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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 7 CFR part 3550.

[52 FR 26134, July 13, 1987, as amended at 60 FR 55122, Oct. 27, 1995; 67 FR 78329, Dec. 24, 2002]

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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 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 7 CFR part 3560, subpart I. 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. This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, or Resource Conservation and Development loans, which are serviced under part 1782 of this title. In addition, this subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

[52 FR 26134, July 13, 1987, as amended at 69 FR 69105, Nov. 26, 2004; 72 FR 55017, Sept. 28, 2007; 72 FR 64122, Nov. 15, 2007]

§ 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.

§§ 1951.4-1951.6 [Reserved]

§ 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 RRRH, 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*

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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

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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 accrues 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,

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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.

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§ 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, re-scheduling, 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

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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]

EXHIBIT A TO SUBPART A OF PART 1951—
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 TO SUBPART A OF PART 1951—
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

RHS, RBS, RUS, FSA, USDA

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(\$ ____). 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 [Reserved]

Subpart C—Offsets of Federal Payments to USDA Agency Borrowers

§ 1951.101 General.

Federal debt collection statutes provide 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) for its community facility program, and Rural Business-Cooperative Service (RBS), herein referred to collectively as "United States Department of Agriculture (USDA) Agency," to collect delinquent debts. Any money that is or may become payable from the United States to an 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, direct multi-family housing loans, and the Rural Utilities Service. Section 1951.136 of this subpart only applies to RHS for its community

facility program and RBS for the offset of Federal payments. Nothing in this subpart affects the common law right of set off available to USDA Agencies. [67 FR 69671, Nov. 19, 2002]

§ 1951.102 Administrative offset.

(a) *General.* Collections of delinquent debts through administrative offset will be taken in accordance with 7 CFR part 3, subpart B and § 1951.106.

(b) *Definitions.* In this subpart:

(1) *Agency* means Farm Service Agency, Farm Loan Programs; Rural Housing Service, except direct Single Family Housing loans and direct Multi-Family Housing loans; and Rural Business-Cooperative Service, or any successor agency.

(2) *Contracting officer* is any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto. The term also includes the authorized representative of the contracting officer, acting within the limits of the representative's authority.

(3) *County Committee* means the local committee elected by farmers in the county, as authorized by the Soil Conservation and Domestic Allotment Act and the Department of Agriculture Reorganization Act of 1994, to administer FSA programs approved for the county as appropriate.

(4) *Creditor agency* means a Federal agency to whom a debtor owes a monetary debt. It need not be the same agency that effects the offset.

(5) *Debt management officer* means an agency employee responsible for collection by administrative offset of debts owed the United States.

(6) *Delinquent or past-due* means a payment that was not made by the due date.

(7) *Entity* means a corporation, joint stock company, association, general partnership, limited partnership, limited liability company, irrevocable trust, revocable trust, estate, charitable organization, or other similar organization participating in the farming operation.

(8) *FP* means Farm Programs.

(9) *FLP* means Farm Loan Programs.

(10) *FSA* means Farm Service Agency.

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(11) *National Appeals Division* means the organization within the Department of Agriculture that conducts appeals of adverse decisions for program participants under the purview of 7 CFR part 11.

(12) *Offsetting agency* means an agency that withholds from its payment to a debtor an amount owed by the debtor to a creditor agency, and transfers the funds to the creditor agency for application to the debt.

(13) *Propriety* means the offset is feasible. It includes offsetting a debtor's payments due any entity in which the debtor participates either directly or indirectly equal to the debtor's interest in the entity. To be feasible the debt must exist and be 90 days past due or the borrower must be in default of other obligations to the Agency, which can be cured by the payment.

(14) *Reviewing officer* means an agency employee responsible for conducting a hearing or documentary review on the existence of debt and the propriety of administrative offset in accordance with 7 CFR 3.29. FSA District Directors or other State Executive Director designees are designated to conduct the hearings or reviews.

[65 FR 50602, Aug. 21, 2000, as amended at 67 FR 69671, Nov. 19, 2002; 69 FR 5267, Feb. 4, 2004]

§§ 1951.103–1951.105 [Reserved]

§ 1951.106 Offset of payments to entities related to debtors.

(a) *General*. Collections of delinquent debts through administrative offset will be in accordance with 7 CFR part 3, subpart B, and paragraphs (b) and (c) of this section.

