

**DEPARTMENT OF AGRICULTURE****Rural Housing Service****Rural Business-Cooperative Service****Rural Utilities Service****Farm Service Agency****7 CFR Parts 1951, 1956, 1962, 1965**

RIN 0560-AE89

**Implementation of the Delinquent Account Servicing Provisions of the Federal Agriculture Improvement and Reform Act of 1996**

**AGENCIES:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The following changes implement provisions of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) that affect the Farm Loan Programs of the Farm Service Agency (FSA), formerly administered by the Farmers Home Administration (FmHA). The provisions of this rule affect the direct and guaranteed farm ownership (FO), operating loan (OL) programs, and the direct emergency (EM) loan program. Implementation of these provisions will result in the streamlining and shortening of the loan servicing process and result in reduced losses to the Government.

**DATES:** *Effective:* March 14, 1997. Comments must be submitted by May 13, 1997.

**ADDRESSES:** Submit written comments to Director, Farm Service Agency, United States Department of Agriculture, Farm Loan Programs Loan Servicing and Property Management Division, Ag Code 0523, Post Office Box 2415, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** Kimberly R. Laris, Senior Loan Officer, Farm Service Agency, U.S. Department of Agriculture, Room 5449-S, Washington, DC 20250-0523; Telephone: 202-720-1659; Facsimile: 202-690-0949.

**SUPPLEMENTARY INFORMATION****Executive Order 12866**

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

**Regulatory Flexibility Act**

The Farm Service Agency certifies that this rule will not have a significant

impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-534, as amended (5 U.S.C. 601).

**Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The issuing agencies have determined that this action does not significantly affect the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

**Executive Order 12778**

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

**Executive Order 12372**

For reasons set forth in the notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

**The Unfunded Mandate Reform Act of 1995**

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local and tribal governments and the private sector of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA, FSA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, or tribal governments, in the aggregate, or to the private sector. When such a statement is needed for a rule, section 205 of the UMRA generally requires FSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Paperwork Reduction Act**

This interim rule does not impose any new information collection or recordkeeping requirements; however, the provisions of the 1996 Act do eliminate the need for some information previously collected and result in a revision to the number of estimated respondents from whom information will be collected. Therefore, the agency will revise the information collection currently approved in support of its regulations pertaining to Farm Loan Programs account servicing policies under the Office of Management and Budget (OMB) control number 0560-0161 and debt settlement regulations under OMB control number 0575-0118. The agency will publish a Federal Register notice in the near future requesting comments for a 60-day period regarding revisions resulting from the 1996 Act; increases or decreases in program activity; and changes to the estimated responses per respondent and estimated average hours per response. OMB emergency clearance has been obtained to allow continued use of the affected regulations and forms under OMB control numbers 0560-0172 and 0560-0173.

**Federal Assistance Programs**

10.404—Emergency Loans  
10.406—Farm Operating Loans  
10.407—Farm Ownership Loans  
10.416—Soil and Water Loans.

**Discussion of the Interim Rule**

Enacted on April 4, 1996, the Federal Agriculture Improvement and Reform Act (1996 Act) changed the qualifications for loan servicing benefits for borrowers with farm loans from FSA, formerly FmHA. The specific changes to FSA Farm Loan Programs are as follows:

**Leaseback/Buyback Program**

The 1996 Act terminated the Leaseback/Buyback program effective April 4, 1996. Borrowers, former owners and their spouses, children, or former operators no longer have any priority right to purchase FSA inventory property or to lease such property with an option to purchase. This action will remove the regulations for this program. A transition rule provides that borrowers who had submitted a complete application for leaseback/buyback before the date of enactment

may still be considered for the program. The regulations governing leaseback/buyback for these applications can be found in the previous CFR volume containing revisions as of January 1, 1996 and the Agency's procedures, (available in any county office.)

#### *Homestead Protection*

The application period for this program was changed by the 1996 Act from 90 to 30 days after notification of the former owner of FSA inventory property. The Agency is now required to advise the owner of program availability on or before the date that it acquires the property, instead of within 30 days of acquisition as was required by 7 CFR 1951.911(b)(2)(iii).

#### *Primary Loan Servicing*

The 1996 Act requires notification of loan servicing programs to borrowers who are 90 days past due on their FLP loan payment (or 60 days delinquent, since accounts are not considered delinquent until they are 30 days past due). Formerly, these packets were sent when borrowers were 180 days delinquent (210 days past due). Application requirements have been modified to eliminate some forms and clarify that borrowers do not need to provide information that is already in their case files and still current, as determined by the approval official. Borrowers who request servicing before they become delinquent are required to pay at least a portion of the interest due on the account as a condition of rescheduling or reamortization. In making restructuring decisions, FSA will assume that the borrower needs up to 110 percent of the amount indicated for payment of farm operating expenses, debt service obligations, and family living expenses, instead of the 105 percent required before the 1996 Act. Failure to achieve this 110 percent margin will not make a borrower ineligible for loan servicing, but in no case will the account be restructured with a cash flow of less than 100 percent. Borrowers who qualify for debt writedown, but whose accounts could be restructured without writedown at a margin of less than 110 percent, will be allowed to choose between the two options: (1) Restructuring with writedown, or (2) restructuring without writedown at a margin of less than 110 percent. Since section 645 of the 1996 Act, which establishes the 110 percent cash flow, is not mandatory, FSA is offering borrowers the option to forego writedown. Thus, they would avoid the statutory debt forgiveness limitation explained below. Borrowers who choose writedown (with a higher cash flow

margin than restructuring without writedown) will not be able to receive any additional debt forgiveness from FSA.

#### *Debt Forgiveness*

Under the 1996 Act, borrowers can receive only one reduction or termination of a direct FLP loan in a manner that results in a loss to the Government. Those who have received debt forgiveness on a direct loan at any time in the past are no longer eligible for such relief on another loan. Pursuant to section 640(2) of the 1996 Act, debt forgiveness is defined as writing down or writing off a direct loan, debt settling a direct loan, paying a loss claim on a loan guarantee pursuant to section 357 of the Consolidated Farm and Rural Development Act (Con Act) and discharging a debt as a result of bankruptcy.

#### *Buyout of Debt*

The loan servicing option of buying out a debt at its net recovery value was changed by the Act to buyout at current market value. The requirement for a recapture agreement, under which the Agency could recover a portion of its loss if the property is sold within 10 years, was eliminated.

#### *Conservation Contracts*

Based on section 642 of the 1996 Act, the Agency has revised Exhibit H of this subpart to change the conservation easement program to a conservation contract program. Since section 642(1) of the 1996 Act removed the requirement that the program restrict the usage of the property for not less than 50 years, FSA has exercised its discretion to provide a graduated reduction in the amount of debt written off, based on the time period that usage is restricted. Borrowers who agree to a 50-year contract will receive the maximum amount of debt writedown. Borrowers who agree to a 30-year contract will receive 60 percent of the maximum writedown. Borrowers who agree to a 10-year contract will receive 20 percent of the maximum writedown.

#### *Graduation*

When reviewing accounts for possible graduation from direct FLP credit, the Agency is authorized by the Act to submit a borrower prospectus to potential commercial lenders without the borrower's approval. Borrowers must be notified that such information has been provided. If an approved lender agrees to provide credit to that borrower in accordance with the terms of the prospectus, that borrower is

ineligible for Farm Ownership or Farm Operating direct loan credit.

#### *Annual Reviews and Eligibility*

Under section 635 of the 1996 Act, the County Committee must certify annually that a review has been made of each borrower's operation and of continued eligibility for Agency assistance. This is an internal agency requirement and therefore regulations governing this requirement are not published in the CFR.

#### *Electronic Filing of Financing Statements*

Pursuant to section 662 of the 1996 Act, all lenders are authorized to file financing statements electronically in states having Uniform Commercial Code (UCC) laws allowing that practice.

#### *Appeals*

The Agency has removed from this regulation the requirement that the borrower be notified of appeal rights in numerous instances where it previously appeared following authorization for an adverse decision. A guide to the mediation, appeals and review processes has been added as section 1951.904.

#### *Miscellaneous*

Some material which was obsolete, outdated, or repetitive has been omitted. Some references to other sections of the CFR have been revised for conformity purposes.

#### *List of Subjects*

##### *7 CFR Part 1951*

Account servicing, Accounting, Debt restructuring, Foreclosure, Government acquired property, Credit, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing loans—servicing, Mortgages, Rural areas, Sale of government acquired property, Surplus government property.

##### *7 CFR Part 1956*

Accounting, Loan programs—agriculture, Rural areas.

##### *7 CFR Part 1962*

Crops, Government property, Livestock, Loan programs—agriculture, Rural areas.

##### *7 CFR Part 1965*

Foreclosure, Loan programs—agriculture, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

**PART 1951—SERVICING AND COLLECTIONS**

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

**Subpart F—Analyzing Credit Needs and Graduation of Borrowers**

2. Section 1951.262 is amended by revising paragraphs (f)(1) and (f) (2) to read as follows:

**§ 1951.262 Farm Loan Programs—graduation of borrowers.**

\* \* \* \* \*

(f) \* \* \*

(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.

**Subpart J—Management and Collection of Nonprogram (NP) Loans****§ 1951.454 [Amended]**

3. Section 1951.454 is amended by revising the words "chapter; except that a borrower does have appeal rights if the decision involves the denial of NP loan assistance under the Leaseback/Buyback and Homestead Protection provisions of subpart S of this Part 1951" to read "chapter or parts 11 and 780 of this title."

**§ 1951.455 [Amended]**

4. Section 1951.455 is amended by:

a. In paragraph (a) by removing "Leaseback/Buyback and" in the second sentence; by revising the words "Leaseback/Buyback and Homestead Protection programs," to read "Homestead Protection program" in the fourth sentence; by removing the words "FmHA or its successor agency under Public Law 103-354" in the fifth sentence; by revising the words "FmHA or its successor agency under Public Law 103-354" to read "the Agency" in the sixth sentence;

b. In paragraph (b) by removing the first sentence; by revising the words "FmHA or its successor agency under Public Law 103-354" to read "FLP" in the second sentence; by removing the words "FmHA or its successor agency under Public Law 103-354" in the

fourth sentence; by revising the words "FmHA or its successor agency under Public Law 103-354" and "FP" to read "FLP" in the fifth sentence;

c. In paragraph (c) by revising the words "FmHA or its successor agency under Public Law 103-354 office" to read "agency office" and the words "FmHA or its successor agency under Public Law 103-354 credit" to read "FLP credit" in the first sentence;

d. In paragraph (e) by revising the words "FmHA or its successor agency under Public Law 103-354 office" to read "agency office" in the first sentence and removing the words "FmHA or its successor agency under Public Law 103-354" in the fourth sentence;

e. In paragraph (f) by removing the first and third sentence;

f. In paragraph (g) by revising the words "FmHA or its successor agency under Public Law 103-354" to read "FLP" in the introductory text; by removing paragraphs (g) (1) and (4); by revising the words "FmHA or its successor agency under Public Law 103-354 may" to read "the agency may" and the words "FmHA or its successor agency under Public Law 103-354 retains" to read "the agency retains" in the second sentence of paragraph (g)(2); and by redesignating paragraphs (g) (2), (3) and (5) as (g) (1) through (3);

g. In paragraph (h) by revising the word "FP" to read "FLP";

h. In paragraph (i) by removing the first sentence;

i. In paragraph (j) by revising the words "an FmHA or its successor agency under Public Law 103-354" to read "a".

5. Section 1951.457 is amended by revising paragraph (a) to read as follows:

**§ 1951.457 Payments.**

(a) *Receiving payments.* Borrowers will mail or bring their payments to the county office. Borrowers will be responsible for any fees associated with converting cash payments to money orders. If the fee is not paid, it will be deducted from the payment.

\* \* \* \* \*

6. Section 1951.458 is revised to read as follows:

**§ 1951.458 Servicing real estate taxes.**

Refer to subpart A of part 1925 of this chapter for servicing real estate taxes.

**Subpart S—Farmer Program Account Servicing Policies**

7. Section 1951.901 is revised to read as follows:

**§ 1951.901 Purpose.**

This subpart describes the policies and procedures that the agency will use in servicing most Farm Loan Program (FLP) loans. The loans include Operating Loan (OL), Farm Ownership Loan (FO), Soil and Water Loan (SW), Softwood Timber Production Loan (ST), Emergency Loan (EM), Economic Emergency Loan (EE), Economic Opportunity Loan (EO), Recreation Loan (RL), and Rural Housing Loan for farm service buildings (RHF) accounts. Cases involving unauthorized assistance will be serviced as described in subpart L of this part. When it has been determined that all the conditions outlined in § 1951.558(b) of subpart L of this part have been met, the loan will be treated as an authorized loan and may be serviced under this subpart. Cases involving graduation of borrowers to other sources of credit will be serviced as described in subpart F of this part. This subpart does not apply to FLP Non-Program (NP) loans. Examples of Primary Loan Servicing actions are: consolidation, rescheduling and/or reamortization, deferral of principal and interest payments, reclassifying to ST loans, reducing interest rate on the loan, writedown of debt and conservation contract, or a combination of these actions. Preservation loan servicing is the Homestead Protection program. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to agency employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an agency employee.

8. Section 1951.902 is revised to read as follows:

**§ 1951.902 General.**

*Supervision and Servicing.* It is a primary objective of the Agency to provide supervised credit to borrowers in financial, production or other difficulty in a manner that will assure the maximum opportunity for their recovery and, at the same time, get the best recovery for the Government. Supervision and servicing are continuing processes that begin the day a farmer comes into the office. Providing supervised credit has two objectives:

(a) To help farmers set goals, work on problem areas and work toward graduation to commercial credit;

(b) To recover the maximum possible amount for the Government.

9. Section 1951.903 is revised to read as follows:

**§ 1951.903 Authorities and responsibilities.**

(a) *Responsibilities.* Servicing officials will make full use of the National automated tracked system to track and manage the FLP primary and preservation loan servicing and debt settlement programs.

(b) *Authorities.* All loan servicing decisions except as set forth in this section will be made by the servicing official except the approval of writedown and buyout of a borrower's debt. Also, all applications for debt settlement of FLP loans must be recommended by the County Committee (except where the debt has been discharged through bankruptcy), approved by the State Executive Director or the Administrator (depending upon the amount of debt to be settled), and processed in accordance with the provisions of subpart B of part 1956 of this chapter. Servicing officials are authorized to accept a buyout payment when the borrower(s) pays the current market value of the security set forth in § 1951.909 of this Instruction. Only State Executive Directors are authorized to approve writedown and buyout in accordance with § 1951.909 of this part and release a divorced spouse from liability on the debt in accordance with § 1951.909(a) of this part.

10. Section 1951.904 is added to read as follows:

**§ 1951.904 Mediation, reviews and appeals.**

(a) *Participant rights.* (1) For loan servicing under this subpart, mediation or a voluntary meeting of creditors will be offered if the DALRS calculations indicate that a feasible plan of operation cannot be developed considering all primary loan service programs, Softwood Timber, and Conservation Contracts. In states with a USDA Certified Mediation Program, mediation will be offered. In all other states, a voluntary meeting of creditors will be offered.

(2) Any negotiation of an Agency appraisal must be completed prior to the meeting of creditors or mediation.

(3) If the borrower does not request mediation or a voluntary meeting of creditors as offered in Exhibit E of this subpart within 45 days, the servicing official will issue the appropriate "Notice of Intent to Accelerate or to Continue Acceleration and Notice of Borrowers' Rights."

(4) Whenever the servicing official makes a decision that will adversely affect a participant, the participant will be informed that the decision can be reviewed in accordance with 7 CFR part 780 and indicate whether it can be

appealed to the USDA National Appeals Division (NAD) according to regulations set forth in 7 CFR part 11. Nonprogram (NP) participants are not entitled to appeal rights.

(b) *Non-appealable decisions.* The following types of decisions are not appealable:

(1) Decisions made by parties outside the agency, even when those decisions are used as a basis for the agency's decisions.

(2) Decisions that do not meet the eligibility requirements of 7 CFR part 11.

(3) Interest rates as set forth in Agency procedures, except appeals alleging application of the incorrect interest rate.

(4) Refusal to request or grant an administrative waiver permitted by program regulations.

(5) Denials of assistance due to lack of funds.

(6) In cases where the adverse decision is based on both appealable and non-appealable actions, the adverse action is not appealable.

(7) Determinations previously made by the Agency that have been appealed, and a NAD decision adverse to the participant has been entered; or upon which the time frame for appeal has expired with no appeal being requested.

(c) *Next-level review.* Any adverse decision, whether appealable or non-appealable, may be reviewed in accordance with 7 CFR part 780.

(d) *NAD review.* (1) A participant may request that NAD review the Agency's determination that the decision may not be appealed.

(2) A participant may request that NAD review any decision that is appealable.

(3) NAD will review the participant's request in accordance with 7 CFR part 11.

(e) *Agency actions pending outcome of appeal.* Assistance will not be discontinued pending the outcome of an appeal of any adverse action. Releases for essential family living and farm operating expenses will not be terminated until the account has been accelerated.

(f) *Time limits.* Time limits for action under this subpart will be tolled during the pendency of an appeal, but not during the pendency of a request that NAD determine that a matter is or is not appealable.

11. Section 1951.906 is revised to read as follows:

**§ 1951.906 Definitions.**

As used in this subpart, the following definitions apply:

*Borrower.* An individual or entity which has outstanding obligations to the

agency under any Farm Loan Programs (FLP) loan, without regard to whether the loan has been accelerated. This does not include any such debtor whose total loans and accounts have been foreclosed or liquidated, voluntarily or otherwise. Collection-only borrowers are considered borrowers. Borrower also includes any other party liable for the FLP debt. Nonprogram (NP) borrowers are not considered borrowers for the purposes of this subpart.

*CONTACT or CONTACT property.* Property which secured a loan made or insured under the Consolidated Farm and Rural Development Act. Within this part, it shall also be construed to cover property which secured other FLP loans.

*Conservation contract.* A contract under which a borrower agrees to set aside land for conservation, recreation or wildlife purposes in exchange for cancellation of a portion of an outstanding FLP debt. Relief obtained in this manner is not considered debt forgiveness as defined in this section.

*Consolidation.* The combining and rescheduling of the rates and terms of two or more notes of the same type of OL or EO loans, EE operating-type loans or EM loans. EM actual loss loans will not be consolidated.

*Current market value buyout.* Termination of a borrower's loan obligations to the agency in exchange for payment of the current appraised value of the security property, less any prior liens.

*Debt forgiveness.* For the purposes of loan servicing, debt forgiveness is defined as a reduction or termination of a direct FLP loan in a manner that results in a loss to the Agency. Included, but not limited to, are losses from a writedown or writeoff under this subpart, subpart J of this part, subpart B of part 1956 of this chapter, after discharge under the bankruptcy code, and associated with release of liability. Debt cancellation through conservation contracts is not considered debt forgiveness under this subpart.

*Debt settlement.* The settlement of debts owed the United States for FLP loans. The types of debt settlement programs are: compromise, adjustment, cancellation and chargeoff. These programs are administered in accordance with subpart B of part 1956 of this chapter. Any action through debt settlement which results in a loss to the Agency will be considered debt forgiveness.

*Deferral.* An approved delay in making regularly scheduled payments, including softwood timber (ST) loans. Deferral is not considered debt forgiveness.

**Delinquent borrower.** A borrower who has failed to make all or part of a payment which is due for 30 or more calendar days after the due date.

**Entity.** A corporation, partnership, joint operation, or cooperative.

**Farm Loan Programs (FLP) loans.** This refers to Farm Ownership (FO), Soil and Water (SW), Recreation (RL), Economic Opportunity (EO), Operating (OL), Emergency (EM), Economic Emergency (EE), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

**Farm plan.** Form FmHA 431-2, "Farm and Home Plan," or other plans or documents acceptable to the agency that will accurately reflect the production and financial management of the farming operation for one production cycle. The agency will not require the use of consolidated financial statements.

**Feasible plan.** A feasible plan must be based upon the applicant or borrower's actual records that show the farming operation's actual income, production and expenses. These records will include income tax returns and supporting documents (hereafter called income tax records). The records must be for the most recent five-year period or, if the borrower has been farming less than five years, for the period which the borrower has farmed. For borrowers who have been farming for less than five years, other available records will be used in the order listed in section § 1924.57(d)(1) of subpart B of part 1924 of this chapter to complete a five-year history. Future production yields will be based on an average of the most recent past five years' actual production yields. Borrowers with yields affected by disasters in at least two of the five most recent years may exclude the crop year with the lowest actual yield. In addition, in accordance with section § 1924.57(d)(1) of subpart B of part 1924 of this chapter, if the applicant's remaining disaster years' yields are less than the County average yield, and the borrower's yields were affected by the disaster, County average yields will be used for those years. If County average yields are not available, State average yields will be used. These records will be used along with realistic anticipated prices, including any planned FLP loan payments, to determine that the income from the farming operation, and any reliable off-farm income, will provide the income necessary for an applicant or borrower to at least be able to:

(1) Pay all operating expenses and taxes which are due during the projected farm business accounting period.

(2) Meet scheduled payments on all debts.

(3) Meet up to 110 percent, but not less than 100 percent, of the amount indicated for payment of farm operating expenses, debt servicing obligations and family living expenses. The Agency will assume that a borrower needs this margin to meet all obligations and continue farming. However, this will not prohibit a borrower from receiving debt restructuring because the farm and home plan shows less than such a margin. In no case will a borrower with a cash flow of less than 100 percent receive restructuring.

(d) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership, or joint operation borrower, which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which reside in the same household.

**Financially distressed.** A financially distressed borrower is one who will not be able to make payments as planned for the current or next business accounting period. Borrowers will also be considered as in financial distress if it is determined that they will not be able to project a feasible plan of operation for the next business accounting period.

**Foreclosed.** The completed act of selling security either under the "power of sale" in the security instrument or through court proceedings.

