

(4) Loans reamortized at the limited resource interest rate will be subject to annual limited resource review in accordance with § 765.51 of this chapter.

(5) SA payment agreements will be reamortized at the current SA amortization rate in effect on the date of approval or the rate on the original payment agreement, whichever is less.

(d) *Capitalizing accrued interest and adding protective advances to the loan principal.* (1) The Agency capitalizes the amount of outstanding accrued interest on the loan at the time of reamortization.

(2) The Agency adds protective advances for the payment of real estate taxes to the principal balance at the time of reamortization.

(3) The borrower must resolve all other protective advances not capitalized prior to closing the reamortization.

(e) *Installments.* 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 promissory note is executed and the next installment due date.

§ 766.109 Deferral.

(a) *Conditions for approving deferrals.* The Agency will only consider deferral of loan payments if:

(1) The borrower meets the loan servicing eligibility requirements in § 766.104;

(2) Rescheduling, consolidation, and reamortization of all the borrower's loans, will not result in a feasible plan with 110 percent debt service margin;

(3) The need for deferral is temporary; and

(4) The borrower develops feasible first-year deferral and post-deferral farm operating plans subject to the following:

(i) The deferral will not create excessive net cash reserves beyond that necessary to develop a feasible plan.

(ii) The Agency will consider a partial deferral if deferral of the total Agency payment would result in the borrower developing more cash availability than necessary to meet debt repayment obligations.

(b) *Deferral period.* (1) The deferral term will not exceed 5 years and will be determined based on the post-deferral plan that results in the:

(i) Greatest improvement over the first year cash available to service FLP debt;

(ii) The shortest possible deferral period.

(2) The Agency will distribute interest accrued on the deferred principal portion of the loan equally to payments over the remaining loan term after the deferral period ends.

(c) *Agency actions when borrower's repayment ability improves.* (1) If during the deferral period the borrower's repayment ability has increased to allow the borrower to make payments on the deferred loans, the borrower must make supplemental payments, as determined by the Agency. If the borrower agrees to make supplemental payments, but does not do so, the borrower will be considered to be in non-monetary default.

(2) If the Agency determines that the borrower's improved repayment ability will allow graduation, the Agency will require the borrower to graduate in accordance with part 765, subpart C of this chapter.

(d) *Associated loan servicing.* (1) The Agency must cancel an existing deferral if the Agency approves any new primary loan servicing action.

(2) Loans deferred will also be serviced in accordance with §§ 766.107, 766.108 and 766.111, as appropriate.

§ 766.110 Conservation Contract.

(a) *General.* (1) A debtor with only SA or Non-program loans is not eligible for a Conservation Contract. However, an SA or Non-program loan may be considered for a Conservation Contract if the borrower also has program loans.

(2) A current or financially distressed borrower may request a Conservation Contract at any time prior to becoming 90 days past due.

(3) A delinquent borrower may request a Conservation Contract during the same 60-day time period in which the borrower may apply for primary loan servicing. The borrower eligibility requirements in § 766.104 will apply.

§766.110

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

(4) A Conservation Contract may be established for conservation, recreation, and wildlife purposes.

(5) The land under a Conservation Contract cannot be used for the production of agricultural commodities during the term of the contract.

(6) Only loans secured by the real estate that will be subject to the easement, may be considered for a Conservation Contract.

(b) *Eligible lands.* The following types of lands are eligible to be considered for a Conservation Contract by the Conservation Contract review team:

(1) Wetlands or highly erodible lands; and

(2) Uplands that meet any one of the following criteria:

(i) Land containing aquatic life, endangered species, or wildlife habitat of local, State, tribal, or national importance;

(ii) Land in 100-year floodplains;

(iii) Areas of high water quality or scenic value;

(iv) Historic or cultural properties listed in or eligible for the National Register of Historic Places;

(v) Aquifer recharge areas of local, regional, State, or tribal importance;

(vi) Buffer areas necessary for the adequate protection of proposed Conservation Contract areas;

(vii) Areas that contain soils generally not suited for cultivation; or

(viii) Areas within or adjacent to Federal, State, tribal, or locally administered conservation areas.

(c) *Unsuitable acreage.* Acreage is unsuitable for Conservation Contract if:

(1) It is not suited or eligible for the program due to legal restrictions;

(2) It has on-site or off-site conditions that prohibit the use of the land for conservation, wildlife, or recreational purposes; or

(3) The Conservation Contract review team determines that the land is not suitable for conservation, wildlife, or recreational purposes.

(d) *Conservation Contract terms.* The borrower selects the term of the contract, which may be 10, 30, or 50 years.