(b) *Offsetting entities*. Collections of delinquent debts through administrative offset may be taken against a debtor's pro rata share of payments due any entity in which the debtor participates when:

(1) It is determined that FSA has a legally enforceable right under state law or Federal law, including program regulations at 7 CFR 792.7(1) and 1403.7(q), to pursue the entity payment;

(2) A debtor has created a shell corporation before receiving a loan, or after receiving a loan, established an entity, or has reorganized, transferred

ownership of, or otherwise changed in some manner the debtor's operation or the operation of a related entity for the purpose of avoiding payment of the FSA, FLP debt or otherwise circumventing Agency regulations;

(3) Assets used in the entity's operation include assets pledged as security to the Agency which have been transferred to the entity without payment to the Agency of the value of the security or Agency consent to transfer of the assets;

(4) A corporation to which a payment is due is the alter ego of a debtor; or

(5) A debtor participates in, either directly or indirectly, the entity as determined by FSA.

(c) *Other remedies*. Nothing in this section shall be deemed to limit remedies otherwise available to the Agency under other applicable law.

[65 FR 50603, Aug. 21, 2000]

§§ 1951.107–1951.110 [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 delinquent 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. For delinquent Farm Loan Programs direct loans, salary offset will not begin until the borrower has been notified of servicing options in accordance with 7 CFR part 766. In addition, for Farm Loan Programs direct loans, salary offset will not be instituted if the Federal salary has been considered on the farm operating plan, and it was determined the funds were to be used for another purpose other than payment on the USDA Agency loan. For Farm Loan Programs guaranteed debtors, salary offset can not begin until a final loss

claim has been paid. 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 against an employee's salary.

(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; Financial Management Director; Financial Management Division, 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 Collec-

tion 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, the debtor should be notified within 15 calendar days after the salary offset determination. This notice will notify the debtor of intended salary offset at least 30 days before the salary offset begins. For Farm Loan Programs direct loans, this notice will be sent after the borrower is over 90 days past due and immediately after sending notification of servicing rights in accordance with 7 CFR part 766. For Farm Loan Programs guaranteed debtors, this notice will be sent after a final loss claim has been paid. The salary offset determination notice will be delivered to the debtor by regular mail.

(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

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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

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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 bor-

rower'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 (1) (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 (1) (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 other-

wise 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

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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; 65 FR 50603, Aug. 21, 2000; 67 FR 69671, Nov. 19, 2002; 72 FR 64122, Nov. 15, 2007]

§§ 1951.112–1951.132 [Reserved]

§ 1951.133 Establishment of Federal Debt.

Any amounts paid by RBS on account of liabilities of a business and industry (B&I) program guaranteed loan borrower will constitute a Federal debt owing to RBS by the B&I guaranteed loan borrower. In such case, the RBS may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996 (DCIA), to collect the debt from the borrower. Interest charges will be established at the note rate of the guaranteed loan on the date a loss claim is paid. RBS may, at its option, refer such debt in all or part to the Department of the Treasury, before a final loss claim is determined.

[69 FR 3000, Jan. 22, 2004]

§§ 1951.134–1951.135 [Reserved]

§ 1951.136 Procedures for Department of Treasury offset and cross-servicing for the Rural Housing Service (Community Facility Program only) and the Rural Business-Cooperative Service.

(a) The National Offices of the Rural Housing Service (RHS), Community Facilities (CF) and the Rural Business-Cooperative Service (RBS) will refer past due, legally enforceable debts which are over 180 days delinquent to the Secretary of the Treasury for collection by centralized administrative offset (TOP), Internal Revenue Service offset administered through TOP and Treasury's Cross-Servicing (Cross-Servicing) Program, which centralizes all Government debt collection actions. A borrower with a workout agreement in place, in bankruptcy or litigation, or meeting other exclusion criteria, may be excluded from TOP or Cross-Servicing.

(b) A 60 day due process notice will be sent to borrowers subject to TOP or Cross-Servicing. The borrower will be given 60 days to resolve any delinquency before the debt is reported to Treasury. The notice will include:

(1) The nature and amount of the debt, the intention of the Agency to collect the debt through TOP or Cross-

RHS, RBS, RUS, FSA, USDA

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Servicing, and an explanation of the debtor's rights;

(2) An opportunity to inspect and copy the records related to the debt from the Agency;

(3) An opportunity to review the matter within the Agency or the National Appeals Division, if there has not been a previous opportunity to appeal the offset; and

(4) An opportunity to enter into a written repayment agreement.