**Good faith.** An eligibility requirement for Primary Loan Servicing and Current Market Value Buyout. Borrowers are considered to have acted in "good faith" if they have demonstrated "honesty" and "sincerity" in complying with the requirements of Form 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," and any other written agreements made with the agency, as documented in the case file. In addition, the agency must substantiate any allegations of fraud, waste, or conversion with a written legal opinion from the Office of the General Counsel (OGC) when such allegations are used to deny a servicing request. A borrower will not be considered to lack "good faith" if the sole basis for such a determination was the disposition of normal income security (§ 1962.4 of subpart A of part 1962 of this chapter) prior to October 14, 1988, without the Agency's consent and the borrower demonstrates that the proceeds were used to pay essential family living and farm operating expenses that could have been approved according to § 1962.17 of subpart A of part 1962 of this chapter.

**Homestead Protection.** The right of a former owner to apply to lease, with an

option to purchase the Homestead Protection property, not to exceed 10 acres.

**Homestead Protection property.** This refers to the principal residence which secured a FLP loan.

**Indian Reservation.** Indian reservation means all land located within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; trust or restricted land located within the boundaries of a former reservation of a Federally recognized Indian tribe in the State of Oklahoma; or all Indian allotments the Indian titles to which have not been extinguished if such allotments are subject to the jurisdiction of a Federally recognized Indian Tribe.

**Limited Resource Program.** A reduction of interest rates for operating loans (OL), farm ownership loans (FO) and soil and water loans (SW).

**Liquidated.** The completed act of voluntarily selling security to end the obligation for the debt, or involuntarily as the result of a completed civil suit against a borrower to recover collateral against the debt. The filing of a claim in a bankruptcy action is not a complete liquidation of the borrower's accounts. Collection-only accounts are not considered liquidated.

**Loan service program.** A Primary Loan Servicing program or a Preservation Loan Servicing program (Homestead Protection) for FLP loan borrowers.

**New application.** An application submitted on or after November 28, 1990, for loan servicing programs. This does not include an application reconsidered after an appeal or revision of an application submitted before November 28, 1990.

**Nonessential assets.** Nonessential assets are those in which the borrower has an ownership interest, that:

(1) do not contribute a net income to pay essential family living expenses or to maintain a sound farming operation (see 1962.17 of subpart A of part 1962 of this chapter); and

(2) are not exempt from judgment creditors or in a bankruptcy action. Each State Executive Director, with the guidance of the Office of the General Counsel, will issue a State Supplement to establish guidelines on items that are exempt from judgment creditors and are exempt under bankruptcy law in accordance with statute.

**Nonprogram (NP) loan.** An NP loan results when a loan is made to an ineligible applicant or transferee in connection with a loan assumption and sale of inventory properties at ineligible

terms. Borrowers originally determined eligible by the agency and found to be ineligible after the loan was made due to an agency error are not considered to have nonprogram loans.

*Preservation loan service program.* See Homestead Protection.

*Primary loan service program.*

Primary loan service program means:

- (1) loan consolidation, rescheduling, or reamortization;
- (2) interest rate reduction, including use of the limited resource program;
- (3) loan restructuring, including deferral, or writing down of the principal or accumulated interest; or
- (4) any combination of the above.

*Reamortization.* Reamortization is rearranging the installment payments of a real estate loan, and may include changing the interest rate and terms of a loan made for Subtitle A purposes.

*Rescheduling.* Rescheduling is rewriting the rates and/or terms of OL, SL, EO loans, EE operating-type loans or EM loans made for Subtitle B purposes.

*Writedown.* For purposes of this subpart, writedown is reducing a borrower's debt to an amount that will result in a feasible plan of operation.

12. In § 1951.907, paragraphs (c), (d) and (e) are revised to read as follows and paragraph (f) is removed:

**§ 1951.907 Notice of loan service programs.**

\* \* \* \* \*

(c) *Notification of borrowers 90 days past due on payments.* FLP borrowers who are at least 90 days past due (60 days delinquent) will be sent Exhibit A of this subpart with attachments 1 and 2 by certified mail, return receipt requested. If the borrower submits an incomplete application, see paragraph (e) of this section for procedures on requesting additional information. Delinquent borrowers who have also violated their loan agreements with the agency will be handled in accordance with § 1951.907(e). In addition to the requirements set forth above, servicing officials will provide Attachments 1 and 2 of Exhibit A of this subpart to these borrowers, as set forth below:

(1) At the time an application is made for participation in an FLP loan service program, unless such application is the result of the notice provided to the borrower in accordance with this section,

(2) On written request of any FLP borrower, whether delinquent or not, prior to the sending of a packet under paragraph (c) of this section, and

(3) If a borrower has not previously received exhibit A and attachments 1 and 2 of this subpart, such exhibit and attachments will be provided before the earliest of:

- (i) Initiating any liquidation action,
- (ii) Accepting a voluntary conveyance of security, or the borrower requesting permission to sell security,
- (iii) Accelerating payments on the loan,
- (iv) Repossessing the borrower's property,
- (v) Foreclosing on property, or
- (vi) Taking any other collection action.

(d) *Notification of borrowers in non-monetary default; delinquent borrowers also in non monetary default, or when a junior or senior lienholder is foreclosing.* FLP borrowers who are in non-monetary default will be sent attachments 1, 3, and 4 of exhibit A of this subpart by certified mail, return receipt requested. If a case is in the hands of the Department of Justice or in litigation, no loan servicing action will be taken without Department of Justice or OGC concurrence (see 1962.49 of this chapter). Any servicing request will be processed as indicated in § 1951.909. The account will not be liquidated until the borrower has the opportunity to appeal any adverse decision. After any final appeal decision that does not result in a resolution of the loan defaults, the account will be accelerated.

(e) *Request for primary and preservation loan service programs.*(1) To request consideration for Primary and Preservation Loan Service programs, borrowers who are sent exhibit A, with attachments 1 and 2 or attachments 1, 3, and 4 must complete and return attachment 2 or attachment 4, as appropriate, to the local county office within 60 days after receiving those documents, with the forms required by this paragraph for a completed application.

(2) If borrowers are sent attachments 3 and 4 and do not request servicing within 60 days, the agency will proceed with liquidation in accordance with § 1955.15 of this chapter.

(3) If borrowers are sent exhibit A and attachments 1 and 2 of this subpart and do not submit a completed application within the 60-day time period, the servicing official will send attachments 9 and 10, or 9-A and 10-A of exhibit A of this subpart, as applicable. These attachments will not be sent to borrowers who are being serviced in accordance with § 1951.908. For borrowers receiving attachments 9 and 10 or 9-A and 10-A, the agency will proceed with liquidation in accordance with § 1955.15 of this chapter.

(4) If a borrower has moved and left a forwarding address, the certified mail will be forwarded. If no forwarding address is given, the mail will be

returned to the county office. The servicing official will immediately send the documents from the certified mail package to the borrower's last known address, first class mail. The borrower's response date for a completed application will begin on the date of receipt of the certified mail or 3 days following the date of first class mailing, whichever is earlier.

(5) An application for loan service programs must include the following forms (available in any agency office), and data, unless the information is already in the borrower's case file and still current, as determined by the approval official:

(i) Attachment 2 or 4 of exhibit A to this subpart, response form to apply for loan servicing.

(ii) Form 410-1, "Application for FmHA Services," including a current (within 90 days) financial statement of all individuals and entities personally liable for the FLP debt.

(iii) Form 431-2, "Farm and Home Plan," or any other form or submission acceptable to the agency that sets forth a plan of operation and the necessary information. Commodity prices supplied by the agency will be used to complete the forms.

(iv) Form 440-32, "Request for Statement of Debts and Collateral."

(v) Form RD 1910-5, "Request for Verification of Employment."

(vi) Form AD-1026, "Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification," if the one on file with the agency does not reflect all the land owned and leased by the borrower.

(vii) Form SCS CPA-26, "Highly Erodible Land and Wetland Determination," if not previously on file with the agency for the farm operation. This form is included as part of the application after being completed by NRCS. (This form is available at NRCS local offices.)

(viii) If the applicant wants to be considered for a conservation contract, a map or copy of an aerial photo of the farm, on which the applicant must show that portion of the farm and approximate acres to be considered in a request for debt restructuring provided for in the conservation contract program.

(ix) The most recent five years' income tax returns and supporting documents, unless the borrower has been farming for less than five years. In such case, income tax returns and supporting documents for the tax years that the borrower farmed.

(x) If the borrower is applying for debt settlement, Form RD1956-1,

"Application for Settlement of Indebtedness."

(6) The borrower will be provided with copies of these forms when Exhibit A is sent, and may request copies of regulations and the forms manual inserts (FMI) in writing within 30 days of receipt of the loan servicing notice. If these latter items are not provided within 10 days of such a request, the borrower's time for submission of a complete application will be increased by the period of delay in excess of 10 days caused by the Agency.

(7) Not more than one 60-day period will be provided to a borrower to respond to the notice of loan service programs except in accordance with § 1951.908. Subsequent notices as provided for in this section will not be issued until the first notice is resolved.

13. Section 1951.908 is revised to read as follows:

**§ 1951.908 Servicing financially distressed current borrowers.**

A borrower who is financially distressed, but is not yet delinquent on FLP payments, may request servicing at any time.

(a) *Notification.* If a current plan of operation demonstrates that the borrower is or will be financially distressed, as defined in § 1951.906, or if the borrower otherwise requests servicing, the servicing official will provide attachments 1 and 2 of exhibit A of this subpart.

(b) *Eligibility.* To be considered for servicing in accordance with this section, the borrower must submit to the county office within 60 days Attachment 2 of exhibit A of this subpart and a complete application in accordance with the requirements of § 1951.907(e).

(1) The eligibility requirements of § 1951.909(c) (1) and (2) apply to servicing under this section.

(2) Eligible financially distressed borrowers who are current on their FLP loan payments may be considered for the Primary Loan Service programs described in §§ 1951.909(e) (1), (2) and (3).

(3) Financially distressed borrowers who are not delinquent are not eligible for writedown of debt or buyout as described in 1951.909.

(c) *Processing the application.* The servicing official must process a completed application and notify the borrower of the decision.

(1) Current borrowers will be considered only for the Primary Loan Servicing programs described in §§ 1951.909 (e) (1), (2), and (3). The servicing official must use the Debt and Loan Restructuring System (DALRS)

program, in accordance with exhibit J-1 of this subpart, to determine if a feasible plan can be developed as defined in § 1951.906.

(2) If a feasible plan can be developed, the borrower will be sent exhibit B of this subpart with attachment 1 and the printout of the DALRS calculations as notification of the favorable decision. The borrower must accept the offer within 45 days of its receipt by returning attachment 1 to exhibit B of this subpart or the offer will expire. If the borrower accepts, loan restructuring will be processed in accordance with §§ 1951.909 (e) (1), (2), or (3), as applicable.

(3) If a feasible plan cannot be developed, the borrower will be informed of the reasons for the adverse decision. The DALRS printout will be attached.

(4) Current borrowers who have received notices under this section and who do not apply for primary loan servicing, or who refuse an offer to restructure their debt, and later become 90 days past due on the FLP loan payment, will be sent notices as described in § 1951.907.

(5) Borrowers whose accounts are not delinquent may receive rescheduling, reamortization, consolidation, or deferral under this subpart only after they have paid at least a portion of the interest due on their FLP debt. The portion due will be based on the applicant's ability to pay, as determined by thoroughly analyzing the farm operation, including any off-farm income. The payment must be made on or before the date that restructuring is closed. Borrowers in non-monetary default, but not delinquent on their FLP debt, must cure the non-monetary default before they may be considered for servicing under this paragraph.

14. Section 1951.909 is revised to read as follows:

**§ 1951.909 Processing primary loan service programs requests.**

(a) *Servicing official responsibilities.*

(1) After receipt of attachment 2 or 4 and a completed application in accordance with § 1951.907(e), the servicing official will consider all primary service programs options in this subpart. That official must use the Debt and Loan Restructuring System (DALRS) computer program, in accordance with exhibit J-1 of this subpart for borrowers who submit a new application, to attempt to find the combination of loan service programs that will result in a feasible plan. Borrowers who request loan servicing and who have disposed of all the FLP loan security, including Collection-Only borrowers, will be

processed in accordance with part 1956, subpart B, of this chapter. If the application includes a request for the Conservation Contract program, as indicated by the submission of the information required in § 1951.907(e)(5)(viii), the servicing official will determine whether the borrower is eligible, based on criteria as set forth in exhibit H of this subpart. If the borrower is eligible, the servicing official will make an estimate of the information needed to permit the DALRS program to make the calculations of feasibility of the Conservation Contract. The assumptions used to establish the estimates will be based on the servicing official's knowledge of the farmland values, the borrower's repayment ability, and the proposed contract acreage. When the DALRS calculations for restructuring are completed, the borrower will be notified as set forth in paragraph (h) of this section.

(2) When jointly liable individual borrowers have been divorced and one has withdrawn from the operation, the State Executive Director will consider, upon the recommendation of the servicing official, the release of liability for the individual who has withdrawn if the following conditions are met.

(i) A divorce decree or property settlement document held the withdrawing party not responsible for the loan payments;

(ii) The withdrawing party's interest in the security is conveyed to the borrower with whom the loan will be continued;

(iii) The person withdrawing does not have any repayment ability for the loan, and does not own any nonessential assets, as defined in § 1951.906;

(iv) The individual withdrawing has never received debt forgiveness on another direct loan; and.

(v) The withdrawing party provides a copy of the divorce decree and property settlement, evidence of conveyance, a current financial statement, verification of income and debts, and Form 431-2 or Form RD-1944-3 as applicable.

(3) If a completed application includes a request for a waiver from the training required by paragraph (c)(5) of this section, the County Committee will, prior to any offer of Primary Loan Servicing, evaluate the borrower's knowledge and ability in production and financial management and determine the need for additional training as set out in § 1924.74 of this chapter.

(b) *Adverse determination.* (1) If the approval official determines that the borrower is not eligible for any of the Primary Loan Service programs or

restructuring is not feasible because of debt held by other lenders, the borrower will be advised of mediation or meeting of creditors as provided in paragraph (h)(3) of this section. If mediation or the meeting of creditors does not result in a feasible plan, the borrower will be sent attachments 5 and 6, or 5-A and 6-A, of exhibit A of this subpart, as applicable.

(2) Borrowers who do not buy out their debt at its current market value, or who indicate in writing that they do not wish to buy out, will automatically be considered for debt settlement if they submitted an "Application For Debt Settlement." Any appeal of a primary loan servicing denial will be completed before the servicing official begins any further processing of a Debt Settlement or Homestead Protection request. If the adverse decision on restructuring is upheld on appeal, the borrower will be considered for these options. The servicing official will complete the processing of the borrower's application for Debt Settlement in accordance with part 1956 of this chapter. Homestead Protection will be processed in accordance with § 1951.911. No acceleration or foreclosure will occur until the appeal process has been completed for servicing or debt settlement requests timely submitted under this subpart.

(3) Applicants may request a negotiated appraisal in accordance with paragraph (i) of this section if they object to the agency's appraisal. Negotiation of the appraisal, if requested by the borrower, will take place before mediation or a voluntary meeting of creditors.

(c) *Eligibility.* Applicants will be eligible for Primary Loan Service programs if the servicing official has determined that they meet all of the following requirements:

(1) The delinquency or financial distress does exist and is due to circumstances beyond the control of the borrower, due to a reduction in income which reduces cash flow to a point where outflows exceed inflows, only as follows:

(i) The reduction in essential income from a non-farm job due to unemployment or underemployment of the borrower-operator or spouse is caused by circumstances beyond their control;

(ii) Illness, injury, or death of an individual borrower, stockholder, member or partner who operates the farm;

(iii) Natural disasters, an outbreak of uncontrollable disease, or uncontrollable insect damage which caused severe loss of agricultural

production that reduced repayment ability so that scheduled payments cannot be made; or

(iv) Economic factors that are widespread and not limited to an individual case, such as high interest rates or low market prices for agricultural commodities as compared to production costs, that reduce repayment ability so that the scheduled payments cannot be made.

(2) The borrower has acted in good faith.

(3) Borrowers who do not meet the eligibility requirements of this section will be notified of the adverse decision by sending attachments 5 and 6, or 5-A and 6-A, of exhibit A of this subpart, as appropriate.

(4) Borrowers with sufficient nonessential assets to bring the FLP loan account current are not eligible for assistance under this subpart and will be processed in accordance with § 1951.910 of this subpart.

(5) The borrower must agree to meet the training requirements of § 1924.74 of this chapter unless a waiver is granted in accordance with that section. The training requirement applies to all primary loan servicing programs.

(d) *Feasibility determinations.* The servicing official must determine:

(1) That the borrower will be able to develop a feasible plan.

(2) If restructured, the loan will result in a net recovery to the Government that will be equal to or greater than the net recovery value from involuntary liquidation or foreclosure as calculated in accordance with paragraph (f) of this section. A comparison with net recovery to the Government, however, will not be made when establishing conservation contracts under exhibit H of this subpart.

(e) *Primary loan service programs.* Any FLP borrower may request Primary Loan Servicing Programs described in this subpart at any time prior to becoming 90 days past due. However, borrowers must show that they are not able to pay their debt as scheduled before the agency will approve Primary Loan Servicing Programs. The agency will consider the borrower's other assets in accordance with § 1951.910 of this subpart. Rescheduling, reamortization, consolidation, or deferral may be utilized for any eligible borrower. Existing deferrals will be cancelled at the same time additional primary loan servicing is received. The loan will be entered into DALRS as if the deferral were already cancelled. If DALRS shows that a borrower can develop a feasible plan without a writedown at a lower cash flow margin than with a writedown, that borrower will be

provided the opportunity to choose between restructuring with or without a writedown.

(1) *Consolidation and rescheduling of OL and EO loans, EE operating-type loans and EM loans made for subtitle B purposes including EM loss loans.* This subsection explains how to consolidate and/or reschedule *existing* loans, providing the borrower agrees to such actions. When the servicing official determines that consolidation and/or rescheduling will assist in the orderly collection of the loan, the servicing official should take such action provided all of the following conditions exist:

(i) The borrower meets the eligibility requirements in paragraph (c) of this section;

(ii) Such action is not taken to circumvent the FLP graduation requirements;

(iii) The borrower's account is not being serviced by the OGC or the U.S. Attorney and there are no plans to have the account serviced by either of these offices in the near future;

(iv) Loans may be rescheduled or reamortized, as appropriate, to bring the account current or to keep the account from becoming delinquent. A sufficient number of notes including all delinquent notes will be rescheduled to permit the development of a feasible plan of operation;

(v) The borrower will comply with the highly Erodible Land and Wetland Conservation provisions of exhibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) Loans secured by real estate will not be consolidated and/or rescheduled, until the servicing official reviews the Government's real estate lien priority and value of security and decides that such an action will be in the best interest of the Government and the borrower. If there are any liens which were not in existence at the time the note was signed, the servicing official will ask the OGC for an opinion as to what lien position the Government will have if a new note is taken unless a State supplement authorizing this action has been issued on this subject;

(vii) Only loans of the same type will be consolidated;

(viii) EM actual loss loans will not be consolidated;

(ix) Loans serviced under subpart L of this part will not be consolidated with another loan;

(x) Loans that have been deferred under this section will not be consolidated and/or rescheduled during the deferral period;

(xi) Terms of consolidated and/or rescheduled loans are as follows:

(A) Consolidated and/or rescheduled loans will be repaid according to the borrower's repayment ability, but will not exceed 15 years from the date of the consolidation and/or rescheduling action, except:

(B) Repayment of loans solely for recreation and/or nonfarm enterprise purposes may not exceed seven years from the date of the consolidation and/or rescheduling action (the date the new note is signed).

(C) Repayment of EE loans may not exceed 15 years from the date of rescheduling.

(xii) Interest rates of consolidated and/or rescheduled loans will be as follows:

(A) The interest rate for consolidated and/or rescheduled loans will be the lesser of the current interest rate for that type of loan or the lowest *original* loan note rate on any of the original notes being consolidated and/or rescheduled. In the case of an OL-limited resource loan, it will be the lesser of the current limited resource OL loan rate or the original note rate. The interest rate for loans rescheduled but not consolidated will be the lesser of the current interest rate for that type of loan or the *original* loan note rate.

(B) At the time of the consolidation and/or rescheduling action, OL loans that were not assigned a limited resource rate when the loan was received, may be assigned a limited resource rate if:

(1) The borrower meets the requirements for the limited resource interest rate, and

(2) A feasible plan cannot be developed at regular interest rates and maximum terms permitted in this section.

(xiii) The original (old) note(s) will be marked "Rescheduled" and stapled to the new rescheduled promissory note and will be filed in the operation file. Copy(ies) for the borrower's(s') case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If part of a note is written down, the written down note will be marked "Rescheduled with Debt Write Down," and will be filed in the operation file.

(xiv) For applications received before November 28, 1990, the amount of outstanding accrued interest more than 90 days overdue and any outstanding protective advances, as defined in § 1965.11(b) of subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the

date the new note is signed by the borrower). Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens. See section II E of exhibit J of this subpart for an explanation of how to schedule payment of interest not more than 90 days overdue; and

(xv) For new applications, the amount of outstanding accrued interest and any outstanding protective advances, as defined in § 1965.11(b) subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of consolidation and/or rescheduling (the date the new note is signed by the borrower) in accordance with the provisions of exhibit J-1 of this subpart. Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens.

