

§ 766.102

7 CFR Ch. VII (1-1-08 Edition)

programs, and homestead protection as follows:

(1) A borrower who is financially distressed, or current and requesting servicing will be provided FSA-2512 (Appendix A to this subpart);

(2) A borrower who is 90 days past due will be sent FSA-2510 (Appendix B to this subpart);

(3) A borrower who is in non-monetary or both monetary and non-monetary default will receive FSA-2514 (Appendix C to this subpart);

(4) A borrower who has only delinquent SA will be notified of available loan servicing;

(5) Notification to a borrower who files bankruptcy will be provided in accordance with subpart G of this part.

(c) *Mailing.* Notices to delinquent borrowers or borrowers in non-monetary default will be sent by certified mail to the last known address of the borrower. If the certified mail is not accepted, the notice will be sent immediately by first class mail to the last known address. The appropriate response time will begin three days following the date of the first class mailing. For all other borrowers requesting the notices, the notices will be sent by regular mail or hand-delivered.

(d) *Borrower response timeframes.* To be considered for loan servicing, a borrower who is:

(1) Current or financially distressed may submit a complete application any time prior to becoming 90 days past due;

(2) Ninety (90) days past due must submit a complete application within 60 days from receipt of FSA-2510;

(3) In non-monetary default with or without monetary default must submit a complete application within 60 days from receipt of FSA-2514.

§ 766.102 Borrower application requirements.

(a) Except as provided in paragraph (e) of this section, an application for primary loan servicing, conservation contract, current market value buyout, homestead protection, or some combination of these options, must include the following to be considered complete:

(1) Completed acknowledgment form provided with the Agency notification and signed by all borrowers;

(2) Completed Agency application form;

(3) Financial records for the 3 most recent years, including income tax returns;

(4) The farming operation's production records for the 3 most recent years or the years the borrower has been farming, whichever is less;

(5) Documentation of compliance with the Agency's environmental regulations contained in subpart G of 7 CFR part 1940;

(6) Verification of all non-farm income;

(7) A current financial statement and the operation's farm operating plan, including the projected cash flow budget reflecting production, income, expenses, and debt repayment plan. In the case of an entity, the entity and all entity members must provide current financial statements; and

(8) Verification of all debts and collateral.

(b) In addition to the requirements contained in paragraph (a) of this section, the borrower must submit an aerial photo delineating any land to be considered for a conservation contract.

(c) To be considered for debt settlement, the borrower must provide the appropriate Agency form, and any additional information required under subpart B of 7 CFR part 1956.

(d) If a borrower who submitted a complete application while current or financially distressed is renotified as a result of becoming 90 days past due, the borrower must only submit a request for servicing in accordance with paragraph (a)(1) of this section, provided all other information is less than 90 days old and is based on the current production cycle. Any information 90 or more days old or not based on the current production cycle must be updated.

(e) The borrower need not submit any information under this section that already exists in the Agency's file and is still current as determined by the Agency.

(f) When jointly liable borrowers have been divorced and one has withdrawn from the farming operation, the

Agency may release the withdrawing individual from liability, provided:

- (1) The remaining individual submits a complete application in accordance with this section;
- (2) Both parties have agreed in a divorce decree or property settlement that only the remaining individual will be responsible for all FLP loan payments;
- (3) The withdrawing individual has conveyed all ownership interest in the security to the remaining individual; and
- (4) The withdrawing individual does not have repayment ability and does not own any non-essential assets.

§ 766.103 Borrower does not respond or does not submit a complete application.

(a) If a borrower, who is financially distressed or current, requested loan servicing and received FSA-2512, but fails to respond timely and subsequently becomes 90 days past due, the Agency will notify the borrower in accordance with § 766.101(a)(2).

(b) If a borrower who is 90 days past due and received FSA-2510, or is in non-monetary, or both monetary and non-monetary default and received FSA-2514, and fails to timely respond or does not submit a complete application within the 60-day timeframe, the Agency will notify the borrower by certified mail of the following:

- (1) The Agency's intent to accelerate the loan; and
- (2) The borrower's right to request reconsideration, mediation and appeal in accordance with 7 CFR parts 11 and 780.

§ 766.104 Borrower eligibility requirements.

(a) A borrower must meet the following eligibility requirements to be considered for primary loan servicing:

- (1) The delinquency or financial distress is the result of reduced repayment ability due to one of the following circumstances beyond the borrower's control:
 - (i) Illness, injury, or death of a borrower or other individual who operates the farm;
 - (ii) Natural disaster, adverse weather, disease, or insect damage which

caused severe loss of agricultural production;

- (iii) Widespread economic conditions such as low commodity prices;
- (iv) Damage or destruction of property essential to the farming operation; or
- (v) Loss of, or reduction in, the borrower or spouse's essential non-farm income.

(2) The borrower does not have non-essential assets for which the net recovery value is sufficient to resolve the financial distress or pay the delinquent portion of the loan.

(3) If the borrower is in non-monetary default, the borrower will resolve the non-monetary default prior to closing the servicing action.

(4) The borrower has acted in good faith.

(5) Financially distressed or current borrowers requesting servicing must pay a portion of the interest due on the loans.

(6) The borrower must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

(b) Debtors with SA only must:

- (1) Be delinquent due to circumstances beyond their control;
- (2) Have acted in good faith.

§ 766.105 Agency consideration of servicing requests.

(a) *Order in which Agency considers servicing options.* The Agency will consider loan servicing options and combinations of options to maximize loan repayment and minimize losses to the Agency. The Agency will consider loan servicing options in the following order for each eligible borrower who requests servicing:

- (1) Conservation Contract, if requested;
- (2) Consolidation and rescheduling or reamortization;
- (3) Deferral;
- (4) Writedown; and
- (5) Current market value buyout.

(b) *Debt service margin.* (1) The Agency will attempt to achieve a 110 percent debt service margin for the servicing options listed in paragraphs (a)(2) through (4) of this section.

(2) If the borrower cannot develop a feasible plan with the 110 percent debt