statement showing account activity for each loan made or insured under the CONACT. Field offices will post a notice on the bulletin board informing borrowers of the availability of loan summary statements. See exhibit A of subpart A of this part for a sample of the required notice.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards to field offices a copy of Form FmHA or its successor agency under Public Law 103–354 1951–9, ''Annual Statement of Loan Account,'' to be retained in borrower files as a permanent record of account activity for the year.

(2) Quarterly Forms FmHA or its successor agency under Public Law 103–354 1951–9 are retained in the Finance Office on microfiche. These statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. Servicing offices may request copies of these quarterly or annual statements by sending Form FmHA or its successor agency under Public Law 103–354 1951–57, ''Request for Loan Summary Statement,'' to the Finance Office.

(3) The servicing office will provide a copy of the applicable loan summary statement to the borrower on request. A copy of Form FmHA or its successor agency under Public Law 103–354 1951–9 and, for loans with unamortized installments, a printout of future installments owed obtained using the borrower status screen option in the Automated Discrepancy Processing System (ADPS), will constitute the loan summary statement to be provided to the borrower.

(c) *Insurance.* FmHA or its successor agency under Public Law 103–354 borrowers shall maintain insurance coverage as follows:

(1) Community and Insured Business Programs borrowers shall continuously maintain adequate insurance coverage as required by the loan agreement and § 1942.17(j)(3) of subpart A of part 1942 of this chapter. Insurance coverage must be monitored in accordance with the above-referenced section to determine that adequate policies and bonds are in force.

(2) For all other types of loans covered by this subpart, property insurance will be serviced according to subpart A of part 1806 of this chapter (FmHA or its successor agency under Public Law 103–354 Instruction 426.1) in

real estate mortgage cases, and according to the loan agreement in other cases.

(d) *Property taxes.* Real property taxes are serviced according to Subpart A of part 1925 of this chapter. If State statutes permit a personal property tax lien to have priority over FmHA or its successor agency under Public Law 103–354's lien, such taxes are serviced according to §§ 1925.3 and 1925.4 of subpart A of part 1925 of this chapter.

(e) *Changes in borrower's legal organization.* (1) The State Director may approve, with OGC's concurrence, changes in a recipient's legal organization, including revisions of articles of incorporation or charter and bylaws, when:

(i) The change does not provide for a sole member type of organization;

(ii) The borrower retains control over its assets and the operation, management, and maintenance of the facility, and continues to carry out its responsibilities as set forth in § 1942.17(b)(4) of subpart A of part 1942 of this chapter; and

(iii) The borrower retains significant local ties with the rural community.

(2) The State Director may approve, with prior concurrence of the Administrator, changes in a recipient's legal organization which result in a sole member type of organization, or any other change which results in a recipient's loss of control over its assets and/or the operation, management and maintenance of the facility, provided all of the following have been or will be met:

(i) The change is in the best interest of the Government;

(ii) The State Director determines and documents that other servicing options under this subpart, such as sale or transfer and assumption, have been explored and are not feasible;

(iii) The loan is classified as a nonprogram loan;

(iv) The borrower is notified that it is no longer eligible for any program benefits, but will remain responsible under the loan agreement; and

(v) Prior concurrence of the Administrator is obtained. Requests will be forwarded to the Administrator: Attention (appropriate program division), and will include the case file; Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), appropriately completed; the proposed changes; OGC comments; and any other necessary supporting information.

(f) *Membership liability.* As a loan approval requirement, some borrowers may have special agreements with members of the purchase of shares of stock or for payment of a pro rata share of the loan in the event of default, or they may have authority in their corporate instruments to make special assessments in that event. Such agreements may be referred to as individual liability agreements and may be assigned to and held by FmHA or its successor agency under Public Law 103–354 as additional security. In other cases the borrower's note may be endorsed by individuals. The liability instruments will be serviced in a manner indicated by their contents and the advice of OGC to adequately protect FmHA or its successor agency under Public Law 103–354's interest. Servicing actions necessary due to such provisions will be noted on Form FmHA or its successor agency under Public Law 103–354 1905–10, ''Management System Card—Association.''

(g) *Other security.* Other security such as collateral assignments, water stock certificates, notices of lienholder interest (Bureau of Land Management grazing permits) and waivers of grazing privileges (Forest Service grazing permits) will be serviced to protect the interest of FmHA or its successor agency under Public Law 103–354, and in compliance with any special servicing actions developed by the State Director with OGC assistance. Evidence of the security will be filed in the servicing office case file. Necessary servicing actions will be noted on Form FmHA or its successor agency under Public Law 103–354 1905–10.

(h) *Correcting errors in security instruments.* Land, buildings, or chattels included in a mortgage through mutual mistake may be released from the mortgage by the State Director when substantiated by the factual situation. The release is contingent on the State Director determining, with OGC advice, that the property was included due to mutual error.

(i) *Present market value determination.* For purposes of this subpart, the value of security is determined by the approval official as follows:

(1) *Security representing a relatively small portion of the total value of the security property.* The approval official will determine that the real estate and chattels are disposed of at a reasonable price. A current appraisal report may be required.

(2) *Security representing a relatively large portion of the total value of the security property.* The approval official will require a current appraisal report, and the sale prices of the real estate and chattels disposed of will at least equal the present market value as determined by this appraisal.

(3) *Appraisal report.* If required, a current appraisal report will be completed in accordance with § 1942.3 of subpart A of part 1942 of this chapter. The appraisal will be completed by a qualified FmHA or its successor agency under Public Law 103–354 employee or an independent appraiser as determined appropriate by the approval official.

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 775, Jan. 9, 1992; 57 FR 21199, May 19, 1992; 57 FR 36591, Aug. 14, 1992]

§ 1951.221 Collections, payments and refunds.

Collections are processed in accordance with subpart B of part 1951 of this chapter. Payments and refunds are handled in accordance with the following:

(a) *Community and Insured Business Programs.* (1) Field offices can obtain data on principal installments due for Community and Insured Business Programs loans with unamortized installments using the borrower status screen option in the ADPS.

(2) Regular payments for Community and Insured Business Programs borrowers are all payments other than extra payments and refunds. Such payments are usually derived from facility revenues, and do not include proceeds from the sale of security. They also include payments derived from sources which do not decrease the value of FmHA or its successor agency under Public Law 103–354's security.

(i) Distribution of such payments is made as follows:

(A) First, to the FmHA or its successor agency under Public Law 103–354 loan(s) in proportion to the delinquency existing on each. Any excess will be distributed in accordance with paragraphs (a)(2)(i) (B) and (C) of this section.

(B) Second, to the FmHA or its successor agency under Public Law 103–354 loan or loans in proportion to the approximate amounts due on each. Any excess will be distributed according to paragraph (a)(2)(i)(C) of this section.

(C) Third, as advance payments on FmHA or its successor agency under Public Law 103–354 loans. In making such distributions, consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(ii) Unless otherwise established by the debt instrument, regular payments will be applied as follows:

(A) For amortized loans, first to interest accrued (as of the date of receipt of the payment), and then to principal.

(B) For principal-plus-interest loans, first to the interest due through the date of the next scheduled installment of principal and interest and then to principal due, with any balance applied to the next scheduled principal installment.

(3) Extra payments are derived from sale of basic chattel or real estate security; refund of unused loan funds; cash proceeds of property insurance as provided in § 1806.5(b) of subpart A of part 1806 (paragraph V B of FmHA or its successor agency under Public Law 103–354 Instruction 426.1); and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be distributed and applied as follows:

(i) First to the account secured by the lowest priority of lien on the property from which the extra payment was obtained. Any balance will be applied to other FmHA or its successor agency under Public Law 103–354 loans in ascending order of priority.

(ii) For amortized loans, first to interest accrued to the date payment is

received, and then to principal. For debt instruments with installments of principal plus interest, such payments will be applied to the final unpaid principal installment.

(b) *Grazing Association Loans, Irrigation, Drainage and other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans.* (1) Regular payments for such loans are defined in § 1951.8(a) of subpart A of part 1951 of this chapter, and are distributed according to § 1951.9(a) of that subpart unless otherwise established by the note or bond.

(2) Extra payments are defined in § 1951.8(b) of subpart A of part 1951 of this chapter, and are distributed according to § 1951.9(b) of that subpart.

§ 1951.222 Subordination of security.

When a borrower requests FmHA or its successor agency under Public Law 103–354 to subordinate a security instrument so that another creditor or lender can refinance, extend, reamortize, or increase the amount of a prior lien; be on parity with; or place a lien ahead of the FmHA or its successor agency under Public Law 103–354 lien, it will submit a written request to the servicing office as provided below. For purposes of this subpart, subordination is defined to include cases where a parity security position is being considered.

(a) *General.* The following requirements must normally be met:

(1) The request must be for subordination of a specific amount of the FmHA or its successor agency under Public Law 103–354 indebtedness, and the amount must be within the approval official's authority as set forth in exhibits A, B, and C of subpart A of part 1901 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(2) It must be determined that the borrower cannot refinance its FmHA or its successor agency under Public Law 103–354 debt in accordance with subpart F of part 1951 of this chapter.

(3) The transaction will further the purposes for which the FmHA or its successor agency under Public Law 103–354 loan was made, not adversely affect the borrower's debt-paying ability, and result in the FmHA or its successor agency under Public Law 103–354 debt being adequately secured.

(4) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as the requirements of all other debts.

(5) Any proposed development work will be planned and performed according to § 1942.18 of subpart A of part 1942 of this chapter or in a manner directed by the creditor which reasonably attains the objectives of that section.

(6) All contracts, pay estimates, and change orders will be reviewed and concurred in by the State Director.

(7) In cases involving land purchase, the FmHA or its successor agency under Public Law 103–354 will obtain a mortgage on the purchased land.

(8) When the transaction involves more than $10,000 or the approval official considers it necessary, a present market value appraisal report will be obtained. However, a new report need not be obtained if there is an appraisal report not over one year old which permits a proper determination of the present market value of the total property after the transaction.

(9) The proposed action must not change the nature of the borrower's activities so as to make it ineligible for FmHA or its successor agency under Public Law 103–354 loan assistance.

(10) Necessary consent and subordination of all other outstanding security interests must be obtained.

(11) For Indian Tribes and Tribal Corporations, loan funds will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in exhibit M of subpart G of part 1940 of this chapter. This requirement will be monitored throughout the term of the loan.

(b) *Authorities.* Proposals not meeting one or more of the above requirements will be submitted to the Administrator, Attention (appropriate program division) for prior concurrence. All other proposals may be approved by the official with loan approval authority under subpart A of part 1901 of this chapter.

(c) *Processing.* The case file is to include:

(1) The borrower's written request on Form FmHA or its successor agency under Public Law 103–354 465–1, ''Application for Partial Release, Subordination, or Consent,'' if appropriate, or in other acceptable format. The request must contain the purpose of the subordination; exact amount of money or property involved; description of security property involved; type of security instrument; name, address, line of business and other general information pertaining to the party in favor of which the request is made; and other pertinent information to evaluate the need for the request;

(2) Current balance sheet;

(3) If development work is involved, an operating budget on Form FmHA or its successor agency under Public Law 103–354 442–7, ''Operating Budget,'' or similar form which projects income and expenses through the first full year of operation following completion of planned improvements; or if no development work is involved, an income statement and budget on Form FmHA or its successor agency under Public Law 103–354 442–2, ''Statement of Budget, Income, and Equity,'' schedules 1 and 2, or similar form;

(4) Copy of proposed security instrument;

(5) Appraisal report, when applicable;

(6) OGC opinion on the request;

(7) Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), appropriately completed;

(8) Appropriate environmental review; and

(9) Any other necessary supporting information.

(d) *Closing.* All requests for subordination will be closed according to instructions from OGC except those which affect only chattel liens other than pledges of revenue. FmHA or its successor agency under Public Law 103–354's consent on Form FmHA or its successor agency under Public Law 103–354 465–1 will be signed concurrently with Form FmHA or its successor agency under Public Law 103–354 460–2, ''Subordination by the Government,'' when applicable.

§1951.223 Reamortization.

(a) *State Director authorization.* The State Director is authorized to approve reamortization of loans under the following conditions:

(1) The account is delinquent and cannot be brought current within one year while maintaining a reasonable reserve;

(2) The borrower has demonstrated for at least one year by actual performance or has presented a budget which clearly indicates that it is able to meet the proposed payment schedule;

(3) The amount being reamortized is within the State Director's loan approval authorization; and

(4) There is no extension of the final maturity date.

(b) *Requests requiring National Office approval.* Reamortizations not meeting the above conditions require prior National Office approval. Requests will be forwarded to the National Office with the case file, including:

(1) Current budget and cash flow prepared on Form FmHA or its successor agency under Public Law 103–354 442–2, schedules 1 and 2, or similar form;

(2) Current balance sheet and income statement;

(3) Exhibit A of this subpart, appropriately completed;

(4) Form FmHA or its successor agency under Public Law 103–354 1951–33, ''Reamortization Request,'' completed in accordance with §1951.223(c)(3) of this subpart, when applicable; and

(5) Any other necessary supporting information.

(c) *Processing.* When legally permissible and administratively acceptable, the total outstanding principal and interest balances will be reamortized rather than only the delinquent amount. Accrued interest will be at the rate currently reflected in Finance Office records.

(1) Reamortizations will be perfected in accordance with OGC closing instructions.

(2) When debt instruments are being modified or new debt instruments executed, bond counsel or local counsel, as appropriate, must provide an opinion indicating any effect on FmHA or its successor agency under Public Law 103–354's security position. The FmHA or its successor agency under Public Law

103–354 approval official must determine that the government's interest will remain adequately protected if the security position will be affected.

(3) *Notes.* Except as provided in § 1951.223(c)(4), loans evidenced by notes will be reamortized through a new evidence of debt unless OGC recommends that the terms of the existing document be modified. Form FmHA or its successor agency under Public Law 103–354 1951–33 may be used to effect such modifications, if legally adequate, or other forms may be used if acceptable to FmHA or its successor agency under Public Law 103–354. The original of a new note or any endorsement required by OGC is to be attached to the existing note, filed in the servicing office, and retained until the account is paid in full or otherwise satisfied. A copy will be forwarded to the Finance Office.

(4) *Bonds and notes with other than real or chattel security pledged to FmHA or its successor agency under Public Law 103–354.* Loans evidenced by bonds, or by notes with other than real or chattel security pledged to FmHA or its successor agency under Public Law 103–354, may be reamortized using procedures acceptable to the State Director and legally permissible under State statutes in the opinion of the borrower's counsel and the OGC.

(i) The procedure may consist of a new debt instrument or agreement for the total FmHA or its successor agency under Public Law 103–354 indebtedness, including the delinquency, or a new instrument or agreement whereby the borrower agrees to repay the delinquency plus interest. If a new instrument or agreement for only the delinquent amount is used, a new loan number will be assigned to the delinquent amount, and the borrower will be required to pay the amounts due under both the original and the new instruments.

(ii) When a delinquent or problem loan cannot be reamortized by issuing a new debt instrument due to State statutes, or the cost of preparation and closing is prohibitive, the rescheduling agreement provided as Exhibit H of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), may be used.

(iii) Section 1942.19 of subpart A of part 1942 of this chapter applies to any new bonds issued unless precluded by State statutes or an exception is approved by the National Office.

(iv) If State statutes do not require the release of existing bonds, they will be retained with the new bond instrument or agreement in the FmHA or its successor agency under Public Law 103–354 office authorized to store such documents. If State statutes require release of existing bonds, the exchange will be accomplished by the District Director, and the new bond and/or agreement will be retained in the appropriate office.

(5) *New debt instruments or agreements.* (i) A copy will be sent to the Finance Office after execution, except that if serial bonds are used, the original bond(s) will be submitted to the Finance Office.

(ii) Any agreement used will contain:

(A) The amount delinquent, which must equal the total delinquency on the account and net advances (the unpaid principal on any advance and the accrued interest on any advance through the date of reamortization, less interest payments credited on the advance account);

(B) The effective date of the reamortization;

(C) The number of years over which the delinquency will be amortized;

(D) The repayment schedule; and

(E) The interest rate.

(iii) A payment will be due on the next scheduled due date. Deferment of interest and/or principal payments is not authorized.

(iv) A separate new instrument will be required for each loan being reamortized.

(v) If amortized payments are not used, the schedule of principal installments developed will be such that combined payments of principal and interest closely approximate an amortized payment.

(d) *Reamortization with interest rate adjustment—Water and waste borrowers only.* A borrower that is seriously delinquent in loan payments may be eligible for loan reamortization with interest rate adjustment. The purpose of loan reamortization with interest rate adjustment is to provide relief for a

borrower that is unable to service the outstanding loan in accordance with its existing terms and to enhance recovery on the loan. A borrower must meet the conditions of this subpart to be considered eligible for this provision.

(1) *Eligibility determination.* The State Director, Rural Development, may submit to the Administrator for approval an adjustment in the rate of interest charged on outstanding loans only for those borrowers who meet the following requirements:

(i) The borrower has exhausted all other servicing provisions contained in this subpart;

(ii) The borrower is experiencing severe financial problems;

(iii) Any management deficiencies must have been corrected or the borrower must submit a plan acceptable to the State Office to correct any deficiencies before an interest rate adjustment may be considered;

(iv) Borrower user rates must be comparable to similar systems. In addition, the operating expenses reported by the borrower must appear reasonable in relation to similar system expenses;

(v) The borrower has cooperated with Rural Development in exploring alternative servicing options and has acted in good faith with regard to eliminating the delinquency and complying with its loan agreements and agency regulations; and

(vi) The borrower's account must be delinquent at least one annual debt payment for 180 days.

(2) *Conditions of approval.* All borrowers approved for an adjustment in the rate of interest by the Administrator shall agree to the following conditions:

(i) The borrower shall agree not to maintain cash or cash reserves beyond what is reasonable at the time of interest rate adjustment to meet debt service, operating, and reserve requirements.

(ii) A review of the borrower's management and business operations may be required at the discretion of the State Director. This review shall be performed by an independent expert who has been recommended by the State Director and approved by the National Office. The borrower must agree to implement all recommendations made by the State Director as a result of the review.

(iii) If requested, a copy of the latest audited financial statements or management report must be submitted to the Administrator.

(3) *Reamortization.* At the discretion of the Administrator, the interest rate charged on outstanding loans of eligible borrowers may be adjusted to no less than the poverty interest rate and the term of the loans may be extended up to a new 40 year term or the remaining useful life of the facility, whichever is less.

[55 FR 4399, Feb. 8, 1990, as amended at 56 FR 25351, June 4, 1991; 63 FR 41714, Aug. 5, 1998]

§1951.224 Third party agreements.

The State Director may authorize all or part of a facility to be operated, maintained or managed by a third party under a contract, management agreement, written lease, or other third party agreement as follows:

(a) *Leases*—(1) *Lease of all or part of a facility (except when liquidation action is pending).* The State Director may consent to the leasing of all or a portion of security property when:

(i) Leasing is the only feasible way to provide the service and is the customary practice as required under §1942.17(b)(4) of subpart A of part 1942 of this chapter;

(ii) The borrower retains ultimate responsibility for operating, maintaining, and managing the facility and for its continued availability and use at reasonable rates and terms as required under §1942.17(b)(4) of subpart A of part 1942 of this chapter. The lease agreement must clearly reflect sufficient control by the borrower over the operation, maintenance, and management of the facility to assure that the borrower maintains this responsibility;

(iii) The lease agreement contains provisions prohibiting any amendments to the lease or any subleasing arrangements without prior written approval from FmHA or its successor agency under Public Law 103–354;

(iv) The lease document contains nondiscrimination requirements as set forth in §1951.204 of this subpart;

(v) The lease contains a provision which recognizes that FmHA or its successor agency under Public Law 103–354 is a lienholder on the subject facility and, as such, the lease is subordinate to the rights and claims of FmHA or its successor agency under Public Law 103–354 as lienholder; and

(vi) The lease does not constitute a lease/purchase arrangement, unless permitted under § 1951.232 of this subpart.

(2) *Lease of all or part of a facility (pending liquidation action).* The State Director may consent to the leasing of all or a portion of security property when:

(i) The lease will not adversely affect the repayment of the loan or the Government's rights under the security or other instruments;

(ii) The State Director has determined that liquidation will likely be necessary and the lease is necessary until liquidation can be accomplished;

(iii) Leasing is not an alternative to, or means of delaying, liquidation action;

(iv) The lease and use of any proceeds from the lease will further the objective of the loan;

(v) Rental income is assigned to FmHA or its successor agency under Public Law 103–354 in an amount sufficient to make regular payments on the loan and operate and maintain the facility unless such payments are otherwise adequately secured;

(vi) The lease is advantageous to the borrower and is not disadvantageous to the Government;

(vii) If foreclosure action has been approved and the case has been submitted to OGC, consent to lease and use of proceeds will be granted only with OGC's concurrence; and

(viii) The lease does not exceed a one-year period. The property may not be under lease more than two consecutive years without authorization from the National Office. Long-term leases may be approved, with prior authorization from the National Office, if necessary to ensure the continuation of services for which the loan was made and if other servicing options contained in this subpart have been determined inappropriate for servicing the loan.

(b) *Mineral leases.* Unless liquidation is pending, the State Director is authorized to approve mineral leases when:

(1) The lessee agrees, or is liable without any agreement, to pay adequate compensation for any damage to the real estate surface and improvements. Damage compensation will be assigned to FmHA or its successor agency under Public Law 103–354 or the prior lienholder by the use of Form FmHA or its successor agency under Public Law 103–354 443–16, ''Assignment of Income from Real Estate Security,'' or other appropriate instrument;

(2) Royalty payments are adequate and are assigned to FmHA or its successor agency under Public Law 103–354 on Form FmHA or its successor agency under Public Law 103–354 443–16 in an amount determined by the State Director to be adequate to protect the Government's interest;

(3) All or a portion of delay rentals and bonus payments may be assigned on Form FmHA or its successor agency under Public Law 103–354 443–16 if needed for protection of the Government's interest;

(4) The lease, subordination, or consent form is acceptable to OGC;

(5) The lease will not interfere with the purpose for which the loan or grant was made; and

(6) When FmHA or its successor agency under Public Law 103–354 consent is required, the borrower submits a completed Form FmHA or its successor agency under Public Law 103–354 465–1. The form will include the terms of the proposed agreement and specify the use of all proceeds, including any to be released to the borrower.

(c) *Management agreements.* Management agreements should contain the minimum suggested contents contained in Guide 24 of part 1942, subpart A of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(d) *Affiliation agreements.* An affiliation agreement between the borrower and a third party may be approved by the State Director, with OGC concurrence, if it provides for shared services between the parties and does not result

in changes to the borrower's legal organizational structure which would result in its loss of control over its assets and/or over the operation, management, and maintenance of the facility to the extent that it cannot carry out its responsibilities as set forth in § 1942.17(b)(4) of subpart A of part 1942 of this chapter. However, affiliation agreements which result in a loss of borrower control may be approved with prior concurrence of the Administrator if the loan is reclassified as a nonprogram loan and the borrower is notified that it is no longer eligible for any program benefit. Requests forwarded to the Administrator will contain the case file, the proposed affiliation agreement, and necessary supporting information.

(e) *Processing.* The consent of other lienholders will be obtained when required. When National Office approval is required, or if the State Director wishes to have a transaction reviewed prior to approval, the case file will be forwarded to the National Office and will include:

(1) A copy of the proposed agreement;

(2) Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), appropriately completed;

(3) Any other necessary supporting information.

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 21199, May 19, 1992]

§ 1951.225 Liquidation of security.

When the District Director believes that continued servicing will not accomplish the objectives of the loan, he or she will complete Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), and submit it with the District Office file to the State Office. If the State Director determines the account should be liquidated, he or she will encourage the borrower to dispose of the FmHA or its successor agency under Public Law 103–354 security voluntarily through a sale or transfer and assumption, and establish a specified period, not to exceed 180 days, to accomplish the action. If a transfer or voluntary sale is not carried out, the loan will be liquidated according to subpart A of part 1955 of this chapter.

§ 1951.226 Sale or exchange of security property.

A cash sale of all or a portion of a borrower's assets or an exchange of security property may be approved subject to the conditions set forth below.

(a) *Authorities.* (1) The District Director is authorized to approve actions under this section involving only chattels.

(2) The State Director is authorized to approve real estate transactions except as noted in the following paragraph.

(3) Approval of the Administrator must be obtained when a substantial loss to the Government will result from a sale; one or more members of the borrower's organization proposes to purchase the property; it is proposed to sell the property for less than the appraised value; or the buyer refuses to assume all the terms of the Grant Agreement. It is not FmHA or its successor agency under Public Law 103–354 policy to sell security property to one or more members of the borrower's organization at a price which will result in a loss to the Government.

(b) *General.* Approval may be given when the approval official determines and documents that:

(1) The consideration is adequate;

(2) The release will not prevent carrying out the purpose of the loan;

(3) The remaining property is adequate security for the loan or the transaction will not adversely affect FmHA or its successor agency under Public Law 103–354's security position;

(4) If the property to be sold or exchanged is to be used for the same or similar purposes for which the loan or grant was made, the purchaser will:

(i) Execute Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement.'' The covenants involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan or grant was made. The instrument of conveyance will contain the covenant referenced in § 1951.204 of this subpart; and

(ii) Provide to FmHA or its successor agency under Public Law 103–354 a written agreement assuming all rights and obligations of the original grantee if grant funds were provided. See

§ 1951.215 below for additional guidance on grant agreements.

(5) The proceeds remaining after paying any reasonable and necessary selling expenses are used for one or more of the following purposes:

(i) To pay on FmHA or its successor agency under Public Law 103–354 debts according to § 1951.221 of this subpart; on debts secured by a prior lien; and on debts secured by a subsequent lien if it is to FmHA or its successor agency under Public Law 103–354's advantage.

(ii) To purchase or acquire through exchange property more suited to the borrower's needs, if the FmHA or its successor agency under Public Law 103–354 debt will be as well secured after the transaction as before.

(iii) To develop or enlarge the facility if necessary to improve the borrower's debt-paying ability; place the operation on a sounder basis; or otherwise further the loan objectives and purposes.

(6) Disposition of property acquired in whole or part with FmHA or its successor agency under Public Law 103–354 grant funds will be handled in accordance with the grant agreement.

(c) *Processing*. (1) The case file will contain the following:

(i) Except for actions approved by the District Director, Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), appropriately completed;

(ii) The appraisal report, if appropriate;

(iii) Name of purchaser, anticipated sales price, and proposed terms and conditions;

(iv) Form FmHA or its successor agency under Public Law 103–354 1965–8, ''Release from Personal Liability,'' including the County Committee memorandum and the State Director's recommendations;

(v) An executed Form FmHA or its successor agency under Public Law 103–354 400–4, if applicable;

(vi) An executed Form FmHA or its successor agency under Public Law 103–354 465–1, if applicable;

(vii) Form FmHA or its successor agency under Public Law 103–354 460–4, ''Satisfaction,'' if a debt has been paid in full or satisfied by debt settlement action. For cases involving real estate, a similar form may be used if approved by OGC; and

(viii) Written approval of the Administrator when required under § 1951.226(a)(3) of this subpart;

(2) *Releasing security*. (i) The District Director is authorized to satisfy or terminate chattel security instruments when § 1951.226(b) of this subpart and § 1962.17 and § 1962.27 of subpart A of part 1962 of this chapter have been complied with. Partial release may be made by using Form FmHA or its successor agency under Public Law 103–354 460–1, ''Partial Release,'' or Form FmHA or its successor agency under Public Law 103–354 462–12, ''Statements of Continuation, Partial Release, Assignment, Etc.''

(ii) Subject to § 1951.226(b) of this subpart, the State Director is authorized to release part or all of an interest in real estate security by approving Form FmHA or its successor agency under Public Law 103–354 465–1. Partial release of real estate security may be made by use of Form FmHA or its successor agency under Public Law 103–354 460–1 or other form approved by OGC.

(3) FmHA or its successor agency under Public Law 103–354 liens will not be released until the sale proceeds are received for application on the Government's claim. In states where it is necessary to obtain the insured note from the lender to present to the recorder before releasing a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The District Director will advise the borrower when it requests a partial release that it must pay these costs. If the borrower is unable to pay the costs from its own funds, the amounts shown on the statement of actual costs furnished by the insured lender may be deducted from the sale proceeds.

(d) *Release from liability*. (1) When an FmHA or its successor agency under Public Law 103–354 debt is paid in full from the proceeds of a sale, the borrower will be released from liability by use of Form FmHA or its successor agency under Public Law 103–354 1965–8.

(2) When sale proceeds are not sufficient to pay the FmHA or its successor agency under Public Law 103–354 debt in full, any balance remaining will be

handled in accordance with procedures for debt settlement actions set forth in subpart C of part 1956 of this chapter.

(i) In determining whether a borrower should be released from liability, the State Director will consider the borrower's debt-paying ability based on its assets and income at the time of the sale.

(ii) Release from liability will be accomplished by using Form FmHA or its successor agency under Public Law 103–354 1965–8 and obtaining from the County Committee a memorandum recommending the release which contains the following statement:

_____ in our opinion does not have reasonable debt-paying ability to pay the balance of the debt after considering its assets and income at the time of the sale. The borrower has cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the borrower be released from liabilty upon the completion of the sale.

§ 1951.227 Protective advances.

The State Director is authorized to approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to or insured by FmHA or its successor agency under Public Law 103–354 if the debt instrument provides that FmHA or its successor agency under Public Law 103–354 may voucher the account to protect its lien or security. The State Director must determine that authorizing a protective advance is in the best interest of the government. For insurance, factors such as the amount of advance, occupancy of the structure, vulnerability to damage and present value of the structure and contents will be considered.

(a) Protective advances are considered due and payable when advanced. Advances bear interest at the rate specified in the most recent debt instrument authorizing such an advance.

(b) Protective advances are not to be used as a substitute for a loan.

(c) Vouchers are prepared in accordance with applicable procedures set forth in FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 36591, Aug. 14, 1992]

§§ 1951.228—1951.229 [Reserved]

§ 1951.230 Transfer of security and assumption of loans.

(a) *General.* It is FmHA or its successor agency under Public Law 103–354 policy to approve transfers and assumptions to transferees which will continue the original purpose of the loan in accordance with the following and specific requirements relating to eligible and ineligible borrowers set forth below:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan.

(2) The transfer will not be disadvantageous to the Government or adversely affect either FmHA or its successor agency under Public Law 103–354's security position or the FmHA or its successor agency under Public Law 103–354 program in the area.

(3) Transfers to eligible applicants will receive preference over transfers to ineligible applicants if recovery to FmHA or its successor agency under Public Law 103–354 is not less than it would be if the transfer were to an ineligible applicant.

(4) If the FmHA or its successor agency under Public Law 103–354 debt(s) exceed the present market value of the security as determined by the State Director, the transferee will assume an amount at least equal to the present value.

(5) If the transfer and assumption is to one or more members of the borrower's organization, there must not be a loss to the government.

(6) FmHA or its successor agency under Public Law 103–354 concurs in plans for disposition of funds in the transferor's debt service, reserve, operation and maintenance, and any other project account, including supervised bank accounts.

(7) When the property to be transferred is to be used for the same or similar purposes for which the loan was made, the transferee will execute Form

FmHA or its successor agency under Public Law 103–354 400–4 to continue nondiscrimination covenants and provide to FmHA or its successor agency under Public Law 103–354 a written certification assuming all terms of the Grant Agreement executed by the transferor. All instruments of conveyance will contain the covenant referenced in § 1951.204 of this subpart.

(8) This subpart does not preclude the transferor from receiving equity payments when the full account of the FmHA or its successor agency under Public Law 103–354 debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the FmHA or its successor agency under Public Law 103–354 debt will be paid.

(9) Transferees must have the ability to pay the FmHA or its successor agency under Public Law 103–354 debt as provided in the assumption agreement and the legal capacity to enter into the contract. The applicant will submit a current balanced sheet using Form FmHA or its successor agency under Public Law 103–354 442–3, ''Balance Sheet,'' and budget and cash flow information using Form FmHA or its successor agency under Public Law 103–354 442–2, or similar forms. For ineligible applicants, such information may be supplemented by a credit report from an independent source or verified by an independent certified public accountant.

(10) For purposes of this subpart, transfers to eligible applicants will include mergers and consolidations. Mergers occur when two or more corporations combine in such a manner that only one remains in existence. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with all of the original corporations ceasing to exist. In both mergers and consolidations, the surviving or emerging corporation takes the assets and assumes the liabilities of the corporation(s) which ceased to exist. Such transactions must be distinguished from transfers and assumptions, in which a transferor will not necessarily go out of existence and the transferee will not always take all assets or assume all liabilities of the transferor.

(11) A current appraisal report to establish the present market value of the security will be completed in accordance with § 1951.220(i) of this subpart when the full debt is not being assumed.

(12) There must be no lien, judgment, or similar claims of other parties against the FmHA or its successor agency under Public Law 103–354 security being transferred unless the transferee is willing to accept such claims and the FmHA or its successor agency under Public Law 103–354 approval official determines that they will not prevent the transferee from repaying the FmHA or its successor agency under Public Law 103–354 debt, meeting all operating and maintenance costs, and maintaining required reserves. The written consent of any other lienholder will be obtained where required.

(b) *Authorities.* The State Director is authorized to approve transfers and assumptions of FmHA or its successor agency under Public Law 103–354 loans in accordance with the provisions of paragraphs (c) and (d) of this section, except for the following, which require prior approval of the Administrator:

(1) Proposals which will involve a loss to the Government;

(2) Proposals involving a transfer to one or more members of the present borrower's organization;

(3) Proposals involving rates and terms which are more liberal than those set forth in § 1951.230(c) of this subpart;

(4) Proposals involving a cash payment to the present borrower which exceeds the actual sales expenses;

(5) The transferee refuses to assume all terms of the Grant Agreement for a project financed in part with FmHA or its successor agency under Public Law 103–354 grant funds;

(6) Proposed transfers to ineligible applicants when there is no significant downpayment and/or the repayment period is to exceed 25 years; and

(7) For Indian Tribes and Tribal Corporations, the requirements found in exhibit M of subpart G of part 1940 of this chapter are not met.

(c) *Eligible applicants.* Except as noted in § 1951.230(b) of this subpart, the State Director is authorized to approve transfers of security property to and

assumptions of FmHA or its successor agency under Public Law 103–354 debts by transferees who would be eligible for financial assistance under the loan program involved for the type of loan being transferred. The State Director must determine and document that eligibility requirements have been satisfied.

(1) If a loan is evidenced and secured by a note and lien on real or chattel property, Form FmHA or its successor agency under Public Law 103–354 1951–15, ''Community Programs Assumption Agreement,'' will be executed by the transferee. When the terms of the loan are changed, the new repayment period may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility. Interest will accrue at the rate currently reflected in Finance Office records.

(2) If the loan is evidenced and secured by a bond, procedures will be followed which are acceptable to the State Director and legally permissible under State law in the opinion of the borrower's counsel and OGC. The interest rate will be the rate currently reflected in Finance Office records. Any new repayment period provided may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility.

(3) Loans being transferred and assumed may be combined when the security is the same, new terms are being provided, a new debt instrument will be issued, and the loans have the same interest rate and are for the same purpose. If applicable, §1942.19(h)(11) will govern the preparation of any new debt instruments required.

(4) A loan may be made in connection with a transfer if the transferee meets all eligibility and other requirements for the kind of loan being made. Such a loan will be considered as a separate loan, and must be evidenced by a separate debt instrument. However, it is permissible to have one authorizing loan resolution or ordinance if permitted by State statutes.

(5) Any development funds remaining in a supervised bank account which are not to be refunded to FmHA or its successor agency under Public Law 103–354 will be transferred to a supervised bank account for the transferee simultaneously with the closing of the transfer for use in completing planned development.

(d) *Ineligible applicants.* Except as noted in §1951.230(b) of this subpart, the State Director is authorized to approve transfer and assumptions to transferees who would not be eligible for financial assistance under the loan program involved for the type of loan being transferred. However, the State Director is authorized to approve all transfers of incorporated Economic Opportunity Cooperative loans to ineligible applicants without regard to the requirements set forth in §1951.230(b). Such transfers are considered only when an eligible transferee is not available or when the recovery to FmHA or its successor agency under Public Law 103–354 from a transfer to an available eligible transferee would be less. Transfers are not to be considered as a means by which members of the transferor's governing body can obtain an equity or as a method of providing a source of easy credit for purchasers.

(1) Ineligible applicants must pay a one-time nonrefundable transfer fee when they submit an application or proposal.

(i) The National Office will issue a directive annually advising the field of the amount of the fee. Any cost for appraisals performed by non-FmHA or its successor agency under Public Law 103–354 personnel will be handled in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office), and will be added to the basic fee.

(ii) Transfer fees will be deposited in accordance with current instructions governing the handling of collections. The fees will be identified as transfer fees on Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittances,'' and will be included on the Daily Activity Report. The amount will be credited to the Rural Development Insurance Fund.

(iii) If the State Director determines waiver of the transfer fee is in the best interest of the government, he or she

will request prior approval by submitting the transfer case file established in accordance with processing requirements set forth below to the National Office, Attention (appropriate program division).

(2) Any funds remaining in a supervised bank account will be refunded to FmHA or its successor agency under Public Law 103–354 and applied to the debt as a condition of transfer.

(3) The interest rate will be the greater of the rate specified for the note in current Finance Office records or the market rate for Community Programs as of the transfer closing date.

(4) The transferred loan will be identified as an NP loan and serviced in accordance with § 1951.216 of this subpart.

(5) Form FmHA or its successor agency under Public Law 103–354 465–5, ''Transfer of Real Estate Security,'' will be used, and will be modified as appropriate before execution.

(6) Consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(e) *Release from liability*. Except when nonprogram loans or Economic Opportunity Cooperative loans are involved, transferors may be released from liability in accordance with the following:

(1) If the full amount of the debt is assumed, the State Director may approve the release from liability by use of Form FmHA or its successor agency under Public Law 103–354 1965–8.

(2) If less than the full amount of the debt is assumed, any balance remaining will be handled in accordance with procedures for debt settlement actions set forth in subpart C of part 1956 of this chapter.

(i) In determining whether a borrower should be released from liability, the State Director will consider the borrower's debt-paying ability based on its assets and income at the time of the sale.

(ii) Release from liability will be accomplished by using Form FmHA or its successor agency under Public Law 103–354 1965–8 and obtaining from the County Committee a memorandum recommending the release which contains the statement set forth in § 1951.226(d)(2)(ii) of this subpart.

(f) *Processing*. Transfers and assumptions will be processed in accordance with the following:

(1) A transfer case file organized in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2033–A (available in any FmHA or its successor agency under Public Law 103–354 office) will be established, and will contain all documents and correspondence relating to the transfer. The forms utilized for transfers and assumptions are listed in Exhibit D (available in any FmHA or its successor agency under Public Law 103–354 office). All forms listed must be completed and included in the case file unless inappropriate for the particular situation.

(2) A letter of conditions establishing requirements to be met in connection with the transfer and assumption will be issued, and the transferee will be required to execute Form FmHA or its successor agency under Public Law 103–354 442–46, ''Letter of Intent to Meet Conditions,'' prior to the closing of the transfer.

(3) Both the transferee and transferor are responsible for obtaining the legal services necessary to accomplish the transfer.

(4) Transfers will be closed in accordance with instructions provided by OGC.

(5) When the transferee is a public body and Form FmHA or its successor agency under Public Law 103–354 1951–15 is not suitable, the transferee's attorney will prepare the documents necessary to effect the transfer and assumption and submit them for approval by FmHA or its successor agency under Public Law 103–354 and OGC.

(6) Accrued interest to be entered in either Table 1 of Form FmHA or its successor agency under Public Law 103–354 1951–15 or other appropriate assumption agreement is to be obtained using the status screen option in ADPS.

(7) The following forms, if utilized, will be sent immediately to the Finance Office:

(i) Form FmHA or its successor agency under Public Law 103–354 1951–15 or other appropriate assumption agreement;

(ii) A conformed copy of Form FmHA or its successor agency under Public Law 103–354 1965–8.

(8) If an FmHA or its successor agency under Public Law 103–354 grant was made in conjunction with the loan being transferred, the transferee must agree in writing to assume all rights and obligations of the original grantee. See §1951.215 for additional guidance on grant agreements.

(9) The transferee will obtain insurance according to requirements for the loan(s) being transferred unless the approval official requires additional insurance. When the entire FmHA or its successor agency under Public Law 103–354 debt is being assumed and an amount has been advanced for insurance premiums or any other purposes, the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

(10) *Rates and terms.* (i) If the transfer will be closed at the same rates and terms, the transferee will be informed of the amount needed to be on schedule by the next installment due date.

(ii) If the transfer will be closed at new rates and terms, the transferee will be informed of the amount of principal and interest owed based on information obtained using the ADPS status screen option.

(11) The effective date of a transfer is the actual date the transfer is closed, which is the same date Form FmHA or its successor agency under Public Law 103–354 1951–15 or other appropriate assumption agreement is signed.

(12) Title to all assets will be conveyed from the transferor to the transferee unless other arrangements are agreed upon by all parties concerned, including FmHA or its successor agency under Public Law 103–354. All instruments of conveyance will contain the covenant referenced in §1951.204 of this subpart.

(13) If an insured loan being held by an investor is involved, the Finance Office will have to repurchase the note prior to processing the assumption agreement.

(14) When National Office approval is required, the transfer case file will be submitted to the Administrator, Attention: (appropriate program division), with Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), appropriately completed, and a cover memorandum which denotes any unusual circumstances.

(15) The District Director must review Form FmHA or its successor agency under Public Law 103–354 1910–11, ''Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts,'' with the applicant, and the form must be signed by the applicant and included in the file.

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 36590, Aug. 14, 1992]

§1951.231 Special provisions applicable to Economic Opportunity (EO) Cooperative Loans.

(a) *Withdrawal of member and transfer to and assumption by new members of Unincorporated Cooperatives.* (1) Withdrawal of a member who is no longer utilizing the services of an association and transfer of withdrawing member interest in the association to a new member who will assume the entire unpaid balance of the indebtedness of the withdrawing member may be permitted, if the remaining members agree to accept the new member and the transfer will not adversely affect collection of the loan. The servicing office will submit to the State Office the borrow case file and the following:

(i) Form FmHA or its successor agency under Public Law 103–354 1951–15 executed by the proposed new member;

(ii) Statement of the current amount of the indebtedness involved;

(iii) A description and statement of the value of the security property;

(iv) A memorandum to justify the transaction;

(v) Form FmHA or its successor agency under Public Law 103–354 440–2, ''County Committee Certification or Recommendation;''

(vi) Exhibit B of this subpart, ''Agreement for New Member (With or Without Withdrawing Member),'' (available in any FmHA or its successor agency under Public Law 103–354 office), executed by the remaining members of the association, the proposed new member, and the withdrawing member; and

(vii) Form FmHA or its successor agency under Public Law 103–354 450–12,

''Bill of Sale (Transfer by Withdrawing Member),'' executed by the withdrawing member.

(2) If the State Director determines after review of the above information that the proposed new member is eligible and the transfer is justified, the State Director may approve the transfer and assumption by executing Form FmHA or its successor agency under Public Law 103–354 1951–15.

(3) Upon completion of the above actions, the State Director may release the outgoing member from personal liability using Form FmHA or its successor agency under Public Law 103–354 1965–8.

(4) If Finance Office records must be changed due to changes in borrower name, address and/or case number, necessary documents, including Form FmHA or its successor agency under Public Law 103–354 1951–15 and, if applicable, Form FmHA or its successor agency under Public Law 103–354 1965–8, will be forwarded to the Finance Office immediately with a memorandum indicating that the purpose of the submission is only to establish liability for a new member and release an old member from liability.

(b) *Withdrawal of members from Unincorporated Cooperatives when new member not available.* Withdrawal of a member who no longer utilizes the services of an association may be permitted even though a new member is not available, provided:

(1) The State Director determines that the remaining members have sufficient need for the property, and that the withdrawal of the member will not adversely affect collection of the loan; and

(2) The remaining members obtain from the outgoing member an agreement conveying his or her interest in the cooperative property to them. They may also wish to agree to protect the outgoing member against liability on the debt owed to FmHA or its successor agency under Public Law 103–354 as well as any other debts. Exhibit C of this subpart, ''Agreement for Withdrawal of Member (Without New Member),'' (available in any FmHA or its successor agency under Public Law 103–354 office), may be used by the cooperative. FmHA or its successor agency under Public Law 103–354 will not be a party to the agreement.

(c) *Addition of new members (no withdrawing member or transfer involved) for both Incorporated and Unincorporated Cooperatives.* (1) A new member may be admitted to the association even though there is no withdrawing member, if:

(i) The members of the association agree to accept the proposed new member, and

(ii) The State Director determines that the association owns adequate facilities to provide service to the new member.

(2) The servicing office will submit to the State Office the case file and items (i) through (vi) of § 1951.231(a)(1).

(3) If the State Director determines after the review of the above information that the proposed new member is eligible and the transaction is justified, the State Director may approve the transaction by executing Form FmHA or its successor agency under Public Law 103–354 1951–15.

(4) Form FmHA or its successor agency under Public Law 103–354 1951–15 will be forwarded immediatly to the Finance Office with a memorandum indicating that the form is intended only to establish liability for a new member.

(d) *Deceased members of Unincorporated Cooperatives.* Form FmHA or its successor agency under Public Law 103–354 442–24, ''Operating Agreement,'' (now obsolete) was executed by recipients of these loans. Paragraph 10 of that form provides that in case of the death of any member, the heirs or personal representative of the deceased member shall take the deceased member's place in the association. This provision also covers sale of the decedent's interest in the association if the sale is necessary to pay debts of the estate.

(1) If the heirs or personal representative do not wish to continue membership in the association, the remaining members may be permitted to continue to operate the property if FmHA or its successor agency under Public Law 103–354's financial interest will not be jeopardized. The remaining members should obtain from the deceased member's estate an agreement conveying the estate's interest in the cooperative

property to them. The remaining members may wish to agree to protect the estate against liability on the debt to FmHA or its successor agency under Public Law 103–354 as well as any other debts of the cooperative.

(2) The requirement of §1962.46(h) of subpart A of part 1962 will also be followed.

(e) *Action which affects individual members of Unincorporated EO Cooperative security.* The borrower will be expected to protect its own interest in condemnation, trespass, quiet title, and other cases affecting the security. The servicing office will immediately furnish the complete facts concerning any action taken against individual members of Unincorporated Cooperatives to the State Director together with the case file.

(f) *Debt Settlement.* Debt settlement actions for Economic Opportunity Cooperative loans must be handled under the Federal Claims Collection Act; proposals will be submitted to the National Office for review and approval.

§1951.232 Water and waste disposal systems which have become part of an urban area.

A water and/or waste disposal system serving an area which was formerly a rural area as defined in §1942.17(b)(2)(iii) and (iv) of subpart A of part 1942 of this chapter, but which has become in its entirety part of an urban area, will be serviced in accordance with this section.

(a) *Curtailment or limitation of service.* Service may not be curtailed or limited by the inclusion of a system within an urban area.

(b) *Sale or transfer and assumption.* (1) The urban community or another entity may purchase the facility involved and immediately pay the FmHA or its successor agency under Public Law 103–354 debt in full; or

(2) The urban community or another entity may accept a transfer of the FmHA or its successor agency under Public Law 103–354 debt on an ineligible applicant basis.

(3) When a grant is involved, the entity will agree in writing to assume all rights and obligations of the original grantee. See §1951.215 for additional guidance on grant agreements.

(c) *Lease-purchase arrangement.* If §1951.232(b) (l) and (2) of this section are not practicable, the urban community may, with prior approval of the National Office, operate and maintain the system under a lease-purchase arrangement which provides that:

(1) The urban community will:

(i) Assume responsibility for operation and maintenance of the facility, subject to nondiscrimination and all other requirements which are applicable to the borrower, which are to be specified in the agreement between the parties; and

(ii) Pay the association annually an amount sufficient to enable it to meet all its obligations, including reserve account requirements.

(2) The FmHA or its successor agency under Public Law 103–354 borrower will:

(i) Meet its debt service and reserve account requirements to FmHA or its successor agency under Public Law 103–354;

(ii) Retain its corporate existence until FmHA or its successor agency under Public Law 103–354 has been paid in full; and

(iii) If agreed upon by both parties, convey title to the facility to the urban community when the FmHA or its successor agency under Public Law 103–354 debt has been paid in full.

(d) *Processing.* (1) Sale of a borrower's assets will be handled in accordance with §1951.226 of this subpart.

(2) Transfer and assumption of a borrower's assets and indebtedness will be handled in accordance with §1951.230 of this subpart.

(3) Lease-operation-to-purchase arrangements are not permitted.

(4) When a lease-purchase arrangement is proposed, the State Director will obtain a proposed agreement drafted by either the borrower or the urban community. The following will be forwarded to the Administrator, Attention: Water and Waste Disposal Division, for review and approval authorization:

(i) A copy of the proposed agreement;

(ii) Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), appropriately completed;

(iii) OGC comments;

(iv) The case file, including all documentation appropriate for the type of servicing action involved.

[55 FR 4399, Feb. 8, 1992, as amended at 57 FR 21199, May 19, 1992]

§§ 1951.233—1951.239 [Reserved]

§ 1951.240 State Director's additional authorizations and guidance.

(a) *Promote financing purposes and improve or maintain collectibility.* The State Director is authorized to perform the following functions when the action is determined likely to promote the loan or grant purposes without jeopardizing collectibility of the loan or imparing the adequacy of the security; will strengthen the security; or will facilitate, improve, or maintain the orderly collection of the loan:

(1) Approve requests for permission to modify bylaws, articles of incorporation, or other rules and regulations of recipients, including changes in rate or fee schedules. Changes affecting the recipient's legal organizational structure must be approved by OGC.

(2) Consent to requests by the recipient to incur additional indebtedness, subject to applicable FmHA or its successor agency under Public Law 103–354 instructions and covenants in the loan or grant agreement.

(3) Renew existing security instruments.

(4) Approve the extension or expansion of facilities and services.

(5) Require additional security when:

(i) Existing security is inadequate and the loan or security instruments obligate the borrower to give additional security; or

(ii) The loan is in default and additional security is acceptable in lieu of other servicing actions.

(6) Release properties being sold by the borrower from mortgages securing Rural Renewal loans if the amount of the notes and mortgages given by the purchaser to the borrower equal the present market value and are assigned and pledged to FmHA or its successor agency under Public Law 103–354, and any money payable to the borrower is applied as an extra payment on the Rural Renewal loan.

(7) Approve requests for rights-of-way and easements and any subordination necessary in connection with such requests.

(b) *Referrals to National Office.* All proposed servicing actions which the State Director is not authorized by this subpart to approve will be referred to the National Office.

(c) *Defeasance of FmHA or its successor agency under Public Law 103–354 indebtedness.* Defeasance is the use of invested proceeds from a new bond issue to repay outstanding bonds in accordance with the repayment schedule of the outstanding bonds. The new issue supersedes the contractual agreements the borrower agreed to in the prior issue. Defeasance, or amending outstanding loan instruments and agreements to permit defeasance, of FmHA or its successor agency under Public Law 103–354 debt instruments is not authorized, since defeasance limits, or eliminates entirely, the borrower's ability to comply with statutory refinancing requirements implemented by subpart F of part 1951 of this chapter.

§ 1951.241 Special provision for interest rate change.

(a) *General.* Effective October 1, 1981, and thereafter, upon request of the borrower, the interest rate charged by FmHA or its successor agency under Public Law 103–354 to water and waste disposal and community facility borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing. Pub. L. 99–88 provides that any FmHA or its successor agency under Public Law 103–354 grant funds associated with such loans shall be set in the amount based on the interest rate in effect at the time of loan approval. Loans closed October 1, 1981, through October 25, 1985, were closed at the interest rate in effect at the time of loan approval and that interest rate is reflected in the borrower's debt instrument. For community facility and water and waste disposal loans closed on or after October 1, 1981, and for which the interest rate in effect at the time of loan closing is lower than the interest rate in effect at the time of loan approval, the borrower may request to be charged the lower interest rate. The loan closing interest rate will be determined by FmHA or its successor agency under Public Law 103–

354 based upon requirements in effect at the date of loan closing. Exhibit E of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) contains a summary of interest rate requirements for specific time periods. Exhibit C of Subpart O of this part (available in any FmHA or its successor agency under Public Law 103–354 office) will be used to determine the interest rate and effective dates by category of poverty, intermediate, and market rates. Exhibit F of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) contains the instructions on how to process a change of interest rate. Loans meeting the criteria of this section that have been paid in full are eligible for the borrower to request the lower interest rate. For loan(s) that involved multiple advances of FmHA or its successor agency under Public Law 103–354 funds using temporary debt instruments, wherein the borrower requests the interest rate in effect at loan closing, the interest rate charged shall be the rate in effect on the date when the first temporary debt instrument was issued.

(b) *Notification to borrower and borrower selection of interest rate.* (1) FmHA or its successor agency under Public Law 103–354 servicing officials will notify each borrower meeting the provisions of this section of the availability of a choice of interest rate. The notification will be made in writing at the earliest possible date, utilizing Exhibit G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), and sent by certified mail, return receipt requested. Borrowers will be advised at the time of notification that if a change of interest rate is requested, the change will be accomplished administratively by FmHA or its successor agency under Public Law 103–354. The effect of the change on the loan account will also be fully explained to the borrower.

(2) Borrowers must notify FmHA or its successor agency under Public Law 103–354 within 90 calendar days of the date of FmHA or its successor agency under Public Law 103–354 notification indicating their election to retain the rate in effect at loan approval or to change the rate to the rate in effect at the time of loan closing. If the borrower does not respond within the 90-day period, FmHA or its successor agency under Public Law 103–354 will not consider a future request for a lower interest rate under the provisions of this subpart.

(3) The borrower is responsible for assuring that the official executing the letter requesting the change of interest rate is duly authorized and any action(s) necessary for this authorization have been taken as required. Any costs associated with a change of interest rate will be the responsibility of the borrower.

(c) *Processing loan interest rate change.* The State Director is authorized to approve loan interest rate changes which meet the requirements of this section. Loan interest rate changes will be accomplished as follows:

(1) All loan payments already applied to the account(s) will be reversed and reapplied by FmHA or its successor agency under Public Law 103–354 utilizing the changed interest rate. The balance remaining after the completion of the reversal and reapplication procedures will be applied first to any delinquency on the account and then to principal.

(2) For paid-in-full accounts which meet the criteria of § 1951.241(a) of this subpart, the balance of loan payments after completion of the reversal and reapplication procedures will be returned to the borrower unless the borrower is delinquent on another FmHA or its successor agency under Public Law 103–354 loan of the same type. In those cases the amount will be applied to the delinquent amount owed, with any balance refunded to the borrower.

(3) The Finance Office will administratively change the interest rate on a borrower's account in accordance with notification from the servicing official. The installment schedule set forth in each borrower's debt instrument will not change. The original principal schedule for principal-plus-interest accounts where principal *only* is stipulated will continue to be used for payment calculation by the Finance Office. Amortized accounts will adhere to the original payment schedule and amount. The last scheduled principal

installment will be reduced by the amount of the balance previously generated by the reversal and reapplication of payments.

(4) When FmHA or its successor agency under Public Law 103–354 has processed a change of interest rate for an amortized loan and a reduction in installment amounts is needed to provide for a sound operation, the borrower may request reamortization in accordance with § 1951.223 of this subpart.

(5) The borrower will be notified in writing of the new interest rate as changed.

§§ 1951.242—1951.249 [Reserved]

§ 1951.250 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0575–0066. Public reporting burden for this collection of information is estimated to vary from fifteen minutes to three hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Washington, DC 20503.

EXHIBITS TO SUBPART E

EDITORIAL NOTE: Exhibits A through H are not published in the Code of Federal Regulations.

EXHIBIT A—REPORT ON SERVICING ACTION

EXHIBIT B—AGREEMENT FOR NEW MEMBER (WITH OR WITHOUT WITHDRAWING MEMBER)

EXHIBIT C—AGREEMENT FOR WITHDRAWAL OF MEMBER (WITHOUT NEW MEMBER)

EXHIBIT D—ITEMS TO BE INCLUDED IN TRANSFER AND ASSUMPTION DOCKETS (IF APPLICABLE)

EXHIBIT E—INTEREST RATE REQUIREMENTS AND EFFECTIVE DATES

EXHIBIT F—INSTRUCTION TO FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 PERSONNEL TO IMPLEMENT PUBLIC LAW 100–233

EXHIBIT G—LETTER TO BORROWER NOTIFYING OF CHOICE OF INTEREST RATE

EXHIBIT H—RESCHEDULING AGREEMENT—PUBLIC BODIES

Subpart F—Analyzing Credit Needs and Graduation of Borrowers

SOURCE: 61 FR 35927, July 9, 1996, unless otherwise noted.

§ 1951.251 Purpose.

This subpart prescribes the policies to be followed when analyzing a direct borrower's needs for continued Agency supervision, further credit, and graduation. All loan accounts will be reviewed for graduation in accordance with this subpart, with the exception of Guaranteed, Watershed, Resource Conservation and Development, Rural Development Loan Funds, and Rural Rental Housing loans made to build or acquire new units pursuant to contracts entered into on or after December 15, 1989, and Intermediary Relending Program loans. The term ''Agency'' used in this subpart refers to the Farm Service Agency (FSA) including its

county and state committees and their personnel), Rural Utilities Service (RUS), Rural Housing Service (RHS), or Rural Business-Cooperative Service (RBS), depending upon the loan program discussed herein. This subpart does not apply to RHS direct single family housing (SFH) customers.

[61 FR 35927, July 9, 1996, as amended at 61 FR 59778, Nov. 22, 1996]

§ 1951.252 Definitions.

Commercial classified. The Agency's highest quality Farm Credit Programs (FCP) accounts. The financial condition of the borrowers is strong enough to enable them to absorb the normal adversities of agricultural production and marketing. There is ample security for all loans, there is sufficient cash flow to meet the expenses of the agricultural enterprise and the financial needs of the family, and to service debts. The account is of such quality that commercial lenders would likely view the loans as a profitable investment.

Farm Credit Programs (FCP) loans. FSA Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO), Special Livestock (SL), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

Graduation, FCP. The payment in full of all FCP loans or all FCP loans of one type (i.e., all loans made for chattel purposes or all loans made for real estate purposes) by refinancing with other credit sources either with or without an Agency loan guarantee. A loan made for both chattel and real estate purposes, for example an EM loan, will be classified according to how the majority of the loan's funds were expended. Borrowers must continue with their farming operations to be considered as graduated.

Graduation, other programs. The payment in full of any direct loan for Community and Business Programs, and all direct loans for housing programs, before maturity by refinancing with other credit sources. Graduated housing borrowers must continue to hold title to the property. Graduation, for other than FCP, does not include credit which is guaranteed by the United States.

Prospectus, FCP. Consists of a transmittal letter with a current balance sheet and projected year's budget attached. The applicant's or borrower's name and address need not be withheld from the lender. The prospectus is used to determine lender interest in financing or refinancing specific Agency direct loan applicants and borrowers. The prospectus will provide information regarding the availability of an Agency loan guarantee and interest assistance.

Reasonable rates and terms. Those commercial rates and terms which borrowers are expected to meet when borrowing for similar purposes and similar periods of time. The ''similar periods of time'' of available commercial loans will be measured against, but need not be the same as, the remaining or original term of the loan. In the case of Multi-Family Housing (MFH) loans, ''reasonable rates and terms'' would be considered to mean financing that would allow the units to be offered to eligible tenants at rates consistent with other multi-family housing.

Servicing official. The district or county office official responsible for the immediate servicing functions of the borrower.

Standard classified. These loan accounts are fully acceptable by Agency standards. Loan risk and potential loan servicing costs are higher than would be acceptable to other lenders, but all loans are adequately secured. Repayment ability is adequate, and there is a high probability that all loans will be repaid as scheduled and in full.

§ 1951.253 Objectives.

(a) [Reserved]

(b) Borrowers must graduate to other credit at reasonable rates and terms when they are able to do so.

(c) If a borrower refuses to graduate, the account will be liquidated under the following conditions:

(1) The borrower has the legal capacity and financial ability to obtain other credit.

(2) Other credit is available from a commercial lender at reasonable rates and terms. In the case of Labor Housing (LH), Rural Rental Housing (RRH),

and Rural Cooperative Housing (RCH) Programs, reasonable rates and terms must also permit the borrowers to continue providing housing for low and moderate income persons at rental rates tenants can afford considering the loss of any subsidy which will be canceled when the loan is paid in full.

(d) The Agency will enforce borrower graduation.

§ 1951.254 [Reserved]

§ 1951.255 Nondiscrimination.

All loan servicing actions described in this subpart will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or physical or mental handicap.

§§ 1951.256—1951.261 [Reserved]

§ 1951.262 Farm Credit Programs—graduation of borrowers.

(a)–(d) [Reserved]

(e) *Graduation candidates.* Borrowers who are classified ''commercial'' or ''standard'' are graduation candidates. At least every 2 years, all borrowers who have a current classification of commercial or standard must submit a year-end balance sheet, actual financial performance information for the most recent year, and a projected budget for the current year to enable the Agency to reclassify their status and determine their ability to graduate.

(f) *Sending prospectus information to lenders.* (1) The Agency will distribute a borrower's prospectus to local lenders for possible refinancing. The borrower's permission is not required, however, the borrower must be notified of this action.

(2) The borrower is responsible for any application fees. The borrower has 30 days from the date the borrower is notified of lender interest in refinancing to make application, if required by the lender, and refinance the FLP loan. For good cause, the borrower may be granted a reasonable amount of additional time by the Agency.

[61 FR 35927, July 9, 1996, as amended at 62 FR 10120, Mar. 5, 1997]

§ 1951.263 Graduation of non-Farm Credit programs borrowers.

(a)–(b) [Reserved]

(c) *The thorough review.* Borrowers are required to supply such financial information as the Agency deems necessary to determine whether they are able to graduate to other credit. At a minimum, the financial statements requested from the borrower must include a balance sheet and a statement of income and expenses. Ordinarily, the financial statements will be those normally required at the end of the particular borrower's fiscal year. For borrowers who are not requested to furnish audited financial statements, the balance sheet and statement of income and expenses may be of the borrower's own format if the borrower's financial situation is accurately reflected. The borrower has 60 days for group type loans and 30 days for individual type loans to supply the financial information requested.

(d) [Reserved]

(e) *Requesting the borrower to graduate.* (1) The Agency will send written notice to borrowers found able to graduate requesting them to graduate. The borrower must seek a loan only in the amount necessary to repay the unpaid balance.

(2) Borrowers must provide evidence of their ability or inability to graduate within 30 days for RH borrowers, and 90 days for group type borrowers, after the date of the request. The Agency may allow additional time for good cause, for example when a borrower expects to receive income in the near future for the payment of accounts which would substantially reduce the amount required for refinancing, or when a borrower is a public body and must issue bonds to accomplish graduation.

(3) If a borrower is unable to graduate the full amount of the loan, the borrower must furnish evidence to the Agency, showing:

(i) The names of other lenders contacted;

(ii) The amount of loan requested by the borrower and the amount, if any, offered by the lenders;

(iii) The rates and terms offered by the lenders or the specific reasons why other credit is not available; and

(iv) The purpose of the loan request.

(4) The difference in interest rates between the Agency and other lenders will not be sufficient reason for failure

to graduate if the other credit is available at rates and terms which the borrower can reasonably be expected to pay. An exception is made where there is an interest rate ceiling imposed by Federal law or contained in the note or mortgage.

(5) The Agency will notify the borrower in writing if it determines that the borrower can graduate. The borrower must take positive steps to graduate within 15 days for individual loans and 60 days for group loans from such notice to avoid legal action. The servicing official may grant a longer period where warranted.

§ 1951.264 Action when borrower fails to cooperate, respond or graduate.