(2) *Reamortization of FO, SW, RL, RHF, EE, or EM loans made for real estate purposes.* When the servicing official determines that a reamortization action will assist in the orderly collection of the loan, the servicing official should take such action, provided:

(i) The borrower meets the eligibility requirements of 1951.909(c) of this subpart;

(ii) Such action is not taken to circumvent the FLP graduation requirements;

(iii) The borrower's account is not being serviced by the OGC or the U.S. Attorney, and there are no plans to have the account serviced by either of these offices in the foreseeable future;

(iv) A feasible plan for the borrower cannot be developed with the existing repayment schedule. A sufficient number of notes, including all delinquent notes, will be reamortized to permit the development of a feasible plan of operation;

(v) The borrower will comply with the Highly Erodible Land and Wetland Conservation requirements of exhibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) Loans that have been deferred in this subpart will not be reamortized during the deferral period unless the deferral is cancelled;

(vii) Terms of repayment of reamortized loans are as follows:

(A) Reamortized installments usually will be scheduled for repayment within the remaining time period of the note or assumption agreement being reamortized. If repayment terms are extended, the new repayment period may not exceed 40 years from the date of the original note or assumption agreement or the useful life of the security, whichever is less. EE loans for real estate purposes, which are secured

by chattels only, may be reamortized over a period not to exceed 20 years from the date of the original note or assumption agreement, or the useful life of the security, whichever is less. RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(B) The Agency's lien priority may be affected if the final due date of the original loan is extended. A State supplement will be issued to provide instructions on the effect that a change in the final due date has on security instruments and the actions necessary to retain the Government's lien priority. The State supplement will also include instructions for releasing the original security instrument when a new one is obtained.

(viii) Interest:

(A) The interest rate will be the current interest rate in effect on the date of reamortization (the date the new note is signed by the borrower), or the interest rate on the *original* Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be the limited resource FO or SW loan rate or the original loan note rate, whichever is less.

(B) At the time of the reamortization, an FO or SW loan that was not assigned a limited resource rate when the loan was received, may be changed to a limited resource interest rate if:

(1) The borrower meets the requirements for a limited resource interest rate,

(2) A feasible plan cannot be developed at regular interest rates and at the maximum terms permitted in this section, and

(3) For SW loans, the loans funds were used for soil and water conservation and protection purposes as set forth in § 1943.66 (a)(1) through (a)(5) of subpart B of part 1943 of this chapter.

(C) For applications received before November 28, 1990, the amount of accrued interest more than 90 days overdue and any protective advances, as defined in § 1965.11(b) of subpart A of part 1965 of this chapter, charged to the borrower's account, will be added to the principal at the time of the reamortization action (the date the new note is signed by the borrower).

*Protective advances are not authorized for the payment of prior or junior liens except real estate tax liens.* If there are no deferred installments, the first installment payment under the reamortization will be at least equal to the interest amount which will accrue on the new principal between the date the Form 1940-17 is processed and the next installment due date. See section II

E of exhibit J of this subpart for an explanation of how to schedule payments of interest not more than 90 days overdue. For new applications, the amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of reamortization (the date the new note is signed by the borrower) in accordance with the provisions of exhibit J-1 of this subpart.

(ix) The original (old) note(s) will be marked "Reamortized" and will be stapled to the new promissory note and filed in the operational file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies filed as indicated above. If a part of a note is written down, the written down note will be marked "Reamortized with Debt Writedown" and will be filed as indicated above in this paragraph.

(3) *Deferral of existing OL, FO, SW, RL, EM, EO, RHF, and EE loans.*—(i) *Loan deferrals.* Deferrals will be considered only after it has been determined that consolidation, rescheduling, and reamortization, in accordance with this subpart, will not provide a feasible plan.

(ii) *Conditions.* In order to be considered for a deferral, the borrower must meet both of the following conditions:

(A) The need for the deferral must be temporary. To be *temporary* means that the borrowers will be able to show to the satisfaction of the servicing official that they will be able to resume payment on the debt by the end of the deferral period, or the new payments, as established by using consolidation, rescheduling, or reamortization can be resumed at the end of the deferral period; and

(B) Continuation of loan payments as presently scheduled without change, will unduly impair the borrower's standard of living. An unduly impaired standard of living is a condition whereby the borrower, due to circumstances beyond the borrower's control, is unable to pay essential family living expenses (partnerships, joint operators, corporations, and cooperatives do not have family living expenses), pay normal farm operating expenses, including reasonable and customary hired labor and/or salary paid to the operator(s) of a partnership, a joint operation, a corporation, or a cooperative, maintain essential chattels and real estate, and meet the scheduled payments of all debts.

(iii) *Approval official determinations.*

The approval official must:

(A) Determine that the borrower meets the eligibility requirements of § 1951.909(c) of this subpart;

(B) Determine that a deferral of payments is necessary and appropriately document the conditions causing the need for deferral;

(C) If a borrower owns 50 acres or more of marginal land as defined in exhibit G of this subpart and a feasible plan cannot be developed after consideration of a deferral, the servicing official will inform the borrower about the Softwood Timber (ST) loan program authorized by exhibit G of this subpart by sending Attachment 1 of exhibit G of this subpart by certified mail, return receipt requested, within 5 days after the adverse deferral determination. If the borrower requests the servicing official to determine that an ST loan may allow the borrower to continue to farm, within 15 days of the borrower's receipt of attachment 1, the servicing official will determine if the borrower is eligible, based on criteria as set forth in exhibit G of this subpart. If the borrower is eligible the servicing official will help the borrower to develop a plan to determine if a feasible operation can be developed utilizing this program. The discussion will be documented in the borrower's case file.

(iv) *Loan deferral considerations.* The servicing official will assist the borrower in completing a typical-year plan. If there is no typical year, the servicing official will assist the borrower with completing a plan of operation for each year of the deferral. The plans must be considered in DALRS.

(A) A sufficient number of loans must be considered for deferral to permit the borrower to have a feasible plan.

(B) A deferral plan may include a reorganization of the farming operation, including the use of new enterprises, to overcome existing financial, economic or other limitations of the operation. If the proposed restructuring requires capital expenditures, a subordination or additional loan will be considered. Deferral of additional loan installments beyond those needed to allow the borrower to develop a feasible plan will not be used to create additional cash reserve for capital purchases. Such purchases are not considered operating expenses.

(C) A typical year during the deferral period is a year which most closely represents the borrower's average operation for the entire deferral period. There may be no typical year for farming or ranching operations undergoing a major reorganization. If

there is no typical year, then it will be necessary to develop a plan of operation for each year of the deferral. The plans must be considered in DALRS to determine if each plan is feasible.

(D) The deferral of loan installments is not intended to create a high net cash reserve where revenue substantially exceeds expenses. If the deferral of a complete note would cause a high net cash reserve during the entire deferral period, a full deferral should not be granted. In such a case, a partial deferral should be considered to obtain a feasible plan of operation. The same approach should be used for situations in which there is no typical year and debt payments must vary throughout the deferral period.

(E) The borrower must have feasible plans of operation to support any deferral request. Plans of operation in conjunction with loan deferrals must be realistic and supported by the borrower's actual records.

(v) *Additional and subsequent deferrals.* If, during the period of the initial deferral, the borrower is unable to make the scheduled payments, the borrower may again request primary loan service actions. When considering primary servicing actions, existing deferred notes must be entered into DALRS as if they had not been deferred. If it is necessary to defer additional loans to develop a feasible plan, such action will be taken if the deferral will result in a greater net recovery to the Government than debt writedown. Borrowers may obtain subsequent deferrals after the deferral period provided the conditions of this subsection are met.

(vi) *Term and interest rate.* A deferral period will not exceed five (5) annual installments. Deferral interest rates will be determined as specified in paragraphs (e)(1)(xii) and (e)(2)(viii) of this section.

(A) All loans being deferred will be consolidated, rescheduled or reamortized, as applicable. The promissory note rescheduled, reamortized or consolidated for the deferral will show "zero" as the installments due during the period of the deferral if the whole note is deferred and will not be changed during the deferral period unless the conditions of paragraph (e)(3)(v) of this section are met. The servicing official will determine the amount of interest that will accrue during the deferred period. This interest will be repaid in equal amortized installments during the term of the loan remaining after the deferral period. The calculated installments will be added to the remaining installments for the remaining principal balance and

inserted on the promissory note as a scheduled installment for the remaining period of the loan. The Finance Office will apply the payments made on the note in accordance with subpart A of this part. For applications received before November 28, 1990, the amount of outstanding accrued interest more than 90 days overdue and any outstanding protective advances, as described in § 1965.11(b) of subpart A of part 1965 of this chapter, made on the loan will be added to the principal at the time of the deferral (the date the new note is signed by the borrower). Protective advances are not authorized for the payment of prior or junior liens except real estate taxes. See section II E of exhibit J of this subpart for an explanation of how to schedule payment of interest not over 90 days overdue. For new applications, the amount of outstanding accrued interest and any outstanding protective advances made on the loan will be added to the principal at the time of deferral (the date the new note is signed by the borrower).

(B) The field office will process the deferral via the Automated Discrepancy Processing System (ADPS).

(C) If a deferral is approved, the borrower's name and the date of approval will be recorded and maintained in accordance with subpart A of part 1905 of this chapter. The Finance Office will provide the county office with a quarterly status report for each borrower who has received a deferral.

(D) Six months prior to the end of the deferral period the servicing official will notify the borrower in writing of the expiration of the deferral and the amount and date of the borrower's first upcoming installment of the debt.

(E) A deferral will be cancelled if the loan is later restructured in accordance with this subpart. The cancellation will be processed via ADPS.

(vii) *Increase in repayment ability.* At the time the servicing official makes the analysis required by § 1924.60 of subpart B of part 1924 of this chapter, the servicing official will determine whether the borrower has had an increase in income and repayment ability. If an income increase is substantial enough to enable the borrower to graduate, the case will be handled in accordance with subpart F of this part. If an increase would enable the borrower to make some payments during the deferral period, the servicing official will, in writing, ask the borrower to sign a Form 440-9, "Supplementary Payment Agreement," within 30 days of the date of the written request. The borrower will be provided appeal rights.

When doing the analysis to determine whether there is a substantial increase in income and repayment ability, the servicing official will determine whether this increase exists by comparing it to the original plan developed in the deferral application and also to plans developed for the current operating year to determine that the excess income is not needed for essential living and operating expenses or scheduled debt payment. Refusal to sign Form 440-9 will be considered a non-monetary default and will be handled as set forth in § 1951.907(e) of this subpart. If the borrower signs Form 440-9 and later does not honor the terms and conditions of the repayment agreement, the borrower's account will be handled as set forth in § 1951.907 of this subpart.

(4) *Writedown.* The following conditions shall be met in order for a borrower to receive writedown of FLP debts:

(i) No other Primary Loan Service programs, including deferral, nor any combination thereof, will produce a feasible plan that will permit the borrower to continue the operation. However, if DALRS shows that a borrower can develop a feasible plan without a writedown at a lower cash flow margin than with a writedown, then the borrower will be provided the opportunity to choose between restructuring with or without a writedown;

(ii) The borrower must never have received debt forgiveness on another direct loan at any time;

(iii) The amount written off may not exceed \$300,000.

(iv) A feasible plan must be developed that will result in a present value of loans to be repaid to the Government which is equal to or more than a net recovery from an involuntary liquidation or foreclosure;

(v) The borrower must comply with the Highly Erodible Land and Wetland Conservation requirements of exhibit M of subpart G of part 1940 of this chapter, if applicable;

(vi) The borrower must agree to a Shared Appreciation Agreement if the loan is secured by real estate;

(vii) Loans written down with the Primary Loan Servicing programs will be rescheduled, reamortized, or deferred in accordance with paragraph (e) of this section; and

(viii) Borrower must agree to a lien on certain assets as provided in 1951.910 of this subpart, including nonessential assets, where the net recovery value of these assets was not paid to the Agency. (The Agency's lien will be taken only at

the time of closing the restructured loans); and

(ix) Debt reduction received through conservation easements or contracts will not be counted toward the limitations in paragraphs (e)(4) (ii) and (iii) of this section.

(f) *Determining value of net recovery from involuntary liquidation.* After receipt of a complete application for Primary and Preservation Loan Service programs, the servicing official will make the calculations required in this section and notify the borrower of the result. For New Applications, nonessential assets will be considered in accordance with § 1951.910(a) of this subpart.

(1) The servicing official will use the computer program, DALRS, to determine the net recovery to the Government equivalent to involuntary liquidation of the collateral securing the FLP debt in accordance with Exhibit J or J-1 of this subpart, "Debt and Loan Restructuring System," as applicable, and will follow the guidance provided by State supplements and Exhibit I of this subpart, "Guidelines for Determining Adjustments for Net Recovery Value of Collateral." The servicing official will determine the current market value of the collateral in the borrower's possession including tangible property in existence and of record in accordance with subpart E of part 1922 of this chapter for real estate property, and on Form 440-21, "Appraisal of Chattel Property." The servicing official also will determine the current market value of any bank accounts, stocks and bonds, certificates of deposit and the like pledged to and/or in the possession of the Agency. Collateral may include real estate, chattels, tangible property and property such as bank accounts, stocks and bonds, certificates of deposit, and the like. Chattels include machinery, equipment, livestock, growing crops, and crops in storage. Tangible property may include accounts receivable (including Government payments), inventories, supplies, feed, etc. From the current market value of the collateral in the borrower's possession, or pledged to and/or in the possession of the Agency (in the case of bank accounts, stock and bonds, certificates of deposit, and the like), the following adjustments will be made:

(i) Subtract the amount which would be required to pay prior liens on the collateral;

(ii) Subtract taxes and assessments, depreciation, management costs, and interest cost to the Government based on the 90-day Treasury Bills (published in a National Office issuance). Taxes

and assessments, depreciation, management costs, as well as interest costs will be calculated on the current market value of the property for the average inventory holding period. The holding period for suitable inventory farm property will be established by each State as of July 1 each year using Report Code 597. The months that the suitable property is under lease will not be included in determining the average holding period for purposes of this subpart;

(iii) Adjust the current market value for estimated increases or decreases in value of the property for the holding period specified in paragraph (f)(1)(ii) of this section;

(iv) Subtract resale expenses, such as repairs, commissions, and advertising;

(v) Other administrative and attorney's expenses;

(vi) Add income which will be received after acquisition; and

(vii) For a borrower who submits a "new application" as defined in § 1951.906 of this subpart, add the value of any collateral that is not in the borrower's possession and that has not been approved on the Form 1962-1 or released in writing by the Agency, minus the value of any prior lienholder's interest. Collateral not in possession of the borrower is defined as any property specified in any agency security instruments for such borrower's FLP debt that the borrower has disposed of and that the Agency has not approved or released in writing. The value of normal income security not in possession of the borrower will not be added to the NRV if it could be post-approved for release in accordance with § 1962.17 of subpart A of part 1962. The value of any collateral that is not in the possession of the borrower will be determined by the servicing official based upon the best information available about the value of the collateral on or about the time of its disposition. In determining the value of such property, the Agency will use such sources as the publications Hotline (Farm Equipment Guide) and Official Guide (Tractor and Farm Equipment), sale prices at local public auctions, public livestock sale barn prices, comparable real estate sales, etc. Agency appraisal forms will be used to record the value of the missing collateral and the basis for the valuation.

(2) The State Executive Director will determine costs of involuntary liquidation of collateral for farm loans by analyzing the costs of involuntary liquidation within the geographic areas of their jurisdiction. The State Executive Director also will issue a State supplement of estimated costs and

average holding time to be used as guidelines by servicing officials in making calculations of net recovery value under this subsection. Such cost analyses will be carried out in July of each year. The State Executive Director will consult with State Executive Directors of adjoining States, other lenders, real estate agents, auctioneers, and others in the community to gather and analyze the information specified in this subpart.

(g) *Determining net recovery value resulting from primary servicing.* The value of the restructured debt will be based on the present value of payments the borrower would make to the Agency using any combination of primary loan service programs that will provide a feasible plan. Present value is a calculation concept which assigns a lower current value to dollars received in later years than to dollars received at the present time. Servicing officials will use a discount rate based on 90-day Treasury Bills as of the date the borrower files the application for restructuring. The National Office will publish the 90-day Treasury Bill rate in a National Office issuance.

(h) *Notification requirements.* In those instances where the applicable notice is sent certified mail, and the certified mail is not accepted by the borrower, the servicing official will immediately send the documents from the certified mail package to the borrower's last known address, first class mail. The appropriate response time will commence 3 days following the date of mailing.

(1) *Offer.* If the calculations show that the value of the restructured debt is greater than or equal to the NRV as determined in paragraph (f) of this section, the servicing official will forward to the State Executive Director the borrower's Farm and Home Plan and the original printout of the DALRS calculations. The servicing official will certify that the borrower meets all requirements for debt restructuring with the writedown amount specified on the printout. The State Executive Director's authorization to the servicing official to proceed with the writedown will be evidenced by the State Executive Director's signature affixed to the original copy of the DALRS printout returned to the servicing official. Within 60 days after receiving a complete application, the servicing official will notify the borrower of the results of the calculations by sending Exhibit F of this subpart, certified mail, return receipt requested, and offer to restructure the debt. A printout of the DALRS calculations will be attached to Exhibit F of this subpart.

(i) Exhibit F of this subpart will inform the borrower(s) of the Agency's offer to restructure the debt, the right to request a copy of the agency's appraisal, and other options which may include payment of nonessential assets and negotiation of the appraisal. If the borrower accepts the offer within 45 days following any appeal, the servicing official will restructure the debt within 45 days after receipt of the written notice of the borrower's acceptance.

(ii) If the borrower does not respond to exhibit F within 45 days, or declines the Agency's offer to restructure the debt without requesting an appeal or negotiation, the servicing official will send attachments 9 and 10, or 9-A and 10-A of exhibit A of this subpart, as applicable. If the borrower requests an appeal and the Agency is upheld, attachments 9-A and 10-A will not be sent until the borrower is given the opportunity to accept the original offer within 45 days following the final appeal decision. These borrowers will not have an additional opportunity to appeal the offer in attachments 9-A and 10-A. If attachment 10 or 10-A is not returned within 30 days of the borrower's receipt of the attachments, the account will be accelerated or foreclosed in accordance with § 1955.15 of subpart A of part 1955 of this chapter.

(iii) If the borrower submitted a new application and requests a negotiated appraisal within 30 days of receiving exhibit F, the negotiation of the appraisal will be completed in accordance with paragraph (i) of this section.

(A) After completing a negotiation of the appraisal, if the debt can be restructured, the servicing official will send exhibit F to the borrower making the new offer in accordance with paragraph (h)(1)(i) of this section.

(B) If the negotiated appraisal changes the DALRS calculations so that the debt cannot be restructured, the borrower will be sent exhibit E, "Notification of Adverse Decision for Primary Loan Servicing, Mediation or Meeting of Creditors and Other Options," in accordance with paragraph (h)(3) of this section. The appraisal cannot be negotiated again and is not subject to appeal.

(2) *Conservation contracts.* If the borrower returned attachment 2 or 4 to Exhibit A of this subpart within 60 days, requesting a conservation contract by submitting a map or aerial photo showing the portion of the farm and approximate acres to be considered in the request, the servicing official will proceed with processing the request for debt relief as set forth in Exhibit H of this subpart. Borrowers who did not

previously ask for this option can make a request for the contract at this time by submitting a map or copy of an aerial photo indicating that portion of the farm and appropriate acres to be considered. Borrowers must submit the photo within 30 days of receiving Exhibit E of this subpart.

(3) *Mediation/voluntary meeting of creditors.* If the DALRS calculations indicate a feasible plan of operation cannot be developed considering all Primary Loan Service Programs, Softwood Timber, or Conservation Contracts, the servicing official will take the following actions within 15 days from the date of the determination that the borrower's debt cannot be restructured as requested:

(i) Exhibit E, "Notification of Adverse Decision for Primary Loan Servicing, Mediation or Meeting of Creditors and Other Options," of this subpart will be sent to the borrower in all cases by certified mail, return receipt requested. A printout of the DALRS calculations will be attached to exhibit E of this subpart.

(A) When the borrower is in a State with a USDA Certified Mediation Program, paragraph I in exhibit E will be used. Paragraph I tells the borrower that the Agency is requesting mediation with the borrower's creditors in an effort to obtain debt adjustment which would permit the development of a feasible plan of operation. If the borrower submitted a new application, the borrower must respond to exhibit E of this subpart if the borrower wants to negotiate the Agency's appraisal in accordance with paragraph (i) of this section. The borrower may request a copy of the Agency's appraisal. The Agency must participate in USDA Certified Mediation Programs whether or not the borrower responds to exhibit E of this subpart. Any negotiation of the appraisal must be completed prior to any mediation.

(B) In States without a certified mediation program, exhibit E of this subpart will be sent by certified mail, return receipt requested, to inform the borrower about the applicable options which may include a request for a copy of the Agency's appraisal, a meeting of creditors, payment of nonessential assets, negotiation of the appraisal and a request for an independent appraisal. Paragraph I of exhibit E of this subpart will be deleted. The purpose of the voluntary meeting of creditors is to develop a feasible plan. Paragraph II of exhibit E of this subpart, therefore, will be used to offer a voluntary meeting of creditors when the borrower has undersecured creditors who hold a substantial part of the borrower's total

debt. A "substantial part of the borrower's total debt" means that the debt of the undersecured creditors is large enough so that if it were written down to zero, a feasible plan could be developed considering all primary servicing options. The servicing official will document such determination in the case file, and the servicing official will not offer to carry out a voluntary meeting of creditors when the undersecured debt is not a substantial part of the borrower's total debt. Such borrower will be informed later of additional rights, including appeal rights, when the Agency sends attachments 5 and 6, or attachments 5-A and 6-A, of exhibit A of this subpart. Any appeal may challenge the Agency's determination not to offer a voluntary meeting of creditors because the undersecured debt is not a substantial part of the borrower's total debt.

(C) Any negotiation of the Agency's appraisal must be completed prior to the meeting of creditors or mediation. If the borrower does not request any of the options offered in exhibit E of this subpart within 45 days, the servicing official will send attachments 5 and 6, or 5-A and 6-A of exhibit A of this subpart, as applicable, certified mail, return receipt requested.