(c) In referring debt to the Department of Treasury the Agency will certify that:

(1) The debt is past due and legally enforceable in the amount submitted and the Agency will ensure that collections are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within 10 years after the Agency's right of action accrues;

(3) The Agency has made reasonable efforts to obtain payment; and

(4) Payments that are prohibited by law from being offset are exempt from centralized administrative offset.

[67 FR 69672, Nov. 19, 2002]

§ 1951.137 Procedures for Treasury offset and cross-servicing for the Farm Service Agency (FSA) farm loan programs.

(a) The Farm Service Agency, Farm Loan Programs, will refer past due, legally enforceable debts which are over 180 days delinquent to the Secretary of the Treasury for collection by centralized administrative offset (TOP), Internal Revenue Service offset administered through TOP and Treasury's Cross-Servicing (Cross-Servicing) Program, which centralizes all Government debt collection actions. A borrower with a workout agreement in place, in bankruptcy or litigation, or meeting other exclusion criteria, may be excluded from TOP or Cross-Servicing. Guaranteed debtors will only be referred to TOP upon confirmation of payment on a final loss claim.

(b) A 60 day due process notice will be sent to borrowers subject to TOP or Cross-Servicing by the Director of Kansas City Finance Office. The borrower will be given 60 days to resolve any de-

linquency before the debt is reported to Treasury. The notice will include:

(1) The nature and amount of the debt, the intention of the Agency to collect the debt through TOP or Cross-Servicing, and an explanation of the debtor's rights;

(2) An opportunity to inspect and copy the records related to the debt, from the Agency;

(3) An opportunity to review the matter within the Agency; and

(4) An opportunity to enter into a written repayment agreement.

(c) In referring debt to the Department of Treasury the Agency will certify that:

(1) The debt is past due and legally enforceable in the amount submitted and the Agency will ensure that collections are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred for offset within 10 years after the Agency's right of action accrues;

(3) The Agency has made reasonable efforts to obtain payment; and

(4) Payments that are prohibited by law from being offset are exempt from centralized administrative offset.

[67 FR 69672, Nov. 19, 2002]

§§ 1951.138–1951.149 [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 Rural Housing Service (RHS), and Rural Business-Cooperative Service (RBS), herein referred to as "Agency," for processing final payment on all loans. This subpart does not apply to

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Direct Single Family Housing customers or to the Rural Rental Housing, Rural Cooperative Housing, or Farm Labor Housing Program of the RHS. This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development loans, which are serviced under part 1782 of this title. In addition, this subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

[72 FR 55018, Sept. 28, 2007, as amended at 72 FR 64123, Nov. 15, 2007]

§ 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

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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 the following programs: Community Facility loans and grants, Rural

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Business Enterprise/Television Demonstration grants; loans for Grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Direct Business loans; Economic Opportunity Cooperative loans; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; System for Delivery of Certain Rural Development Programs panel grants; in part 4284 of this title, Rural and Cooperative Development Grants, Value-Added Producer Grants, and Agriculture Innovation Center Grants. Rural Development State Offices act on behalf of 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. This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development Loans, which are serviced under part 1782 of this title.

[72 FR 55018, Sept. 28, 2007]

§ 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.

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§ 1951.203 Definitions.

(a) *Approval official*. An official who has been delegated loan and/or grant approval authorities within applicable programs.

(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 non-refundable 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.

[55 FR 4399, Feb. 8, 1990, as amended at 69 FR 70884, Dec. 8, 2004]

§ 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 non-discrimination 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

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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]

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§ 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 Use of Rural Development loans and grants for other purposes.

(a) If, after making a loan or a grant, the Administrator determines that the circumstances under which the loan or grant was made have sufficiently changed to make the project or activity for which the loan or grant was made available no longer appropriate, the Administrator may allow the loan borrower or grant recipient to use property (real and personal) purchased or improved with the loan or grant funds, or proceeds from the sale of property (real and personal) purchased with such funds, for another project or activity that:

(1) Will be carried out in the same area as the original project or activity;

(2) Meets the criteria for a loan or grant described in section 381E(d) of the Consolidated Farm and Rural Development Act, as amended; and

(3) Satisfies such additional requirements as are established by the Administrator.

(b) For the purpose of this section, Administrator means the Administrator of the Rural Housing Service or Rural Business-Cooperative Service that has the delegated authority to administer the loan or grant program that covers the property or the proceeds from the sale of property proposed to be used in another way.