(a) When borrowers with other than FCP loans fail to:

(1) Provide information following receipt of both FmHA Guide Letters 1951–1 and 1951–2 (available in any Agency office), or letters of similar format, they are in default of the terms of their security instruments. The approval official may, when appropriate, accelerate the account based on the borrower's failure to perform as required by this subpart and the loan and security instruments.

(2) Apply for or accept other credit following receipt of both FmHA Guide Letters 1951–F–5 and 1951–6 (available in any Agency office), or letters of similar format, they are in default under the graduation requirement of their security instruments. If the Agency determines the borrower is able to graduate, foreclosure action will be initiated in accordance with § 1955.15(d)(2)(ii). If the borrower's account is accelerated, the borrower may appeal the decision.

(b) If an FCP borrower fails to cooperate after a lender expresses a willingness to consider refinancing the Agency loan, the account will be referred for legal action.

§ 1951.265 Application for subsequent loan, subordination, or consent to additional indebtedness from a borrower who has been requested to graduate.

(a) Any borrower who appears to meet the local commercial lending standards, taking into consideration the Agency's loan guarantee program, will not be considered for a subsequent loan, subordination, or consent to additional indebtedness until the borrower's ability or inability to graduate has been confirmed. An exception may be made where the proposed action is needed to alleviate an emergency situation, such as meeting applicable health or sanitary standards which require immediate attention.

(b) If the borrower has been requested to graduate and has also been denied a request for a subsequent loan, subordination, or consent to additional indebtedness, the borrower may appeal both issues.

§ 1951.266 Special requirements for MFH borrowers.

All requirements of subpart E of part 1965 must be met prior to graduation and acceptance of the full payment from an MFH borrower.

§§ 1951.267–1951.299 [Reserved]

§ 1951.300 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0093.

EXHIBITS TO SUBPART F

EXHIBIT A [RESERVED]

EXHIBIT B—SUGGESTED OUTLINE FOR SEEKING INFORMATION FROM LENDERS ON CREDIT CRITERIA FOR GRADUATION OF SINGLE FAMILY HOUSING LOANS

Date: _____

Name of Lender: _____

Title: _____

Address: _____

Name of County Supervisor: _____

Service Area: _____

1. Is the lender interested in making loans to refinance rural housing borrowers? Yes:___; No:___.

If later, when? _____

How much credit does the lender expect to have available in the next three to four months for making such loans? $_____

In the next twelve (12) months? $_____

2. What are the loan terms? _____

3. What is the current interest rate? _____ ☐ Variable rate. ☐ Fixed rate.

If variable, how is it determined? _____

4. Is a risk differential used in establishing interest rates charged for new customers? Yes: ____; No: ____.

If yes, explain: _____

5. What can a typical loan applicant be expected to pay for:

	Dollars	Or percent
a. Filing an application		
b. Real estate appraisal		
c. Credit report		
d. Loan orgination fee		
e. Loan closing costs		

6. Is mortgage guarantee insurance required? Yes: ____; No: ____. If yes, how many years? ____. Cost? _____.

7. Is there a minimum or maximum loan size policy? Yes: ____; No: ____.

If yes, explain: — _____

8. Is there a minimum and maximum home value the lender will loan on? Yes: ____; No: ____. If yes, minimum: $_____; maximum: $_____.

9. Does the lender use a loan to market value ratio? _____

10. Is there a minimum net and gross income criteria? Yes: ____; No: ____. If yes, net: $_____; gross: $_____.

11. Does the lender use a minimum loan or home value to income ratio? Yes: ____; No: ____. If yes, loan to income ratio: _____ Value to income ratio: _____

12. Is there a percentage of gross income a typical applicant should have available to pay housing costs? _____

a. To pay for principal, interest, taxes and insurance (PITI)? ____%.

b. To pay for the total housing costs and other credit obligations? ____%.

13. Are there any age of home, housing type, site size, and/or geographic restriction policies? Yes: ____; No: ____.

If yes, List: _____

14. Other Comments: _____

15. For the purpose of reducing the number of inappropriate referrals, would the lender like the opportunity to review specific borrower financial information prior to the borrower being asked to file a formal application? Yes: ____; No: ____. If the answer is yes, *only* those borrowers who are listed on Form FmHA or its successor agency under Public Law 103–354 1951–24 will be referred to the bank. The lenders should be advised, however, the information supplied to them will not include the borrower's name, social security number, exact address, or place of employment that could be used to link a specific borrower to the information being provided by FmHA or its successor agency under Public Law 103–354.

[48 FR 40203, Sept. 6, 1983; 48 FR 41142, Sept. 14, 1983]

Subpart G—I [Reserved]

Subpart J—Management and Collection of Nonprogram (NP) Loans

SOURCE: 58 FR 52646, Oct. 12, 1993, unless otherwise noted.

§ 1951.451 General.

This subpart contains policies and procedures of the Farm Service Agency (FSA) for making, managing, collecting, liquidating, and servicing loans on nonprogram (NP) terms. All references in this subpart to farm real estate, farm property and farm chattels also include nonfarm property that was security for a Farm Credit debt of the FSA.

(a) An NP loan is a loan on terms more stringent than terms for a program loan and it is an extension of credit for the convenience of the Government because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Government. NP loans include:

(1) Sale of inventory property on NP terms;

(2) Assumption of a program loan on NP terms;

(3) Loans converted to NP status as a result of receipt of unauthorized assistance;

(4) Loans converted to NP status when only a portion of the security property is being transferred and the FmHA or its successor agency under Public Law 103–354 debt is not paid in full;

(5) Sale of the real property that was security for an FP loan to the previous owner under the Leaseback/Buyback program on NP terms;

(6) Sale of the real property of an FP borrower under the Homestead Protection program; or

(7) FP accounts rescheduled under an accelerated repayment agreement.

(b) C&BP/NP and MFH/NP transactions involving transfer of the security property will be submitted to the National Office for review, authorization and processing guidance. The submission must include a justification for the proposed action, a servicing and management plan, the State Director's recommendations, and the case files. The sale of C&BP and MFH inventory property to NP purchasers will be handled in accordance with subpart C of part 1955 of this chapter.

(c) Borrowers who have program and NP loans will have their loan accounts serviced and liquidated in accordance with the regulation applicable to the particular loan(s). Therefore, NP loans are not eligible for any program servicing except those permitted in this subpart. However, even though the NP loan will not be eligible for program servicing benefits or entitlements, the borrower is not precluded from receiving assistance on the program loan (e.g., having an NP farm loan should not preclude a borrower from being considered for debt restructuring assistance in the form of a deferral, rescheduling, consolidation, etc., on a FP program loan). When the decision has been made to liquidate the program loan of a borrower who is also indebted for an NP loan and the NP security is also additional security for the program loan the NP loan will be accelerated at the same time as the program loan using the program acceleration notice. Likewise, if an NP loan is to be liquidated and the borrower is also indebted for a program loan which serves as additional security for the NP loan the program loan will be accelerated at the same time as the NP loan using the program acceleration notice. Any appeal of an adverse decision involving both an NP and program loan would affect only the program loan.

[58 FR 52646, Oct. 12, 1993, as amended at 61 FR 59778, Nov. 22, 1996]

§1951.452 Policy.

NP credit is extended for the convenience of the Government in servicing an existing loan or to facilitate sale of inventory property. Where a borrower has both program and NP loans outstanding, servicing will be according to the regulation applicable to the particular loan(s). NP borrowers are not eligible for program entitlements or servicing actions such as subsidy, moratorium, reamortization, rescheduling, consolidation, deferral, limited resource assistance, buyout, writedown and conservation easements. Neither are NP borrowers subject to occupancy/operation requirements, graduation or other similar requirements imposed on program borrowers. NP borrowers are required to adequately maintain the security, pay real estate taxes and/or assessments when due or make scheduled escrow installments for taxes and insurance when required by FmHA or its successor agency under Public Law 103–354, and keep buildings insured according to the promissory note and mortgage or security agreement, but may lease all or a portion of the security without FmHA or its successor agency under Public Law 103–354's consent, except as provided in §1951.460 (a) and (b) of this subpart.

§1951.453 [Reserved]

§1951.454 Review of adverse decisions.

NP applicants and borrowers are not entitled to appeal rights under subpart B of part 1900 of this chapter or parts 11 and 780 of this title. However, decisions involving NP applicants, borrowers or property are reviewable by the next level supervisor.

[58 FR 52646, Oct. 12, 1993, as amended at 62 FR 10120, Mar. 5, 1997]

§1951.455 NP loan making for Single Family Housing (SFH) and farm property (real and chattel).

(a) *Application for NP credit.* Applications for credit on NP terms are made at the County Office serving the area where the property is located or through an approved packager or real estate broker if so instructed by County Office personnel. To apply for NP credit, except Homestead Protection program, standard forms used to process program applications may be utilized or comparable documentation which contains information to establish financial stability, creditworthiness, and repayment ability for the requested credit. However, the loan approval official will have the discretion

to determine what information is required to support approval of the loan. For property purchased under the Homestead Protection program the information required to support approval of the loan will be in accordance with subpart S of part 1951 of this chapter. The creditworthiness standards in § 1944.9 of subpart A of part 1944 of this chapter will be used to evaluate an NP applicant's eligibility for assistance to purchase a single family residence. The application is not complete until all information requested by the Agency is received.

(b) *Fees.* In addition, credit reports will be ordered to determine the eligibility of NP applicants requesting FLP credit. A nonrefundable credit report fee will be charged the applicant. The amounts of these fees change periodically; current fees will be quoted by county office personnel upon request. A borrower whose loan is reclassified as NP because unauthorized assistance was received; or only a portion of the security property is being transferred and the FLP debt is not paid in full; or FLP accounts rescheduled under an accelerated repayment agreement will not be required to submit an application or pay the application fee.

(c) *Eligibility restrictions.* If farm property is being purchased or the debt assumed, and an individual or member, stockholder, partner, or joint operator of a proposed entity transferee or purchaser has been convicted after December 23, 1985, under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of subpart A of part 1941 of this chapter (available in any agency office), for the definition of ''controlled substance'') prior to the approval of the credit sale or assumption in any crop year, the individual or entity shall be ineligible for FLP credit for the crop year in which the individual was convicted four succeeding crop years following the conviction. Purchasers will attest on the application form used that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(d) [Reserved]

(e) *Downpayment.* A downpayment must be collected at closing and remitted in accordance with subpart B of this part 1951 (available in any agency office). The minimum downpayment will be based on the purchase price for a credit sale and the current market value (less any prior liens for chattel security) or the debt, whichever is lower, for an assumption. Downpayment requirements vary from time to time and vary by type of property. Current downpayment requirements will be provided by county office personnel upon request.

(f) *Interest rate.* The FP/NP interest rate for real property or chattel property, as applicable, in effect at the time of loan approval, will be charged on NP assumptions and credit sales involving all other types of sales, except as otherwise stated. The Homestead Protection program interest rate in effect at the time of loan approval will be charged on Homestead Protection properties.

(g) *Terms.* The purchase price for credit sales or the FLP debt being assumed, less the downpayment amount, will be amortized as follows, except the term will never be longer than the period for which the property will serve as adequate security:

(1) *Farm property (real estate security) and CONACT residential property classified as surplus.* The note amount will be amortized over a period not to exceed 15 years. When an NP loan was initially scheduled for repayment in 15 years or less together with a 25-year amortization, the agency may authorize an extension not to exceed a total of 25 years from the date the NP assumption or credit sale was closed provided it is in the Government's best interest and the agency retains the same lien priority.

(2) *Farm property (chattels security).* The note amount will be amortized over a period not to exceed 5 years.

(3) *Homestead protection.* The note amount will be amortized over a period not to exceed 35 years.

(h) *Modification of security instruments.* Any convenants in the promissory note and/or security instruments (mortgage or deed of trust) relating to graduation to other credit, inability to secure other financing, restrictions on

leasing, FLP operation requirements, and consent to junior lien encumbrance will be deleted.

(i) *Security*. The security requirements for NP loans on farm real estate will be in accordance with subpart A of part 1943 of this chapter and NP loans on chattel property will be secured in accordance with subpart A of part 1962 of this chapter. Except that, an NP loan will be secured only by the property purchased.

(j) *Closing*. Title clearance, preparation of deeds, loan closing and property insurance requirements are the same as for a program loan on the same type property, except the purchaser must pay his/her own closing costs.

[58 FR 52646, Oct. 12, 1993, as amended at 62 FR 10120, Mar. 5, 1997]

§1951.456 [Reserved]

§1951.457 Payments.

(a) *Receiving payments*. Borrowers will mail or bring their payments to the county office. Borrowers will be responsible for any fees associated with converting cash payments to money orders. If the fee is not paid, it will be deducted from the payment.

(b) Payments not received when due. NP borrowers are expected to make scheduled payments when due. The Agency personnel are not required to provide program supervision, servicing, management or credit counseling in accordance the agency servicing instructions if payments are not received when due. To ensure consistency, a series of contacts will be made when servicing delinquent accounts. All actions taken, agreements reached and recommendations made in the servicing of the borrower's account are to be documented. When appropriate, the Agency may work out a reasonable agreement with an NP borrower to cure a delinquency; however, such an agreement will not usually exceed 1 year. Failure to make payments as agreed will result in actions determined by the agency to best protect the Government's interest. Collection of a delinquency from an Internal Revenue Service (IRS) offset will be used to the extent permitted by law.

[58 FR 52646, Oct. 12, 1993, as amended at 60 FR 55146, Oct. 27, 1995; 62 FR 10120, Mar. 5, 1997]

§1951.458 Servicing real estate taxes.

Refer to subpart A of part 1925 of this chapter for servicing real estate taxes.

[62 FR 10120, Mar. 5, 1997]

§1951.459 Preservation of security.

(a) *Inspections of NP security property*. Inspections will be made on NP security as necessary to protect FmHA or its successor agency under Public Law 103–354's security interest. In the event of abandonment, servicing actions will be taken according to §1955.55 of subpart B of part 1955 of this chapter.

(b) *Subordination*. Subordination is not authorized where an NP borrower only owes FmHA or its successor agency under Public Law 103–354 an NP loan(s). Subordination of a mortgage may be permitted to refinance, extend, reamortize, increase the amount of an existing prior lien, or to permit a prior lien only when the security for the NP loan is also security for an FmHA or its successor agency under Public Law 103–354 program loan, the request for the subordination meets all the requirements for the subordination of the FmHA or its successor agency under Public Law 103–354 program loan and is in the best interest of the Government.

(c) *Bankruptcy*. NP loans on single family residences will be serviced in accordance with subpart C of part 1965 of this chapter, farm real estate in accordance with subpart A of part 1965 of this chapter, and farm chattel in accordance with subpart A of part 1962 of this chapter.

§1951.460 Release of security property or sale or lease of related property rights.

(a) *Partial release*. Release of a portion of the security property may be made when the borrower requests it and FmHA or its successor agency under Public Law 103–354 determines the release will not adversely affect the Government's interest. Release

may be approved when payment is received by FmHA or its successor agency under Public Law 103–354 in the amount of the market value, as determined by FmHA or its successor agency under Public Law 103–354, of the property to be released. Proceeds from such transactions (less related expenses authorized by FmHA or its successor agency under Public Law 103–354) will be applied to the FmHA or its successor agency under Public Law 103–354 indebtedness as an extra payment or to prior liens in order of lien priority.

(b) *Easements, right-of-ways, and lease of mineral rights or other rights.* Consent may be given by FmHA or its successor agency under Public Law 103–354 for the borrower to grant an easement or lease mineral rights when it is determined by FmHA or its successor agency under Public Law 103–354 the action will not adversely affect the Government's interest. The granting of an easement or right-of-way and lease of mineral rights may be approved when payment is received by FmHA or its successor agency under Public Law 103–354 in the amount of the market value, as determined by FmHA or its successor agency under Public Law 103–354, for rights granted or benefits are derived which are equal to or greater than the value of the property being disposed of. Proceeds from these transactions (less related expenses authorized by FmHA or its successor agency under Public Law 103–354) will be applied to the FmHA or its successor agency under Public Law 103–354 debt as an extra payment or to prior liens in order of lien priority.

(c)–(d) [Reserved]

§ 1951.461 Release of valueless FmHA or its successor agency under Public Law 103–354 lien without monetary consideration.

Release of an FmHA or its successor agency under Public Law 103–354 lien without monetary consideration may be granted when it is determined by FmHA or its successor agency under Public Law 103–354 to have no present or prospective value or when enforcement would be ineffectual or uneconomical. Judgment liens or statutory redemption rights may be released only with prior consent of OGC.

§ 1951.462 Deceased borrower.

When an NP borrower dies, FmHA or its successor agency under Public Law 103–354 will determine whether or not arrangements can be effected for continuation of the loan under one of the provisions of this section. If not, the loan may be liquidated according to § 1951.468 of this subpart. The servicing actions and the circumstances under which they may be considered are outlined in paragraphs (a) through (d) of this section.

(a) *Continue with jointly liable borrower.* If a jointly liable borrower will repay the loan and fulfill other obligations of the loan, FmHA or its successor agency under Public Law 103–354 will take no action to liquidate the loan.

(b) *Assumption by spouse not liable for the FmHA or its successor agency under Public Law 103–354 debt.* The spouse of a deceased borrower who is not liable for the FmHA or its successor agency under Public Law 103–354 debt and who wishes to assume the debt may do so in accordance with § 1951.463(d)(1) of this subpart.

(c) *Continue with joint tenant, tenant by the entirety, or other person.* When a joint tenant, tenant by the entirety, or other person who inherits title to (or an interest in) the security property, on which the principal residence is located, by devise, descent, or operation of law upon the death of a borrower makes payments as scheduled in the promissory note (or assumption agreement), FmHA or its successor agency under Public Law 103–354 may not take action to liquidate the loan as long as the property is adequately maintained, real estate taxes and assessments are paid when due, and the dwelling is not known to be uninsured (if funds for taxes and insurance are being escrowed, the escrow is a part of the scheduled payments). The loan may be assumed in accordance with § 1951.463(d) of this subpart; however, assumption of the indebtedness is not required. Continuation with a joint tenant, tenant by the entirety, or other person under the provisions of this paragraph applies only to the transfer of title resulting

from death of the borrower; it does not apply to any subsequent transfer of title by the inheritor(s) except by devise, descent, or operation of law upon the death of the inheritors or sale of interests among inheritors to consolidate title. Any other subsequent transfer of title will be treated as a sale and is subject to the requirements of § 1951.463 of this subpart.

(d) *Assumption by a person, other than the spouse, who is not liable for the FmHA or its successor agency under Public Law 103–354 loan.* A person other than the deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, without receiving title to the property, may do so in accordance with § 1951.463(d)(1) of this subpart provided:

(1) The residence will continue to be occupied by one or more persons who were dependent on the borrower at the time of death; and

(2) There is reasonable prospect for orderly repayment of the loan and other obligations of the loan will be met.

§ 1951.463 Transfer of security and assumption of indebtedness.

When a borrower proposes to sell security property, assumption of the indebtedness may be approved on program or NP terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. Assumptions under paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section only are authorized on existing terms. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA or its successor agency under Public Law 103–354 debt is not assumed by the purchaser (new owner) or paid in full, the conveyance will not be approved, except as provided in paragraphs (b)(2) and (b)(5) of this section or § 1951.462 of this subpart. If the conveyance is not approved the loan must be liquidated unless FmHA or its successor agency under Public Law 103–354 determines it is not in the Government's best interest. If FmHA or its successor agency under Public Law 103–354 decides to continue with the loan, the account will be serviced in the borrower's name and the borrower will remain liable for the loan under the terms of the security instrument.

(a) [Reserved]

(b) *General.* The following policies apply to all transfers and assumptions under this subpart:

(1) *Amount of assumption.* Except for transfers covered in paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section, the transferee will assume the lesser of the indebtedness, or current market value as determined by FmHA or its successor agency under Public Law 103–354, less any prior liens and the downpayment.

(2) *Conveyance of security property by borrower to spouse or child.* When a borrower conveys security property to his/her spouse or children, assumption of the indebtedness is not required and FmHA or its successor agency under Public Law 103–354 may not take action to liquidate the loan as long as payments are made as scheduled and other obligations of the loan are met. In the event the transferee(s) wishes to assume the indebtedness, it may be assumed on the terms outlined in paragraph (d)(1) of this section as applicable to the circumstances.

(3) *Withdrawal of jointly liable borrower.* When a stockholder/member/partner/joint operator of an entity who is personally liable on the note withdraws from the entity or dies, and all of the remaining individuals are not personally liable on the note(s), the loan must be assumed by all remaining parties.

(4) *Addition of new transferee(s).* When new stockholders/members/partners/joint operators enter an entity, assumption of the indebtedness is required, however, the indebtedness may be assumed on existing terms. A downpayment based on the unpaid balance of the loan is required when the assumption is closed.

(5) *Conveyance of security property into an inter vivos trust.* When the borrower conveys security property into an inter vivos trust, whereby the borrower does not transfer rights of occupancy in the property, FmHA or its successor agency under Public Law 103–354 may not take action to liquidate the loan as

long as payments are made as scheduled and other obligations of the loan are met.

(c) *Program assumption.* A NP loan may be assumed by an eligible program applicant if the property meets the eligibility requirements for a currently authorized program (SFH, Farm Ownership (FO), etc.). In such cases, the assumption will be at the interest rate and up to the maximum term in effect for the type loan involved at the time the assumption is approved. After assumption on program terms, the loan will be reclassified as Rural Housing (RH), FO, etc., as applicable.

(d) *NP assumption.* The rates and terms for an NP assumption will be as provided in § 1951.455 of this subpart. A loan may be assumed on existing terms only in the situations outlined in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), (d)(1), (d)(2), and (d)(3) of this section. An individual not liable for the loan who acquires title to or an interest in the security by means of one of the situations mentioned may assume the indebtedness on existing terms or current terms if more favorable, in which case a downpayment based on the unpaid balance would be required. The interest rate, final due date, payment date, and account status (current, delinquent, ahead of schedule) will not be changed by virtue of an assumption on existing terms, after assumption compliance with loan conditions is required. If a same terms assumption is consummated and the account is delinquent, it may be reamortized in accordance with applicable program regulations. Situations where these terms are authorized are:

(1) An individual who acquires title to or an interest in the security property by virtue of death, divorce, or deed from a spouse or parent but is not liable for the debt and who wishes to assume the loan may do so. Any subsequent transfer of title, except between inheritors to consolidate title, will be treated as a sale and is not covered by these provisions. Individuals in this category are:

(i) A deceased borrower's surviving spouse.

(ii) A divorced borrower's spouse.

(iii) A joint tenant with right of survivorship or relative of a deceased borrower.

(2) The spouse or child of a living borrower to whom title to the security property has been conveyed by spouse or parent.

(3) A person other than the deceased borrower's spouse who wishes to continue with the loan under conditions outlined in § 1951.462 (c) or (d) of this subpart may do so.

(e) *County Committee actions on Farmer Program assumptions.* On program assumptions, the County Committee must certify the transferee's eligibility for the type of loan to be assumed.

(f) *Title clearance and loan closing.* Title clearance and closing will be the same as for any program loan of the same type.

(g) *Release from liability.* Release from liability of NP borrowers is not authorized.

§§ 1951.464—1951.467 [Reserved]

§ 1951.468 Liquidation.

When it is determined an NP borrower cannot or will not successfully repay the loan, FmHA or its successor agency under Public Law 103–354 will attempt to have the borrower liquidate voluntarily.

(a) *Voluntary.* If an NP borrower in default indicates a willingness to voluntarily liquidate, other liquidation actions by FmHA or its successor agency under Public Law 103–354 may be delayed for a reasonable period, usually not to exceed 120 days for real estate, if the borrower is earnestly seeking other financing, or has the security property listed or offered for sale and it is being actively marketed at a reasonable price.

(b) *Foreclosure.* If an NP borrower in default (monetary or nonmonetary) does not cure the default and is not willing or able to voluntarily liquidate, the servicing official will refer the case to the next level supervisor with a recommendation for further action. If foreclosure is approved, the account will be accelerated. NP borrowers do not have appeal rights under subpart B of part 1900 of this chapter; however, the NP borrower may request a review of the decision to foreclose by the next

level supervisor to consider evidence that the loan is not in default. If the borrower fails to satisfy the account during the period specified in the demand letter, FmHA or its successor agency under Public Law 103–354 will proceed with foreclosure without further notice or extension of time.

(c) *Conveyance to FmHA or its successor agency under Public Law 103–354.* FmHA or its successor agency under Public Law 103–354 does not solicit or encourage conveyance of NP security property to the Government and will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt has been accelerated and when it is in the Government's best interest. Release of the borrower from liability is not authorized. Upon receipt of an offer to convey, FmHA or its successor agency under Public Law 103–354 will remind the borrower of provisions for voluntary liquidation under paragraph (a) of this section. The borrower will also be informed of the consequences of a conveyance by deed in lieu of foreclosure as follows:

(1) All costs related to the conveyance which FmHA or its successor agency under Public Law 103–354 pays will be added to the debt;

(2) A credit equal to the market value of the property, as determined by FmHA or its successor agency under Public Law 103–354, less prior liens, will be applied to the debt; and

(3) If the credit does not satisfy the debt, the debtor remains liable for the payment of the account balance and the account will be debt settled.

(d) *Consent to sale of real estate security when the FmHA or its successor agency under Public Law 103–354 debt and authorized selling expenses exceed market value.* If an NP borrower proposes to sell real estate security for an amount which will be insufficient to pay the FmHA or its successor agency under Public Law 103–354 debt, prior lien(s) if any, and sale expenses authorized by FmHA or its successor agency under Public Law 103–354, an appraisal will be completed and FmHA or its successor agency under Public Law 103–354 may consent to the sale if the proposed sale price is not less than the market value. No commission will be allowed or paid under this paragraph when the sale is to the broker, broker's salesperson(s), to persons living in his/her or salesperson(s) immediate household or to legal entities in which the broker or salesperson(s) have an interest if the sale involves FmHA or its successor agency under Public Law 103–354 credit. If credit is not being extended to the persons mentioned in the preceding sentence (a cash sale), a commission will be allowed or paid. In no case will the borrower (seller) receive any cash proceeds from the sale. Any real estate taxes due from the transferor and other authorized selling expenses for which there is insufficient equity proceeds for payment at closing will be charged to the borrower's account prior to loan closing. Authorized selling expenses will not be considered or included in the amount assumed. Release from liability is not authorized.

§1951.469 Actions after liquidation of property.

(a) [Reserved]

(b) *Servicing unsatisfied account balances.* A current financial statement will be obtained, if possible, when application of sale proceeds does not satisfy an NP loan; or if a conveyance to FmHA or its successor agency under Public Law 103–354 has been accepted and credit of the market value less prior liens and estimated inventory handling expenses does not satisfy the debt, FmHA or its successor agency under Public Law 103–354 will pursue collection if there appears to be income or assets from which to collect. Where the borrower owns other real estate, or if the borrower is known to be in the process of purchasing other real estate (such as another dwelling), a judgment for the remaining debt including expenses paid by FmHA or its successor agency under Public Law 103–354 will be sought.

(c) [Reserved]

§§1951.470–1951.478 [Reserved]

§1951.479 Pilot projects.

From time to time FmHA or its successor agency under Public Law 103–354 conducts pilot projects to test concepts related to the management and/or sale of SFH inventory property which may

deviate from the provisions of this subpart, but will not be inconsistent with provisions of the authorizing statutes, or other Acts affecting FmHA or its successor agency under Public Law 103–354's loan programs. Prior to initiation of a pilot project, FmHA or its successor agency under Public Law 103–354 will publish in the FEDERAL REGISTER a Notice outlining the nature, scope, and duration of the pilot. The pilot projects may be handled by FmHA or its successor agency under Public Law 103–354 employees and/or under contract with persons, firms, or other entities in the private sector.

§ 1951.480 [Reserved]

§ 1951.481 FmHA or its successor agency under Public Law 103–354 Instructions.

Detailed FmHA or its successor agency under Public Law 103–354 Instructions for administering this subpart are available in any FmHA or its successor agency under Public Law 103–354 office (FmHA or its successor agency under Public Law 103–354 Instruction 1951–J).

§§ 1951.482–1951.500 [Reserved]

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

SOURCE: 50 FR 8597, Mar. 4, 1985, unless otherwise noted.

§ 1951.501 General.

(a) This subpart prescribes the policies, authorizations, and procedures for implementing and servicing PASS for all of the following Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) Multiple Family Housing (MFH) loan recipients which includes Farm Labor Housing (LH) and Rural Rental Housing (RRH) including Rural Cooperative Housing (RCH) and Congregate Housing and includes:

(1) All MFH loans, credit sales, reamortizations, and transfers closed on or after May 1, 1985, and

(2) All MFH loan recipients converting from the Daily Interest Accrual System (DIAS) to PASS according to § 1951.517 of this subpart, except:

(i) Seasonal LH and LH loans to individual farmers may be closed on monthly or annual payment schedules and also may be closed on Daily Interest Accrual under subpart A of part 1951 of this chapter. Instructions for scheduling payments are according to the Forms Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103–354 1944–52, ''Multiple Family Housing Promissory Note.''

(ii) Rural Housing Site (RHS) loans and Site Option (SO) loans will be closed and serviced on Daily Interest Accrual under subpart A of part 1951 of this chapter. Payment billings are subject to § 1951.506 of this subpart.

(b) All MFH loan recipients not described in paragraph (a) of this section will continue to be subject to the servicing and collection requirements of subpart A of part 1951 of this chapter. For the purposes of this subpart, all references to ''County Supervisor'' in subpart A of part 1951 shall be construed to mean ''District Director.''

(c) All FmHA or its successor agency under Public Law 103–354 MFH loans (RRH, RCH, LH, RHS, and SO) whether DIAS or PASS, are subject to the definitions contained in § 1951.504 of this subpart, and payment application as outlined in § 1951.510 of this subpart.

(d) All MFH loan payments will be processed using Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

[50 FR 8597, Mar. 4, 1985, as amended at 53 FR 16244, May 6, 1988; 56 FR 28038, June 19, 1991]

§ 1951.502 [Reserved]

§ 1951.503 Authorities and responsibilities.

District Directors are responsible for administering this subpart under the general guidance and supervision of the State Director. The District Office Management System will be fully used to accomplish this responsibility.

§1951.504 Definitions and statements of policy.

Advance regular payment. Regular payments made at election of the borrower to pay the account ahead of schedule. These payments may be either full or partial payments and will be applied to the amortized payment schedule by the Finance Office.

Amortization schedule. An amortization schedule is the projected application of periodic payments to principal and interest at the promissory note rate so the debt will be paid in full over the number of periods specified in the promissory note, assumption agreement (new terms), or reamortization agreement. Computation is based on a 30-day month and a 360-day year.

Amortized recoverable costs. Recoverable cost items may be amortized over a period up to 5 years. This function will allow the servicing official to voucher recoverable cost items such as taxes.

(1) *Payment of real estate taxes.* When a borrower's taxes are paid by voucher, the amortization period of the tax advance will be the number of months for which the taxes are being vouchered with a maximum of 5 years.

(2) *Costs other than real estate taxes.* Advances for costs other than real estate taxes will be amortized for 12 months unless, based on the borrower's repayment ability, a longer period is needed. An amortization period of more than 12 months will be used only when the cost is of a nonrecurring type. In no case, however, will the repayment period exceed 5 years.

(3) *Retroactive amortization of recoverable costs.* Recoverable costs which have been vouchered since May 1, 1985, may, with National Office approval, be retroactively amortized for applicable time periods as shown in paragraphs (c)(1) and (c)(2) of this section, if payments made since the costs were vouchered are sufficient to bring both the loan and cost accounts current. The following information should be forwarded to the National Office for approval of the reclassification to amortized status, and forwarded to the Finance Office for processing: An audit showing all costs vouchered along with payments made since the date of the cost item and to be made prior to the reclassification; the estimated reapplication of the payments due to reclassification showing that the account will be current after the reclassification; and the proposed budget and management case files.

Audit receivables. Loan, grant or subsidy funds which were used by the borrower for unauthorized purposes; have been identified by the Office of Inspector General (OIG) in an audit; and, which FmHA or its successor agency under Public Law 103–354 is requiring the borrower to repay.

Conversion. The act of changing a borrower's account from DIAS to PASS.

Daily Interest Accrual System (DIAS). A system whereby interest is charged daily from the date a payment is received in the District Office to the next date a payment is received. A daily interest accrual factor is computed by multiplying the outstanding principal balance by the effective interest rate and dividing by 365 days. Computation is always based on a 365 day year. Interest on each payment is charged on the actual number of days that a principal balance is outstanding.

District Director. For the purpose of this subpart the term includes the Assistant District Director, and other qualified District staff who may be delegated responsibilities according to §1930.143 of subpart C of part 1930 of this chapter, and the provisions of subpart F of part 2006 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office). In the case of LH loans still being serviced in the County Office, this definition also includes qualified County Office staff. This definition further includes the Area Loan Specialists in Alaska, Island Directors in Hawaii, Directors of Western Pacific Territories, and other qualified staff members in Alaska, Hawaii, and Western Pacific Territories, respectively.

Extra payment. Extra payments are applied all to principal on the end of the loan and are funds derived from:

(1) Sale of basic chattel or real estate security, including rental or lease of real estate security of a depreciating or depleting nature.

(2) Refinancing of real estate debt.

(3) Mineral royalties.

(4) Cash proceeds of real property insurance as provided in subpart A of part 1806 of this chapter (FmHA or its successor agency under Public Law 103–354 Instruction 426.1).

(5) Sale of real estate not mortgaged to the Government, pursuant to a condition of loan approval.

(6) Transactions of a similar nature which reduce the value of the security for the loan(s).

Non-recoverable costs. Payments charged to a loan program insurance fund by use of a fund code. These costs are only incurred after Government acquisition of title to the property, and are therefore charged to an inventory account.

Overage. This term refers to both ''overage'' and ''surcharge'' described in exhibit H to subpart C of part 1930 of this chapter.

Payment effective date. The payment effective date is the day of the month on which payments will be effectively applied to the account by the Finance Office for the month payment is due regardless of the payment reception date. On PASS all payments will be applied as of the first day of the month.

Payment reception date. The day of the month the payment is received in the District Office.

Predetermined Amortization Schedule System (PASS). System whereby FmHA or its successor agency under Public Law 103–354 will apply loan payments based on an amortization schedule.

Project late fee. The amount charged a borrower's project account for a delinquent payment according to § 1951.510(c)(2) of this subpart, or when an uncollectible regular payment has been processed according to § 1951.506(c) of this subpart.

Promissory note installment. The unrounded amortized installment shown on the promissory note, conversion agreement, assumption agreement or reamortization agreement, whichever is currently in effect.

Recoverable costs. Additional project costs such as vouchered insurance or taxes which FmHA or its successor agency under Public Law 103–354 requires a borrower to pay.

Refund payment. Payments from unused loan funds which are applied to principal on the end of the loan account.

Regular payment. All monthly payments scheduled according to PASS. Does not include extra payments, advance regular payments, refund payments or voluntary additional principal payments.

Subsidized installment. The promissory note installment reduced by the terms of Form FmHA or its successor agency under Public Law 103–354 1944–7, ''Multiple Family Housing Interest Credit and Rental Assistance Agreement.'' The subsidized installment is the unrounded amortized installment computed at the subsidized interest rate.

Subsidy credit. The difference between a borrower's monthly promissory note installment and the monthly subsidized installment.

Voluntary additional principal payment. Payments applied all to principal which are made at the election of the borrower in addition to regularly scheduled payments and with FmHA or its successor agency under Public Law 103–354 approval. Such payments will not affect the schedule payment status or change the amount of the regular monthly payments. Funds for voluntary additional principal payments are derived from sources other than extra payment sources. Payments will be applied to current loans only.

[50 FR 8597, Mar. 4, 1985, as amended at 53 FR 2194, Jan. 26, 1988; 53 FR 16244, May 6, 1988; 55 FR 25078, June 20, 1990; 56 FR 66961, Dec. 27, 1991; 62 FR 25070, May 7, 1997]

§ 1951.505 [Reserved]

§ 1951.506 Processing payments.

(a) *Regular payments.* Regular payments and advance regular payments will be processed as follows:

(1) All payments will be based on tenants occupying the units as of the first day of the month prior to the payment due date. For example, a payment due on July 1 is based on tenants occupying the units June 1. For the purposes of this subpart, the word ''tenant'' also means RCH ''member.''

(2) The borrower must deliver all Forms FmHA or its successor agency

under Public Law 103–354 1944–8, ''Tenant Certification,'' or for tenants receiving Section 8 assistance, the acceptable Department of Housing and Urban Development (HUD) form to the District Director according to paragraph VII F 1 of exhibit B to subpart C to part 1930 of this chapter. The District Director will date stamp each certification and will verify the information on the tenant certification also as required in paragraph VII F of exhibit B to subpart C of part 1930 of this chapter. The data from the tenant certifications must be entered into the Multi-Family Housing Tenant File System (MTFS) which will calculate the tenant's rent payment.

(i) If the calculations on the tenant certification do not agree with MTFS, the District Office will contact the borrower/management to resolve the discrepancy. MTFS calculations will be used to calculate interest credit and rental assistance due the borrower.

(ii) A copy of MTFS ''Project Worksheet—Interest Credit and Rental Assistance,'' an automated printout, will be generated and compared to the borrower's Form FmHA or its successor agency under Public Law 103–354 1944–29, ''Project Worksheet for Interest Credit and Rental Assistance.'' Only tenants with current tenant certifications shown on MTFS will be certified for interest credit or rental assistance when processing payments.

(iii) A copy of the monthly MTFS project worksheet report will be filed with Form FmHA or its successor agency under Public Law 103–354 1944–29 to document the approved subsidies.

(iv) At the borrower's request, a copy of the MTFS project worksheet report may be used as Parts I and II in lieu of Form FmHA or its successor agency under Public Law 103–354 1944–29. The District Office will provide a copy of the MTFS project worksheet report to the borrower about the 20th of the month. When using the MTFS project worksheet report as Parts I and II of Form FmHA or its successor agency under Public Law 103–354 1944–29, the borrower will verify the data, sign the MTFS project worksheet report, and return it with the monthly payment to the District Office. Borrowers using the MTFS project worksheet report as Part II, only, will complete, sign, and attach Part I of Form FmHA or its successor agency under Public Law 103–354 1944–29 to the MTFS project worksheet report, before returning it with the monthly payment. Borrowers with Section 8 units who are reporting overage payment, and/or excess HUD contract rent to the reserve account are required to complete Part I of either Form FmHA or its successor agency under Public Law 103–354 1944–29 or the MTFS project worksheet report.

(3) On or about the 11th day of each month, the Finance Office will generate and mail to each borrower that is delinquent and/or has late fees, Form FmHA or its successor agency under Public Law 103–354 1944–9A, ''Multiple Family Housing Statement of Payment Due,'' showing the current monthly payment due, unpaid late fees, and delinquent payments, if any, due on the first day of the following month. This payment statement will be determined from current Finance Office records but will not reflect overage due from the borrower or rental assistance (RA) due the borrower.

(4) Each borrower will submit to the District Office Form FmHA or its successor agency under Public Law 103–354 1944–29 with the required monthly payment indicated or adjusted as indicated in paragraph (a)(5) of this section regardless of whether or not Form FmHA or its successor agency under Public Law 103–354 1944–9A is received.

(5) Form FmHA or its successor agency under Public Law 103–354 1944–29, prepared by the borrower must reflect the following:

(i) Only tenants occupying units the first day of the month prior to the payment due date.

(ii) Interest credit and (RA) may be claimed only for tenants with current tenant certification as specified in paragraph VII F 2 of exhibit B to subpart F of part 1930 of this chapter.

(iii) Overage up to the market rent must be paid to FmHA or its successor agency under Public Law 103–354 by the borrower for tenants without current tenant certifications unless there is a formal eviction in process, then the payment will be calculated based on the expired tenant certificate. The District Director may determine that the

tenant may be required to reimburse the borrower for that overage as allowed in paragraph VII F 6 c of exhibit B to subpart C of part 1930 of this chapter.

(iv) The borrower may subtract any RA due the project (supported by current tenant certifications) from the payment due and remit a ''net'' payment. Calculations supporting the ''net'' payment must be shown on Part I of Form FmHA or its successor agency under Public Law 103–354 1944–29. The Finance Office will net enough RA to bring the account status current and pay any unpaid overage, late fees, interest on delinquent principal, etc., based on the payment reception date. If the account is on or ahead of schedule on the payment reception date, enough RA will be netted to pay one full installment and any unpaid coverage, interest on delinquent principal, etc.

(6) The District Director will certify that data on current tenant certifications held in the District Office supports claims on Form FmHA or its successor agency under Public Law 103–354 1944–29. The District Director will transmit payments as directed in exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

(7) Payment input by FmHA or its successor agency under Public Law 103–354 will be based on correct amounts regardless of the amount remitted by the borrower.

(b) *Other payments.* Payments made through the District Office will be processed according to subpart B of part 1951 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(c) *Uncollectible payment.* Uncollectible payments will be handled under subpart B of this part 1951 of this chapter. The payment effective date for the replacement payment will be the date the replacement payment is received in the District Office, not the date of the original payment.

[50 FR 8597, Mar. 4, 1985, as amended at 51 FR 27671, Aug. 1, 1986; 55 FR 25078, June 20, 1990; 56 FR 28038, June 19, 1991; 58 FR 40954, July 30, 1993; 59 FR 54789, Nov. 2, 1994; 62 FR 25065, 25070, May 7, 1997]

§ 1951.507 Maintaining borrower accounts.

(a) *Accounts of active borrowers.* The foundation for proper and timely debt payment is sound budgeting and monthly review of income and expenses by the borrower and, as necessary, the District Office staff. Account maintenance, therefore, must begin with initial planning and must be an integral part of ongoing analysis, planning and follow-up management assistance.

(b) *Accounts of collection-only borrowers.* Collection only accounts will be serviced according to § 1951.7(b) of subpart A of this part.

(c) *Notifying borrowers of late fees and past due payments.* The Finance Office will automatically notify each borrower of late fees for payments which were unpaid on the 10th day of the month. A copy of the notice will be mailed to the District Office servicing the account.

(d) *Subsequent servicing.* Delinquent accounts will be serviced according to the respective program requirements. Accounts will also be serviced under subpart B of part 1965 of this chapter.

(e) *District Office monitoring.* District Offices should review each account at least monthly by accessing the Automated Multi-Housing Accounting System (AMAS) through field office terminals. For projects on PASS, the Management System card will be flagged with an orange signal between Position ''5'' and ''RRH.'' Exhibit A–1 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) should be used to track payments.

[50 FR 8597, Mar. 4, 1985, as amended at 58 FR 40955, July 30, 1993]

§§ 1951.508–1951.509 [Reserved]

§ 1951.510 Payment application.

(a) *Regular payment due date.* The regular payment due date is the first day of each month. All months will be counted as 30 days (360 day year).

(b) *First regular payment.* (1) The first regular amortized payment after loan closing for transfers (new terms), reamortizations, voluntary conversions, credit sales, or loans closed after interim financing *must* be at least one (1) month from closing. For example, if a

loan is closed on January 31, the first regular amortized payment will be due March 1. For multiple advance loans the first payment must be at least one (1) month after the final advance.

(2) For transfers (same terms) payments on loans already on PASS will be due on the next scheduled due date.

(3) Transfers (same terms) converting from DIAS to PASS are loans retaining the same interest rate and final due date and regular amortized payments will be due 30 days form either the date of closing or the interest only installment, whichever is later.

(c) *Delinquent payments.* (1) A loan payment is due on the first day of a month. A loan payment is considered past due when it is received on the second day or a subsequent day through the close of business of the tenth day of the month. A loan payment is late when it is received after normal business hours of the tenth day of the month, without regard to weekends, holidays or payment transmission factors. Thereafter, a late fee will be charged as described in paragraphs (c)(2) and (c)(4) of this section.

(2) The project account will be charged a late fee when the regular payment is not received in the District Office by close of business of the tenth (10) day of the month the payment is due or when the payment is applied by the Finance Office and does not fully pay the regular payment and other charges for each project loan. Late fees collected by the Finance Office will be deposited in the Rural Housing Insurance Fund (RHIF).

(i) The project late fee is six percent of the total regular payment(s) due shown on the promissory note(s), conversion agreement(s), assumption agreement(s) or reamortization agreement(s).

(ii) A project late fee will be charged for any unpaid portion of the regular payment(s) exceeding $15.00.

(iii) A project late fee will be charged one time only, for each regular payment.

(iv) Except for cooperative housing, project late fees may not be paid from project income as specified in paragraph XIII B2a(4) of exhibit B to subpart C of part 1930 of this chapter.

(v) Exceptions may be made to late fee charges only as follows:

(A) The State Director may allow an exception for any project for three (3) monthly project late fee charges in any calendar year, based on the State Director's determination that the late fees place an unfair burden on the project. For each exception requested, the borrower must provide a written explanation of the circumstances which caused the late payment and what actions will be taken to bring the account current.

(B) The National Office may authorize exceptions to late fees for borrowers who have late fees exceeding the State Director's exception authority. When the State Director determines that the application of a late fee would place an unfair burden on the borrower, the State Director may submit a request for an exception to the late fee to the National Office. The request will include an explanation of the circumstances, a recommendation for action and all relevant case file material. The National Office will review the request and notify the State Director what action should be taken on the account.

(C) When an exception to late fees is granted, the State Director will notify the borrower on Form FmHA or its successor agency under Public Law 103–354 1951–51, ''Multiple Family Housing Exception to Late Fees,'' completed according to the FMI.

(D) When an application for late fee exception is denied the State Director must give the borrower appeal rights under subpart B of part 1900 of this chapter.

(3) A project is considered delinquent on the 30th day of the month when any due amount is unpaid.

(4) When a regular PASS payment continues to be delinquent on the first of the month following the delinquent payment due date, interest will be charged on the unpaid delinquent principal at the note rate from the date the principal was due until all regular payments, recoverable cost charges, late fees, and occupancy surcharges have been paid current in accordance with

the number of full installments required by the promissory note. This interest will be in addition to the scheduled interest of the regular payment. The interest on delinquent principal will be added to the regular payment amount due for the month.

(d) *Subsidy credit.* When the Finance Office receives the regular payment, subsidy credit will be applied to the loan account before any payment or other credit is applied to the account. Subsidy credit will be applied first to accrued interest and then to principal after all interest is paid. Subsidy credit will not be applied to late fees, audit receivables, or recoverable cost charges.

(e) *Regular payments.* Regular payments will be applied in the following priority:

(1) Amortized audit receivables.

(2) Unamortized audit receivables.

(3) All project late fees due.

(4) Occupancy surcharges.

(5) Amortized recoverable costs due.

(6) Unamortized recoverable costs due.

(7) Overage.

(8) All other interest due.

(9) Principal.

(10) Any remaining regular payment will be applied as an advance regular payment unless specifically designated otherwise.

(f) *Advance regular payments.* These payments affect the payment status of the loan. The loan account must be current before a payment can be applied as an advance payment. The payment effective date will be the due date of the next regular payment which is not fully paid.

(g) *Extra and refund payments.* Both will be applied as principal to the last installment to become due under the note.

(h) *Voluntary additional principal payments.* These payments will only be credited to the account when all regularly scheduled payments on the account have been paid. Voluntary additional principal payments are credited all to principal, as of the payment effective date, and do not affect the payment status of the loan.

(i) *Projects with initial and subsequent loan(s).* Regular payments on projects with an initial and subsequent loan(s) will be applied according to the priorities listed in § 1951.510(e) of this subpart. Each priority item will be paid for all project loans before moving to the next item.

Payments will be applied for each priority item in accordance with the loan number, beginning with the initial loan and ending with the highest numbered subsequent loan.

(j) *Final payments.* Final payments will be applied on the next payment due date or the final due date shown on the promissory note, assumption agreement or reamortization agreement, whichever is sooner. The District Office must contact the Finance Office for the amount of the final payment. Final payment should be accepted under conditions specified in § 1965.90 of subpart B to part 1965 of this chapter.

[50 FR 8597, Mar. 4, 1985, as amended at 53 FR 16245, May 6, 1988; 55 FR 5975, Feb. 21, 1990; 55 FR 25078, June 20, 1990; 56 FR 2257, Jan. 22, 1991; 58 FR 40955, July 30, 1993]

§ 1951.511 [Reserved]

§ 1951.512 Changes in the application of loan payments.

District Office employees with State Director authorization according to § 1930.143 of subpart C to part 1039 of this chapter are authorized to approve reapplication of loan payments between accounts when payments have been applied in error. All authorization for reapplication of payments must conform to the policies expressed in this subpart. No change may be made if the loan is paid in full, the cancelled note or notes have been returned to the borrower, and the security instruments have been satisfied. The District Director will process the changes as prescribed in exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) by the AMAS Coordinator.

[56 FR 28038, June 19, 1991, as amended at 58 FR 40955, July 30, 1993]

§ 1951.513 Overpayments and refunds to borrowers.

Overpayments and refunds to borrowers will be processed according to § 1951.13 of Subpart A of this part.

§1951.514 Recoverable and non-recoverable cost charges.

The District Director will service recoverable and non-recoverable cost items according to §1951.14 of subpart A of this part and FmHA or its successor agency under Public Law 103–354 Instruction 2024–A which is available in any FmHA or its successor agency under Public Law 103–354 office. (Recoverable and non-recoverable costs are defined in §1951.504 of this subpart.)

[53 FR 16245, May 6, 1988, as amended at 57 FR 36591, Aug. 14, 1992]

§1951.515 Promissory notes for borrowers who convert to PASS.

Promissory notes in the hands of investors when a loan is converted to PASS will be repurchased by the Finance Office and forwarded to the District Office for storage.

§1951.516 [Reserved]

§1951.517 Conversion from DIAS to PASS.

(a) *Conversion prior to May 1, 1985.* The account of any existing RRH loan recipient who elected to convert to PASS before October 31, 1983, by following instructions prescribed by FmHA or its successor agency under Public Law 103–354, and who signed their conversion documents before May 1, 1985, or any recipient of a new loan, credit sale, or transfer (new terms) closed between November 1, 1983, and April 30, 1985, who elected to convert to PASS, was converted, as if the loan has been on an amortization schedule from the date of the loan, transfer (new terms), or reamortization (new terms), whichever occurred later.

(b) *Conversion on or after May 1, 1985*—(1) *Required conversion.* After *May 1, 1985,* all MFH loans, transfers or reamortizations must be closed on PASS, except LH loans specified in §1951.501(a)(2)(i) of this subpart. All borrowers receiving subsequent loans or reamortizations must convert all initial and subsequent loans on the project to PASS. If the subsequent loan and conversion are not closed on the first of the month, the interest from the date of closing to the first of the month will be capitalized. Recoverable costs and unpaid interest may be capitalized on coversions required by subsequent loans or reamortization of one loan on the project account.

(2) *Voluntary conversion.* District Directors shall approve voluntary conversion of any account from DIAS to PASS upon a request by the borrower, when the following conditions are met:

(i) The loan account and reserve account are current less any authorized withdrawals at the time of conversion.

(ii) Conversion does not result in a rent increase.

(iii) The conversion is effective the first day of the month.

(3) *Processing conversions.* The following actions must be taken to convert an account from DIAS to PASS:

(i) Form FmHA or its successor agency under Public Law 103–354 1951–50, ''Multiple Family Housing Conversion Agreement,'' will be completed according to the FMI except loans converted on Form FmHA or its successor agency under Public Law 103–354 1965–9, ''Multiple Family Housing Assumption Agreement,'' or FmHA or its successor agency under Public Law 103–354 1965–16, ''Multiple Family Housing Reamortization Agreement.'' The terms of Forms FmHA or its successor agency under Public Law 103–354 1965–9 and FmHA or its successor agency under Public Law 103–354 1965–16 convert the account to PASS.

(ii) When the borrower will continue to receive interest credit following conversion, the current interest credit plan type will be passed through to the PASS loan. However, a new Form FmHA or its successor agency under Public Law 103–354 1944–7 must be prepared to reflect the PASS payment and subsidy amount.

(iii) On the back of the original note or assumption agreement (new terms), below all signatures and endorsements, the District Director will insert the following: ''A Form FmHA or its successor agency under Public Law 103–354 1951–50 dated _____ 198__, in the principal sum of $_____, has been given to modify the payment schedule of the note.

(4) *Principal balance to be converted.* For transfers and reamortizations, the applicable transfer or reamortization form will convert the account to PASS. The principal balance converted to

PASS will be established according to the FMI for Forms FmHA or its successor agency under Public Law 103–354 1965–9, FmHA or its successor agency under Public Law 103–354 1965–10, ''Information on Assumption of Multiple Family Housing Loans,'' or FmHA or its successor agency under Public Law 103–354 1965–16, and the following:

(i) For DIAS to PASS transactions (new terms):

(A) First of the month closings: The unpaid interest, overage and late fees accrued through the last day of the previous month will be capitalized.

(B) Other than the first of the month closing: Accrued interest, overage and late fees through the date of closing will be capitalized. An interest only installment from the date of closing through the 30th day of the month will be collected from the transferee and applied to the transferee's account. This interest only installment will be calculated on the same interest credit rate in effect for the previous borrower.

(ii) For DIAS to PASS transactions (same terms):

(A) First of the month closings: Accrued interest, overage and late fees through the last day of the previous month will be collected from the transferor at closing and credited to the transferor's account.

(B) Other than the first of the month closings: Accrued interest, overage and late fees through the date of closing will be collected from the transferor at closing and credited to the transferor's account. The date of credit is the day before closing. An interest only installment from the date of closing through the 30th day of the month will be collected from the transferee and credited to the transferee's account. This interest only installment will be calculated on the same interest credit rate in effect for the previous borrower.

(iii) Reamortizations will always be effective the first day of the month. Unpaid interest, including any unpaid overage and late fees may be capitalized as follows: DIAS to PASS transactions, through the last day of the previous month; PASS to PASS transactions, through the 30th day of the previous month.

(iv) Audit receivables may not be transferred or reamortized. They will be established as a ''Collection Only'' account for the transferor and must be collected or charged off.

(5) *Terms of conversion.* All conversion on Form FmHA or its successor agency under Public Law 103–354 1951–50 will be at the interest rate and within the remaining terms shown on the converting promissory note, assumption agreement (new terms) or reamortization agreement (new terms).

[50 FR 8597, Mar. 4, 1985, as amended at 53 FR 16245, May 6, 1988; 58 FR 40955, July 30, 1993; 62 FR 25065, May 7, 1997]

§ 1951.518 Determining current loan balances for transfer.

Same terms transfers, when the transferor has been converted to PASS, must take place in a current loan status on the date of the transfer. Any delinquent principal and interest must be brought current. Overpayments and advance regular payments made on PASS accounts result in the creation of a ''future paid'' status account under AMAS. These advance payments must be reversed off and applied to the transferor's principal balance prior to determining the loan balance to be transferred. If the future payments have been made through rental assistance, they must be refunded to the transferor and reapplied in the form of cash on the loan balance.

[53 FR 16245, May 6, 1988]

§§ 1951.519—1951.547 [Reserved]

§ 1951.548 Exception authority.

The Administrator of the Farmers Home Administration or its successor agency under Public Law 103–354 may, in individual cases, make an exception to any requirements of this Subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government. The Administrator will exercise the authority only at the request of the State Director. The District Director will submit the request supported by data: demonstrating the adverse impact; identifying the particular requirement involved; showing proper alternative courses of action; and, identifying how the adverse impact will be eliminated.

§ 1951.549 [Reserved]

§ 1951.550 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0106. Public reporting burden for this collection of information is estimated to be 15 minutes per response, with an average of 15 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0106), Washington, DC 20503.

[56 FR 28039, June 19, 1991]

Subpart L—Servicing Cases Where Unauthorized Loan or Other Financial Assistence was Received—Farmer Programs

SOURCE: 50 FR 45777, Nov. 1, 1985, unless otherwised noted.

§ 1951.551 Purpose.

This subpart prescribes the policies and procedures for servicing insured Operating (OL), Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Softwood Timber (ST), Economic Opportunity (EO) loans, and Rural Housing loans for farm service buildings (RHF) (referred to as farmer program (FP) loans), when it is determined that the borrower was not eligible for all or part of the financial assistance received in the form of a loan or subsidy granted. It does not apply to guaranteed loans.

[52 FR 26138, July 13, 1987]

§ 1951.552 Definitions.

As used in this subpart, the following definitions apply:

(a) *Active borrower.* A borrower who has an outstanding account in the records of the Finance Office, including collection–only or an unsatisfied account balance where a voluntary conveyance was accepted without borrower being released from liability or where liquidation did not satisfy the indebtedness.

(b) *Assistance.* Financial assistance in the form of a loan or interest subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note or assumption agreement.

(d) *False information.* Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correction information.

(e) *Inaccurate information.* Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower.* A former active borrower whose loan(s) has(have) been paid in full or assumed by another party(ies), and who does not have an outstanding account in the records of the Finance Office.

(g) *Unauthorized Assistance.* Any loan, primary loan servicing action, including Net Recovery Buyout, or interest subsidy received for which there was no authorization, for which the borrower was not eligible, or which was obligated from the wrong appropriation or fund. An unauthorized interest subsidy is a benefit received through a loan that was made at a lower interest rate than that to which the borrower was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

[50 FR 45777, Nov. 1, 1985, as amended at 56 FR 33862, July 24, 1991]

§ 1951.553 Policy.

When it is determined that unauthorized assistance has been received, an effort must be made to collect from the borrower the sum which is determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitations has expired.

§§ 1951.554—1951.555 [Reserved]

§ 1951.556 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General (OIG), USDA; through reviews made by Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been received by a borrower. If FmHA or its successor agency under Public Law 103–354 has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to the Office of the General Counsel (OGC) or the National Office, as appropriate, for review and advice. In every case where it is known or believed by FmHA or its successor agency under Public Law 103–354 that the assistance was based on false information, investigation by the OIG will be requested, as provided for in FmHA or its successor agency under Public Law 103–354 Instruction 2012–B (available in any FmHA or its successor agency under Public Law 103–354 office). If OIG conducts an investigation, the actions outlined in § 1951.557 of this subpart will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the borrower will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the borrower;

(b) Submission of false information by the borrower;

(c) Submission of inaccurate or false information by another party on the borrower's behalf such as a seller, developer, real estate broker, or attorney, when the borrower did not know the other party had submitted inaccurate or false information;

(d) Error by FmHA or its successor agency under Public Law 103–354 personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved.

§ 1951.557 Notification to borrower.

(a) Collection efforts will be initiated by the County Supervisor by a letter substantially similar to Exhibit A of this Subpart (available in any FmHA or its successor agency under Public Law 103–354 office), and mailed to the borrower by ''Certified Mail, Return Receipt Requested,'' with a copy to the State Director; and, for a case identified in an OIG audit report, copies to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all borrowers who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid according to Exhibit D of this Subpart (available in any FmHA or its successor agency under Public Law 103–354 office); and

(3) Establish an appointment for the borrower to discuss with the County Supervisor the basis for FmHA or its successor agency under Public Law 103–354's claim; and give the borrower an opportunity to provide facts, figures, written records or other information which might refute FmHA or its successor agency under Public Law 103–354's determination that the assistance received was unauthorized.

(b) If the borrower meets with the County Supervisor, the County Supervisor will outline to the borrower why the assistance was determined to be unauthorized. The borrower will be given an opportunity to provide information to refute FmHA or its successor agency under Public Law 103–354's findings. When requested by the borrower, the County Supervisor may grant additional time for the borrower to assemble documentation. When an extension is granted, the County Supervisor will specify a definite number of days to be allowed and establish the

follow up necessary to assure that servicing of the case continues without undue delay.

§1951.558 Decision on servicing actions.

When the County Supervisor is the same official who approved the unauthorized assistance, the District Director must review the case before further actions are taken by the County Supervisor.

(a) *Payment in full.* If the borrower agrees with FmHA or its successor agency under Public Law 103–354's determination and agrees to repay in a lump sum, the County Supervisor may allow a reasonable period of time (not to exceed 90 days) for the borrower to arrange for repayment. The amount due will be the amount stated in the letter as shown in Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office). The County Supervisor will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittances,'' for application to the borrower's account as an extra payment. After a borrower repays an unauthorized interest subsidy benefit in a lump sum, the loan will be serviced in accordance with §1951.561(a)(3) of this subpart. In the case of unauthorized assistance which was identified in an OIG audit, the County Supervisor will report the repayment as outlined in §1951.568(a) of this subpart.

(b) *Continuation with borrower.* If the borrower agrees with FmHA or its successor agency under Public Law 103–354's determination or is willing to repay but cannot repay the unauthorized assistance in a lump sum within a reasonable period of time, continuation may be authorized. Servicing actions outlined in §1951.561 of this subpart will be taken, provided all of the following conditions are met:

(1) The borrower did not provide false information as defined in §1951.552(d) of this subpart.

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA or its successor agency under Public Law 103–354's financial interests.

(c) *Liquidation of loan(s) or legal action to enforce collection.* When a case cannot be handled according to the provisions of paragraph (a) or (b) of this section, or if the borrower refuses to execute the documents necessary to make account adjustments or establish an obligation to repay the unauthorized assistance as provided in §1951.561 of this subpart, or when a borrower fails to respond to the initial letter prescribed in §1951.557 of this subpart within 30 days, one of the following actions will be taken:

(1) *Active borrower with a secured loan.* (i) The County Supervisor will send Exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office.)

(ii) If the borrower wants to voluntarily convey, the County Supervisor will follow the directions in §1955.10 or §1955.20 as applicable, of subpart A of part 1955 of this chapter.

(iii) If the borrower does not appeal, does not repay the unauthorized assistance in full, does not voluntarily convey, voluntarily sell or refinance the entire FmHA or its successor agency under Public Law 103–354 debt, the borrower's account will be accelerated and there will be no appeal of this action. The County Supervisor and District Director will follow the directions in §1955.15 of subpart A of part 1955 of this chapter.

(iv) Forced liquidation will not be pursued when:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and recoverable costs charged to the account, is less that $1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the servicing official wishes to make an exception to forced liquidation under paragraph (c)(1)(B) of this section, a request for an exception under §1951.569 of this subpart will be made.

(v) Account adjustments will be made by FmHA or its successor agency under

Public Law 103–354 without the signature of the borrower according to § 1951.568(a)(5) of this subpart. In these cases, the borrower will be notified by letter of the actions taken with a copy of Forms FmHA or its successor agency under Public Law 103–354 1951–12, ''Correction of Loan Account,'' or 1951–13, ''Change in Interest Rate,'' as applicable, enclosed to reflect the adjustments.

(2) *(Inactive borrower or active borrower with unsecured loan such as collection-only or unsatisfied balance after liquidation).* The County Supervisor will document the facts in the case and submit it to the State Director who will request the advice of OGC on pursuing legal action to effect collection. The State Director will tell OGC what assets, if any, are available from which to collect.

[50 FR 45777, Nov. 1, 1985, as amended at 53 FR 35717, Sept. 14, 1988]

§§ 1951.559—1951.560 [Reserved]

§ 1951.561 Servicing options in lieu of liquidation or legal action.

When all of the conditions outlined in § 1951.558(b) of this subpart are met, servicing options outlined in this section will be considered; and accounts will be serviced according to this section and § 1951.568 of this subpart.

(a) *Active borrower*—(1) *Entire loan, or loan servicing unauthorized.* When the entire loan, or all or a portion of primary loan servicing, is determined to be unauthorized because the borrower was not eligible, or because the loan or primary loan servicing was approved for unauthorized purposes, the following alternatives will be considered in the order listed:

(i) Execution of Form FmHA or its successor agency under Public Law 103–354 1965–11, ''Accelerated Repayment Agreement,'' according to § 1965.26(e) of subpart A of part 1965 of this chapter, for loans secured by real estate, or rescheduling according to Subpart A of this part, for loans not secured by real estate, based on the borrower's repayment ability.

(ii) Refinancing with another type of FmHA or its successor agency under Public Law 103–354 loan to repay the unauthorized loan, if the borrower is eligible for the type loan being considered.