(ii) If mediation or the voluntary meeting of creditors is held but is not successful, the borrower will be sent attachments 5 and 6, or 5-A and 6-A, of exhibit A of this subpart, as applicable, certified mail, return receipt requested, within 15 days of the unsuccessful mediation or meeting. The DALRS computer printout will be attached to attachment 5 or 5-A of exhibit A of this subpart.

(4) *Buyout of loans.* The following notification and processing provisions also apply to buyout as offered in Attachments 5 and 5-A of Exhibit A of this subpart. After July 3, 1996, buyout will be at the Current Market Value (CMV) of the security.

(i) Eligible borrowers will have 90 days after the receipt of the notification of ineligibility for Primary Loan Service programs to buy out their loans at Current Market Value, or the balance of their unpaid FLP debt, whichever is lower.

(ii) The present value of the restructured loan must be less than the net recovery value to receive buyout.

(iii) The Agency will not provide direct or guaranteed credit for a buyout.

(iv) The borrower must never have received debt forgiveness on another direct loan. (Applies if any debt will be written off.)

(v) The amount written off may not exceed \$300,000.

(vi) The borrower must have acted in good faith.

(vii) Debt reduction received through conservation easements or contracts will not be counted toward the limitations in paragraphs (h)(4) (iv) and (v) of this section.

(viii) The mortgage or deed of trust will be released in accordance with paragraph (k) of this section.

(ix) The State Executive Director must approve the buyout prior to offering buyout to the borrower if the Agency will be writing off any debt.

(i) *Administrative appeals and negotiation of appraisals.—(1) Appeals.* The time limit to pay the current market value of the security, as set out in paragraph (h)(4) of this section, will start on the day the borrower receives the final appeal or review decision upholding the initial decision. The borrower will have conclusively presumed to have received that decision within 3 days of mailing.

(2) *Appeal process.* (i) If the administrative appeal process results in a determination that the borrower is eligible for Primary Loan Servicing, the servicing official will process the request pursuant to § 1951.909 of this subpart. The information used will be that which the appeal officer used in making the decision on the appeal, unless stated otherwise in the final appeal decision letter. In cases of debt restructure resulting from appeals, the interest rate will be the lesser of the current rate or the original note rate on the date of the closing of the transaction. If implementation of the appeal decision would cause writedown or writeoff of more than \$300,000 because of interest accrued after the adverse decision, the servicing official will process the action so as to complete the transaction.

(ii) If the administrative appeal process results in a determination that the borrower is ineligible for Primary Loan Servicing, the servicing official will send Exhibit K and Attachment 1 of this subpart and continue processing any application for debt settlement that may have been submitted in accordance with subpart B of part 1956 of this chapter. If the borrower does not return Attachment 1 of Exhibit K within 15 days of the date that it is sent, the servicing official will continue to process the application for Preservation Loan Servicing and any debt settlement. The account will not be accelerated or foreclosure will not continue until the borrower has the opportunity to appeal any denial of the Preservation Loan Servicing and any Debt Settlement request. If the borrower returns Attachment 1 of Exhibit K within 15

days of its mailing, the account will be accelerated.

(3) *Appraisal appeals.* (i) Borrowers appealing the current market appraisal completed by the Agency may obtain an appraisal by an independent appraiser selected from a list of at least three names provided by the servicing official. A borrower who submitted a new application may appeal the Agency's appraisal, if it has not previously been negotiated under paragraph (i)(4) of this section, and the denial of other issues of Primary Loan Service programs in which the appraisal, as part of the NRV calculation, is relevant. The cost of the independent appraisal must be paid by the borrower. The borrower will, upon request, have access to the case file and receive a copy of the Agency's appraisal. The independent appraiser must be a State certified general appraiser.

(ii) The appraisal report must conform to subpart E of part 1922 of this chapter for real estate and Form 440-21 for chattels.

(iii) If either the servicing official or the borrower discovers any mathematical or property description errors in the appraisal prior to or at the time of the review and comparison, necessary corrections may be made if both parties agree. The party discovering the error must contact the other for a meeting to approve the corrections.

(iv) If the Agency's appraisal and the borrower's independent appraisal vary in value by five percent or less, the borrower will select the appraisal to be used for servicing under this subpart.

(4) *Negotiation of appraisals.* A borrower who submits a new application may request to negotiate the appraisal one time only. Negotiation of appraisals is offered in Exhibits E and F of this subpart, as discussed in paragraph (h) of this section. All appraisals used in the negotiations must reflect the value of the property as of the same time frame as the Agency's initial appraisal. Errors will be handled in accordance with paragraph (i)(3)(iii) of this section.

(i) The borrower can request the list of independent appraisers from the servicing official on Attachment 2 of Exhibits E and F of this subpart. The borrower must provide the servicing official with a copy of his or her independent appraisal within 30 days of requesting negotiation. The borrower must pay for this independent appraisal. The borrower's independent appraiser and appraisal report must meet the qualifications described in paragraph (i)(3)(ii) of this section, but the independent appraiser need not be on

the Agency's list of qualified appraisers. If the Agency's appraisal and the borrower's independent appraisal vary in value by five percent or less, the borrower will select the appraisal to be used for servicing under this subpart. No further negotiation will occur.

(ii) If the two appraisals differ by more than five percent, the servicing official will give the borrower a list of qualified, independent appraisers. The borrower will select one appraiser from the Agency's list to conduct a third appraisal. The appraiser cannot have conducted either the Agency's or the borrower's independent appraisal, and must meet the qualifications set out in paragraph (i)(3) of this section. The borrower, the appraiser and the servicing official will complete and sign the Appraisal Agreement (Attachment 3 of Exhibit F of this subpart). The appraiser will be sent a copy of the appraisal standards, subpart E of part 1922 of this chapter, for real estate and Form 440-21 for chattels. The borrower will submit to the servicing official the original or a copy of the third appraisal and its attachments and the appraiser's bill. The Agency will pay 50 percent of the cost. The borrower is responsible for paying the appraiser directly the remaining 50 percent of the cost.

(iii) Following the completion of the third appraisal, the three appraisals will be compared by the servicing official, who will average the two that are the closest in value. The average of the two closest in value will become the final appraised value. Errors will be handled in accordance with paragraph (i)(3)(iii) of this section.

(j) *Processing of writedown.* Borrowers who are eligible for Primary Loan Service Programs with writedown will have their loans rescheduled or reamortized in accordance with this subpart. All loan servicing actions approved in connection with the writedown must take place simultaneously. The borrower and servicing official will complete exhibit D to this subpart, "Shared Appreciation Agreement." Exhibit D provides for recapture as specified in 1951.914 of this subpart of a portion of any appreciation in the value of the real property securing the debt remaining after the writedown. The DALRS computer program will be used to determine the notes to be written down.

(1) A separate Form 1940-17, "Promissory Note," will be used for each note or assumption agreement being reamortized.

(2) A Form 1940-17 will be completed, signed, and distributed as provided in the FMI.

(3) The loan servicing action date of approval is also the date that will be inserted on the rescheduled or reamortized Form 1940-17 in accordance with the provisions in the ADPS manual when establishing an equity record.

(4) A Form 1940-17 may be processed provided the County Office has possession of the original note being reamortized. If the County Office does not have possession of the original note, the servicing official will ask the Finance Office to return the original note so that it is in the County Office before Form 1940-17 is processed.

(5) The field office will process the reamortization or consolidation via the Automated Discrepancy Processing System (ADPS) in accordance with Form 1940-17, and complete exhibit D of this subpart.

(6) The original (old) note(s) will be marked "Rescheduled or Reamortized with Writedown of Debt" and stapled to the new rescheduled or reamortized promissory note(s) and will be filed in the promissory note file in the operation file. Copies for the borrower(s) case file should be marked and stapled the same and filed in position 2 of the case file. If a transfer is involved, assumption agreement(s) will be marked and stapled with the note(s) and copies will be filed as indicated above.

(7) A lien will be taken on assets in accordance with § 1951.910 of this subpart.

(k) *Real estate liens.* The Agency's real estate liens will be maintained even if the writedown of the borrower's real estate debt results in all real estate debts to the Agency being written down. The Agency's real estate lien will not be subordinated to increase the amount of the prior liens during the shared appreciation period. Shared appreciation agreements will be serviced in accordance with § 1951.914 of this subpart. Upon payment by the borrower of current market value in a buyout, the original mortgage or deed of trust will be released on real estate for the FLP loans bought out. The notes will be marked "Satisfied at Current Market Value" and returned to the debtor or the debtor's legal representative. Existing net recovery buyout recapture agreements will be serviced in accordance with § 1951.913 of this subpart.

(l) *Non-real estate liens.* If a borrower's FLP loan(s) were not secured by real estate, there will be no recapture and the borrower will not be required to enter into a recapture agreement. Upon payment by the borrower of the current market value in a buyout, the original security instruments will be released on

chattel security for the FLP loans bought out. These notes will be marked "Satisfied at Current Market Value" and returned to the debtor or the debtor's legal representative.

(m) *Notes.* Notes evidencing real estate debts written down in full or written off as a result of Primary Servicing will be returned to the debtor at the end of any recapture period. If there is no recapture period, the notes will be returned when the County Office verifies that the transaction has been recorded in the Finance Office. For a market value buyout, the original and copies of the notes will be marked "Satisfied by Approved Current Market Value Buyout." For writedown in full, the original and copies of the notes will be marked "Satisfied by Approved Debt Writedown." If a note is only partially written-down, it will be returned to the debtor when paid in full. The original and copies of such notes will be marked "Satisfied by Approved Partial Writedown." Original chattel security notes will be marked "Satisfied at Current Market Value" and released to the debtor upon payment of their current market value in a buyout.

15. Section 1951.910 is revised to read as follows:

**§ 1951.910 Consideration of borrower's other assets for new applications.**

If a delinquent borrower has other assets that are not serving as collateral for the FLP debt, the servicing official will determine whether these assets are nonessential, as defined in § 1951.906 of this subpart.

(a) *Nonessential assets.* The net recovery value (NRV) of nonessential assets must be considered when the borrower's application is processed for loan servicing in accordance with this subpart. The Agency will not write down or write off any debt or portion of a debt that could be paid by liquidation of nonessential assets, or by payment of the loan value of the assets that could be received from non-Agency sources. The loan value of the assets will be considered as the same as the NRV of the assets.

(1) *Determining the value of nonessential assets.* The NRV of the nonessential assets is the market value less any prior liens and any selling costs which may include such items as taxes due, commissions and advertising costs. The determination of NRV of nonessential assets does not include a deduction for carrying the property in inventory. The market value of the nonessential assets must be estimated by a current appraisal in accordance with subpart E of part 1922 of this chapter for real estate property, and on

Form 440-21, "Appraisal of Chattel Property," for chattels. Borrowers who disagree with the Agency's appraisal may request a negotiated appraisal or appeal in accordance with § 1951.909(i) of this subpart.

(2) *Eligibility.* If the NRV of the nonessential assets is sufficient to bring the delinquent FLP account current, the borrower is not eligible for primary loan servicing including buyout in accordance with this subpart. The borrower, instead, will be sent attachments 5-A and 6-A of exhibit A of this subpart. The servicing official will indicate the values of both the NRV of nonessential assets and the FLP security on attachment 5-A. The borrower's nonessential assets and their NRVs also will be listed on attachment 5-A. The borrower will have 90 days to bring the FLP account current from the date of the receipt of attachments 5-A and 6-A. If the borrower does not pay current within this time period, the account will be accelerated after all appeal rights have been exhausted. If the NRV of the nonessential assets is not sufficient to bring the FLP account current, then the nonessential assets will be considered as set out in paragraph (a)(3) of this section.

(3) *Inclusion in NRV.* If the NRV of the nonessential assets is not sufficient to bring the FLP account current, then the servicing official will add the NRV of these assets to the NRV of the FLP collateral according to § 1951.909(f) of this subpart. The servicing official will encourage, but not require the borrower to liquidate those nonessential assets and apply the proceeds to his/her outstanding debts. If the borrower liquidates the nonessential assets, or obtains a loan against the equity in such assets, and pays the Agency the NRV of the nonessential assets within 45 days of receiving exhibit E or F of this subpart, as appropriate, the payment will be subtracted from the FLP debt and then the servicing official will recalculate the debt restructuring without considering the NRV of the nonessential assets. If the borrower does not sell these assets, the servicing official will include their NRV in calculating the debt restructuring and take a lien on the assets at the time of closing the restructured loan.

(b) *Lien on certain assets.* Delinquent borrowers must pledge certain assets, essential and nonessential, unencumbered to the Agency as security at the time FLP loans are restructured, as follows:

(1) The best lien obtainable will be taken on all assets owned by the borrower. When the borrower is an entity, the best lien obtainable will be

taken on all assets owned by the entity, and all assets owned by all members of the entity. Different lien positions on real estate are considered separate and identifiable collateral.

(2) Security will include, but is not limited to, the following: land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, certain cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance.

(3) Security will also include assignments of leases or leasehold interests having mortgageable value, revenues, royalties from mineral rights, patents and copyrights, and pledges of security by third parties.

(4) The exceptions set forth in § 1941.19(c) of subpart A of part 1941 of this chapter apply.

(5) These assets will be considered as additional security for the loans as well as any shared appreciation agreement. The value of the essential assets will not be included in the NRV calculation to determine restructuring. The Agency's lien will be taken only at the time of closing the restructured FLP loans.

16. Section 1951.911 is revised to read as follows:

**§ 1951.911 Homestead protection.**

(a) *General.* If the Agency has only chattel property as security, preservation servicing will not be offered. Borrowers who submitted a complete application prior to April 4, 1996 will be considered for leaseback/buyback in accordance with the previous CFR volume containing revisions as of January 1, 1996 and Agency procedures, (available in any county office.) Inventory property which is located within the boundaries of an Indian reservation of a Federally recognized Indian Tribe and the previous owner is a member of the Indian Tribe that has jurisdiction over that reservation should be handled in accordance with § 1955.66(d) of subpart A of part 1955 of this chapter.

(b) *Homestead protection.* Borrowers and former borrowers who had or have an FLP loan secured by the real property containing the dwelling owned by them and used as their principal residence may apply for homestead protection before or after the Agency acquires the property. Real property that is in inventory as of the effective date of the statute or is acquired in the future will be considered for homestead protection as set forth in this subpart.

(1) *Purpose.* The purpose of the Homestead Protection Program is to permit borrowers or former borrowers to retain their dwellings through a lease or purchase. Such lease or purchase could permit these individuals to have a home and providing an opportunity to continue to farm.

(2) *Notification and processing.* If a feasible plan for restructuring debt cannot be developed using Primary Loan Service programs, the borrower will be advised by the use of Exhibit K with Attachment 1 of this subpart that the Agency will continue with the processing of Preservation Service programs, if applicable. A borrower who desires homestead protection must request it in accordance with § 1951.907. A borrower who meets the eligibility requirements of paragraph (b)(3) of this section will be permitted to retain possession of the homestead, in accordance with paragraph (b)(2)(ii) of this section, before title is acquired or under a lease with an option to purchase after title is acquired.

(i) *Determining homestead protection property.* (A) The homestead protection property will include the borrower's principal residence and not more than 10 acres of adjoining land that is used to maintain the borrower's family and a reasonable number of farm service buildings located on land adjoining the residence which are useful to the occupants of the dwelling.

(B) The servicing official will review the proposed homestead protection property. If the servicing official does not agree with the proposed shape or size of the property, an alternate configuration will be negotiated with the borrower.

(C) If the borrower and the servicing official cannot agree on the proposed shape and size of the property, the servicing official will make the determination.

(D) When the size and shape of the property is agreed upon and the borrower has been found eligible, the servicing official will request a licensed surveyor to survey the property, have a legal description prepared, and mark the property lines with permanent type markers.

(E) Appraisals will be completed in accordance with paragraphs (b)(6) and (b)(7)(ii)(B) of this section.

(ii) *Processing homestead protection before the Agency acquires title.* (A) A borrower will be considered for homestead protection when it is determined that the Primary Loan Service programs cannot resolve the delinquency. To process an application, the borrower must indicate the buildings and land to be included in the

request for homestead protection. If determined eligible for homestead protection, the borrower and the servicing official will enter into a Homestead Protection Program Agreement (Exhibit L of this subpart) to lease the property if and when the Agency acquires title. A copy of Form 1955-20, "Lease of Real Property," will be attached to the agreement as an exhibit.

(B) Concurrently with the execution of the preacquisition Homestead Protection Program Agreement, the borrower will deliver a completed Form RD 1955-1 to the Agency. The Agreement is subject to the provisions of subpart A of part 1955 of this chapter. If the Agency acquires title during the processing of a preacquisition Homestead Protection Agreement, processing of the agreement will be terminated and the owner will be given homestead protection rights pursuant to paragraph (b)(2)(iii) of this section.

(C) The Agency's obligation to lease the dwelling to the borrower will be contingent on the Agency's prior compliance with all State and local laws, ordinances and regulations governing the subdivision of land. If the Agency cannot satisfy the conditions within 2 years from the date of the agreement, the agreement (and the Agency's obligation to lease with option to purchase) will terminate. If an agreement has been entered into, but title to the property has not been conveyed to the Agency (or acquisition has been determined not to be in its financial interest), the Agency will continue with acceleration and foreclosure of the property. It is not the intent of the 2-year term of the agreement to limit the Agency's ability to foreclose on the property, provided that all the terms have been met except that title has not been conveyed.

(iii) *Application for homestead protection when the Agency acquires title.* When the Agency acquires title to the farm property, the borrower will be sent Exhibit M of this subpart, by certified mail, return receipt requested, no later than the date of acquisition. The borrower must request homestead protection by notifying the servicing official in writing not later than 30 days after the date of acquisition and must provide the information set forth in § 1951.907(e) of this subpart and indicate the buildings and land to be included in the request.

(iv) *Lease with option.* A lease with an option to purchase will be entered into with an eligible borrower on Form 1955-20 after the Agency acquires title to the property. Form 1955-20 will be

completed in accordance with § 1951.911 (b)(8) of this subpart.

(3) *Eligibility.* The servicing official will make the determination on eligibility. To qualify for homestead protection, the borrower must meet the following requirements:

(i) An applicant must be an individual who is or was personally liable for the Farm Loan Programs (FLP) loan that was secured in part by the Homestead Protection property, or, if a non-borrower pledged the property to secure the FLP loan, the owner of the property. In either case, the applicant must be or have been the owner of the Homestead Protection property. A member of an entity who is or was personally liable for a loan that is or was secured by the Homestead protection property is considered an owner for homestead protection purposes, so long as either the member of the entity or the entity itself held fee title to the property.

(ii) When more than one member of an entity was personally liable for an FLP loan, each such member who possessed and occupied a separate dwelling as his or her principal residence, on property that is or was security for the loan may apply separately for homestead protection of their individual dwellings;

(iii) The applicant and any spouse must have received, from the farming or ranching operations, gross farm income reasonably commensurate with the size and location of the farm and reasonably commensurate with local agricultural conditions (including natural and economic conditions) in at least 2 calendar years during the 6-year period preceding the calendar year in which the application is made. Farms used for comparison purposes must be of similar size, type of operation and locality. For the purposes of §§ 1951.911(b)(3) (iii) and (iv) of this subpart, income from farming or ranching operations will include rent paid by a lessee of agricultural land during any period in which the borrower, due to circumstances beyond his or her control, such as economic, natural disaster or health problems, was unable to actively farm that property. The borrower's records will be used in determining whether the gross farm income was reasonably commensurate with the farm size and location and local agricultural conditions. When applying for homestead protection, the borrower will give the servicing official at least 2 calendar years of records of planned and actual gross farm income for the 6-year period preceding the calendar year in which the application is made. If such records do not exist, they may be developed by the applicant

and servicing official from information relating to yields, expenses and prices found in the borrower's county office case file, agency records, or other reliable sources;

(iv) The applicant and any spouse must have received, from the farming or ranching operations, at least 60 percent of their gross annual income in at least 2 of the 6 calendar years preceding the calendar year in which the application is made;

(v) The applicant must have continuously occupied the homestead protection property during the 6-year period preceding the calendar year in which the application is made, unless it was necessary to leave for a period of time not to exceed 12 months during the 6-year period due to circumstances beyond the borrower's control, such as illness, employment, or conditions that made the dwelling uninhabitable; and

(vi) The applicant must have sufficient income to make rental payments for the term of the lease and the ability to maintain the property in good condition, and must agree to all the terms and conditions set forth in paragraph (b)(7) of this section and in Form 1955-20.

(4) *Transfer of homestead protection.* An applicant's right to request homestead protection and rights under the Agreement or lease entered into pursuant to this section are not transferable or assignable by the applicant or by operation of law, except that, in the case of death or incompetency of the applicant, such rights and agreements shall be transferable to the spouse upon agreement to comply with the terms and conditions of the lease.

(5) *Property requirements.* (i) The proposed homestead protection property tract must meet all requirements for the division into a separate legal lot as required by State and local laws. All environmental considerations required under subpart G of part 1940 of this chapter will be complied with.

(ii) Costs for a survey, legal description or other service needed to establish, appraise, define or describe the homestead protection property as a separate tract, will be paid for by the Agency. No repairs or improvements will be paid for by the Agency except as provided for in § 1955.64 (a) of subpart A of part 1955 of this chapter.

(iii) If necessary, the Agency will grant or retain for the benefit of adjoining property reasonable easements for ingress, egress, utilities, water rights, etc.

(6) *Appraisal.* The current market value of the homestead protection

property shall be determined by an independent appraisal made within 6 months from the date of the borrower's application for homestead protection. The applicant will select an independent real estate appraiser from a list of appraisers approved by the servicing official. The cost of such an appraisal will be handled in accordance with paragraph (b)(5)(ii) of this section.