(c) If the new use of the property is under the authority of another Administrator, the other Administrator will be consulted on whether the new use will meet the criteria of the other program. Since the new project or activity must be carried out in the same area as the original project or activity, a new rural area determination will not be necessary.

(d) Borrowers and grantees that wish to take advantage of this option may make their request through the appropriate Rural Development State Office. Permission to use this option will be exercised on a case-by-case-basis on applications submitted through the State Office to the Administrator for consideration. If the proposal is approved, the Administrator will issue a memorandum to the State Director outlining

the conditions necessary to complete the transaction.

[72 FR 55018, Sept. 28, 2007]

§§ 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

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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 non-program 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 tracked in the Multi-Family Housing Information System (MFIS).

(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 in MFIS.

(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 ap-

praisal 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; 69 FR 69105, Nov. 26, 2004]

§ 1951.221 Collections, payments and refunds.

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:

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(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) *Soil and Water Conservation 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.

[55 FR 4399, Feb. 8, 1990, as amended at 66 FR 1569, Jan. 9, 2001; 68 FR 61331, Oct. 28, 2003; 68 FR 69952, Dec. 16, 2003]

§ 1951.222 Subordination of security.

When a borrower requests FmHA or its successor agency under Public Law 103-354 to subordinate a security in-

strument 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 Rural Development indebtedness.

(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.

(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.

[55 FR 4399, Feb. 8, 1990, as amended at 66 FR 1569, Jan. 9, 2001; 69 FR 70884, Dec. 8, 2004]

§ 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 RD 1951-33, "Reamortization Request," completed in accordance with § 1951.223(c)(3) of this subpart, when applicable; and

(5) Any other necessary supporting information.

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(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 RD 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 delin-

quency 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; 69 FR 69105, Nov. 26, 2004; 73 FR 8008, Feb. 12, 2008]

§ 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;

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(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 non-program 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 ac-

complish 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;

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(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 of this subpart 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 liability upon the completion of the sale.

[55 FR 4399, Feb. 8, 1990, as amended at 69 FR 70884, Dec. 8, 2004]

§ 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.

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(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; and

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

(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.

(1) 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-

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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 an Agency approved form, “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; 66 FR 1569, Jan. 9, 2001; 69 FR 70884, Dec. 8, 2004]

§ 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:

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(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 immediately 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) (1) 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.

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(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 impairing 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 no-

tify 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.

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(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 re-application 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 Servicing delinquent Community Facility loans.

(a) For the purpose of this section, a loan is delinquent when a borrower fails to make all or part of a payment by the due date.

(b) The delinquent loan borrower and the Agency, at its discretion, may enter into a written workout agreement.

(c) For loans that are delinquent, the borrower must provide, monthly comparative financial statements in a format that is acceptable to the Agency by the 15th day of the following month. The Agency may waive this requirement if it would cause a hardship for

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the borrower or the borrower is actively marketing the security property.

[69 FR 70884, Dec. 8, 2004]

§§ 1951.243-1951.249 [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.

[55 FR 4399, Feb. 8, 1990, as amended at 69 FR 70884, Dec. 8, 2004]

EXHIBITS TO SUBPART E OF PART 1951

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 need 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, 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 Rural Housing Service (RHS), or Rural Business-Cooperative Service (RBS), depending upon the loan program discussed herein. This subpart does not apply to Farm Service Agency, Farm Loan Programs and to RHS direct single family housing (SFH) customers. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, Resource Conservation and Development loans, which are serviced under part 1782 of this title.

[72 FR 55018, Sept. 28, 2007, as amended at 72 FR 64123, Nov. 15, 2007]

§ 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.

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§ 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.

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(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 ac-

count 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 7 CFR part 3560, subpart K must be met prior to graduation and acceptance of the full payment from an MFH borrower.

[69 FR 69105, Nov. 26, 2004]

§§ 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.

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**EXHIBIT A TO SUBPART F OF PART 1951
[RESERVED]**

**EXHIBIT B TO SUBPART F OF PART 1951—
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 origination 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]

Subparts G-N [Reserved]

Subpart O—Servicing Cases Where Unauthorized Loan(s) or Other Financial Assistance Was Received—Community and Insured Business Programs.

SOURCE: 71 FR 75852, Dec. 19, 2006, 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 Rural Development 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 Rural Development 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. This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development Loans, which are serviced under part 1782 of this title.