(iii) When the case cannot be handled according to paragraph (a)(1)(i) or (a)(1)(ii) of this section, continuance with the loan on the existing terms may be approved, and the loan will, thereafter, be serviced as an authorized loan.

(2) *Portion of loan unauthorized.* When a portion of a loan is determined to be unauthorized, the Finance Office will be instructed to separate the authorized and unauthorized portions of the loan, setting up each as a separate loan at the correct interest rate. The correct interest rate will be taken from Exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) as of the date of loan approval. All payments made on the loan being corrected will be reversed and reapplied to the unauthorized portion. If after reapplication of payments the unauthorized portion is not paid in full, the options outlined in paragraph (a) of this section may be considered for repayment of the balance of the unauthorized portion; and the authorized portion will be serviced as an outlined loan. See § 1951.568 of this subpart for instructions on setting up separate accounts.

(3) *Unauthorized interest subsidy benefits received.* When the borrower was eligible for the loan, but should properly have been charged a higher interest rate than that shown in the debt instrument on all or a portion of the loan, resulting in the receipt of unauthorized interest subsidy benefits, the case will be handled as outlined below. The unauthorized interest rate will be corrected to the interest rate in effect on the date the original loan was approved as outlined in paragraph (a)(3)(iii) of this section.

(i) When a subsidized interest rate was incorrectly charged on the entire loan, all payments made will be reversed and reapplied at the correct interest rate; and future installments will be scheduled at the correct interest rate. After reapplication of payments, the loan will be treated as an authorized loan.

(ii) When a subsidized interest rate was incorrectly charged on only a portion of the loan, the Finance Office will

be instructed by the County Supervisor to separate the loan into two portions, with the correct interest rate established for the portion having the incorrect subsidized interest rate. All payments made on the loan being adjusted will be reversed and reapplied, first to the portion with the corrected interest rate. After reapplication of payments at the correct interest rate, both portions will be serviced as authorized loans.

(iii) Incorrect interest rates will be corrected as follows referring to Exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) for interest rates in effect on specific dates:

(A) For disaster Emergency (EM) loans, to the rate for EM annual production loans.

(B) For Operating Loans—Limited Resource (OL–LR), to the rate for regular Operating Loans (OL).

(C) For Farm Ownership—Limited Resource (FO–LR), to the rate for regular Farm Ownership (FO).

(D) For all other types of FP loans, to the correct rate for the type loan involved which was in effect when the loan was approved.

(b) *Inactive borrower.* When the individual or entity does not have an outstanding account in the records of the Finance Office, the following actions will be taken:

(1) Have the inactive borrower execute a promissory note in the amount of the assistance determined to be unauthorized according to §1951.557 of this subpart. This note will bear interest at the rate which was in effect for the type loan associated with the unauthorized assistance when it was approved. The term will not exceed 10 years or the term of the original loan, whichever is the shorter term.

(2) Take the best lien obtainable on any collateral having equity value to secure the note.

[50 FR 45777, Nov. 1, 1985, as amended at 51 FR 4138, Feb. 3, 1986; 56 FR 33862, July 24, 1991]

§§1951.562—1951.567 [Reserved]

§1951.568 Account adjustments and reporting requirements.

When a final determination has been made that unauthorized assistance has been granted, the Finance Office will be notified of necessary account adjustments as outlined in this section, depending upon whether the case of unauthorized assistance was identified by OIG in an audit report or by another means. The Finance Office will service the accounts as prescribed in this section.

(a) *Audit cases.* Only cases of unauthorized assistance identified by OIG will be reported to the Finance Office by submission on Form FmHA or its successor agency under Public Law 103–354 1951–12 completed in accordance with the FMI. The Finance Office will flag the account for monitoring and reporting as required. Each payment reversed will be reapplied as of the original date of credit. ''Loan'' refers to an account with an active borrower unless specified as ''inactive.'' If the borrower has arranged to repay in a lump sum, the payment will be remitted with Form FmHA or its successor agency under Public Law 103–354 451–2, according to the FMI. Form FmHA or its successor agency under Public Law 103–354 1951–12 will reflect the amount and the Schedule Number.

(1) *Entire loan unauthorized.* When the entire loan is unauthorized because the borrower was not eligible or because the loan was approved for unauthorized purposes, and continuation is authorized, the Finance Office will be advised as follows:

(i) *Accelerated repayment agreement or loan rescheduled.* If the borrower has executed Form FmHA or its successor agency under Public Law 103–354 1965–11 for loans secured by real estate; or has executed Form FmHA or its successor agency under Public Law 103–354 1951–4 for loans not secured by real estate, the form(s) will be prepared and distributed according to the FMIs, attaching the original form(s) to Form FmHA or its successor agency under Public Law 103–354 1951–12.

(ii) *Continuation with loan on existing terms.* When it is determined that all the conditions outlined in § 1951.558(b) of this subpart are met and continuation with the loan on the existing terms is approved, the servicing official will submit Form FmHA or its successor agency under Public Law 103–354 1951–12 to the Finance Office to reflect this.

(2) *Portion of loan unauthorized.* When a loan is to be separated into authorized and unauthorized portions, the authorized portion will retain the original loan number, and the original principal amount will be reduced by the unauthorized amount. A new loan in the unauthorized amount will be established as the unauthorized loan with the next available number assigned by the Finance Office. Payments made on the loan being adjusted will be reversed and reapplied first to the unauthorized loan. If the reapplication of payments does not pay the unauthorized loan in full, upon receipt of Forms FmHA or its successor agency under Public Law 103–354 451–26, ''Transaction Record,'' showing the balances of the authorized and unauthorized loans, the servicing official will proceed under the provisions of § 1951.561(a)(2) and will submit a revised Form FmHA or its successor agency under Public Law 103–354 1951–12 (along with a copy of the original Form FmHA or its successor agency under Public Law 103–354 1951–12).

(3) *Unauthorized subsidy benefits received.* (i) *Entire loan.* When the interest rate on an entire loan is changed, Form FmHA or its successor agency under Public Law 103–354 1951–12 will be submitted to notify the Finance Office of the correct interest rate to be charged from the original loan closing date. Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will then be treated as an authorized loan.

(ii) *Portion of loan.* When the interest rate on only a portion of a loan must be changed, the portion which has the incorrect interest rate will be established as a new loan at the correct interest rate shown on Form FmHA or its successor agency under Public Law 103–354 1951–12. Payments made on the loan being adjusted will be reversed and reapplied first to the loan with the corrected interest rate. Both loans will then be treated as authorized loans.

(4) *Liquidation pending.* When liquidation is initiated under the provisions of this subpart, Form FmHA or its successor agency under Public Law 103–354 1951–12 will be submitted to advise the Finance Office to establish the unauthorized assistance account. This account will be flagged ''FAP'' (Foreclosure Action Pending) or ''CAP'' (Court Action Pending), as applicable.

(5) *Liquidation not initiated.* Cases in which liquidation would normally be initiated, but where it is not because of the provisions of § 1951.558 (c)(1)(iv)(A) or (c)(1)(iv)(B) of this subpart, will be adjusted according to § 1951.561 (a)(2) or (a)(3) of this subpart and this section, and the adjustments will be reflected on Form FmHA or its successor agency under Public Law 103–354 1951–12. In this instance *only*, account adjustments will be made even though the borrower does not sign Form FmHA or its successor agency under Public Law 103–354 1951–12 and any related documents.

(6) *Establishment of account of inactive borrower.* (i) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, Form FmHA or its successor agency under Public Law 103–354 1951–12 will reflect this, and the Finance Office will establish or the account according to the terms indicated on Form FmHA or its successor agency under Public Law 103–354 1951–12.

(ii) When a judgment is obtained against such a borrower, Form FmHA or its successor agency under Public Law 103–354 1962–20, ''Notice of Judgment,'' will be prepared and distributed in accordance with the FMI to establish a judgment account. The FmHA or its successor agency under Public Law 103–354 field office will process the judgment or the third party judgment via the FmHA or its successor agency under Public Law 103–354 field office terminal system.

(7) *Payments on authorized and unauthorized loans concurrently.* When a borrower has both authorized and unauthorized loans outstanding, installments may be scheduled to be paid concurrently on all loans. Payments may be adjusted by means of rescheduling or reamortizing to coincide with the borrower's repayment ability according to servicing regulations for the type loan involved. The County Supervisor will complete Form FmHA or its successor agency under Public Law 103–354 451–2 so that payments received will be applied first to the unauthorized loan account to maintain it current, with the remainder of the payment applied to the other loan(s).

(8) *Reporting.* At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. For reporting purposes, the following applies:

(i) For an unauthorized loan account established as provided in paragraph (a) (1), (2), or (6) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, it will be reported on the next scheduled report *only,* giving the amount collected.

(B) When unauthorized assistance is to be repaid under an accelerated repayment agreement, the unpaid balance will be reported initially and the collections and status will be included on each scheduled report until the account is paid in full.

(C) When continuation with the loan on existing terms is approved, or after a loan is rescheduled or reamortized, it will be reported as resolved on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraph (a)(3) of this section, when the unauthorized amount has been repaid, or payments have been reversed and reapplied at the correct interest rate, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(iii) When an account is established with liquidation action pending as provided in paragraph (a)(4) of this section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(iv) When liquidation is not initiated as provided in paragraph (a)(5) of this section, it will be reported on the next scheduled report (along with collections, if any). No further reporting is required.

(b) *Nonaudit cases.* Basically, servicing options which may be used are the same for audit and nonaudit cases; however, when receipt of unauthorized assistance is identified by a means other than an OIG audit report, the Finance Office will be notified only if adjustments to an account or reinstatement of an inactive account are necessary. Once adjustments are made as provided in this paragraph, the loan(s) will be treated as an authorized loan(s). Each payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the servicing official will receive Forms FmHA or its successor agency under Public Law 103–354 451–26 from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate is necessary, retroactive to the date of loan closing on all or a portion of a loan, Form FmHA or its successor agency under Public Law 103–354 1951–13 will be completed according to the FMI and submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(ii) For accounts to be rescheduled or reamortized, Forms FmHA or its successor agency under Public Law 103–354 1951–4, or 1965–11, as applicable, will be prepared and submitted in accordance with the respective FMI.

(iii) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, the County Supervisor will notify the Finance Office by memorandum, attaching a copy of the promissory note. The Finance Office will establish or reinstate the account according to the terms of the promissory note.

(iv) If a loan is paid in full, the remittance will be handled in the same manner as any other final payment.

(2) A delinquency created through reversal and reapplication of payments to effect corrections outlined in paragraph (b)(1) of this section will be serviced according to the applicable servicing regulations for the type loan involved.

[50 FR 45777, Nov. 1, 1985, as amended at 55 FR 35295, Aug. 29, 1990]

§ 1951.569 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely effect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate Program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.570—1951.599 [Reserved]

§ 1951.600 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0102.

Subpart M [Reserved]

Subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing

SOURCE: 50 FR 12996, Apr. 2, 1985, unless otherwise noted.

§ 1951.651 Purpose.

This subpart prescribes the policies and procedures for servicing multiple family housing (MFH) loans and/or grants made by Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, subsidy granted, any other direct financial assistance, or was not made subject to restrictive-use provisions required by law and/or regulation. As used in this subpart, MFH loans and grants are section 515 rural rental housing (RRH) and rural cooperative housing (RCH) loans and sections 514 and 516 labor housing (LH) loans and grants.

[58 FR 38926, July 21, 1993]

§ 1951.652 Definitions.

As used in this subpart, the following definitions apply:

(a) *Active borrower.* A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without release from liability or foreclosure did not satisfy the indebtedness.

(b) *Assistance.* Financial assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note, assumption agreement, grant agreement/resolution, or bond.

(d) *False information.* Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

(e) *Inaccurate information.* Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower.* A former borrower whose loan(s) has(have) been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the Finance Office.

(g) *Recipient.* ''Recipient'' refers to an individual or entity that received a loan, or portion of a loan, an interest subsidy, or a grant which was unauthorized or was not made subject to restrictive-use provisions required by law and/or regulation.

(h) *Unauthorized assistance.* Any loan, interest subsidy, or grant, or any portion thereof, received by a borrower or grantee for which there was no regulatory authorization, or for which the recipient was not eligible.

Interest subsidy includes interest credits, rental assistance, and subsidy benefits received because a loan was made at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

§ 1951.653 Policy.

When unauthorized assistance has been received, an effort must be made to collect the sum which is determined to be unauthorized from the recipient, regardless of amount, unless any applicable statute of limitations has expired.

[58 FR 38926, July 21, 1993]

§ 1951.654 Categories of unauthorized assistance.

Unauthorized assistance includes, but is not limited to, these categories:

(a) The recipient was not eligible for the assistance.

(b) The property, as approved, does not qualify for the program. For example: An RRH or LH project which clearly is above modest in size, design and/or cost or was not located in an area designated as rural when the initial loan was made.

(c) The loan or grant was made for unauthorized purposes. For example: Purchase of an excessive amount of land.

(d) The recipient was granted unauthorized subsidy in the form of:

(1) Interest credits (IC) on an RRH loan;

(2) Rental Assistance (RA) in connection with an RRH or LH loan; or

(3) A subsidy benefit received through use of an incorrect interest rate.

(e) The recipient was not subjected to obligations required by the assistance, such as restrictive-use provisions, at the time the assistance was provided.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

§ 1951.655 [Reserved]

§ 1951.656 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General, USDA, (OIG); through reviews made by FmHA or its successor agency under Public Law 103–354 personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been received by a recipient of FmHA or its successor agency under Public Law 103–354 assistance. If FmHA or its successor agency under Public Law 103–354 has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case will be referred to the Regional Office of the General Counsel (OGC) or the National Office, as appropriate, for review and advice. In every case where it is known or believed by FmHA or its successor agency under Public Law 103–354 that the assistance was based on false information, investigation by the Office of the Inspector General (OIG) will be requested as provided for in FmHA or its successor agency under Public Law 103–354 Instruction 2012–B (available in any FmHA or its successor agency under Public Law 103–354 office). If OIG conducts an investigation, the actions outlined in § 1951.657 of this subpart will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the recipient will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the recipient;

(b) Submission of false information by the recipient;

(c) Submission of inaccurate or false information by another party on the recipient's behalf such as a loan packager, developer, real estate broker, or

professional consultants such as engineers, architects, management agents and attorneys, when the recipient did not know the other party had submitted inaccurate or false information;

(d) Error by FmHA or its successor agency under Public Law 103–354 personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved or which was caused by omission from the instrument of language required by applicable regulation.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

§ 1951.657 Notification to recipient.

(a) Collection efforts will be initiated by the District Director by a letter substantially similar to exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), and mailed by the servicing official to the recipient by ''Certified Mail, Return Receipt Requested,'' with a copy to the State Director and, for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all recipients who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance to be repaid according to exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office); and

(3) Establish an appointment for the recipient to discuss with the District Director the basis for FmHA or its successor agency under Public Law 103–354's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA or its successor agency under Public Law 103–354's determination that the assistance received was unauthorized.

(b) If the recipient meets with the District Director, the District Director will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA or its successor agency under Public Law 103–354's findings. When requested by the recipient, the District Director may grant additional time for the recipient to assemble documentation. When an extension is granted, the District Director will specify a definite number of days to be allowed and establish the followup necessary to assure that servicing of the case continues without undue delay.

§ 1951.658 Decision on servicing actions.

When the District Director is the same individual who approved the unauthorized assistance, the State Director must review the case before further actions are taken by the District Director.

(a) *Payment in full.* If the recipient agrees with FmHA or its successor agency under Public Law 103–354's determination or will pay in a lump sum, the District Director may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be the amount stated in the letter as shown in exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office). The requirements of subpart E of part 1965 will be followed with appropriate modifications for prepayments under this subpart. If the loan was subject to restrictive-use provisions prior to the request for payment in full, the project will remain subject to restrictive-use provisions. Wherever feasible, appropriate, or necessary to protect tenants and the low- and moderate-income population of the community, all attempts to encourage the borrower to sell the project to an acceptable transferee will be made before the prepayment is accepted. All tenant notifications and restrictive-use provisions, when applicable, must be followed when prepayment of all debt on an MFH project is demanded. The District Director will remit collections as follows:

(1) In the case of the loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a ''Miscellaneous Collection for Application to the General Fund.''

(3) In the case of a loan or grant which was identified in an OIG audit, the District Director will report the repayment as outlined in §1951.668 (a)(1)((i), (a)(3), or (a)(6) as applicable.

(4) In the case of RA, the repayment will be handled as outlined in §1951.661 (a)(3) and exhibit E to FmHA or its successor agency under Public Law 103–354 Instruction 1930–C.

(b) *Continuation with recipient.* If the recipient agrees with FmHA or its successor agency under Public Law 103–354's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in §1951.668 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in §1951.652 (d);

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA or its successor agency under Public Law 103–354's financial interests.

(c) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA or its successor agency under Public Law 103–354's determination, or if the recipient fails to respond to the initial letter prescribed in §1951.657 within 30 days, the District Director will notify the recipient by letter substantially similar to exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA or its successor agency under Public Law 103–354 to be unauthorized;

(2) A statement of further actions to be taken by FmHA or its successor agency under Public Law 103–354 as outlined in paragraph (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

(d) *Appeals.* Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to subpart B of part 1900 of this chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an appeal is not made during the time allowed, the District Director will proceed with the actions outlined in paragraph (e) of this section, as applicable. If during the course of appeal the appellant decides to agree with FmHA or its successor agency under Public Law 103–354's findings or is willing to repay the unauthorized assistance, the District Director will proceed with the actions outlined in paragraph (a) or (b) of this section.

(e) *Liquidation of loan(s) or legal action to enforce collection.* If the recipient is unwilling or unable to arrange for repayment as provided in paragraph (a) of this section or continuation is not feasible as provided in paragraph (b) of this section, one of the following actions, as appropriate, will be taken:

(1) *Active borrower with a secured loan.* (i) The District Director will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented by an entry in the running record of the case file. Where real property is involved, a letter will be prepared by the District Director and signed by the recipient agreeing to voluntary liquidation. For organizations, a resolution of the governing body may be necessary in addition to the running record notation. If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in

accordance with subpart A of 1955 of this chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the District Director wishes to make an exception to forced liquidation under paragraph (e)(1)(i)(B) of this section, a request for an exception under § 1951.669 will be made.

(ii) When all of the conditions of paragraph (a) or (b) or this section are met, but the recipient does not repay or refuses to execute documents to effect necessary account adjustments according to the provisions of § 1951.661, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section account adjustments will be made by FmHA or its successor agency under Public Law 103–354 without the signature of the recipient according to § 1951.668(a)(5). In these cases, the recipient will be notified by letter of the actions taken with a copy of Form FmHA or its successor agency under Public Law 103–354 1951–12, ''Correction of Loan Account,'' if applicable.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* The District Director will document the facts in the case and submit it to the State Director who will request the advice of OGC on pursuing legal action to effect collection. The State Director will tell OGC what assets, if any, are available from which to collect. The case file, recommendation of State Director and OGC comments will be forwarded to the National Office for review and authorization to implement recommended servicing actions.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

§§ 1951.659—1951.660 [Reserved]

§ 1951.661 Servicing options in lieu of liquidation or legal action to collect.

When all of the conditions outlined in § 1951.658(b) are met, an unauthorized loan or grant will be serviced according to this section and § 1951.668, provided the recipient has the legal and financial capabilities.

(a) *Active borrower/grantee*—(1) *Unauthorized loan.* (i) *Correction of problem.* If the problem causing the assistance to be unauthorized can be corrected, corrective action will be required. For example, where a loan was in excess of the authorized amount, the recipient will be required to refund the difference; or where the loan included funds for purchase of excess land, the recipient will be required to sell the excess land and the proceeds will be applied to the account as an extra payment; or where a restrictive-use provision was omitted from a loan document, the provision will be inserted.

(ii) *Continuation on existing terms.* When there is no specific problem which can be corrected, continuation on the existing terms is authorized.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the recipient was eligible for the loan but should properly have been charged a higher interest rate than that shown in the debt instrument, resulting in the receipt of unauthorized subsidy benefits, the interest rate must be corrected to that which was in effect when the loan was approved. All payments made will be reversed and reapplied at the correct interest rate and future installments will be scheduled at the correct interest rate. A delinquency which is created will be serviced according to subpart B of part 1965 of this chapter. After reapplication of payments, the loan will be serviced as an authorized loan. Change in interest rate will be accomplished according to § 1951.668. When the recipient is a public body with loans secured by bonds on which interest rate cannot legally be changed or payments reversed or reapplied, continuation on existing terms is authorized.

(3) *Unauthorized interest credits or rental assistance.* In cases involving RA and/or IC, the subsidy benefits should be terminated as provided in the Interest Credit and Rental Assistance Agreement. Unauthorized RA will be serviced as a delinquent account according to paragraph X B of exhibit E of subpart C of part 1930 of this chapter.

(i) *Tenant's failure to properly report changes in income or size of the household to the borrower.* In cases where a tenant has received RA and/or IC benefits to which he/she was not entitled because of the tenant's failure to properly report income or changes in household size, the borrower-landlord will provide the tenant with a notice of intent to recoup improperly advanced rental subsidy benefits. Such a notice must inform the tenant of the amount improperly advanced and the lump sum or monthly amount that will be added to the tenant's rent to recoup the improper rental subsidy. The borrower will inform the District Director of the unauthorized benefits and of the agreement made by the tenant to repay. Money collected will be remitted according to the FMI for Form FmHA or its successor agency under Public Law 103–354 1944–9. If the borrower has rental assistance, that portion attributable to RA will be credited to the borrower's RA account. In the event that the tenant does not repay through active collection efforts including legal remedy, the borrower will report the facts to the District Director. The District Director will report to the State Director who will obtain the advice of OGC on further actions.

(ii) *Tenant knowingly misrepresented income or number of occupants to the borrower.* If it appears the tenant has knowingly misrepresented income to the borrower, the District Director will look into the case to determine the facts. If the District Director determines that income or number of occupants was misrepresented, he/she will direct the borrower-landlord to demand and to attempt to recoup improperly received rental subsidy from the tenant. Money collected will be remitted to the Finance Office according to the FMI for Form FmHA or its successor agency under Public Law 103–354 1944–9. If the tenant fails to make restitution, the District Director will refer the case to the State Director who will request the advice of OGC on further actions.

(iii) *Unauthorized RA and/or IC paid due to borrower's error.* Whether unauthorized RA or IC was received by the borrower due to miscalculation or oversight by the borrower or the borrower's management agent, the borrower is required to make restitution to FmHA or its successor agency under Public Law 103–354. This restitution will not be charged to any tenant or to the project as any part of the budget or operating expense. The restitution will be handled as a refund according to the FMI for Form FmHA or its successor agency under Public Law 103–354 1944–49. In the case of a nonprofit or public body borrower, when funds from nonproject sources are not available, the State Director may make an exception and allow project income not required for approved operating budget items to cover the cost of restitution.

(iv) *Rental assistance assigned to wrong household.* When the tenant has correctly reported income and household size, but RA was assigned by the borrower to the household in error, the tenant's RA benefit will be cancelled and reassigned.

(A) *Notification and cancellation.* Before the borrower notifies the tenant, the borrower or management agent will review the case with the District Director. If the District Director verifies that an error was made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice by the borrower or management agent that the unit was assigned in error and that the RA benefit will be cancelled effective on the next monthly rental payment due after the end of the 30-day notice period. The written notice will provide that:

(*1*) The tenant has the right to cancel the lease based on the loss of subsidy benefit to the tenant.

(*2*) The RA granted in error will not be recaptured.

(*3*) The tenant may meet with management to discuss the cancellation and the facts on which the decision was

based. The borrower must give the tenant appeal rights under subpart L or part 1944 of this chapter.

(B) *Reassignment of RA.* Rental assistance will be reassigned in accordance with paragraph XII of exhibit E to subpart C of part 1930 of this chapter.

(v) *Rental assistance in excess of contract.* When rental assistance is advanced in excess of the RA contract limit, the District Director will send a report of the facts and a recommendation of proposed action through the State Director to the Assistant Administrator, Housing. The Assistant Administrator will determine the disposition of the case and notify the State Director, who will instruct the District Director of the required action.

(4) *Unauthorized grant assistance.* (i) When the recipient will repay unauthorized grant assistance over a period of time, interest will be charged at the rate specified in the grant agreement for default from the date received until paid. Repayment will be scheduled over a period consistent with the recipient's repayment ability but not to exceed 10 years. The District Director must maintain collection records as the Finance Office cannot set upon an account for repayment of a grant. The District Director will attempt to collect the monies due, and all collections will be remitted with Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittances,'' as a ''Miscellaneous Collection for Application to the General Fund.'' For cases identified in OIG audits only, the District Director will report quarterly to the State Office according to § 1951.668 (a)(6).

(ii) If it is determined the recipient cannot repay unauthorized grant assistance, the assistance may be left outstanding under the terms of the grant agreement. In the case of committed funds not yet disbursed, no further disbursements will be made without prior consent of the Administrator.

(5) *Cases where recipient has both authorized and unauthorized loans outstanding.* When a recipient has both authorized and unauthorized loans outstanding, installments will be scheduled to be paid concurrently on all loans. Each loan will be serviced according to the loan servicing regulations in effect for an authorized loan of its type.

(b) *Inactive borrower.* When a borrower no longer has an outstanding account in the records of the Finance Office, the following actions will be taken:

(1) Have the recipient execute a promissory note in the amount of the assistance determined to be unauthorized in the exhibit A (available in any FmHA or its successor agency under Public Law 103–354 office) letter according to § 1951.657. This note will bear interest at the rate which was in effect for the type loan associated with the unauthorized assistance when it was approved. The term will not exceed 10 years.

(2) Take the best mortgage obtainable to secure the note.

[50 FR 12996, Apr. 2, 1985, as amended at 51 FR 11563, Apr. 4, 1986; 58 FR 38926, July 21, 1993]

§§ 1951.662—1951.667 [Reserved]

§ 1951.668 Servicing unauthorized assistance accounts.

When a final determination has been made that unauthorized assistance has been granted, the Finance Office will be notifed of necessary account adjustments as outlined in this section, depending upon whether the case or unauthorized assistance was identified by OIG in an audit report or by another means. The Finance Office will service the accounts as prescribed in this section.

(a) *Audit cases.* Ony the cases of unauthorized assistance identified by OIG will be reported to the Finance Office. Form FmHA or its successor agency under Public Law 103–354 1951–12 will be completed in accordance with the FMI, and the District Director will prepare and submit Form FmHA or its successor agency under Public Law 103–354 1951–52, ''MFH Record Adjustment—Audit Claim,'' according to the FMI to advise the Finance Office. The Finance Office will flag the account for monitoring and reporting as required. Each payment reversed will be reapplied as of the original date of credit. ''Loan'' as used in this section refers to an account with an active borrower unless specified as ''inactive.''

(1) *Unauthorized loan.* When the loan is unauthorized because the recipient was not eligible or because the loan was approved for unauthorized purposes, the Finance Office will be advised as follows:

(i) *Repayment in full.* If the recipient has arranged to repay the unauthorized loan, the payment will be remitted with Form FmHA or its successor agency under Public Law 103–354 1944–9, in accordance with the FMI. Forms FmHA or its successor agency under Public Law 103–354 1951–12 and 1951–52 will reflect the amount and the Schedule Number from Form FmHA or its successor agency under Public Law 103–354 1944–9.

(ii) *Continuation with loan on existing terms.* When continuation with the loan on the existing terms is approved according to §1951.661 (a)(1)(ii), the District Director will submit Form FmHA or its successor agency under Public Law 103–354 1951–52 to the Finance Office to reflect this.

(2) *Unauthorized subsidy benefits received through use of incorrect interest rate.* When the interest rate on an entire loan is changed, Form FmHA or its successor agency under Public Law 103–354 1951–52 will be submitted to notify the Finance Office of the correct interest rate to be charged from the loan closing date. Payments made will be reversed and reapplied at the corrected interest rate, after which the unauthorized subsidy benefits will be reported to OIG as resolved. The loan will thereafter be treated as an authorized loan.

(3) *Unauthorized interest credits and/or rental assistance.* Unauthorized rental assistance and/or interest credits will be recovered according to the provisions of §1951.661. The District Director will report to the State Office by the 1st of March, June, September, and December of each year, the repayment of unauthorized rental assistance and/or interest credits by account name, case number, account code, audit report number, finding number, date of claim, amount of claim, amount collected during period, and balance owed at end of reporting period. The State Office will forward a consolidated report to the Finance Office no later than the 15th of March, June, September, and December of each year for inclusion in the OIG report.

(4) *Liquidation pending.* When liquidation is initiated under the provisions of this subpart, Form FmHA or its successor agency under Public Law 103–354 1951–52 will be submitted to advise the Finance Office of the unauthorized assistance account to be established. This account will be flagged ''FAP'' (Foreclosure Action Pending) or ''CAP'' (Court Action Pending), as applicable. The account status will also be amended in the MFH Information Tracking and Retrieval System (MISTR) according to subpart G of part 2033 (available in any FmHA or its successor agency under Public Law 103–354 State or District Office).

(5) *Liquidation not initiated.* Cases in which Liquidation has not been initiated because of the provisions of §1951.658 (e)(1)(i)(A) or (e)(1)(i)(B) will be adjusted according to §1951.661 and this section of this subpart, and the adjustments will be reflected on Form FmHA or its successor agency under Public Law 103–354 1951–52. In this instance only, account adjustments will be made even though the recipient does not sign Form FmHA or its successor agency under Public Law 103–354 1951–52 and any related documents.

(6) *Unauthorized grant assistance.* When grant funds are to be repaid as provided in §1951.661(a)(4) the District Director will report to the State Office by the 1st of March, June, September, and December of each year, the amount of collections by account name, case number, fund code, audit report number, finding number, date of claim, original amount of claim, amount collected during period, and the balance owed at end of reporting period on the unauthorized grant assistance. The State Office will submit a composite report to the Finance Office by the 15th of March, June, September, and December of each year.

(7) *Establishment of account for inactive borrower.* When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, Forms FmHA or its successor agency under Public Law 103–354 1951–12 and 1951–52 will be completed according to the FMIs. The Finance Office will establish

the account according to the terms indicated on Form FmHA or its successor agency under Public Law 103–354 1951–52.

(8) *Reporting.* At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(i) For an unauthorized loan account as provided in paragraph (a)(1) or (a)(4) of this section, reporting will be as follows:

(A) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(B) When continuation with the loan on existing terms is approved, the case will be reported as resolved on the next scheduled report, and no further reporting is required.

(ii) For unauthorized subsidy cases as provided in paragraph (a)(2) or (a)(3) of this section, after the unauthorized amount has been repaid or payments have been reversed and reapplied at the correct interest rate, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(iii) When an account is established with liquidation action pending as provided in paragraph (a)(4) of this section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(iv) When liquidation is not initiated as provided in paragraph (a)(5) of this section, this will be reported on the next scheduled report (along with collections, if any). No further reporting is required.

(v) When unauthorized grant assistance is scheduled to be repaid, the collections and status reported by the State Office to the Finance Office by memorandum according to paragraph (a)(6) of this section will be included in the OIG Report until the account is paid in full.

(vi) When an inactive borrower has agreed to repay unauthorized assistance according to paragraph (a)(7) of this section, the account will be reported initially, and collections and status will be included in each scheduled report until the account is paid in full.

(b) *Nonaudit cases.* Basically, servicing is the same for audit and nonaudit case; however, when receipt of unauthorized assistance is identified by a means other than an OIG audit report, the Finance Office will be notified only if adjustments to an active account or reinstatement of an inactive account are necessary, or grant funds are repaid. Once adjustments are made as provided in this paragraph, the loan(s) will be treated as an authorized loan(s). Any payment reversed will be reapplied as of the original date of credit. After payments are reversed and reapplied, the District Director will receive Form FmHA or its successor agency under Public Law 103–354 451–26, ''Transaction Record,'' from the Finance Office reflecting the account status.

(1) Account adjustments will be handled as follows:

(i) When a change in interest rate retroactive to the date of loan closing is necessary, Form FmHA or its successor agency under Public Law 103–354 1951–13, ''Change in Interest Rate,'' will be completed according to the FMI and executed by the borrower. Form FmHA or its successor agency under Public Law 103–354 1951–521 will be submitted to the Finance Office. Payments will be reversed and reapplied accordingly.

(ii) When an inactive borrower agrees to repay unauthorized assistance and executes documents to evidence such an obligation, the District Director will notify the Finance Office by memorandum, attaching a copy of the promissory note. The Finance Office will establish or reinstate the account according to the terms of the promissory note.

(iii) If a loan is paid in full, the remittance will be handled in the same manner as any other final payment.

(2) A delinquency created through reversal and reapplication of payments to effect corrections outlined in paragraph (b)(1)(i) of this section will be serviced according to subpart B of part 1965 of this chapter.

(c) *Collection of unauthorized assistance.* Collection of unauthorized assistance will be made in accordance with the appropriate sections of subpart K of part 1951 of this chapter. If full prepayment of an MFH loan is required, the prepayment will be accepted in accordance with the requirements of subpart E of part 1965 of this chapter, and appropriate restrictive-use provisions, if applicable, will remain in the deeds of release.

[50 FR 12996, Apr. 2, 1985, as amended at 58 FR 38926, July 21, 1993]

§ 1951.669 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Housing. Requests will be supported with documentation to explain the adverse effect on the Government's interest, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1951.670—1951.699 [Reserved]

§ 1951.700 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0104.

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs

SOURCE: 50 FR 13000, Apr. 2, 1985, unless otherwise noted.

§ 1951.701 Purpose.

This subpart prescribes the policies and procedures for servicing Community and Business Program loans and/or grants made by Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, or subsidy granted, or any other direct financial assistance. It does not apply to guaranteed loans. Loans sold without insurance by the FmHA or its successor agency under Public Law 103–354 to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

[52 FR 38908, Oct. 20, 1987]

§ 1951.702 Definitions.

As used in this subpart, the following definitions apply:

(a) *Active borrower.* A borrower who has an outstanding account in the records of the Finance Office, including collection-only or an unsatisfied account balance where a voluntary conveyance was accepted without release from liability of foreclosure did not satisfy the indebtedness.

(b) *Assistance.* Finance assistance in the form of a loan, grant, or subsidy received.

(c) *Debt instrument.* Used as a collective term to include promissory note, assumption agreement, grant agreement agreement/resolution, or bond.

(d) *False information.* Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

(e) *Inaccurate information.* Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

(f) *Inactive borrower.* A former borrower whose loan(s) has (have) been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the Finance Office.

(g) *Recipient.* ''Recipient'' refers to an individual or entity that received a loan, or portion of a loan, an interest

subsidy, a grant, or a portion of a grant which was unauthorized.

(h) *Servicing official.* For Community Programs, the servicing official is the District Director, an Assistant District Director, or a District Loan Specialist so designated. For Business Programs, the servicing official is the State Director or Designee.

(i) *Unauthorized assistance.* Any loan, interest subsidy, grant, or portion thereof received by a recipient for which there was no regulatory authorization for which the recipient was not eligible. Interest subsidy includes subsidy benefits received because a loan was closed at a lower interest rate than that to which the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official or the documents were prepared in error.

§ 1951.703 Policy.

When unauthorized assistance has been received, an effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount, unless any applicable Statute of Limitation has expired.

§§ 1951.704—1951.705 [Reserved]

§ 1951.706 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the Office of the Inspector General, USDA, (OIG); through reviews made by FmHA or its successor agency under Public Law 103–354 personnel; or through other means such as information provided by a private citizen which documents that unauthorized assistance has been receive by a recipient of FmHA or its successor agency under Public Law 103–354 assistance. If the servicing official has reason to believe unauthorized assistance was received, but is unable to determine whether or not the assistance was in fact unauthorized, the case file including the advice of the Regional Office of the General Counsel (OGC) will be referred to the National Office for review and comment. In every case where it is known or believed by FmHA or its successor agency under Public Law 103–354 that the assistance was based on false information, investigation by the OIG will be requested as provided for in FmHA or its successor agency under Public Law 103–354 Instruction 2012–B (available in any FmHA or its successor agency under Public Law 103–354 office). If OIG conducts an investigation, the actions outlined in § 1951.707 will be deferred until the OIG investigation is completed and the report is received. The reason(s) for the unauthorized assistance being received by the recipient will be well documented in the case file, and will specifically state whether it was due to:

(a) Submission of inaccurate information by the recipient;

(b) Submission of false information by the recipient.

(c) Submission of inaccurate or false information by another authorized party acting on the recipient's behalf including professional consultant such as engineers, architects, and attorneys, when the recipient did not know the other part had submitted inaccurate or false information;

(d) Error by FmHA or its successor agency under Public Law 103–354 personnel, either in making computations or failure to follow published regulations or other agency issuances; or

(e) Error in preparation of a debt instrument which caused a loan to be closed at an interest rate lower than the correct rate in effect when the loan was approved.

§ 1951.707 Notification to recipient.

(a) Collection efforts will be initiated by the servicing official by a letter substantially similar to exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), and mailed to the recipient by ''Certified Mail, Return Receipt Requested,'' with a copy to the State Director and, for a case identifed in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will be sent to all recipients who received unauthorized assistance, regardless of amount. The letter will:

(1) Specify in detail the reason(s) the assistance was determined to be unauthorized;

(2) State the amount of unauthorized assistance, including any accrued interest to be repaid; and

(3) Establish an appointment for the recipient to discuss with the servicing official the basis for FmHA or its successor agency under Public Law 103–354's claim; and give the recipient an opportunity to provide facts, figures, written records or other information which might alter FmHA or its successor agency under Public Law 103–354's determination that the assistance received was unauthorized.

(b) If the recipient meets with the servicing official, the servicing official will outline to the recipient why the assistance was determined to be unauthorized. The recipient will be given an opportunity to provide information to refute FmHA or its successor agency under Public Law 103–354's findings. When requested by the recipient, the servicing official may grant additional time for the recipient to assemble documentation. When an extension is granted, the servicing official will specify a definite number of days to be allowed and establish the follow up necessary to assure that servicing of the case continues without undue delay.

§1951.708 Decision on servicing actions.

When the servicing official is the same individual who approved the unauthorized assistance, the next-higher supervisory official must review the case before further actions are taken by the servicing official.

(a) *Payment in full.* If the recipient agrees with FmHA or its successor agency under Public Law 103–354's determination or will pay the amount in question, the servicing official may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be determined according to §1951.711(a). the servicing official will remit collections to the Finance Office according to the Forms Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittances,'' as follows:

(1) In the case of a loan, for application to the borrower's account as an extra payment.

(2) In the case of a grant, as a ''Miscellaneous Collection for Application to the General Fund.''

(3) In the case of a loan or grant which was identified in an OIG audit, the servicing official will report the repayment as outlined in §1951.711(b)(2) or 1951.715 as applicable.

(b) *Continuation with recipient.* If the recipient agrees with FmHA or its successor agency under Public Law 103–354's determination or is willing to pay the amount in question but cannot repay the unauthorized assistance within a reasonable period of time, continuation is authorized and servicing actions outlined in §1951.711 will be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in §1951.702(d);

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance; and

(3) Failure to collect the unauthorized assistance in full will not adversely affect FmHA or its successor agency under Public Law 103–354's financial interests.

(c) *Notice of determination when agreement is not reached.* If the recipient does not agree with FmHA or its successor agency under Public Law 103–354's determination, or if the recipient fails to respond to the initial letter prescribed in §1951.707 within 30 days, the servicing official will notify the recipient by letter substantially similar to exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) (sent by Certified Mail, Return Receipt Requested), with a copy to the State Director, and for a case identified in an OIG audit report, a copy to the OIG office which conducted the audit and the Planning and Analysis Staff of the National Office. This letter will include:

(1) The amount of assistance finally determined by FmHA or its successor agency under Public Law 103–354 to be unauthorized including any accrued interest.

(2) A statement of further actions to be taken by FmHA or its successor agency under Public Law 103–354 as outlined in paragraph (e)(1) or (e)(2) of this section; and

(3) The appeal rights as prescribed in exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

(d) *Appeals.* Appeals resulting from the letter prescribed in paragraph (c) of this section will be handled according to subpart B of part 1900 of this chapter. All appeal provisions will be concluded before proceeding with further actions. If the recipient does not prevail in an appeal, or when an apeal is not made during the time allowed, the servicing official will document the facts in the case file and submit to State Director, if the servicing official is other than State Director, who will proceed with the actions outlined in paragraph (e) of this section, as applicable. If during the course of appeal the appellant decides to agree with FmHA or its successor agency under Public Law 103–354's findings or is willing to repay the unauthorized assistance, the servicing official will proceed with the actions outlined in paragraph (a), (b), or (e) of this section.

(e) *Liquidation of loan(s) or legal action to enforce collection.* When a case cannot be handled according to the provisions of paragraph (a) or (b) of this section, or if the recipient refuses to execute the documents necessary to establish an obligation to repay the unauthorized assistance as provided in §1951.711, one of the following actions will be taken:

(1) *Active borrower with a secured loan.* (i) The servicing official will attempt to have the recipient liquidate voluntarily. If the recipient agrees to liquidate voluntarily, this will be documented in the case file. Where real property is involved, a letter will be prepared by the servicing official and signed by the recipient agreeing to voluntary liquidation. A resolution of the governing body may be required. If the recipient does not agree to voluntary liquidation, or agrees but it cannot be accomplished within a reasonable period of time (usually not more than 90 days), forced liquidation action will be initiated in accordance with applicable provisions of subpart A of part 1955 of this chapter unless:

(A) The amount of unauthorized assistance outstanding, including principal, accrued interest, and any recoverable costs charged to the account, is less than $1,000; or

(B) It can be clearly documented that it would not be in the best financial interest of the Government to force liquidation. If the servicing official wishes to make an exception to forced liquidation under paragraph (e)(1)(i)(B) of this section, a request for an exception under §951.716 will be made.

(ii) When all of the conditions of paragraph (a) or (b) of this section are met, but the recipient does not repay or refuses to execute documents to effect necessary account adjustments according of the provisions of §1951.711, liquidation action will be initiated as provided in paragraph (e)(1)(i) of this section.

(iii) When forced liquidation would be initiated except that the loan is being handled under paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section, continuation with the loan on existing terms will be provided. In these cases, the recipient will be notified by letter of the actions taken.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* The servicing official will document the facts in the case file and submit it to the State Director, if the servicing official is other than the State Director, who will request the advice of the OGC on pursuing legal action to effect collection. The case file, recommendation of State Director and OGC comments will be forwarded to the National Office for review and authorization to implement recommended servicing actions. The State Director will tell OGC what assets, if any, are available from which to collect.

§§ 1951.709—1951.710 [Reserved]

§ 1951.711 Servicing options in lieu of liquidation or legal action to collect.

When the conditions outlined in §1951.708(b) are met, the servicing options outlined in this section will be

considered. Accounts will be serviced according to this section and §1951.715.

(a) *Determination of unauthorized loan and/or grant assistance amount*—(1) *Unauthorized loan amount.* The principal loan amount that was unauthorized will be determined. The unauthorized amount will be the unauthorized principal plus any accrued interest on the unauthorized principal at the note interest rate until the date paid in accordance with §1951.708(a), or until the date other satisfactory financial arrangements are made in accordance with paragraph (b)(1) or (c) of this section.

(2) *Unauthorized grant amount.* The unauthorized grant actually expended will be determined. The unauthorized amount will be the unauthorized grant with accrued interest at the interest rate stipulated in the respective executed grant agreement for default cases until the date paid in accordance with §1951.708(a), or until the date other satisfactory financial arrangements are made in accordance with paragraph (b)(2) or (c) of this section.

(b) *Continuation on modified terms.* When the recipient has the legal and financial capabilities, the case will be serviced according to one of the following, as appropriate. In each instance, the servicing official will advise the Finance Office by memorandum of the actions necessary to effect the account adjustment.

(1) *Unauthorized loan.* A loan for the unauthorized amount determined according to paragraph (a)(1) of this section will be established at the interest rate specified in the outstanding debt instrument or at the present market interest rate, whichever is greater, for the respective Community and Business program area. The loan will be amortized for a period not to exceed fifteen (15) years, the remaining term of the original loan, or the remaining useful life of the facility whichever is shorter.

(2) *Unauthorized grant.* The unauthorized grant amount determined according to paragraph (a)(2) of this section will be converted to a loan at the market interest rate for the respective Community and Business Programs area in effect on the date the financial assistance was provided, and will be amortized for a period not to exceed fifteen (15) years. The recipient will be required to execute a debt instrument to evidence this obligaton, and the best security position practicable in a manner which will adequately protect the FmHA or its successor agency under Public Law 103–354's interests during the repayment period will be taken as security. When the recipient is to repay grant assistance, the servicing official must maintain records on the ''account'' as the Finance Office cannot set up an account for repayment of a grant. The servicing official will attempt to collect the monies due and all collections will be remitted with Form FmHA or its successor agency under Public Law 103–354 451–2 to the Finance Office as ''Miscellaneous Collections for Application to the General Fund.'' For cases identified in OIG audits only, the servicing official will report by the 1st of March, June, September, and December of each year the following information on cases of this type to the State Director: Recipient's name, fund code, audit report number, audit finding number, date of claim, amount of claim, amount collected during the reporting period, and the balance owed on the unauthorized grant assistance.

(3) *Unauthorized subsidy benefits received.* When the recipient was eligible for the loan but should have been charged a higher interest rate than that in the debt instrument, which resulted in the receipt of unauthorized subsidy benefits, the case will be handled as outlined in this paragraph. The recipient will be given the option to submit a written request that the interest rate be adjusted to the lower of the rate for which they were eligible that was in effect at the date of loan approval or loan closing. (See exhibit C of this subpart for interest rates (available in any FmHA or its successor agency under Public Law 103–354 office).) FmHA or its successor agency under Public Law 103–354 servicing officials will make a concerted effort to collect all unauthorized subsidy benefits from the recipient and will contact the Office of General Counsel in each case for advice in accomplishing corrective actions.

(c) *Continuation on existing terms.* When the recipient does not have the

legal and/or financial capabilities for the options outlined in paragraph (b)(1), (b)(2), or (b)(3) of this section, as appropriate, to be exercised, the recipient may be allowed to continue to meet the loan/grant obligations outlined in the existing loan/grant instruments. Unless the unauthorized assistance was identified in an OIG audit, no Finance Office notification or action is necessary. If identified by OIG, the servicing official will advise the Finance Office by memorandum of the determination to continue with the recipient on the existing terms of the loan/grant.

(d) *Reporting requirements to National Office.* An annual report will be submitted by the State Office to the Assistant Administrator, Community and Business Programs, within 30 days following the end of the Government's fiscal year for each case of unauthorized assistance or subsidy benefits. The report will include for each case the account name, case number, fund code, OIG audit number (if applicable), amount collected during period, and the balance owed on the unauthorized assistance. Each State Office is responsible for coordinating with the servicing official's office so that this information can be accumulated and consolidated by the State Office within the allotted time. A negative report is required from States which have no unauthorized assistance cases.

[50 FR 13000, Apr. 2, 1985, as amended at 51 FR 11563, Apr. 4, 1986; 54 FR 28020, July 5, 1989]

§§ 1951.712—1951.714 [Reserved]

§ 1951.715 Account adjustments and reporting requirement.

Cases of unauthorized assistance which require Finance Office notification and action, regardless of whether they were identified in an OIG audit or by other means, will be submitted to the Finance Office by memorandum from the servicing official, as provided in applicable paragraphs of § 1951.711 of this subpart. Each memorandum should include account (borrower) name, case number, audit report number (if applicable), finding number (if applicable), fund code, loan number, and an explanation of the actions to be taken. If the unauthorized assistance was identified in an OIG audit report, the memorandum should be clearly annotated ''Audit Claim for OIG Report'' as a part of the subject. The explanation should provide sufficient details to allow the Finance Office to properly adjust the account. The State Office will forward a consolidated report on unauthorized grant assistance identified in an OIG audit to the Finance Office by the 15th of March, June, September, and December of each year reflecting the information reported by servicing officials in accordance with § 1951.711(b)(2) for inclusion in the report to OIG.

(a) *Entire loan unauthorized.* When the entire loan is unauthorized because the recipient was not eligible or because the loan was approved for unauthorized purposes, the servicing official will advise the Finance Office, by memorandum, which of the following servicing actions will be taken.

(1) *Repayment in full.* If the recipient has arranged to repay the unauthorized loan in full through refinancing or other available resources, the payment will be remitted with Form FmHA or its successor agency under Public Law 103–354 451–2 and the schedule number will be included in the memorandum.

(2) *Continuation with loan on existing or modified terms.* When it is determined, according to § 1951.711 (b)(1) or (c), that continuation with the loan on the existing or modified terms will be provided, the servicing official will advise the Finance Office by memorandum of this determination including an explanation of the terms, if modified.

(b) *Portion of loan unauthorized.* When only a portion of the loan has been determined to be for unauthorized purposes, the servicing official will advise the Finance Office, by memorandum, of the servicing actions as follows:

(1) *Repayment in full of unauthorized portion.* If the recipient has arranged to repay the unauthorized portion of the loan through refinancing or other available resources, the remittance will be submitted with Form FmHA or its successor agency under Public Law 103–354 451–2, and the schedule number will be included in the memorandum.

(2) *Continuation with unauthorized portion of loan on existing or modified*

terms. When it is determined, according to §1951.711 (b)(1) or (c), that continuation with the unauthorized portion of the loan on the existing or modified terms will be provided, the servicing official will advise the Finance Office by memorandum of this determination, including an explanation of the terms if modified. The authorized portion will retain the original loan number with installments adjusted accordingly. Payments previously made will not be reversed and reapplied. The amortized unauthorized amount will be assigned the next available loan number. Installments for the authorized and unauthorized loans will be scheduled and paid concurrently.

(c) *Unauthorized subsidy benefits received.* The unauthorized subsidy benefits received will be serviced according to §1951.711 (b)(3) or (c).

(d) *Liquidation pending.* When liquidation is initiated under the provisions of this subpart, the servicing official will advise the Finance Office, by memorandum, that an unauthorized assistance account is to be established. This account will be flagged ''FAP'' (Foreclosure Action Pending) or ''CAP'' (Court Action Pending), as applicable.

(e) *Liquidation not initiated.* Cases in which liquidation would normally be initiated, but where it is not because of the provisions of §1951.708(e)(1), will be serviced in accordance with §1951.708(e)(1)(iii). If the unauthorized assistance was identified through means other than an OIG audit report, the Finance Office will not be notified and no action is necessary.

(f) *Unauthorized grant assistance.* A grant that is to be repaid will be serviced according to §1951.711(b)(2). If the unauthorized assistance was identified through means other than an OIG audit report and a determination has been made not to recover, the Finance Office will not be notified and no action is necessary.

(g) *Reporting.* At prescribed intervals, the Finance Office will report to the OIG on the status of cases involving unauthorized assistance which were identified by OIG in audit reports. The amounts to be reported will be determined by the Finance Office after account servicing actions have been completed. For reporting purposes, the following applies:

(1) For an unauthorized loan account established as provided in paragraph (a) or (b) of this section, reporting will be as follows:

(i) When unauthorized assistance is paid in full, this will be reported on the next scheduled report only.

(ii) When continuation with the loan on existing or modified terms is approved, this will be reported on the next scheduled report, and no further reporting is required.

(2) For unauthorized subsidy cases as provided in paragraph (c) of this section, once the interest rate has been appropriately adjusted, the unauthorized subsidy will be reported as resolved on the next scheduled report. No further reporting is required.

(3) When an account is established with liquidation action pending as provided in paragraph (d) of this section, the status will be included on each scheduled report until the liquidation is completed or the account is otherwise paid in full.

(4) When liquidation is not initiated as provided in paragraph (e) of this section, this will be reported on the next scheduled report. No further reporting is required.

(5) When unauthorized grant assistance is scheduled to be repaid as provided in paragraph (f) of this section, collections and status will be included in the report to OIG until the amount is paid in full.

§1951.716 Exception authority.

The Administrator may in individual cases make an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and submitted through the Assistant Administrator, Community and Business Programs. Requests will be supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect

will be eliminated or minimized if the exception is granted.

§§ 1951.717—1951.749 [Reserved]

§ 1951.750 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0103.

Subparts P–Q [Reserved]

Subpart R—Rural Development Loan Servicing

SOURCE: 53 FR 30656, Aug. 15, 1988, unless otherwise noted.

§ 1951.851 Introduction.

(a) This subpart contains regulations for servicing or liquidating loans made by the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) under the Intermediary Relending Program (IRP) to eligible IRP intermediaries and applies to ultimate recipients and other involved parties. The provisions of this subpart supersede conflicting provisions of any other subpart.

(b) This subpart also contains regulations for servicing the existing Rural Development Loan Fund (RDLF) loans previously approved and administered by the U.S. Department of Health and Human Services (HHS) under 45 CFR part 1076. This action is needed to implement the provisions of Section 1323 of the Food Security Act of 1985, Pub. L. 99–198, which provides for the transfer of the loan servicing authority for those loans from the HHS to the U.S. Department of Agriculture (USDA).

(c) The portion of this regulation pertaining to loanmaking applies to RDLF intermediaries cited in § 1951.851(b) which have RDLF funds from HHS and have not fully utilized relending of those funds to ultimate recipients at the date of these regulations. The loanmaking of all other IRP loans serviced by this regulation is in accordance with part 1948, subpart C of this chapter.

(d) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations.

(e) The loan program is administered by the FmHA or its successor agency under Public Law 103–354 National Office. The Director, Business and Industry Division, is the point of contact for servicing activities unless otherwise delegated by the Administrator.

§ 1951.852 Definitions and abbreviations.

(a) *General definitions.* The following definitions are applicable to the terms used in this subpart.

(1) *Intermediary* (Borrower). The entity receiving FmHA or its successor agency under Public Law 103–354 loan funds for relending to ultimate recipients. FmHA or its successor agency under Public Law 103–354 becomes an intermediary in the event it takes over loan servicing and/or liquidation.

(2) *Loan Agreement.* The signed agreement between FmHA or its successor agency under Public Law 103–354 and the intermediary setting forth the terms and conditions of the loan.

(3) *Low-income.* The level of income of a person or family which is at or below the Poverty Guidelines as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

(4) *Market value.* The most probable price which property should bring, as of a specific date in a competitive and open market, assuming the buyer and seller are prudent and knowledgeable, and the price is not affected by undue stimulus such as forced sale or loan interest subsidy.

(5) *Principals of intermediary.* Includes members, officers, directors, and other entities directly involved in the operation and management of an intermediary organization.

(6) *Ultimate recipient.* The entity receiving financial assistance from the intermediary. This may be interchangeable with the term ''subrecipient'' in some documents previously issued by HHS.

(7) *Rural area.* Includes all territory of a State that is not within the outer

boundary of any city having a population of twenty-five thousand or more.

(8) *State.* Any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(9) *Technical assistance or service.* Technical assistance or service is any function unreimbursed by FmHA or its successor agency under Public Law 103–354 performed by the intermediary for the benefit of the ultimate recipient.

(10) *Working capital.* The excess of current assets over current liabilities. It identifies the liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(b) *Abbreviations.* The following abbreviations are applicable:

B&I—Business and Industry

CSA—Community Services Administration

EIS—Environmental Impact Statement

HHS—U.S. Department of Health and Human Services

IRP—Intermediary Relending Program

OCS—Office of Community Services

OIG—Office of Inspector General

OGC—Office of the General Counsel

RDLF—Rural Development Loan Fund

USDA—United States Department of Agriculture

[53 FR 30656, Aug. 15, 1988, as amended at 63 FR 6052, Feb. 6, 1998]

§ 1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.

(a) *RDLF Intermediaries.* Rural Development Loan funds will be used by the RDLF intermediary to provide loans to ultimate recipients in accordance with paragraph (b) of this section. Interest income, service fees, and other authorized financing charges received by RDLF intermediaries operating relending programs may be used to pay for: The costs of administering the RDLF relending program, the provision of technical assistance to borrowers, the absorption of bad debts associated with RDLF loans, and repayment of debt. All proceeds in excess of those needed to cover authorized expenses, as described above, must be returned to the Agency.

(b) *Ultimate recipients.*

(1) Financial assistance from the intermediary to the ultimate recipient must be for business facilities and community development projects in rural areas.

(2) Financial assistance involving Rural Development Loan funds from the intermediary to the ultimate recipient may include but not be limited to:

(i) Business acquisitions, construction, conversion, enlargement, repair, modernization, or development cost.

(ii) Purchasing and development of land, easements, rights-of-way, building, facilities, leases, or materials.

(iii) Purchasing of equipment, leasehold improvements, machinery or supplies.

(iv) Pollution control and abatement.

(v) Transportation services.

(vi) Startup operating costs and working capital.

(vii) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(viii) Feasibility studies.

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.

(x) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture means the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stock of fish.

[53 FR 30656, Aug. 15, 1988, as amended at 63 FR 6053, Feb. 6, 1998]

§ 1951.854 Ineligible assistance purposes.

(a) *RDLF Intermediaries.* RDLF loans may *not* be used by the intermediary:

(1) For payment of the intermediary's own administrative costs or expenses.

(2) To purchase goods or services or render assistance in excess of what is needed to accomplish the purpose of the ultimate recipient project.

(3) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(4) For charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(5) For assistance to government employees, military personnel, or principals or employees of the intermediary who are directors, officers or have major ownership (20 percent or more) in the ultimate recipient.

(6) For relending in a city with a population of twenty-five thousand or more as determined by the latest decennial census.

(7) For a loan to an ultimate recipient which has applied or received a loan from another intermediary unless FmHA or its successor agency under Public Law 103–354 provides prior written approval for such loan.

(8) For any line of credit.

(9) To finance more than 75 percent of the total cost of a project by the ultimate recipient. The total amount of RDLF loan funds requested by the ultimate recipient plus the outstanding balance of any existing RDLF loan(s) will not exceed $150,000. Other loans, grants, and/or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided with RDLF funds.

(10) For any investments in securities or certificates of deposit of over 30-day duration without the concurrence of FmHA or its successor agency under Public Law 103–354. If the RDLF funds have been unused to make loans to ultimate recipients for 6 months or more, those funds will be returned to FmHA or its successor agency under Public Law 103–354 unless FmHA or its successor agency under Public Law 103–354 provides an exception to the RDLF intermediary. Any exception would be based on evidence satisfactory to FmHA or its successor agency under Public Law 103–354 that every effort is being made by the intermediary to utilize the RDLF funding in conformance with program objectives.

(b) *Ultimate recipients.* Ultimate recipients may *not* use assistance received from RDLF intermediaries involving RDLF funds:

(1) For agricultural production, which means the cultivation, production (growing), harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds and marine life, either for fiber or food for human consumption, and disposal or marketing thereof, the raising, housing, feeding, breeding, hatching, control and/or management of farm and domestic animals). Exceptions to this definition are:

(i) Aquaculture as identified under eligible purposes.

(ii) Commercial nurseries primarily engaged in the production of ornamental plants and trees and other nursery products such as bulbs, florists' greens, flowers, shrubbery, flower and vegetable seeds, sod, the growing of vegetables from seed to the transplant stage.

(iii) Forestry, which includes establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, and related activities such as reforestation.

(iv) Financial assistance for livestock and poultry processing as identified under eligible purposes.

(v) The growing of mushrooms or hydroponics.

(2) For the transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(3) For community antenna television services or facilities.

(4) For any legitimate business activity when more than 10 percent of the annual gross revenue is derived from legalized gambling activity.

(5) For any illegal activity.

(6) For any otherwise eligible project that is in violation of either a Federal, State or local environmental protection law or regulation or an enforceable land use restriction unless the financial assistance required will result in curing or removing the violation.

(7) For any hotels, motels, tourist homes, or convention centers.

(8) For any tourist, recreation, or amusement centers.

§§ 1951.855—1951.858 [Reserved]

§ 1951.859 Term of loans.

(a) No loans shall be extended for a period exceeding 30 years. Principal payments on loans will be made at least annually. The initial principal payment may be deferred not more than 3 years.

(b) The terms of loan repayment will be those stipulated in the loan agreement and/or promissory note.

§ 1951.860 Interest on loans.

(a) RDLF intermediaries: When the RDLF loan portfolio was transferred from HHS to USDA as required under Pub. L. 99–198, section 1323 of the Food Security Act of 1985, there were provisions that affected the interest rates on those loans.

(1) Those loans made in 1980 and 1981 carried an original note rate of 1 percent interest when they were first issued. The legislation provides for those loans made in 1980 and 1981 to have a permanent interest rate reduction to 1 percent effective December 23, 1985, to maturity. However, the interest rates on the loans made in 1983 and 1984 may remain the same as the original note rate.

(2) Loans made in 1983 and 1984 do not automatically qualify for a lower rate than the level of interest rates when the notes were first issued. Section 407 of Pub. L. 99–425 provides for a weighted average requirement that would affect those loans made in 1983 and 1984 to intermediary borrowers.

(3) In those cases where loans were made in RDLF intermediaries and the weighted average of all loans made by the RDLF intermediary after December 31, 1982, does not exceed the sum of 6 percent plus the interest rate to the intermediary (7 percent), the interest rate to be charged the RDLF intermediary will be the rate charged on such loans made in 1980, or 1 percent. Should the weighted average exceed 7 percent, the note rate will control.

(i) In order for FmHA or its successor agency under Public Law 103–354 to determine the weighted average of the loan portfolio, the RDLF intermediary will be required to complete a weighted loan average rate on its outstanding portfolio. The schedule prepared for FmHA or its successor agency under Public Law 103–354's review should include:

(A) Calculations of the interest amount scheduled to accrue on each loan outstanding over a 1-year period based on the current interest rate of each ultimate recipient's loan.

(B) The sum total of interest on each individual loan will be added together to determine the total interest amount scheduled to accrue over a 1-year period.

(C) Divide the total of paragraph (a)(2) of this section by the total principal outstanding to determine the average interest percent yield in the intermediary's loan portfolio.

(D) The loans to be included in determining the weighted interest average will be those made from January 1, 1983, forward.

(E) FmHA or its successor agency under Public Law 103–354 will use the anniversary date of October 1 of each year to request the intermediary to complete a weighted interest average to determine the interest rate on its RDLF loan for the coming calendar year, January 1 through December 31. All loans made in 1980 and 1981 have had the interest rate permanently reduced by legislation to 1 percent, effective December 25, 1985.

(F) The weighted loan average interest rate on the outstanding loan portfolio as referenced in this section will be forwarded to FmHA or its successor agency under Public Law 103–354 along with sufficient documentation which should include calculations, list of outstanding loans, current interest rate being charged on the loan, etc.

(b) Interest rates charged by intermediaries to the ultimate recipients shall be at rates negotiated by those parties. Intermediaries are encouraged

to make loans to ultimate recipients at the lowest possible rate, taking into account the cost of the loan funds to the intermediary and the cost of administering the loan portfolio.

§§ 1951.861—1951.865 [Reserved]

§ 1951.866 Security.

(a) *Loans from RDLF intermediaries to ultimate recipients.* Security requirements for loans from intermediaries to ultimate recipients will be negotiated between the intermediaries and ultimate recipients. FmHA or its successor agency under Public Law 103–354 concurrence in the intermediary's security proposal is required only when security for the loan from the intermediary to the ultimate recipient will also serve as security for the FmHA or its successor agency under Public Law 103–354 loan.

(b) *Additional security.* The FmHA or its successor agency under Public Law 103–354 may require additional security at any time during the term of a loan to an intermediary if, after review and monitoring, an assessment indicates the need for such security.

(c) *Appraisals.* Real property serving as security for all loans to intermediaries and for loans to ultimate recipients serving as security for loans to intermediaries will be appraised by a qualified appraiser. For all other types of property, a valuation shall be made using any recognized, standard technique for the type of property involved (including standard reference manuals), and this valuation shall be described in the loan file.

§ 1951.867 Conflict of interest.