(7) *Terms of the lease and exercising the option.* (i) All leases will have an option to purchase. Any reference to a lease for homestead protection purposes will mean a lease with an option to purchase. The lease will be offered with an option to purchase on Form 1955-20 and will be for a period of not more than 5 years as requested by the applicant. A lease of less than 5 years may be extended, but not beyond 5 years from the date of the beginning of the term of the original lease.

(A) The amount of the rent will be based upon equivalent rents charged for similar residential properties in the area in which the dwelling is located.

(B) Lease payments will be retained by the Government.

(C) Failure to make lease payments as scheduled or to maintain the property in good condition shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property under this section. If a lease default is not cured within 30 days of notice, the servicing official will notify the lessee in writing of the termination of the lease and option.

(D) Any interference by the lessee with the Government's efforts to lease or sell the remainder of farm inventory property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property including the right to exercise the option to purchase.

(ii) Exercising the option to purchase.

(A) The lessee may exercise the option in writing at any time prior to the expiration of the lease by delivering to the servicing official a signed, written statement notifying the Agency that the lessee is exercising the option to purchase the property. Failure to exercise the option within the lease period will end the lessee's rights under the option to purchase.

(B) When the lessee exercises the option to purchase the property, the purchase price will be the current market value of the property. That value will be determined by an appraisal in accordance with paragraph (b)(6) of this section providing the appraisal is not more than 1 year old. If the appraisal is more than 1 year old, the current market value will be determined by a new

appraisal requested in accordance with paragraph (b)(6) of this section.

(C) At the time the lessee exercises the option, the lessee must notify the servicing official if he or she wants to purchase the property for cash or finance it through a credit sale from the Agency.

(D) If a credit sale is involved, the applicant must furnish the servicing official the information required by § 1951.907 (e) to assist in determining whether or not the applicant has adequate repayment ability.

(8) *Rates and terms for a credit sale.* Terms for a credit sale of homestead protection property when the lessee is exercising the option to purchase will be in accordance with subpart J of this part.

(9) *Closing.* A credit sale will be closed in accordance with subpart J of this part.

(10) *Conflict with State law.* In the event of a conflict between a borrower's homestead protection rights and any provisions of the law of any State relating to the right of a borrower to designate for separate sale or redeem part or all of the property securing a loan foreclosed on by a lender, such provision of State law shall prevail. A State supplement will be prepared as necessary to supplement paragraph (b) of this section.

(11) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in subpart J of this part.

#### § 1951.914 [Amended]

17. Section 1951.914 is amended by removing paragraph (a)(5)(iii) and redesignating paragraphs (a)(5)(iv) through (a)(5)(vi) to (a)(5)(iii) through (a)(5)(v) respectively.

#### §§ 1951.917 and 1951.918 [Removed and reserved]

18. Sections 1951.917 and 1951.918 are removed and reserved.

19. Exhibit A is revised to read as follows:

Exhibit A—Notice of the Availability of Loan Servicing and Debt Settlement Programs for Delinquent Farm Borrowers

Dear (Borrower's Name):

This notice is to inform you that you are behind with your loan payments and to inform you of your options.

#### I. Loan Servicing Programs Available

Primary loan servicing programs are intended to adjust the debt so that you can continue farming and the Agency will receive a better recovery on the money it loaned you.

The Preservation loan servicing program (Homestead Protection) is intended to help

farmers who may lose their land to the Agency get their home back through a lease with an option to buy.

## II. Application Information

### Time Limits

You must notify the county office within 60 days of getting this notice if you want to be considered for these programs.

### How to Apply

To apply, you must complete and return the required forms enclosed with this notice, including your signed Acknowledgment Of Notice Of Program Availability within the 60-day time limit. The county office will process your completed forms and let you know if you qualify.

#### Included With This Notice You Will Find:

- (1) A summary of primary loan servicing programs options;
- (2) A summary of the preservation loan servicing program;
- (3) A summary of debt settlement programs;
- (4) The forms you need to apply for services;
- (5) Information on how to get copies of the Agency's regulations;
- (6) A description of the National Appeals Division appeal process.

## III. Foreclosure and Liquidation

### What Happens if You Do Not Apply Within 60 Days?

The Agency will accelerate your loan if you continue to be delinquent or in nonmonetary default. Acceleration of your loan is very severe. This means the Agency will take legal action to collect all the money you owe them.

After acceleration, the Agency will start foreclosure proceedings. They will repossess or take legal action to take any real estate, personal property, crops, livestock, equipment, or any other assets in which the Agency has a security interest. The Agency will also stop allowing you to use your crop, livestock, and milk checks to pay living and operating expenses. The Agency will also take by administrative offset money which other federal agencies owe you.

Sincerely,

Attachment 1—Primary and Preservation Loan Servicing and Debt Settlement Programs Purpose

### Purpose

These programs are to help you repay the loan and keep your farm property and settle your Farm Loan Programs loan debt. This notice tells you:

- (1) How To get more information
- (2) How to apply
- (3) Your appeal rights if you apply and are turned down

### How To Get More Information

Ask at any county office for copies of the rules describing these programs. These rules must be given to you within 10 days of when we receive your request.

### Who Can Apply?

All "farm loan programs borrowers" who have one of the following loans:

Operating (OL)  
Farm Ownership (FO)  
Emergency (EM)  
Economic Emergency (EE)  
Soil and Water (SW)  
Recreation (RL)  
Rural Housing Loans made for farm service buildings (RHF)  
Economic Opportunity (EO)

Borrowers that are current on their scheduled payments but are financially distressed through no fault of their own may be eligible for some assistance to restructure their debt.

### You May Need Help in Applying

The legal requirements for these programs are very complicated. You may need help to understand them. You may want to ask an attorney to help you. If you cannot get an attorney, there are organizations that give free or low-cost advice to farmers. Ask your State Department of Agriculture or the USDA Extension Service what services are available to your state.

Note: Agency employees cannot recommend a particular attorney or organization.

## I. Primary Loan Service Programs

### (1) Loan Consolidation

Two or more of the same type of loans can be combined into one larger loan. For example, operating loans can only be joined with operating loans.

### (2) Loan Rescheduling

The payment schedule can be altered to give you longer to repay loans secured by equipment, livestock, or crops. For example, the time for repayment of an operating-type loan can be extended up to 15 years from the date the loan is rescheduled. When a loan is rescheduled, the interest rate may be reduced.

### (3) Loan Reamortization

The payment schedule can be changed to give you longer to repay loans secured by real estate. For example, a Farm Ownership loan payback period may be extended to 40 years from the date the original loan was signed. When a loan is reamortized, the interest rate may be reduced.

### (4) Interest Rate Reduction

#### Regular Interest Rate

FSA has specific interest rates for each type of loan. These interest rates change quite often. They depend on what it costs the Government to borrow money. Each type of loan will have a regular rate.

#### Limited Resource Interest Rate

If you have an Operating Loan (OL), Soil and Water (SW) loan or a Farm Ownership (FO) loan, it may be possible for you to get a "limited resource interest rate." The limited resource interest rate can be as low as 5 percent. It changes quite often and depends on what it cost the Government to borrow money.

#### Interest Rate for Loan Servicing

When loans are consolidated, rescheduled, or reamortized, the interest rate on the new

loan will be either the interest rate on the original loan or the current regular rate of interest for that type of loan, whichever is less. The borrower may be able to get the limited resource interest rate on OL, SW, or FO loans.

For information about current interest rates, contact the FSA county office.

### (5) Loan Deferral

Payments of principal and interest can be temporarily delayed for up to 5 years. You must show that you cannot pay essential living expenses or maintain your property and pay your debts. You must also show you will be able to pay at the end of the deferral period.

The interest rate on a deferred loan will be either the current rate of interest for loans of the same type or the original rate on the loan, whichever one is lower.

The interest that builds up during the deferral period will be added to the principal of the loan. You must pay this interest in yearly payments for the rest of the loan term.

Note: You can only get a loan deferral if the FSA determines options 1-4 will not work for you.

### (6) Softwood Timber Program

Marginal land including highly erodible land and pasture can be planted in softwood timber. If you qualify, a debt of up to \$1000 an acre can be deferred up to 45 years. Interest will be charged during the deferral period. The debt must be paid when the timber is sold.

### (7) Conservation Contract Program

You may enter into a contract with the Secretary of Agriculture to protect highly erodible land, wetlands, or wildlife habitat located on your property that serves as security for your farm loan debt. In exchange for the contract, FSA will reduce your FSA debt. The amount of land left after the contract must be enough to continue your farming operation.

### (8) Debt Writedown

This is not available to borrowers who are current in their loan payments or to borrowers who have had previous debt forgiveness on another direct loan.

Debt writedown means the FSA debt you owe is reduced. FSA can reduce both the principal and interest of your debt. Your debt can be reduced to the recovery value.

*Recovery value.* The recovery value is the fair market value of the collateral pledged as security for FSA loans minus all of the expenses such as sale costs, attorneys fees, management costs, taxes and payment of prior liens on the collateral that FSA would have to pay if it foreclosed on and sold the collateral. The fair market value of any collateral that is not in your possession and has not been released for sale by FSA in writing will also be used in determining recovery value.

Also considered, will be the fair market value of any other assets that you may own that are not essential for family living or for farm operation, and are not exempt from your judgment creditors or in a bankruptcy action, minus the value of any creditors' prior security interests and your selling costs. The

value of the collateral and any other assets must be decided by a qualified appraiser.

In order to get debt writedown, you must show that after the writedown, you will have up to 110 percent, but not less than 100 percent, of income available to pay all of your family living and farming operating expenses and scheduled debt payments. This means you must have a feasible plan of operation. FSA will not write down more of the debt than is necessary for you to show a feasible plan. You have the choice to select a smaller cash flow margin without a writedown. If you choose to do this, you will avoid taking your one time debt forgiveness as explained below.

The writedown is used only when the loan servicing programs listed in 1-7 above alone will not be enough for you to have a feasible plan. If you get writedown, some of the principal and interest on your loans will be written down in addition to changing the payback period, and possibly the interest rate, using 1-7 above.

You can receive a writedown if you have not previously received any form of debt forgiveness from FSA on any other direct farm loan. The maximum debt that can be written down on all loans is \$300,000.

## II. Who Can Qualify for Primary Loan Service Programs

To qualify you must prove that:

(1) You cannot repay your FSA debt due to circumstances beyond your control. If you have certain nonessential assets with a value high enough to bring your account current, then you are not eligible for Primary Loan Service Programs. These assets are only those that are not essential for necessary family living or for your farm operation. FSA cannot reduce or write off any of your debt that you could pay by selling any of these assets or borrowing against your equity in the assets.

You must have had less income than expected due to such things as:

- (a) A natural disaster, weather, or insect problems;
- (b) Family illness or injury;
- (c) Loss or reduction of off-farm income;
- (d) Disease in your livestock;
- (e) Low commodity prices and high operating expenses in your local area; or
- (f) Other circumstances beyond your control.

(2) You have acted in "good faith" to keep your agreements with FSA in that you have kept all written agreements with FSA including those for the use of proceeds and release of property used to secure the loan, and your file shows no fraud, waste, or conversion.

You must agree to give FSA a lien on certain other assets for additional security for the FSA debt. If you are offered restructuring and accept the offer, you must provide this lien at closing.

You must agree to meet, at your own cost, FSA's training requirements in production and financial management. The cost will be included in your farm plan as an operating expense. The training must be completed within 2 years from the date of restructuring. This requirement may be waived if you are able to demonstrate that you have adequate training in this area. To request a waiver of this training requirement, complete Form

FmHA 1924-27, "Request for Waiver of Borrower Training Requirements," and submit with your request for FSA servicing. This training requirement is not applicable if you have previously received a waiver or you have successfully completed the required FSA Borrower Training program.

### Who Will Decide if You Qualify?

The FSA servicing official will decide if you qualify. The servicing official will decide whether you can pay as much or more on the loan as FSA would get if they foreclosed and sold the collateral for the loan plus the value of any nonessential assets. To do this, the servicing official must decide whether the total payments of principal and interest on your adjusted debt will be at least as much as the "recovery value" defined in part I above.

### Can You Get Your Debts Written Down?

Only if FSA will get as much or more by writing down part of your debt than through foreclosure or sale of the collateral for the loan and any nonessential assets. You also must be delinquent on your FSA debt payments.

### Conditions of the New Agreement if You Qualify

You must sign a shared appreciation agreement for 10 years. Under the terms of the agreement:

- You must repay a part of the sum written down.
- The amount you must repay depends on how much your real estate collateral increases in value.

During this 10 years, FSA will ask you to repay part of the debt written down if you do one of the following:

- (1) Sell or convey the real estate
- (2) Stop farming
- (3) Pay off the entire debt

If you do not do one of these things during the 10 years, FSA will ask you to repay part of the debt written down at the end of the 10 year period.

FSA can only ask you to repay if the value of your real estate collateral goes up.

If either 1, 2, or 3 above occurs in the first four years of the agreement, FSA will ask you to pay 75 percent of the increase in value of the real estate. In the last 6 years, you will be asked to pay only 50 percent of the increase in value. FSA will not ask you to pay more than the amount of the debt written down.

### Date To Begin Restructured Agreement

If you are found eligible, you will be informed of the date for an appointment so your debt can be restructured. You must notify FSA that you accept its offer to restructure your debt within 45 days of when you receive the offer.

## III. Preservation Loan Servicing Program

### Purpose

This program applies when the primary loan service programs cannot help you.

**Homestead Protection.** (Keeping your farm home.) You may lease your farm home, certain outbuildings and up to 10 acres of land. The lease time will be for up to 5 years.

The lease will include an option for you to purchase the property you lease.

## IV. Who Can Qualify for Homestead Protection?

(1) Your gross annual income from your farm or ranch must have been similar to other comparable operations in your area. This must be true for at least 2 years of the last 6 years.

(2) Sixty percent (60%) of your gross annual income in at least 2 of the last 6 years must have come from the farming operation.

(3) You must have lived in your homestead property for 6 years immediately before your application. If you had to leave for less than 12 months during the 6-year period and you had no control over the circumstances, you still may qualify.

(4) You must be the owner or former owner of the property.

(5) If FSA has already taken your property, you must apply within 30 days of the date FSA took your property.

### How To Lease Your Dwelling

(1) You may lease your home and up to 10 acres if you pay FSA reasonable rent. The rent prices FSA charges you will be similar to comparable property in your area.

(2) You must maintain the property in good condition during the term of the lease.

(3) You may lease for up to 5 years.

(4) You cannot sublease your property.

(5) If you do not keep up your rental payments to FSA, FSA will force you to leave.

You can buy back your homestead property at current market value at any time during the lease. FSA may place an easement on your property to protect and restore any wetlands or converted wetlands. Current market value will be decided by an independent appraiser. The appraisal will be made within 6 months of your application for homestead protection. The appraised value of your property will reflect the value of the land after any placement of a wetland conservation easement.

You should be aware that any real property, located in special areas or having special characteristics, which comes into FSA's inventory, may have restrictions or easements placed on the property which prevent your use of all or a portion of the property, should you choose to lease or buy your former dwelling. These restrictions and encumbrances will be placed in leases and in deeds on properties containing wetlands, floodplains, endangered species, wild and scenic rivers, historic and cultural properties, coastal barriers, and highly erodible soils.

## V. Debt Settlement Programs.

### Purpose

These programs apply after it has been determined that primary loan service programs cannot help you. You may be eligible for both debt settlement and homestead protection. If you do not have FSA collateral you will need to apply for debt settlement only. Under these programs, the debt you owe FSA may be settled for less than the amount you owe. You may apply for debt settlement at any time by submitting an application for debt settlement on Form

FmHA 1956-1. These programs are subject to the discretion of the agency and are not a matter of entitlement or right.

#### *Programs Available*

(1) **Compromise offer:** A lump-sum payment of less than the total FSA debt owed.

(2) **Adjustment offer:** One or more payments of less than the total amount owed to FSA. Your payments can be spread out over a maximum of five years if FSA decides you will be able to make the payments as they become due.

(3) **Cancellation:** The final settlement of a debt without any payment. FSA must decide there is no FSA security or other asset from which FSA can collect. You must be unable to pay any part of the debt now or in the future.

#### *Approval Requirements*

If you sell your collateral, you must apply the proceeds from the sale to your FSA account before you can be considered for debt settlement. In the case of compromise and adjustment, however, you may keep your collateral if you are unable to pay your total FSA debt and pay FSA the present fair market value of your collateral along with any additional amount you are able to pay as determined by FSA. You will be allowed to retain a reasonable equity in essential nonsecurity property to continue your normal operations and meet minimum family living expenses. FSA will not finance a compromise or adjustment offer.

All debt settlements of FLP loans must be recommended by the County Committee with a finding that the statements on your application are true. The committee must certify that you do not have assets or income in addition to what you stated in your application. You must also have not previously received any form of debt forgiveness from FSA on any other direct farm loan. If you qualify, your application must also be approved by the FSA State Executive Director or the FSA Administrator depending on the amount of the debt to be settled.

#### *VI. How to Apply for Primary and Preservation Loan Servicing Programs.*

##### *Application Forms and Information Needed*

The forms set out below should be included with this notice. If they are not, you can obtain them from the FSA county office or as directed below.

(1) Attachment 2 or 4 of Exhibit A Response form to apply for loan services.

(2) FmHA 410-1 Application for FSA Services (The financial statement on this form must include information no more than 90 days old. The financial statement must be for all individuals and entities personally liable for the FSA debt.

(3) FmHA 431-2 Farm and Home Plan, or other acceptable plan of operation. The commodity prices to use for this plan of operation or Farm and Home Plan are included with the form. You may request the servicing official to assist you in completing your plans.

(4) FmHA 440-32 Request for Statement of Debts and Collateral. Complete the name and

address of the creditor, account number, if applicable, and your name. All parties liable to the creditor must sign and date the forms. FSA will obtain the creditor information.

(5) FmHA 1910-5 Request for Verification of Employment. Complete employer's name and address, employee's name and address, social security number, sign and date. FSA will send the form to your employer to obtain the needed information.

(6) SCS-CPA-026 Highly Erodible Land and Wetland Conservation Determination (This form must be obtained from and completed by the Natural Resources Conservation Service office, if not already on file with FSA.)

(7) AD-1026 Highly Erodible Land Conservation (HEL) and Wetland Conservation (WC) Certification (You will be required to complete this form in the FSA office if the one you have on file does not reflect all the land you own and lease.)

(8) FmHA 1960-12 Financial and Production Farm Analysis Summary (Complete the backside of the form or other similar type worksheets to provide production and expense history for crops, livestock, livestock products, etc. for each of the five years immediately preceding the year of application or the years you have been farming, whichever is less and if not already in the FSA case file. You must be able to support this information with farm or income tax records.)

(9) Copies of income tax records and any supporting documents for the last five years immediately preceding the year of application if not already on file with the FSA county office. (If you have been farming for less than 5 years, submit the tax records for the tax years immediately preceding the year of application during which you farmed. If copies of tax records are not readily available, you can obtain copies from the Internal Revenue Service (IRS).)

(10) Map or aerial photo of your farm from FSA or Natural Resources Conservation Service if you are applying for the conservation contract program. (Identify on the map or photo the portion of the land and approximate number of acres to be considered in the contract.)

(11) RD 1956-1 Application for Settlement of Indebtedness (Complete this form only if you wish to apply for debt settlement.)

##### *Time to Apply for Primary and Preservation Loan Servicing Programs*

To apply, you must complete the appropriate forms and return them and the required information to the FSA county office within 60 days from the date you received this notice.

#### *VII. What Happens When You Are Not Eligible for Primary Loan Service Programs?*

If the servicing official decides you are not eligible, you may request a meeting with that official so the official can explain the decision.

If you do not agree with the FSA servicing official's decision, you can tell the official why. If you can make the necessary realistic changes to your Farm and Home Plan to show a feasible plan, you should show these changes to the servicing official.

#### *Negotiation of the Appraisal*

A negotiation of the appraisal is a process whereby the borrower objects to the FSA appraisal, obtains an independent appraisal at the borrower's own costs, pays one-half of the cost for a third appraisal, and the average of the two appraisals closest in value is taken as the final appraised value to be used in considering restructuring. In all cases of primary and preservation loan servicing where the borrower presents an independent appraisal which is conducted by a qualified appraiser and is within 5 percent of the value of the FSA appraisal, the borrower must choose one of these two appraisals for the servicing official to use to continue processing the request. Negotiation of appraisal may affect your right to appeal the appraisal.

#### *You May Request Mediation of Other Loans*

If you cannot show a feasible farm plan because you owe too much to other creditors and suppliers, FSA will help you try to get your other creditors to adjust your debts. This will be done by FSA asking for mediation if your State has a mediation program approved by the United States Department of Agriculture. If there is no State mediation program, FSA will try to set up a meeting with your other creditors and suppliers if it can be shown that a reduction in these debts can provide a feasible farm plan.

#### *You Have the Right to Appeal*

**Appeal.** Appeal rights will be provided to you after FSA has made a decision on your request for primary loan servicing. If you first request a meeting with the servicing official instead of an appeal, the time for requesting an appeal will be extended until you are advised of the results of your meeting. You will be provided with the address of USDA's National Appeals Division. Your request for an appeal must be postmarked no later than 30 days from the date you received the agency's adverse decision. If you disagree with FSA's determination that any determination is not appealable, you may request a determination of appealability from the National Appeals Division.

#### *You May Buyout (Pay Off) Your Loan at the "Current Market Value"*

(1) **Current market value.** If the analysis of your debt shows that you cannot "cash flow" even if your debt to FSA is reduced to the value of the collateral, the servicing official will advise you in writing that you can buyout the loan by paying the "current market value" minus any prior liens. The current market value is determined by a current appraisal completed by a qualified appraiser.

(2) **Limits.** You may receive a buyout if you have not previously received any form of debt forgiveness from FSA on any other direct farm loan. The maximum debt that can be written off with buyout is \$300,000.