[72 FR 55018, Sept. 28, 2007]

§ 1951.702 Definitions.

As used in this subpart, the following definitions apply:

Active borrower. A borrower who has an outstanding account in the records of the Office of the Deputy Chief Financial Officer (ODCFO), 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.

Assistance. Finance assistance in the form of a loan, grant, or subsidy received.

Debt instrument. Used as a collective term to include promissory note, assumption agreement, grant agreement, or bond.

False information. Information, known to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

Inaccurate information. Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

Inactive borrower. A former borrower whose loan(s) has been paid in full or assumed by another party(ies) and who does not have an outstanding account in the records of the ODCFO.

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.

Rural Development. A mission area within the U.S. Department of Agriculture consisting of the Office of the Under Secretary for Rural Development, Office of Community Development, Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service and their successors.

Unauthorized assistance. Any loan, interest subsidy, grant, or portion thereof received by a recipient for which there was no regulatory authorization or 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 expeditious effort must be made to collect from the recipient the sum which is determined to be unauthorized, regardless of amount.

§§ 1951.704–1951.705 [Reserved]

§ 1951.706 Initial determination that unauthorized assistance was received.

Unauthorized assistance may be identified through audits conducted by the USDA Office of Inspector General (OIG), through reviews made by Rural Development personnel, or through other means such as information provided by a private citizen who documents that unauthorized assistance has been received by a recipient of Rural Development assistance.

§ 1951.707 Determination of the amount of unauthorized assistance.

(a) *Unauthorized loan amount.* The unauthorized loan amount will be the unauthorized principal plus any interest accruing on the unauthorized principal at the note interest rate until the date paid unless otherwise agreed in writing by Rural Development.

(b) *Unauthorized grant amount.* The unauthorized amount will be the unauthorized grant amount actually expended under the grant agreement plus interest accrued beginning on the date of the demand letter at the interest rate stipulated in the applicable grant agreement, or, if none is stated, the default rate established by the U.S. Department of the Treasury, until the date paid unless otherwise agreed in writing by Rural Development.

§ 1951.708

§ 1951.708 Notification to recipient.

(a) Upon determination that unauthorized assistance was received, Rural Development will send a demand letter to the recipient that:

(1) Specifies the amount of unauthorized assistance, including any accrued interest to be repaid, and the standards for imposing accrued interest;

(2) States the amount of penalties and administrative costs to be paid, the standards for imposing them, and the date on which they will begin to accrue;

(3) Provides detailed reason(s) why the assistance was determined to be unauthorized;

(4) States the amount is immediately due and payable to Rural Development;

(5) Describes the rights the recipient has for seeking review of Rural Development's determination pursuant to 7 CFR part 11;

(6) Describes the Agency's available remedies regarding enforced collection, including referral of debt delinquent more than 180 days for Federal salary, benefit, and tax offset under the Department of Treasury Offset Program (TOP); and

(7) Provides an opportunity for the recipient to meet with Rural Development to provide facts, figures, written records, or other information which might refute Rural Development's determination.

(b) If the recipient meets with Rural Development, Rural Development 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 Rural Development's findings. When requested by the recipient, Rural Development may grant additional time for the recipient to assemble documentation. Such extension of time for payment will be valid only if Rural Development documents the extension in writing and specifies the period in days during which period the payment obligation created by the demand letter (but not the ongoing accrual of interest) will be suspended. Interest and other charges will continue to accrue pursuant to the demand letter during any extension period unless the terms of the demand letter are modified in writing by Rural Development.

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(c) Unless Rural Development modifies the original demand, it will remain in full force and effect.

§ 1951.709 Decision on servicing actions.

(a) *Payment in full.* If the recipient agrees with Rural Development's determination or will pay the amount in question, Rural Development 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 § 1951.707.

(b) *Continuation with recipient.* If the recipient agrees with Rural Development'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 may be taken provided all of the following conditions are met:

(1) The recipient did not provide false information as defined in § 1951.702.

(2) It would be highly inequitable to require prompt repayment of the unauthorized assistance.

(3) Failure to collect the unauthorized assistance in full will not adversely affect Rural Development's financial interest.

(c) *Appeals.* Appeals resulting from the letter prescribed in § 1951.708 will be handled according to 7 CFR Part 11. All appeal provisions will be concluded before proceeding with further actions.