The intermediary will, for each proposed loan to an ultimate recipient, inform FmHA or its successor agency under Public Law 103–354 in writing and furnish such additional evidence as FmHA or its successor agency under Public Law 103–354 requests as to whether and the extent to which the intermediary or its principal officers (including immediate family) hold any legal or financial interest or influence in the ultimate recipient or the ultimate recipient or any of its principal officers (including immediate family) holds any legal or financial interest or influence in the intermediary. FmHA or its successor agency under Public Law 103–354 shall determine whether such ownership, influence or financial interest is sufficient to create potential conflict of interest. In the event FmHA or its successor agency under Public Law 103–354 determines there is a conflict of interest, the intermediary's assistance to the ultimate recipient will not be approved until such conflict is eliminated.

§ 1951.868—1951.870 [Reserved]

§ 1951.871 Post award requirements.

(a) RDLF intermediaries with undisbursed RDLF loan funds shall be governed by these regulations, the loan agreement, the approved work program, security interests, and other conditions which FmHA or its successor agency under Public Law 103–354 may require in awarding a loan.

(b) Unless otherwise specifically agreed to in writing by the FmHA or its successor agency under Public Law 103–354, any loan funds held by an intermediary and any funds obtained from loaning FmHA or its successor agency under Public Law 103–354-derived funds and recollecting them that are not immediately needed by the intermediary for an ultimate recipient should be deposited in an interest-bearing account in a bank or other financial institution which will be covered by a form of Federal deposit insurance. Any interest or income earned as a result of such deposits shall be used by the intermediary only for purposes authorized by FmHA or its successor agency under Public Law 103–354.

(c) Intermediaries operating relending programs must maintain separate ledgers and segregated accounts for RDLF funds at all times.

(d) Reporting requirements shall be those delineated in the loan agreement between the United States and the intermediary and such subsequent requirements as FmHA or its successor agency under Public Law 103–354 deems appropriate. The intermediaries must document periodically the extent to which increased employment, income and ownership opportunities are provided to rural residents for each loan made by such intermediary.

(e) No intermediary may make a loan to an ultimate recipient who has applied for or received a loan from another intermediary unless FmHA or its successor agency under Public Law 103–354 provides prior written approval for such loan.

(f) All loan payments that are due on RDLF loans will be made payable to the Farmers Home Administration or its successor agency under Public Law 103–354, using the number assigned, and mailed directly to: Farmers Home Administration or its successor agency under Public Law 103–354, Finance Office, FC 35, 1520 Market Street, St. Louis, Missouri 63103.

§ 1951.872 Other regulatory requirements.

(a) *Intergovenmental consultation.* The RDLF program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. For each ultimate recipient to be assisted with a loan under this subpart and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Point of Contact must be notified. Notification, in the form of a project description, can be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the loan funds for the ultimate recipient. Prior to FmHA or its successor agency under Public Law 103–354's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. These requirements should be carried out in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 1940–J, ''Intergovernmental Review of Farmers Home Administration or its successor agency under Public Law 103–354 Programs and Activities,'' available in any FmHA or its successor agency under Public Law 103–354 office.

(b) *Environmental requirements.* (1) Unless specifically modified by this section, the requirements of subpart G of part 1940 of this chapter apply to this subpart. FmHA or its successor agency under Public Law 103–354 will give particular emphasis to ensuring compliance with the environmental policies contained in §§1940.303 and 1940.304 in subpart G of part 1940 of this chapter. Intermediaries and ultimate recipients of loans must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment.

(2) As part of the intermediary's request to FmHA or its successor agency under Public Law 103–354 for concurrence to make a loan to an ultimate recipient, the intermediary will include for the ultimate recipient a properly completed Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information,'' if it is classified as a Class I or Class II action. FmHA or its successor agency under Public Law 103–354 will complete the environmental review required by subpart G of part 1940 of this chapter. The results of this review will be used by FmHA or its successor agency under Public Law 103–354 in making its decision on the request.

(c) *Equal opportunity and nondiscrimination requirements.*

(1) In accordance with Title V of Pub. L. 93–495, the Equal Credit Opportunity Act, neither the intermediary nor FmHA or its successor agency under Public Law 103–354 will discriminate against any applicant on the basis of race, color, religion, national origin, age, physical or mental handicap (provided that the applicant has the capacity to enter into a binding contract), sex or marital status with respect to any aspect of a credit transaction anytime Federal funds are involved.

(2) The regulations contained in part 1901, subpart E of this chapter apply to loans made under this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with Title VI of the Civil Rights Act of 1964, ''Nondiscrimination in Federally Assisted Programs,'' 42 U.S.C. 2000d–2000d–4. If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Equal Opportunity Officer.

§§ 1951.873—1951.876 [Reserved]

§ 1951.877 Loan agreements.

(a) A loan agreement will have been executed by the RDLF intermediary and OCS or HHS for each loan. The loan agreement ordinarily would contain the following provisions:

(1) The amount of the loan.

(2) The interest rate.

(3) The term and repayment schedule.

(4) The provisions for late charges.

(5) Provisions regarding default.

(6) Disbursement procedure.

(7) Insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required on every ultimate recipient in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The RDLF intermediary's interest in the insurance ordinarily will be assigned to the FmHA or its successor agency under Public Law 103–354.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient and will be assigned or pledged to the RDLF intermediary and subsequently to FmHA or its successor agency under Public Law 103–354. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with State law.

(iv) The RDLF intermediary is responsible for determining if an ultimate recipient is located in a special flood or mudslide hazard area anytime Federal funds are involved. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(b) The RDLF intermediary will agree:

(1) Not to make any changes in the RDLF intermediary's articles of incorporation, charter or bylaws without the concurrence of FmHA or its successor agency under Public Law 103–354.

(2) Not to make a loan commitment to an ultimate recipient without first receiving FmHA or its successor agency under Public Law 103–354's written concurrence in the proposed use of loan funds.

§§ 1951.878—1951.880 [Reserved]

§ 1951.881 Loan servicing.

(a) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations. preexisting documents control when in conflict with these regulations. The loan is governed by terms of existing legal documents of each intermediary. The RDLF/IRP intermediary is responsible for compliance with the terms and conditions of the loan agreement.

(b) Each intermediary will be monitored by FmHA or its successor agency under Public Law 103–354 based on progress reports submitted by the intermediary, audit findings, disbursement transactions, visitations, and other contract with the intermediary as necessary.

(c) Loan servicing is intended to be preventive rather than a curative action. Prompt followup on delinquent accounts and early recognition of potential problems and pursuing a solution to them are keys to resolving many problem loan cases.

(d) Written notices on payments coming due will be prepared and sent to the intermediary by the FmHA or its successor agency under Public Law 103–354 Finance Office approximately 15 days in advance of the due date of the payments. A copy of the notice will be sent to the FmHA or its successor agency under Public Law 103–354 Administrator or designee.

(e) If the scheduled payment is not made by the intermediary within 30 days after the due date of the payment, the Finance Office will send a past due

notice to the intermediary. The notice will show the late charge amount, if applicable, and the interest amount past due. The late charge amount, if applicable, and the interest past due amount will be capitalized as principal due 30 days after the due date of the monthly payment unless existing loan documents prior to this regulation state otherwise. If the loan documents state when late charge amounts or interest accruals are to be capitalized, the loan documents will prevail.

(1) A per diem amount will be shown on the late notice sent to the intermediary. The Finance Office will send this notice to the Administrator or designee 30 days after the past due notice has been sent to the intermediary and the account remains delinquent. Thereafter, further notices by FmHA or its successor agency under Public Law 103–354 designee will be sent to the intermediary on the late payments or any further payments until the account is in a current status.

(2) The Finance Office will notify the Administrator or designee on any payments due from the delinquent intermediary. It will be the responsibility of the Administrator or designee to follow up on delinquent payments to bring the account to a current status.

(3) A copy of any correspondence or notice generated by the Administrator or designee on any delinquent loan will be sent to the Finance Office.

(4) Interest will be computed on a 365-day basis unless legal documents state otherwise.

(f) It is the responsibility of the Finance Office to maintain complete accounting records for each intermediary. The Finance Office will:

(1) Coordinate with the Administrator or designee to assure that interest and principal payments received are in accordance with the promissory notes and its companion documents, and the effective amortization schedule. If the payments received appear to be incorrect, the Finance Office will advise the Administrator or designee. The Administrator or designee will take the necessary action to clear the issue and promptly advise the Finance Office of the proper accounting procedure.

(2) Send monthly statements to the National Office reflecting all payments received to date on each borrower.

(3) Send to the Administrator or designee a monthly summary of all intermediary loans as follows:

(i) Number and amount of all loans.

(ii) Total advanced on all loans.

(iii) Total interest and principal received on the loans.

(iv) Total outstanding balance on all loans.

(4) Prepare reamortization schedules needed as a result of restructuring any loans and send to the Administrator or designee.

(5) Furnish in writing to the Administrator or designee a per diem amount on the actual interest amount due when requested by the Administrator.

(g) It is the responsibility of the Administrator or designee to:

(1) Review and analyze the semiannual report of the intermediaries and reconcile same to the annual audits.

(2) Review the annual audits of intermediaries.

(3) Review the semiannual reports of the intermediaries and take appropriate action when necessary.

(4) Follow up on delinquent intermediaries to bring the account current.

(5) Notify the Finance Office in writing when a loan is determined to be uncollectible in order for the Finance Office to make provisions for an appropriate timely entry to the loss account.

(6) Furnish to the Finance Office the necessary information to produce reamortization schedules.

(7) Provide the Finance Office a copy of any correspondence in regard to the restructuring of the loans.

(8) Review reamortization schedules, the schedule will then be forwarded to the intermediary.

(9) Confirm account balances. Payment history of loans and any other related matter will be furnished to the requesting party, (i.e. third party auditing firms) if warranted and proper. If there are discrepancies in any loan balances being confirmed, the Finance Office should be consulted before the Administrator or designee writes the requested parties.

(10) Furnish upon request by the Finance Office, the information necessary to help reconcile account balances, obtain evidence of payments made by the borrower, and any other related data necessary to keep the financial records correct and in balance.

(11) Answer Congressional and other correspondence.

(12) Review intermediary's plans, cash flow projections, balance sheets, and operating statements.

§ 1951.882 Field visits.

(a) During or in preparation for field visits to RDLF/IRP intermediaries by FmHA or its successor agency under Public Law 103–354 personnel, the following loan servicing activities are to be performed:

(1) Review what is being done to inform eligible applicants of the program's existence.

(2) Obtain current and proper financial information and analyze for trends on all RDLF/IRP intermediaries. Also determine if there is a sufficient interest rate spread between the interest rate charged the intermediary and the interest rate charged the ultimate recipients to cover the administrative costs, including bad debts of operating the program.

(3) Include in the writeups of the field visit any issues or problems not resolved from the last visitation in the agenda.

(4) Review credit elsewhere information (has the ultimate recipient been refused funds by other sources?) to determine if this information is in the files.

(5) Observe collateral and its condition, maintenance, protection and utilization by the intermediary or ultimate recipient.

(6) Review the process for handling loan proceeds to assure they are deposited in an interest-bearing account or time deposit in a bank or other financial institution fully protected by Federal or State insurance.

(7) Review materials to determine if the purpose of the program is being fulfilled; i.e., loan funds are being used in accordance with FmHA or its successor agency under Public Law 103–354 policies, procedures, the approved work plan and the Loan Agreement.

(8) A report of the visit will be made on ''RDLF/IRP Review Summary Sheet,'' or otherwise documented and included in the loan file in the format of the ''RDLF/IRP Review Summary Sheet.'' The report should include an opinion on the financial condition of the intermediary based upon the review of the annual audited financial statement, periodic financial statements, and observations made during the visit and other sources.

(9) Determine if the ultimate recipients' files are complete, organized, and current.

(10) Any instructions, directions, or corrective action should be confirmed by letter to the intermediaries.

(b) All intermediaries are required to provide an annual audited financial statement as well as a summary sheet of their lending program on each ultimate recipient receiving Federal funds. The summary sheet of their lending program on each ultimate recipient should include but not be limited to: the borrower's name and address, type of business, use of loan funds, loan amount, date of note, outstanding balance, date of final payment, interest rate, amount and type of collateral, insurance information, loan status, and the date of FmHA or its successor agency under Public Law 103–354 approval, if applicable.

(c) The intermediary should perform an analysis on its ultimate recipients and follow up in writing on any servicing action required. A copy of the analysis will be provided to FmHA or its successor agency under Public Law 103–354 for those ultimate recipients having Federal funds.

§ 1951.883 Reporting requirements.

(a) Intermediaries are to provide FmHA or its successor agency under Public Law 103–354 with reports as required in their respective loan agreements, applicable statutes and as required by FmHA or its successor agency under Public Law 103–354. The report shall include the following:

(1) An annual audit; dates of audit report period need not necessarily coincide with other reports on the RDLF/IRP. Audits shall be due 90 days following the audit period. Audits must cover

all of the intermediary's activities. Audits will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. FmHA or its successor agency under Public Law 103–354 does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement.

(2) Quarterly or semiannual reports (due 30 days after the end of the period).

(i) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been advanced to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's IRP revolving fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(ii) These reports shall contain only information on the IRP revolving loan fund, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP revolving fund from the Agency a separate report shall be made for each of the IRP revolving funds.

(iii) The reports will include, on a form provided by the Agency, information on the intermediary's lending activity, income and expenses, financial condition, and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(3) An annual report on the extent to which increased employment income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by such intermediary.

(4) Proposed budget for the following year.

(5) Other reports as FmHA or its successor agency under Public Law 103–354 may require from time to time.

(b) Intermediaries shall report to FmHA or its successor agency under Public Law 103–354 whenever an ultimate recipient is more than 90 days in arrears in the repayment of principal or interest.

[53 FR 30656, Aug. 15, 1988, as amended at 63 FR 6053, Feb. 6, 1998]

§ 1951.884 Non-Federal funds.

Once all the FmHA or its successor agency under Public Law 103–354-derived loan funds have been utilized by the intermediary for assistance to ultimate recipients according to the provisions of these regulations and the loan agreement, assistance to new ultimate recipients financed thereafter from the intermediary's revolving loan fund shall not be considered as being derived from Federal funds and the requirements of these regulations will not be imposed on those new ultimate recipients. Ultimate recipients assisted by the intermediary with FmHA or its successor agency under Public Law 103–354-derived loan funds shall be required to comply with the provisions of these regulations and/or loan agreement.

§ 1951.885 Loan classifications.

All loans to intermediaries in the FmHA or its successor agency under Public Law 103–354 portfolio will be classified by FmHA or its successor agency under Public Law 103–354 at loan closing and again whenever there is a change in the loan which would impact on the original classification. No one classification should be viewed as more important than others. The uncollectibility aspect of Doubtful and Loss classifications is of obvious importance. However, the function of the Substandard classification is to indicate those loans that are unduly risky

which may result in future losses. Substandard, Doubtful and Loss are adverse classifications. The special mention classification is for loans which are not adversely classified but which require the attention and followup of FmHA or its successor agency under Public Law 103–354. The loans will be classified as follows:

(a) *Seasoned loan classification.* To be classified as a seasoned loan, a loan must:

(1) Have a remaining principal loan balance of two-thirds or less of the original aggregate of all existing loans made to that intermediary.

(2) Be in compliance with all loan conditions and FmHA or its successor agency under Public Law 103–354 regulations.

(3) Have been current on the loan(s) payments for 24 consecutive months.

(4) Be secured by collateral which is determined to be adequate to ensure there will be no loss on the loan.

(b) *Current non-problem classification.* This classification includes those loans which have been current for less than 24 consecutive months and are in compliance with the loan conditions and FmHA or its successor agency under Public Law 103–354 regulations, and are not considered to pose a credit risk to FmHA or its successor agency under Public Law 103–354. These loans would be classified as seasoned but for the ''24 months'' and ''two-thirds'' requirements for seasoned loans.

(c) *Special mention classification.* This classification includes loans which do not presently expose FmHA or its successor agency under Public Law 103–354 to a sufficient degree of risk to warrant a Substandard classification but do possess credit deficiencies deserving FmHA or its successor agency under Public Law 103–354's close attention because the failure to correct these deficiencies could result in greater risk in the future. This classification would include loans that may be high quality, but which FmHA or its successor agency under Public Law 103–354 is unable to supervise properly because of an inadequate loan agreement, the condition or lack of control over the collateral, failure to obtain proper documentation or any other deviations from prudent lending practices. Adverse trends in the intermediary's operation or an imbalanced position in the balance sheet which has not reached a point that jeopardizes the repayment of the loan should be assigned to this classification. Loans in which actual, not potential, weaknesses are evident and significant should be considered for a Substandard classification.

(d) *Substandard classification.* This classification includes loans which are inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans in this classification must have a well defined weakness or weaknesses that jeopardize the payment in full of the debt. If the deficiencies are not corrected, there is a distinct possibility that FmHA or its successor agency under Public Law 103–354 will sustain some loss.

(e) *Doubtful classification.* This classification includes those loans which have all the weaknesses inherent in those classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, based on currently known facts, conditions and values, highly questionable and improbable.

(f) *Loss classification.* This classification includes those loans which are considered uncollectible and of such little value that their continuance as loans is not warranted. Even though partial recovery may be effected in the future, it is not practical or desirable to defer writing off these basically worthless loans.

§§ 1951.886—1951.888 [Reserved]

§ 1951.889 Transfer and assumption.

(a) All transfers and assumptions must be approved in advance in writing by FmHA or its successor agency under Public Law 103–354. Such transfers and assumptions must be to an eligible intermediary.

(b) Available transfer and assumption options to eligible intermediaries include the following:

(1) The total indebtedness may be transferred to another eligible intermediary on the same terms.

(2) The total indebtedness may be transferred to another eligible intermediary on different terms not to exceed those terms for which an initial loan can be made to an organization that would have been eligible originally.

(3) Less than total indebtedness may be transferred to another eligible intermediary on the same terms.

(4) Less than total indebtedness may be transferred to another eligible intermediary on different terms.

(c) The transferor will prepare the transfer document for FmHA or its successor agency under Public Law 103–354's review prior to the transfer and assumption.

(d) The transferee will provide FmHA or its successor agency under Public Law 103–354 with a copy of its latest financial statement and a copy of its annual financial statement for the past 3 years if available; its Federal Tax Identification number; organizational charter; minutes from the Board of Directors authorizing the transaction; certification of good standing from the Secretary of State or whatever regulatory agency oversees nonprofit corporations for that State or Commonwealth where the entity is headquartered; and any other information that FmHA or its successor agency under Public Law 103–354 deems necessary for its review.

(e) The assumption agreement will contain the FmHA or its successor agency under Public Law 103–354 case nunber of the transferor and transferee.

(f) When the transferee makes a cash downpayment in connection with the transfer and assumption, any proceeds received by the transferor will be credited on the transferor's loan debt in inverse order of maturity.

(g) The Administrator or designee will approve or decline all transfers and assumptions.

§ 1951.890 Office of Inspector General and Office of General Counsel referrals.

When facts or circumstances indicate that criminal violations, civil fraud, misrepresentations, or regulatory violations may have been committed by an applicant or an intermediary, FmHA or its successor agency under Public Law 103–354 will refer the case to the appropriate Regional Inspector General for Investigations, OIG, USDA, in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2012–B (available in any FmHA or its successor agency under Public Law 103–354 office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG and FmHA or its successor agency under Public Law 103–354 and confirmed in writing. In order to assure protection of the financial and other interests of the Government, a duplicate of the notification will be sent to the OGC. OGC will be consulted on legal questions. After OIG has accepted any matter for investigation, FmHA or its successor agency under Public Law 103–354 staff must coordinate with OIG in advance regarding routine servicing actions on existing loans.

§ 1951.891 Liquidation; default.

(a) In the event that FmHA or its successor agency under Public Law 103–354 takes over the servicing of the ultimate recipient of an intermediary, those loans will be serviced by this regulation and in accordance with the contractual arrangement between the intermediary and the ultimate recipient. Should the FmHA or its successor agency under Public Law 103–354 determine that it is necessary or desirable to take action to protect or further the interests of FmHA or its successor agency under Public Law 103–354 in connection with any default or breach of conditions under any loan made hereunder, the FmHA or its successor agency under Public Law 103–354 may:

(1) Declare that the loan is immediately due and payable.

(2) Assign or sell at public or private sale, or otherwise dispose of for cash or credit at its discretion and upon such terms and conditions as FmHA or its successor agency under Public Law 103–354 shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property or security assigned to or held by the FmHA or its successor agency under Public Law 103–354 in connection with financial assistance extended hereunder.

(3) Adjust interest rates, use fixed or variable rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by FmHA or its successor agency under Public Law 103–354 and take such actions in respect to such loans as are necessary or appropriate, consistent with the purpose of the program and this subpart. The Administrator will notify the FmHA or its successor agency under Public Law 103–354 Finance Office of any change in payment terms, such as reamortizations or interest rate adjustments, and effective dates of any changes resulting from servicing actions.

(b) Failure by an ultimate recipient to comply with the provisions of these regulations and/or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of its loan.

(c) Failure by an intermediary to comply with the provisions of these regulations or to relend funds in accordance with an approved work plan or loan agreement shall constitute grounds for a declaration of default and the demand for immediate and full repayment of the loan.

(d) In the event of default, the intermediary will promptly be informed in writing of the consequences of failing to comply with loan covenant(s).

(e) Protective advances to the intermediary will not be made in lieu of additional loans, in particular working capital loans. Protective advances are advances made by FmHA or its successor agency under Public Law 103–354 for the purpose of preserving and protecting the collateral where the intermediary has failed to and will not or cannot meet its obligations. The Administrator or designee must approve in writing all protective advances.

(f) In the event of bankruptcy by the intermediary and/or ultimate recipient, FmHA or its successor agency under Public Law 103–354 is responsible for protecting the interests of the Government. All bankruptcy cases should be reported immediately to the Regional Attorney. The Administrator must approve in advance and in writing the estimated liquidation expenses on loans in liquidation backruptcy. These expenses must be considered by FmHA or its successor agency under Public Law 103–354 to be reasonable and customary.

(g) Liquidation, management, and disposal of inventory property will be handled in accordance with subparts A, B, and C of part 1955 of this chapter.

§§ 1951.892—1951.893 [Reserved]

§ 1951.894 Debt settlement.

Debt settlement of all claims will be handled in accordance with the Federal Claims Collection Standards (4 CFR parts 101–105).

§ 1951.895 [Reserved]

§ 1951.896 Appeals.

Any appealable adverse decision made by FmHA or its successor agency under Public Law 103–354 which affects the borrower may be appealed upon written request of the aggrieved party in accordance with subpart B of part 1900 of this chapter.

§ 1951.897 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with an applicable law or opinion of the Comptroller General, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The basis for this exception will be fully documented. The documentation will: demonstrate the adverse impact; identify the particular requirement involved; and show how the adverse impact will be eliminated.

§§ 1951.898—1951.899 [Reserved]

§ 1951.900 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB Control Number 0575.0131. In accordance with 5 CFR part 1320, summarized below is the annualized public reporting burden for this regulation.

Sect. of regulations (A)	Title (B)	Form No. (if any) (C)	Estimated No. of respondents (D)	Report filed annually (E)	Total annual responses (d) × (e) (F)	Est. No. of man-hrs. per response (G)	Est. total manhours (f) × (g) (H)
Reporting Requirements—No Forms							
1951.860(a)(3)(i)	Weighted average interest calculation	Written	12	1	12	3.0	36
1951.877(a)(7)(i)	Insurance	Assignment	36	On occasion	100	1.0	100
1951.882(a)	Intermediary visitations	Meeting	36	1	36	4.5	162
1951.882(b)	Audited financial statement	Written	36	1	36	.5	18
1951.883(a)(2)(ii)	Program narrative	Written					
	IRP borrower		10	4	40	4.0	160
	RDLF borrower		26	2	52	4.0	208
1951.833(a)(2)(iii)	Employment/income narrative	Written	36	1	36	1.5	54
1951.883(a)(2)(iv)	Proposed budget	Written	36	1	36	2.5	90
1951.883(c)	Intermediary's report of loans 90 days in arrears	Written	36	On occasion	50	1.0	50
1951.889(c)	Assumption Agreement	Written	2	1	2	3.5	7
1951.889(d)	Transferee financial statement	Written	2	1	2	.5	1
Form Approved with this Docket							
1951.883(a)(2)	IRP Lending Activity Report	1951–4					
	IRP borrower		10	4	40	20	800
	RDLF borrower		26	2	52	20	1040
Reporting Requirements Under Other Numbers							
1951.872(b)	Request for Environmental Information	1940–20 (0575–0094).					
					[1]494		[2]2,726

[1] Docket totals. [2] Total hours.

Subpart S—Farmer Program Account Servicing Policies

SOURCE: 57 FR 18626, Apr. 30, 1992, unless otherwise noted.

§ 1951.901 Purpose.

This subpart describes the policies and procedures that the agency will use in servicing most Farm Loan Program (FLP) loans. The loans include Operating Loan (OL), Farm Ownership Loan (FO), Soil and Water Loan (SW), Softwood Timber Production Loan (ST), Emergency Loan (EM), Economic Emergency Loan (EE), Economic Opportunity Loan (EO), Recreation Loan (RL), and Rural Housing Loan for farm service buildings (RHF) accounts. Shared Appreciation Loans (SA) may be reamortized under this subpart if the borrower also has outstanding Farm Loan Programs loans. Cases involving unauthorized assistance will be serviced as described in subpart L of this part. When it has been determined that all the conditions outlined in § 1951.558(b) of subpart L of this part have been met, the loan will be treated as an authorized loan and may be serviced under this subpart. Cases involving graduation of borrowers to other sources of credit will be serviced as described in subpart F of this part. This subpart does not apply to FLP Non-Program (NP) loans. Examples of Primary Loan Servicing actions are: consolidation, rescheduling and/or reamortization, deferral of principal and interest payments, reclassifying to ST loans, reducing interest rate on the loan, writedown of debt and conservation contract, or a combination of these actions. Preservation loan servicing is the Homestead Protection program. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to agency employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an agency employee.

[62 FR 10120, Mar. 5, 1997, as amended at 63 FR 6628, Feb. 10, 1998]

§ 1951.902 General.

Supervision and Servicing. It is a primary objective of the Agency to provide supervised credit to borrowers in financial, production or other difficulty in a manner that will assure the maximum opportunity for their recovery and, at the same time, get the best recovery for the Government. Supervision and servicing are continuing processes that begin the day a farmer comes into the office. Providing supervised credit has two objectives:

(a) To help farmers set goals, work on problem areas and work toward graduation to commercial credit;

(b) To recover the maximum possible amount for the Government.

[62 FR 10120, Mar. 5, 1997]

§ 1951.903 Authorities and responsibilities.

(a) *Responsibilities.* Servicing officials will make full use of the National automated tracked system to track and manage the FLP primary and preservation loan servicing and debt settlement programs.

(b) *Authorities.* All loan servicing decisions except as set forth in this section will be made by the servicing official except the approval of writedown and buyout of a borrower's debt. Also, all applications for debt settlement of FLP loans must be recommended by the County Committee (except where the debt has been discharged through bankruptcy), approved by the State Executive Director or the Administrator (depending upon the amount of debt to be settled), and processed in accordance with the provisions of subpart B of part 1956 of this chapter. Servicing officials are authorized to accept a buyout payment when the borrower(s) pays the current market value of the security set forth in § 1951.909 of this Instruction. Only State Executive Directors are authorized to approve writedown and buyout in accordance with § 1951.909 of this part and release a divorced spouse from liability on the debt in accordance with § 1951.909(a) of this part.

[62 FR 10121, Mar. 5, 1997]

§1951.904 Mediation, reviews and appeals.

(a) *Participant rights.* (1) For loan servicing under this subpart, mediation or a voluntary meeting of creditors will be offered if the DALR$ calculations indicate that a feasible plan of operation cannot be developed considering all primary loan service programs, Softwood Timber, and Conservation Contracts. In states with a USDA Certified Mediation Program, mediation will be offered. In all other states, a voluntary meeting of creditors will be offered.

(2) Any negotiation of an Agency appraisal must be completed prior to the meeting of creditors or mediation.

(3) If the borrower does not request mediation or a voluntary meeting of creditors as offered in Exhibit E of this subpart within 45 days, the servicing official will issue the appropriate ''Notice of Intent to Accelerate or to Continue Acceleration and Notice of Borrowers' Rights.''

(4) Whenever the servicing official makes a decision that will adversely affect a participant, the participant will be informed that the decision can be reviewed in accordance with 7 CFR part 780 and indicate whether it can be appealed to the USDA National Appeals Division (NAD) according to regulations set forth in 7 CFR part 11. Nonprogram (NP) participants are not entitled to appeal rights.

(b) *Non-appealable decisions.* The following types of decisions are not appealable:

(1) Decisions made by parties outside the agency, even when those decisions are used as a basis for the agency's decisions.

(2) Decisions that do not meet the eligibility requirements of 7 CFR part 11.

(3) Interest rates as set forth in Agency procedures, except appeals alleging application of the incorrect interest rate.

(4) Refusal to request or grant an administrative waiver permitted by program regulations.

(5) Denials of assistance due to lack of funds.

(6) In cases where the adverse decision is based on both appealable and non-appealable actions, the adverse action is not appealable.

(7) Determinations previously made by the Agency that have been appealed, and a NAD decision adverse to the participant has been entered; or upon which the time frame for appeal has expired with no appeal being requested.

(c) *Next-level review.* Any adverse decision, whether appealable or non-appealable, may be reviewed in accordance with 7 CFR part 780.

(d) *NAD review.* (1) A participant may request that NAD review the Agency's determination that the decision may not be appealed.

(2) A participant may request that NAD review any decision that is appealable.

(3) NAD will review the participant's request in accordance with 7 CFR part 11.

(e) *Agency actions pending outcome of appeal.* Assistance will not be discontinued pending the outcome of an appeal of any adverse action. Releases for essential family living and farm operating expenses will not be terminated until the account has been accelerated.

(f) *Time limits.* Time limits for action under this subpart will be tolled during the pendency of an appeal, but not during the pendency of a request that NAD determine that a matter is or is not appealable.

[62 FR 10121, Mar. 5, 1997]

§951.905 [Reserved]

§1951.906 Definitions.

As used in this subpart, the following definitions apply:

Borrower. An individual or entity which has outstanding obligations to the agency under any Farm Loan Programs (FLP) loan, without regard to whether the loan has been accelerated. This does not include any such debtor whose total loans and accounts have been foreclosed or liquidated, voluntarily or otherwise. Collection-only borrowers are considered borrowers. Borrower also includes any other party liable for the FLP debt. Nonprogram (NP) borrowers are not considered borrowers for the purposes of this subpart.

CONACT or CONACT property. Property which secured a loan made or insured under the Consolidated Farm and

Rural Development Act. Within this part, it shall also be construed to cover property which secured other FLP loans.

Conservation contract. A contract under which a borrower agrees to set aside land for conservation, recreation or wildlife purposes in exchange for cancellation of a portion of an outstanding FLP debt. Relief obtained in this manner is not considered debt forgiveness as defined in this section.

Consolidation. The combining and rescheduling of the rates and terms of two or more notes of the same type of OL or EO loans, EE operating-type loans or EM loans. EM actual loss loans will not be consolidated.

Current market value buyout. Termination of a borrower's loan obligations to the agency in exchange for payment of the current appraised value of the security property, less any prior liens.

Debt forgiveness. For the purposes of loan servicing, debt forgiveness is defined as a reduction or termination of a direct FLP loan in a manner that results in a loss to the Agency. Included, but not limited to, are losses from a writedown or writeoff under this subpart, subpart J of this part, subpart B of part 1956 of this chapter, after discharge under the bankruptcy code, and associated with release of liability. Debt cancellation through conservation contracts is not considered debt forgiveness under this subpart.

Debt settlement. The settlement of debts owed the United States for FLP loans. The types of debt settlement programs are: compromise, adjustment, cancellation and chargeoff.These programs are administered in accordance with subpart B of part 1956 of this chapter. Any action through debt settlement which results in a loss to the Agency will be considered debt forgiveness.

Deferral. An approved delay in making regularly scheduled payments, including softwood timber (ST) loans. Deferral is not considered debt forgiveness.

Delinquent borrower. A borrower who has failed to make all or part of a payment which is due for 30 or more calendar days after the due date.

Entity. A corporation, partnership, joint operation, or cooperative.

Farm Loan Programs (FLP) loans. This refers to Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

Farm plan. Form FmHA 431–2, ''Farm and Home Plan,'' or other plans or documents acceptable to the agency that will accurately reflect the production and financial management of the farming operation for one production cycle. The agency will not require the use of consolidated financial statements.

Feasible plan. A feasible plan must be based upon the applicant or borrower's actual records that show the farming operation's actual income, production and expenses. These records will include income tax returns and supporting documents (hereafter called income tax records). The records must be for the most recent five-year period or, if the borrower has been farming less than five years, for the period which the borrower has farmed. For borrowers who have been farming for less than five years, other available records will be used in the order listed in section § 1924.57(d)(1) of subpart B of part 1924 of this chapter to complete a five-year history. Future production yields will be based on an average of the most recent past five years' actual production yields. Borrowers with yields affected by disasters in at least two of the five most recent years may exclude the crop year with the lowest actual yield. In addition, in accordance with section § 1924.57(d)(1) of subpart B of part 1924 of this chapter, if the applicant's remaining disaster years' yields are less than the County average yield, and the borrower's yields were affected by the disaster, County average yields will be used for those years. If County average yields are not available, State average yields will be used. These records will be used along with realistic anticipated prices, including any planned FLP loan payments, to determine that the income from the farming operation, and any reliable off-farm income, will provide the income necessary for an applicant or borrower to at least be able to:

(1) Pay all operating expenses and taxes which are due during the projected farm business accounting period.

(2) Meet scheduled payments on all debts.

(3) Meet up to 110 percent, but not less than 100 percent, of the amount indicated for payment of farm operating expenses, debt servicing obligations and family living expenses. The Agency will assume that a borrower needs this margin to meet all obligations and continue farming. However, this will not prohibit a borrower from receiving debt restructuring because the farm and home plan shows less than such a margin. In no case will a borrower with a cash flow of less than 100 percent receive restructuring.

(d) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower, which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which reside in the same household.

Financially distressed. A financially distressed borrower is one who will not be able to make payments as planned for the current or next business accounting period. Borrowers will also be considered as in financial distress if it is determined that they will not be able to project a feasible plan of operation for the next business accounting period.

Foreclosed. The completed act of selling security either under the ''power of sale'' in the security instrument or through court proceedings.

Good faith. An eligibility requirement for Primary Loan Servicing and Current Market Value Buyout. Borrowers are considered to have acted in ''good faith'' if they have demonstrated ''honesty'' and ''sincerity'' in complying with the requirements of Form 1962–1, ''Agreement for the Use of Proceeds/Release of Chattel Security,'' and any other written agreements made with the agency, as documented in the case file. In addition, the agency must substantiate any allegations of fraud, waste, or conversion with a written legal opinion from the Office of the General Counsel (OGC) when such allegations are used to deny a servicing request. A borrower will not be considered to lack ''good faith'' if the sole basis for such a determination was the disposition of normal income security (§1962.4 of subpart A of part 1962 of this chapter) prior to October 14, 1988, without the Agency's consent and the borrower demonstrates that the proceeds were used to pay essential family living and farm operating expenses that could have been approved according to §1962.17 of subpart A of part 1962 of this chapter.

Homestead Protection. The right of a former owner to apply to lease, with an option to purchase the Homestead Protection property, not to exceed 10 acres.

Homestead Protection property. This refers to the principal residence which secured a FLP loan.

Indian Reservation. Indian reservation means all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

Limited Resource Program. A reduction of interest rates for operating loans (OL), farm ownership loans (FO) and soil and water loans (SW).

Liquidated. The completed act of voluntarily selling security to end the obligation for the debt, or involuntarily as the result of a completed civil suit against a borrower to recover collateral against the debt. The filing of a claim in a bankruptcy action is not a complete liquidation of the borrower's accounts. Collection-only accounts are not considered liquidated.

Loan service program. A Primary Loan Servicing program or a Preservation Loan Servicing program (Homestead Protection) for FLP loan borrowers.

New application. An application submitted on or after November 28, 1990,

for loan servicing programs. This does not include an application reconsidered after an appeal or revision of an application submitted before November 28, 1990.

Nonessential assets. Nonessential assets are those in which the borrower has an ownership interest, that:

(1) Do not contribute a net income to pay essential family living expenses or to maintain a sound farming operation (see 1962.17 of subpart A of part 1962 of this chapter); and

(2) Are not exempt from judgment creditors or in a bankruptcy action. Each State Executive Director, with the guidance of the Office of the General Counsel, will issue a State Supplement to establish guidelines on items that are exempt from judgment creditors and are exempt under bankruptcy law in accordance with statute.

Nonprogram (NP) loan. An NP loan results when a loan is made to an ineligible applicant or transferee in connection with a loan assumption and sale of inventory properties at ineligible terms. Borrowers originally determined eligible by the agency and found to be ineligible after the loan was made due to an agency error are not considered to have nonprogram loans.

Preservation loan service program. See Homestead Protection.

Primary loan service program. Primary loan service program means:

(1) Loan consolidation, rescheduling, or reamortization;

(2) Interest rate reduction, including use of the limited resource program;

(3) Loan restructuring, including deferral, or writing down of the principal or accumulated interest; or

(4) Any combination of the above.

Reamortization. Reamortization is rearranging the installment payments of a real estate loan, and may include changing the interest rate and terms of a loan made for Subtitle A purposes.

Rescheduling. Rescheduling is rewriting the rates and/or terms of OL, SL, EO loans, EE operating-type loans or EM loans made for Subtitle B purposes.

Writedown. For purposes of this subpart, writedown is reducing a borrower's debt to an amount that will result in a feasible plan of operation.

[62 FR 10121, Mar. 5, 1997]

§ 1951.907 Notice of Loan Service Programs.

In those instances where the applicable notice is sent certified mail, and the certified mail is not accepted by the borrower, the County Supervisor will immediately send the documents from the certified mail package to the borrower's last known address, first class mail. The appropriate response time will commence 3 days following the date of first class mailing.

(a) *Notification of borrowers who file bankruptcy.* The account will be serviced in accordance with instructions from the Regional Office of the General Counsel (OGC), and in accordance with § 1962.47(a)(3) of subpart A of part 1962 of this chapter.

(b) *Notification of borrowers who have been discharged in bankruptcy or who have plans confirmed by bankruptcy courts.* If the borrower has been discharged in bankruptcy or the borrower is operating under a confirmed plan, the account will be serviced in accordance with instructions from the Regional OGC and in accordance with § 1962.47 (a) or (c) of subpart A of part 1962 of this chapter.

(c) *Notification of borrowers 90 days past due on payments.* FLP borrowers who are at least 90 days past due (60 days delinquent) will be sent Exhibit A of this subpart with attachments 1 and 2 by certified mail, return receipt requested. If the borrower submits an incomplete application, see paragraph (e) of this section for procedures on requesting additional information. Delinquent borrowers who have also violated their loan agreements with the agency will be handled in accordance with § 1951.907(e). In addition to the requirements set forth above, servicing officials will provide Attachments 1 and 2 of Exhibit A of this subpart to these borrowers, as set forth below:

(1) At the time an application is made for participation in an FLP loan service program, unless such application is the result of the notice provided to the borrower in accordance with this section,

(2) On written request of any FLP borrower, whether delinquent or not, prior to the sending of a packet under paragraph (c) of this section, and

(3) If a borrower has not previously received exhibit A and attachments 1 and 2 of this subpart, such exhibit and attachments will be provided before the earliest of:

(i) Initiating any liquidation action,

(ii) Accepting a voluntary conveyance of security, or the borrower requesting permission to sell security,

(iii) Accelerating payments on the loan,

(iv) Repossessing the borrower's property,

(v) Foreclosing on property, or

(vi) Taking any other collection action.

(d) *Notification of borrowers in nonmonetary default; delinquent borrowers also in non monetary default, or when a junior or senior lienholder is foreclosing.* FLP borrowers who are in non-monetary default will be sent attachments 1, 3, and 4 of exhibit A of this subpart by certified mail, return receipt requested. If a case is in the hands of the Department of Justice or in litigation, no loan servicing action will be taken without Department of Justice or OGC concurrence (see 1962.49 of this chapter). Any servicing request will be processed as indicated in §1951.909. The account will not be liquidated until the borrower has the opportunity to appeal any adverse decision. After any final appeal decision that does not result in a resolution of the loan defaults, the account will be accelerated.

(e) *Request for primary and preservation loan service programs.* (1) To request consideration for Primary and Preservation Loan Service programs, borrowers who are sent exhibit A, with attachments 1 and 2 or attachments 1, 3, and 4 must complete and return attachment 2 or attachment 4, as appropriate, to the local county office within 60 days after receiving those documents, with the forms required by this paragraph for a completed application.

(2) If borrowers are sent attachments 3 and 4 and do not request servicing within 60 days, the agency will proceed with liquidation in accordance with §1955.15 of this chapter.

(3) If borrowers are sent exhibit A and attachments 1 and 2 of this subpart and do not submit a completed application within the 60-day time period, the servicing official will send attachments 9 and 10, or 9–A and 10–A of exhibit A of this subpart, as applicable. These attachments will not be sent to borrowers who are being serviced in accordance with §1951.908. For borrowers receiving attachments 9 and 10 or 9–A and 10–A, the agency will proceed with liquidation in accordance with §1955.15 of this chapter.

(4) If a borrower has moved and left a forwarding address, the certified mail will be forwarded. If no forwarding address is given, the mail will be returned to the county office. The servicing official will immediately send the documents from the certified mail package to the borrower's last known address, first class mail. The borrower's response date for a completed application will begin on the date of receipt of the certified mail or 3 days following the date of first class mailing, whichever is earlier.

(5) An application for loan service programs must include the following forms (available in any agency office), and data, unless the information is already in the borrower's case file and still current, as determined by the approval official:

(i) Attachment 2 or 4 of exhibit A to this subpart, response form to apply for loan servicing.

(ii) Form 410–1, ''Application for FmHA Services,'' including a current (within 90 days) financial statement of all individuals and entities personally liable for the FLP debt.

(iii) Form 431–2, ''Farm and Home Plan,'' or any other form or submission acceptable to the agency that sets forth a plan of operation and the necessary information. Commodity prices supplied by the agency will be used to complete the forms.

(iv) Form 440–32, ''Request for Statement of Debts and Collateral.''

(v) Form RD 1910–5, ''Request for Verification of Employment.''

(vi) Form AD–1026, ''Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification,'' if the one on file with the agency does not reflect all the land owned and leased by the borrower.

(vii) Form SCS CPA–26, ''Highly Erodible Land and Wetland Determination,'' if not previously on file with the agency for the farm operation. This

form is included as part of the application after being completed by NRCS. (This form is available at NRCS local offices.)

(viii) If the applicant wants to be considered for a conservation contract, a map or copy of an aerial photo of the farm, on which the applicant must show that portion of the farm and approximate acres to be considered in a request for debt restructuring provided for in the conservation contract program.

(ix) The most recent five years' income tax returns and supporting documents, unless the borrower has been farming for less than five years. In such case, income tax returns and supporting documents for the tax years that the borrower farmed.

(x) If the borrower is applying for debt settlement, Form RD1956–1, ''Application for Settlement of Indebtedness.''

(6) The borrower will be provided with copies of these forms when Exhibit A is sent, and may request copies of regulations and the forms manual inserts (FMI) in writing within 30 days of receipt of the loan servicing notice. If these latter items are not provided within 10 days of such a request, the borrower's time for submission of a complete application will be increased by the period of delay in excess of 10 days caused by the Agency.

(7) Not more than one 60-day period will be provided to a borrower to respond to the notice of loan service programs except in accordance with § 1951.908. Subsequent notices as provided for in this section will not be issued until the first notice is resolved.

[57 FR 18626, Apr. 30, 1992, as amended at 62 FR 10123, Mar. 5, 1997]

§ 1951.908 Servicing financially distressed current borrowers.

A borrower who is financially distressed, but is not yet delinquent on FLP payments, may request servicing at any time.

(a) *Notification*. If a current plan of operation demonstrates that the borrower is or will be financially distressed, as defined in § 1951.906, or if the borrower otherwise requests servicing, the servicing official will provide attachments 1 and 2 of exhibit A of this subpart.

(b) *Eligibility*. To be considered for servicing in accordance with this section, the borrower must submit to the county office within 60 days Attachment 2 of exhibit A of this subpart and a complete application in accordance with the requirements of § 1951.907(e).

(1) The eligibility requirements of § 1951.909(c) (1) and (2) apply to servicing under this section.

(2) Eligible financially distressed borrowers who are current on their FLP loan payments may be considered for the Primary Loan Service programs described in §§ 1951.909(e) (1), (2) and (3).

(3) Financially distressed borrowers who are not delinquent are not eligible for writedown of debt or buyout as described in 1951.909.

(c) *Processing the application*. The servicing official must process a completed application and notify the borrower of the decision.

(1) Current borrowers will be considered only for the Primary Loan Servicing programs described in §§ 1951.909 (e) (1), (2), and (3). The servicing official must use the Debt and Loan Restructuring System (DALR$) program, in accordance with exhibit J–1 of this subpart, to determine if a feasible plan can be developed as defined in § 1951.906.

(2) If a feasible plan can be developed, the borrower will be sent exhibit B of this subpart with attachment 1 and the printout of the DALR$ calculations as notification of the favorable decision. The borrower must accept the offer within 45 days of its receipt by returning attachment 1 to exhibit B of this subpart or the offer will expire. If the borrower accepts, loan restructuring will be processed in accordance with §§ 1951.909 (e) (1), (2), or (3), as applicable.

(3) If a feasible plan cannot be developed, the borrower will be informed of the reasons for the adverse decision. The DALR$ printout will be attached.

(4) Current borrowers who have received notices under this section and who do not apply for primary loan servicing, or who refuse an offer to restructure their debt, and later become 90 days past due on the FLP loan payment, will be sent notices as described in § 1951.907.

(5) Borrowers whose accounts are not delinquent may receive rescheduling, reamortization, consolidation, or deferral under this subpart only after they have paid at least a portion of the interest due on their FLP debt. The portion due will be based on the applicant's ability to pay, as determined by thoroughly analyzing the farm operation, including any off-farm income. The payment must be made on or before the date that restructuring is closed. Borrowers in non-monetary default, but not delinquent on their FLP debt, must cure the non-monetary default before they may be considered for servicing under this paragraph.

[62 FR 10124, Mar. 5, 1997]

§1951.909 Processing primary loan service programs requests.

(a) *Servicing official responsibilities.* (1) After receipt of attachment 2 or 4 and a completed application in accordance with §1951.907(e), the servicing official will consider all primary service programs options in this subpart. That official must use the Debt and Loan Restructuring System (DALR$) computer program, in accordance with exhibit J–1 of this subpart for borrowers who submit a new application, to attempt to find the combination of loan service programs that will result in a feasible plan. Borrowers who request loan servicing and who have disposed of all the FLP loan security, including Collection-Only borrowers, will be processed in accordance with part 1956, subpart B, of this chapter. If the application includes a request for the Conservation Contract program, as indicated by the submission of the information required in §1951.907(e)(5)(viii), the servicing official will determine whether the borrower is eligible, based on criteria as set forth in exhibit H of this subpart. If the borrower is eligible, the servicing official will make an estimate of the information needed to permit the DALR$ program to make the calculations of feasibility of the Conservation Contract. The assumptions used to establish the estimates will be based on the servicing official's knowledge of the farmland values, the borrower's repayment ability, and the proposed contract acreage. When the DALR$ calculations for restructuring are completed, the borrower will be notified as set forth in paragraph (h) of this section.

(2) When jointly liable individual borrowers have been divorced and one has withdrawn from the operation, the State Executive Director will consider, upon the recommendation of the servicing official, the release of liability for the individual who has withdrawn if the following conditions are met.

(i) A divorce decree or property settlement document held the withdrawing party not responsible for the loan payments;

(ii) The withdrawing party's interest in the security is conveyed to the borrower with whom the loan will be continued;

(iii) The person withdrawing does not have any repayment ability for the loan, and does not own any nonessential assets, as defined in §1951.906;

(iv) The individual withdrawing has never received debt forgiveness on another direct loan; and.

(v) The withdrawing party provides a copy of the divorce decree and property settlement, evidence of conveyance, a current financial statement, verification of income and debts, and Form 431–2 or Form RD–1944–3 as applicable.

(3) If a completed application includes a request for a waiver from the training required by paragraph (c)(5) of this section, the County Committee will, prior to any offer of Primary Loan Servicing, evaluate the borrower's knowledge and ability in production and financial management and determine the need for additional training as set out in §1924.74 of this chapter.

(b) *Adverse determination.* (1) If the approval official determines that the borrower is not eligible for any of the Primary Loan Service programs or restructuring is not feasible because of debt held by other lenders, the borrower will be advised of mediation or meeting of creditors as provided in paragraph (h)(3) of this section. If mediation or the meeting of creditors does not result in a feasible plan, the borrower will be sent attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as applicable.

(2) Borrowers who do not buy out their debt at its current market value, or who indicate in writing that they do

not wish to buy out, will automatically be considered for debt settlement if they submitted an ''Application For Debt Settlement.'' Any appeal of a primary loan servicing denial will be completed before the servicing official begins any further processing of a Debt Settlement or Homestead Protection request. If the adverse decision on restructuring is upheld on appeal, the borrower will be considered for these options. The servicing official will complete the processing of the borrower's application for Debt Settlement in accordance with part 1956 of this chapter. Homestead Protection will be processed in accordance with § 1951.911. No acceleration or foreclosure will occur until the appeal process has been completed for servicing or debt settlement requests timely submitted under this subpart.

(3) Applicants may request a negotiated appraisal in accordance with paragraph (i) of this section if they object to the agency's appraisal. Negotiation of the appraisal, if requested by the borrower, will take place before mediation or a voluntary meeting of creditors.

(c) *Eligibility.* Applicants will be eligible for Primary Loan Service programs if the servicing official has determined that they meet all of the following requirements:

(1) The delinquency or financial distress does exist and is due to circumstances beyond the control of the borrower, due to a reduction in income which reduces cash flow to a point where outflows exceed inflows, only as follows:

(i) The reduction in essential income from a non-farm job due to unemployment or underemployment of the borrower-operator or spouse is caused by circumstances beyond their control;

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm;

(iii) Natural disasters, an outbreak of uncontrollable disease, or uncontrollable insect damage which caused severe loss of agricultural production that reduced repayment ability so that scheduled payments cannot be made; or

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or low market prices for agricultural commodities as compared to production costs, that reduce repayment ability so that the scheduled payments cannot be made.

(2) The borrower has acted in good faith.

(3) Borrowers who do not meet the eligibility requirements of this section will be notified of the adverse decision by sending attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as appropriate.

(4) Borrowers with sufficient nonessential assets to bring the FLP loan account current are not eligible for assistance under this subpart and will be processed in accordance with § 1951.910 of this subpart.

(5) The borrower must agree to meet the training requirements of § 1924.74 of this chapter unless a waiver is granted in accordance with that section. The training requirement applies to all primary loan servicing programs.

(d) *Feasibility determinations.* The servicing official must determine:

(1) That the borrower will be able to develop a feasible plan.

(2) If restructured, the loan will result in a net recovery to the Government that will be equal to or greater than the net recovery value from involuntary liquidation or foreclosure as calculated in accordance with paragraph (f) of this section. A comparison with net recovery to the Government, however, will not be made when establishing conservation contracts under exhibit H of this subpart.

(e) *Primary loan service programs.* Any FLP borrower may request Primary Loan Servicing Programs described in this subpart at any time prior to becoming 90 days past due. However, borrowers must show that they are not able to pay their debt as scheduled before the agency will approve Primary Loan Servicing Programs. The agency will consider the borrower's other assets in accordance with § 1951.910 of this subpart. Rescheduling, reamortization, consolidation, or deferral may be utilized for any eligible borrower. Existing deferrals will be cancelled at the same time additional primary loan servicing is received. The loan will be entered into DALR$ as if the deferral were already cancelled. If DALR$

shows that a borrower can develop a feasible plan without a writedown at a lower cash flow margin than with a writedown, that borrower will be provided the opportunity to choose between restructuring with or without a writedown.

(1) *Consolidation and rescheduling of OL and EO loans, EE operating-type loans and EM loans made for subtitle B purposes including EM loss loans.* This subsection explains how to consolidate and/or reschedule *existing* loans, providing the borrower agrees to such actions. When the servicing official determines that consolidation and/or rescheduling will assist in the orderly collection of the loan, the servicing official should take such action provided all of the following conditions exist:

(i) The borrower meets the eligibility requirements in paragraph (c) of this section;

(ii) Such action is not taken to circumvent the FLP graduation requirements;

(iii) The borrower's account is not being serviced by the OGC or the U.S. Attorney and there are no plans to have the account serviced by either of these offices in the near future;

(iv) Loans may be rescheduled or reamortized, as appropriate, to bring the account current or to keep the account from becoming delinquent. A sufficient number of notes including all delinquent notes will be rescheduled to permit the development of a feasible plan of operation;

(v) The borrower will comply with the highly Erodible Land and Wetland Conservation provisions of exhibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) Loans secured by real estate will not be consolidated and/or rescheduled, until the servicing official reviews the Government's real estate lien priority and value of security and decides that such an action will be in the best interest of the Government and the borrower. If there are any liens which were not in existence at the time the note was signed, the servicing official will ask the OGC for an opinion as to what lien position the Government will have if a new note is taken unless a State supplement authorizing this action has been issued on this subject;

(vii) Only loans of the same type will be consolidated;

(viii) EM actual loss loans will not be consolidated;

(ix) Loans serviced under subpart L of this part will not be consolidated with another loan;

(x) Loans that have been deferred under this section will not be consolidated and/or rescheduled during the deferral period;

(xi) Terms of consolidated and/or rescheduled loans are as follows:

(A) Consolidated and/or rescheduled loans will be repaid according to the borrower's repayment ability, but will not exceed 15 years from the date of the consolidation and/or rescheduling action, except:

(B) Repayment of loans solely for recreation and/or nonfarm enterprise purposes may not exceed seven years from the date of the consolidation and/or rescheduling action (the date the new note is signed).

(C) Repayment of EE loans may not exceed 15 years from the date of rescheduling.

(xii) Interest rates of consolidated and/or rescheduled loans will be as follows:

(A) The interest rate for consolidated and/or rescheduled loans will be the lesser of the current interest rate for that type of loan or the lowest *original* loan note rate on any of the original notes being consolidated and/or rescheduled. In the case of an OL-limited resource loan, it will be the lesser of the current limited resource OL loan rate or the original note rate. The interest rate for loans rescheduled but not consolidated will be the lesser of the current interest rate for that type of loan or the *original* loan note rate.

(B) At the time of the consolidation and/or rescheduling action, OL loans that were not assigned a limited resource rate when the loan was received, may be assigned a limited resource rate if:

(*1*) The borrower meets the requirements for the limited resource interest rate, and

(*2*) A feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section.

(xiii) The original (old) note(s) will be marked ''Rescheduled'' and stapled

to the new rescheduled promissory note and will be filed in the operation file. Copy(ies) for the borrower's(s') case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If part of a note is written down, the written down note will be marked ''Rescheduled with Debt Write Down,'' and will be filed in the operation file.

(xiv) For applications received before November 28, 1990, the amount of outstanding accrued interest more than 90 days overdue and any outstanding protective advances, as defined in § 1965.11(b) of subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the date the new note is signed by the borrower). Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens. See section II E of exhibit J of this subpart for an explanation of how to schedule payment of interest not more than 90 days overdue; and

(xv) For new applications, the amount of outstanding accrued interest and any outstanding protective advances, as defined in § 1965.11(b) subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the date the new note is signed by the borrower) in accordance with the provisions of exhibit J–1 of this subpart. Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens.

(2) *Reamortization of FO, SW, RL, RHF, EE, or EM loans made for real estate purposes.* When the servicing official determines that a reamortization action will assist in the orderly collection of the loan, the servicing official should take such action, provided:

(i) The borrower meets the eligibility requirements of 1951.909(c) of this subpart;

(ii) Such action is not taken to circumvent the FLP graduation requirements;

(iii) The borrower's account is not being serviced by the OGC or the U.S. Attorney, and there are no plans to have the account serviced by either of these offices in the foreseeable future;

(iv) A feasible plan for the borrower cannot be developed with the existing repayment schedule. A sufficient number of notes, including all delinquent notes, will be reamortized to permit the development of a feasible plan of operation;

(v) The borrower will comply with the Highly Erodible Land and Wetland Conservation requirements of exhibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) Loans that have been deferred in this supbart will not be reamortized during the deferral period unless the deferral is cancelled;

(vii) Reamortized installments usually will be scheduled for repayment within the remaining time period of the note or assumption agreement being reamortized. If repayment is extended, the new repayment period plus the period the loan has been in effect may not exceed the maximum number of years for that type of loan as set forth below, or the useful life of the security, whichever is less:

(A) FO, SW, RL, EE, and EM loans may not exceed 40 years from the date of the original note or assumption agreement.

(B) EE loans for real estate purposes, which are secured by chattels only, may be reamortized over a period not to exceed 20 years from the date of the original note or assumption agreement.

(C) RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(D) SA loans may not exceed 25 years from the date of the original amortized note.

(viii) The interest rate will be as follows:

(A) The interest rate will be the current interest rate in effect on the date of reamortization (the date the new note is signed by the borrower), or the interest rate on the original Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be the limited resource FO or SW loan rate or the original loan note rate, whichever is less. SA loans will be remortized at the current nonprogram interest rate in effect on the

date of reamortization or the nonprogram interest rate on the original amortized note, whichever is less.

(B) At the time of the reamortization, an FO or SW loan that was not assigned a limited resource rate when the loan was received, may be changed to a limited resource interest rate if:

(*1*) The borrower meets the requirements for a limited resource interest rate,

(*2*) A feasible plan cannot be developed at regular interest rates and at the maximum terms permitted in this section, and

(*3*) For SW loans, the loans funds were used for soil and water conservation and protection purposes as set forth in §1943.66 (a)(1) through (a)(5) of subpart B of part 1943 of this chapter.

(C) For applications received before November 28, 1990, the amount of accrued interest more than 90 days overdue and any protective advances, as defined in §1965.11(b) of subpart A of part 1965 of this chapter, charged to the borrower's account, will be added to the principal at the time of the reamortization action (the date the new note is signed by the borrower). *Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens.* If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the Form 1940–17 is processed and the next installment due date. See section II E of exhibit J of this subpart for an explanation of how to schedule payments of interest not more than 90 days overdue. For new applications, the amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of reamortization (the date the new note is signed by the borrower) in accordance with the provisions of exhibit J–1 of this subpart.

(ix) The original (old) note(s) will be marked ''Reamortized'' and will be stapled to the new promissory note and filed in the operational file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If a part of a note is written down, the written down note will be marked ''Reamortized with Debt Writedown'' and will be filed as indicated above in this paragraph.

(3) *Deferral of existing OL, FO, SW, RL, EM, EO, RHF, and EE loans*—(i) *Loan deferrals.* Deferrals will be considered only after it has been determined that consolidation, rescheduling, and reamortization, in accordance with this subpart, will not provide a feasible plan.

(ii) *Conditions.* In order to be considered for a deferral, the borrower must meet both of the following conditions:

(A) The need for the deferral must be temporary. To be *temporary* means that the borrowers will be able to show to the satisfaction of the servicing official that they will be able to resume payment on the debt by the end of the deferral period, or the new payments, as established by using consolidation, rescheduling, or reamortization can be resumed at the end of the deferral period; and

(B) Continuation of loan payments as presently scheduled without change, will unduly impair the borrower's standard of living. An unduly impaired standard of living is a condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, joint operators, corporations, and cooperatives do not have family living expenses), pay normal farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, a joint operation, a corporation, or a cooperative, maintain essential chattels and real estate, and meet the scheduled payments of all debts.

(iii) *Approval offical determinations.* The approval official must:

(A) Determine that the borrower meets the eligibility requirements of §1951.909(c) of this subpart;

(B) Determine that a deferral of payments is necessary and appropriately document the conditions causing the need for deferral;

(C) If a borrower owns 50 acres or more of marginal land as defined in exhibit G of this subpart and a feasible plan cannot be developed after consideration of a deferral, the servicing official will inform the borrower about the Softwood Timber (ST) loan program authorized by exhibit G of this subpart by sending Attachment 1 of exhibit G of this subpart by certified mail, return receipt requested, within 5 days after the adverse deferral determination. If the borrower requests the servicing official to determine that an ST loan may allow the borrower to continue to farm, within 15 days of the borrower's receipt of attachment 1, the servicing official will determine if the borrower is eligible, based on criteria as set forth in exhibit G of this subpart. If the borrower is eligible the servicing official will help the borrower to develop a plan to determine if a feasible operation can be developed utilizing this program. The discussion will be documented in the borrower's case file.

(iv) *Loan deferral considerations.* The servicing official will assist the borrower in completing a typical-year plan. If there is no typical year, the servicing official will assist the borrower with completing a plan of operation for each year of the deferral. The plans must be considered in DALR$.

(A) A sufficient number of loans must be considered for deferral to permit the borrower to have a feasible plan.

(B) A deferral plan may include a reorganization of the farming operation, including the use of new enterprises, to overcome existing financial, economic or other limitations of the operation. If the proposed restructuring requires capital expenditures, a subordination or additional loan will be considered. Deferral of additional loan installments beyond those needed to allow the borrower to develop a feasible plan will not be used to create additional cash reserve for capital purchases. Such purchases are not considered operating expenses.

(C) A typical year during the deferral period is a year which most closely represents the borrower's average operation for the entire deferral period. There may be no typical year for farming or ranching operations undergoing a major reorganization. If there is no typical year, then it will be necessary to develop a plan of operation for each year of the deferral. The plans must be considered in DALR$ to determine if each plan is feasible.

(D) The deferral of loan installments is not intended to create a high net cash reserve where revenue substantially exceeds expenses. If the deferral of a complete note would cause a high net cash reserve during the entire deferral period, a full deferral should not be granted. In such a case, a partial deferral should be considered to obtain a feasible plan of operation. The same approach should be used for situations in which there is no typical year and debt payments must vary throughout the deferral period.

(E) The borrower must have feasible plans of operation to support any deferral request. Plans of operation in conjunction with loan deferrals must be realistic and supported by the borrower's actual records.

(v) *Additional and subsequent deferrals.* If, during the period of the initial deferral, the borrower is unable to make the scheduled payments, the borrower may again request primary loan service actions. When considering primary servicing actions, existing deferred notes must be entered into DALR$ as if they had not been deferred. If it is necessary to defer additional loans to develop a feasible plan, such action will be taken if the deferral will result in a greater net recovery to the Government than debt writedown. Borrowers may obtain subsequent deferrals after the deferral period provided the conditions of this subsection are met.

(vi) *Term and interest rate.* A deferral period will not exceed five (5) annual installments. Deferral interest rates will be determined as specified in paragraphs (e)(1)(xii) and (e)(2)(viii) of this section.

(A) All loans being deferred will be consolidated, rescheduled or reamortized, as applicable. The promissory note rescheduled, reamortized or consolidated for the deferral will show ''zero'' as the installments due during the period of the deferral if the whole note is deferred and will not be changed during the deferral period unless the conditions of paragraph (e)(3)(v) of this section are met. The

servicing official will determine the amount of interest that will accrue during the deferred period. This interest will be repaid in equal amortized installments during the term of the loan remaining after the deferral period. The calculated installments will be added to the remaining installments for the remaining principal balance and inserted on the promissory note as a scheduled installment for the remaining period of the loan. The Finance Office will apply the payments made on the note in accordance with subpart A of this part. For applications received before November 28, 1990, the amount of outstanding accrued interest more than 90 days overdue and any outstanding protective advances, as described in §1965.11(b) of subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of the deferral (the date the new note is signed by the borrower). Protective advances are not authorized for the payment of prior or junior liens except real estate taxes. See section II E of exhibit J of this subpart for an explanation of how to schedule payment of interest not over 90 days overdue. For new applications, the amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of deferral (the date the new note is signed by the borrower).