(3) **Eligibility.** To qualify you must prove that:

You cannot repay your FSA delinquent debt and the reason you cannot repay was due to circumstances beyond your control,

You have acted in good faith, and

The value of your restructured loan is less than the recovery value.

(4) *Time Limit.* If you want to buy out your farm loan debt at the current market value, you must pay FSA within 90 days of the date you receive the offer. If you appeal the servicing official's decision not to give you primary loan servicing, this 90 days will not start until the administrative appeal process ends.

(5) *Cash.* If you pay off the loan at the current market value, you must pay in cash. FSA will not make or guarantee a loan for this purpose.

*Consideration for Preservation Loan Service Program*

*(Homestead Protection)*

You will be considered for homestead protection if:

(1) You applied for primary loan servicing as required and did not qualify.

(2) You do not appeal your primary loan servicing denial, or do not win your appeal.

(3) You do not pay off the loan through buyout.

(4) You agree to give FSA title to your land at the time FSA signs the written homestead protection agreement with you. FSA will not accept title and will deny your preservation request if it is not in FSA's best financial interest to accept title. FSA will compute the costs of taking title including the cost of paying other creditors who have outstanding liens on the property. FSA will take title only if it can obtain a recovery on its cost. Any written agreement for preservation loan servicing will include the amount you must pay for rent, the number of years you can rent, and an option to purchase the property at the fair market value at the time you exercise the option to purchase.

(5) You must request Homestead Protection within 30 days of FSA obtaining title to the property.

*Consideration for Debt Settlement Programs*

If you wish to be considered for debt settlement, you will need to request and return a completed Form RD 1956-1. You may request debt settlement at any time. Usually, the most appropriate time for making this request is when FSA has determined that Primary Loan Servicing options will not provide the best net recovery to the Government and you are requesting preservation loan servicing. If you no longer have any security remaining for the outstanding FSA loans, you may want to request debt settlement instead of primary and preservation loan servicing.

*VIII. What Happens When You Are Turned Down for Homestead Protection or Debt Settlement Programs?*

If FSA decides that you cannot get homestead protection or debt settlement you can ask for

(1) A meeting with FSA to discuss the decision, or

(2) Appeal the determination.

*The Right to a Meeting*

The servicing official will send you a letter telling you why FSA decided not to give you homestead protection or debt settlement.

That letter will give you 15 days to ask for a meeting with FSA.

*The Right to an Appeal*

Appeal rights will be provided to you after FSA has made a decision on your request for homestead protection. If you first request a meeting with the servicing official instead of an appeal, the time for requesting an appeal will be extended until you are advised of the results of your meeting. You will be provided with the address of USDA's National Appeals Division. Your request for an appeal must be postmarked no later than 30 days from the date you received the final determination.

On appeal, you can contest FSA's rental amount and its decision not to give you homestead protection. You can also contest FSA's decision to reject your debt settlement application.

*IX. Acceleration and Foreclosure*

If you do not appeal an adverse determination or if you are denied relief on appeal, FSA will accelerate your loan account and make demand for payment of the whole debt. FSA will stop allowing you to use any of your crop, livestock, and milk checks, on which they have a claim, to pay for living and operating expenses. FSA will repossess the collateral or start legal foreclosure or liquidation proceedings to take and sell the collateral, including your equipment, livestock, crops, and land. FSA will also take by administrative offset money which FSA and other Federal Government agencies owe you.

FSA may refrain from taking these actions if you agree to do one, or a combination of the following actions, within an agreed upon time, with FSA's approval:

(1) Sell all the collateral for the loan at market value.

(2) Convey (legally transfer) the collateral to FSA.

(3) Apply to transfer the collateral to someone else and have that person assume all or part of the FSA debt. (This is called transfer and assumption.)

If any of these options result in payment of less than you owe, you may apply or reapply for debt settlement. You may apply or reapply for homestead protection even if you applied before and were not accepted. However, applications for homestead protection or debt settlement filed after the 60-day time period provided in this notice will not delay acceleration, offset, and foreclosure.

*Attachment 2—Acknowledgment of Notice of Program Availability*

I have been given a notice explaining the primary and preservation loan service and debt settlement programs.

The date on the notice was \_\_\_\_\_.

This notice explained that FSA programs are available to help me keep my property or settle my debt with FSA.

I ask FSA to consider me for all of these programs.

I understand that I will be notified of my rights to appeal after FSA decides on my request.

Signature \_\_\_\_\_

Date \_\_\_\_\_

Attachment 3—Notice to Borrowers With Non-Monetary Defaults, Non-Monetary Defaults and Delinquency, or That a Prior Lienholder or Junior Lienholder is Foreclosing

Dear \_\_\_\_\_

FSA has reviewed your loan account. Our record shows:

You are now \$ \_\_\_\_\_ behind on your payments. This is a violation of your loan agreement.

You have disposed of some of your property used to secure your loan. You did not get written approval for this. This property is \_\_\_\_\_

(Describe property.)

You have stopped farming or ranching. This is a violation of your loan agreement.

A foreclosure action has been filed against you by \_\_\_\_\_. This is a violation of your loan agreement.

You have \_\_\_\_\_

(Insert reasons for proposed action.)

*FSA Will Accelerate Your Loans*

FSA will take legal action to collect the money you owe. They will foreclose on real estate and repossess equipment and other property used to secure your loans. They will also stop the release of money from the sale of crops or other property. They will take by administrative offset money you are owed by other Federal agencies.

*Steps You Can Take Before FSA Accelerates Your Loans*

You can apply for the programs described in Attachment 1. These are called Primary and Preservation Loan Service and Debt Settlement Programs. You can also ask for a meeting. At this meeting you can explain why you think FSA's records, as indicated on this Notice, are wrong. You can also suggest things you can do to correct these problems, so as to avoid acceleration and foreclosure.

You can request loan servicing, debt settlement and a meeting at the same time. For example, if this Notice states that you are delinquent, and also have disposed of property without FSA's written consent, you can request servicing to deal with the delinquency problem and request a meeting on the question of unauthorized disposition of property. Please read the section on debt settlement programs for guidance in requesting and receiving consideration of a request for debt settlement.

*Forms Attached to This Notice*

You will find:

(1) A summary of all primary loan service programs;

(2) A summary of the preservation loan servicing program;

(3) A summary of all debt settlement programs;

(4) Copies of the forms needed to apply; and

(5) Advice on how to get copies of FSA regulations.

**Purpose of Primary Service Programs**

These loan service programs are to help you repay the loan and keep your farm property.

**Purpose of the Preservation Loan Service Program**

This program is intended to help farmers who may lose their land to FSA to get their home back, either by purchase or through a lease with an option to purchase.

**Purpose of Debt Settlement Programs**

These programs apply after it has been determined that primary loan service programs cannot help you. You may be eligible for both debt settlement and preservation loan service programs. If you no longer have FSA collateral you will need to apply for debt settlement only. Under these programs, the debt you owe FSA may be settled for less than the amount you owe. You may apply for debt settlement at any time by requesting and submitting an application for debt settlement on Form RD 1956-1.

**How to Apply for Loan Servicing**

Complete Attachment 4 and the appropriate forms included with this notice.

You must return these within 60 days of receiving this notice.

**Right to a Meeting**

You have the right to meet with your FSA servicing official before they decide to accelerate your loan. You must check the box on Attachment 4 saying you want a meeting. (Attachment 4 is the "Response to Notice of Intent to Accelerate and Notice of Borrower Rights.")

**How to Ask for a Meeting**

You must check the box on Attachment 4 asking for a meeting within 15 days from the date of this notice. Return it to your county office. Do this as soon as possible. It is wise to call also to set up the meeting.

**The Right to Appeal**

- You can ask for an administrative appeal even if the meeting does not resolve your problems.
- You can ask for an appeal even if you do not have a meeting.
- You have the right to appeal even if you do not want to apply for loan servicing programs or debt settlement.

**How to Ask for an Appeal**

Your request for appeal must be in writing and sent directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

Note: If you do not check the box on the Attachment 4 to ask for primary and preservation loan service programs, you will not be considered for those programs.

If you do not ask for a meeting to try and resolve the issues, you will not get another chance later.

**The Right Not To Be Discriminated Against**

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract). You cannot be denied a loan because all or part of your income is from a public assistance program. If you believe that you have been discriminated against for any of these reasons, you can write the Secretary of Agriculture, Washington, D.C. 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

Attachment 4—Response to Notice Informing Me of FSA's Intent To Accelerate My Loan

**Notice of My Rights**

TO: Farm Service Agency

FROM: \_\_\_\_\_  
(Please print your name and address.)

I have read the notice informing me of FSA's intent to accelerate my loan which I received with this form.

I want to: (Check one or more of the following boxes).

1. Request a meeting with the FSA servicing official.

My phone number is \_\_\_\_\_.

I must return this form in 15 days. I understand I do not lose my right to appeal by asking for a meeting.

2. Be considered for all primary and preservation loan service and debt settlement programs. I must return this form along with all applicable forms in 60 days.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Sign here.)

Attachment 5—Notice of Intent To Accelerate or To Continue Acceleration and Notice of Borrowers' Rights

Name and Address

Dear (Borrower's Name):

You are not eligible for debt restructuring. I  FSA has reviewed your application for primary loan servicing (debt restructuring) and based upon the information available, you are not eligible.

Your Farm and Home Plan does not show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FSA help.

The attached computer printout shows that in order to develop a feasible plan and receive primary loan servicing, you would need to increase your cash available to pay your debts by \$\_\_\_\_\_.

II.  FSA has reviewed your application and your case file. You have broken your agreement with FSA. Your Farm and Home Plans shows you can pay all of your family living expenses, farm operating expenses, and scheduled debt repayments if FSA uses primary loan servicing, softwood timber, and conservation contract programs to restructure your loans.

You have broken loan agreements with FSA in the following way:

You are \$\_\_\_\_\_ behind in your scheduled loan payments.

You have sold or otherwise disposed of property you used to secure the FSA loan without proper approval from FSA. This property is \_\_\_\_\_

(Describe property.)

You no longer are farming or ranching.

You have \_\_\_\_\_

III.  You have already received your lifetime limit of at least one form of debt forgiveness on other direct loans.

IV. FSA Intends to Foreclose

FSA will accelerate your loan because you are not eligible for primary loan servicing.

FSA will take legal action to collect the money you owe.

FSA may:

(1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FSA loan;

(2) Foreclose and sell your real estate mortgaged to FSA;

(3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;

(4) Take by administrative offset any money you are owed by Federal agencies;

(5) File lawsuits to collect money you owe to FSA.

**V. WHAT YOU CAN DO TO STOP FORECLOSURE**

Before FSA can take action against you, you can:

(1) Request a meeting with the FSA servicing official.

If you disagree with FSA's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the FSA servicing official. The servicing official can explain the FSA decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in Section I.

To ask for this meeting, check the box #1 on the Response Form: (Attachment 6).

Time limit: You must return the "Response Form" to the county FSA office within 15 days from the date you get this letter. You should also call the county office to set up the meeting.

(2) Appeal.

You may appeal FSA's decision. On appeal, you may challenge the ways FSA says you broke your loan agreement. You may also challenge FSA's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FSA believes you cannot present a feasible plan.

You may also ask for an independent appraisal of your property used to secure the FSA loan. This independent appraisal may be important if you think FSA has put too high or too low a value on your property when it considered you for primary loan servicing. You will have to pay for this appraisal. FSA will give you three names of appraisers to choose from. Check box #2 on the "Response Form" if you want the independent appraisal.

If you request a meeting with the FSA servicing official, you will be given another chance to appeal after that meeting. If you do not want to request the meeting but do want to appeal, you must send a letter requesting appeal directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

If you want to request a meeting and appeal at the same time, you must request the meeting on the "Response Form" and appeal in writing to NAD.

(3) Buy Out the Loan at the Current Market Value.

You have this option if you meet the eligibility requirements and the recovery value is greater than the value of the restructured loan. The recovery value is \$\_\_\_\_\_. The restructured loan value is \$\_\_\_\_\_.

You [may] or [may not] buy out your FSA loans at the current market value of the property securing the loan, minus prior liens, in the amount of \$\_\_\_\_\_. (This amount could change if the prior lien indebtedness changes before the buyout date.)

Note: The attached computer printout summarizes FSA's calculations.

If you are eligible and pay the buyout amount, FSA will write off the rest of your debt.

**Time Limit.** If you are eligible and want to buy out your FSA debt, you must pay FSA the above amount within 45 days from the date you received this letter. You must pay FSA in cash, legal money order, or certified check.

If you appeal FSA's adverse decision, the 45-day period to buy out will not start until all of the appeals are completed. Check box #3 on the "Response Form" if you want to buy out.

(4) Consideration for Homestead Protection

After all appeals are concluded, and your time to buy out, if eligible, has expired, FSA will automatically consider you for Homestead protection if your home is

mortgaged to FSA. [You applied for this program when you applied for primary loan servicing (debt restructuring).] FSA will notify you that it will be considering you for this program and will request some additional information when the time comes to consider you.

VI. What Happens If You Do Not Cure Your Default or Buyout?

If you do not cure your default or buyout, FSA will accelerate or continue with acceleration of your FSA debts. This is a very severe action. FSA will take any of the actions listed above to collect on your debt.

*The Right Not to Be Discriminated Against*

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract.) You cannot be denied a loan because all or part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you can write the Secretary of Agriculture, Washington, DC 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing that this law is obeyed is the Federal Trade Commission, Washington, DC 20580. Sincerely,

Attachment 5-A—Notice of Intent To Accelerate or To Continue Acceleration and Notice of Borrowers' Rights

(To Be Used for Applications Submitted On or After November 28, 1990)

Name and Address

Dear (Borrower's Name):

You are not eligible for debt restructuring. I. [ ] FSA has reviewed your application for primary loan servicing (debt restructuring) and based upon the information available, you are not eligible.

Your Farm and Home Plan does not show you can pay all your family living expenses, farm operating expenses, and scheduled debt repayments even with FSA help.

The attached computer printout shows that in order to develop a feasible plan and receive primary loan servicing, you would need to increase your cash available to pay your debts by \$\_\_\_\_\_.

II. [ ] FSA has reviewed your application and your case file. Your Farm and Home Plans shows you can pay all of your family living expenses, farm operating expenses, and scheduled debt repayments if FSA uses primary loan servicing, softwood timber, and conservation contract programs to restructure your loans.

But you have not acted in good faith.

You have broken loan agreements with FSA in the following way:

[ ] You are \$\_\_\_\_\_ behind in your scheduled loan payments.

[ ] You have sold or otherwise disposed of property you used to secure the FSA loan without proper approval from FSA.

This property is \_\_\_\_\_

(Describe property.)

[ ] You no longer are farming or ranching.

[ ] You have \_\_\_\_\_

III. [ ] FSA has reviewed your application and case file. You have sufficient nonessential assets to bring your FSA account current. The net recovery value (NRV) of the nonessential assets is \$\_\_\_\_\_. Your nonessential assets and their NRVs are as follows:

Nonessential Assets \_\_\_\_\_

NRVs \_\_\_\_\_

The NRV is the current appraised market value minus any prior liens and any costs of sale such as taxes due, commissions and advertising costs.

The amount needed to bring your FSA account current is \$\_\_\_\_\_.

If you intend to sell the nonessential assets or borrow against their value to obtain the money to pay FSA current, you must do so immediately so that you can pay FSA current within 90 days from the date you receive this letter.

If you do not pay FSA current within 90 days or appeal this adverse decision (see part VI of this notice), FSA will accelerate your account (see part V). If you appeal the decision, the 90-day period to pay FSA current will not start until all the appeals are completed. You must check the appropriate block on the response form and return it to FSA within the specified time limit. Since FSA believes you have sufficient nonessential assets to bring your FSA account current, you are not now eligible for buyout (option 3 on Attachment 6-A). If you disagree, see part VI for an explanation of your rights.

IV. [ ] You have already received your lifetime limit of at least one form of debt forgiveness for which you are entitled.

[ ] Your writedown or writeoff of debt exceeded \$300,000.

V. FSA Intends to Foreclose

FSA will accelerate your loan because you are not eligible for primary loan servicing.

FSA will take legal action to collect the money you owe.

FSA may:

(1) Repossess and sell your equipment, crops, livestock, livestock products, and other personal property used to secure your FSA loan;

(2) Foreclose and sell your real estate mortgaged to FSA. This could include your dwelling, if it was used to secure your farm loan;

(3) Stop any release of money from the sale of crops, livestock, livestock products, or other property you need to live and operate your farm;

(4) Take by administrative offset any money you are owed by Federal agencies;

(5) File lawsuits to collect money you owe to FSA.

VI. What You Can Do To Stop Foreclosure

Before FSA can take action against you, you can:

- (1) Pay your FSA account current.  
 (2) Request a meeting with the FSA

servicing official.

If you disagree with FSA's decision that you broke your loan agreement or the decision not to give you debt restructuring, you should request a meeting with the FSA servicing official. The servicing official can explain the FSA decision. You can also present changes in your Farm and Home Plan which may show that you can make the amount of payment listed above in section I.

To ask for this meeting, check the box #1 on the Response Form: (Attachment 6-A).

Time limit: You must return the "Response Form" to the county FSA office within 15 days from the date you get this letter. You should also call the county office to set up the meeting.

- (3) Appeal.

You may appeal FSA's decision. On appeal, you may challenge the ways FSA says you broke your loan agreement. You may challenge FSA's decision that you cannot present a feasible Farm and Home Plan for primary loan servicing if your notice states FSA believes you cannot present a feasible plan. You may challenge FSA's decision that you are ineligible for debt restructuring because you have already received a writedown, buyout, or other form of debt forgiveness from FSA on another direct farm loan.

If you did not previously negotiate your appraisal, you may ask for an independent appraisal of your property including any nonessential assets that FSA says you own. This independent appraisal may be important if you think FSA has put too high or too low a value on your property. You will have to pay for this appraisal. The FSA servicing official will give you a list of three appraisers to choose from. Check box #2 on the "Response Form" if you want the independent appraisal. If the FSA appraisal contains mathematical or property description errors, you and the servicing official can make the necessary corrections if you both agree to such changes.

If you submit an independent appraisal and it is within five percent of the value of the FSA appraisal, you must select which of the two appraisals you want FSA to use for your request. This will be the final appraisal. It cannot be appealed.

If you request a meeting with the FSA servicing official, you will be given a chance to appeal after that meeting. If you do not want to request the meeting but do want to appeal, you must send a letter requesting appeal directly to the National Appeals Division, <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. A copy of your request should be sent to the FSA county office. Your request for an appeal must be postmarked no later than 30 days from the date you received this notice.

If you want to request a meeting and appeal at the same time, you must request the meeting on the "Response Form" and appeal in writing to NAD.

- (4) Buy Out the Loan at the Current Market Value.

You have this option if the recovery value is greater than the value of the restructured loan, you cannot repay your FSA debt due to circumstances beyond your control, and you have acted in good faith and tried to keep your loan agreements with FSA. The recovery value in this case is \$ \_\_\_\_\_. The restructured loan value is \$ \_\_\_\_\_.

In addition, buyout is subject to certain lifetime limitations regarding the maximum amount and number of benefits that can be received. A further explanation of these limits can be found in the Primary and Preservation Loan Service and Debt Settlement Programs Purpose notice which was sent to you earlier.

You [may] or [may not] buy out your FSA debt at the current market value of the property securing the loan and any nonessential assets, minus prior liens, in the amount of \$ \_\_\_\_\_. (This amount could change if the prior lien indebtedness changes before the buyout date.)

Note: The attached computer printout summarizes FSA's calculations.

If you are eligible and pay the buyout amount, FSA will write off the rest of your debt up to \$300,000.

*Time Limit.* If you are eligible and want to buy out your FSA debt, you must pay FSA the above amount within 90 days from the date you received this letter. You must pay FSA in cash, legal money order, or certified check.

If you appeal FSA's adverse decision, the 90-day period to buy out will not start until all of the appeals are completed. Check box #3 on the "Response Form" if you want to buy out.

- (5) Consideration for Homestead Protection and Debt Settlement.

After all appeals are concluded and your time to buyout, if eligible, has expired, FSA will automatically consider you for Homestead protection if your home is mortgaged to FSA. [You applied for this program when you applied for primary loan servicing (debt restructuring).] FSA will notify you that it will be considering you for this program and will request some additional information when the time comes to consider you. If you applied for Debt Settlement by returning Form FmHA 1956-1, will also consider you for this option at this time. If you did not apply for Debt Settlement before, you can apply now. Copies of Form FmHA 1956-1 are available at your FSA County Office.

#### VII. WHAT HAPPENS IF YOU DO NOT CURE THE DEFAULT OR BUYOUT?

If you do not cure the default or buyout, or if you do not respond to this letter by completing and returning the enclosed Attachment 6-A, FSA will accelerate or continue with acceleration of your FSA debts. This is a very severe action. FSA will take any of the actions listed in section V above to collect on your debt.

#### The Right Not To Be Discriminated Against

Federal law does not allow discrimination of any kind. You cannot be denied a loan

because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract.) You cannot be denied a loan because all or part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you can write to the Secretary of Agriculture, Washington, D.C. 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

#### Attachment 6—Response to Notice Informing Me of FSA'S Intent To Accelerate or Continue With Acceleration and Notice of My Rights

TO: Farm Service Agency

FROM: \_\_\_\_\_

(Please print your name and address.)

I have read the notice informing me of FSA's intent to accelerate or continue with acceleration of my loan which I received with this response form.

I want to:

[Check appropriate box or boxes.]

(1) Request a meeting with an FSA servicing official.

My current telephone number is \_\_\_\_\_.

I understand that I do not lose my appeal rights by asking for this meeting.

(2) Request an independent appraisal of my property that secures the FSA loans.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me the names of three appraisers, from which I must choose one.

(3) Buy out my loan at the current market value.