(d) *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 or more of the following actions will be taken:

(1) *Active borrower with a secured loan.*
(i) Rural Development will attempt to have the recipient liquidate voluntarily. 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 would not be in the best financial interest of the Government to force liquidation.

(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 to the provisions of §1951.711, forced liquidation action will be initiated as provided in paragraph (d)(1)(i) of this section.

(iii) When forced liquidation would be initiated, except that the loan is being handled in accordance with paragraph (d)(1)(i)(A) or (d)(1)(i)(B) of this section, continuation with the loan on existing terms may be provided.

(iv) If the debt is not otherwise resolved, Rural Development will take appropriate debt collection actions in accordance with 7 CFR Part 3, subparts B and C, and the Federal Claims Collection Standards at 31 CFR Chapter IX, Parts 900-904.

(2) *Grantee, inactive borrower, or active borrower with unsecured loan (such as collection-only, or unsatisfied balance after liquidation).* Rural Development may pursue all reasonable legal remedies.

§ 1951.710 [Reserved]

§ 1951.711 Servicing options in lieu of liquidation or legal action to collect.

When the conditions outlined in §1951.709(b) are met, the servicing options outlined in this section will be considered.

(a) *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.

(1) *Unauthorized loan.* A loan for the unauthorized amount determined according to §1951.707(a) will remain accelerated per the demand letter sent in accordance with §1951.708 unless modified terms are timely reached with the recipient and accrued 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 per a repayment schedule satisfactory to Rural Development, but in no event may the revised repayment schedule exceed a period of 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 §1951.707(b) will be converted to an account receivable, with interest payable at the market interest rate for the respective Community Facilities or Business and Industry Program area in effect on the date the financial assistance was provided. In all cases, the receivable will be amortized per a repayment schedule satisfactory to Rural Development, but in no event may the amortization period exceed fifteen (15) years. The recipient will be required to execute a debt instrument to evidence this receivable, and the best security position available to adequately protect Rural Development's interest during the repayment period will be taken as security.

(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 follows:

(i) The recipient will be given the option to submit a written request that the interest rate be corrected to the lower of the rate for which they were eligible that was in effect at the date of loan approval or loan closing.

(ii) Any accrued unauthorized subsidy will be handled in accordance with §1951.709.

(b) *Continuation on existing terms.* When the recipient does not have the legal and/or financial capabilities for the options outlined in paragraph (a)(1), (a)(2), or (a)(3) of this section, the recipient may be allowed to continue to meet the loan obligations outlined in the existing loan instruments. Rural Development will not continue

§§ 1951.712–1951.716

with unauthorized grants on existing terms.

§§ 1951.712–1951.716 [Reserved]

§ 1951.717 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart, provided that any such exception is not inconsistent with any applicable law or opinion of the Comptroller General, and provided further, the Administrator determines that the application of the requirement or provision would adversely affect the Government's interest.

§§ 1951.718–1951.750 [Reserved]

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

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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 "sub-recipient" 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 author-

ized 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.

(xi) Debt refinancing if the following conditions are met.

(A) Intermediary is responsible for determining whether debt restructuring is in the best interest of the revolving loan fund.

(B) Refinancing debts will be allowed only when it is determined by the intermediary that the project is viable and refinancing is necessary to create new or save existing jobs or create or continue a needed service; and

(C) On any request for refinancing of a secured loan, the intermediary must obtain the previously held collateral as security and must not pay off a creditor in excess of the value of the collateral. Additional collateral will be required when the refinancing of an unsecured loan is unavoidable to accomplish the necessary strengthening of the ultimate recipient's position.

[53 FR 30656, Aug. 15, 1988, as amended at 63 FR 6053, Feb. 6, 1998; 73 FR 54306, Sept. 19, 2008]

§ 1951.854 Ineligible assistance purposes.

(a) *Intermediaries.* Intermediary loans may *not* be used by the intermediary for any of the following purposes:

(1) For payment of the intermediary's own administrative costs or expenses.

(2) For 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 institutions, that would not have revenue from sales, fees, or stable revenue to support the operation and repay the loan, and fraternal organizations.

(5) For assistance to Federal government employees, active duty military personnel, employees of the intermediary, or any organization for which

such persons are directors or officers or have 20 percent or more ownership.

(6) For relending in a non-rural area.

(7) For a loan to an ultimate recipient which has an application pending with, or a loan outstanding from, another intermediary involving an IRP revolving fund if the total IRP loans would exceed the limits established in § 4274.331(b).