(e) *Conservation management plan.* The Agency, through the recommendations of the Conservation Contract review team, is responsible for approving the conservation management plan.

(f) *Management authority.* The Agency has enforcement authority over the Conservation Contract. The Agency, however, may delegate contract management to another entity if doing so is in the Agency's interest.

(g) *Limitations.* The Conservation Contract must meet the following conditions:

(1) Result in a feasible plan for current borrowers; or

(2) Result in a feasible plan with or without primary loan servicing for financially distressed or delinquent borrowers; and

(3) Improve the borrower's ability to repay the remaining balance of the loan.

(h) *Maximum debt reduction for a financially distressed or current borrower.* The amount of debt reduction by a Conservation Contract is calculated as follows:

(1) Divide the contract acres by the total acres that secure the borrower's FLP loans to determine the contract acres percentage.

$$\frac{\text{Contract acres}}{\text{Total acres}} \text{ divided by } \frac{\text{Total acres}}{\text{Total acres}} = \frac{\text{Contract acres}}{\text{Total acres}} = \text{Percent of contract acres to total acres}$$

(2) Multiply the borrower's total unpaid FLP loan balance (principal, interest, and recoverable costs already paid by the Agency) by the percentage calculated under paragraph (h)(1) of this section to determine the amount

of FLP debt that is secured by the contract acreage.

$$\frac{\text{Total FLP debt}}{\text{Total FLP debt}} \times \frac{\text{Percent calculated under (h)(1)}}{\text{Percent calculated under (h)(1)}} = \frac{\text{FLP debt secured by contract acres}}{\text{FLP debt secured by contract acres}}$$

(3) Multiply the borrower's total unpaid FLP loan balance (principal, interest, and recoverable costs already paid by the Agency) by 33 percent.

$$\frac{\text{Total FLP debt}}{\text{Total FLP debt}} \times 33\% = \text{_____}$$

(4) The lesser of the amounts calculated in paragraphs (h)(2) and (h)(3) of this section is the maximum amount of debt reduction for a 50-year contract.

(5) The borrower will receive 60 percent of the amount calculated in paragraph (h)(4) of this section for a 30-year contract.

$$\frac{\text{Result from (h)(4)}}{\text{Result from (h)(4)}} \times 60\% = \frac{\text{Maximum debt reduction for a 30-year contract}}{\text{Maximum debt reduction for a 30-year contract}}$$

(6) The borrower will receive 20 percent of the amount calculated in paragraph (h)(4) of this section for a 10-year contract.

$$\frac{\text{Result from (h)(4)}}{\text{Result from (h)(4)}} \times 20\% = \frac{\text{Maximum debt reduction for a 10-year contract}}{\text{Maximum debt reduction for a 10-year contract}}$$

(i) *Maximum debt reduction for a delinquent borrower.* The amount of debt reduction by a Conservation Contract is calculated as follows:

(1) Divide the contract acres by the total acres that secure the borrower's FLP loans to determine the contract acres percentage.

$$\frac{\text{Contract acres}}{\text{Contract acres}} \text{ divided by } \frac{\text{Total acres}}{\text{Total acres}} = \frac{\text{Percent of contract acres to total acres}}{\text{Percent of contract acres to total acres}}$$

(2) Multiply the borrower's total unpaid FLP loan balance (principal, interest, and recoverable costs already paid by the Agency) by the percentage

calculated in paragraph (i)(1) of this section to determine the amount of FLP debt that is secured by the contract acreage.

$$\frac{\text{Total FLP debt}}{\text{Percent calculated in (i)(1)}} \times \frac{\text{Market value of total acres less contributory value of structural improvements}}{\text{Market value of acres in the contract}} = \frac{\text{FLP debt secured by contract acres}}{\text{Market value of acres in the contract}}$$

(3) Multiply the market value of the total acres, less contributory value of any structural improvements, that secure the borrower's FLP loans by the percent calculated in paragraph (i)(1) of this section to determine the current value of the acres in the contract.

$$\frac{\text{Market value of total acres less contributory value of structural improvements}}{\text{Percent calculated in (i)(1)}} \times \frac{\text{Market value of acres in the contract}}{\text{Market value of acres in the contract}} = \frac{\text{Market value of acres in the contract}}{\text{Market value of acres in the contract}}$$

(4) Subtract the market value of the contract acres calculated in paragraph (i)(3) of this section from the FLP debt secured by the contract acres as calculated in paragraph (i)(2) of this section.

$$\frac{\text{Result from (i)(2)}}{\text{Result from (i)(3)}} - \frac{\text{Result from (i)(3)}}{\text{Result from (i)(3)}} = \frac{\text{Difference}}{\text{Result from (i)(3)}}$$

(5) Select the greater of the amounts calculated in either paragraphs (i)(3) and (i)(4) of this section. amount of debt reduction for a 50-year contract term.