I understand that I must pay FSA \_\_\_\_\_ in cash, certified check, or legal money order. I understand I should contact the servicing official when I am ready to pay this amount as it may be different if my prior lien indebtedness changes before the buyout date. I understand that I must pay FSA within 45 days of the date I received this letter, or if I appeal, I must pay within 45 days from the adverse decision on appeal. I understand that if I pay this amount FSA will write off the rest of my debt.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Borrower's signature \_\_\_\_\_

Date \_\_\_\_\_

**Attachment 6-A— Response to Notice Informing Me of FSA'S Intent To Accelerate or Continue With Acceleration and Notice of My Rights**

TO: Farm Service Agency

FROM: \_\_\_\_\_  
(Please print your name and address.)

I have read the notice informing me of FSA's intent to accelerate or continue with acceleration of my loan which I received with this response form.

I want to:

[Check appropriate box or boxes.]

(1) Request a meeting with an FSA servicing official.

I must return this "Response Form" within 15 days to request a meeting.

My current telephone number is \_\_\_\_\_.

I understand that I do not lose my appeal rights by asking for this meeting.

(2) Request an independent appraisal of my property including any nonessential assets.

I must return this "Response Form" within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me names of three appraisers, from which I must choose one if I am also requesting an appeal.

(3) Buy out my loans at the current market value.

I understand that I must pay FSA \$\_\_\_\_\_ in cash, certified check, or legal money order. I understand I should contact the servicing official when I am ready to pay this amount as it may be different if my prior lien indebtedness changes before the buyout date. I understand that I must pay FSA within 90 days of the date I received this letter, or if I appeal the FSA decision, I must pay within 90 days from the end of the appeal of the FSA decision.

(4) Pay my FSA account current.

I understand that I must pay FSA \$\_\_\_\_\_ to pay my account current. I will pay this amount to FSA within 90 days of the date I received this letter, or if I appeal the FSA decision, I will pay within 90 days from the end of the appeal process on the FSA decision. I understand that when I pay this amount FSA will continue with my account.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Borrower's signature \_\_\_\_\_  
Date \_\_\_\_\_

**Attachments 7 and 8—Obsolete**

**Attachment 9—Notification of Intent To Accelerate or Continue Acceleration of Loans and Notice of Your Rights**

Name and Address

Date

Dear (Borrower's Name):

FSA will accelerate your loan because you have not asked or have not accepted the offer for primary loan service programs.

You can:

- (1) Ask for meeting with your FSA servicing official.
- (2) Appeal FSA's decision.
- (3) Ask to voluntarily convey to FSA the property used to secure your loan and ask to be released from your debt.
- (4) Ask to keep your home if the FSA acquires ownership of it.

You are behind with your payments to FSA, and a review of your account shows:

You are \_\_\_\_\_ behind in your FSA loan payments.

This is a violation of your loan agreement.

You have sold or otherwise disposed of property used to secure your FSA loan. You did not get written approval for this.

The property is \_\_\_\_\_

(Describe property.)

You are no longer farming or ranching.

This is a violation of your loan agreement.

You have \_\_\_\_\_

(Insert reason for proposed action.)

**FSA Will Accelerate Your Loans**

FSA will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. They may also stop the release of money from the sale of crops or other property. They will take by administrative offset any money you are owed by other Federal agencies.

**Steps You Can Take Before FSA Accelerates or Continues Acceleration of Your Loans**

(1) Ask for a meeting. You can ask to meet with your FSA servicing official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10 saying you want a meeting. [Attachment 10 is the "Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan."]

How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10. Return it to your county office. Do this as soon as possible.

(2) Appeal. You can ask for an administrative appeal. On appeal, you can contest FSA's decision to accelerate or continue acceleration of your loan. You can ask for an independent appraisal of your land. You will have to pay for this appraisal. FSA will give you three names of approved appraisers to choose from. Check box 3 if you want an independent appraisal.

You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting. However, you only have the

opportunity to appeal an issue once. For example, if you previously appealed or had the opportunity to appeal a favorable debt restructuring offer and were not successful on appeal, or did not appeal within the time allotted, you cannot appeal this offer again. You can ask for an appeal even if you do not have a meeting.

**How to Ask for an Appeal.** Your request for appeal must be in writing and sent directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

**What Happens if You Do Not Respond?** If you do not respond to this notice by filling out Attachment 10, or requesting an appeal, FSA will accelerate or continue acceleration of any loans. This means they will take legal action to collect the unpaid loan, including foreclosure as described above.

Note: Foreclosure means you lose the title to your land. But you can still apply for homestead protection to keep possession of your house. [See Exhibit A, Attachment 1 sent to you on \_\_\_\_\_. If you did not get these forms, contact your county office within 15 days of this notice.]

**The Right Not to Be Discriminated Against**

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract). You cannot be denied a loan because all or a part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you can write to the Secretary of Agriculture, Washington, D.C. 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

**Attachment 9-A—Notification of Intent To Accelerate or Continue Acceleration of Loans and Notice of your Rights**

(To Be Used for Borrowers Receiving Notices on or After November 28,1990)

Name and Address

Date

Dear (Borrower's Name):

FSA will accelerate your loan because you have not asked or have not accepted the offer for primary loan service programs.

You can:

- (1) Ask for meeting with your FSA servicing official.
- (2) Appeal FSA's decision.
- (3) Ask to voluntarily sign over to FSA the property used to secure your loan and ask to be released from your debt.

(4) Ask to keep your home if the FSA acquires ownership of it.  
 You are behind with your payments to FSA, and a review of your account shows:  
 You are \$\_\_\_\_\_ behind in your FSA loan payments.  
 This is a violation of your loan agreement.  
 You have sold or otherwise disposed of property used to secure your FSA loan. You did not get written approval for this.  
 The property is \_\_\_\_\_

(Describe property.)  
 You are no longer farming or ranching. This is a violation of your loan agreement.  
 You have \_\_\_\_\_

(Insert reason for proposed action.)

**FSA Will Accelerate Your Loans**

FSA will take legal action to collect the money you owe. They will foreclose on real estate and other property used to secure your loans. They may also stop the release of money from the sale of crops or other property. They will take by administrative offset any money you are owed by other Federal agencies.

**Steps You Can Take Before FSA Accelerates or Continues Acceleration of Your Loans**

(1) Ask for a meeting. You can ask to meet with your FSA servicing official before they decide to accelerate or continue acceleration of your loan. You must check the box on Attachment 10-A saying you want a meeting. [Attachment 10-A is the "Response to Notice of Intent to Accelerate or Continue Acceleration of My Loan."]

How Soon Must I Ask for a Meeting? You must ask for a meeting within 15 days from the date of this notice. Check the box on Attachment 10-A. Return it to your county office. Do this as soon as possible.

(2) Appeal. You can ask for an administrative appeal. On appeal, you can contest FSA's decision to accelerate or continue acceleration of your loan. You can ask for an administrative appeal, even if you have asked for a meeting and your problems were not resolved at that meeting. However, you only have the opportunity to appeal an issue once. For example, if you previously appealed or had the opportunity to appeal a favorable debt restructuring offer and were not successful on appeal, or did not appeal within the time allotted, you cannot appeal this offer again. You can ask for an appeal even if you do not have a meeting.

How to Ask for an Appeal. Your request for appeal must be in writing and sent directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. Mail a copy of your request to the FSA county office. Your request for appeal must be postmarked no later than 30 days from the date you receive this notice.

What Happens if You Do Not Respond? If you do not respond to this notice by filling out Attachment 10-A, or request an appeal, FSA will accelerate or continue acceleration of any loans. This means they will take legal

action to collect the unpaid loan, including foreclosure as described above.  
 Note: Foreclosure means you lose the title to your land. But you can still apply for homestead protection to keep possession of your house. [See Exhibit A, Attachment 1 sent to you on \_\_\_\_\_. If you did not get these forms, contact your county office within 15 days of this notice.]

**The Right Not To Be Discriminated Against**

Federal law does not allow discrimination of any kind. You cannot be denied a loan because of your race, color, religion, national origin, sex, marital status, handicap, or age (if you can legally sign a contract). You cannot be denied a loan because all or a part of your income is from a public assistance program. If you believe you have been discriminated against for any of these reasons, you should write to the Secretary of Agriculture, Washington, DC 20250.

You cannot be denied a loan because you exercised your rights under the Consumer Credit Protection Act. You must have exercised these rights in good faith. The Federal Agency responsible for seeing this law is obeyed is the Federal Trade Commission, Washington, DC 20580.

Sincerely,

**Attachment 10—Response to Notice Informing Me of FSA'S Intent To Accelerate or Continue To Accelerate My Loan**

**Notice of My Rights**

TO: Farm Service Agency

FROM: \_\_\_\_\_  
 (Please print your name and address.)

I want to: (Check one or more of the following boxes)  
 (1) Request a meeting with the FSA servicing official.

My telephone number is \_\_\_\_\_.

I understand I do not lose my right to appeal if I ask for a meeting.

(2) Voluntarily sign over to FSA all the property used to secure my loan and settle my debt.

(3) Request an independent appraisal of property securing my loans. I understand I must pay for this appraisal. I understand FSA will give me names of three qualified appraisers.

(4) Homestead Protection.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Signed \_\_\_\_\_  
 Date \_\_\_\_\_

**Attachment 10-A—Response to Notice Informing Me of FSA'S Intent To Accelerate or Continue To Accelerate My Loan**

(To Be Used for Borrowers Receiving Notices on or After November 28, 1990)

**Notice of My Rights**

TO: Farm Service Agency

FROM: \_\_\_\_\_  
 (Please print your name and address.)

I want to: (Check one or more of the following boxes)

(1) Request a meeting with the FSA servicing official.

My telephone number is \_\_\_\_\_.

I must return this form within 15 days.

I understand I do not lose my right to appeal if I ask for a meeting.

(2) Voluntarily sign over to FSA all the property used to secure my loan and settle my debt.

(3) Homestead Protection.

I understand that if I want to appeal FSA's decision to accelerate my loan, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice.

Signed \_\_\_\_\_  
 Date \_\_\_\_\_

20. Exhibit B is revised to read as follows:

**Exhibit B—Notification of Offer To Restructure Debt for Financially Distressed Borrowers Current on Their Loan Payments**

(Borrower's Name and Address)

(Date)

Dear (Borrower's Name):  
 We have determined that the Farm Service Agency (FSA) can approve your request for primary loan servicing programs.

Our calculations indicate that you will be able to make the necessary annual payment on your FSA loan if your loan is restructured through the use of primary loan servicing programs. The attached computer printout indicates the primary loan servicing program that will help you overcome your financial difficulty and provide the greatest net recovery to the Government. Therefore, We are offering to restructure your FSA debt in the following fashion:

\_\_\_\_\_  
 \* As a condition of this restructuring, you must agree to meet, at your own cost, FSA's training requirements which provide instruction in production and financial management within 2 years of the date your loans are restructured. The cost will be included in your farm plan as an operating expense. Upon completion of the training, the instructor will assign a score according to the following criteria:

Score

1 The borrower attended classroom sessions as agreed, satisfactorily completed all assignments, and demonstrated an understanding of the course material.

2 The borrower attended classroom sessions as agreed and attempted to complete all assignments; however, the borrower does not demonstrate an understanding of the course material.

3 The borrower did not attend classroom sessions as agreed or did not attempt to complete assignments. In general, the borrower did not make a good faith effort to complete the training.

Attached is a list of courses you will be required to complete to fulfill the training requirement. A list of approved vendors in your area for these courses is also attached. Any denial of a request for a waiver of the training requirement is not appealable. If you fail to complete the training as agreed, you will be ineligible for future FSA benefits including future direct and guaranteed loans, Primary Loan Servicing, Interest Assistance renewals, and restructuring of guaranteed loans.

\* The County Committee has waived the training requirement for the restructuring offered in this notice.

If you want FSA to use the primary servicing program identified on the computer printout, you must accept this offer in writing. Your acceptance must be received by FSA not later than 45 days from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled "Acceptance of Offer to Restructure my Debt."

If you do not accept this offer within 45 days, and your account becomes delinquent, FSA will renotify you of all servicing options available at that time.

Sincerely,

\* Indicates optional paragraphs to fit the individual circumstances.

**Attachment 1—Acceptance of Offer to Restructure My Debt**

(Date)

TO: Farm Service Agency

FROM: (Please print your name and address)

I have received your offer to restructure my FSA debt. I would like to accept that offer.

Sincerely,

(Borrower's signature)

(Date)

21. Exhibit C is revised to read as follows:

**Exhibit C—Net Recovery Buyout Recapture Agreement**

In consideration of the Farm Service Agency (FSA) allowing me to purchase the real estate property securing my FSA Farm Loan Programs loan obligations at the net recovery value of \$ \_\_\_\_\_ in accordance with 7 CFR part 1951, subpart S, I agree to pay to difference between the net recovery value of the security of \$ \_\_\_\_\_ and the fair market value of the real estate property of \$ \_\_\_\_\_ as of the date of this agreement, if I sell or otherwise convey the security

within 2 years of this agreement for an amount which exceeds the net recovery value. This amount is \$ \_\_\_\_\_. I further agree to give FSA a mortgage or deed of trust to secure this amount for the best lien obtainable which will be subordinate to any purchase money security instrument which does not exceed the fair market value of the property to enable the borrower to purchase the property from FSA at the net recovery value. This mortgage or deed of trust will be released 2 years from the date of this agreement if I do not sell or convey the property during the two year period.

I understand that the difference between the net recovery value of the real estate securing the FSA loan obligations and the fair market value of the real estate security specified above will all be due and payable on the day of sale or conveyance if I sell or otherwise convey the real estate property within two (2) years from the date of this agreement, if I realize a gain in this transaction.

Loan Balance \$ \_\_\_\_\_.

Amount of Buyout \$ \_\_\_\_\_.

Date of Agreement \_\_\_\_\_

Borrower \_\_\_\_\_

22. Exhibit C-1 is revised to read as follows:

**Attachment C-1—Net Recovery Buyout Recapture Agreement**

*Purpose*

This agreement with FSA will allow you to buy out your loan at the net recovery value.

1. I \_\_\_\_\_ understand and agree to the following conditions.

2. I will give FSA a lien (mortgage or deed of trust) on the FSA real estate security property I own to secure this agreement.

The lien is to secure the maximum recapture amount listed in item 6.c. of this agreement. This lien is secondary to the following liens, including any lien used to obtain the net recovery buyout amount up to the net recovery value.

(name, address, and unpaid balance of liens)

3. I agree that if I do not sell or convey any portion of the real estate used as security for 10 years, the agreement and any liability you have under it will be satisfied at the end of 10 years, and then FSA will release its lien.

Note: Convey includes, but is not limited to, any form of transfer in all or any portion of the real estate property, including sale, gift, Contract Sale or Purchase Agreement, foreclosure, and below-fair-market sale, but does not include a mortgage or deed of trust. Transfer of title to property to a spouse or child who is actively engaged in farming the property upon the death or retirement of a borrower will not be treated as a conveyance. In such a transaction, FSA will not release its lien, and the transferee will assume liability under the agreement.

4. I agree that as of the date of this agreement, the net recovery value of the real estate is \$ \_\_\_\_\_.

5. I agree that as of the date of this agreement, the total amount of the FSA debt

secured by real estate including principal and interest before buyout is \$ \_\_\_\_\_.

6. If I do sell or convey any part or all of this real estate within 10 years of this agreement, I must pay FSA the recapture amount for that part sold or conveyed which is the smaller of a., b., or c.

a. The Fair Market Value of the real estate parcel at the time of the sale or conveyance, as determined by an FSA appraisal, minus that portion of the recovery value of the real estate represented in item 4,

b. The Fair Market Value of the real estate parcel at the time of the sale or conveyance, as determined by an FSA appraisal, minus the unpaid balance of prior liens at the time of the sale or conveyance, minus the net recovery value of the real estate in item 4 if this amount has not been accounted for as a prior lien, or

c. The total amount of the FSA debt written off for loans secured by real estate.

I agree that the amount in Item 5 is the outstanding balance of principal and interest owed on the FSA Farm Loan Programs loans as of the date of this agreement, minus the net recovery value of the real estate in item 4. This amount is \$ \_\_\_\_\_ and is the maximum amount that can be recaptured.

7. When I pay the recapture amount due, FSA will release its lien on the property sold or conveyed. The agreement and any liability I have under it will be satisfied at the end of 10 years if I have made all the required payments under the recapture agreement. The agreement and any liability I have under it will be satisfied before this time only if I sell or convey all of the real estate securing this agreement and make all the required payments under the agreement.

8. This agreement is subject to FSA regulations in 7 CFR part 1951, subpart S, and any future regulations which are consistent with this agreement.

9. The date of this agreement is the latest date of the dates below.

Signed \_\_\_\_\_  
(borrower or obligor)

Date \_\_\_\_\_

Signed \_\_\_\_\_  
(borrower or obligor)

Date \_\_\_\_\_

(FSA)

Date \_\_\_\_\_

23. Exhibit E is revised to read as follows:

**Exhibit E—Notification of Adverse Decision for Primary Loan Servicing, Mediation or Meeting of Creditors and Other Options**

(Borrower's Name and Address)

Dear (Borrower's Name):

The Farm Service Agency (FSA) has carefully considered your request for primary loan servicing programs. Due to your debt with lenders other than FSA, you are unable to develop a feasible plan. Your Farm and Home Plan must show that you have enough income after payment of your essential living and operating expenses and other non-FSA debts to make an annual payment to FSA of at least \$ \_\_\_\_\_. The attached computer printout shows that in order to develop a feasible plan and receive primary

loan servicing, you would need to increase your cash available to pay FSA and your other debts by \$ \_\_\_\_\_.

If you did not previously request a Conservation Contract, you may request this servicing action by submitting a map or FSA aerial photo indicating that portion of the farm and the appropriate acres to be considered. You must submit this information to FSA within 30 days of receiving this notice.

(To be used when Certified State Mediation is available)

*Certified State Mediation*

We are requesting mediation under the (Name) State Certified Mediation Program. We will work with you and your creditors to determine if your debts can be adjusted sufficiently to permit you to develop a feasible plan of operation. If, with the adjustment of your debt, you are able to develop a feasible plan of operation which shows that you can make an annual payment to FSA of at least \$\_\_\_\_\_, FSA will reconsider your application for primary loan servicing.

(To be used when Certified State Mediation is not available and undersecured creditors have a substantial part of the total borrower's debt.)

*Meeting of Creditors*

If you request, we will schedule a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts sufficiently to permit you to develop a feasible plan of operation. The FSA State Executive Director will contract for a mediator or appoint an FSA representative not previously involved in servicing of your account upon your written request to participate in the meeting with creditors. Sign the attached acknowledgement within 30 days of the date of this letter. The acknowledgment will be your written request and consent to FSA releasing information concerning your account to other creditors who participate in the meeting.

(To be used when Certified State Mediation is not available and undersecured creditors do not hold a substantial part of the total borrower's debt.)

We will not be scheduling a meeting with you and your other creditors in an effort to reach agreements with them to adjust your debts. We have determined that your other creditors do not hold a sufficient amount of your total debt to permit you to develop a feasible plan of operation even if their debts are entirely written off. You may object to our determination not to give you a voluntary meeting of creditors in any appeal you may have. You will be notified of your appeal rights in a later notice.

(The following paragraphs will be removed if the application was submitted before November 28, 1990, or the borrower does not have any nonessential assets.)

*Nonessential Assets*

FSA has determined that you have nonessential assets that do not contribute income to pay essential family living and farm operating expenses. The net recovery value (NRV) of the nonessential assets has been added to the NRV of the FSA collateral

for the calculation on the attached printout. The NRV of the nonessential assets is \$ \_\_\_\_\_. Your nonessential assets and their NRVs are as follows:

*Nonessential Assets*

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*NRVs*

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

FSA encourages you to sell the nonessential assets or borrow against their value. If you pay the NRV of the nonessential assets on your FSA debt, that amount will be subtracted from your debt and FSA will reevaluate your servicing request. If you are going to pay FSA the NRV of your nonessential assets, you must do so within 45 days of the date of receiving this letter. You must check the appropriate block on the response form and return it to FSA within 45 days with \$\_\_\_\_\_ for payment of the NRV of the nonessential assets. If you want to reduce the NRV, you must pay FSA before any mediation or meeting of creditors.

If you wish to dispute FSA's decision that you own nonessential assets, you will be given the opportunity to appeal if mediation or the meeting of creditors is unsuccessful. If mediation or a meeting of creditors is not held, you will be notified of your appeal rights in a later notice.

*Negotiation of the Appraisal*

If you object to the FSA appraisal of your property, you may ask the FSA by returning the "Response Form" to negotiate the appraisal with you. You must ask to negotiate the FSA appraisal within 30 days from the date you receive this notice. To do this you must provide FSA with a copy of your current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FSA regulations.

If you do not have a current independent appraisal and wish FSA to assist you, check option 2 of the "Response Form" and FSA will provide you with a list of such appraisers.

You must provide FSA a copy of your independent appraisal within 30 days of requesting negotiation.

If your current independent appraisal is within five percent of the FSA appraisal, you must select which appraisal of the two you want FSA to use in processing your request. The appraisal you select will be the final appraisal. It cannot be further negotiated or appealed. If the difference is more than five percent and you have requested a negotiated appraisal, you and FSA will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. FSA will pay for the other half of the third appraisal. You, the appraiser and the servicing official must complete and sign an appraisal agreement. Following the completion of the third appraisal, the average of the two appraisals

that are closest in value, as determined by FSA, shall establish the appraised value to be used. This final negotiated appraisal is not appealable. Do not select this option of the "Response Form" if you and FSA have already negotiated your appraisal.

If you choose not to negotiate and wish to dispute FSA's appraisal, you will be given the opportunity to appeal in a later notice. If you believe there are mathematical or property description errors in the appraisals, you should immediately contact the servicing official. If you and the servicing official agree, the corrections will be made and initialed by both you and the servicing official.