(B) The field office will process the deferral via the Automated Discrepancy Processing System (ADPS).

(C) If a deferral is approved, the borrower's name and the date of approval will be recorded and maintained in accordance with subpart A of part 1905 of this chapter. The Finance Office will provide the county office with a quarterly status report for each borrower who has received a deferral.

(D) Six months prior to the end of the deferral period the servicing official will notify the borrower in writing of the expiration of the deferral and the amount and date of the borrower's first upcoming installment of the debt.

(E) A deferral will be cancelled if the loan is later restructured in accordance with this subpart. The cancellation will be processed via ADPS.

(vii) *Increase in repayment ability.* At the time the servicing official makes the analysis required by §1924.60 of subpart B of part 1924 of this chapter, the servicing official will determine whether the borrower has had an increase in income and repayment ability. If an income increase is substantial enough to enable the borrower to graduate, the case will be handled in accordance with subpart F of this part. If an increase would enable the borrower to make some payments during the deferral period, the servicing official will, in writing, ask the borrower to sign a Form 440–9, ''Supplementary Payment Agreement,'' within 30 days of the date of the written request. The borrower will be provided appeal rights. When doing the analysis to determine whether there is a substantial increase in income and repayment ability, the servicing official will determine whether this increase exists by comparing it to the original plan developed in the deferral application and also to plans developed for the current operating year to determine that the excess income is not needed for essential living and operating expenses or scheduled debt payment. Refusal to sign Form 440–9 will be considered a non-monetary default and will be handled as set forth in §1951.907(e) of this subpart. If the borrower signs Form 440–9 and later does not honor the terms and conditions of the repayment agreement, the borrower's account will be handled as set forth in §1951.907 of this subpart.

(4) *Writedown.* The following conditions shall be met in order for a borrower to receive writedown of FLP debts:

(i) No other Primary Loan Service programs, including deferral, nor any combination thereof, will produce a feasible plan that will permit the borrower to continue the operation. However, if DALR$ shows that a borrower can develop a feasible plan without a writedown at a lower cash flow margin than with a writedown, then the borrower will be provided the opportunity to choose between restructuring with or without a writedown;

(ii) The borrower must never have received debt forgiveness on another direct loan at any time;

(iii) The amount written off may not exceed $300,000.

(iv) A feasible plan must be developed that will result in a present value of loans to be repaid to the Government which is equal to or more than a net recovery from an involuntary liquidation or foreclosure;

(v) The borrower must comply with the Highly Erodible Land and Wetland Conservation requirements of exibibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) The borrower must agree to a Shared Appreciation Agreement if the loan is secured by real estate;

(vii) Loans written down with the Primary Loan Servicing programs will be rescheduled, reamortized, or deferred in accordance with paragraph (e) of this section; and

(viii) Borrower must agree to a lien on certain assets as provided in 1951.910 of this subpart, including nonessential assets, where the net recovery value of these assets was not paid to the Agency. (The Agency's lien will be taken only at the time of closing the restructured loans); and

(ix) Debt reduction received through conservation easements or contracts will not be counted toward the limitations in paragraphs (e)(4) (ii) and (iii) of this section.

(f) *Determining value of net recovery from involuntary liquidation.* After receipt of a complete application for Primary and Preservation Loan Service programs, the servicing official will make the calculations required in this section and notify the borrower of the result. For New Applications, nonessential assets will be considered in accordance with § 1951.910(a) of this subpart.

(1) The servicing official will use the computer program, DALR$, to determine the net recovery to the Government equivalent to involuntary liquidation of the collateral securing the FLP debt in accordance with Exhibit J or J–1 of this subpart, ''Debt and Loan Restructuring System,'' as applicable, and will follow the guidance provided by State supplements and Exhibit I of this subpart, ''Guidelines for Determining Adjustments for Net Recovery Value of Collateral.'' The servicing official will determine the current market value of the collateral in the borrower's possession including tangible property in existence and of record in accordance with subpart E of part 1922 of this chapter for real estate property, and on Form 440–21, ''Appraisal of Chattel Property.'' The servicing official also will determine the current market value of any bank accounts, stocks and bonds, certificates of deposit and the like pledged to and/or in the possession of the Agency. Collateral may include real estate, chattels, tangible property and property such as bank accounts, stocks and bonds, certificates of deposit, and the like. Chattels include machinery, equipment, livestock, growing crops, and crops in storage. Tangible property may include accounts receivable (including Government payments), inventories, supplies, feed, etc. From the current market value of the collateral in the borrower's possession, or pledged to and/or in the possession of the Agency (in the case of bank accounts, stock and bonds, certificates of deposit, and the like), the following adjustments will be made:

(i) Subtract the amount which would be required to pay prior liens on the collateral;

(ii) Subtract taxes and assessments, depreciation, management costs, and interest cost to the Government based on the 90-day Treasury Bills (published in a National Office issuance). Taxes and assessments, depreciation, management costs, as well as interest costs will be calculated on the current market value of the property for the average inventory holding period. The holding period for suitable inventory farm property will be established by each State as of July 1 each year using Report Code 597. The months that the suitable property is under lease will not be included in determining the average holding period for purposes of this subpart;

(iii) Adjust the current market value for estimated increases or decreases in value of the property for the holding period specified in paragraph (f)(1)(ii) of this section;

(iv) Subtract resale expenses, such as repairs, commissions, and advertising;

(v) Other administrative and attorney's expenses;

(vi) Add income which will be received after acquisition; and

(vii) For a borrower who submits a ''new application'' as defined in §1951.906 of this subpart, add the value of any collateral that is not in the borrower's possession and that has not been approved on the Form 1962–1 or released in writing by the Agency, minus the value of any prior lienholder's interest. Collateral not in possession of the borrower is defined as any property specified in any agency security instruments for such borrower's FLP debt that the borrower has disposed of and that the Agency has not approved or released in writing. The value of normal income security not in possession of the borrower will not be added to the NRV if it could be post-approved for release in accordance with §1962.17 of subpart A of part 1962. The value of any collateral that is not in the possession of the borrower will be determined by the servicing official based upon the best information available about the value of the collateral on or about the time of its disposition. In determining the value of such property, the Agency will use such sources as the publications Hotline (Farm Equipment Guide) and Official Guide (Tractor and Farm Equipment), sale prices at local public auctions, public livestock sale barn prices, comparable real estate sales, etc. Agency appraisal forms will be used to record the value of the missing collateral and the basis for the valuation.

(2) The State Executive Director will determine costs of involuntary liquidation of collateral for farm loans by analyzing the costs of involuntary liquidation within the geographic areas of their jurisdiction. The State Executive Director also will issue a State supplement of estimated costs and average holding time to be used as guidelines by servicing officials in making calculations of net recovery value under this subsection. Such cost analyses will be carried out in July of each year. The State Executive Director will consult with State Executive Directors of adjoining States, other lenders, real estate agents, auctioneers, and others in the community to gather and analyze the information specified in this subpart.

(g) *Determining net recovery value resulting from primary servicing.* The value of the restructured debt will be based on the present value of payments the borrower would make to the Agency using any combination of primary loan service programs that will provide a feasible plan. Present value is a calculation concept which assigns a lower current value to dollars received in later years than to dollars received at the present time. Servicing officials will use a discount rate based on 90-day Treasury Bills as of the date the borrower files the application for restructuring. The National Office will publish the 90-day Treasury Bill rate in a National Office issuance.

(h) *Notification requirements.* In those instances where the applicable notice is sent certified mail, and the certified mail is not accepted by the borrower, the servicing official will immediately send the documents from the certified mail package to the borrower's last known address, first class mail. The appropriate response time will commence 3 days following the date of mailing.

(1) *Offer.* If the calculations show that the value of the restructured debt is greater than or equal to the NRV as determined in paragraph (f) of this section, the servicing official will forward to the State Executive Director the borrower's Farm and Home Plan and the original printout of the DALR$ calculations. The servicing official will certify that the borrower meets all requirements for debt restructuring with the writedown amount specified on the printout. The State Executive Director's authorization to the servicing official to proceed with the writedown will be evidenced by the State Executive Director's signature affixed to the original copy of the DALR$ printout returned to the servicing official. Within 60 days after receiving a complete application, the servicing official will notify the borrower of the results of the calculations by sending Exhibit F of this subpart, certified mail, return receipt requested, and offer to restructure the debt. A printout of the DALR$ calculations will be attached to Exhibit F of this subpart.

(i) Exhibit F of this subpart will inform the borrower(s) of the Agency's offer to restructure the debt, the right

to request a copy of the agency's appraisal, and other options which may include payment of nonessential assets and negotiation of the appraisal. If the borrower accepts the offer within 45 days following any appeal, the servicing official will restructure the debt within 45 days after receipt of the written notice of the borrower's acceptance.

(ii) If the borrower does not respond to exhibit F within 45 days, or declines the Agency's offer to restructure the debt without requesting an appeal or negotiation, the servicing official will send attachments 9 and 10, or 9–A and 10–A of exhibit A of this subpart, as applicable. If the borrower requests an appeal and the Agency is upheld, attachments 9–A and 10–A will not be sent until the borrower is given the opportunity to accept the original offer within 45 days following the final appeal decision. These borrowers will not have an additional opportunity to appeal the offer in attachments 9–A and 10–A. If attachment 10 or 10–A is not returned within 30 days of the borrower's receipt of the attachments, the account will be accelerated or foreclosed in accordance with § 1955.15 of subpart A of part 1955 of this chapter.

(iii) If the borrower submitted a new application and requests a negotiated appraisal within 30 days of receiving exhibit F, the negotiation of the appraisal will be completed in accordance with paragraph (i) of this section.

(A) After completing a negotiation of the appraisal, if the debt can be restructured, the servicing official will send exhibit F to the borrower making the new offer in accordance with paragraph (h)(1)(i) of this section.

(B) If the negotiated appraisal changes the DALR$ calculations so that the debt cannot be restructured, the borrower will be sent exhibit E, ''Notification of Adverse Decision for Primary Loan Servicing, Mediation or Meeting of Creditors and Other Options,'' in accordance with paragraph (h)(3) of this section. The appraisal cannot be negotiated again and is not subject to appeal.

(2) *Conservation contracts.* If the borrower returned attachment 2 or 4 to Exhibit A of this subpart within 60 days, requesting a conservation contract by submitting a map or aerial photo showing the portion of the farm and approximate acres to be considered in the request, the servicing official will proceed with processing the request for debt relief as set forth in Exhibit H of this subpart. Borrowers who did not previously ask for this option can make a request for the contract at this time by submitting a map or copy of an aerial photo indicating that portion of the farm and appropriate acres to be considered. Borrowers must submit the photo within 30 days of receiving Exhibit E of this subpart.

(3) *Mediation/voluntary meeting of creditors.* If the DALR$ calculations indicate a feasible plan of operation *cannot* be developed considering all Primary Loan Service Programs, Softwood Timber, or Conservation Contracts, the servicing official will take the following actions within 15 days from the date of the determination that the borrower's debt cannot be restructured as requested:

(i) Exhibit E, ''Notification of Adverse Decision for Primary Loan Servicing, Mediation or Meeting of Creditors and Other Options,'' of this subpart will be sent to the borrower in all cases by certified mail, return receipt requested. A printout of the DALR$ calculations will be attached to exhibit E of this subpart.

(A) When the borrower is in a State *with* a USDA Certified Mediation Program, paragraph I in exhibit E will be used. Paragraph I tells the borrower that the Agency is requesting mediation with the borrower's creditors in an effort to obtain debt adjustment which would permit the development of a feasible plan of operation. If the borrower submitted a new application, the borrower must respond to exhibit E of this subpart if the borrower wants to negotiate the Agency's appraisal in accordance with paragraph (i) of this section. The borrower may request a copy of the Agency's appraisal. The Agency must participate in USDA Certified Mediation Programs whether or not the borrower responds to exhibit E of this subpart. Any negotiation of the appraisal must be completed prior to any mediation.

(B) In States *without* a certified mediation program, exhibit E of this subpart will be sent by certified mail, return receipt requested, to inform the borrower about the applicable options which may include a request for a copy of the Agency's appraisal, a meeting of creditors, payment of nonessential assets, negotiation of the appraisal and a request for an independent appraisal. Paragraph I of exhibit E of this subpart will be deleted. The purpose of the voluntary meeting of creditors is to develop a feasible plan. Paragraph II of exhibit E of this subpart, therefore, will be used to offer a voluntary meeting of creditors when the borrower has undersecured creditors who hold a substantial part of the borrower's total debt. A ''substantial part of the borrower's total debt'' means that the debt of the undersecured creditors is large enough so that if it were written down to zero, a feasible plan could be developed considering all primary servicing options. The servicing official will document such determination in the case file, and the servicing official will not offer to carry out a voluntary meeting of creditors when the undersecured debt is not a substantial part of the borrower's total debt. Such borrower will be informed later of additional rights, including appeal rights, when the Agency sends attachments 5 and 6, or attachments 5–A and 6–A, of exhibit A of this subpart. Any appeal may challenge the Agency's determination not to offer a voluntary meeting of creditors because the undersecured debt is not a substantial part of the borrower's total debt.

(C) Any negotiation of the Agency's appraisal must be completed prior to the meeting of creditors or mediation. If the borrower does not request any of the options offered in exhibit E of this subpart within 45 days, the servicing official will send attachments 5 and 6, or 5–A and 6–A of exhibit A of this subpart, as applicable, certified mail, return receipt requested.

(ii) If mediation or the voluntary meeting of creditors is held but is not successful, the borrower will be sent attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as applicable, certified mail, return receipt requested, within 15 days of the unsuccessful mediation or meeting. The DALR$ computer printout will be attached to attachment 5 or 5–A of exhibit A of this subpart.

(4) *Buyout of loans.* The following notification and processing provisions also apply to buyout as offered in Attachments 5 and 5–A of Exhibit A of this subpart. After July 3, 1996, buyout will be at the Current Market Value (CMV) of the security.

(i) Eligible borrowers will have 90 days after the receipt of the notification of ineligibility for Primary Loan Service programs to buy out their loans at Current Market Value, or the balance of their unpaid FLP debt, whichever is lower.

(ii) The present value of the restructured loan must be less than the net recovery value to receive buyout.

(iii) The Agency will not provide direct or guaranteed credit for a buyout.

(iv) The borrower must never have received debt forgiveness on another direct loan. (Applies if any debt will be written off.)

(v) The amount written off may not exceed $300,000.

(vi) The borrower must have acted in good faith.

(vii) Debt reduction received through conservation easements or contracts will not be counted toward the limitations in paragraphs (h)(4) (iv) and (v) of this section.

(viii) Upon payment by the borrower of current market value buyout, the security instruments will be released for the Farm Loan Programs loans bought out.

(ix) The State Executive Director must approve the buyout prior to offering buyout to the borrower if the Agency will be writing off any debt.

(i) *Administrative appeals and negotiation of appraisals*—(1) *Appeals.* The time limit to pay the current market value of the security, as set out in paragraph (h)(4) of this section, will start on the day the borrower receives the final appeal or review decision upholding the initial decision. The borrower will have conclusively presumed to have received that decision within 3 days of mailing.

(2) *Appeal process.* (i) If the administrative appeal process results in a determination that the borrower is *eligible* for Primary Loan Servicing, the

servicing official will process the request pursuant to § 1951.909 of this subpart. The information used will be that which the appeal officer used in making the decision on the appeal, unless stated otherwise in the final appeal decision letter. In cases of debt restructure resulting from appeals, the interest rate will be the lesser of the current rate or the original note rate on the date of the closing of the transaction. If implementation of the appeal decision would cause writedown or writeoff of more than $300,000 because of interest accrued after the adverse decision, the servicing official will process the action so as to complete the transaction.

(ii) If the administrative appeal process results in a determination that the borrower is *ineligible* for Primary Loan Servicing, the servicing official will send Exhibit K and Attachment 1 of this subpart and continue processing any application for debt settlement that may have been submitted in accordance with subpart B of part 1956 of this chapter. If the borrower does not return Attachment 1 of Exhibit K within 15 days of the date that it is sent, the servicing official will continue to process the application for Preservation Loan Servicing and any debt settlement. The account will not be accelerated or foreclosure will not continue until the borrower has the opportunity to appeal any denial of the Preservation Loan Servicing and any Debt Settlement request. If the borrower returns Attachment 1 of Exhibit K within 15 days of its mailing, the account will be accelerated.

(3) *Appraisal appeals.* (i) Borrowers appealing the current market appraisal completed by the Agency may obtain an appraisal by an independent appraiser selected from a list of at least three names provided by the servicing official. A borrower who submitted a new application may appeal the Agency's appraisal, if it has not previously been negotiated under paragraph (i)(4) of this section, and the denial of other issues of Primary Loan Service programs in which the appraisal, as part of the NRV calculation, is relevant. The cost of the independent appraisal must be paid by the borrower. The borrower will, upon request, have access to the case file and receive a copy of the Agency's appraisal. The independent appraiser must be a State certified general appraiser.

(ii) The appraisal report must conform to subpart E of part 1922 of this chapter for real estate and Form 440–21 for chattels.

(iii) If either the servicing official or the borrower discovers any mathematical or property description errors in the appraisal prior to or at the time of the review and comparison, necessary corrections may be made if both parties agree. The party discovering the error must contact the other for a meeting to approve the corrections.

(iv) If the Agency's appraisal and the borrower's independent appraisal vary in value by five percent or less, the borrower will select the appraisal to be used for servicing under this subpart.

(4) *Negotiation of appraisals.* A borrower who submits a new application may request to negotiate the appraisal one time only. Negotiation of appraisals is offered in Exhibits E and F of this subpart, as discussed in paragraph (h) of this section. All appraisals used in the negotiations must reflect the value of the property as of the same time frame as the Agency's initial appraisal. Errors will be handled in accordance with paragraph (i)(3)(iii) of this section.

(i) The borrower can request the list of independent appraisers from the servicing official on Attachment 2 of Exhibits E and F of this subpart. The borrower must provide the servicing official with a copy of his or her independent appraisal within 30 days of requesting negotiation. The borrower must pay for this independent appraisal. The borrower's independent appraiser and appraisal report must meet the qualifications described in paragraph (i)(3)(ii) of this section, but the independent appraiser need not be on the Agency's list of qualified appraisers. If the Agency's appraisal and the borrower's independent appraisal vary in value by five percent or less, the borrower will select the appraisal to be used for servicing under this subpart. No further negotiation will occur.

(ii) If the two appraisals differ by more than five percent, the servicing official will give the borrower a list of

qualified, independent appraisers. The borrower will select one appraiser from the Agency's list to conduct a third appraisal. The appraiser cannot have conducted either the Agency's or the borrower's independent appraisal, and must meet the qualifications set out in paragraph (i)(3) of this section. The borrower, the appraiser and the servicing official will complete and sign the Appraisal Agreement (Attachment 3 of Exhibit F of this subpart). The appraiser will be sent a copy of the appraisal standards, subpart E of part 1922 of this chapter, for real estate and Form 440–21 for chattels. The borrower will submit to the servicing official the original or a copy of the third appraisal and its attachments and the appraiser's bill. The Agency will pay 50 percent of the cost. The borrower is responsible for paying the appraiser directly the remaining 50 percent of the cost.

(iii) Following the completion of the third appraisal, the three appraisals will be compared by the servicing official, who will average the two that are the closest in value. The average of the two closest in value will become the final appraised value. Errors will be handled in accordance with paragraph (i)(3)(iii) of this section.

(j) *Processing of writedown.* The DALR$ computer program will be used to determine the notes and amount to be written down. The borrower's account will be credited for the amount written down and the loans remaining after writedown will be rescheduled or reamortized.

(1) A separate note will be signed for each loan being reamortized.

(2) If any loan written down was secured by real estate, the borrower must enter into a ''Shared Appreciation Agreement.'' This agreement provides for FSA to collect back all or part of the amount written down by taking a share in any positive appreciation in the value of the real property securing the SAA and the remaining debt after the writedown. The maximum amount of shared appreciation collected will not exceed the amount written down. If a borrower's FLP loan was not secured by real estate, the borrower will not be required to enter into a shared appreciation agreement.

(3) A lien will be taken on assets in accordance with §1951.910. The Agency's real estate liens will be maintained even if the writedown of the borrower's debt results in all real estate debts to the Agency being written down. The Agency's real estate lien will not be surbordinated to increase the amount of the prior liens during the shared appreciation period.

[62 FR 10124, Mar. 5, 1997, as amended at 63 FR 6628, Feb. 10, 1998; 63 FR 56290, Oct. 21, 1998]

§1951.910 Consideration of borrower's other assets for new applications.

If a delinquent borrower has other assets that are not serving as collateral for the FLP debt, the servicing official will determine whether these assets are nonessential, as defined in §1951.906 of this subpart.

(a) *Nonessential assets.* The net recovery value (NRV) of nonessential assets must be considered when the borrower's application is processed for loan servicing in accordance with this subpart. The Agency will not write down or write off any debt or portion of a debt that could be paid by liquidation of nonessential assets, or by payment of the loan value of the assets that could be received from non-Agency sources. The loan value of the assets will be considered as the same as the NRV of the assets.

(1) *Determining the value of nonessential assets.* The NRV of the nonessential assets is the market value less any prior liens and any selling costs which may include such items as taxes due, commissions and advertising costs. The determination of NRV of nonessential assets does not include a deduction for carrying the property in inventory. The market value of the nonessential assets must be estimated by a current appraisal in accordance with subpart E of part 1922 of this chapter for real estate property, and on Form 440–21, ''Appraisal of Chattel Property,'' for chattels. Borrowers who disagree with the Agency's appraisal may request a negotiated appraisal or appeal in accordance with §1951.909(i) of this subpart.

(2) *Eligibility.* If the NRV of the nonessential assets is sufficient to bring the delinquent FLP account current,

the borrower is not eligible for primary loan servicing including buyout in accordance with this subpart. The borrower, instead, will be sent attachments 5–A and 6–A of exhibit A of this subpart. The servicing official will indicate the values of both the NRV of nonessential assets and the FLP security on attachment 5–A. The borrower's nonessential assets and their NRVs also will be listed on attachment 5–A. The borrower will have 90 days to bring the FLP account current from the date of the receipt of attachments 5–A and 6–A. If the borrower does not pay current within this time period, the account will be accelerated after all appeal rights have been exhausted. If the NRV of the nonessential assets is not sufficient to bring the FLP account current, then the nonessential assets will be considered as set out in paragraph (a)(3) of this section.

(3) *Inclusion in NRV.* If the NRV of the nonessential assets is not sufficient to bring the FLP account current, then the servicing official will add the NRV of these assets to the NRV of the FLP collateral according to § 1951.909(f) of this subpart. The servicing official will encourage, but not require the borrower to liquidate those nonessential assets and apply the proceeds to his/her outstanding debts. If the borrower liquidates the nonessential assets, or obtains a loan against the equity in such assets, and pays the Agency the NRV of the nonessential assets within 45 days of receiving exhibit E or F of this subpart, as appropriate, the payment will be subtracted from the FLP debt and then the servicing official will recalculate the debt restructuring without considering the NRV of the nonessential assets. If the borrower does not sell these assets, the servicing official will include their NRV in calculating the debt restructuring and take a lien on the assets at the time of closing the restructured loan.

(b) *Lien on certain assets.* Delinquent borrowers must pledge certain assets, essential and nonessential, unencumbered to the Agency as security at the time FLP loans are restructured, as follows:

(1) The best lien obtainable will be taken on all assets owned by the borrower. When the borrower is an entity, the best lien obtainable will be taken on all assets owned by the entity, and all assets owned by all members of the entity. Different lien positions on real estate are considered separate and identifiable collateral.

(2) Security will include, but is not limited to, the following: land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, certain cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance.

(3) Security will also include assignments of leases or leasehold interests having mortgageable value, revenues, royalties from mineral rights, patents and copyrights, and pledges of security by third parties.

(4) The exceptions set forth in § 1941.19(c) of subpart A of part 1941 of this chapter apply.

(5) These assets will be considered as additional security for the loans as well as any shared appreciation agreement. The value of the essential assets will not be included in the NRV calculation to determine restructuring. The Agency's lien will be taken only at the time of closing the restructured FLP loans.

[62 FR 10132, Mar. 5, 1997]

§ 1951.911 Homestead protection.

(a) *General.* If the Agency has only chattel property as security, preservation servicing will not be offered. Borrowers who submitted a complete application prior to April 4, 1996 will be considered for leaseback/buyback in accordance with the previous CFR volume containing revisions as of January 1, 1996 and Agency procedures, (available in any county office.) Inventory property which is located within the boundaries of an Indian reservation of a Federally recognized Indian Tribe and the previous owner is a member of the Indian Tribe that has jurisdiction over that reservation should be handled in accordance with § 1955.66(d) of subpart A of part 1955 of this chapter.

(b) *Homestead protection.* Borrowers and former borrowers who had or have

an FLP loan secured by the real property containing the dwelling owned by them and used as their principal residence may apply for homestead protection before or after the Agency acquires the property. Real property that is in inventory as of the effective date of the statute or is acquired in the future will be considered for homestead protection as set forth in this subpart.

(1) *Purpose.* The purpose of the Homestead Protection Program is to permit borrowers or former borrowers to retain their dwellings through a lease or purchase. Such lease or purchase could permit these individuals to have a home and providing an opportunity to continue to farm.

(2) *Notification and processing.* If a feasible plan for restructuring debt cannot be developed using Primary Loan Service programs, the borrower will be advised by the use of Exhibit K with Attachment 1 of this subpart that the Agency will continue with the processing of Preservation Service programs, if applicable. A borrower who desires homstead protection must request it in accordance with §1951.907. A borrower who meets the eligibility requirements of paragraph (b)(3) of this section will be permitted to retain possession of the homestead, in accordance with paragraph (b)(2)(ii) of this section, before title is acquired or under a lease with an option to purchase after title is acquired.

(i) *Determining homestead protection property.* (A) The homestead protection property will include the borrower's principal residence and not more than 10 acres of adjoining land that is used to maintain the borrower's family and a reasonable number of farm service buildings located on land adjoining the residence which are useful to the occupants of the dwelling.

(B) The servicing official will review the proposed homestead protection property. If the servicing official does not agree with the proposed shape or size of the property, an alternate configuration will be negotiated with the borrower.

(C) If the borrower and the servicing official cannot agree on the proposed shape and size of the property, the servicing official will make the determination.

(D) When the size and shape of the property is agreed upon and the borrower has been found eligible, the servicing official will request a licensed surveyor to survey the property, have a legal description prepared, and mark the property lines with permanent type markers.

(E) Appraisals will be completed in accordance with paragraphs (b)(6) and (b)(7)(ii)(B) of this section.

(ii) *Processing homestead protection before the Agency acquires title.* (A) A borrower will be considered for homestead protection when it is determined that the Primary Loan Service programs cannot resolve the delinquency. To process an application, the borrower must indicate the buildings and land to be included in the request for homestead protection. If determined eligible for homestead protection, the borrower and the servicing official will enter into a Homestead Protection Program Agreement (Exhibit L of this subpart) to lease the property if and when the Agency acquires title. A copy of Form 1955–20, ''Lease of Real Property,'' will be attached to the agreement as an exhibit.

(B) Concurrently with the execution of the preacquisition Homestead Protection Program Agreement, the borrower will deliver a completed Form RD 1955–1 to the Agency. The Agreement is subject to the provisions of subpart A of part 1955 of this chapter. If the Agency acquires title during the processing of a preacquisition Homestead Protection Agreement, processing of the agreement will be terminated and the owner will be given homestead protection rights pursuant to paragraph (b)(2)(iii) of this section.

(C) The Agency's obligation to lease the dwelling to the borrower will be contingent on the Agency's prior compliance with all State and local laws, ordinances and regulations governing the subdivision of land. If the Agency cannot satisfy the conditions within 2 years from the date of the agreement, the agreement (and the Agency's obligation to lease with option to purchase) will terminate. If an agreement has been entered into, but title to the property has not been conveyed to the

Agency (or acquisition has been determined not to be in its financial interest), the Agency will continue with acceleration and foreclosure of the property. It is not the intent of the 2-year term of the agreement to limit the Agency's ability to foreclose on the property, provided that all the terms have been met except that title has not been conveyed.

(iii) *Application for homestead protection when the Agency acquires title.* When the Agency acquires title to the farm property, the borrower will be sent Exhibit M of this subpart, by certified mail, return receipt requested, no later than the date of acquisition. The borrower must request homestead protection by notifying the servicing official in writing not later than 30 days after the date of acquisition and must provide the information set forth in § 1951.907(e) of this subpart and indicate the buildings and land to be included in the request.

(iv) *Lease with option.* A lease with an option to purchase will be entered into with an eligible borrower on Form 1955–20 after the Agency acquires title to the property. Form 1955–20 will be completed in accordance with § 1951.911 (b)(8) of this subpart.

(3) *Eligibility.* The servicing official will make the determination on eligibility. To qualify for homestead protection, the borrower must meet the following requirements:

(i) An applicant must be an individual who is or was personally liable for the Farm Loan Programs (FLP) loan that was secured in part by the Homestead Protection property, or, if a nonborrower pledged the property to secure the FLP loan, the owner of the property. In either case, the applicant must be or have been the owner of the Homestead Protection property. A member of an entity who is or was personally liable for a loan that is or was secured by the Homestead protection property is considered an owner for homestead protection purposes, so long as either the member of the entity or the entity itself held fee title to the property.

(ii) When more than one member of an entity was personally liable for an FLP loan, each such member who possessed and occupied a separate dwelling as his or her principal residence, on property that is or was security for the loan may apply separately for homestead protection of their individual dwellings;

(iii) The applicant and any spouse must have received, from the farming or ranching operations, gross farm income reasonably commensurate with the size and location of the farm and reasonably commensurate with local agricultural conditions (including natural and economic conditions) in at least 2 calendar years during the 6-year period preceding the calendar year in which the application is made. Farms used for comparison purposes must be of similar size, type of operation and locality. For the purposes of §§ 1951.911(b)(3) (iii) and (iv) of this subpart, income from farming or ranching operations will include rent paid by a lessee of agricultural land during any period in which the borrower, due to circumstances beyond his or her control, such as economic, natural disaster or health problems, was unable to actively farm that property. The borrower's records will be used in determining whether the gross farm income was reasonably commensurate with the farm size and location and local agricultural conditions. When applying for homestead protection, the borrower will give the servicing official at least 2 calendar years of records of planned and actual gross farm income for the 6-year period preceding the calendar year in which the application is made. If such records do not exist, they may be developed by the applicant and servicing official from information relating to yields, expenses and prices found in the borrower's county office case file, agency records, or other reliable sources;

(iv) The applicant and any spouse must have received, from the farming or ranching operations, at least 60 percent of their gross annual income in at least 2 of the 6 calendar years preceding the calendar year in which the application is made;

(v) The applicant must have continuously occupied the homestead protection property during the 6-year period preceding the calendar year in which the application is made, unless it was necessary to leave for a period of time

not to exceed 12 months during the 6-year period due to circumstances beyond the borrower's control, such as illness, employment, or conditions that made the dwelling uninhabitable; and

(vi) The applicant must have sufficient income to make rental payments for the term of the lease and the ability to maintain the property in good condition, and must agree to all the terms and conditions set forth in paragraph (b)(7) of this section and in Form 1955–20.

(4) *Transfer of homestead protection.* An applicant's right to request homestead protection and rights under the Agreement or lease entered into pursuant to this section are not transferable or assignable by the applicant or by operation of law, except that, in the case of death or incompetency of the applicant, such rights and agreements shall be transferable to the spouse upon agreement to comply with the terms and conditions of the lease.

(5) *Property requirements.* (i) The proposed homestead protection property tract must meet all requirements for the division into a separate legal lot as required by State and local laws. All environmental considerations required under subpart G of part 1940 of this chapter will be complied with.

(ii) Costs for a survey, legal description or other service needed to establish, appraise, define or describe the homestead protection property as a separate tract, will be paid for by the Agency. No repairs or improvements will be paid for by the Agency except as provided for in § 1955.64 (a) of subpart A of part 1955 of this chapter.

(iii) If necessary, the Agency will grant or retain for the benefit of adjoining property reasonable easements for ingress, egress, utilities, water rights, etc.

(6) *Appraisal.* The current market value of the homestead protection property shall be determined by an independent appraisal made within 6 months from the date of the borrower's application for homestead protection. The applicant will select an independent real estate appraiser from a list of appraisers approved by the servicing official. The cost of such an appraisal will be handled in accordance with paragraph (b)(5)(ii) of this section.

(7) *Terms of the lease and exercising the option.* (i) All leases will have an option to purchase. Any reference to a lease for homestead protection purposes will mean a lease with an option to purchase. The lease will be offered with an option to purchase on Form 1955–20 and will be for a period of not more than 5 years as requested by the applicant. A lease of less than 5 years may be extended, but not beyond 5 years from the date of the beginning of the term of the original lease.

(A) The amount of the rent will be based upon equivalent rents charged for similar residential properties in the area in which the dwelling is located.

(B) Lease payments will be retained by the Government.

(C) Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property under this section. If a lease default is not cured within 30 days of notice, the servicing official will notify the lessee in writing of the termination of the lease and option.

(D) Any interference by the lessee with the Government's efforts to lease or sell the remainder of farm inventory property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property including the right to exercise the option to purchase.

(ii) Exercising the option to purchase.

(A) The lessee may exercise the option in writing at any time prior to the expiration of the lease by delivering to the servicing official a signed, written statement notifying the Agency that the lessee is exercising the option to purchase the property. Failure to exercise the option within the lease period will end the lessee's rights under the option to purchase.

(B) When the lessee exercises the option to purchase the property, the purchase price will be the current market value of the property. That value will be determined by an appraisal in accordance with paragraph (b)(6) of this section providing the appraisal is not more than 1 year old. If the appraisal is

more than 1 year old, the current market value will be determined by a new appraisal requested in accordance with paragraph (b)(6) of this section.

(C) At the time the lessee exercises the option, the lessee must notify the servicing official if he or she wants to purchase the property for cash or finance it through a credit sale from the Agency.

(D) If a credit sale is involved, the applicant must furnish the servicing official the information required by § 1951.907 (e) to assist in determining whether or not the applicant has adequate repayment ability.

(8) *Rates and terms for a credit sale.* Terms for a credit sale of homestead protection property when the lessee is exercising the option to purchase will be in accordance with subpart J of this part.

(9) *Closing.* A credit sale will be closed in accordance with subpart J of this part.

(10) *Conflict with State law.* In the event of a conflict between a borrower's homestead protection rights and any provisions of the law of any State relating to the right of a borrower to designate for separate sale or redeem part or all of the property securing a loan foreclosed on by a lender, such provision of State law shall prevail. A State supplement will be prepared as necessary to supplement paragraph (b) of this section.

(11) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in subpart J of this part.

[62 FR 10132, Mar. 5, 1997]

§ 1951.912 Mediation.

(a) *States with a USDA certified mediation program.* The FmHA or its successor agency under Public Law 103–354 is required to participate in USDA Certified State Mediation Programs. The purpose of mediation is to participate with farm borrowers, and their creditors, in an effort to resolve issues necessary to overcome the borrower's financial difficulties. Any negotiation of an FmHA or its successor agency under Public Law 103–354 appraisal pursuant to § 1951.909(i) of this subpart will be completed prior to mediation.

(1) FmHA or its successor agency under Public Law 103–354 shall participate in a USDA Certified Mediation Program under the same terms and conditions as other creditors. Decisions will not be binding on FmHA or its successor agency under Public Law 103–354 unless approved by the representative assigned by FmHA or its successor agency under Public Law 103–354 in accordance with paragraph (a)(4) of this section.

(2) FmHA or its successor agency under Public Law 103–354 will pay the same mediation fees to the USDA Certified State Mediation Board that are charged to all creditors that participate in mediation. The Contracting Officer (CO) will complete Form AD–838, ''Purchase Order,'' to establish a mediation contract and submit Form FmHA or its successor agency under Public Law 103–354 838–B, ''Invoice-Receipt Certification,'' for payment upon receipt of an invoice from the Mediator or the Contracting Officer's Representative (COR) recommending payment.

(3) Failure of creditors and/or borrowers to participate in mediation will not preclude FmHA or its successor agency under Public Law 103–354 from granting Primary Loan Service Programs to assist borrowers.

(4) The FmHA or its successor agency under Public Law 103–354 State Director will designate a representative to represent FmHA or its successor agency under Public Law 103–354 in the mediation process. Authorities of the representatives can vary from complete authority to act for FmHA or its successor agency under Public Law 103–354, to a requirement for review and concurrence by the State Director or designee prior to approving a mediation agreement. The State Director will set forth in writing the specific authority delegated to the designated representative.

(5) The FmHA or its successor agency under Public Law 103–354 State Director will arrange for adequate training for representatives designated to represent FmHA or its successor agency under Public Law 103–354 in mediation.

(6) When mediation is not successful in resolving the borrower's financial difficulty, the County Supervisor will send the borrower attachments 5 and 6,

or 5–A and 6–A, of exhibit A of this subpart, as applicable.

(7) The FmHA or its successor agency under Public Law 103–354 State Director will develop a State supplement that describes how FmHA or its successor agency under Public Law 103–354 will participate in the State Mediation Program. In developing the State supplement the State Director should confer with the State Attorney General's Office, farm organizations that are interested in the development of the State's Certified Agricultural Loan Meditation Program, and Departments of State Governments to ensure that all interested parties have input on the content of the State supplement. The State Director will consult with the Regional OGC as necessary to develop the State supplement. State supplements will be submitted to the National Office for post approval in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2006–B (available in any FmHA or its successor agency under Public Law 103–354 office).

(b) *States without a Certified Mediation Program.* To service those borrowers in States where there is no USDA Certified Mediation Program established, the State Director will provide the means of conducting a voluntary meeting of creditors, either with a mediator or a designated FmHA or its successor agency under Public Law 103–354 representative. ''Creditors,'' for purposes of this paragraph, means all the borrower's undersecured creditors holding a substantial part of the borrower's debt in accordance with § 1951.909(h)(3)(i) of this subpart. State Directors are encouraged to contract for qualified mediators within their jurisdictional areas to conduct the voluntary meeting of creditors in an effort to help farmers resolve their financial difficulty. The National Office will provide the State a list of qualified mediators for contracting purposes. Any negotiation of an FmHA or its successor agency under Public Law 103–354 appraisal pursuant to § 1951.909(i) of this subpart will be completed prior to meeting with other creditors.

(1) When a mediator is available, the County Supervisor will assist the mediator in scheduling a meeting with the borrower and all of the borrower's creditors and will encourage them to participate in such a meeting. The mediator will be responsible for conducting the meeting in accordance with accepted mediation practices and to develop an Agreement to assist the farmer in resolving their financial difficulties.

(2) When a mediator is not available, the State Director will designate an FmHA or its successor agency under Public Law 103–354 representative to conduct a meeting of creditors and attempt to develop a plan with borrowers and their creditors that will assist the borrowers to resolve their financial difficulty. The State Director will designate a representative not previously involved in servicing the borrower's account. State Directors will designate a representative, or FmHA or its successor agency under Public Law 103–354 employees who have demonstrated good human relations skills and ability to resolve problems and settle disputes.

(3) The designated FmHA or its successor agency under Public Law 103–354 representative for conducting a meeting of creditors will do the following:

(i) Schedule a meeting between the borrower and the borrower's creditors and encourage them to participate in such a meeting;

(ii) State that the parties understand that the representative is neutral and does not represent any of the parties;

(iii) Inform the borrower and creditors concerning FmHA or its successor agency under Public Law 103–354 programs available to assist the borrowers;

(iv) Encourage the parties to utilize all available means to assist the borrower to overcome the financial difficulty;

(v) Advise, counsel, and facilitate the development of a debt restructure agreement between the borrower and creditors which will permit the borrower to remain in farming;

(vi) Review with the parties any proposed solution to determine if it can be effectively implemented and to help the parties understand the consequences of the proposed solution;

(vii) Review the obligations of the participants, including but not limited to the maintenance of confidentiality

and the promotion of good faith discussions in an effort to reach agreement; and

(viii) Develop a written document that specifies the agreements reached in the meeting. The agreement will be signed by all parties with authority to approve the agreement for the participating creditors. When signed, copies will be distributed to the borrower and participating creditors. A copy will be filed in the borrower's County Office case file.

(4) If agreements are reached which will permit the development of a feasible plan of operation, the County Supervisor will proceed with processing and approval of the borrower's request for primary loan servicing.

(5) When the FmHA or its successor agency under Public Law 103–354 representative has exhausted all efforts to develop an agreement between the borrower and creditors and an agreement cannot be reached, the FmHA or its successor agency under Public Law 103–354 representative will report the results of this meeting to the State Director by memorandum. Copies of the memorandum will be sent to the borrower and all creditors participating in the meeting. When the County Supervisor receives a copy of this memorandum indicating that an agreement cannot be reached, attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as applicable, will be sent to the borrower.

(6) State Directors will provide the necessary training to ensure that the FmHA or its successor agency under Public Law 103–354 representative has the necessary skills to effectively conduct a voluntary meeting between a borrower and creditors which may result in reaching an agreement.

(7) Failure of creditors to participate in a voluntary meeting of creditors will not preclude FmHA or its successor agency under Public Law 103–354 from using debt writedown if it would result in a greater net recovery to FmHA or its successor agency under Public Law 103–354 than liquidation. Whenever the net recovery to FmHA or its successor agency under Public Law 103–354 will be greater using the writedown than to go through foreclosure, FmHA or its successor agency under Public Law 103–354 will use the writedown, regardless of the actions of the other creditors. Voluntary meetings of creditors cannot delay consideration of a borrower for Primary Loan Service Programs, except with the consent of the borrower.

(8) If the borrower does not participate in the voluntary meeting of creditors without good cause and a feasible plan of operation cannot be developed, the County Supervisor will send the borrower attachments 5 and 6, or 5–A and 6–A, of exhibit A of this subpart, as applicable.

§ 1951.913 Servicing Net Recovery Buyout Recapture Agreements.

(a) *Death or retirement.* If upon the death or retirement of a borrower who submitted a ''new application,'' as defined in § 1951.906 of this subpart, the borrower executed exhibit C–1 of this subpart and transferred title of the borrower's real estate security to a spouse or child who is actively engaged in farming on the property, then the transaction will not be treated as a ''sale'' or ''conveyance'' under the recapture agreement. The borrower's spouse or child, however, must assume the full liability of the borrower under the provisions of the borrower's Net Recovery Buyout Recapture Agreement and real estate lien instrument in accordance with instructions from OGC.

(b) *Record of net recovery buyout.* The Finance Office will credit the borrower's account with the net recovery value (NRV) amount paid by the borrower. An equity record will be established in accordance with the provisions of the ADPS manual.

(1) For borrowers who applied for Loan Servicing and Preservation Service Programs before November 28, 1990, and executed exhibit C of this subpart, a recapture equity record will be established in an amount equal to the difference between the NRV and the market value of the real estate security as of the date the net recovery buyout agreement was signed by the borrower.

(2) For borrowers who submit ''new applications,'' as defined in § 1951.906 of this subpart, and execute exhibit C–1 of this subpart, an equity record will be established in an amount equal to the amount of debt secured by real estate

that was written off as of the date the net recovery buyout agreement was signed by the borrower. This is the maximum amount that can be recaptured.

(c) *Review by County Supervisor.* The County Supervisor will establish a follow-up to review the County real estate records every 24 months starting from the date of the Net Recovery Buyout Recapture Agreement to determine if the borrower has sold or conveyed the real estate property covered by the agreement. Scheduled reviews to be conducted must be posted on the borrower's Form FmHA or its successor agency under Public Law 103–354 1905–1, ''Management System Card—Individual,'' for follow-up purposes. The results of the review will be recorded in the borrower's County Office case file. These reviews will end at the expiration of the agreement. If there is no recapture due, then the County Supervisor will proceed in accordance with paragraph (g) of this section.

(d) *Notification of recapture due.* If the County Supervisor determines that the borrower has sold the real estate, the borrower will be notified in writing, certified mail, return receipt requested, of the following:

(1) The amount of recapture due in accordance with exhibits C or C–1 of this subpart, as applicable. The County Supervisor will establish an equity receivable account in accordance with the provisions of the ADPS manual;

(2) The date the recapture is due (not to exceed 30 days from the date the Notice of Recapture Letter is received by the borrower);

(3) Appeal rights as set forth in subpart B of part 1900 of this chapter; and

(4) If the borrower fails to pay any amount due to FmHA or its successor agency under Public Law 103–354 as the result of a sale of the property, the account will be accelerated as set forth in §1955.15 of subpart A of part 1955 of this chapter after all appeal rights have been exhausted.

(e) *Processing payments.* The County Supervisor will issue Form FmHA or its successor agency under Public Law 103–354 451–2, ''Schedule of Remittance,'' for all the payments received under the Recapture Agreement. The following should be recorded in the body of the form: ''Equity Receivable Payment.''

(f) *Release of liability.* When the total amount due under the agreement has been paid and credited to the borrower's account, the borrower will be released from personal liability. The recapture agreement will be marked ''Recapture Agreement Satisfied'' and returned to the debtor or to the debtor's legal representative. In such cases, the security instrument(s) will be released of record in accordance with subpart A of part 1965 of this chapter.

(g) *No recapture due.* If the County Supervisor determines there is no recapture due, the County Supervisor will close the borrower's equity record in accordance with the provisions of the ADPS manual. Exhibit C or C–1 of this subpart, as applicable, will be terminated and security instruments will be processed as set forth in paragraph (f) of this section.

§1951.914 Servicing shared appreciation agreements.

(a) [Reserved]

(b) *When shared appreciation is due.* Shared appreciation is due at the end of the term of the Shared Appreciation Agreement, or sooner, if one of the following events occurs:

(1) The sale or conveyance of any or all the real estate security, including gift, contract for sale, purchase agreement, or foreclosure. Transfer to the spouse of the borrower in case of the death of the borrower will not be treated as a conveyance; until the spouse further conveys the property;

(2) Repayment of the loans; or the loans are otherwise satisfied;

(3) The borrower or surviving spouse ceases farming operations or no longer receives farm income, including lease income; or

(4) The notes are accelerated.

(c) *Determining the amount of shared appreciation due.* (1) The current market value of the real estate property will be determined based on a current appraisal. If only a portion of the real estate is sold, an appraisal will only be done on the real estate being considered for release. For these cases, an appraisal may be required to determine the market value of the property at the time the SAA was signed if such value

cannot be obtained through another method.

(2) [Reserved]

(3) Shared appreciation will be due if there is a positive difference between the market value of the security property at the time of calculation and the market value of the security property as of the date of the SAA. The maximum appreciation requested will not be more than the total amount written down. The amount of shared appreciation will be:

(i) 75% of any positive appreciation if any one of the events listed in paragraphs (b)(1) through (4) of this section occur within 4 years or less from the date of the SAA; or

(ii) 50% of any positive appreciation if any one of the events listed in paragraphs (b)(1) through (4) of this section occurs more than 4 years from the date of the SAA, or if the term of the SAA expires.

(4) [Reserved]

(5) When the full amount of the appreciation due under this section and any remaining FSA debt is paid in full and credited to the account, the borrower will be released from liability.

(6) Shared appreciation that will become due will be included in the amount owed to FSA, such as with any debt settlement. Nonamortized shared appreciation may be assumed and amortized on program or nonprogram terms based on the transferee's eligibility as contained in subpart A of part 1965 of this chapter.

(d) [Reserved]

(e) *Shared appreciation amortization.* Shared appreciation may be amortized to a nonprogram loan for borrowers who will continue with FSA on program loans. Shared appreciation will not be amortized if the amount is due because of acceleration, payment in full or satisfaction of the debt, or the borrower ceases farming. The amount due may be amortized as an SA loan under the following conditions:

(1) The borrower must have a feasible plan as defined in § 1951.906 including the SA loan payment.

(2) The borrower must be unable to pay the shared appreciation, or obtain the funds elsewhere to pay the shared appreciation.

(3)–(4) [Reserved]

(5) The loan term will be based on the borrower's repayment ability and the life of the security, not to exceed 25 years.

(6) The interest rate will be the nonprogram real property rate contained in RD Instruction 440.1 (available in any FSA office.)

(7) A lien will be obtained on any remaining FSA security, or if there is no security remaining, the best lien obtainable on any other real estate or chattel property sufficient to secure the SA note, if available.

(8) The borrower will sign a promissory note for each SA loan established.

(9) If the borrower has outstanding FLP loans, and becomes delinquent or financially distressed as defined in § 1951.906, the SA loan may be considered for reamortization as set forth in § 1951.909(e).

(f) *Priority of collection application.* Proceeds from the sale of security property will first be applied to any prior lienholder's debt, then to any shared appreciation due, and to the balance of outstanding FLP loans in accordance with subpart A of this part.

(g) *Subordination.* Subordination of FSA's lien on property securing the Shared Appreciation Agreement may be approved and processed in accordance with subpart A of part 1965 of this chapter provided the prior lien debt is not increased.

[63 FR 6629, Feb. 10, 1998]

§ 1951.915 [Reserved]

§ 1951.916 Exception authority.

(a) *Administrator.* The Administrator or delegate may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected. The Administrator will exercise this authority upon request of the State Director with recommendation of the appropriate Program Assistant Administrator, or upon request initiated by the appropriate Program Assistant Administrator. In certain situations such as a natural

disaster, the Administrator may delegate this authority to specific State Director positions in certain states. In such cases, the State Director will exercise the delegation of authority upon the request of the County Supervisor with the recommendation of the District Director, rather than the appropriate Program Assistant Administrator. Requests for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

(b) *State Director*. The State Director may, in individual cases of extraordinary circumstances, make an exception to the requirement that attachments 2 or 4 of exhibit A of this subpart, as appropriate, must be completed and returned to the FmHA or its successor agency under Public Law 103–354 County Office with the appropriate forms and documents for a complete application within 60 days after receiving attachments 1 and 2 or 3 and 4 of exhibit A of this subpart. If the borrower requests additional time to submit a complete application or submits a complete application after the deadline, the County Supervisor must ask the borrower why the additional time is or was needed. The County Supervisor must ask the borrower whether there are extraordinary circumstances like serious medical illness, severe adverse weather, or a family emergency, and explain that only the State Director can authorize an extension of time for extraordinary circumstances. In such cases, the County Supervisor must document the situation in the case file and immediately submit the request with his or her recommendation on whether the State Director should grant an exception for an extension of time. The request should describe the circumstances in accordance with the examples of extraordinary circumstances mentioned above and recommend an estimate of the additional time needed. Normally, such an extension of time should not exceed 30 days.

[58 FR 4066, Jan. 13, 1993, as amended at 58 FR 15418, Mar. 23, 1993]

§§ 1951.917—1951.949 [Reserved]

§ 1951.950 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0560–0161. Public reporting burden for this collection of information is estimated to average five minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0560–0161), Washington, DC 20503.

[57 FR 18626, Apr. 30, 1992, as amended at 63 FR 6629, Feb. 10, 1998]

EXHIBITS TO SUBPART S

EXHIBIT A—NOTICE OF THE AVAILABILITY OF LOAN SERVICING AND DEBT SETTLEMENT PROGRAMS FOR DELINQUENT FARM BORROWERS

Dear (Borrower's Name):

This notice is to inform you that you are behind with your loan payments and to inform you of your options.

I. Loan Servicing Programs Available

Primary loan servicing programs are intended to adjust the debt so that you can continue farming and the Agency will receive a better recovery on the money it loaned you.

The Preservation loan servicing program (Homestead Protection) is intended to help farmers who may lose their land to the Agency get their home back through a lease with an option to buy.

II. Application Information

Time Limits

You must notify the county office within 60 days of getting this notice if you want to be considered for these programs.

How to Apply

To apply, you must complete and return the required forms enclosed with this notice, including your signed Acknowledgment Of Notice Of Program Availability within the 60-day time limit. The county office will process your completed forms and let you know if you qualify.

Included With This Notice You Will Find:

(1) A summary of primary loan servicing programs options;

(2) A summary of the preservation loan servicing program;

(3) A summary of debt settlement programs;

(4) The forms you need to apply for services;

(5) Information on how to get copies of the Agency's regulations;

(6) A description of the National Appeals Division appeal process.

III. Foreclosure and Liquidation

What Happens if You Do Not Apply Within 60 Days?

The Agency will accelerate your loan if you continue to be delinquent or in nonmonetary default. Acceleration of your loan is very severe. This means the Agency will take legal action to collect all the money you owe them.

After acceleration, the Agency will start foreclosure proceedings. They will repossess or take legal action to take any real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will also stop allowing you to use your crop, livestock, and milk checks to pay living and operating expenses. The Agency will also take by administrative offset money which other federal agencies owe you.

Sincerely,

ATTACHMENT 1—PRIMARY AND PRESERVATION LOAN SERVICING AND DEBT SETTLEMENT PROGRAMS PURPOSE

Purpose

These programs are to help you repay the loan and keep your farm property and settle your Farm Loan Programs loan debt. This notice tells you:

(1) How To get more information
(2) How to apply
(3) Your appeal rights if you apply and are turned down

How To Get More Information

Ask at any county office for copies of the rules describing these programs. These rules must be given to you within 10 days of when we receive your request.

Who Can Apply?

All ''farm loan programs borrowers'' who have one of the following loans:

Operating (OL)
Farm Ownership (FO)
Emergency (EM)
Economic Emergency (EE)
Soil and Water (SW)
Recreation (RL)
Rural Housing Loans made for farm service buildings (RHF)
Economic Opportunity (EO)

Borrowers that are current on their scheduled payments but are financially distressed through no fault of their own may be eligible for some assistance to restructure their debt.

You May Need Help in Applying

The legal requirements for these programs are very complicated. You may need help to understand them. You may want to ask an attorney to help you. If you cannot get an attorney, there are organizations that give free or low-cost advice to farmers. Ask your State Department of Agriculture or the USDA Extension Service what services are available to your state.

NOTE: Agency employees cannot recommend a particular attorney or organization.

I. Primary Loan Service Programs

(1) Loan Consolidation

Two or more of the same type of loans can be combined into one larger loan. For example, operating loans can only be joined with operating loans.

(2) Loan Rescheduling

The payment schedule can be altered to give you longer to repay loans secured by equipment, livestock, or crops. For example, the time for repayment of an operating-type loan can be extended up to 15 years from the date the loan is rescheduled. When a loan is rescheduled, the interest rate may be reduced.

(3) Loan Reamortization

The payment schedule can be changed to give you longer to repay loans secured by real estate. For example, a Farm Ownership loan payback period may be extended to 40 years from the date the original loan was signed. When a loan is reamortized, the interest rate may be reduced.

(4) Interest Rate Reduction

Regular Interest Rate

FSA has specific interest rates for each type of loan. These interest rates change quite often. They depend on what it costs the

Government to borrow money. Each type of loan will have a regular rate.

Limited Resource Interest Rate

If you have an Operating Loan (OL), Soil and Water (SW) loan or a Farm Ownership (FO) loan, it may be possible for you to get a ''limited resource interest rate.'' The limited resource interest rate can be as low as 5 percent. It changes quite often and depends on what it cost the Government to borrow money.

Interest Rate for Loan Servicing

When loans are consolidated, rescheduled, or reamortized, the interest rate on the new loan will be either the interest rate on the original loan or the current regular rate of interest for that type of loan, whichever is less. The borrower may be able to get the limited resource interest rate on OL, SW, or FO loans.

For information about current interest rates, contact the FSA county office.

(5) Loan Deferral

Payments of principal and interest can be temporarily delayed for up to 5 years. You must show that you cannot pay essential living expenses or maintain your property and pay your debts. You must also show you will be able to pay at the end of the deferral period.

The interest rate on a deferred loan will be either the current rate of interest for loans of the same type or the original rate on the loan, whichever one is lower.

The interest that builds up during the deferral period will be added to the principal of the loan. You must pay this interest in yearly payments for the rest of the loan term.

NOTE: You can only get a loan deferral if the FSA determines options 1–4 will not work for you.

(6) Softwood Timber Program

Marginal land including highly erodible land and pasture can be planted in softwood timber. If you qualify, a debt of up to $1000 an acre can be deferred up to 45 years. Interest will be charged during the deferral period. The debt must be paid when the timber is sold.

(7) Conservation Contract Program

You may enter into a contract with the Secretary of Agriculture to protect highly erodible land, wetlands, or wildlife habitat located on your property that serves as security for your farm loan debt. In exchange for the contract, FSA will reduce your FSA debt. The amount of land left after the contract must be enough to continue your farming operation.

(8) Debt Writedown

This is not available to borrowers who are current in their loan payments or to borrowers who have had previous debt forgiveness on another direct loan.

Debt writedown means the FSA debt you owe is reduced. FSA can reduce both the principal and interest of your debt. Your debt can be reduced to the recovery value.

Recovery value. The recovery value is the fair market value of the collateral pledged as security for FSA loans minus all of the expenses such as sale costs, attorneys fees, management costs, taxes and payment of prior liens on the collateral that FSA would have to pay if it foreclosed on and sold the collateral. The fair market value of any collateral that is not in your possession and has not been released for sale by FSA in writing will also be used in determining recovery value.

Also considered, will be the fair market value of any other assets that you may own that are not essential for family living or for farm operation, and are not exempt from your judgment creditors or in a bankruptcy action, minus the value of any creditors' prior security interests and your selling costs. The value of the collateral and any other assets must be decided by a qualified appraiser.

In order to get debt writedown, you must show that after the writedown, you will have up to 110 percent, but not less than 100 percent, of income available to pay all of your family living and farming operating expenses and scheduled debt payments. This means you must have a feasible plan of operation. FSA will not write down more of the debt than is necessary for you to show a feasible plan. You have the choice to select a smaller cash flow margin without a writedown. If you choose to do this, you will avoid taking your one time debt forgiveness as explained below.

The writedown is used only when the loan servicing programs listed in 1–7 above alone will not be enough for you to have a feasible plan. If you get writedown, some of the principal and interest on your loans will be written down in addition to changing the payback period, and possibly the interest rate, using 1–7 above.

You can receive a writedown if you have not previously received any form of debt forgiveness from FSA on any other direct farm loan. The maximum debt that can be written down on all loans is $300,000.

II. *Who Can Qualify for Primary Loan Service Programs*

To qualify you must prove that:

(1) You cannot repay your FSA debt due to circumstances beyond your control. If you have certain nonessential assets with a value high enough to bring your account current,

then you are not eligible for Primary Loan Service Programs. These assets are only those that are not essential for necessary family living or for your farm operation. FSA cannot reduce or write off any of your debt that you could pay by selling any of these assets or borrowing against your equity in the assets.

You must have had less income than expected due to such things as:

(a) A natural disaster, weather, or insect problems;
(b) Family illness or injury;
(c) Loss or reduction of off-farm income;
(d) Disease in your livestock;
(e) Low commodity prices and high operating expenses in your local area; or
(f) Other circumstances beyond your control.

(2) You have acted in ''good faith'' to keep your agreements with FSA in that you have kept all written agreements with FSA including those for the use of proceeds and release of property used to secure the loan, and your file shows no fraud, waste, or conversion.

You must agree to give FSA a lien on certain other assets for additional security for the FSA debt. If you are offered restructuring and accept the offer, you must provide this lien at closing.

You must agree to meet, at your own cost, FSA's training requirements in production and financial management. The cost will be included in your farm plan as an operating expense. The training must be completed within 2 years from the date of restructuring. This requirement may be waived if you are able to demonstrate that you have adequate training in this area. To request a waiver of this training requirement, complete Form FmHA 1924–27, ''Request for Waiver of Borrower Training Requirements,'' and submit with your request for FSA servicing. This training requirement is not applicable if you have previously received a waiver or you have successfully completed the required FSA Borrower Training program.

Who Will Decide if You Qualify?

The FSA servicing official will decide if you qualify. The servicing official will decide whether you can pay as much or more on the loan as FSA would get if they foreclosed and sold the collateral for the loan plus the value of any nonessential assets. To do this, the servicing official must decide whether the total payments of principal and interest on your adjusted debt will be at least as much as the ''recovery value'' defined in part I above.

Can You Get Your Debts Written Down?

Only if FSA will get as much or more by writing down part of your debt than through foreclosure or sale of the collateral for the loan and any nonessential assets. You also must be delinquent on your FSA debt payments.

Conditions of the New Agreement if You Qualify

You must sign a shared appreciation agreement for 10 years. Under the terms of the agreement:

- You must repay a part of the sum written down.
- The amount you must repay depends on how much your real estate collateral increases in value.

During this 10 years, FSA will ask you to repay part of the debt written down if you do one of the following:

(1) Sell or convey the real estate
(2) Stop farming
(3) Pay off the entire debt

If you do not do one of these things during the 10 years, FSA will ask you to repay part of the debt written down at the end of the 10 year period.

FSA can only ask you to repay if the value of your real estate collateral goes up.

If either 1, 2, or 3 above occurs in the first four years of the agreement, FSA will ask you to pay 75 percent of the increase in value of the real estate. In the last 6 years, you will be asked to pay only 50 percent of the increase in value. FSA will not ask you to pay more than the amount of the debt written down.

Date To Begin Restructured Agreement

If you are found eligible, you will be informed of the date for an appointment so your debt can be restructured. You must notify FSA that you accept its offer to restructure your debt within 45 days of when you receive the offer.

III. Preservation Loan Servicing Program

Purpose

This program applies when the primary loan service programs cannot help you.

Homestead Protection. (Keeping your farm home.) You may lease your farm home, certain outbuildings and up to 10 acres of land. The lease time will be for up to 5 years. The lease will include an option for you to purchase the property you lease.

IV. Who Can Qualify for Homestead Protection?

(1) Your gross annual income from your farm or ranch must have been similar to other comparable operations in your area. This must be true for at least 2 years of the last 6 years.

(2) Sixty percent (60%) of your gross annual income in at least 2 of the last 6 years must have come from the farming operation.

(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you

had no control over the circumstances, you still may qualify.

(4) You must be the owner or former owner of the property.

(5) If FSA has already taken your property, you must apply within 30 days of the date FSA took your property.

How To Lease Your Dwelling

(1) You may lease your home and up to 10 acres if you pay FSA reasonable rent. The rent prices FSA charges you will be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease for up to 5 years.

(4) You cannot sublease your property.

(5) If you do not keep up your rental payments to FSA, FSA will force you to leave.

You can buy back your homestead property at current market value at any time during the lease. FSA may place an easement on your property to protect and restore any wetlands or converted wetlands. Current market value will be decided by an independent appraiser. The appraisal will be made within 6 months of your application for homestead protection. The appraised value of your property will reflect the value of the land after any placement of a wetland conservation easement.

You should be aware that any real property, located in special areas or having special characteristics, which comes into FSA's inventory, may have restrictions or easements placed on the property which prevent your use of all or a portion of the property, should you choose to lease or buy your former dwelling. These restrictions and encumbrances will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible soils.

V. Debt Settlement Programs.

Purpose

These programs apply after it has been determined that primary loan service programs cannot help you. You may be eligible for both debt settlement and homestead protection. If you do not have FSA collateral you will need to apply for debt settlement only. Under these programs, the debt you owe FSA may be settled for less than the amount you owe. You may apply for debt settlement at any time by submitting an application for debt settlement on Form FmHA 1956–1. These programs are subject to the discretion of the agency and are not a matter of entitlement or right.

Programs Available

(1) Compromise offer: A lump-sum payment of less than the total FSA debt owed.

(2) Adjustment offer: One or more payments of less than the total amount owed to FSA. Your payments can be spread out over a maximum of five years if FSA decides you will be able to make the payments as they become due.

(3) Cancellation: The final settlement of a debt without any payment. FSA must decide there is no FSA security or other asset from which FSA can collect. You must be unable to pay any part of the debt now or in the future.