(6) The lesser of the amounts calculated in paragraphs (i)(2) and (i)(5) of this section will be the maximum amount of debt reduction for a 30-year contract term.

$$\frac{\text{Result from (i)(6)}}{\text{Maximum debt cancellation for a 30-year term}} \times 60\% = \frac{\text{Maximum debt cancellation for a 30-year term}}{\text{Maximum debt cancellation for a 30-year term}}$$

(8) The borrower will receive 20 percent of the amount calculated in paragraph (i)(6) of this section for a 10-year contract term.

$$\frac{\text{Result from (i)(6)}}{\text{Maximum debt cancellation for a 10-year term}} \times 20\% = \frac{\text{Maximum debt cancellation for a 10-year term}}{\text{Maximum debt cancellation for a 10-year term}}$$

(j) *Conservation Contract Agreement.* The borrower must sign the Conservation Contract Agreement establishing the contract's terms and conditions. or any subsequent landowner transfers title to the property, the Conservation Contract will remain in effect for the duration of the contract term.

(k) *Transferring title to land under Conservation Contract.* If the borrower (l) *Borrower appeals of technical decisions.* Borrower appeals of the Natural

Farm Service Agency, USDA

§ 766.113

Resources Conservation Service's (NRCS) technical decisions made in connection with a Conservation Contract, will be handled in accordance with applicable NRCS regulations. Other aspects of the denial of a conservation contract may be appealed in accordance with 7 CFR parts 11 and 780.

§ 766.111 Writedown.

(a) *Eligibility.* The Agency will only consider a writedown if the borrower:

- (1) Meets the eligibility criteria in § 766.104;
- (2) Is delinquent;
- (3) Has not previously received debt forgiveness on any FLP direct loan; and

(4) Complies with the Highly Erodible Land and Wetland Conservation requirements of 7 CFR part 12.

(b) *Conditions.* (1) Rescheduling, consolidation, reamortization, deferral or some combination of these options on all of the borrower's loans would not result in a feasible plan with a 110 percent debt service margin. If a feasible plan, including writedown is achieved with a debt service margin of 101 percent or more, the Agency will determine if a feasible plan can be achieved without a writedown. If a feasible plan is achieved with and without a writedown and the borrower meets all the eligibility requirements, both options will be offered and the borrower may choose one option.

(2) The present value of the restructured loan must be greater than or equal to the net recovery value of Agency security and any non-essential assets.

(3) The writedown amount, excluding debt reduction received through Conservation Contract, does not exceed \$300,000.

(4) A borrower who owns real estate must execute an SAA in accordance with § 766.201.

(c) *Associated loan servicing.* Loans written down will also be serviced in accordance with §§ 766.107 and 766.108, as appropriate.

§ 766.112 Additional security for restructured loans.

(a) If the borrower is delinquent prior to restructuring, the borrower, and all entity members in the case of an enti-

ty, must execute and provide to the Agency a lien on all of their assets, except as provided in paragraph (b) of this section, when the Agency is servicing a loan.

(b) The Agency will take the best lien obtainable on all assets the borrower owns, except:

(1) When taking a lien on such property will prevent the borrower from obtaining credit from other sources;

(2) When the property could have significant environmental problems or costs as described in subpart G of 7 CFR part 1940;

(3) When the Agency cannot obtain a valid lien;

(4) When the property is subsistence livestock, cash, special collateral accounts the borrower uses for the farming operation, retirement accounts, personal vehicles necessary for family living, household contents, or small equipment such as hand tools and lawn mowers; or

(5) When a contractor holds title to a livestock or crop enterprise, or the borrower manages the enterprise under a share lease or share agreement.

§ 766.113 Buyout of loan at current market value.

(a) *Borrower eligibility.* A delinquent borrower may buy out the borrower's FLP loans at the current market value of the loan security, including security not in the borrower's possession, and all non-essential assets if:

(1) The borrower has not previously received debt forgiveness on any other FLP direct loan;

(2) The borrower has acted in good faith;

(3) The borrower does not have non-essential assets for which the net recovery value is sufficient to pay the account current;

(4) The borrower is unable to develop a feasible plan through primary loan servicing programs or a Conservation Contract, if requested;

(5) The present value of the restructured loans is less than the net recovery value of Agency security;

(6) The borrower pays the amount required in a lump sum without guaranteed or direct credit from the Agency; and