(8) For any line of credit.

(9) For lending and investment institutions and insurance companies.

(10) For golf courses, race tracks, or gambling facilities.

(11) To finance more than 75 percent or more than \$250,000 of an ultimate recipient's total project cost, as described in § 4274.331(b). The total amount of RDLF funds requested by the ultimate recipient plus the outstanding balance of any existing RDLF loan(s) will not exceed \$150,000. This limit does not apply to revolved funds. Other loans, grants, 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.

(12) For any investments in securities or certificates of deposit of over 30-day duration without the concurrence of Rural Development. If the IRP funds have been unused to make loans to ultimate recipients for 6 months or more, those funds will be returned to Rural Development unless Rural Development provides an exception to the intermediary. Any exception would be based on evidence satisfactory to Rural Development that every effort is being made by the intermediary to utilize the IRP 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

RHS, RBS, RUS, FSA, USDA

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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.

[53 FR 30656, Aug. 15, 1988, as amended at 73 FR 54306, Sept. 19, 2008]

§§ 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.

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(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) *Intergovernmental 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 non-discrimination 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 non-discrimination 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 inter-

mediary 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 in-

terest 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.

§ 1951.882

(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 semi-annual 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.

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§ 1951.882 [Reserved]

§ 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 number 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

§§ 1951.892–1951.893

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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 bankruptcy. 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 |

| Sect. of regulations (A) | Title (B) | Form No. (if any) (C) | Estimated No. of respondents (D) | Report filed annually (E) | Total annual responses (d) x (e) (F) | Est. No. of man-hrs. per response (G) | Est. total manhours (f) x (g) (H) |
|--|--|-----------------------|----------------------------------|---------------------------|--------------------------------------|---------------------------------------|-----------------------------------|
| Reporting Requirements—No Forms | | | | | | | |
| 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 IRP borrower RDLF borrower | 1951-4 | | | | | |
| | | | 10 | 4 | 40 | 20 | 800 |
| | | | 26 | 2 | 52 | 20 | 1040 |
| Reporting Requirements Under Other Numbers | | | | | | | |
| 1951.872(b) | Request for Environmental Information | 1940-20 (0575-0094) | | | | | |
| | | | | | 1494 | | ≈2,726 |

¹ Docket totals.
² Total hours.

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

- Sec.
- 1955.1 Purpose.
- 1955.2 Policy.
- 1955.3 Definitions.
- 1955.4 Redefinition of authority.
- 1955.5 General actions.
- 1955.6-1955.8 [Reserved]
- 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 lienholder, bankruptcy trustee, or taxing authority.
- 1955.13 Acquisition of property by exercise of Government redemption rights.
- 1955.14 [Reserved]
- 1955.15 Foreclosure by the Government of loans secured by real estate.
- 1955.16-1955.17 [Reserved]
- 1955.18 Actions required after acquisition of property.
- 1955.19 [Reserved]
- 1955.20 Acquisition of chattel property.
- 1955.21 Exception authority.

- 1955.22 State supplements.
- 1955.23-1955.49 [Reserved]
- 1955.50 OMB control number.
- EXHIBITS A-F TO SUBPART A [RESERVED]

Subpart B—Management of Property

- 1955.51 Purpose.
- 1955.52 Policy.
- 1955.53 Definitions.
- 1955.54 Redefinition of authority.
- 1955.55 Taking abandoned real or chattel property into custody and related actions.
- 1955.56 Real property located in Coastal Barrier Resources System (CBRS).
- 1955.57 Real property containing underground storage tanks.
- 1955.58-1955.59 [Reserved]
- 1955.60 Inventory property subject to redemption by the borrower.
- 1955.61 Eviction of persons occupying inventory real property or dispossession of persons in possession of chattel property.
- 1955.62 Removal and disposition of nonsecurity personal property from inventory real property.
- 1955.63 Suitability determination.
- 1955.64 [Reserved]
- 1955.65 Management of inventory and/or custodial real property.
- 1955.66 Lease of real property.
- 1955.67-1955.71 [Reserved]
- 1955.72 Utilization of inventory housing by Federal Emergency Management Agency (FEMA) or under a Memorandum of Understanding between the Agency and the Department of Health and Human Services (HHS) for transitional housing for the homeless.
- 1955.73-1955.80 [Reserved]
- 1955.81 Exception authority.