Approval Requirements

If you sell your collateral, you must apply the proceeds from the sale to your FSA account before you can be considered for debt settlement. In the case of compromise and adjustment, however, you may keep your collateral if you are unable to pay your total FSA debt and pay FSA the present fair market value of your collateral along with any additional amount you are able to pay as determined by FSA. You will be allowed to retain a reasonable equity in essential nonsecurity property to continue your normal operations and meet minimum family living expenses. FSA will not finance a compromise or adjustment offer.

All debt settlements of FLP loans must be recommended by the County Committee with a finding that the statements on your application are true. The committee must certify that you do not have assets or income in addition to what you stated in your application. You must also have not previously received any form of debt forgiveness from FSA on any other direct farm loan. If you qualify, your application must also be approved by the FSA State Executive Director or the FSA Administrator depending on the amount of the debt to be settled.

VI. How to Apply for Primary and Preservation Loan Servicing Programs.

Application Forms and Information Needed

The forms set out below should be included with this notice. If they are not, you can obtain them from the FSA county office or as directed below.

(1) Attachment 2 or 4 of Exhibit A Response form to apply for loan services.

(2) FmHA 410–1 Application for FSA Services (The financial statement on this form must include information no more than 90 days old. The financial statement must be for all individuals and entities personally liable for the FSA debt.

(3) FmHA 431–2 Farm and Home Plan, or other acceptable plan of operation. The commodity prices to use for this plan of operation or Farm and Home Plan are included with the form. You may request the servicing official to assist you in completing your plans.

(4) FmHA 440–32 Request for Statement of Debts and Collateral. Complete the name and address of the creditor, account number, if applicable, and your name. All parties liable to the creditor must sign and date the forms. FSA will obtain the creditor information.

(5) FmHA 1910–5 Request for Verification of Employment. Complete employer's name and address, employee's name and address, social security number, sign and date. FSA will send the form to your employer to obtain the needed information.

(6) SCS–CPA–026 Highly Erodible Land and Wetland Conservation Determination (This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with FSA.)

(7) AD–1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification (You will be required to complete this form in the FSA office if the one you have on file does not reflect all the land you own and lease.)

(8) FmHA 1960–12 Financial and Production Farm Analysis Summary (Complete the backside of the form or other similar type worksheets to provide production and expense history for crops, livestock, livestock products, etc. for each of the five years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the FSA case file. You must be able to support this information with farm or income tax records.)

(9) Copies of income tax records and any supporting documents for the last five years immediately preceding the year of application if not already on file with the FSA county office. (If you have been farming for less than 5 years, submit the tax records for the tax years immediately preceding the year of application during which you farmed. If copies of tax records are not readily available, you can obtain copies from the Internal Revenue Service (IRS).)

(10) Map or aerial photo of your farm from FSA or Natural Resources Conservation Service if you are applying for the conservation contract program. (Identify on the map or photo the portion of the land and approximate number of acres to be considered in the contract.)

(11) RD 1956–1 Application for Settlement of Indebtedness (Complete this form only if you wish to apply for debt settlement.)

Time to Apply for Primary and Preservation Loan Servicing Programs

To apply, you must complete the appropriate forms and return them and the required information to the FSA county office within 60 days from the date you received this notice.

VII. What Happens When You Are Not Eligible for Primary Loan Service Programs?

If the servicing official decides you are not eligible, you may request a meeting with that official so the official can explain the decision.

If you do not agree with the FSA servicing official's decision, you can tell the official why. If you can make the necessary realistic changes to your Farm and Home Plan to show a feasible plan, you should show these changes to the servicing official.

Negotiation of the Appraisal

A negotiation of the appraisal is a process whereby the borrower objects to the FSA appraisal, obtains an independent appraisal at the borrower's own costs, pays one-half of the cost for a third appraisal, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering restructuring. In all cases of primary and preservation loan servicing where the borrower presents an independent appraisal which is conducted by a qualified appraiser and is within 5 percent of the value of the FSA appraisal, the borrower must choose one of these two appraisals for the servicing official to use to continue processing the request. Negotiation of appraisal may affect your right to appeal the appraisal.

You May Request Mediation of Other Loans

If you cannot show a feasible farm plan because you owe too much to other creditors and suppliers, FSA will help you try to get your other creditors to adjust your debts. This will be done by FSA asking for mediation if your State has a mediation program approved by the United States Department of Agriculture. If there is no State mediation program, FSA will try to set up a meeting with your other creditors and suppliers if it can be shown that a reduction in these debts can provide a feasible farm plan.

You Have the Right to Appeal

Appeal. Appeal rights will be provided to you after FSA has made a decision on your request for primary loan servicing. If you first request a meeting with the servicing official instead of an appeal, the time for requesting an appeal will be extended until you are advised of the results of your meeting. You will be provided with the address of USDA's National Appeals Division. Your request for an appeal must be postmarked no later than 30 days from the date you received the agency's adverse decision. If you disagree with FSA's determination that any determination is not appealable, you may request a determination of appealability from the National Appeals Division.

You May Buyout (Pay Off) Your Loan at the ''Current Market Value''

(1) *Current market Value.* If the analysis of your debt shows that you cannot ''cash flow'' even if your debt to FSA is reduced to the value of the collateral, the servicing official will advise you in writing that you can buyout the loan by paying the ''current market value'' minus any prior liens. The current market value is determined by a current appraisal completed by a qualified appraiser.

(2) *Limits.* You may receive a buyout if you have not previously received any form of debt forgiveness from FSA on any other direct farm loan. The maximum debt that can be written off with buyout is $300,000.

(3) *Eligibility.* To qualify you must prove that:

You cannot repay your FSA delinquent debt and the reason you cannot repay was due to circumstances beyond your control,

You have acted in good faith, and

The value of your restructured loan is less than the recovery value.

(4) *Time Limit.* If you want to buy out your farm loan debt at the current market value, you must pay FSA within 90 days of the date you receive the offer. If you appeal the servicing official's decision not to give you primary loan servicing, this 90 days will not start until the administrative appeal process ends.

(5) *Cash.* If you pay off the loan at the current market value, you must pay in cash. FSA will not make or guarantee a loan for this purpose.

Consideration for Preservation Loan Service Program

(Homestead Protection)

You will be considered for homestead protection if:

(1) You applied for primary loan servicing as required and did not qualify.

(2) You do not appeal your primary loan servicing denial, or do not win your appeal.

(3) You do not pay off the loan through buyout.

(4) You agree to give FSA title to your land at the time FSA signs the written homestead protection agreement with you. FSA will not accept title and will deny your preservation request if it is not in FSA's best financial interest to accept title. FSA will compute the costs of taking title including the cost of paying other creditors who have outstanding liens on the property. FSA will take title only if it can obtain a recovery on its cost. Any written agreement for preservation loan servicing will include the amount you must pay for rent, the number of years you can rent, and an option to purchase the property at the fair market value at the time you exercise the option to purchase.

(5) You must request Homestead Protection within 30 days of FSA obtaining title to the property.

Consideration for Debt Settlement Programs

If you wish to be considered for debt settlement, you will need to request and return a completed Form RD 1956–1. You may request debt settlement at any time. Usually, the most appropriate time for making this request is when FSA has determined that Primary Loan Servicing options will not provide the best net recovery to the Government and you are requesting preservation loan servicing. If you no longer have any security remaining for the outstanding FSA loans, you may want to request debt settlement instead of primary and preservation loan servicing.

VIII. What Happens When You Are Turned Down for Homestead Protection or Debt Settlement Programs?

If FSA decides that you cannot get homestead protection or debt settlement you can ask for

(1) A meeting with FSA to discuss the decision, or

(2) Appeal the determination.

The Right to a Meeting

The servicing official will send you a letter telling you why FSA decided not to give you homestead protection or debt settlement. That letter will give you 15 days to ask for a meeting with FSA.

The Right to an Appeal

Appeal rights will be provided to you after FSA has made a decision on your request for homestead protection. If you first request a meeting with the servicing official instead of an appeal, the time for requesting an appeal will be extended until you are advised of the results of your meeting. You will be provided with the address of USDA's National Appeals Division. Your request for an appeal must be postmarked no later than 30 days from the date you received the final determination.

On appeal, you can contest FSA's rental amount and its decision not to give you homestead protection. You can also contest FSA's decision to reject your debt settlement application.

IX. Acceleration and Foreclosure

If you do not appeal an adverse determination or if you are denied relief on appeal, FSA will accelerate your loan account and make demand for payment of the whole debt. FSA will stop allowing you to use any of your crop, livestock, and milk checks, on which they have a claim, to pay for living and operating expenses. FSA will repossess the collateral or start legal foreclosure or liquidation proceedings to take and sell the

collateral, including your equipment, livestock, crops, and land. FSA will also take by administrative offset money which FSA and other Federal Government agencies owe you.

FSA may refrain from taking these actions if you agree to do one, or a combination of the following actions, within an agreed upon time, with FSA's approval:

(1) Sell all the collateral for the loan at market value.

(2) Convey (legally transfer) the collateral to FSA.

(3) Apply to transfer the collateral to someone else and have that person assume all or part of the FSA debt. (This is called transfer and assumption.)

If any of these options result in payment of less than you owe, you may apply or reapply for debt settlement. You may apply or reapply for homestead protection even if you applied before and were not accepted. However, applications for homestead protection or debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, offset, and foreclosure.

ATTACHMENT 2—ACKNOWLEDGMENT OF NOTICE OF PROGRAM AVAILABILITY

I have been given a notice explaining the primary and preservation loan service and debt settlement programs.

The date on the notice was _____.

This notice explained that FSA programs are available to help me keep my property or settle my debt with FSA.

I ask FSA to consider me for all of these programs.

I understand that I will be notified of my rights to appeal after FSA decides on my request.

Signature _____

Date _____

ATTACHMENT 3—NOTICE TO BORROWERS WITH NON-MONETARY DEFAULTS, NON-MONETARY DEFAULTS AND DELINQUENCY, OR THAT A PRIOR LIENHOLDER OR JUNIOR LIENHOLDER IS FORECLOSING

Dear

FSA has reviewed your loan account. Our record shows:

[ ] You are now $_____ behind on your payments. This is a violation of your loan agreement.

[ ] You have disposed of some of your property used to secure your loan. You did not get written approval for this. This property is

_____

(Describe property.)

[ ] You have stopped farming or ranching. This is a violation of your loan agreement.

[ ] A foreclosure action has been filed against you by _____. This is a violation of your loan agreement.

[ ] You have _____

_____

(Insert reasons for proposed action.)

FSA Will Accelerate Your Loans

FSA will take legal action to collect the money you owe. They will foreclose on real estate and repossess equipment and other property used to secure your loans. They will also stop the release of money from the sale of crops or other property. They will take by administrative offset money you are owed by other Federal agencies.

Steps You Can Take Before FSA Accelerates Your Loans

You can apply for the programs described in Attachment 1. These are called Primary and Preservation Loan Service and Debt Settlement Programs. You can also ask for a meeting. At this meeting you can explain why you think FSA's records, as indicated on this Notice, are wrong. You can also suggest things you can do to correct these problems, so as to avoid acceleration and foreclosure. You can request loan servicing, debt settlement and a meeting at the same time. For example, if this Notice states that you are delinquent, and also have disposed of property without FSA's written consent, you can request servicing to deal with the delinquency problem and request a meeting on the question of unauthorized disposition of property. Please read the section on debt settlement programs for guidance in requesting and receiving consideration of a request for debt settlement.

Forms Attached to This Notice

You will find:

(1) A summary of all primary loan service programs;

(2) A summary of the preservation loan servicing program;

(3) A summary of all debt settlement programs;

(4) Copies of the forms needed to apply; and

(5) Advice on how to get copies of FSA regulations.

Purpose of Primary Service Programs

These loan service programs are to help you repay the loan and keep your farm property.

Purpose of the Preservation Loan Service Program

This program is intended to help farmers who may lose their land to FSA to get their home back, either by purchase or through a lease with an option to purchase.

Purpose of Debt Settlement Programs

These programs apply after it has been determined that primary loan service programs cannot help you. You may be eligible for both debt settlement and preservation loan service programs. If you no longer have FSA collateral you will need to apply for debt settlement only. Under these programs, the debt you owe FSA may be settled for less than the amount you owe. You may apply for debt settlement at any time by requesting and submitting an application for debt settlement on Form RD 1956–1.

How to Apply for Loan Servicing

Complete Attachment 4 and the appropriate forms included with this notice.

You must return these within 60 days of receiving this notice.

Right to a Meeting

You have the right to meet with your FSA servicing official before they decide to accelerate your loan. You must check the box on Attachment 4 saying you want a meeting. (Attachment 4 is the ''Response to Notice of Intent to Accelerate and Notice of Borrower Rights.'')

How to Ask for a Meeting

You must check the box on Attachment 4 asking for a meeting within 15 days from the date of this notice. Return it to your county office. Do this as soon as possible. It is wise to call also to set up the meeting.

The Right to Appeal

- You can ask for an administrative appeal even if the meeting does not resolve your problems.
- You can ask for an appeal even if you do not have a meeting.
- You have the right to appeal even if you do not want to apply for loan servicing programs or debt settlement.

How to Ask for an Appeal

Your request for appeal must be in writing and sent directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

NOTE: If you do not check the box on the Attachment 4 to ask for primary and preservation loan service programs, you will not be considered for those programs.

If you do not ask for a meeting to try and resolve the issues, you will not get another chance later.

The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract). You cannot be denied a loan because all or part of your income is from a public assistance program. If you believe that you have been discriminated against for any of these reasons, you can write the Secretary of Agriculture, Washington, D.C. 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

ATTACHMENT 4—RESPONSE TO NOTICE INFORMING ME OF FSA'S INTENT TO ACCELERATE MY LOAN

Notice of My Rights

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I have read the notice informing me of FSA's intent to accelerate my loan which I received with this form.

I want to: (Check one or more of the following boxes).

[ ] 1. Request a meeting with the FSA servicing official.

My phone number is _____.

I must return this form in 15 days. I understand I do not lose my right to appeal by asking for a meeting.

[ ] 2. Be considered for all primary and preservation loan service and debt settlement programs. I must return this form along with all applicable forms in 60 days.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be

postmarked no later than 30 days from the date I received this notice.

Date: _____

Signature: _____
(Sign here.)

ATTACHMENT 5—NOTICE OF INTENT TO ACCELERATE OR TO CONTINUE ACCELERATION AND NOTICE OF BORROWERS' RIGHTS

Name and Address

Dear (Borrower's Name):

You are not eligible for debt restructuring.

I. [ ] FSA has reviewed your application for primary loan servicing (debt restructuring) and based upon the information available, you are not eligible.

Your Farm and Home Plan does not show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FSA help.

The attached computer printout shows that in order to develop a feasible plan and receive primary loan servicing, you would need to increase your cash available to pay your debts by $_____.

II. [ ] FSA has reviewed your application and your case file. You have broken your agreement with FSA. Your Farm and Home Plans shows you can pay all of your family living expenses, farm operating expenses, and scheduled debt repayments if FSA uses primary loan servicing, softwood timber, and conservation contract programs to restructure your loans.

You have broken loan agreements with FSA in the following way:

[ ] You are $_____ behind in your scheduled loan payments.

[ ] You have sold or otherwise disposed of property you used to secure the FSA loan without proper approval from FSA. This property is _____
(Describe property.) _____

[ ] You no longer are farming or ranching.

[ ] You have _____

III. [ ] You have already received your lifetime limit of at least one form of debt forgiveness on other direct loans.

IV. FSA Intends to Foreclose

FSA will accelerate your loan because you are not eligible for primary loan servicing.

FSA will take legal action to collect the money you owe.

FSA may:

(1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FSA loan;

(2) Foreclose and sell your real estate mortgaged to FSA;

(3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;

(4) Take by administrative offset any money you are owed by Federal agencies;

(5) File lawsuits to collect money you owe to FSA.

V. What You Can Do to Stop Foreclosure

Before FSA can take action against you, you can:

(1) *Request a meeting with the FSA servicing official.*

If you disagree with FSA's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the FSA servicing official. The servicing official can explain the FSA decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in Section I.

To ask for this meeting, check the box #1 on the Response Form: (Attachment 6).

Time limit: You must return the ''Response Form'' to the county FSA office within 15 days from the date you get this letter. You should also call the county office to set up the meeting.

(2) *Appeal.*

You may appeal FSA's decision. On appeal, you may challenge the ways FSA says you broke your loan agreement. You may also challenge FSA's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FSA believes you cannot present a feasible plan.

You may also ask for an independent appraisal of your property used to secure the FSA loan. This independent appraisal may be important if you think FSA has put too high or too low a value on your property when it considered you for primary loan servicing. You will have to pay for this appraisal. FSA will give you three names of appraisers to choose from. Check box #2 on the ''Response Form'' if you want the independent appraisal.

If you request a meeting with the FSA servicing official, you will be given another chance to appeal after that meeting. If you do not want to request the meeting but do want to appeal, you must send a letter requesting appeal directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

If you want to request a meeting and appeal at the same time, you must request the

meeting on the ''Response Form'' and appeal in writing to NAD.

(3) *Buy Out the Loan at the Current Market Value.*

You have this option if you meet the eligibility requirements and the recovery value is greater than the value of the restructured loan. The recovery value is $_____. The restructured loan value is $_____.

You [may] or [may not] buy out your FSA loans at the current market value of the property securing the loan, minus prior liens, in the amount of $_____. (This amount could change if the prior lien indebtedness changes before the buyout date.)

NOTE: The attached computer printout summarizes FSA's calculations.

If you are eligible and pay the buyout amount, FSA will write off the rest of your debt.

Time Limit. If you are eligible and want to buy out your FSA debt, you must pay FSA the above amount within 45 days from the date you received this letter. You must pay FSA in cash, legal money order, or certified check.

If you appeal FSA's adverse decision, the 45-day period to buy out will not start until all of the appeals are completed. Check box #3 on the ''Response Form'' if you want to buy out.

(4) Consideration for Homestead Protection

After all appeals are concluded, and your time to buy out, if eligible, has expired, FSA will automatically consider you for Homestead protection if your home is mortgaged to FSA. [You applied for this program when you applied for primary loan servicing (debt restructuring).] FSA will notify you that it will be considering you for this program and will request some additional information when the time comes to consider you.

VI. What Happens If You Do Not Cure Your Default or Buyout?

If you do not cure your default or buyout, FSA will accelerate or continue with acceleration of your FSA debts. This is a very severe action. FSA will take any of the actions listed above to collect on your debt.

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract.) You cannot be denied a loan because all or part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you can write the Secretary of Agriculture, Washington, DC 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing that this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

ATTACHMENT 5–A—NOTICE OF INTENT TO ACCELERATE OR TO CONTINUE ACCELERATION AND NOTICE OF BORROWERS' RIGHTS

(To Be Used for Applications Submitted On or After November 28, 1990)

Name and Address

Dear (Borrower's Name):

You are not eligible for debt restructuring.

I. [ ] FSA has reviewed your application for primary loan servicing (debt restructuring) and based upon the information available, you are not eligible.

Your Farm and Home Plan does not show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FSA help.

The attached computer printout shows that in order to develop a feasible plan and receive primary loan servicing, you would need to increase your cash available to pay your debts by $_____.

II. [ ] FSA has reviewed your application and your case file. Your Farm and Home Plans shows you can pay all of your family living expenses, farm operating expenses, and scheduled debt repayments if FSA uses primary loan servicing, softwood timber, and conservation contract programs to restructure your loans.

But you have not acted in good faith.

You have broken loan agreements with FSA in the following way:

[ ] You are $_____behind in your scheduled loan payments.

[ ] You have sold or otherwise disposed of property you used to secure the FSA loan without proper approval from FSA.

This property is _____

_____

(Describe property.)

[ ] You no longer are farming or ranching.

[ ] You have _____

_____

III. [ ] FSA has reviewed your application and case file. You have sufficient nonessential assets to bring your FSA account current. The net recovery value (NRV) of the nonessential assets is $_____. Your nonessential assets and their NRVs are as follows:

Nonessential Assets _____

_____

_____

NRVs _____

_____

_____

The NRV is the current appraised market value minus any prior liens and any costs of sale such as taxes due, commissions and advertising costs.

The amount needed to bring your FSA account current is $_____.

If you intend to sell the nonessential assets or borrow against their value to obtain the money to pay FSA current, you must do so immediately so that you can pay FSA current within 90 days from the date you receive this letter.

If you do not pay FSA current within 90 days or appeal this adverse decision (see part VI of this notice), FSA will accelerate your account (see part V). If you appeal the decision, the 90-day period to pay FSA current will not start until all the appeals are completed. You must check the appropriate block on the response form and return it to FSA within the specified time limit. Since FSA believes you have sufficient nonessential assets to bring your FSA account current, you are not now eligible for buyout (option 3 on Attachment 6–A). If you disagree, see part VI for an explanation of your rights.

IV. [ ] You have already received your lifetime limit of at least one form of debt forgiveness for which you are entitled.

[ ] Your writedown or writeoff of debt exceeded $300,000.

V. FSA Intends to Foreclose

FSA will accelerate your loan because you are not eligible for primary loan servicing.

FSA will take legal action to collect the money you owe.

FSA may:

(1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FSA loan;

(2) Foreclose and sell your real estate mortgaged to FSA. This could include your dwelling, if it was used to secure your farm loan;

(3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;

(4) Take by administrative offset any money you are owed by Federal agencies;

(5) File lawsuits to collect money you owe to FSA.

VI. What You Can Do To Stop Foreclosure

Before FSA can take action against you, you can:

(1) Pay your FSA account current.

(2) Request a meeting with the FSA servicing official.

If you disagree with FSA's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the FSA servicing official. The servicing official can explain the FSA decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in section I.

To ask for this meeting, check the box #1 on the Response Form: (Attachment 6–A).

Time limit: You must return the ''Response Form'' to the county FSA office within 15 days from the date you get this letter. You should also call the county office to set up the meeting.

(3) Appeal.

You may appeal FSA's decision. On appeal, you may challenge the ways FSA says you broke your loan agreement. You may challenge FSA's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FSA believes you cannot present a feasible plan. You may challenge FSA's decision that you are ineligible for debt restructuring because you have already received a writedown, buyout, or other form of debt forgiveness from FSA on another direct farm loan.

If you did not previously negotiate your appraisal, you may ask for an independent appraisal of your property including any nonessential assets that FSA says you own. This independent appraisal may be important if you think FSA has put too high or too low a value on your property. You will have to pay for this appraisal. The FSA servicing official will give you a list of three appraisers to choose from. Check box #2 on the ''Response Form'' if you want the independent appraisal. If the FSA appraisal contains mathematical or property description errors, you and the servicing official can make the necessary corrections if you both agree to such changes.

If you submit an independent appraisal and it is within five percent of the value of the FSA appraisal, you must select which of the two appraisals you want FSA to use for your request. This will be the final appraisal. It cannot be appealed.

If you request a meeting with the FSA servicing official, you will be given a chance to appeal after that meeting. If you do not want to request the meeting but do want to appeal, you must send a letter requesting appeal directly to the National Appeals Division, <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. A copy of your request should be sent to the FSA county office. Your request for an appeal must be postmarked no later than 30 days from the date you received this notice.

If you want to request a meeting and appeal at the same time, you must request the

meeting on the ''Response Form'' and appeal in writing to NAD.

(4) Buy Out the Loan at the Current Market Value.

You have this option if the recovery value is greater than the value of the restructured loan, you cannot repay your FSA debt due to circumstances beyond your control, and you have acted in good faith and tried to keep your loan agreements with FSA. The recovery value in this case is $_____. The restructured loan value is $_____.

In addition, buyout is subject to certain lifetime limitations regarding the maximum amount and number of benefits that can be received. A further explanation of these limits can be found in the Primary and Preservation Loan Service and Debt Settlement Programs Purpose notice which was sent to you earlier.

You [may] or [may not] buy out your FSA debt at the current market value of the property securing the loan and any nonessential assets, minus prior liens, in the amount of $_____. (This amount could change if the prior lien indebtedness changes before the buyout date.)

NOTE: The attached computer printout summarizes FSA's calculations.

If you are eligible and pay the buyout amount, FSA will write off the rest of your debt up to $300,000.

Time Limit. If you are eligible and want to buy out your FSA debt, you must pay FSA the above amount within 90 days from the date you received this letter. You must pay FSA in cash, legal money order, or certified check.

If you appeal FSA's adverse decision, the 90-day period to buy out will not start until all of the appeals are completed. Check box #3 on the ''Response Form'' if you want to buy out.

(5) Consideration for Homestead Protection and Debt Settlement.

After all appeals are concluded and your time to buyout, if eligible, has expired, FSA will automatically consider you for Homestead protection if your home is mortgaged to FSA. [You applied for this program when you applied for primary loan servicing (debt restructuring).] FSA will notify you that it will be considering you for this program and will request some additional information when the time comes to consider you. If you applied for Debt Settlement by returning Form FmHA 1956–1, will also consider you for this option at this time. If you did not apply for Debt Settlement before, you can apply now. Copies of Form FmHA 1956–1 are available at your FSA County Office.

VII. What Happens if You do Not Cure the Default or Buyout?

If you do not cure the default or buyout, or if you do not respond to this letter by completing and returning the enclosed Attachment 6–A, FSA will accelerate or continue with acceleration of your FSA debts. This is a very severe action. FSA will take any of the actions listed in section V above to collect on your debt.

The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract.) You cannot be denied a loan because all or part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you can write to the Secretary of Agriculture, Washington, D.C. 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

ATTACHMENT 6—RESPONSE TO NOTICE INFORMING ME OF FSA'S INTENT TO ACCELERATE OR CONTINUE WITH ACCELERATION AND NOTICE OF MY RIGHTS

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I have read the notice informing me of FSA's intent to accelerate or continue with acceleration of my loan which I received with this response form.

I want to:

[Check appropriate box or boxes.]

[ ] (1) Request a meeting with an FSA servicing official.

My current telephone number is _____.

I understand that I do not lose my appeal rights by asking for this meeting.

[ ] (2) Request an independent appraisal of my property that secures the FSA loans.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me the names of three appraisers, from which I must choose one.

[ ] (3) Buy out my loan at the current market value.

I understand that I must pay FSA _____ in cash, certified check, or legal money order. I understand I should contact the servicing official when I am ready to pay this amount as it may be different if my

prior lien indebtedness changes before the buyout date. I understand that I must pay FSA within 45 days of the date I received this letter, or if I appeal, I must pay within 45 days from the adverse decision on appeal. I understand that if I pay this amount FSA will write off the rest of my debt.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Borrower's signature _____

Date _____

ATTACHMENT 6–A—RESPONSE TO NOTICE INFORMING ME OF FSA'S INTENT TO ACCELERATE OR CONTINUE WITH ACCELERATION AND NOTICE OF MY RIGHTS

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I have read the notice informing me of FSA's intent to accelerate or continue with acceleration of my loan which I received with this response form.

I want to:

[Check appropriate box or boxes.]

[ ] (1) Request a meeting with an FSA servicing official.

I must return this ''Response Form'' within 15 days to request a meeting.

My current telephone number is _____.

I understand that I do not lose my appeal rights by asking for this meeting.

[ ] (2) Request an independent appraisal of my property including any nonessential assets.

I must return this ''Response Form'' within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me names of three appraisers, from which I must choose one if I am also requesting an appeal.

[ ] (3) Buy out my loans at the current market value.

I understand that I must pay FSA $_____ in cash, certified check, or legal money order. I understand I should contact the servicing official when I am ready to pay this amount as it may be different if my prior lien indebtedness changes before the buyout date. I understand that I must pay FSA within 90 days of the date I received this letter, or if I appeal the FSA decision, I must pay within 90 days from the end of the appeal of the FSA decision.

[ ] (4) Pay my FSA account current.

I understand that I must pay FSA $_____ to pay my account current. I will pay this amount to FSA within 90 days of the date I received this letter, or if I appeal the FSA decision, I will pay within 90 days from the end of the appeal process on the FSA decision. I understand that when I pay this amount FSA will continue with my account.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Borrower's signature _____

Date _____

ATTACHMENT 7 and 8—OBSOLETE

ATTACHMENT 9—NOTIFICATION OF INTENT TO ACCELERATE OR CONTINUE ACCELERATION OF LOANS AND NOTICE OF YOUR RIGHTS

Name and Address

Date

Dear (Borrower's Name):

FSA will accelerate your loan because you have not asked or have not accepted the offer for primary loan service programs.

You can:

(1) Ask for meeting with your FSA servicing official.

(2) Appeal FSA's decision.

(3) Ask to voluntarily convey to FSA the property used to secure your loan and ask to be released from your debt.

(4) Ask to keep your home if the FSA acquires ownership of it.

You are behind with your payments to FSA, and a review of your account shows:

[ ] You are _____ behind in your FSA loan payments.

This is a violation of your loan agreement.

[ ] You have sold or otherwise disposed of property used to secure your FSA loan. You did not get written approval for this.

The property is _____

_____

(Describe property.)

[ ] You are no longer farming or ranching.

This is a violation of your loan agreement.

[ ] You have _____

_____
(Insert reason for proposed action.)

FSA Will Accelerate Your Loans

FSA will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. They may also stop the release of money from the sale of crops or other property. They will take by administrative offset any money you are owed by other Federal agencies.

Steps You Can Take Before FSA Accelerates or Continues Acceleration of Your Loans

(1) Ask for a meeting. You can ask to meet with your FSA servicing official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10 saying you want a meeting. [Attachment 10 is the ''Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan.'']

How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10. Return it to your county office. Do this as soon as possible.

(2) Appeal. You can ask for an administrative appeal. On appeal, you can contest FSA's decision to accelerate or continue acceleration of your loan. You can ask for an independent appraisal of your land. You will have to pay for this appraisal. FSA will give you three names of approved appraisers to choose from. Check box 3 if you want an independent appraisal.

You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting. However, you only have the opportunity to appeal an issue once. For example, if you previously appealed or had the opportunity to appeal a favorable debt restructuring offer and were not successful on appeal, or did not appeal within the time alloted, you cannot appeal this offer again. You can ask for an appeal even if you do not have a meeting.

How to Ask for an Appeal. Your request for appeal must be in writing and sent directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

What Happens if You Do Not Respond? If you do not respond to this notice by filling out Attachment 10, or requesting an appeal, FSA will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan, including foreclosure as described above.

NOTE: Foreclosure means you lose the title to your land. But you can still apply for homestead protection to keep possession of your house. [See Exhibit A, Attachment 1 sent to you on _____. If you did not get these forms, contact your county office within 15 days of this notice.]

The Right Not to Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract). You cannot be denied a loan because all or a part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you can write to the Secretary of Agriculture, Washington, D.C. 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

ATTACHMENT 9–A—NOTIFICATION OF INTENT TO ACCELERATE OR CONTINUE ACCELERATION OF LOANS AND NOTICE OF YOUR RIGHTS

(To Be Used for Borrowers Receiving Notices on or After November 28,1990)

Name and Address

Date

Dear (Borrower's Name):

FSA will accelerate your loan because you have not asked or have not accepted the offer for primary loan service programs.

You can:

(1) Ask for meeting with your FSA servicing official.

(2) Appeal FSA's decision.

(3) Ask to voluntarily sign over to FSA the property used to secure your loan and ask to be released from your debt.

(4) Ask to keep your home if the FSA acquires ownership of it.

You are behind with your payments to FSA, and a review of your account shows:

[ ] You are $_____ behind in your FSA loan payments.

This is a violation of your loan agreement.

[ ] You have sold or otherwise disposed of property used to secure your FSA loan. You did not get written approval for this.

The property is _____

_____
(Describe property.)

[ ] You are no longer farming or ranching.

This is a violation of your loan agreement.

[ ] You have _____

_____

(Insert reason for proposed action.)

FSA Will Accelerate Your Loans

FSA will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. They may also stop the release of money from the sale of crops or other property. They will take by administrative offset any money you are owed by other Federal agencies.

Steps You Can Take Before FSA Accelerates or Continues Acceleration of Your Loans

(1) Ask for a meeting. You can ask to meet with your FSA servicing official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10–A saying you want a meeting. [Attachment 10–A is the ''Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan.'']

How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10–A. Return it to your county office. Do this as soon as possible.

(2) Appeal. You can ask for an administrative appeal. On appeal, you can contest FSA's decision to accelerate or continue acceleration of your loan. You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting. However, you only have the opportunity to appeal an issue once. For example, if you previously appealed or had the opportunity to appeal a favorable debt restructuring offer and were not successful on appeal, or did not appeal within the time alloted, you cannot appeal this offer again. You can ask for an appeal even if you do not have a meeting.

How to Ask for an Appeal. Your request for appeal must be in writing and sent directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

What Happens if You Do Not Respond? If you do not respond to this notice by filling out Attachment 10–A, or request an appeal, FSA will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan, including foreclosure as described above.

NOTE: Foreclosure means you lose the title to your land. But you can still apply for homestead protection to keep possession of your house. [See Exhibit A, Attachment 1 sent to you on _____. If you did not get these forms, contact your county office within 15 days of this notice.]

The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract). You cannot be denied a loan because all or a part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you should write to the Secretary of Agriculture, Washington, DC 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

ATTACHMENT 10—RESPONSE TO NOTICE INFORMING ME OF FSA'S INTENT TO ACCELERATE OR CONTINUE TO ACCELERATE MY LOAN

Notice of My Rights

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I want to: (Check one or more of the following boxes)

[ ] (1) Request a meeting with the FSA servicing official.

My telephone number is _____.

I understand I do not lose my right to appeal if I ask for a meeting.

[ ] (2) Voluntarily sign over to FSA all the property used to secure my loan and settle my debt.

[ ] (3) Request an independent appraisal of property securing my loans. I understand I must pay for this appraisal. I understand FSA will give me names of three qualified appraisers.

[ ] (4) Homestead Protection.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Signed _____

_____

Date _____

ATTACHMENT 10–A—RESPONSE TO NOTICE INFORMING ME OF FSA'S INTENT TO ACCELERATE OR CONTINUE TO ACCELERATE MY LOAN

(To Be Used for Borrowers Receiving Notices on or After November 28, 1990)

Notice of My Rights

TO: Farm Service Agency

FROM: _____

(Please print your name and address.)

I want to: (Check one or more of the following boxes)

[ ] (1) Request a meeting with the FSA servicing official.

My telephone number is _____.

I must return this form within 15 days.

I understand I do not lose my right to appeal if I ask for a meeting.

[ ] (2) Voluntarily sign over to FSA all the property used to secure my loan and settle my debt.

[ ] (3) Homestead Protection.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Signed _____

Date _____

[62 FR 10134, Mar. 5, 1997]

EXHIBIT B—NOTIFICATION OF OFFER TO RESTRUCTURE DEBT FOR FINANCIALLY DISTRESSED BORROWERS CURRENT ON THEIR LOAN PAYMENTS

(Borrower's Name and Address)

(Date)

Dear (Borrower's Name):

We have determined that the Farm Service Agency (FSA) can approve your request for primary loan servicing programs.

Our calculations indicate that you will be able to make the necessary annual payment on your FSA loan if your loan is restructured through the use of primary loan servicing programs. The attached computer printout indicates the primary loan servicing program that will help you overcome your financial difficulty and provide the greatest net recovery to the Government. Therefore, We are offering to restructure your FSA debt in the following fashion:

_____

_____

* As a condition of this restructuring, you must agree to meet, at your own cost, FSA's training requirements which provide instruction in production and financial management within 2 years of the date your loans are restructured. The cost will be included in your farm plan as an operating expense. Upon completion of the training, the instructor will assign a score according to the following criteria:

Score

1 The borrower attended classroom sessions as agreed, satisfactorily completed all assignments, and demonstrated an understanding of the course material.

2 The borrower attended classroom sessions as agreed and attempted to complete all assignments; however, the borrower does not demonstrate an understanding of the course material.

3 The borrower did not attend classroom sessions as agreed or did not attempt to complete assignments. In general, the borrower did not make a good faith effort to complete the training.

Attached is a list of courses you will be required to complete to fulfill the training requirement. A list of approved vendors in your area for these courses is also attached. Any denial of a request for a waiver of the training requirement is not appealable. If you fail to complete the training as agreed, you will be ineligible for future FSA benefits including future direct and guaranteed loans, Primary Loan Servicing, Interest Assistance renewals, and restructuring of guaranteed loans.

* The County Committee has waived the training requirement for the restructuring offered in this notice.

If you want FSA to use the primary servicing program identified on the computer printout, you must accept this offer in writing. Your acceptance must be received by FSA not later than *45 days* from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled ''Acceptance of Offer to Restructure my Debt.''

If you do not accept this offer within 45 days, and your account becomes delinquent, FSA will renotify you of all servicing options available at that time.

Sincerely,

* Indicates optional paragraphs to fit the individual circumstances.

ATTACHMENT 1—ACCEPTANCE OF OFFER TO RESTRUCTURE MY DEBT

(Date)

TO: Farm Service Agency

FROM: (Please print your name and address)

I have received your offer to restructure my FSA debt. I would like to accept that offer.

Sincerely,

(Borrower's signature)

_____

(Date)

[62 FR 10143, Mar. 5, 1997]

EXHIBIT C—NET RECOVERY BUYOUT RECAPTURE AGREEMENT

In consideration of the Farm Service Agency (FSA) allowing me to purchase the real estate property securing my FSA Farm Loan Programs loan obligations at the net recovery value of $ _____ in accordance with 7 CFR part 1951, subpart S, I agree to pay to difference between the net recovery value of the security of $ _____ and the fair market value of the real estate property of $ _____ as of the date of this agreement, if I sell or otherwise convey the security within 2 years of this agreement for an amount which exceeds the net recovery value. This amount is $ _____. I further agree to give FSA a mortgage or deed of trust to secure this amount for the best lien obtainable which will be subordinate to any purchase money security instrument which does not exceed the fair market value of the property to enable the borrower to purchase the property from FSA at the net recovery value. This mortgage or deed of trust will be released 2 years from the date of this agreement if I do not sell or convey the property during the two year period.

I understand that the difference between the net recovery value of the real estate securing the FSA loan obligations and the fair market value of the real estate security specified above will all be due and payable on the day of sale or conveyance if I sell or otherwise convey the real estate property within two (2) years from the date of this agreement, if I realize a gain in this transaction.

Loan Balance $ _____.

Amount of Buyout $ _____.

_____

Date of Agreement

_____

Borrower

[62 FR 10144, Mar. 5, 1997]

EXHIBIT C–1—NET RECOVERY BUYOUT RECAPTURE AGREEMENT

Purpose

This agreement with FSA will allow you to buy out your loan at the net recovery value.

1. I _____ understand and agree to the following conditions.

2. I will give FSA a lien (mortgage or deed of trust) on the FSA real estate security property I own to secure this agreement.

The lien is to secure the maximum recapture amount listed in item 6.c. of this agreement. This lien is secondary to the following liens, including any lien used to obtain the net recovery buyout amount up to the net recovery value.

_____

(name, address, and unpaid balance of liens)

3. I agree that if I do not sell or convey any portion of the real estate used as security for 10 years, the agreement and any liability you have under it will be satisfied at the end of 10 years, and then FSA will release its lien.

NOTE: Convey includes, but is not limited to, any form of transfer in all or any portion of the real estate property, including sale, gift, Contract Sale or Purchase Agreement, foreclosure, and below-fair-market sale, but does not include a mortgage or deed of trust. Transfer of title to property to a spouse or child who is actively engaged in farming the property upon the death or retirement of a borrower will not be treated as a conveyance. In such a transaction, FSA will not release its lien, and the transferee will assume liability under the agreement.

4. I agree that as of the date of this agreement, the net recovery value of the real estate is $ _____.

5. I agree that as of the date of this agreement, the total amount of the FSA debt secured by real estate including principal and interest before buyout is $ _____.

6. If I do sell or convey any part or all of this real estate within 10 years of this agreement, I must pay FSA the recapture amount for that part sold or conveyed which is the smaller of a., b., or c.

a. The Fair Market Value of the real estate parcel at the time of the sale or conveyance, as determined by an FSA appraisal, minus that portion of the recovery value of the real estate represented in item 4,

b. The Fair Market Value of the real estate parcel at the time of the sale or conveyance, as determined by an FSA appraisal, minus the unpaid balance of prior liens at the time of the sale or conveyance, minus the net recovery value of the real estate in item 4 if this amount has not been accounted for as a prior lien, or

c. The total amount of the FSA debt written off for loans secured by real estate.

I agree that the amount in Item 5 is the outstanding balance of principal and interest owed on the FSA Farm Loan Programs loans as of the date of this agreement, minus the net recovery value of the real estate in item 4. This amount is $ _____ and is the maximum amount that can be recaptured.

7. When I pay the recapture amount due, FSA will release its lien on the property sold or conveyed. The agreement and any liability I have under it will be satisfied at the end of 10 years if I have made all the required payments under the recapture agreement. The agreement and any liability I have under it will be satisfied before this time only if I sell or convey all of the real estate securing this agreement and make all the required payments under the agreement.

8. This agreement is subject to FSA regulations in 7 CFR part 1951, subpart S, and any future regulations which are consistent with this agreement.

9. The date of this agreement is the latest date of the dates below.

igned _____
(borrower or obligor)
Date _____
Signed _____
(borrower or obligor)
Date _____
_____
(FSA)
Date _____

[62 FR 10144, Mar. 5, 1997]

EXHIBIT D [RESERVED]

EXHIBIT E—NOTIFICATION OF ADVERSE DECISION FOR PRIMARY LOAN SERVICING, MEDIATION OR MEETING OF CREDITORS AND OTHER OPTIONS

(Borrower's Name and Address)

Dear (Borrower's Name):

The Farm Service Agency (FSA) has carefully considered your request for primary loan servicing programs. Due to your debt with lenders other than FSA, you are unable to develop a feasible plan. Your Farm and Home Plan must show that you have enough income after payment of your essential living and operating expenses and other non-FSA debts to make an annual payment to FSA of at least $ _____. The attached computer printout shows that in order to develop a feasible plan and receive primary loan servicing, you would need to increase your cash available to pay FSA and your other debts by $ _____.

If you did not previously request a Conservation Contract, you may request this servicing action by submitting a map or FSA aerial photo indicating that portion of the farm and the appropriate acres to be considered. You must submit this information to FSA within 30 days of receiving this notice.

(To be used when Certified State Mediation is available)

Certified State Mediation

We are requesting mediation under the (Name) State Certified Mediation Program. We will work with you and your creditors to determine if your debts can be adjusted sufficiently to permit you to develop a feasible plan of operation. If, with the adjustment of your debt, you are able to develop a feasible plan of operation which shows that you can make an annual payment to FSA of at least $_____, FSA will reconsider your application for primary loan servicing.

(To be used when Certified State Mediation is not available and undersecured creditors have a substantial part of the total borrower's debt.)

Meeting of Creditors

If you request, we will schedule a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts sufficiently to permit you to develop a feasible plan of operation. The FSA State Executive Director will contract for a mediator or appoint an FSA representative not previously involved in servicing of your account upon your written request to participate in the meeting with creditors. Sign the attached acknowledgement within 30 days of the date of this letter. The acknowledgment will be your written request and consent to FSA releasing information concerning your account to other creditors who participate in the meeting.

(To be used when Certified State Mediation is not available and undersecured creditors do not hold a substantial part of the total borrower's debt.)

We will not be scheduling a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts. We have determined that your other creditors do not hold a sufficient amount of your total debt to permit you to develop a feasible plan of operation even if their debts are entirely written off. You may object to our determination not to give you a voluntary meeting of creditors in any appeal you may have. You will be notified of your appeal rights in a later notice.

(The following paragraphs will be removed if the application was submitted before November 28, 1990, or the borrower does not have any nonessential assets.)

Nonessential Assets

FSA has determined that you have nonessential assets that do not contribute income to pay essential family living and farm operating expenses. The net recovery value (NRV) of the nonessential assets has been added to the NRV of the FSA collateral for the calculation on the attached printout.

The NRV of the nonessential assets is $_____. Your nonessential assets and their NRVs are as follows:

Nonessential Assets

_____
_____
_____
_____

NRVs

_____
_____
_____
_____

FSA encourages you to sell the nonessential assets or borrow against their value. If you pay the NRV of the nonessential assets on your FSA debt, that amount will be subtracted from your debt and FSA will reevaluate your servicing request. If you are going to pay FSA the NRV of your nonessential assets, you must do so within 45 days of the date of receiving this letter. You must check the appropriate block on the response form and return it to FSA within 45 days with $_____ for payment of the NRV of the nonessential assets. If you want to reduce the NRV, you must pay FSA before any mediation or meeting of creditors.

If you wish to dispute FSA's decision that you own nonessential assets, you will be given the opportunity to appeal if mediation or the meeting of creditors is unsuccessful. If mediation or a meeting of creditors is not held, you will be notified of your appeal rights in a later notice.

Negotiation of the Appraisal

If you object to the FSA appraisal of your property, you may ask the FSA by returning the ''Response Form'' to negotiate the appraisal with you. You must ask to negotiate the FSA appraisal within 30 days from the date you receive this notice. To do this you must provide FSA with a copy of your current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FSA regulations.

If you do not have a current independent appraisal and wish FSA to assist you, check option 2 of the ''Response Form'' and FSA will provide you with a list of such appraisers.

You must provide FSA a copy of your independent appraisal within 30 days of requesting negotiation.

If your current independent appraisal is within five percent of the FSA appraisal, you must select which appraisal of the two you want FSA to use in processing your request. The appraisal you select will be the final appraisal. It cannot be further negotiated or appealed. If the difference is more than five percent and you have requested a negotiated appraisal, you and FSA will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. FSA will pay for the other half of the third appraisal. You, the appraiser and the servicing official must complete and sign an appraisal agreement. Following the completion of the third appraisal, the average of the two appraisals that are closest in value, as determined by FSA, shall establish the appraised value to be used. This final negotiated appraisal is not appealable. Do not select this option of the ''Response Form'' if you and FSA have already negotiated your appraisal.

If you choose not to negotiate and wish to dispute FSA's appraisal, you will be given the opportunity to appeal in a later notice. If you believe there are mathematical or property description errors in the appraisals, you should immediately contact the servicing official. If you and the servicing official agree, the corrections will be made and initialed by both you and the servicing official.

If you want information on the requirements of an FSA appraisal, you may request a copy of the FSA appraisal regulations from the servicing official.

Sincerely,

Attachment

ATTACHMENT 1—BORROWER'S REQUEST FOR MEETING OF CREDITORS AND ACKNOWLEDGMENT

I have been given a notice explaining that I am not eligible for primary loan service programs. FSA has told me that due to my debt with other lenders it does not believe I can develop a feasible plan. I request that you schedule a meeting with my undersecured creditors to assist me in developing a feasible plan of operation. I consent to FSA releasing information concerning my FSA account to these creditors to assist me in developing a feasible plan.

(Date) _____

(Borrower's signature) _____

ATTACHMENT 2—BORROWER'S REQUEST FOR MEETING OF CREDITORS OR REQUEST TO NEGOTIATE THE FSA APPRAISAL AND ACKNOWLEDGMENT

I have been given a notice explaining that I am not eligible for primary loan service programs.

I want to:

[Check the appropriate box or boxes.]

[ ] (1) Request an independent appraisal of my property including any nonessential assets.

I must return this ''Response Form'' within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me a list of appraisers.

If the independent appraisal is within five percent of the FSA appraisal, I must select which of the two appraisals I want to be used for processing my request.

[ ] (2) Request Negotiation of the Appraisal.

I must return this ''Response Form'' within 30 days to request a negotiation of my appraisal.

I understand that I must provide FSA with a copy of my independent appraisal within 30 days of requesting negotiation. I understand that I must pay for this appraisal and one-half of a third appraisal, if necessary. I understand that FSA will not negotiate the appraisal more than once.

[ ] (3) I request a copy of the recent FSA appraisal of my property.

[ ] (4) I am paying FSA the net recovery value of any nonessential assets that FSA has said I own. I will pay this amount within 45 days.

Please recalculate the restructuring of the FSA debt.

* [ ] (5) Request that you schedule a meeting with my undersecured creditors to assist me in trying to develop a feasible plan of operation. I consent to FSA releasing information concerning my FSA account to these creditors to assist me in developing a feasible plan. I must return this ''Response Form'' within 30 days if I want a meeting.

(Date) _____

(Borrower's signature) _____

* Optional paragraph depending on the circumstances.

[62 FR 10144, Mar. 5, 1997]

EXHIBIT F—NOTIFICATION OF OFFER TO RESTRUCTURE DEBT

(Borrower's Name and Address)

Date

Dear (Borrower's Name):

We have determined that the Farm Service Agency (FSA) can approve your request for primary loan servicing programs.

Offer

Our calculations indicate that you will be able to develop a feasible plan and make the necessary annual payment on your FSA loan if your loan is restructured in the following fashion:

_____

_____

_____

The attached computer printout indicates the primary loan servicing program that will keep you on the farm and provide the greatest net recovery to the Government.

* Our calculations indicate that a feasible plan can be found with or without a writedown, as described below. However, with a writedown, your cash flow margin would be _____ percent, whereas without a writedown, your cash flow margin would only be _____ percent. You can choose to accept the restructuring offer with or without a writedown on the attached response form. If you choose a writedown, you will not be able to receive future loans through FSA, except for annual operating loans.

* As a condition of this restructuring, you must agree to meet, at your own cost, FSA's training requirements which provide instruction in production and financial management within 2 years of the date your loans are restructured. The cost will be included in your farm plan as an operating expense. Upon completion of the training, the instructor will assign a score according to the following criteria:

Score

1. The borrower attended classroom sessions as agreed, satisfactorily completed all assignments, and demonstrated an understanding of the course material.

2. The borrower attended classroom sessions as agreed and attempted to complete all assignments; however, the borrower does not demonstrate an understanding of the course material.

3. The borrower did not attend classroom sessions as agreed or did not attempt to complete assignments. In general, the borrower did not make a good faith effort to complete the training.

Attached is a list of courses you will be required to complete to fulfill the training requirement. A list of approved vendors in your area for these courses is also attached. Any denial of a request for a waiver of the training requirement is not appealable. If you fail to complete the training as agreed, you will be ineligible for future FSA benefits including future direct and guaranteed loans, Primary Loan Servicing, Interest Assistance renewals, and restructuring of guaranteed loans.

* The County Committee has waived the training requirement for the restructuring offered in this notice.

If you want FSA to use the primary servicing program identified on the computer printout to restructure your debt, you must accept this offer in writing. Your acceptance must be received by FSA no later than 45 days from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled ''Acceptance of Offer to Restructure my Debt.''

** Nonessential Assets*

FSA has determined that you have nonessential assets that do not contribute a net

income to pay essential family living expenses or maintain a sound farming operation. The net recovery value (NRV) of the nonessential assets has been added to the NRV of the FSA collateral for the calculation on the attached printout. The NRV of the nonessential assets is $ _____. Your nonessential assets and their NRVs are as follows:

Nonessential Assets

_____
_____
_____
_____

NRVs _____
_____
_____
_____
_____

FSA encourages you to sell the nonessential assets or borrow against their value. If you pay the NRV of the nonessential assets, the amount will be subtracted from your debt and FSA will recalculate the value of your FSA debt. If you are going to pay FSA the NRV of your nonessential assets, you must do so within 45 days of the date of receiving this letter. You must check the appropriate block on the response form and return it to FSA within 45 days with your payment for the NRV of the nonessential assets of $_____.

If you wish to dispute FSA's decision that you own nonessential assets or disagree with the offer presented, you may request a meeting and/or an appeal.

Negotiation of the Appraisal

If you object to the FSA appraisal of your property, you may ask the FSA to negotiate the appraisal with you by returning the ''Response Form.'' You must ask to negotiate the FSA appraisal within 30 days from the date you receive this notice. To do this, you must provide FSA with a copy of your current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FSA regulations.

If you do not have a current appraisal and wish FSA to assist you, check option 2 of the ''Response Form'' and FSA will provide you with a list of such appraisers.

You must provide FSA a copy of your independent appraisal within 30 days of requesting negotiation.

If your current independent appraisal is within five percent of the FSA appraisal, you must select which appraisal of the two you want FSA to use in processing your request. The appraisal you select will be the final appraisal. It cannot be further negotiated or appealed. If the difference is more than five percent and you have requested a negotiated appraisal, you and FSA will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. You, the appraiser and the servicing official must complete and sign an appraisal agreement for this appraisal. FSA will pay for the other half of the third appraisal. Following the completion of the third appraisal, the average of the two appraisals that are closest in value, as determined by FSA, shall establish the appraised value to be used. This final negotiated appraisal is not appealable. Do not select this option on the ''Response Form'' if you and FSA have already negotiated your appraisal.

If you wish to dispute FSA's appraisal, but do want to reach agreement with FSA by negotiating the appraisal, you may also request a meeting or appeal of other items of the decision that you do not agree with by checking the appropriate box on the attached response form. If you believe there are mathematical or property description errors in the appraisals, you should immediately contact the servicing official. If you and the servicing official agree, the corrections will be made and initialed by both you and the servicing official.

If you want information on the requirements of an FSA appraisal, you may request a copy of the FSA appraisal regulations from the servicing official.

What Happens If You Do Not Accept the Offer

If you do not accept the restructuring offer on page 1, FSA will deny your request for primary loan servicing and send you an additional notice stating that FSA intends to liquidate your account. You can appeal FSA's offer by sending a letter requesting appeal directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. A copy of your request should be sent to the FSA county office. Your request must be postmarked no later than 30 days from the date you received this notice.

YOU MAY HAVE A FEDERAL INCOME TAX LIABILITY IF FSA RESTRUCTURES YOUR FSA INDEBTEDNESS WITH A WRITEDOWN. YOU SHOULD CONTACT THE INTERNAL REVENUE SERVICE (IRS) FOR INFORMATION.

Sincerely,

*Optional paragraphs depending on circumstance.

ATTACHMENT 1—ACCEPTANCE OF OFFER TO RESTRUCTURE MY DEBT

TO: Farm Service Agency

FROM: (Please print your name and address)

I have received your offer to restructure my FSA debt.

I would like to accept that offer.

Sincerely.

(Borrower's signature)

(Date) _____

ATTACHMENT 2—ACCEPTANCE OF RESTRUCTURING OFFER, REQUEST TO NEGOTIATE APPRAISAL OR PAY FSA THE NRV OF NONESSENTIAL ASSETS

(This Attachment Will Be Used Instead of Attachment 1 for Borrowers Who Submitted Applications On or After November 28, 1990)

TO: Farm Service Agency

FROM: (Please print your name and address)

I have received your offer to restructure my FSA debt.

(Check the appropriate blocks.)

*[ ](1) I accept FSA's offer to restructure my debt. I understand that I must accept FSA's offer within 45 days of receiving Exhibit F.

*[ ](1) I accept FSA's offer to restructure my debt as follows: (Put an ''X'' in Block (a) or (b).) I undestand I must accept FSA's offer within 45 days of receiving Exhibit F.

(a) [ ] With a writedown giving me a higher cash flow margin than without a writedown.

(b) [ ] Without a writedown giving me a lower cash flow margin than if I would take the writedown.

[ ](2) I request an independent appraisal of my property including any nonessential assets. If the difference between my independent appraisal and the FSA appraisal is not more than five percent, I understand that I must select which of the two appraisals I want to be used for reconsidering my request. In such a case, there will not be an appeal of the appraisal or any further negotiation of the appraisal.

I must return this ''Response Form'' within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me a list of appraisers.

[ ](3) I request a copy of the FSA recent appraisal of my property.

[ ](4) Request Negotiation of the Appraisal.

I must return this ''Response Form'' within 30 days to request a negotiation of my appraisal.

I understand that I must provide FSA with a copy of my independent appraisal within 30 days of requesting negotiation. I understand that I must pay for this appraisal plus one-half of a third appraisal, if necessary. I understand that FSA will not negotiate the appraisal more than once.

[ ](5) I intend to pay FSA the net recovery value of any nonessential assets that FSA has said I own.

I understand that I must pay the net recovery value of the nonessential assets within 45 days of receiving Exhibit F.

I understand that if I want to appeal FSA's offer to restructure, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice. If possible, I should submit a copy of my independent appraisal to the FSA servicing official and the hearing officer prior to the appeal hearing if I am appealing the appraisal.

Sincerely,

(Borrower's signature)

_____

(Date)

* Optional paragraphs depending on the circumstance.

[62 FR 10146, Mar. 5, 1997]

EXHIBIT G—DEFERRAL, REAMORTIZATION AND RECLASSIFICATION OF DISTRESSED FARMER PROGRAM (FP) LOANS FOR SOFTWOOD TIMBER PRODUCTION (ST) LOANS

I. GENERAL.

Borrowers with distressed FP loans, as defined in this exhibit, with 50 or more acres of marginal land may request FmHA or its successor agency under Public Law 103–354 assistance under the provisions of this section. Such distressed FP loans may be reamortized with the use of future revenue produced from the planting of softwood timber on marginal land as set out in this section. The basic objectives of the FmHA or its successor agency under Public Law 103–354 in reamortizing and deferring payments of distressed FP loans (ST loans) to financially distressed farmers are to develop a feasible plan to assist eligible FmHA or its successor agency under Public Law 103–354 borrowers to improve their financial condition, to repay their outstanding FmHA or its successor agency under Public Law 103–354 debts in an orderly manner, to carry on a feasible

farming operation, and to take marginal land, including highly erodible land, out of the production of agricultural commodities other than for the production of softwood timber. County Supervisors are authorized to approve softwood timber (ST) loans subject to the limitations in paragraph VI of this exhibit.

(A) *Management assistance.* FmHA or its successor agency under Public Law 103–354 management assistance will be provided to borrowers to assist them to achieve loan objectives and protect the Government's financial interests, in accordance with subpart B of part 1924 of this chapter.

(B) *Definitions.*

(1) *Distressed FmHA or its successor agency under Public Law 103–354 loan.* An FP loan which is delinquent or in financial distress because a borrower cannot project a feasible plan by using the other loan modification actions including rescheduling, reamortizing or deferral for the maximum term.

(2) *Marginal land.* Land determined suitable for softwood timber production by the Soil Conservation Service (SCS) that was previously pasture land or within the last five years used for the production of agricultural commodities, as defined in §12.2 of subpart A of part 12 of this chapter and which is Attachment 1 of Exhibit M of subpart 1940 of this chapter. This could include:

(a) Highly erodible land as defined or classified by the SCS under §12.2 of subpart A of part 12 of this chapter, or

(b) Marginal lands that predominantly include soils that are in Class IV, V, VI, VII, or VIII in the SCS's Land Capability Classification System. However, marginal land shall not include wetlands as defined in §12.2 (a)(26) of subpart A of part 12 of this chapter and which is attachment 1 of exhibit M of subpart G of part 1940 of this chapter.

(3) *Softwood timber.* The wood of a coniferous tree having soft wood that is easy to work or finish and is commonly grown and commercially sold for pulpwood, chip, and sawtimber.

(c) *ST loan eligibility.* A borrower must:

(1) Have the debt repayment ability and reliability, managerial ability and industry to carry out the proposed timber production operation.

(2) Be willing to place not less than 50 acres of marginal land in softwood timber production; such land (including timber) may not have any lien against it other than a lien for ST loans.

(3) Have properly maintained chattel (i.e. movable property) and real estate security and accurately accounted for the sale of security, including crops, and livestock production.

(4) Be an FmHA or its successor agency under Public Law 103–354 FP loan borrower who owns 50 acres or more of marginal land which SCS determines to be suitable for softwood timber.

(5) Have sufficient training or farming experience to assure reasonable prospects of success in the proposed timber operation.

(6) Have one or more distressed FmHA or its successor agency under Public Law 103–354 loans as defined by this exhibit.

(7) Not have a total indebtedness of ST loan(s) that will exceed $1,000 per acre for the marginal land at closing. Example: If 50 acres of marginal land is put in softwood timber production, the total ST loan indebtedness may not exceed $50,000 at closing.

(8) Be able to obtain sufficient money through FmHA or its successor agency under Public Law 103–354 or other sources including cost-sharing programs for forestry purposes for the planting, caring, and harvesting of the softwood timber trees.

II. REAMORTIZATION REQUIREMENTS.

(A) A Timber Management Plan must be developed with the assistance of the Federal Forest Service (FS), State Forest Service or such other State or Federal agencies or qualified private forestry service. The plan will outline the necessary site preparation, planting practices, environmental protection practices, tree varieties, the harvesting projection, the planned use of the timber, etc.

(B) The following requirements must also be met:

(1) If the borrower is otherwise eligible, the County Supervisor must determine that a feasible farm plan as defined by subpart B of part 1924 of this chapter on the present farm operation is not possible without using the provisions of this section. The County Supervisor must calculate the borrower's plan of operation, using the maximum terms for the rescheduling, reamortization and deferral authorities set out in this subpart. If a feasible projection can be achieved by using any of these authorities, the borrower's account will be rescheduled, reamortized or deferred, as applicable. Limited Resource rates must be considered, if the borrower is eligible, in determining whether a feasible plan can be achieved. The County Supervisor must document the steps taken to develop these cash flow projections and must place this documentation in the borrower's case file. A copy of this documentation must also be given to the borrower. If a feasible plan is shown, the borrower is not eligible for a reamortization of a distressed loan(s) as set out in this section. The borrower will be given an opportunity to appeal the FmHA or its successor agency under Public Law 103–354 denial, as provided in §1951.909(i) of this subpart after the County Supervisor determines the borrower's eligibility for the other servicing programs in this subpart.

(2) If a feasible plan cannot be developed on the present farm operation, the County Supervisor will determine if a feasible plan

would be possible by deferring and reamortizing a portion of one or more distressed FP loans as ST loans. The ST loan is limited to the loan amount (rounded up to the nearest $1,000) sufficient to produce a feasible plan. However, the amount of the loan cannot exceed the $1,000 per acre specified in paragraph I (C)(7) of this exhibit. The borrower, with assistance from the County Supervisor, must be able to develop a feasible farm plan for the first full crop year of the deferral.

(3) For applications received before November 28, 1990, when a loan is reamortized the accrued interest less than 90 days overdue will not be capitalized. For new applications, as defined in §1951.906 of this subpart, the total amount of outstanding accrued interest will be added to the principal at the time of reamortization. Payments may be deferred for up to 45 years or until the timber crop produces revenue, whichever comes first, except as required in paragraph VIII(B) of this section. If income is available, payments will be required as determined in paragraph II(B)(4) of this exhibit. Repayment of such a reamortized loan shall be made not later than 46 years after the date of the reamortization unless the borrower qualifies for a further reamortization as authorized in section IX(H) of this exhibit.

(4) If assistance is granted, an annual plan will be developed each year to determine if there is any balance available to pay interest and/or principal on ST loans before the deferral period ends. If a balance is available, the borrower will sign Form FmHA or its successor agency under Public Law 103–354 440–9, ''Supplementary Payment Agreement.''

(5) Applicable requirements of subpart G of part 1940 of this chapter must be met.

(C) If a borrower has requested an ST loan that has a portion of the debt set-aside under this subpart, the set-aside will be cancelled at the time the reamortization is granted. The borrower may retain the set-aside on other loans. A borrower who requests a reamortization of a distressed set-aside loan must agree in writing to the cancellation of the set-aside. The written agreement must be placed in the borrower's case file.

(D) If the total amount of the distressed FP loan(s) exceeds $1,000 per acre of the marginal land designated for softwood timber production, the FP loan must be split. The split portion of the loan may not exceed $1,000 per acre for the marginal land. A new mortgage will be required to secure this portion of the loan unless the FmHA or its successor agency under Public Law 103–354 State supplement allows otherwise. The mortgage must ensure that FmHA or its successor agency under Public Law 103–354 has a security interest in the timber. The remaining balance of such a split loan will be secured by the remaining portion of the farm and such other security previously held as security prior to the split. Separate promissory notes will be executed for each portion of the split loan. The remaining portion of the note will be rescheduled, deferred, or reamortized, as applicable, in accordance with this subpart. The ST loan will be deferred and reamortized in accordance with this section. The ST loan(s) will be secured by the marginal land including timber.

(E) The County Supervisor will release all other liens securing FmHA or its successor agency under Public Law 103–354 loans including NP loans on such marginal land when the ST loan is closed. Only ST loans will be secured by such marginal land including timber. Releases will be processed in accordance with subpart A of part 1965 of this chapter. Such releases are authorized by this paragraph. If other lenders have liens on this marginal land, the lenders must release their liens before or simultaneously with FmHA or its successor agency under Public Law 103–354's release of liens. No additional liens can be placed on the marginal land and timber after the closing of a ST loan.

III. INTEREST RATE OF ST LOANS.

See Exhibit B of FmHA or its successor agency under Public Law 103–354 Instruction 440.1 for the applicable interest rate (available in any FmHA or its successor agency under Public Law 103–354 office). The interest rate will be the lower of (1) the rate of interest on the original loan which has been deferred and reamortized as the ST loan or (2) the Exhibit B rate.

IV. SPECIAL REQUIREMENTS.

(A) *Size of the timber tract.* The minimum parcels of marginal land selected as a tract for softwood timber production must be contiguous parcels of land containing at least 50 acres. Small scattered parcels will be excluded.

(B) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county, or parish, the loan will be processed and serviced in the State, county, or parish in which the borrower's residence on the farm is located. However, if the residence is not situated on the farm, the loan will be serviced by the county office serving the county in which the farm or a major portion of the farm is located unless otherwise approved by the State Director.

(C) *Graduation of ST borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from cooperative or private credit source at reasonable rates and terms, the borrower will, upon FmHA or its successor agency under Public Law 103–354 request, apply for and accept such financing.

V. PLANNING.

A farm plan will be completed as provided in subpart B of part 1924 of this chapter. The State Director will supplement this subpart with a State supplement to guide the County Supervisor regarding the sources available to obtain a Timber Management Plan. The required Timber Management Plan developed with the assistance of the FS, State Forest Service or such other State or Federal agencies or qualified private forestry service should provide management recommendations to assist the borrower in establishing, managing and harvesting softwood timber. Borrowers are responsible for implementing the Timber Management Plan.

VI. DISTRESSED REAMORTIZED LOAN APPROVAL OR DISAPPROVAL.

County Supervisors are authorized to approve or disapprove the reamortization of distressed FmHA or its successor agency under Public Law 103–354 loans as described in this section. No more than 50,000 acres nationwide can be placed in the program. Acres for the program will be allocated to borrowers on a first-come, first-serve basis. ''Administrative Notices'' containing reporting requirements will be issued to field offices so that the National Office can keep a tally of the acres placed in the program. The County Supervisor will obtain a verification from the State Director that the acres can be allocated to the program prior to approval of the reamortization of the distressed FP loan(s). Normally, the verification of allocated acres will be obtained when the loan docket is complete and ready for approval. Loans for the program will not be approved until a confirmation is received for the allocation of acres for the loan(s). When a reamortization is approved, the County Supervisor will notify the borrower by letter of the approval of the ST loan(s). The FmHA or its successor agency under Public Law 103–354 field office will process the reamortization via the FmHA or its successor agency under Public Law 103–354 field office terminal system in accordance with Form FmHA or its successor agency under Public Law 103–354 1940–18.

VII. REAMORTIZING DISAPPROVAL.

When a reamortization is disapproved, the County Supervisor will notify the borrower in writing of the action taken and the reasons for the action, and include any suggestions that could result in favorable action. The borrower will be given written notice of the opportunity to appeal as provided in §1951.909 (i) of this subpart after the County Supervisor has determined whether the borrower is eligible for the remaining servicing programs authorized by this subpart.

VIII. PROCESSING OF ST LOANS.

(A) If the reclassified ST loan is approved, all other FmHA or its successor agency under Public Law 103–354 loans must be current on or before the date the reclassified ST notes are signed except for FmHA or its successor agency under Public Law 103–354-authorized recoverable cost items that cannot be rescheduled or reamortized. All other delinquent loans including NP loans will be rescheduled, reamortized, consolidated, deferred or paid current as applicable to bring the borrower's account current.

(B) ST loans on the dwelling. If the only liens on the borrower's dwelling are the reclassified ST loans, the borrower must make payments on the loan(s):

(1) The total of which will be at least equal to the market value rent for the dwelling as determined by the County Supervisor, or

(2) The minimum equally amortized installment for the term of the loan, whichever is less. Such payments cannot be deferred and will be shown in the promissory note as a regular scheduled payment for the reclassified ST loan.

(C) Form FmHA or its successor agency under Public Law 103–354 1940–18, ''Promissory Note for ST Loans,'' will be used for ST loans. Form FmHA or its successor agency under Public Law 103–354 1940–17, ''Promissory Note,'' will be used for any remaining portion of a split distressed loan. The forms will be completed, signed and distributed as provided in the Forms Manual Inset.

(D) For applications for Primary and Preservation Loan Service Programs received before November 28, 1990, interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance upon which interest will accrue over the Softwood Timber deferral period; interest less than 90 days past due will not be capitalized and will be payable at the end of the Softwood Timber deferral period. For new applications, as defined in §1951.906 of this subpart, the total amount of outstanding accrued interest will be added to the principal balance to form a new principal balance upon which interest will accrue over the Softwood Timber deferral period. The FMI for Form FmHA or its successor agency under Public Law 103–354 1940–17 has examples (IV, V) which explain this procedure. The Finance Office will apply the payments made on the note in accordance with subpart A of part 1951 of this chapter.

(E) The following addendum will be typed and signed by the borrower and attached to the promissory note:

Addendum For Deferred Interest For Softwood Timber Loans

Addendum to promissory note dated _____ in the original amount of $_____ at an annual interest rate of _____ percent. This agreement amends and attaches to the

above note. $_____ of each regular payment on the note will be applied to the interest which will accrue during the deferral period. The remainder of the regular payment will be applied in accordance with 7 CFR part 1951, subpart A. I (we) agree to sign a supplementary payment agreement and make additional payments if during the deferral period we have a substantial increase in income and repayment ability.

_____

Borrower

(F) New mortgages on farm property or related assets must be filed unless otherwise excused from being filed by the State supplement. If a new mortgage or separate security agreement is taken, the new mortgage and/or security agreement should be filed and perfected in the manner described by the State supplement. In many cases a survey of the land securing the ST loan will be required.

(G) The borrower will obtain any required releases for previous mortgages from other lienholders and the County Supervisor will release any other FmHA or its successor agency under Public Law 103–354 liens in accordance with paragraph II (E) of this exhibit.

IX. SERVICING.

ST loans will be serviced in accordance with Subpart A of Part 1965 of this chapter with the following exceptions:

(A) ST loans will not be subordinated for any purpose.

(B) Security property for ST loans will not be leased except for softwood timber production as authorized by the ST loan.

(C) During the life of the ST loan, land designated for softwood timber production cannot be used for grazing or the production of other agricultural commodities, as defined in §12.2(a)(1) of Subpart A of Part 12 of this chapter and which is in Attachment 1 of Exihibit M of subpart G of part 1940 of this chapter.

(D) ST loans will only be transferred as NP loans in accordance with subpart A of part 1965 of this chapter except in the case of the death of the borrower. Deceased borrower cases involving transfers will be handled by FmHA or its successor agency under Public Law 103–354 in accordance with Subpart A of Part 1962 of this chapter.

(E) Land designated for softwood timber production under this subpart must remain in the production of softwood timber for the life of the loan. If the trees die or are destroyed or the production of timber ceases, as recognized by acceptable timber management practices, and the borrower is unable to develop feasible plans for the reestablishing of the timber production, the account will be liquidated in accordance with the provisions of Subpart A of Part 1965 of this chapter. *Any appeal to FmHA or its successor agency under Public Law 103–354 must be concluded before any adverse action can be taken on the loan.*

(F) The Timber Management Plan will be updated and revised, as needed, every five years or more often if necessary.

(G) Harvesting softwood timber for Christmas trees is prohibited.

(H) An ST loan will only be reamortized if:

(1) The timber is not harvested in the year stated in the initial promissory note, and

(2) The borrower is unable to pay the note as agreed.

Interest charges more than 90 days overdue will be capitalized at the time of the reamortization. The term of the reamortized note will not exceed 50 years from the date of the initial ST note. The total years of deferred payments will not exceed 45 years, including the payments deferred in the initial note. The note should be scheduled for payment when the timber is expected to be harvested, or when income will be available to pay on the note, whichever comes first. However, partial payments must be scheduled for those years that exceed the deferral period.

(3) For applications received before November 28, 1990, the interest less than 90 days past due will not be capitalized. For new applications, the total amount of outstanding accrued interest will be capitalized. The term of the reamortized note will not exceed 50 years from the date of the initial ST note. The total years of deferred payments will not exceed 45 years, including the payments deferred in the initial note. The note should be scheduled for payment when the timber is expected to be harvested, or when income will be available to pay on the note, whichever comes first. However, partial payments must be scheduled for those years that exceed the deferral period.

S. *State supplements.*

State supplements will be issued immediately and updated as necessary to implement this section.

ATTACHMENT 1—NOTICE OF AVAILABILITY OF OPTION TO REAMORTIZE CERTAIN LOANS SECURED BY FUTURE REVENUE PRODUCED BY PLANTING SOFTWOOD TIMBER

(Used by the County Supervisor to inform borrowers of the availability of Softwood Timber Loans)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
(Name and Address)

Dear _____:

To implement a provision in the 1985 Farm Bill, the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) is offering the additional loan servicing option of reamortizing Farmer Program loans with repayment secured by

and postponed until the harvesting of a Softwood timber crop. Eligible applicants may request or receive an operating loan to cover the actual cost of the required planting. If you are using marginal land for farming or pasture, and desire to use at least 50 acres of this marginal land to plant and produce softwood timber, contact this office within 15 days of the receipt of this letter to apply for this option so that your request can be processed in a timely manner. Please note the following limitations to this program: FmHA or its successor agency under Public Law 103–354 must be the sole lienholder of both the land growing the softwood timber and the revenues from the timber; the total amount of loans secured by the land and softwood timber cannot exceed $1,000 per acre; and the program is limited to 50,000 acres of softwood timber nationwide.

Sincerely,
County Supervisor

[53 FR 35718, Sept. 14, 1988, as amended at 56 FR 3396, Jan. 30, 1991; 57 FR 18661, Apr. 30, 1992]

EXHIBIT H—CONSERVATION CONTRACT PROGRAM

I. General

A Conservation Contract (CC) may be exchanged, when requested by a borrower (current or delinquent), for a cancellation of a portion of the borrower's FSA indebtedness. The CC may be considered alone, or with other Primary Loan Servicing Programs as set forth in 7 CFR 1951.909. These contracts can be established for conservation, recreational, and wildlife purposes on farm property that is wetland, wildlife habitat, upland or highly erodible land. Such land must be suitable for the purposes involved. All Farm Loan Programs loans which are secured by real estate may be considered for a CC. Non-program loan debtors are not eligible to receive any benefits under this section.

Definitions

(1) *Conservation purposes.* These include protecting or conserving any of the following environmental resources or land uses:

(a) *Wetland,* except when such term is part of the term *Converted wetland,* is land that the Natural Resources Conservation Service (NRCS) has determined has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

(i) *Hydric soils* means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation;

(ii) *Hydrophytic vegetation* means a plant growing in—

(*A*) Water; or

(*B*) A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content;

(b) *Highly erodible land* is land that NRCS has determined has an erodibility index of 8 or more.

(c) *Upland* is a term used in the law to refer to land other than highly erodible land and wetland. Although upland in its normal use implies many types of land, it has been more narrowly defined for this purpose to include land or water areas that meet any one of the following criteria:

(i) One-hundred year floodplain,

(ii) Aquatic life, or wildlife habitat or endangered plant habitat of local, regional, State or Federal importance,

(iii) Aquifer recharge area of local, regional or State importance, including lands in the wellhead protection program for public water supplies authorized by the Safe Drinking Water Act Amendments of 1986,

(iv) Area of high water quality or scenic value,

(v) Area containing historic or cultural property, which is listed in or eligible for the National Register of Historic Places, as provided by the National Historic Preservation Act (NHPA),

(vi) Area that provides a buffer zone necessary for the adequate protection of proposed conservation contract areas,

(vii) Area within or adjacent to a National Park, U.S. Fish and Wildlife Service administered area, State Fish and Wildlife agency administered area, a National Forest, a Bureau of Land Management administered area, a Wilderness Area, a National Trail, a unit of the Coastal Barrier Resource System, abandoned railroad corridors contained in local, State or Federal open space, recreation or trail plans, Federal or State Wild or Scenic River, U.S. Army Corps of Engineers land designated for flood control or recreation purposes, State and local recreation, natural or wildlife areas or State Conservation Agency administered areas.

(viii) Area that NRCS determines contains soils that are generally not suited for cultivation such as soils in land capability classes IV, V, VI, VII or VIII in the NRCS's Land Capability Classification System.

(d) *Wildlife habitat* is a term used to include the area that provides direct support for given wildlife species, species life stages,

populations, or communities determined appropriate by the Conservation Agency within the State as being of State, regional or local importance or as determined by the Fish and Wildlife Service to be of national importance. This wildlife habitat area includes all acceptable environmental features such as air quality, water quality, vegetation, and soil characteristics.

(2) *Management authority.* Any agency of the United States, a State, or a unit of local Government of a State, a person, or an individual that is designated in writing by FSA to carry out all or a portion of the activities necessary to manage and implement the terms and conditions of a contract or its management plan. The borrower whose land is subject to the contract may be eligible to be designated as a management authority.

(3) *Person.* Any agency of the United States, a State, a unit of local Government within a State, or a private or public nonprofit organization.

(4) *Recreational purposes.* These activities include providing public use for both consumption (e.g. hunting, fishing) and nonconsumption (e.g. camping, hiking) recreational activities, in a manner that conserves wildlife and their habitats, ensures public safety, complies with applicable laws, regulations, and ordinances and permits the operation of the remaining farm enterprise.

(5) *Wildlife.* Means any wild animal, whether alive or dead, including any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring.

(6) *Wildlife purposes.* These program objectives include establishing and managing areas that contain fish and wildlife habitats of local, regional, State or Federal importance.

II. Eligibility

The following steps must be taken to determine if the borrower is eligible for a conservation contract. If the borrower is found to be ineligible, the FSA servicing official will notify the borrower of the opportunity to appeal the adverse decision on the eligibility for the contract after a final decision is made on whether the borrower qualifies for any other servicing options. The servicing official must find that:

(1) All Farm Loan Programs loans which are secured by real estate may be considered for a CC. A real estate mortgage or deed of trust taken on a borrower's real estate as additional security for a Farm Loan Programs loan qualifies as real estate security.

(2) The proposed contract helps a qualified borrower to repay the loan in a timely manner.

(3) If the land being proposed for the contract is within the FSA Conservation Reserve Program, both the requirements of that program and this section can be met.

III. Establishing the Contract Review Team

The servicing official will establish a contract review team by notifying the appropriate field offices of the Natural Resources Conservation Service (NRCS), U.S. Fish and Wildlife Service (FWS), State Fish and Wildlife Agencies, Conservation Districts, National Park Service, Forest Service (FS), State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resource Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be a management authority for a contract. The notified parties may in turn notify other eligible entities. NRCS, for example, may want to notify the appropriate Conservation District. As part of the notification, the servicing official will provide an approximate location and a general description of the potentially affected land. All notified parties will be invited to serve on the contract review team.

IV. Responsibilities of the Contract Review Team

NRCS will lead the contract review team which in every case will be composed of an NRCS, FSA and FWS representative, plus all other parties that accepted the invitation to participate. To the extent practicable, a site visit will be conducted within fifteen days from the date the review team members are invited to participate. Any lien holder and the borrower will be informed of the site visit time and invited to attend. Within thirty days after the site visit, a report will be developed by the review team and provided to the servicing official. The report will cover the items listed in paragraphs (A) through (F) of this paragraph and will be prepared by the review team. The items to be addressed in the review team report are:

(A) The amount of land, if any, which is wetland, wildlife habitat, upland or highly erodible land and the approximate boundaries of each type of land. If applicable, contract boundaries may be recommended which go beyond the wetland, upland, or highly erodible land but are necessary for either the establishment of identifiable contract boundaries or are required for the efficient management of the contract's terms and conditions.

(B) A finding of whether the land is suitable for conservation, recreation or wildlife habitat purposes and a priority ranking of purposes included, if the land can be so classified and ranked.

First, priority will be given to land contract opportunities to benefit wildlife species of Federal Trust responsibility (e.g., migratory birds and endangered species) and their

habitats (e.g., wetlands). Special consideration will be given to opportunities to benefit a combination of conservation, recreation and wildlife habitat purposes. When there are other land contracts already established or under review within the local area and the intent of these contracts has been established, the review team will consider these actions as purpose rankings are developed.

(C) If appropriate, any special terms or conditions that would need to be placed on the contract plus unique or important features of the property which would not be adequately addressed by the standard contract terms and conditions.

(D) A proposed management plan consistent with the purpose or purposes for which the contract would be established. The management plan will outline the various management alternatives for the proposed contract. The selection of the alternatives to be followed will be based upon future needs, fund availability, and identification within the management plan. The management plan will provide guidance as to the conservation practices to be followed and the costs which may occur in the establishment and maintenance of the contract. This management plan will specifically recommend whether or not public recreational use and public hunting should be allowed on the contract and provide supporting reasons for the recommendation made. Whenever changes are required in the management plan, FSA, may update the management plan to reflect the changes.

V. FSA's Review of Contract Team's Report

Upon receipt, the Servicing Official will review the contract team's report. If the report indicates that a contract is not feasible given the nature of the land, or other factors, the servicing official will inform the borrower of the reasons that the contract has been denied and that the borrower may appeal the denial of the contract or meet with the servicing official.

VI. Terms of Contracts

Borrowers participating in the debt cancellation conservation contract program will be given the option of selecting a 50, 30 or 10 year contract term. The amount of debt to be canceled will be directly proportional to the length of the contract. The area placed under the conservation contract cannot be used for the production of agricultural commodities during the term of the contract.

VII. Determining the Amount of Farm Loan Programs (FLP) Debt That Can Be Canceled

(A) *Calculate the amount of debt to be canceled for a delinquent borrower as follows:*

(1) *Step 1.* Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP loans by dividing the contract acres that secure the borrower's FLP loans by the total acres that secure the borrower's FLP loans. *Contract acres* divided by *Total Farm and Ranch Acres = Percent of Contract Acres to Total Acres.*

(2) *Step 2.* Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by FSA) by the percentage calculated in step 1. *Total FLP Debt × Percent Calculated in step 1 =* _____

(3) *Step 3.* Determine the current value of the land in the contract by multiplying the present market value of the farm that secures the borrower's FLP loans by the percent calculated in step 1. *PMV of Total Farm × Percent Calculated in step 1 =* _____

(4) *Step 4.* Subtract the current value of the contract acres in step 3 from the FLP debt that is secured by the contract acres in step 2. *Result from step 2 − Result from step 3 =* _____

(5) *Step 5.* Select the greater of the amounts calculated in step 3 and step 4.

(6) *Step 6.* Select the lessor of the amounts calculated in steps 2 and 5. This will be the maximum amount of debt that can be canceled for a 50-year contract term.

(7) *Step 7.* For a 30-year contract term, the borrower will receive 60 percent of the amount calculated in step 6. *Result from Step 6 × 60% =* _____

(8) *Step 8.* For a 10-year contract term, the borrower will receive 20 percent of the amount calculated in step 6. *Result from Step 6 × 20% =* _____

(B) Calculate the amount of debt to be canceled for a current borrower as follows:

(1) *Step 1.* Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP loans by dividing the contract acres that secure the borrower's FLP loans by the total acres that secure the borrower's FLP loans. *Contract Acres* divided by *Total Farm and Ranch Acres =* _____%

(2) *Step 2.* Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by FSA) by the percentage calculated in step 1. *Total FLP Debt × Percent Calculated in step 1 =* _____

(3) *Step 3.* Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by thirty-three (33) percent. *Total FLP Debt × 33% =* _____

(4) *Step 4.* Select the lessor of the amounts calculated in steps 2 and 3. This is the maximum amount of debt that can be canceled for a current borrower receiving a 50-year contract.

(5) *Step 5.* For a 30-year contact term, the borrower will receive 60 percent of the

amount calculated in step 4. *Amount calculated in step 4 × 60% =* _____

(6) *Step 6.* For a 10-year contract term, the borrower will receive 20 percent of the amount calculated in step 4. *Amount calculated in Step 4* X *20% =* _____

(C) *Feasibility of debt cancellation.* The servicing official will determine whether or not the borrower, if provided the amount of debt cancellation allowed by paragraph (VII) coupled with other servicing options will be able to develop a feasible plan for farm operations for the current and coming year. In no instance will the total debt cancellation exceed the maximum amount calculated in paragraphs (A) or (B) above. If the borrower would not be able to develop a feasible plan, the servicing official will notify the borrower of the reason that the contract has been denied and that the borrower may appeal this adverse decision after the servicing official has decided whether the borrower qualifies for the additional servicing programs in this subpart.

(D) *The boundaries of the contract area will be determined by the most appropriate method including rectangular surveys, and aerial photographs.* A professional survey of the contract area will not be required but can be used where needed.

(E) *Reaching an agreement with the borrower.* The borrower will be informed of the contract's value, the impact on the remaining financial obligation, and the terms and conditions of the contract. The borrower also will be provided a copy of the contract review team's report. If the borrower decides to enter into the contract, approval will be made by the servicing official, and the borrower by signing Form FSA 1951–39.

(F) *Recording of noncash credit.* The total credit to the borrower's account will not exceed the greater of the value of the land on which the contract is acquired; or the difference between the amount of the outstanding indebtedness secured by the real estate, and the value of the real estate taking into consideration the term of the contract. In the case of a non-delinquent borrower, the amount to be credited will not exceed 33 percent of the amount of the loan secured by the real estate on which the contract is obtained taking into consideration the term of the contract. In all cases, the amount credited will be applied on the FSA loan as an extra payment in order of lien priority on the security. The loan may be reamortized if needed for both current and delinquent borrowers.

(G) [Reserved]

(H) *Contract Records.* If State law allows, the CC will be recorded in the real estate records.

VIII. Violation of Terms and Conditions

If the borrower violates any of the terms or conditions of the contract, the violations will be handled in accordance with the provisions outlined in the contract.

IX. Authorization Requests

When under the circumstances stated in the contract's terms and conditions (Form FSA 1951–39), the grantor needs the Government's written authorization to proceed with an action, a written request for such authorization must be provided by the grantor to the servicing official. In order to provide the requested written authorization, the servicing official must determine that the request does not violate the contract's terms and conditions and must receive the written concurrence of the enforcement authority.

[62 FR 10147, Mar. 5, 1997]

EXHIBIT I—GUIDELINES FOR DETERMINING ADJUSTMENTS FOR NET RECOVERY VALUE OF COLLATERAL

This exhibit provides guidance to State Directors and County Supervisors for determination of the factors to be used in adjusting current market value.

I. STATE DIRECTOR RESPONSIBILITIES

The State Director's analysis to County Supervisors will specify costs which are determined to be consistent statewide, and provide specific guidance on the determination of costs which are somewhat consistent within the State, but may vary on a county to county or property to property basis. All studies or surveys should be conducted so that all necessary information can be distributed at the same time.

A. Real Estate Costs

The analysis for liquidation and disposition costs should, as a minimum, address the following items and considerations:

(1) *Months Held in Inventory.* The average holding period will be the average number of months that suitable properties, which are not leased, are held in inventory. The average holding period is derived from report code 597, ''Farmer Program Inventory,'' for the period ending June 30. However, in situations where States have no suitable inventory, or have a very limited number (generally less than 5) of suitable properties for which the holding period for those properties is not representative (*i.e.*, one property in inventory held 75 months due to local litigation), the average of the holding periods of surrounding States should be used. National Office guidance may be requested in such cases.

(2) *Sales Commission Rate.* A study will be conducted, at least annually, to determine the typical method for disposition of FmHA or its successor agency under Public Law 103–354 inventory farms in the State. The findings will be used to determine whether

commissions should be included as resale expenses, or whether FmHA or its successor agency under Public Law 103–354 normally disposes of inventory farms without the assistance of brokers or auctioneers. However, if a County Office is covered by an exclusive listing agreement or contract for auctioneering services, commissions will always be included as resale expenses in that office. The percentage of commission will be the rate specified on the listing agreement(s) or contract(s) in effect for the County Office.

(3) *Cost Per Advertisement.* The County Supervisor will contact at least one local newspaper to obtain a cost for advertising inventory farms in accordance with subpart C of part 1955 of this chapter.

(4) *Rate of Change in Value.* Yearly percentage decrease or increase in value is the rate of change in value. To provide a fair assessment of projected trends in farm land values, each State Director will establish a farm land market advisory committee (FLMAC). The committee will consist of the FmHA or its successor agency under Public Law 103–354 State Director, the State Executive Director of the Agricultural Stabilization and Conservation Service (ASCS), the State Conservationist for the Soil Conservation Service (SCS), and an Extension Specialist from a Land Grant University (if available) or other Agriculture Extension Service employee with knowledge of the farm real estate market.

The FLMAC will meet at least each July, and will consider the following information:

(a) The actual change in farm land values in the State during the previous year, as indicated in the most recent ''Agricultural Land Values and Market Situation Outlook Report'' issued by the USDA Economic Research Service.

(b) Current conditions in the State and national agricultural economics.

(c) Availability and cost of credit to purchase farm land.

(d) The amount of repossessed farm land held by FmHA or its successor agency under Public Law 103–354, the Farm Credit System, and other private sector lenders.

(e) Any special conditions which would effect farm land values in the State.

(f) Any studies or research conducted by the State Agricultural University or similar scholarly source.

The FLMAC should, if possible, determine anticipated value changes on a regional basis with the State, if the State has agricultural regions with discernable differences.

The committee's meetings and decisions, including the basis for those decisions, will be documented, retained in the State Office as part of the State supplement file and provided to interested parties upon request.

Prior to providing the FLMAC determinations to FmHA or its successor agency under Public Law 103–354 field offices, the State Director will contact the FmHA or its successor agency under Public Law 103–354 State Directors in surrounding States to determine if the committee's findings are fairly consistent with those of surrounding States. If there are significant differences, the State Director may reconvene the committee to reconsider its findings.

(5) *Management charges.* In situations where State or district wide contracts for management of inventory farms are in effect, the State Director will specify those rates to be used in management cost calculations. Generally, those costs should be specified on an annual per-acre basis or annual income percentage basis. If there are no area wide contract rates for some or all counties, guidance should be given on how to calculate rates based upon local costs. Such guidance should include customary management activities and their frequency to promote a consistent approach.

B. Chattel Costs

(1) *Months held in inventory.* FmHA or its successor agency under Public Law 103–354 rarely acquires chattel property because it can be sold much more quickly and easily than real estate. Therefore, the average holding period for chattel property will be zero, unless significant acquisitions occur and the Administrator determines that chattels do have a holding period.

(2) *Sales commission rate.* A study will be conducted, at least annually, to determine typical and reasonable commission rates for sales of chattel property in the State. The results of the study will be provided as guidance to field personnel. [The County Supervisor will conduct a survey of auctioneers to determine the average commission rate for chattel sales in the area.]

(3) *Other sales cost.* These are miscellaneous cost typically incurred when selling acquired chattels. County Offices should be advised to obtain specific guidance in unusual cases.

(4) *Rate of change in value.* This is a yearly percentage decrease or increase in the value. Because FmHA or its successor agency under Public Law 103–354 rarely acquires chattel property, the average holding period for chattel property will normally be zero, unless significant acquisitions occur and the Administrator determines that chattel do have a holding period. Therefore, there will normally not be a rate of change in value of chattels.

C. Legal and Administrative Costs

(1) *Administrative liquidation cost for each loan type.* This is the FmHA or its successor agency under Public Law 103–354 administrative cost of liquidation. The FmHA or its successor agency under Public Law 103–354 Resource Management System (RMS) work standards (FmHA or its successor agency

under Public Law 103–354 Instruction 2006–J, exhibit A, available in any FmHA or its successor agency under Public Law 103–354 Office) for liquidation should be used to determine the administrative costs associated with liquidation for each loan type. The following equation will be used for each loan type:

(RMS standard for loan type in minutes divided by 60) x hourly pay rate for GS–11/1–Administrative cost of liquidation for the loan type.

(2) *Real estate costs and chattel only costs.* This is the administrative liquidation cost for Government attorney time. The State Director will consult with the appropriate Regional OGC to determine the average amount of government attorney time involved in an individual involuntary liquidation of both real estate and chattels. The legal costs associated with liquidation for real estate and chattels will be arrived at separately by multiplying the attorney time, in hours, by $75.

(3) *Property management cost.* This is the administrative cost of managing an inventory property, while it is in inventory. This cost will be deducted in those cases involving real property. The costs should also be derived from the RMS standards. It will be necessary to determine the average number of property actions per month. This figure is obtained from the RMS–7 Report, which is issued to the State Offices quarterly. The following equation is used to compute the total property management cost:

(average actions per property per month x average holding period) x (RMS standard for property management for FO loans divided by 60) x (GS–11/1 hourly pay rate) + (RMS standard for FO property sale actions divided by 60) x GS–11/1 hourly pay rate–Administrative costs for inventory period.

II. COUNTY SUPERVISOR RESPONSIBILITIES

The County Supervisor will use the statewide costs and give careful consideration to the cost and other guidance provided by the State Director. The County Supervisor will determine certain localized liquidation costs based upon guidance in the State supplement at least annually. These figures will be documented and provided to borrowers upon request.

A. *Management Expenses.* If the County Office is not covered by State or district wide property management contracts, the management expense rates will be based upon local level contract rates.

B. *Repairs.* Approximate costs for typical essential repairs may be developed, considering the guidance in the State supplement. Repair items must be related to physical condition (*i.e.*, roof, windows, doors, etc.) and not to functional or economic obsolescence.

C. *Advertisements.* The County Supervisor will contact at least one local newspaper to obtain a cost for advertising inventory farms in accordance with subpart C of part 1955 of this chapter.

D. *Commissions.* A survey of auctioneers will be made to determine the average commission rate for chattel sales in the area. Real estate commissions, if any, will follow the State supplement.

E. *Legal Expense.* A survey of local closing agents will be performed to determine the cost FmHA or its successor agency under Public Law 103–354 will incur for closing transactions (title opinions, recorder's fees and the like).

F. *Miscellaneous.* Miscellaneous expenses such as land surveys, which are routinely incurred should be determined by a local survey and documented.

III. INCOME

Income will be added to net recovery value only when it is relatively certain that the income will be realized. Lease income will not be planned unless a lease is already in effect at the time the calculations are being made, and it appears that the lease will continue after FmHA or its successor agency under Public Law 103–354 acquires title. The amount of mineral or other lease or royalty income will be based upon the historical record of such income generated by the property. Chattels will not generate income unless they have a holding period.

IV. DEPRECIATION

The amount of depreciation anticipated for buildings and other improvements will be based upon the summation value and estimated remaining life of the improvement as reflected in the real estate appraisal. For example, a dwelling with a summation value of $40,000 and a remaining life of 20 years will depreciate at a rate of $2,000 per year. The depreciation calculations will be documented in the borrower's case file and provided to the borrower upon request. Chattels will not be depreciated unless they have a holding period.

[57 FR 18662, Apr. 30, 1992]

EXHIBIT J—THE DEBT AND LOAN RESTRUCTURING SYSTEM (DALR$)

Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) primary loan service programs provide a large number of alternatives for restructuring an FmHA or its successor agency under Public Law 103–354 loan. The number of loans a borrower has increases the number of combinations of possible alternatives. It is difficult and extremely time consuming to manually calculate all the potential combinations of servicing actions. To assure that the various combinations of programs are considered, FmHA or its successor agency

under Public Law 103–354 has developed the Debt and Loan Restructuring System (DALR$) for operation of the County Office computer system. FmHA or its successor agency under Public Law 103–354 personnel will not manually perform the calculations in this exhibit. This exhibit is provided as a benefit to those who may want to perform manual calculations, or understand the procedures DALR$ goes through.

What is DALR$?

DALR$ is a computerized decision support tool. This means that the computer assists the FmHA or its successor agency under Public Law 103–354 loan officer in making a decision. For example, FmHA or its successor agency under Public Law 103–354 regulations specify criteria for determining the interest rate when loans are restructured. DALR$ will select an interest rate using the criteria in the regulations. Judgement decisions are made by the FmHA or its successor agency under Public Law 103–354 loan officer in evaluating the Farm and Home Plan and other information entered into the DALR$ system.

DALR$ Operating System

DALR$ operates on the AT&T 3B2 computer system in FmHA or its successor agency under Public Law 103–354 field offices. It runs under the UNIX (registered tm, AT&T) computer operating system. DALR$ also utilizes Prelude (registered tm, Venturcom) for data entry and storage functions. To operate DALR$, UNIX System V, version 2.0.5 and Prelude version 2.1 are required.

FmHA or its successor agency under Public Law 103–354 developed DALR$ to run under UNIX and Prelude because those systems have the capabilities necessary to allow for relatively rapid development, and are available in all FmHA or its successor agency under Public Law 103–354 offices. DALR$ will not run under DOS on personal computers. Due to lack of resources, FmHA or its successor agency under Public Law 103–354 does not plan to develop duplicate computing capabilities on personal computers. FmHA or its successor agency under Public Law 103–354 will provide copies of program diskettes and/or source code to interested parties upon request.

Advantages of DALR$

The DALR$ system provides several benefits to FmHA or its successor agency under Public Law 103–354 borrowers:

1. Speed of calculation. Calculations which would take hours or days are reduced to minutes. This not only speeds the processing of servicing requests, but provides the flexibility to consider several alternative plans of operation within the same time constraints.

2. Consistency. The use of DALR$ assures that all calculations will be performed in the same way, and that the feasibility of all requests will be evaluated on the same calculation methods.

3. Full consideration. DALR$ considers primary loan service programs and combinations of those programs for every borrower entered into the system. Thus, borrowers can be assured that they will be considered for as many of these actions as necessary to develop a feasible plan, if a feasible plan is possible.

4. Reduction of errors. Use of DALR$ greatly reduces the potential for errors and inadvertent denial of assistance due to those errors. DALR$ eliminates errors in the calculations. The only potential errors related to the calculations are input errors, which are much easier to detect and correct than calculation errors. It is important to note, however, that DALR$ results are only as reliable as the input data.

What DALR$ Does

DALR$ performs a series of mathematical calculations based upon predetermined critera. These same calculations and procedures would be followed when calculations are performed manually. DALR$ also generates a printed summary of its computations for FmHA or its successor agency under Public Law 103–354 and the borrower.

Overview

In arriving at a debt restructuring plan, DALR$ will take advantage of all primary loan service programs to maximize the borrower's ability to repay debt and remain on the farm and avoid loss to the government.

Several combinations of primary loan service programs may be necessary to keep the borrower on the farm and avoid losses to FmHA or its successor agency under Public Law 103–354. DALR$ will examine each combination until a feasible plan is reached or it is determined a feasible plan is not possible with full utilization of primary service programs.

DALR$ considers each primary serving option in the order described below until an appropriate solution is found. Each step increases FmHA or its successor agency under Public Law 103–354's level of assistance to the Borrower and, when applicable, includes the primary loan service programs provided by previous steps.

1. Apply payments, including proceeds from the sale of non-essential assets, which the borrower plans to apply to outstanding FmHA or its successor agency under Public Law 103–354 debt.

2. Reschedule/reamortize loans at maximum terms with interest rates at the minimum or original note interest rate or regular loan program rate. Loans may be considered

for consolidation in accordance with §1951.909 of this subpart prior to being entered into the DALR$ system.

3. Reschedule/reamortize loans at maximum terms with interest rates at the minimum of original note interest rate or applicable limited resource loan program rate.

4. Defer loans at the maximum term and minimum interest rate permitted by program regulation until a feasible plan is obtained in the first year. Loans are selected for deferral so as to minimize debt repayments in the years after the deferral period. If deferral of a loan will result in an excess cash flow margin in the first year then a partial deferral of the loan is used to eliminate the excess cash flow margin. A partial deferral has the added benefit of reducing the payment amount in the years after the deferral period.

5. Provide Softwood Timber loan deferral, when requested by borrower, to the maximum limits permitted by program regulations. Loan deferrals will be recalculated selecting Softwood Timber loans first so as to:

a. Minimize any decrease in present value caused by conversion to Softwood Timber loans, and

b. If regular deferrals are still needed to facilitate a feasible plan in the first year, minimize the increase in payments in the year after the expiration of deferral period.

A Softwood Timber loan deferral has the same effect on existing FmHA or its successor agency under Public Law 103–354 debt repayment as a full write down of the same amount of debt. A Softwood Timber loan deferral, however, will always have a greater present value. Therefore, after a loan is selected for Softwood Timber deferral it will not be considered for write down since this will always reduce present value.

6. Write Down—

Write down loans in the order, at the interest rates, and in combination with other primary loan service programs to maximize the ability of the borrower to remain on the farm and avoid FmHA or its successor agency under Public Law 103–354 loan losses.

a. Conservation Easements

Conservation Easement write-down (when requested by the borrower) will be considered over debt write-down whenever such FmHA or its successor agency under Public Law 103–354 Instruction 1951–S consideration will not prevent development of a debt restructuring plan which will keep the borrower on the farm.

b. Security Considerations

The FmHA or its successor agency under Public Law 103–354 County Supervisor will evaluate each loan and determine its write-down priority considering the degree of collateralization. Loans which are secured but have no collateral value will generally be selected for write down before loans which are at least somewhat collateralized. There are three write-down security/collateral categories.

(1) Low: These loans may be secured or unsecured and have no collateral value.

(2) Medium: These loans are secured but do not have sufficient collateral value to fully protect the Government's interest.

(3) High: These loans are secured and fully collateralized; the Government's interest is fully protected.

c. Methodology

(1) Method 1 (See Section VI B of this exhibit) will be used first to develop an acceptable restructuring plan which will keep the borrower on the farm. If a restructuring plan is not found which will keep the borrower on the farm then Method 2 (See Section VI C of this exhibit for a full description) will be used to develop a restructuring plan.

(2) For both Method 1 and Method 2 loan terms will be the maximum permitted by program regulations. Also, write down amounts will be calculated so that the ''Balance Available'' to repay debt is equal to or as close as possible to the ''Debt Repayment''.

(3) Loans selected for regular deferral will remain deferred, but will be fully or partial written down if needed to obtain positive cash flow margins. Loans converted to Softwood Timber loans (if requested) will remain Softwood Timber loans and will not be written down because writing down Softwood Timber loans decreases present value.

7. If a restructuring plan is not found to keep the borrower on the farm, the borrower, FmHA or its successor agency under Public Law 103–354 County Supervisor, and other Lenders may reevaluate/rework the borrower's farm plan to increase income, reduce other debt, sell non-essential assets, improve security on FmHA or its successor agency under Public Law 103–354 debt, and consider Softwood Timber loans and Conservation Easements (if not originally requested by the Borrower and is permitted by program regulation).

Each of these measures will increase the computed present value. DALR$ will use the new/revised information provided by the borrower and the FmHA or its successor agency under Public Law 103–354 County Supervisor to assure that the restructuring of existing FmHA or its successor agency under Public Law 103–354 debt will maximize the potential for the borrower to repay debt and remain on the farm and avoid FmHA or its successor agency under Public Law 103–354 loan losses.

Iterative Calculation Process

I. EXISTING LOAN INTEREST RATES

A. Obtain status information on each loan.

The status information date (accrual date) must be a date after the last payment or other transaction on the loan.

1. Principal balance.

2. Accrued interest balance.

3. Non-capitalizable interest balance.

B. For each loan compute the interest accrual to the proposed effective date for servicing actions.

Interest Accrual=P × Iex × N-DAYS.

Where:

1. ''P'' is the outstanding principal balance on the date on which loan status information was obtained.

2. ''Iex'' is the daily interest accrual (decimal equivalent) based on the existing interest rate for the loan. Daily interest accrual is equal to the existing annual interest rate divided by 365.

3. ''NDAYS'' is the number of days between the effective date and the status information date. If February 29 occurs between these two days it is not added to the number of days.

C. Determine the amount of Non-capitalizable accrued interest.

1. Deferred loans.

All accrued interest is non-capitalizable interest.

2. Other loans:

Interest less than 90 days past due is non-capitalizable interest.

II. REGULAR PROGRAM INTEREST RATES

A. Determine balance of funds available for debt repayment in the next planning year. This is the ''Balance Available in Year 1''. If loan deferrals are anticipated or are needed, also determine the Balance Available for debt repayment in the year after the end of the specified deferral period.

B. Determine total debt repayment in the next planning year. This is the ''Debt Repayment in year 1.'' If loan deferrals are anticipated or are needed, also determine the debt repayment in the year after the end of the specified deferral period. Included in this amount are:

1. New loans:

New loans planned may affect repayment in the first planning year and/or the year after the end of the specified deferral period, depending on when the loan will be made and the repayment term. The equal annual payments on these new loans are included in the debt repayment calculations. Regular program interest rates (not limited resource rates) are used for all new loans.

NOTE: In subsequent steps the regular loan program interest rate is changed to limited resource rates, if it is determined that it is not possible to develop a feasible plan at regular program rates.

2. FmHA or its successor agency under Public Law 103–354 Loan for annual operating expenses.

Repayment of FmHA or its successor agency under Public Law 103–354 loans for annual operating expenses are based on regular loan program interest rates.

Included in this amount is the annual operating expense loan principal which is due in the applicable planning year.

Interest accrual on this loan may be estimated by multiplying the principal to be paid in the applicable planning year by the regular loan program interest rate (monthly decimal equivalent) and then by the average number of months the principal will be outstanding. See Attachment 1, Formulas, for details.

If some of the principal will be carried over to future years then that portion is either:

a. Included with the new loan payments computed using the amortization factor over the applicable loan term at regular loan program interest rates, or

b. If the amount to be carried over is already included in an existing loan, it is rescheduled with the existing loan over the maximum term permitted by program regulation.

NOTE: In subsequent steps the regular loan program interest rate is changed to limited resource rates, if it is determined that a feasible plan is not possible with regular program rates.

3. Existing FmHA or its successor agency under Public Law 103–354 loans:

Also included are all repayments on existing FmHA or its successor agency under Public Law 103–354 debt as it stands now without servicing actions. As DALR$ steps through the debt restructuring process this repayment amount will change.

Some existing loans may include in whole or in part an FmHA or its successor agency under Public Law 103–354 loan for annual operating expenses which is expected to be repaid in the current year. Since the debt repayment on FmHA or its successor agency under Public Law 103–354 annual operating expense loans is estimated in the previous step, the repayment of this debt should not be included with the repayment of existing loans. Only the repayment of long term debt should be included.

C. Apply loan payments which are planned to be made on the effective date of the servicing actions.

1. Payments are first applied to reduce/eliminate delinquent interest, then non-delinquent interest and then remaining principal balance.

2. If any loan is paid off in full because of these payments, recompute the debt repayment in year 1.

3. If the balance available is greater than or equal to the debt repayment in year 1 and there are no delinquent loans then no further servicing actions in DALR$ are required.

D. Reschedule/reamortize loans as needed to eliminate any delinquency.

1. Criteria:

a. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

b. The interest rate will be the minimum of:

(1) The original note the interest rate.

(2) The regular loan program interest rate which will be in effect on the date the servicing actions are calculated.

c. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

d. Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

e. The transaction records from the last payment date and last due date may be used to assist in determining the dollar amount of interest less than 90 days past due.

2. The Process.

a. Identify delinquent loans. All of these loans will be rescheduled/reamortized.

b. Recompute debt repayment in year 1.

c. If the balance available is greater than or equal to the debt repayment in year 1 then no further servicing actions are required.

E. Reschedule/reamortize the remaining non-delinquent loans.

1. Criteria.

a. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

b. The interest rate will be the minimum of:

(1) The original note interest rate.

(2) The regular loan program interest rate which will be in effect on the date the servicing actions are calculated.

c. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

d. Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

NOTE: Interest is not due until the loan installment is due. The date the servicing action takes place relative to the due date will effect how much interest can be capitalized. For example:

(i) A borrower is current January 1, 1988. An analysis in December 1988 indicates the borrower cannot pay installments due January 1, 1989. Based on the 1989 farm plan, the debts can be restructured. The loans will be restructured on January 10, 1989. None of the accrued interest is 90 days past due and no interest will be capitalized.

(ii) Same situations (i) , except the restructuring occurs on April 2, 1989. The interest which accrued prior to January 1, 1989, will be capitalized. Interest which accrued after January 1, 1989, will not be capitalized.

2. Loan Selection.

a. In selecting the loans for rescheduling/reamortizing, the loans will be ordered so that the loan having the greatest reduction in interest rate will be rescheduled/reamortized first.

b. If the change in interest rate is equal for two or more loans then this subgroup will be ordered so that the loans having the smallest new principal balance will be rescheduled/reamortized first.

c. If the repayment on any rescheduled/reamortized loan exceeds the current repayment amount for that loan then that loan will not be rescheduled/reamortized unless the County Supervisor indicates that rescheduling should be carried out to eliminate unequal payment schedules or balloon payments.

3. The Process.

a. After each rescheduling/reamortization recompute debt repayment in year 1.

b. If the balance available is greater than or equal to the debt repayment in year 1 then no further servicing actions are required.

III. LIMITED RESOURCE INTEREST RATES

A. Recompute debt repayment in year 1.

1. Criteria.

a. New loans will have the maximum term permitted by program regulation, using the limited resource interest rates (when applicable) which will be effective on the date of the servicing actions.

b. Interest accrual on the FmHA or its successor agency under Public Law 103–354 loan(s) for annual operating expenses will be at the limited resource rate (when applicable).

2. The Process.

a. Recompute debt repayment in year 1.

b. If the balance available is greater than or equal to the debt repayment in year 1, no further servicing actions are required.

B. Reschedule/Reamortize existing loans eligible for limited resource rates to obtain a positive cash flow margin in the 1st planning year.

1. Criteria.

a. Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

b. The interest rate will be the minimum of:

(1) The original note interest rate.

(2) The loan program limited resource interest rate in effect on the date the servicing actions are calculated.

c. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

d. Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

2. Loan Selection.

a. In selecting the loans for rescheduling/reamortizing, the loans will be ordered so that the loan having the greatest reduction in interest rate will be rescheduled/reamortized first.

b. If the change in interest rate is equal for two or more loans then this subgroup will be ordered so that the loans having the smallest new principal balance will be rescheduled/reamortized first unless it is deliquent.

c. If the repayment on any rescheduled/reamortized loan exceeds the current repayment amount for that loan then that loan will not be rescheduled/reamortized.

3. The Process.

a. After each rescheduling/reamortization recompute debt repayment in year 1.

b. If the balance available is greater than or equal to Debt Repayment then no further servicing actions are required.

IV. DEFERRALS

A. Deferrals Period.

1. Deferral will only be beneficial if the cash flow margin will improve after the deferral period. This improvement must begin no later than six years after the current planning year, since the maximum deferral period is 5 years.

2. To determine the appropriate deferral period the County Supervisor and borrower will review the farm operation over the next five years. Loans should be deferred to the year when the improvement from the first planning year is the greatest and the improvement in the following years are at least as good.

3. It is not necessary that deferrals provide a positive cash flow margin after the deferral period because it is still possible to obtain a positive cash flow margin with a combination of deferrals, debt write down and the other primary loan service programs. However, to maximize the potential for the borrower to remain on the farm and avoid losses on FmHA or its successor agency under Public Law 103–354 loans, a new farm plan must be prepared by the FmHA or its successor agency under Public Law 103–354 County Supervisor and borrower for the year after the end of the selected deferral period.

4. If there is no anticipated improvement in cash flow margin, then a deferral year plan need not be prepared since other combinations of primary service programs will maximize the potential for the borrower to remain on the farm and avoid losses on FmHA or its successor agency under Public Law 103–354 loans.

B. Deferrals.

1. Criteria.

a. Loans which have been rescheduled/reamortized previously in DALR$ will be rescheduled/reamortized at the same interest and term.

b. Other loans which have not been previously rescheduled/reamortized in DALR$ will be rescheduled/reamortized as follows:

(1) Loans will be rescheduled/reamortized over the maximum term permitted by program regulation.

(2) The interest rate will be the minimum of:

(a) The original note interest rate.

(b) The loan program interest rate (limited resource, if applicable) in effect on the date of the servicing action calculations.

(3) Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance to be rescheduled/reamortized.

(4) Interest less than 90 days past due will be spread equally over the new loan term and will be added to the repayment amount of the new rescheduled/reamortized debt.

2. Loan Selection.

This selection process will assure that after a positive cash flow margin is achieved in the 1st year, the cash flow margin in the year after the deferral period will be the greatest.

a. Calculate the payment after the deferral period for each loan eligible for deferral. This is only a side calculation to determine the best order of selection. A deferral will decrease the payments in the 1st planning year and increase the payments in the year after the deferral expires.

b. For each loan compute the ratio of the increase in ''after deferral period'' payment to the decrease in 1st year payment.

c. The loan with the smallest ratio is deferred first and so on until the balance available is greater than or equal to debt repayment in year 1.

3. The Process.

a. Taking one loan at a time, defer the selected loan, recompute the debt repayment in year 1. Also compute the debt repayment in the year after the end of the deferral period.

b. If the balance available is equal to debt repayment in year 1 and the balance available is greater than or equal to debt repayment in the year after the end of the deferral period then no further servicing actions are required.

c. If the balance available is greater than the debt repayment in year 1, then this implies that the last loan deferred did not require a full deferral.

(1) Compute amount of deferral of the last loan necessary to achieve equality between balance available and debt repayment in year 1.

(2) Recompute payments for this loan during the deferral period and the years after the expiration of the deferral period.

(3) If the balance available in the year after the deferral period is greater than or equal to the debt repayment then no further servicing actions are required.

4. Partial Deferrals.

a. Whenever deferral of a loan results in an excess cash flow margin in the first year, a partial deferral of that loan will result in a higher present value and will also decrease future payments on that loan. See Attachment 1 to this exhibit for applicable formulas for partial deferrals.

b. Examples:

Case 1: Partial Deferral without Write Down.

Situation: A full deferral is more than is needed to achieve a positive cash flow margin in year 1. A full payment on the loan will produce a negative cash flow margin in year 1.

The Process.

1. Determine amount of deferral of necessary to achieve a feasible plan in the first year.

''d'' is the fraction of the loan which must be deferred. This fraction is applied to both the principal (P) and the non-capitalizable interest (N).

''r'' is the amount of cash flow margin in the first year with a full deferral. ''R'' is the debt repayment on the loan in the first year without deferral.

d—1—(r/R).

2. Calculate Portion of debt to be deferred and portion of non-deferred debt to meet cash flow margin criteria in the first year.

Non-deferred portion.

P_1=(1–d) x P=(r/R) x P.

N_1=(1-d) x N=(r/R) x N.

Deferred Portion

P_2=P–P_1.

N_2=N–N_1.

Case 2: Partial Deferral with Write Down.

Write down is required for a feasible plan. In this situation the write down and partial deferral must yield a payment which exactly meets the borrower's ability to repay debt. This will maximize the ''Present Value'' and the borrower's ability to remain on the farm.

Situation: The loan is partially deferred to achieve a feasible plan in the 1st year. The payments in the year after the end of the deferral period exceed the borrower's ability to pay even with a partial deferral. Write down is necessary to achieve a feasible plan. The loan which is partially deferred has been selected as the next loan to write down based upon write down selection criteria.

Write down sequence:

1. The non-capitalizable interest (of the deferred portion of the loan) will be written down first until a feasible plan is achieved or the non-capitalized interest (of the deferred portion of the loan) is fully written down.

2. The remaining principal (on the deferred portion of the loan) is then written down until a feasible plan is achieved or the principal is fully written down.

3. At the point the deferred portion of the loan has been fully written down, but a feasible plan has not yet been found. The subject loan is now a non-deferred loan with reduced principal and reduced non-capitalizable interest. This new loan must now compete for selection for write down with all remaining loans based on the write down selection criteria.

V. Softwood Timber

A. Criteria.

1. Loan terms will be the maximum permitted by program regulation.

2. The interest rate will be the minimum of:

a. The original note interest rate, or

b. The Softwood Timber program interest rate which will be in effect on the date of the servicing action calculations.

3. Interest payments which are 90 days or more past due will be added to the principal balance to form a new principal balance upon which interest will accrue over the Softwood Timber deferral period.

4. Interest less than 90 days past due will not be capitalized and accrue interest, and will be payable at the end of the Softwood Timber deferral period.

5. The rescheduled/reamortized principal amount plus any non-capitalized interest of Softwood Timber loans will not exceed the maximum amount permitted by program regulation or the amount needed to develop a feasible plan, whichever is less.

B. Loan Selection.

Loans will be selected for the Softwood Timber loan program to maximize the present value after conversion to Softwood Timber, thus avoiding loan losses.

1. Cancel all previously calculated deferrals.

2. For each loan compute the present value before and after conversion to a Softwood Timber loan. Then compute the decrease in present value (note: for loans in which the present value increases this will be negative number).

3. For each loan compute the ratio of the decrease in present value to the decrease in first year repayment after conversion to a Softwood Timber loan.

4. Select the loan with the smallest (or most negative) ratio first.

5. If loans have equal ratios select the loan having the least security among these loans first, Softwood Timber loans will have new security instruments. This will improve the FmHA or its successor agency under Public Law 103–354 security and could increase present value if write down is required for other loans.

C. The Process.

1. Starting with the first loan in the list of loans ordered to minimize decrease in

present value convert the loan to Softwood Timber.

2. Continue this process until the maximum limit for Softwood Timber conversion is reached or a feasible plan is possible in the first year.

3. If a loan is only partially converted then create a new loan identity for the partially converted loan. The portion not converted retains the same interest rate and term prior to the conversion to Softwood Timber.

4. If fully utilizing Softwood Timber loan conversion authorities do not result in a feasible plan in the first year rework the loan deferral calculation described in Section IV of this exhibit (if applicable). Do not include the loans selected for Softwood Timber loans in the reworking of the deferral calculations.

5. If conversion to a Softwood Timber loan will permit a feasible plan to be developed (with or without deferrals) no further servicing actions are required.

VI. WRITE-DOWN

Write-down of loans will proceed with Method 1 (contained in VI B) first. If a debt restructuring plan which will keep the borrower on the farm cannot be found using Method 1, then write-down will be recalculated using Method 2.

A. Status.

Debt repayments are at their absolute minimum, a feasible plan is still not possible in the first year and/or the year after the end of the deferral period (if applicable).

1. At this point consideration of primary loan service programs has had the following result:

a. All delinquent loans have been rescheduled/reamortized.

b. If the borrower plans to make payments prior to the servicing actions, these payments have been applied to loans to reduce indebtedness.

c. All existing FmHA or its successor agency under Public Law 103–354 loans have been considered for rescheduling/reamortization.

d. Deferrals have been computed for borrowers when the cash flow margin in the year after the deferral period was higher than the cash flow margin in the first year.

e. Loans have been converted to Softwood Timber loans (when requested by the Borrower) to the maximum extent permitted by program regulations.

2. FmHA or its successor agency under Public Law 103–354 loans for annual operating expenses and all proposed new loans have been computed at limited resource rates (when applicable).

3. All loans are at the lowest interest rate and maximum term permitted by program regulations.

B. Method 1.

Provide Conservation Easement write down on eligible loans, when requested by the borrower, to the maximum limits permitted by program regulations. Conservation Easements will be the first write down considered in this method. If a feasible plan is not obtained using conservation easements then the remaining loans will be written down using debt write-down authority.

1. Criteria.

a. Only loans secured by real estate are eligible for conservation easement write-down.

b. Interest rates, loan terms, loans selected for deferral (if applicable) do not change from the status described in Section VI A of this exhibit. That is, debt repayment is at the absolute minimum.

c. Loans converted to Softwood Timber loans will not be written down.

2. Loan Selection.

Loans will be selected in the following order for full or partial write-down as necessary:

a. Place all loans eligible for conservation easements in a single group. Of these loans order them for selection as follows:

(1) Least collateralized loans first.

(2) For loans with equivalent collateralization, loans with the largest ''Amortization Factor'' first. (See Amortization Factors in Attachment 1 to this exhibit.)

b. If a feasible plan is not obtained using conservation easements or conservation easement write-down had not been requested order the remaining loans as follows:

(1) Unsecured and/or least collateralized loans first.

(2) For loans with equivalent security, loans with the largest ''Amortization Factor'' first. (See Amortization Factors in attachment to this exhibit.)

3. The Process.

Each time a new loan is selected for write-down, deferrals (if applicable) must be recalculated as described in Section IV of this exhibit.

a. Conservation Easement write-down.

(1) Starting with the first loan selected for conservation easement write-down, determine whether a full write-down will permit a feasible plan in the applicable year. The applicable year is the first planning year if deferrals have not been considered. If deferrals have been considered it is the year after the end of the deferral period.

(2) If a full conservation easement write-down will achieve positive cash flow compute the amount of conservation easement write-down so that the balance available equals debt repayment. Reschedule/reamortize the loan for the new principal amount. No further servicing actions are required.

(3) If a full conservation easement write-down does not achieve a positive cash flow margin in the applicable year, recompute the debt repayment in the first planning year and the debt repayment in the year after the

end of the deferral period (if applicable). Deferrals will have to be recalculated using the methods described in Section IV of this part.

(4) Continue selecting loans for conservation easement write-down and repeat this process until an acceptable cash flow margin is obtained in the applicable year or the maximum conservation easement write-down permitted by program regulation is obtained.

b. Debt Write-Down.

(1) Conservation easement write-down (if applicable) did not attain a positive cash flow margin in the applicable planning year. With the remaining loans, reprioritize their selection without regard to eligibility for conservation easements using the criteria described in section VI B 3 of this exhibit.

(2) Using debt write-down authority write down each of these loans until a positive cash flow margin is obtained in the applicable year. Compute the amount of write-down for that loan so that the balance available is equal to the debt repayment.

(3) If the present value of the future payment stream on remaining debt equals or exceeds the net recovery value of the collateral for FmHA or its successor agency under Public Law 103–354 loans then no further servicing actions are required.

C. Method 2.

Use this method only if Method 1 does not find a debt restructuring plan which will allow FmHA or its successor agency under Public Law 103–354 to continue with the borrower.

1. Criteria.

a. Loan terms are the maximum permitted by program regulation.

b. All other loans (except Softwood Timber loans), including the loan selected for write down will be at the minimum of the original note interest rate or the limited resource interest rate (if applicable).

2. Loan Selection.

Loans will be selected in the following order for full or partial write-down as required.

a. Unsecured and/or least collateralized loans first.

b. For loans with equivalent security, loans with the smallest present value factor first. (See Present Value Factor in Attachment 1 of this exhibit.) Note the Present Value Factor is independent of loan interest rate.

c. For loans with equal present value factor, loans with highest interest rate first.

3. The Process

Each time a new loan is selected for write-down all loans whose interest rates change according to the criteria in Section VI C1b of this exhibit will be rescheduled/reamortized using the new interest rate. Deferrals (if applicable) must also be recalculated as described in Section IV of this part.

a. Starting with the first loan selected for debt write-down, determine whether a full write-down will result in a positive cash flow margin in the applicable year. The applicable year is the first planning year if deferrals have not been used. If deferrals have been used, it is the year after the deferral period.

b. If a full debt write-down results in a positive cash flow compute the amount of write-down so that the balance available equals debt repayment. Reschedule/reamortize the loan for the new principal amount and test present value with net recovery value.

D. Net Recovery Value Test

1. Conservation Easements have been requested. The Net Recovery Value test is not applicable and no further servicing actions are required if all of the following are applicable:

a. The loan is eligible for conservation easement.

b. The write-down amount does not exceed the conservation easement write-down limit specified by program regulations.

c. All other loans written down were based on conservation easement authority.

2. If the present value of the repayment on remaining FmHA or its successor agency under Public Law 103–354 debt equals or exceeds the net recovery value of collateral a debt restructuring plan has been found which will keep the borrower on the farm and no further serving actions are required.

3. If a full write-down of a loan does not achieve a positive cash flow margin in the applicable year continue selecting loans for write-down and repeat this process until a positive cash flow margin is obtained in the applicable year or there are no other loans left to write-down.

VII. Net Recovery Value

DALR$ computes the net recovery value of collateral to obtain a value to use for the net recovery value test outlined in section VI C3b of this exhibit, as required in §1951.909(f) of this subpart. See exhibit I, ''Guidelines for Determining Adjustments for Net Recovery Value of Collateral,'' for guidance in determining the value of specific items in the net recovery alue calculations outlined have.

Net recovery value is computed for all FmHA or its successor agency under Public Law 103–354 Farmer Program loan security. If FmHA or its successor agency under Public Law 103–354's lien position or the amount of prior liens vary from item to item, separate net recovery values will be computed for each item which has a different lien structure. Example: FmHA or its successor agency under Public Law 103–354 has a first lien on a borrower's equipment, except for two tractors. One tractor was financed by non-FmHA or its successor agency under Public Law 103–354 credit, and FmHA or its successor agency under Public Law 103–354 has a

junior lien subject to the purchase money financing. In the case of the second tractor, FmHA or its successor agency under Public Law 103–354 subordinated its lien to another lender to finance repairs, thus, FmHA or its successor agency under Public Law 103–354 has a junior lien subject to the amount subordinated. In this example there would be three net recovery calculations, one for each tractor and one for the remaining equipment. The sum of the three calculations would be the net recovery value. The same logic applies to real estate security. Thus, the sum of all individual calculations will be the total net recovery value.

The general formula for net recovery value is as follows:

market value of security
minus prior liens
minus property taxes while in inventory
minus depreciation on property
minus management charges
minus repairs necessary for resale
minus legal and administrative fees
minus sales costs
minus advertising cost
Plus/minus increase/decrease in value while in inventory
minus interest cost while in inventory
minus miscellaneous expenses, if any
plus anticipated income while in inventory
equals net recovery value for security property
total of net recovery value for individual property items-net recovery value of collateral.

The individual items in the net recovery value formula are computed as follows:

1. Market value of security—the market value of the security based upon a current appraisal.

2. Prior liens—the total of all liens proceeding FmHA or its successor agency under Public Law 103–354's security interest, including past due taxes and assessments and subordinates.

3. Property taxes and assessments while in inventory—(annual tax and assessments due divided by 12)× average holding period in months.

4. Depreciation on property—Annual amount of depreciation determined by the County Supervisor, divided by 12)× average holding period in months.

5. Management charges—based upon methods of management used (acres under management × annual rate per acre) divided by 12× average holding period in months, or (net income on a monthly basis × percentage fee charged) × average holding period in months, or the anticipated monthly management and maintenance expense × average holding period in months, or the total of the appropriate combination of these.

6. Repairs—as determined necessary by County Supervisor.

7. Legal fees—determined with guidance from the State Director.

8. Sales costs—commission rate × market value of security.

9. Advertising—cost of three-week advertisement 1 time × (average holding period in months divided by 6, rounded to the nearest whole number).

10. Value increase/decrease—annual percentage divided by 12 × average holding period in months × market value.

11. Interest cost during inventory period—(interest rate on 90-day T-Bills × current market value) divided by 12 × average holding period, in months.

12. Average holding period for inventory, in months—determined by the State Director in accordance with FmHA or its successor agency under Public Law 103–354 Instructions.

13. Miscellaneous—any unusual or other expenses associated with acquiring, holding, or selling the property which are not covered by itemized expense items, such as hazardous waste cleanup and surveys.

14. Income—income received every month × average holding period in months + (total of non-monthly income received for the year divided by 12) × average holding period in months.

VIII. Summary

At this point, DALR$ has finished its calculations. DALR$ will consider service programs to the point where a feasible plan has been achieved, or all farmer program loans have been written down completely. DALR$ will provide a report of the results of the calculations performed, including the present value test.

If DALR$ does not find a solution that will provide a feasible plan, FmHA or its successor agency under Public Law 103–354 will proceed with the other actions authorized in this subpart, including mediation, offer the opportunity to purchase collateral for net recovery value, and consideration for Preservation Service Programs.

Attachment 1—Formulas Used in DALR$ Calculations

I. Amortization Factors (AF)

There are two amortization factors used to compute equal annual installment debt repayments: (1) The amortization factor for interest bearing debt and, (2) The AF for non-interest bearing debt. The first AF is a function of both loan term and interest. The second AF is a function of loan term only.

A. Amortization factor for interest bearing debt

1. Notation: [AF](i,t) (AF=amortization factor)

2. $[AF](i,t)=[i\times(1+i)^5]/[(1+i)^t-1]$

where

a. ''t'' is the loan term (years)

b. ''i'' is the annual interest rate (decimal equivalent)

3. Calculation of the amortization factor for interest bearing debt

example: loan terms are 5% interest, 15 years (i=.05, t=15)

$AF=(.05\times(1+.05)^{15})/((1+.05)^{15}-1)$

AF=.09635

B. AF for non-interest bearing debt

1. Notation: [AF](0,t)

The notation is similar to the notation used for the AF of interest bearing debt except the interest rate is set equal to zero (0).

2. Formula

[AF](0,t)=1/t

Where

''t'' is the term of the loan (Years)

This factor is used to determine annual repayment of Non-capitalized debt. Accrued interest less than 90 days past due is one type of non-capitalized debt. Note: The AF formula for interest bearing debt reduces to this formula when interest is zero.

3. Calculation of the amortization factor non-interest bearing

example: loan term is 15 years

AF =1/15

AF = .06667

II. Present Value Factor (PVF)

Present value is calculated when debt writedown is used. The present value of restructured loans is the sum of the present values of individual loans computed using these formulas.

There are two present value factors used to compute the present value of future payments. (1) The present value factor for single payments and (2) the present value factor for uniform series payments.

A. PVF for single repayments

1. Notation: [PV1] (id,t) (PV1=Present value 1 payment)

2. Formula

$[PV1]\ (id,t) = 1/(1+id)^t$

where

a. ''t'' is the number of payments (years) from the ''present'' date. In all calculations, the ''present'' date is the effective date of proposed servicing actions.

b. ''id'' is the ''discount rate'' (annual decimal equivalent)

example: a payment will be received 45 years from the present date.

The discount rate is 7%

id = .07 t=45

$PV1=1/(1+.07)^{45} = .047613$

if the payment to be received is $50,000

$PV= PV1 \times 50{,}000 = 2381$

B. PVF for uniform series of payments (equally amortized installments)

1. Notation: [PVS] (id,t) (PVS=Present value of series of equal payments)

2. Formula

$[PVS]\ (id,t) = [(1+id)^t-1] / [id \times (1+id)^t]$

Where

a. ''t'' is the number of payments (years) from the ''present'' date. In all calculations, the ''present'' date is the effective date of proposed servicing actions.

b. ''id'' is the ''discount rate'' (annual decimal equivalent)

example: a series of equal annual installments will be received annually for 30 years.

The discount rate is 7%

id =.07 t = 30

$PVS = [(1+.07)^{30}-1] / [.07 \times (1+.07)^{30}] = 7.6031$

if the annual installment is $10,000

$PV= PVS \times 10{,}000 = 76{,}031$

III. Joint Amortization Factor

This factor is used in the selection of loans for deferral and for write down. It is the weighted average of the amortization factors for interest bearing debt and non-interest bearing debt. When this factor is multiplied by the remaining balance on the loan it yields the equal annual installments for the loan.

A. Calculations

1. Notation: [JAF] (i,t)

2. Formula

$[JAF]\ (i,t) = [(P \times [AF]\ (i,t))+(P_{nc} \times [AF](O,t))]/P_T$

where:

''P'' is the sum of the principal balance plus the past due accrued interest.

''P_{nc}'' is the non-capitalizable portion of the accrued interest.

''P_T'' is the total debt and equal to $P + P_{nc}$

''[AF] (i,t)'', ''[AF] (O,t)'', ''t'' and ''i'' are as defined in paragraphs I.A. and I.B. in this attachment.

example: P=5,886 P_{nc}=581 P_T=6,467

i=.05(5%) t=15 (years)

[AF] (i,t)=.09635 [AF](0,t)=.06667

JAF=[(5886×.09635)+(581×.06667)/6467

JAF=.09369

Annual installment=P_T JAF

Annual installment=$606 (always round to next dollar)

IV. Average Month Outstanding

(FmHA or its successor agency under Public Law 103–354 Annual Operating Expense Loan):

This is the average number of months an FmHA or its successor agency under Public Law 103–354 loan of annual operating expenses will be outstanding. It may be estimated or calculated from the projected advance and payment schedule for the loan.

For example, loan(s) for annual operating expenses are estimated to be $15,000 and the projected advance and repayment schedule is planned as follows:

Principal balance outstanding	Number of months
15,000	3
8,000	2
6,000	4

Average Months=(3×15,000)+(2×8,000)+(4×6,000)

15,000 (total loans for annual oper. exp.)
Average Months=(45,000+16,00+24,000)/15,000
Average Months Outstanding=85,000/15,000
Average Months Outstanding=5.7 months
(Round to nearest tenth of month)

V. PARTIAL DEFERRAL

Whenever deferral of a loan results in an excess cash flow margin in the first year, a partial deferral of that loan will result in a higher present value and will also decrease future payment on that loan. Calculation of the partial deferral proceeds as follows:

Input Data

P: Loan Principal plus capitalizable accrued interest without write down.
N: Non-capitalizable interest without write down.
i: Interest Rate (decimal, annual basis)
t: Loan Term (Years)
n: Deferral period
r: Excess cash flow margin created in the first year with a full deferral of a loan.

Calculated/Formula Variables

R: Full payment on loan without deferral or write down

R=[(p×[AF](i,t)) + (N/t)]
R: Full payment on loan with deferral but no write down.
d: fraction of loan deferred, d=1–(r/R).

Output Information

Non-deferred Portion of Loan
$P_{1\leq}$ Loan Principal plus capitalizable interest on nondeferred portion of loan.
$N_{1\leq}$ Non-capitalizable interest on non-deferred portion of loan.
Deferred Portion of Loan
$P_{2\leq}$ Loan Principal plus capitalizable interest on deferred portion of loan.
$N_{2\leq}$ Non-capitalizable interest on deferred portion of loan.

The Process

1. Determine the order in which loans will be deferred based upon the JAF (section III of this attachment.

2. Determine amount of deferral necessary to achieve a feasible plan in the first year (compute variable d).

3. Calculate Portion of debt to be deferred and portion of non-deferred debt to meet cash flow margin criteria in the first year.

Non-deferred portion
P_1=(1–d) x P=(r/R) x P
N_1=(1–d) x N=(r/R) x N
Deferred Portion
P_2= P – P_1
N2=N – N_1

[53 FR 35718, Sept. 14, 1988]

EXHIBIT J–1—THE DEBT AND LOAN RESTRUCTURING SYSTEM (DALR$) (FOR APPLICATIONS FILED FOR PRIMARY LOAN SERVICING ON OR AFTER NOVEMBER 28, 1990)

I. Introduction to DALR$.

Farm Service Agency (FSA) primary loan service programs provide a large number of alternatives for restructuring an agency loan. Additionally, borrowers may request consideration for the Softwood Timber (ST) and Conservation Contract (CC) Programs. The number of loans a borrower has increases the number of combinations of possible servicing alternatives. It is difficult and virtually impossible to manually calculate all the potential combinations of servicing actions. To assure that all the various possible combinations of programs are considered, FSA has developed the Debt and Loan Restructuring System (DALR$) for operation on the county office computer system.

DALR$ is a menu driven computerized support tool that assists FSA field offices in determining and evaluating the effects of primary loan servicing in accordance with 7 CFR part 1951, subpart S. DALR$ will complete a series of mathematical calculations based on information regarding the borrower's cash flow and loan status obtained from the borrower's case file. This information is used in attempting to restructure the borrower's debt and maximize their repayment ability, while avoiding or minimizing loss to the Government. DALR$ will provide a printed summary of the computations and outcome of the calculations.

FSA personnel will not manually perform the calculations in this exhibit. This exhibit is provided as a benefit to those who may want to perform manual calculations, or understand the procedures DALR$ utilizes during the execution of the program.

II. Advantages of DALR$

The DALR$ system provides the following benefits to FSA borrowers:

A. Speed of Calculation—Calculations which would take hours or days are reduced to minutes. This not only speeds the processing of servicing requests, but provides the flexibility to consider several alternative

plans of operation within the same time constraints.

B. Consistency—The use of DALR$ assures that the feasibility of all requests for primary loan servicing will be evaluated on using the same calculation methods.

C. Full Consideration—DALR$ considers primary loan service programs and combinations of those programs for every borrower entered into the system. Thus, borrowers can be assured that they will be considered for as many of these actions as necessary to develop a feasible plan, if a feasible plan is possible.

D. Reduction of Errors—Use of DALR$ greatly reduces the potential for errors and inadvertent denial of assistance due to those errors. DALR$ eliminates errors in the calculations. The only potential errors related to the calculations are input errors, which are much easier to detect and correct than calculation errors. However, DALR$ results are only as reliable as the input data.

IV. Overview

When computing debt restructuring, DALR$ will consider all primary loan service programs, if necessary in attempting to develop a feasible plan. A combination of loan service programs may be necessary. DALR$ will consider each combination until a feasible plan is developed, or it is determined that a feasible plan is not possible with full utilization of primary loan servicing, ST and CC.

DALR$ will attempt to provide the maximum margin available up to ten percent above the total amount needed for payment of farm operating, family living expenses and debt repayment after restructuring. If a feasible plan cannot be developed, DALR$ will determine if the writeoff with market value buyout (less prior liens) is less than or equal to the statutory ceiling for writedown and writeoff. A DALR$ report can be printed which will detail the offer to restructure the borrower's FSA debt, offer to buyout the FSA Farm Loan Programs (FLP) loans at the market value, less prior liens, or inform the borrower that the borrower is not eligible for primary loan servicing or debt forgiveness.

The DALR$ calculations proceed in the following general order:

A. DALR$ calculates the net recovery value (NRV) for FSA security and nonessential assets.

B. DALR$ computes new loan and annual operating expense payments at regular interest rates.

C. DALR$ applies loan payments that will pay loans in full on the proposed restructure date.

D. DALR$ considers conservation contract, if requested, to the maximum extent permitted under the regulations. Conservation contract (CC) will not be provided unless a feasible plan is developed after considering CC and other loan servicing options.

E. DALR$ reschedules or reamortizes all delinquent loans at the maximum term with an interest rate at the lower of the original note rate or current loan program rate. Limited resource rate loans will be rescheduled or reamortized at the lower of the original note rate or the current limited resource loan rate. After rescheduling or reamortizing all delinquent loans, DALR$ will determine if a feasible plan has been developed with the appropriate debt service margin.

F. DALR$ reschedules or reamortizes nondelinquent loans at the maximum term and with an interest rate at the lower of the original note rate or the current loan program rate. Limited resource rate loans will be rescheduled or reamortized at the lower of the original note rate or the current limited resource rate. Non-delinquent loans are rescheduled or reamortized one loan at a time until a feasible plan is developed with the appropriate debt service margin, or until all non-delinquent loans have been processed.

G. DALR$ reschedules or reamortizes limited resource eligible loans at the maximum term and with an interest rate at the lower of the original note rate or the current limited resource program interest rate. Limited resource eligible loans are rescheduled or reamortized one at a time until a feasible plan has been developed with the appropriate debt service margin, or all limited resource eligible loans have been processed.

H. DALR$ reschedules or reamortizes unequal payment loans at the maximum term and with an interest rate at the lower of the original note rate or the current loan program rate (limited resource, if applicable). Unequal payment loans are rescheduled or reamortized one at a time until a feasible plan has been developed with the appropriate debt service margin, or all unequal payment loans have been processed.

I. DALR$ determines the cash available to repay the FSA debt for the first year and the year after the deferral period by subtracting non-FSA payments, farm operating expenses, excluding interest, and family living expenses from the adjusted balance available. If the first year cash available is negative, DALR$ will proceed with paragraph M of this section. If the first year cash available is positive and less than the cash available for the year after the deferral period, DALR$ will consider loan deferral. Loans will be selected for deferral so as to minimize the debt repayment in the year after the deferral period. If the full deferral of a loan will result in a cash flow for the first year that exceeds the appropriate debt service margin, a partial deferral of the loan is used to eliminate the excess cash flow margin. A partial deferral has the added benefit of reducing the payment amount in the years after the deferral period.

J. DALR$ considers ST loan deferral, when requested by the borrower, to the maximum limits permitted. Previously calculated regular deferrals will be cancelled prior to DALR$ considering ST loan deferral. If the cash available after the deferral period is greater than the first year cash available, and ST loan deferral fails to produce a feasible plan at the applicable debt service margin, non-ST deferred loans will be reconsidered. Regular loan deferrals are recalculated after selecting loans for ST to:

1. Minimize any decrease in present value caused by the conversion to ST, and

2. Minimize the increase in payments in the year after the deferral period.

A ST loan deferral has the same effect on the debt repayment ability as a writedown of the same amount. However, a ST loan deferral will always have a greater present value. Therefore, after a loan is selected for ST loan deferral, it will not be considered for writedown since this will always decrease the present value of restructured loans.

K. DALR$ considers writedown of FSA debt for those borrowers who have not received their lifetime limit for writedown and writeoff (with market value buyout).

1. If the cash available for the first year is greater than the cash available for the year after the deferral period, DALR$ considers writedown, in combination with other primary loan service programs (except ST deferrals as noted in paragraph K of this section). When considering a borrower for writedown, DALR$ will attempt to maximize the borrower's repayment ability and minimize losses to the Government.

The amount of writedown cannot exceed the $300,000 limitation. In addition, the present value of the restructured loan plus the amount of the CC cannot be less than the total NRV of the FSA security and non-essential assets.

2. If the cash available after the deferral period is greater than the cash available in the first year, DALR$ will consider a combination of deferral and writedown.

Loans are selected for deferral to achieve a cash flow in the first year. If deferral of loans will result in a cash flow in the first year that exceeds the applicable debt service margin, DALR$ partially defers the loan to reduce the excess cash flow. If there is a negative cash flow after the expiration of the deferral period, DALR$ provides writedown of one loan to attempt to develop a feasible plan in the year after the deferral period. This process is repeated until a feasible plan is developed for both the first year and the year after the deferral period, or until all loans have been processed. The amount of the writedown cannot exceed the $300,000 limitation and the present value of the restructured loans plus the value of the CC cannot be less than the total NRV of the FmHA security and non-essential assets.

L. DALR$ considers market value buyout when a feasible plan cannot be developed after considering the borrower for all combinations of the above servicing options and the borrower has not received the lifetime limitation for writedown and writeoff. The amount of FSA debt to be written off must be less than or equal to the $300,000 limitation, otherwise the borrower is not eligible for primary loan servicing or market value buyout.

M. DALR$ determines the amount of cash improvement needed in the first year Balance Available to cash flow with a zero percent debt service margin when a feasible plan cannot be developed.

N. DALR$ offers to print a servicing report which provides a summary of the computations and the outcome of the calculations.

V. Information Entered in DALR$

The following information will be entered in DALR$ prior to beginning the calculations.

A. Borrower Case Number and Name—The borrower's case number is a concatenation of the State Code, County Code, and Borrower ID (usually the borrower's social security number or tax identification number). Borrowers are entered as either an individual or entity.

B. Date Servicing Actions Requested—This is the date that the borrower submitted a complete application for primary loan servicing. The discount rate used in the calculations of the present value of restructured loans and the NRV will be the rate in effect on this date.

C. Proposed Restructure Date—This is the projected effective date of the restructuring. The interest rate used for restructuring loans and the net recovery constants used in the calculation of the NRV will be those in effect on this date as of the date DALR$ was prepared.

D. Eligibility for Writedown or Writeoff—This field determines if writedown or writeoff (with buyout) should be considered when attempting to restructure the borrower's debt. Borrowers that are not delinquent, or that have met the lifetime limitation regarding writedown and writeoff are not eligible for writedown or writeoff. If the borrower is not eligible, DALR$ will consider the borrower for all primary loan servicing except writedown and market value buyout.

E. Period of Deferral—DALR$ will default to the maximum deferral period of 5 years. The field can be cleared and a lessor period entered if applicable.

F. Adjusted Balance Available—The adjusted balance available for the first year is obtained from Form FmHA 431–2, ''Farm and Home Plan'' developed for the current production cycle or the typical plan, if applicable. Adjusted balance available is the sum of total planned family living expenses from

Table F, total planned cash farm operating expenses, less interest from Table G, and line 16, ''Balance Available,'' from Table J of the Farm and Home Plan. If loan deferral or debt writedown is anticipated or needed, the balance available for the year after the deferral period must also be calculated and entered.

G. Non-Agency Debts, Family Living Expenses and Adjusted Operating Expenses—This is the sum of total planned family living expenses from Table F, total planned cash farm operating expenses, less interest, from table G, and total non-Agency debt repayment (principal and interest) from Table K of Form FmHA 431–2, ''Farm and Home Plan''. If future non-agency loans are planned that will affect the first year or the year after the deferral, the annual debt repayment for these loans should be included. Debt repayment on FSA nonprogram loans should be included when determining this amount. FSA nonprogram debts must be entered here to assure that these loans are not included in the present value calculations or when determining if the $300,000 writedown or writeoff limitation was exceeded.

H. FSA Loan for Annual Operating Expense—The amount of FSA loan for annual operating expenses is the amount of annual operating expense loan principal which is due in the applicable planning year. The estimated average number of months the annual operating loan will be outstanding is also entered.

If some of the principal will be carried over to future years, then that amount is either:

1. Included in the new loan payments computed using the amortization factor over the applicable loan term at the regular loan program interest rate, or

2. If the amount to be carried over was entered as an existing loan, it is rescheduled with the applicable term and interest rate permitted by the program regulation.

I. New FSA Loans and Scheduled Advances—The amount of the loan, loan type, regular program interest rate, and year that the cash flow will be affected will be entered. DALR$ will consider a reduction from the regular program interest rate to the limited resource interest rate (if applicable) during the rescheduling or reamortizing process if necessary to develop a feasible plan.

J. NRV Data—Information pertaining to FSA security and nonessential assets owned by the borrower will be entered in accordance with Exhibit I of part 1951, subpart S. Prior liens will include other creditors debts that hold a prior lien to FSA on the security property. Prior liens may also include FSA nonprogram loans if the same security is cross-collateralized with the program loans and they hold a prior lien to the program loans.

K. Existing Loan Data—Loan information will be obtained from the borrower's case file and Finance Office status inquiry screens. The date of status screens must be after the date of the last payment or other transaction on the loan. The loan information includes the consideration for servicing actions, unpaid principal and interest, amount of next payment, maximum term, original and existing interest rate, security priority, information regarding any portion of the loan not to be rescheduled, and proposed payment in full on the restructure date.

1. If the interest accrual date of the status screen precedes the proposed restructure date, DALR$ will calculate the additional interest accrual. Interest accrual is calculated in accordance with section I of attachment 1 to this exhibit.

2. Loan selection for many of the calculation processes is based partly on the security priority identified for each loan. There are three priorities:

a. Low—These loans are unsecured. If FSA loan security was liquidated, the proceeds would not be sufficient to result in a payment on this loan.

b. Medium—These loans are undersecured. If FSA security was liquidated, the proceeds would be sufficient to result in a partial payment on this loan.

c. High—These loans are fully secured. If FSA security was liquidated, the proceeds would be sufficient to pay this loan in full.

L. Conservation Contract Data—If the borrower requested a conservation contract, the total acreage of the farm, acres to be included in the conservation contract, unpaid debt secured by the farm, and the current market value of the farm must be entered.

M. Softwood Timber (ST) Loan Data—If ST deferral was requested by the borrower, the acreage eligible for ST must be entered.

N. Interest Rate Tables—Interest rates and the effective date provided in Exhibit B of FmHA Instruction 440.1 will be entered.

O. Discount Rate Tables—The discount rate and the effective date provided in Exhibit B of FmHA Instruction 440.1 will be entered.

P. Net Recovery Constants Tables—Net Recovery Constants and the effective date determined in accordance with exhibit I of part 1951, subpart S will be entered.

VI. Calculation Process

As described in section IV of this exhibit, the DALR$ calculations are a repetitive process. During the first phase of the calculations, DALR$ will attempt to restructure the borrower's debt utilizing all necessary combinations of loan servicing and provide a ten percent debt service margin. Debt service margin is calculated in accordance with section II of attachment A of this exhibit. If a feasible plan cannot be developed after considering all combinations of loan servicing, the debt service margin will be reduced to nine percent and all combinations of servicing will again be considered.

DALR$ will continue to reduce the debt service margin by one percent until a feasible plan is developed or the debt service margin falls below zero and a feasible plan is not possible with any combination of servicing options.

The calculation process proceeds as follows:

A. Calculation of NRV

As required by §§1951.909 and 1951.910 of title 7, DALR$ computes total NRV of agency loan security and non-essential assets. Exhibit I of part 1951, subpart S, ''Guidelines for Determining Adjustments for Net Recovery Value'', provides guidance in determining the value of specific items utilized in the net recovery calculations outlined below.

NRV is computed for all Farm Loan Programs loan security, other non-essential assets owned by the borrower, and assets not in the borrower's possession. If the agency's lien position, or the amount of prior liens vary from item to item, separate NRV will be computed for each item which has a different lien structure.

EXAMPLE: FSA has a first lien on a borrower's equipment, except for two tractors. One tractor was financed by non-agency credit, and FSA has a junior lien subject to the purchase money financing. In the case of the second tractor, FSA subordinated its lien to another lender to finance repairs, thus, FSA has a junior lien to the amount subordinated. In this example, there would be three net recovery calculations. One for each tractor, and one for the remaining equipment. The same logic applies to real estate security. The total of all net recovery calculations will be the total NRV.

The general formula for calculating NRV is as follows:

* Current market value of the security
* Minus prior liens
* Minus property taxes while in inventory
* Minus depreciation on buildings and improvements
* Minus management charges
* Minus repairs necessary for resale
* Minus legal and administrative costs
* Minus sales cost
* Minus advertising cost
* Minus miscellaneous expenses
* Minus interest cost while in inventory
* Plus or minus the increase or decrease, as applicable, in value while in inventory
* Plus anticipated income while in inventory
* Equals NRV of the individual property items

The sum of the NRV of individual property items minus:

* Real estate property management costs
* Real estate or real estate and chattel costs, and
* Chattel only costs as applicable, equals the total NRV of FSA security, non-essential assets, and assets not in possession.

The factors listed above do not apply to the calculation of NRV for non-essential assets and assets not in possession.

B. Calculation of Payments for New FSA Loans

DALR$ calculates debt repayment for new FSA term loans and FSA loans for annual operating expenses as follows:

1. Repayment for new term loans will be calculated based on the regular loan program interest rate and the term of the loan. The payment will be calculated in accordance with section III A of attachment 1 to this exhibit.

2. Repayment of loans for annual operating expenses will be calculated based on the regular interest rate and the projected number of months the loan will be outstanding determined in accordance with section III B of attachment 1 to this Exhibit. DALR$ will calculate interest accrual for the annual operating loan by multiplying the amount of principal to be repaid during the period of the plan by the monthly decimal equivalent for the regular program interest rate. This amount is then multiplied by the average number of months that the loan will be outstanding. The amount of debt repayment due on annual operating expense will be the total of interest accrual plus the principal amount of the loan.

DALR$ will initially calculate payments for new FSA loans and FSA loans for annual operating expenses at the regular program interest rate. If a feasible plan cannot be developed, DALR$ will reduce the interest rate to limited resource rates (if applicable) during the calculations completed in paragraph F of this section.

C. Application of Payment on the Effective Date of Servicing.

DALR$ will apply loan payments to be made on the effective date of loan servicing. DALR$ can only consider a full payoff of a loan. If a payment for less than the full amount of the loan is expected or received, the payment must be applied to the loan prior to completing the DALR$ calculations.

If after the application of payments to pay loans in full, there is a debt repayment margin of ten percent or more and none of the borrowers remaining loans are delinquent, no further servicing action in DALR$ is required.

D. Conservation Contract.

DALR$ will consider Conservation Contract (CC), if requested by the borrower, prior any other loan servicing option. CC can be requested by both current and delinquent borrowers. Only FLP loans secured by real

estate are eligible. A borrower will not be offered CC unless, the CC or CC in combination with other loan servicing options results in a feasible plan. Debt cancellation as a result of CC will be applied against the borrowers loans as a noncash credit and will not affect the borrowers debt repayment unless the loan is fully written down.

CC eligible loans will be selected in the order of lowest security priority first. For loans with equal security priority, the secondary selection will be the loan with the largest amortization factor determined in accordance with section IV of attachment 1 to this Exhibit.

The calculations completed during this process are as follows:

1. Determine the maximum amount of CC in accordance with attachment 1 of exhibit H of part 1951, subpart S.

2. Deduct the lessor of the unpaid loan balance or the maximum CC from the first loan selected. Repeat this step until the maximum CC debt cancellation has been deducted, or all CC eligible loans have been written down in full.

3. If a feasible plan was developed with a debt service margin greater than or equal to ten percent, and the borrower does not have any remaining delinquent loans, no further servicing is required. DALR$ will offer the user the opportunity to print the servicing report.

4. If the borrower has delinquent loans, or the debt service margin is less than five percent after consideration of CC, DALR$ will proceed with paragraph E of this section.

E. Rescheduling or Reamortization of Delinquent Loans

DALR$ will reschedule or reamortize existing loans to eliminate any delinquency. All delinquent loans will be restructured. Loans with regular interest rates will be restructured at the lower of the original note rate or the current program rate. Loans that currently have a limited resource rate will be restructured at the lower of the original note rate or the current limited resource rate.

Only loans that are delinquent will be restructured during this process. Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with an equal amortization factor, the final selection will be based on the loan with the lowest present value calculated in accordance with section V of attachment 1 of this Exhibit.

The calculations completed during this process are as follows:

1. Combine recoverable cost items with parent loans.

2. Reschedule or reamortize the delinquent loan over the maximum term entered for the loan.

3. Calculate debt repayment for the first year for the rescheduled or reamortized loan based on the new interest rate and term.

4. Repeat steps 2 and 3 until all delinquent loans have been processed.

5. Determine if a feasible plan was developed with the appropriate debt service margin by rescheduling or reamortizing all delinquent loans.

6. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALR$ will provide the user with the opportunity to print the servicing report.

7. If a feasible plan was not found, DALR$ will reschedule or reamortize non-delinquent loans in accordance with paragraph F of this section.

F. Reschedule or Reamortize Non-Delinquent Loans

DALR$ will reschedule or reamortize non-delinquent loans one at a time to attempt to develop a feasible plan. Loans with regular interest rates will be restructured at the lower of the original note rate, or the current program rate. Loans that currently have a limited resource rate will be restructured at the lower of the original note rate or current limited resource rate.

Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with equal amortization factors, the final selection will be based on the loan with the lowest present value.

After each non-delinquent loan has been rescheduled or reamortized, DALR$ will determine if a feasible plan was developed with the appropriate debt service margin prior to proceeding to the next loan.

The calculations completed during this process are as follows:

1. Reschedule or reamortize the non-delinquent loan over the maximum term entered for the loan.

2. Calculate debt repayment for the first year for the restructured loan based on the new interest rate and term.

3. Determine if a feasible plan was developed with the appropriate debt repayment margin.

4. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALR$ will provide the user with the opportunity to print the servicing report.

5. If a feasible plan is not found, repeat steps 1 through 3 until a feasible plan is

found with the appropriate debt service margin, or all non-delinquent loans have been rescheduled.

6. If a feasible plan was not found, DALR$ will reschedule or reamortize delinquent and non-delinquent loans at limited resource rates (if applicable), in accordance with paragraph G of this section.

G. Rescheduling or Reamortization of Limited Resource Eligible Loans at Limited Resource Rates

DALR$ will attempt to reschedule or reamortize limited resource eligible loans at the limited resource rate to develop a feasible plan. Debt repayment for new FSA term loans and for annual operating expenses will be recalculated at limited resource rates (if applicable). The interest rate for existing loans will be the lessor of the original note rate or the current limited resource rate.

Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with equal amortization factors, the final selection will be based on the loan with the lowest present value.

After each limited resource eligible loan has been rescheduled or reamortized at the limited resource rate, DALR$ will determine if a feasible plan was developed with the appropriate debt service margin prior to proceeding to the next loan.

The calculations completed during this process are as follows:

1. Recalculate repayment for new FSA term loans and annual operating loans at the limited resource rate.

2. Determine if a feasible plan was found with the appropriate debt service margin after reducing the interest rate on new loans.

3. If a feasible plan was developed, no further servicing is required. Proceed to step 7.

4. Reschedule or reamortize an existing limited resource eligible loan at the limited resource interest rate.

5. Calculate debt repayment for the first year for the rescheduled or reamortized loan at the maximum term entered for the loan with limited resource rates.

6. Determine if a feasible plan was found with the appropriate debt service margin.

7. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALR$ will provide the user with the opportunity to print the servicing report.

8. If a feasible plan was not found, repeat steps 4 through 6 until a feasible plan is found with the appropriate debt service margin, or until all limited resource eligible loans have been processed.

9. If a feasible plan was not found, DALR$ will reschedule or reamortize loans with unequal payment schedules in accordance with paragraph H of this section.

H. Rescheduling or Reamortizing Loans with Unequal Payment Schedules

DALR$ will reschedule or reamortize loans with unequal payment schedules. These loans were not previously restructured in sections F or G as rescheduling or reamortization would have resulted in an increase in debt repayment in the first year. However, if the loan was delinquent, the loan would have been rescheduled or reamortized under section E regardless of the impact on the first year debt repayment. Loans will be restructured at the lower of the original note rate or the current loan program rate (limited resource if applicable).

Loans selected for rescheduling or reamortization in this process will not have been restructured during any of the earlier calculations and cannot be a ST loan.

Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with equal amortization factors, the final selection will be based on the loan with the lowest present value.

After each loan with an unequal payment schedule has been rescheduled or reamortized, DALR$ will determine if a feasible plan was developed with the appropriate debt service margin prior to proceeding to the next loan.

The calculations completed during this process are as follows:

1. Reschedule or reamortize an unequal payment loan over the maximum term.

2. Calculate the debt repayment for the first year for the restructured loan based on the new term and interest rate.

3. Determine if a feasible plan was developed with the appropriate debt service margin.

4. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALR$ will offer the user the opportunity to print the servicing report.

5. If a feasible plan is not developed, repeat steps 1 through 3 until a feasible plan is developed with the appropriate debt service margin, or until all unequal payment schedule loans have been processed.

6. If a feasible plan is not developed, calculate the necessary cash improvement required to cash flow in the first year using the rescheduling or reamortization process.

Retain this amount for later use in the cash improvement process.

7. If a feasible plan was not developed, DALR$ will consider deferrals in accordance with paragraph I of this section.

Rescheduling or Reamortization with Deferral

If a feasible plan cannot be developed by utilization of rescheduling or reamortizing delinquent and non-delinquent loans with the maximum terms and lowest interest rates available under the regulations with a ten percent margin, deferral data must be entered in DALR$. DALR$ will not consider the borrower for writedown (discussed in paragraph J of this section) unless deferral data has been entered.

DALR$ will attempt to develop a feasible plan for the first year by deferring payments on FSA loans until the end of the deferral period (1–5 years). A deferral will decrease the payment during the period of the deferral, and increase the payment for the remaining term after the deferral period. Deferrals will only be beneficial if the debt repayment margin increases in the year after the deferral period. This improvement must be no later than six years after the current planning year, since the maximum deferral period is five years.

To determine the appropriate deferral period, the servicing official and borrower will review the farm operation over the next five years. Loans should be deferred to the year when the improvement from the first planning year is the greatest and the improvement in the following years are at least as good.

Loans will be deferred at the lower of the original note rate, or current program interest rate (limited resource, if applicable). ST will not be considered for regular deferral.

To select loans for deferral, DALR$ will calculate the payment after the deferral period for each loan as if the loan had been fully deferred. (This is only a side calculation to determine the best order of selection.) The ratio of the difference between the post deferral year payment and first year payment will be calculated as follows:

(Post Deferral Payment—First Year Payment)

First Year Payment

The loan with the smallest ratio will be deferred first and so forth.

The calculations completed during this process are as follows:

1. Defer the selected loan and calculate debt repayment in the first year and the year after the deferral period.

2. Determine if a feasible plan was developed for the first year with the appropriate debt service margin. If a feasible plan was developed proceed with step three, otherwise, repeat step one until a feasible plan for the first year is developed or all loans have been deferred.

3. If the applicable debt service margin for the first year was exceeded (this indicates that the last loan deferred did not require a full deferral), the following will occur:

a. DALR$ will determine the amount of the partial deferral needed on the last loan selected to maintain the feasible plan developed for the first year. See section VI of attachment 1 of this Exhibit for formulas used in calculating partial deferral.

b. DALR$ will calculate the debt repayment for this loan for the first year and the year after the deferral period.

4. Calculate total debt repayment for the year after the deferral period.

5. If a feasible plan exists for the year after the deferral period, then no further servicing actions are required. DALR$ will offer the user the opportunity to print the servicing report.

6. If the deferral of loans will not permit the borrower to cash flow in the first year, DALR$ will calculate the cash improvement required to cash flow in the first year using deferral. This amount will be retained for later use in the cash improvement process.

7. If a feasible plan does not exist for the year after the deferral period, DALR$ will consider the borrower for ST, if requested in accordance with paragraph J of this section. Otherwise, DALR$ will consider the borrower for debt writedown in accordance with paragraph K of this section.

J. Softwood Timber (ST)

DALR$ will consider ST, if requested by the borrower, to the maximum limit permitted under the regulations. Deferral of payment on ST until the end of the ST deferral period must improve the borrowers debt repayment ability during the first year and the year after the deferral period. All previously calculated regular deferrals will be cancelled. Only loans eligible for ST will be considered. If the entire unpaid balance of a loan is not converted to a ST loan, the loan will be split into two loans. The interest rate for the ST portion will be the lessor of the original note rate or the current ST loan program interest rate. The non ST portion of the loan will retain the interest rate and term determined prior to ST consideration.

Loans will be selected to maximize the present value of the loan after ST deferral. This will minimize or eliminate loss to the Government. DALR$ will calculate the present value for each eligible loan before and after ST and compute the decrease in present value using the following formula:

(Present Value w/ Full ST Deferral—Present Value if not Deferred)

Nondeferred First Year Payment

Note: For loans in which the present value increases, this will be a negative number.

The ratio of the decrease in present value to the first year payment will be calculated. The loan with the smallest (or most negative) ratio will be selected first. For loans with equal ratios, the secondary selection will be based on the loan with the lowest security priority.

The calculations completed during this process are as follows:

1. Starting with the first loan selected for ST, defer the loan. The amount of ST deferral cannot exceed the maximum limit permitted under the regulations.

2. Determine if a feasible plan was developed for the first year with the appropriate debt service margin. If a feasible plan was found, proceed with step three, otherwise, repeat step one until a feasible plan is found or the maximum for ST deferral has been reached.

3. If the full deferral of a loan results in the applicable debt service margin being exceeded, DALR$ will determine the amount of partial deferral required for a feasible plan. If a loan is only partially deferred, DALR$ will create a new loan identity for the partially deferred portion of the loan. The portion not deferred will maintain the interest rate and term prior to the deferral.

4. If full utilization of the ST program does not result in a positive cash flow in the first year, repeat the regular deferral process (see paragraph J of this section. Loans selected for ST will not be deferred when repeating the regular deferral calculations.

5. If the deferral of loans under the ST program results in a positive cash flow with the applicable debt service margin for the first year, no further servicing is required. DALR$ will provide the user with the opportunity to print the servicing report.

6. If the deferral of loans under the ST program will not permit the borrower to cash flow in the first year, DALR$ will calculate the cash improvement required to cash flow in the first year using the ST program. This amount will be retained for later use in the cash improvement process.

7. If a feasible plan is not found, DALR$ will consider the borrower for writedown in accordance with paragraph K of this section.

K. Writedown

If a feasible plan could not be developed utilizing CC, rescheduling or reamortization, limited resource rates, regular deferral and ST deferral, and the borrower is eligible for writedown or writeoff, DALR$ will attempt to develop a feasible plan by writing down the borrower's FSA debt. Borrowers who have met the lifetime limitation for writedown or writeoff will not be considered for writedown. The amount of the writedown necessary to develop a feasible plan must be less than or equal to $300,000 in accordance with section 1951.909 of part 1951, subpart S.

DALR$ will prioritize the loans for writedown and attempt to develop a feasible plan (pass one). If a feasible plan is not found, DALR$ will re-order the loans based on different criteria and again attempt to develop a feasible plan with writedown (pass two). Loans deferred under the ST program will not be considered for writedown.

For the first attempt to writedown (pass one), loan selection will be based on an attempt to maximize the amount of writedown. The loan with the lowest security priority will be selected first. For loans with an equal security priority, the secondary selection will be based on the loan with the largest amortization factor.

If a feasible plan was not developed, DALR$ will re-order the loans based on new criteria, and will again attempt writedown (pass two). Loan selection will be based on lowest security priority. For loans with equal security priority, the secondary selection will be based on the loan with the smallest present value factor. For loans with an equal present value factor, the final selection will be based on the loan with the highest amortization factor.

The calculations completed during this process are as follows:

1. From the list of loans for the first method of loan prioritization (pass one), select the first from the list ordered and apply writedown. This step will be repeated until the borrower cash flows in the first year, or until all selected loans have been written down. The writedown amount for each loan will be retained and added to the total writedown amount.

2. If a cash flow for the first year was achieved and the full writedown of the last loan selected results in the applicable debt service margin being exceeded, this implies that a full writedown was not required. DALR$ will compute the amount of partial writedown on the last loan selected necessary to achieve a cash flow in the first year at the appropriate debt service margin and reschedule or reamortize the remaining unpaid balance.

3. If the present value of all FSA remaining debt plus the total CC equals or exceeds the NRV, and the total writedown amount is less than or equal to $300,000, no further serving is required. DALR$ will offer the user the opportunity to print the servicing report.

If this step fails, the process will be repeated from step one using the second method for ordering loans for writedown.

4. If step three fails after repeating the writedown calculations based on the second method of prioritizing loans for writedown,

DALR$ will consider the borrower for a combination of deferral and writedown in accordance with paragraph L of this section.

L. Writedown with Deferral

This process will defer payment on FSA loans in combination with debt writedown in an effort to develop a feasible plan for the first year and the year after the deferral period. Regular and ST deferrals did not result in a feasible plan for the first year and the year after the deferral period.

The deferral period will be 1–5 years as entered by the user.

To select loans for deferral, DALR$ will calculate the payment for each loan as if it had been fully deferred. (This is a side calculation used only to prioritize the loans.) The ratio between the post deferral year payment and the first year payment will be calculated as follows:

(Post Deferral Payment—First Year Payment)

First Year Payment

The loan with the smallest ratio is deferred first and so on until the borrower cash flows in the first year with the appropriate debt service margin or all loans have been deferred.

Loans will be selected for writedown based on the selection criteria established in paragraph J of this section. The deferred portion of the loan is considered a separate loan in this process and must be prioritized for selection with the remaining loans.

The calculations completed during this process are as follows:

1. Loans are deferred to obtain a positive cash flow in the first year as described in paragraph J of this section.

2. DALR$ will create a new loan identity for the partially deferred portion of any loan.

3. If the borrower cash flows with the appropriate debt service margin in both the first year and the year after the deferral period, no further servicing is required. DALR$ will offer the user the opportunity to print the servicing report.

Otherwise, using the first method of loan selection (pass one) described in paragraph L of this section, DALR$ will select one loan at a time and attempt to develop a feasible plan by utilization of full or partial writedown.

4. If the borrower does not cash flow in the year after the deferral period, or the cash flow in the first year exceeds the appropriate debt service margin, DALR$ retains the writedown amount, all loans not completely written down are converted to non-deferred status, and the process will begin again at step one.

5. If the present value of all FSA remaining debt plus the total CC equals or exceeds the NRV, and if the writedown amount is less than or equal to $300,000, a feasible plan has been found and no further servicing is required. Otherwise, repeat this process beginning from step one using the second method of prioritizing loans for writedown described in paragraph L of this section.

6. If step three fails after repeating the writedown calculations based on the second method of prioritizing loans for writedown, DALR$ will determine if the borrower will be offered buyout at the current market value. If the writeoff amount (total principal and interest minus the total market value) is less than or equal to $300,000, DALR$ will compute an offer to the borrower for buyout at the current maket value. Otherwise, the borrower is not eligible for debt forgiveness. DALR$ will offer the user the opportunity to print the servicing report.

M. Cash Improvement

If a feasible plan could not be developed after considering all available primary loan servicing, DALR$ will provide the user with the opportunity to determine the amount of cash improvement in the first year balance available to produce a feasible plan.

The calculations completed during this process are as follows:

1. Collect cash improvement solutions from the reschedule or reamortize debt process, the regular deferral process, and the softwood timber deferral process.

2. Determine the cash improvement required in the first year to cash flow using conservation contract, if applicable.

3. Determine the cash improvement required in the first year to cash flow using writedown, if applicable.

4. Determine the cash improvement required in the first year to cash flow using writedown with deferrals, if applicable.

5. Select the lowest of all the cash improvements and display it to the screen. DALR$ will offer the user the opportunity to print the servicing report.

O. Summary

At this point, DALR$ has finished its calculations. A feasible plan has been developed, or all possible combinations of servicing actions has been considered. DALR$ will provide a report of the results of the calculations performed.

If DALR$ does not find a solution that will provide a feasible plan, FSA will proceed with the other actions authorized in this subpart, including mediation, offer the opportunity to purchase collateral for market value, and consideration for Homestead Protection.

ATTACHMENT 1—FORMULAS USED IN DALR$ CALCULATIONS

I. Interest Accrual on Existing Loans

If the interest accrual date for an existing loan precedes the proposed restructure date, DALR$ will determine the amount of additional interest which will accrue between these dates. This amount will be added to the unpaid interest that was outstanding as of the accrual date. The calculations used are as follows:

A. Interest Accrual After the Loan Status Date Equals

[(Principal × Interest Rate)/365] × (Effective Date − Accrual Date)

B. Total Accrued Interest Equals

Interest Accrual After the Loan Status Date + Accrued Interest as of the Loan Status Date

II. Debt Service Margin

DALR$ will attempt to develop a feasible plan that provides the borrower with a ten percent margin above the amount needed for family living expenses, farm operating expenses and debt service obligations. If a feasible plan cannot be found with a ten percent debt service margin, DALR$ will reduce the margin in increments of one percent until a feasible plan is found, or the debt service margin falls below zero. DALR$ will consider all loan servicing options prior to reducing the debt service margin.

The debt service margin is applicable in both the first year and the post deferral year calculations if deferral is being considered. The debt service margin is used to calculate the cash available restructure FSA debt and is calculated as follows:

Cash Available = ((balance available + family living expenses + farm operating expenses − interest expense) / applicable debt service margin) − —family living expenses − farm operating expenses (excluding interest) − non-agency debt repayment

The debt service margin used in the above calculations is set initially at 1.10. If a feasible plan is not found after consideration of all loan servicing options, the margin is reduced incrementally by .01. After the reduction is completed, DALR$ will reconsider the borrower for all loan servicing requested. DALR$ will continue to reduce the debt service margin until a feasible plan is developed, or until it has been determined that a feasible plan is not possible with a debt service margin of 1.00.

III. Loan Payment Calculations

Loan payments are calculated using amortization factors rounded to the nearest five places. All payments are rounded up to the next dollar. The equations used to calculate loan payments are as follows:

A. Payments on New FSA Loans

Payment = Principal Amount × Amortization Factor

B. Payments on FSA Loans for Annual Operating Expenses

1. Determine the average number of months that the loan for annual operating expenses will be outstanding. It may be estimated or calculated from the projected advance and payment schedule for the loan.

For example, the loan for annual operating expenses is estimated to be $15,000 and the projected advance and repayment schedule is planned as follows:

Principal balance outstanding	Number of months outstanding
$15,000	3
$8,000	2
$6,000	4

Average Months = (3 × 15,000) + (2 × 8,000) + (4 × 6000) 15,000

Average Months = 45,000 + 16,000 + 24,000 15,000

Average Months = 85,000 15,000

Average Months = 5.7

2. Determine interest accrual on annual operating expense loan.

Interest Accrual = [(Principal Amount × Interest Rate)/12] × Number of Months Outstanding

3. Determine total payment.

Total Payment = Principal Amount + Interest Accrual

C. Payments for Rescheduled or Reamortized Loans

1. Determine interest accrual if loan status date precedes the proposed restructure date in accordance with section I of this attachment.

2. Determine unpaid loan balance.

Unpaid Loan Balance = Principal Amount + Unpaid Interest (as of the loan status date) + Interest Accrual

3. Determine payment amount.

Payment = Unpaid Balance × Amortization Factor

D. Payments for Deferred Loans

1. Determine term of loan entered in DALR$.

2. Determine remaining term after deferral period.

Remaining Term = Term—Deferral Period

Remaining Term = Term-Deferral Period

3. Determine payment during deferral period.

Payment = Nondeferred Principal x Amortization Factor

NOTE: Amortization factor is based on the full term of the loan.

4. Determine payment after deferral.

a. Determine interest accrual on deferred principal.

Interest Accrual = Deferred Principal x Interest Rate x Deferral Period

b. Determine payment on interest accrual.

Payment = Interest Accrual / Remaining Term

c. Determine payment on deferred principal.

Payment = Deferred Principal x Amortization Factor

NOTE: Amortization factor is based on the remaining term after the expiration of the deferral period.

d. Determine total payment after deferral.

Payment = Payment of Nondeferred Principal + Payment on Interest Accrual + Payment on Deferred Principal

IV. Loan Amortization Factors

Loan amortization factors are calculated using the following equations:

A. Non-deferred loan

$A = [(i(l + i)n)/((l + i)n - l)]$

A—amortization factor

i—interest rate

n—term

B. Deferred loan

$A = [((i(l + i)n - t)/((l + i)n - t - l)) + ((i \times t)/(n-t))]$

A—amortization factor

i—interest rate

n—term

t—deferral period

C. Deferred interest

$A = l/(n - t)$

A—amortization factor

n—term

t—deferral period

V. Present value calculations

A. The net present value factors for each loan are calculated using the following equations:

1. Non-deferred loan

$P = [((l+ i)n - l/(i(l+ i)n)]$

P—net present value factor

i—discount rate

n—term

2. Deferred loan

$P = [[((l+ i)n - t - l/(i(l+ i)n - t)]/(l+ i)t]$

P—net present value factor

i—discount rate

n—term

t—deferral period

B. The loan net present is calculated using the following equation:

$NPV = (P)(p)$

NPV—loan net present value

P—loan net present value factor

p—loan payment

VI. Partial deferral calculations

Whenever full deferral of a loan results in excess cash flow (above the applicable debt service margin) in the first year, a partial deferral of that loan will decrease future payments on that loan and eliminate the excess cash flow in the first year. A partial loan is created by apportioning the loan balance into two distinct parts (nondeferred and deferred).

Partial deferrals are calculated as follows:

A. Determine the amount of deferral necessary to achieve cash flow in the first year.

$d = l - (r/R)$

d = The fraction of the loan which must be deferred.

r = The amount of excess cash flow in the first year with full deferral.

R = The debt repayment on the loan in the first year with out deferral.

B. Determine the deferred and nondeferred portion of the loan.

1. $P1 = (1\text{-}d) \times P$

$P1 = (r/R) \times P$

P1—Nondeferred Portion

d—Fraction of the Loan which must be deferred

P—Principal Balance

2. $P2 = P—P1$

P2—Deferred Portion

P—Principal Balance

P1—Nondeferred Portion

VII. $300,000 Debt writedown and buyout limitation

DALR$ will attempt to develop a feasible plan with a ten percent margin. All loan servicing, including writedown will be considered prior to reducing the debt service margin. However, DALR$ will only consider writedown for those borrowers that have not received the lifetime limitations for writedown or writeoff (with buyout). If a feasible plan is found with writedown, DALR$ will:

A. Writedown

1. Determine the amount of writedown that was necessary for the borrower to have a positive cash flow.

2. If the amount of the writedown is less than or equal to $300,000, a feasible plan has been found.

3. If the amount of the writedown is greater than $300,000, and the debt service margin exceeds 1.00, reduce the debt service margin by .01 and repeat from step 1.

4. If the amount of writedown is greater than $300,000, and the debt service margin

equals 1.00, or a feasible plan cannot be developed, determine the amount of writeoff (with buyout at the current market value).

5. If the amount of writeoff (with buyout at the current market value) is less than or equal to $300,000, the borrower will be offered buyout.

6. If the amount of writeoff (with buyout at the current market value) is greater than $300,000, the borrower is not eligible for loan servicing or buyout.

[62 FR 10149, Mar. 5, 1997]

EXHIBIT K—NOTIFICATION OF CONSIDERATION FOR HOMESTEAD PROTECTION

Purpose: To notify borrowers of preacquisition homestead protection consideration when there is a dwelling on the security property and a complete application was submitted for primary and preservation loan servicing or requested from the notice of intent to accelerate notice.

Dear (Borrower's Name)

This notice is to inform you that, per your request, you are being considered for Homestead Protection.

We will need the following additional information to complete our processing of your request:

1.
2.
3.

Please provide the above information within 30 days from the date of this letter. If we do not receive the above requested information within 30 days, we will deny your request for Homestead Protection.

If you wish to withdraw your request for Homestead Protection, please complete and return the enclosed Attachment 1, ''Response to Notification of Consideration for Homestead Protection,'' within 15 days of the date of this letter.

[FOR INDIVIDUAL BORROWERS ONLY—INSERT EQUAL CREDIT OPPORTUNITY PARAGRAPH]

Sincerely,

ATTACHMENT 1—RESPONSE TO NOTIFICATION OF CONSIDERATION FOR HOMESTEAD PROTECTION

TO: Farm Service Agency

FROM: (Please Print your Name and Address)

I have read the Notification of Consideration for Homestead Protection which I received with this response form.

I want to withdraw my request for Homestead Protection.

Borrower's Signature

(Date)

[62 FR 10156, Mar. 5, 1997]

EXHIBIT L—HOMESTEAD PROTECTION PROGRAM AGREEMENT

This agreement is entered into this _____ day of _____, 19 ___, by and between the Farm Service Agency (FSA) of the United States Department of Agriculture and _____ (''Borrower'').

Concurrently, with the execution of the pre-acquisition Homestead Protection Program Agreement, the borrower will deliver a completed Form FmHA 1955–1 to FSA. The Homestead Protection Program Agreement is subject to the provisions of 7 CFR part 1955, subpart A.

A. Borrower has received a loan or loans from FSA secured by real property which includes the Borrower's dwelling, and adjoining land that is used to maintain the Borrower and the Borrower's family (the Homestead Protection property). In some cases the FSA loans may also have been included one or more outbuildings that are useful to the Borrower and the Borrower's family and in such cases these outbuildings are included in the definition of Homestead Protection property.

B. Borrower's FSA loan is in default which could result in the loss of the borrower's Homestead Protection property.

C. Borrower wants to continue to occupy the Homestead Protection property after FSA acquires title to it.

D. FSA has already determined that Borrower has satisfied the requirements for its Homestead Protection Program.

E. FSA agrees to permit Borrower to retain occupancy of the Homestead Protection property on the following terms and conditions:

1. Subject to the terms and conditions set forth below FSA agrees to lease the Homestead Protection property, as more particularly described in attachment 1 hereto, to Borrower on the terms and conditions set forth in the lease as attachment 2 (the ''lease''). Borrower agrees to enter into the lease of the Homestead Protection property.

2. FSA's obligation to enter into the lease of the Homestead Protection property is subject to the occurrence of the following conditions:

a. FSA acquires fee title to the Homestead Protection property in connection with the liquidation of the farm property of which the Homestead Protection property is a portion.

b. All State and local governmental laws, ordinances and regulations concerning the creation of the Homestead Protection property as a separate legal parcel which can be leased and sold have been satisfied.

3. The term of the lease will begin on the date the later of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be ____ years. This term will be inserted in the lease.

5. The rent to be charged during the term of the lease will be determined by FSA as of the commencement date of the lease and will be in an amount substantially equivalent to rents charged for similar residential properties in the area. The borrower will be notified by letter of the amount of the rent and the amount of the rent will be inserted in the lease form, Form FmHA 1955–20.

6. Borrower agrees to cooperate with FSA in applying for and securing whatever local governmental approvals are necessary in order for the Homestead Protection property to be a separate legal parcel. FSA will bear the cost and expense of obtaining such approvals.

7. If the term of the lease has not begun on or before 2 years from the date of this agreement, the agreement shall end and be of no further force or effect.

Farm Service Agency

_____

Borrower:

_____

_____

_____

Attachment 1, Legal Description of the Property.

Attachment 2, Lease Form, Form FmHA 1955–20.

[62 FR 10156, Mar. 5, 1997]

EXHIBIT M—NOTICE OF THE AVAILABILITY OF HOMESTEAD PROTECTION

(Insert Borrower's Name and Address)

(Date)

On [acquisition date], FSA acquired the property which was security for your FSA loan. FSA has a program called the Homestead Protection Program under which you may be allowed to lease (with an option to purchase) the house which you owned and used as your principal residence, a reasonable number of farm buildings located near the house that are useful to the occupants of the house, and not more than 10 acres of land adjoining the house. If you would like to be considered for the Homestead Protection Program, you must notify this office, in writing, by [date 30 days from acquisition date] of the buildings and land you wish to retain.

If you would like more information about the Homestead Protection Program, you should contact the FSA servicing official at [insert county office telephone number].

Failure to respond by the above date will terminate any rights that you have to lease and purchase the property under the Homestead Protection Program.

Sincerely,

[62 FR 10156, Mar. 5, 1997]

Subpart T—Disaster Set-Aside Program

SOURCE: 60 FR 46756, Sept. 8, 1995, unless otherwise noted.

§ 1951.951 Purpose.

This subpart sets forth the policies and procedures for the Disaster Set-Aside (DSA) Program. The DSA program is available to Farm Credit (FC) Programs borrowers, as defined in subpart S of this part, who suffered losses as a result of a natural disaster. FC loans that may be serviced under this subpart include Farm Ownership (FO), Operating (OL), Soil and Water (SW), Emergency (EM), Economic Emergency (EE), Special Livestock (SL), Economic Opportunity (EO), Softwood Timber (ST), Recreation (RL), and Rural Housing loans for farm service buildings (RHF). Nonprogram (NP) farm type loans may be serviced under this subpart for borrowers who also have FC loans.

§ 1951.952 General.

DSA is a program whereby borrowers who are current or not more than one installment behind on any and all FC loans may be permitted to move one scheduled annual installment for each eligible FC loan to the end of the loan term. The intent of this program is to relieve some of the borrower's immediate financial stress caused by the disaster and avoid foreclosure by the Government. DSA is not intended to circumvent the servicing available under subpart S of this part.

§ 1951.953 Notification and request for DSA.

(a) [Reserved]

(b) *Deadline to apply*. All FLP borrowers liable for the debt must request DSA within 8 months from the date the disaster was designated, except borrowers applying for a second installment set-aside for disasters declared by the President between January 1, 1997 and August 1, 1997, have 6 months from the

date of the notification letter to apply. Borrowers may only be considered for DSA one time for each disaster.

(c) *Information needed to apply.* (1) A written request for DSA signed by all parties liable for the debt; and

(2) Actual production, income, and expense records for the production and marketing period in which the disaster occurred. Other information may be requested by the servicing official when needed to make an eligibility determination.

[60 FR 46756, Sept. 8, 1995, as amended at 62 FR 41252, Aug. 1, 1997]

§ 1951.954 Eligibility and loan limitation requirements.

(a) *Eligibility requirements.* The following requirements must be met to be eligible for DSA:

(1) The borrower must have operated a farm or ranch in a county designated a disaster area or a county contiguous to such an area. The borrower must have been a borrower and operated the farm or ranch at the time of the disaster. If the borrower is applying for a second installment to be set-aside, the disaster area operated must have been in a county declared a major disaster or emergency by the President between January 1, 1997 and August 1. 1997.

(2) The borrower must have acted in good faith as defined in § 1951.906 of subpart S of this part.

(3) All nonmonetary defaults must have been resolved. This means that even though the borrower has acted in good faith, the borrower may still be in default for reasons, such as, but not limited to: no longer farming, prior lienholder foreclosure, bankruptcy or under court jurisdiction, not properly maintaining chattel and real estate security, not properly accounting for the sale of security, or not carrying out any other agreement made with the Agency.

(4) The borrower must be current or not more than one installment behind on any and all FC loans at the time the scheduled installment will be set–aside. Borrowers paying under a debt settlement adjustment agreement in accordance with subpart B of part 1956 are not eligible.

(5) As a direct result of the disaster, sufficient income was not available to pay all family living and operating expenses, debts to other creditors, and FSA. This determination will be based on the borrower's actual production and income and expense records for the disaster year and any other records required by the servicing official. Compensation received for losses shall be considered as well as increased expenses incurred because of the disaster. Consideration will also be given to insufficient income for the next production and marketing period following the disaster if the borrower establishes that production will be reduced or expenses increased as a result of the disaster.

(6) After the scheduled installments are set-aside, all FC and NP farm type loans must be current.

(7) The borrower's FC loan has not been accelerated nor has the borrower's debt been restructured under subpart S of this part since the disaster occurred.

(b) *Loan limitation requirements.* (1) The loan must have been outstanding at the time of the disaster.

(2) Only one unpaid installment for each farm loan may be set-aside. Except for Presidential disaster declarations between January 1, 1997 and August 1, 1997, if there is an installment still set-aside from a previous disaster, the loan is not eligible for DSA. For Presidential declarations between January 1, 1997 and August 1, 1997, borrowers who already have one installment set-aside from a previous disaster may set-aside a second installment. If the set-aside is later paid in full, or cancelled through restructuring under subpart S of this part, the set-aside will no longer exist and, therefore, the loan may be considered for Disaster Set-Aside (DSA) in the future.

(3) The term remaining on the loan receiving DSA equals or exceeds 2 years from the due date of the installment being set-aside.

(4) The amount set-aside shall be limited to the amount the borrower is unable to pay Farm Service Agency (FSA) from the production and marketing period in which the disaster occurred. However, if the installment due immediately after the disaster was paid, but other creditors and expenses were not, the amount set-aside will be the lesser of the amount the borrower

is unable to pay other creditors and expenses, rounded up to the nearest whole installment, or the next installment due. Expenses which the borrower is unable to pay may include the following year's operating and family living expenses if the income or commodities lost from the disaster year would have been used for these purposes, or if normal income security from the disaster year is approved for release under subpart A of 7 CFR part 1962 or otherwise authorized under subpart B of 7 CFR part 1924 for these purposes. Under no circumstances will a portion of the installment be set-aside leaving a balance still due. The portion not set-aside must be paid by the borrower on or before the date Exhibit A of FmHA Instruction 1951–T (available in any FSA office) is signed.

(5) The installment that may be set-aside is limited to the first scheduled annual installment due immediately after the disaster occurred, unless that installment is paid, then the next scheduled annual installment after that may be set-aside. For borrowers affected by a 1994 disaster who already paid both of these installments, the third scheduled installment to come due after the disaster may be set-aside.

(6) The amount set-aside will be the unpaid balance remaining on the installment at the time the borrower signs exhibit A of FmHA Instruction 1951–T (available in any FSA office.) This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date taking into consideration any payments applied to principal and interest since the due date. Recoverable cost items charged to FO, SW, and RHF loans may be set-aside with the annual installment. Cost items identified with a loan number different from the parent loan cannot be set-aside.

[60 FR 46756, Sept. 8, 1995, as amended at 62 FR 41252, Aug. 1, 1997]

§§ 1951.955—1951.956 [Reserved]

§ 1951.957 Eligibility determination and processing.

(a) *Eligibility determination.* Upon receipt of a DSA request, the County Supervisor will determine whether the borrower meets the requirements set forth in 1951.954. Approval shall be contingent upon the borrower's continuing eligibility through the signing of Exhibit A.

(1) The borrower has up to 30 days to sign exhibit A of FmHA Instruction 1951–T (available in any FSA office), for each loan installment set-aside. The County Supervisor may provide for a longer period of time not to exceed 90 days under extenuating circumstances, including but not limited to situations where the Agency's approval is contingent upon the borrower doing something to be eligible, such as paying a portion of the FC payments from proceeds that may not be available until after the 30 day period.

(2) Pending requests for primary loan servicing will continue to be considered in accordance with subpart S of this part. However, borrowers are not eligible for servicing under both programs. The application for the program not received will automatically be withdrawn at the time the installment is set-aside or the loan restructured, whichever is applicable. The automatic withdrawal is not appealable because the borrower is no longer delinquent. If the borrower again becomes delinquent or in financial distress, or requests primary loan servicing, the borrower will be notified or the request processed in accordance with subpart S of this part.

(b) *Processing.*

(1) [Reserved]

(2) Interest will accrue on any principal amount set-aside at the same rate charged the non-set-aside portion. Interest will not accrue on the interest portion set-aside. Limited resource interest rate changes will affect the principal set-aside.

(3) The amount set-aside, including interest accrual on any principal set-aside, will be due on or before the final due date of the loan.

(4) There are no additional security requirements attached to the DSA program. All existing security instruments will remain in effect.

(5)–(6) [Reserved]

(7) Payments applied to the amount set-aside will be applied first to interest and then to principal. If more than one installment is set-aside on the loan, payments will be applied to the

oldest installment set-aside until paid in full, before applying payments to the second installment set-aside.

(c) *Adverse determination.* If the borrower becomes more than one installment behind on any FC loan while processing the DSA request, or while an appeal is being considered, and the second installment cannot be paid current prior to exhibit A of FmHA Instruction 1951–T (available in any FSA office) being signed, the DSA request will be denied.

[60 FR 46756, Sept.8, 1995, as amended at 62 FR 41253, Aug. 1, 1997]

§ 1951.958 Cancellation and reversal of DSA.

(a) *Reasons for cancellation.* The set-aside may be reversed and exhibit A of FmHA Instruction 1951–T cancelled under the following described situations:

(1) The loan is later restructured with primary loan servicing, (the total unpaid balance must be restructured);

(2) If prior to the first scheduled installment due date after set-aside, the servicing official determines that the current borrower, if delinquent, would qualify for a writedown or buyout in accordance with subpart S of this part; or

(3) When it has been determined that the borrower was provided unauthorized DSA assistance. (The set-aside will be cancelled after all appeal rights are exhausted. The set-aside will be removed from the account and the payment terms of the original promissory note will be retained as if DSA was never granted. Borrowers financially distressed or delinquent after reversal of the set-aside will be serviced in accordance with subpart S of this part).

(b) [Reserved]

[60 FR 46756, Sept. 8, 1995, as amended at 62 FR 10157, Mar. 5, 1997]

§ 1951.959 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if it is determined that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority upon the request of the State Director with the recommendation of the Deputy Administrator for Farm Credit Programs, or upon request initiated by the Deputy Administrator for Farm Credit Programs.

§§ 1951.960—1951.999 [Reserved]

§ 1951.1000 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0163. Public reporting burden for this collection of information is estimated to be 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Office OIRM, Room 404–W, Washington DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0163), Washington, DC 20503.

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

Sec.

1955.1 Purpose.
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1955.9 Requirements for voluntary conveyance of real property located within a federally recognized Indian reservation owned by a Native American borrower-owner.
1955.10 Voluntary conveyance of real property by the borrower to the Government.
1955.11 Conveyance of property to FmHA or its successor agency under Public Law 103–354 by trustee in bankruptcy.
1955.12 Acquisition of property which served as security for a loan guaranteed by FmHA or its successor agency under Public Law 103–354 or at sale by another