If you want information on the requirements of an FSA appraisal, you may request a copy of the FSA appraisal regulations from the servicing official.

Sincerely,

*Attachment*

*Attachment 1—Borrower's Request for Meeting of Creditors and Acknowledgment*

I have been given a notice explaining that I am not eligible for primary loan service programs. FSA has told me that due to my debt with other lenders it does not believe I can develop a feasible plan. I request that you schedule a meeting with my undersecured creditors to assist me in developing a feasible plan of operation. I consent to FSA releasing information concerning my FSA account to these creditors to assist me in developing a feasible plan.

(Date) \_\_\_\_\_

(Borrower's signature) \_\_\_\_\_

*Attachment 2—Borrower's Request for Meeting of Creditors or Request to Negotiate the FSA Appraisal and Acknowledgment*

I have been given a notice explaining that I am not eligible for primary loan service programs.

I want to:

[Check the appropriate box or boxes.]

(1) Request an independent appraisal of my property including any nonessential assets.

I must return this "Response Form" within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me a list of appraisers.

If the independent appraisal is within five percent of the FSA appraisal, I must select which of the two appraisals I want to be used for processing my request.

(2) Request Negotiation of the Appraisal.

I must return this "Response Form" within 30 days to request a negotiation of my appraisal.

I understand that I must provide FSA with a copy of my independent appraisal within 30 days of requesting negotiation. I understand that I must pay for this appraisal and one-half of a third appraisal, if necessary. I understand that FSA will not negotiate the appraisal more than once.

(3) I request a copy of the recent FSA appraisal of my property.

(4) I am paying FSA the net recovery value of any nonessential assets that FSA has

said I own. I will pay this amount within 45 days.

Please recalculate the restructuring of the FSA debt.

\* [ ] (5) Request that you schedule a meeting with my undersecured creditors to assist me in trying to develop a feasible plan of operation. I consent to FSA releasing information concerning my FSA account to these creditors to assist me in developing a feasible plan. I must return this "Response Form" within 30 days if I want a meeting. (Date) \_\_\_\_\_

(Borrower's signature) \_\_\_\_\_

\* Optional paragraph depending on the circumstances.

24. Exhibit F is revised to read as follows:

**Exhibit F—Notification of Offer to Restructure Debt**

(Borrower's Name and Address)

Date

Dear (Borrower's Name):

We have determined that the Farm Service Agency (FSA) can approve your request for primary loan servicing programs.

*Offer*

Our calculations indicate that you will be able to develop a feasible plan and make the necessary annual payment on your FSA loan if your loan is restructured in the following fashion:

\_\_\_\_\_

The attached computer printout indicates the primary loan servicing program that will keep you on the farm and provide the greatest net recovery to the Government.

\* Our calculations indicate that a feasible plan can be found with or without a writedown, as described below. However, with a writedown, your cash flow margin would be \_\_\_\_\_ percent, whereas without a writedown, your cash flow margin would only be \_\_\_\_\_ percent. You can choose to accept the restructuring offer with or without a writedown on the attached response form. If you choose a writedown, you will not be able to receive future loans through FSA, except for annual operating loans.

\* As a condition of this restructuring, you must agree to meet, at your own cost, FSA's training requirements which provide instruction in production and financial management within 2 years of the date your loans are restructured. The cost will be included in your farm plan as an operating expense. Upon completion of the training, the instructor will assign a score according to the following criteria:

**Score**

- 1 The borrower attended classroom sessions as agreed, satisfactorily completed all assignments, and demonstrated an understanding of the course material.
- 2 The borrower attended classroom sessions as agreed and attempted to complete all assignments; however, the borrower does not demonstrate an understanding of the course material.
- 3 The borrower did not attend classroom sessions as agreed or did not attempt to

complete assignments. In general, the borrower did not make a good faith effort to complete the training.

Attached is a list of courses you will be required to complete to fulfill the training requirement. A list of approved vendors in your area for these courses is also attached. Any denial of a request for a waiver of the training requirement is not appealable. If you fail to complete the training as agreed, you will be ineligible for future FSA benefits including future direct and guaranteed loans, Primary Loan Servicing, Interest Assistance renewals, and restructuring of guaranteed loans.

\* The County Committee has waived the training requirement for the restructuring offered in this notice.

If you want FSA to use the primary servicing program identified on the computer printout to restructure your debt, you must accept this offer in writing. Your acceptance must be received by FSA no later than 45 days from your receipt of this letter. You may accept this offer in writing by signing and returning the attached form titled "Acceptance of Offer to Restructure my Debt."

*\* Nonessential Assets*

FSA has determined that you have nonessential assets that do not contribute a net income to pay essential family living expenses or maintain a sound farming operation. The net recovery value (NRV) of the nonessential assets has been added to the NRV of the FSA collateral for the calculation on the attached printout. The NRV of the nonessential assets is \$ \_\_\_\_\_. Your nonessential assets and their NRVs are as follows:

**Nonessential Assets**

_____
_____
NRVs _____
_____
_____

FSA encourages you to sell the nonessential assets or borrow against their value. If you pay the NRV of the nonessential assets, the amount will be subtracted from your debt and FSA will recalculate the value of your FSA debt. If you are going to pay FSA the NRV of your nonessential assets, you must do so within 45 days of the date of receiving this letter. You must check the appropriate block on the response form and return it to FSA within 45 days with your payment for the NRV of the nonessential assets of \$ \_\_\_\_\_.

If you wish to dispute FSA's decision that your own nonessential assets or disagree with the offer presented, you may request a meeting and/or an appeal.

*Negotiation of the Appraisal*

If you object to the FSA appraisal of your property, you may ask the FSA to negotiate the appraisal with you by returning the "Response Form." You must ask to negotiate the FSA appraisal within 30 days from the date you receive this notice. To do this, you must provide FSA with a copy of your

current independent appraisal or you must now obtain, at your cost, an independent appraisal of your property. The appraisal and the appraiser must meet certain standards published in FSA regulations.

If you do not have a current appraisal and wish FSA to assist you, check option 2 of the "Response Form" and FSA will provide you with a list of such appraisers.

You must provide FSA a copy of your independent appraisal within 30 days of requesting negotiation.

If your current independent appraisal is within five percent of the FSA appraisal, you must select which appraisal of the two you want FSA to use in processing your request. The appraisal you select will be the final appraisal. It cannot be further negotiated or appealed. If the difference is more than five percent and you have requested a negotiated appraisal, you and FSA will choose an independent appraiser to complete a third appraisal. You must pay one-half of the cost of the third appraisal. You, the appraiser and the servicing official must complete and sign an appraisal agreement for this appraisal. FSA will pay for the other half of the third appraisal. Following the completion of the third appraisal, the average of the two appraisals that are closest in value, as determined by FSA, shall establish the appraised value to be used. This final negotiated appraisal is not appealable. Do not select this option on the "Response Form" if you and FSA have already negotiated your appraisal.

If you wish to dispute FSA's appraisal, but do want to reach agreement with FSA by negotiating the appraisal, you may also request a meeting or appeal of other items of the decision that you do not agree with by checking the appropriate box on the attached response form. If you believe there are mathematical or property description errors in the appraisals, you should immediately contact the servicing official. If you and the servicing official agree, the corrections will be made and initialed by both you and the servicing official.

If you want information on the requirements of an FSA appraisal, you may request a copy of the FSA appraisal regulations from the servicing official.

*What Happens If You Do Not Accept the Offer*

If you do not accept the restructuring offer on page 1, FSA will deny your request for primary loan servicing and send you an additional notice stating that FSA intends to liquidate your account. You can appeal FSA's offer by sending a letter requesting appeal directly to the National Appeals Division, (NAD), <NAD Area Director's address>. Your letter must describe FSA's decision and why you believe the decision was not correct. In order for this decision to be changed, you will have to show why the decision should be reversed. A copy of your request should be sent to the FSA county office. Your request must be postmarked no later than 30 days from the date you received this notice.

**YOU MAY HAVE A FEDERAL INCOME TAX LIABILITY IF FSA RESTRUCTURES YOUR FSA INDEBTEDNESS WITH A**

WRITEDOWN. YOU SHOULD CONTACT THE INTERNAL REVENUE SERVICE (IRS) FOR INFORMATION.

Sincerely,

\* Optional paragraphs depending on circumstance.

#### Attachment 1—Acceptance of Offer To Restructure My Debt

TO: Farm Service Agency

FROM: (Please print your name and address)

I have received your offer to restructure my FSA debt.

I would like to accept that offer.

Sincerely,

(Borrower's signature)

(Date) \_\_\_\_\_

#### Attachment 2—Acceptance of Restructuring Offer, Request To Negotiate Appraisal or Pay FSA the NRV of Nonessential Assets

(This Attachment Will Be Used Instead of Attachment 1 for Borrowers Who Submitted Applications On or After November 28, 1990)

TO: Farm Service Agency

FROM: (Please print your name and address)

I have received your offer to restructure my FSA debt.

(Check the appropriate blocks.)

\*  (1) I accept FSA's offer to restructure my debt. I understand that I must accept FSA's offer within 45 days of receiving Exhibit F.

\*  (1) I accept FSA's offer to restructure my debt as follows: (Put an "X" in Block (a) or (b).) I understand I must accept FSA's offer within 45 days of receiving Exhibit F.

(a)  With a writedown giving me a higher cash flow margin than without a writedown.

(b)  Without a writedown giving me a lower cash flow margin than if I would take the writedown.

(2) I request an independent appraisal of my property including any nonessential assets. If the difference between my independent appraisal and the FSA appraisal is not more than five percent, I understand that I must select which of the two appraisals I want to be used for reconsidering my request. In such a case, there will not be an appeal of the appraisal or any further negotiation of the appraisal.

I must return this "Response Form" within 30 days to request an independent appraisal.

I understand that I must pay for this appraisal. I understand that the FSA servicing official will give me a list of appraisers.

(3) I request a copy of the FSA recent appraisal of my property.

(4) Request Negotiation of the Appraisal.

I must return this "Response Form" within 30 days to request a negotiation of my appraisal.

I understand that I must provide FSA with a copy of my independent appraisal within 30 days of requesting negotiation. I understand that I must pay for this appraisal plus one-half of a third appraisal, if

necessary. I understand that FSA will not negotiate the appraisal more than once.

(5) I intend to pay FSA the net recovery value of any nonessential assets that FSA has said I own.

I understand that I must pay the net recovery value of the nonessential assets within 45 days of receiving Exhibit F.

I understand that if I want to appeal FSA's offer to restructure, I must send a letter requesting an appeal to the National Appeals Division. My letter must describe FSA's decision and why I believe the decision was not correct. I should also send the FSA county office a copy of my appeal request. I understand that I will be contacted by the National Appeals Division to set up the appeal hearing date and give me more information. My request for an appeal must be postmarked no later than 30 days from the date I received this notice. If possible, I should submit a copy of my independent appraisal to the FSA servicing official and the hearing officer prior to the appeal hearing if I am appealing the appraisal.

Sincerely,

(Borrower's signature)

(Date) \_\_\_\_\_

\* Optional paragraphs depending on the circumstance.

25. Exhibit H is revised to read as follows:

#### Exhibit H—Conservation Contract Program

##### I. General

A Conservation Contract (CC) may be exchanged, when requested by a borrower (current or delinquent), for a cancellation of a portion of the borrower's FSA indebtedness. The CC may be considered alone, or with other Primary Loan Servicing Programs as set forth in 7 CFR 1951.909. These contracts can be established for conservation, recreational, and wildlife purposes on farm property that is wetland, wildlife habitat, upland or highly erodible land. Such land must be suitable for the purposes involved. All Farm Loan Programs loans which are secured by real estate may be considered for a CC. Non-program loan debtors are not eligible to receive any benefits under this section.

##### Definitions

(1) *Conservation purposes.* These include protecting or conserving any of the following environmental resources or land uses:

(a) *Wetland*, except when such term is part of the term *Converted wetland*, is land that the Natural Resources Conservation Service (NRCS) has determined has a predominance of hydric soils and that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

(i) *Hydric soils* means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation;

(ii) *Hydrophytic vegetation* means a plant growing in—

(A) Water; or

(B) A substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content;

(b) *Highly erodible land* is land that NRCS has determined has an erodibility index of 8 or more.

(c) *Upland* is a term used in the law to refer to land other than highly erodible land and wetland. Although upland in its normal use implies many types of land, it has been more narrowly defined for this purpose to include land or water areas that meet any one of the following criteria:

(i) One-hundred year floodplain,

(ii) Aquatic life, or wildlife habitat or endangered plant habitat of local, regional, State or Federal importance,

(iii) Aquifer recharge area of local, regional or State importance, including lands in the wellhead protection program for public water supplies authorized by the Safe Drinking Water Act Amendments of 1986,

(iv) Area of high water quality or scenic value,

(v) Area containing historic or cultural property, which is listed in or eligible for the National Register of Historic Places, as provided by the National Historic Preservation Act (NHPA),

(vi) Area that provides a buffer zone necessary for the adequate protection of proposed conservation contract areas,

(vii) Area within or adjacent to a National Park, U.S. Fish and Wildlife Service administered area, State Fish and Wildlife agency administered area, a National Forest, a Bureau of Land Management administered area, a Wilderness Area, a National Trail, a unit of the Coastal Barrier Resource System, abandoned railroad corridors contained in local, State or Federal open space, recreation or trail plans, Federal or State Wild or Scenic River, U.S. Army Corps of Engineers land designated for flood control or recreation purposes, State and local recreation, natural or wildlife areas or State Conservation Agency administered areas.

(viii) Area that NRCS determines contains soils that are generally not suited for cultivation such as soils in land capability classes IV, V, VI, VII or VIII in the NRCS's Land Capability Classification System.

(d) *Wildlife habitat* is a term used to include the area that provides direct support for given wildlife species, species life stages, populations, or communities determined appropriate by the Conservation Agency within the State as being of State, regional or local importance or as determined by the Fish and Wildlife Service to be of national importance. This wildlife habitat area includes all acceptable environmental features such as air quality, water quality, vegetation, and soil characteristics.

(2) *Management authority.* Any agency of the United States, a State, or a unit of local Government of a State, a person, or an

individual that is designated in writing by FSA to carry out all or a portion of the activities necessary to manage and implement the terms and conditions of a contract or its management plan. The borrower whose land is subject to the contract may be eligible to be designated as a management authority.

(3) *Person*. Any agency of the United States, a State, a unit of local Government within a State, or a private or public nonprofit organization.

(4) *Recreational purposes*. These activities include providing public use for both consumption (e.g. hunting, fishing) and nonconsumption (e.g. camping, hiking) recreational activities, in a manner that conserves wildlife and their habitats, ensures public safety, complies with applicable laws, regulations, and ordinances and permits the operation of the remaining farm enterprise.

(5) *Wildlife*. Means any wild animal, whether alive or dead, including any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring.

(6) *Wildlife purposes*. These program objectives include establishing and managing areas that contain fish and wildlife habitats of local, regional, State or Federal importance.

## II. Eligibility

The following steps must be taken to determine if the borrower is eligible for a conservation contract. If the borrower is found to be ineligible, the FSA servicing official will notify the borrower of the opportunity to appeal the adverse decision on the eligibility for the contract after a final decision is made on whether the borrower qualifies for any other servicing options. The servicing official must find that:

(1) All Farm Loan Programs loans which are secured by real estate may be considered for a CC. A real estate mortgage or deed of trust taken on a borrower's real estate as additional security for a Farm Loan Programs loan qualifies as real estate security.

(2) The proposed contract helps a qualified borrower to repay the loan in a timely manner.

(3) If the land being proposed for the contract is within the FSA Conservation Reserve Program, both the requirements of that program and this section can be met.

## III. Establishing the Contract Review Team

The servicing official will establish a contract review team by notifying the appropriate field offices of the Natural Resources Conservation Service (NRCS), U.S. Fish and Wildlife Service (FWS), State Fish and Wildlife Agencies, Conservation Districts, National Park Service, Forest Service (FS), State Historic Preservation Officer, State Conservation Agencies, State Environmental Protection Agency, State Natural Resource Agencies, adjacent public landowner, and any other entity that may have an interest and qualifies to be a management authority for a contract. The notified parties may in turn notify other eligible entities. NRCS, for example, may

want to notify the appropriate Conservation District. As part of the notification, the servicing official will provide an approximate location and a general description of the potentially affected land. All notified parties will be invited to serve on the contract review team.

## IV. Responsibilities of the Contract Review Team

NRCS will lead the contract review team which in every case will be composed of an NRCS, FSA and FWS representative, plus all other parties that accepted the invitation to participate. To the extent practicable, a site visit will be conducted within fifteen days from the date the review team members are invited to participate. Any lien holder and the borrower will be informed of the site visit time and invited to attend. Within thirty days after the site visit, a report will be developed by the review team and provided to the servicing official. The report will cover the items listed in paragraphs (A) through (F) of this paragraph and will be prepared by the review team. The items to be addressed in the review team report are:

(A) The amount of land, if any, which is wetland, wildlife habitat, upland or highly erodible land and the approximate boundaries of each type of land. If applicable, contract boundaries may be recommended which go beyond the wetland, upland, or highly erodible land but are necessary for either the establishment of identifiable contract boundaries or are required for the efficient management of the contract's terms and conditions.

(B) A finding of whether the land is suitable for conservation, recreation or wildlife habitat purposes and a priority ranking of purposes included, if the land can be so classified and ranked.

First, priority will be given to land contract opportunities to benefit wildlife species of Federal Trust responsibility (e.g., migratory birds and endangered species) and their habitats (e.g., wetlands). Special consideration will be given to opportunities to benefit a combination of conservation, recreation and wildlife habitat purposes. When there are other land contracts already established or under review within the local area and the intent of these contracts has been established, the review team will consider these actions as purpose rankings are developed.

(C) If appropriate, any special terms or conditions that would need to be placed on the contract plus unique or important features of the property which would not be adequately addressed by the standard contract terms and conditions.

(D) A proposed management plan consistent with the purpose or purposes for which the contract would be established. The management plan will outline the various management alternatives for the proposed contract. The selection of the alternatives to be followed will be based upon future needs, fund availability, and identification within the management plan. The management plan will provide guidance as to the conservation practices to be followed and the costs which may occur in the establishment and maintenance of the contract. This

management plan will specifically recommend whether or not public recreational use and public hunting should be allowed on the contract and provide supporting reasons for the recommendation made. Whenever changes are required in the management plan, FSA, may update the management plan to reflect the changes.

## V. FSA's Review of Contract Team's Report

Upon receipt, the Servicing Official will review the contract team's report. If the report indicates that a contract is not feasible given the nature of the land, or other factors, the servicing official will inform the borrower of the reasons that the contract has been denied and that the borrower may appeal the denial of the contract or meet with the servicing official.

## VI. Terms of Contracts

Borrowers participating in the debt cancellation conservation contract program will be given the option of selecting a 50, 30 or 10 year contract term. The amount of debt to be canceled will be directly proportional to the length of the contract. The area placed under the conservation contract cannot be used for the production of agricultural commodities during the term of the contract.

## VII. Determining the Amount of Farm Loan Programs (FLP) Debt That Can Be Canceled

(A) Calculate the amount of debt to be canceled for a delinquent borrower as follows:

(1) *Step 1*. Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP loans by dividing the contract acres that secure the borrower's FLP loans by the total acres that secure the borrower's FLP loans.

*Contract acres divided by Total Farm and Ranch Acres = Percent of Contract Acres to Total Acres.*

(2) *Step 2*. Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by FSA) by the percentage calculated in step 1. *Total FLP Debt × Percent Calculated in step 1 =*

(3) *Step 3*. Determine the current value of the land in the contract by multiplying the present market value of the farm that secures the borrower's FLP loans by the percent calculated in step 1. *PMV of Total Farm × Percent Calculated in step 1 =*

(4) *Step 4*. Subtract the current value of the contract acres in step 3 from the FLP debt that is secured by the contract acres in step 2. *Result from step 2 – Result from step 3 =*

(5) *Step 5*. Select the greater of the amounts calculated in step 3 and step 4.

(6) *Step 6*. Select the lesser of the amounts calculated in steps 2 and 5. This will be the maximum amount of debt that can be canceled for a 50-year contract term.

(7) *Step 7*. For a 30-year contract term, the borrower will receive 60 percent of the amount calculated in step 6. *Result from Step 6 × 60% =*

(8) *Step 8*. For a 10-year contract term, the borrower will receive 20 percent of the

amount calculated in step 6. *Result from Step 6*  $\times 20\%$  = \_\_\_\_\_

(B) Calculate the amount of debt to be canceled for a current borrower as follows:

(1) *Step 1.* Determine what percent the number of contract acres is of the total acres of land that secures the borrower's FLP loans by dividing the contract acres that secure the borrower's FLP loans by the total acres that secure the borrower's FLP loans. *Contract Acres* divided by *Total Farm and Ranch Acres* = \_\_\_\_\_%

(2) *Step 2.* Determine the amount of FLP debt that is secured by the contract acreage by multiplying the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by FSA) by the percentage calculated in step 1. *Total FLP Debt*  $\times$  *Percent Calculated in step 1* = \_\_\_\_\_

(3) *Step 3.* Multiply the borrower's total unpaid FLP loan balance (principal, interest and recoverable costs already paid by thirty-three (33) percent. *Total FLP Debt*  $\times 33\%$  = \_\_\_\_\_

(4) *Step 4.* Select the lessor of the amounts calculated in steps 2 and 3. This is the maximum amount of debt that can be canceled for a current borrower receiving a 50-year contract.

(5) *Step 5.* For a 30-year contract term, the borrower will receive 60 percent of the amount calculated in step 4. *Amount calculated in step 4*  $\times 60\%$  = \_\_\_\_\_

(6) *Step 6.* For a 10-year contract term, the borrower will receive 20 percent of the amount calculated in step 4. *Amount calculated in Step 4*  $\times 20\%$  = \_\_\_\_\_

(C) *Feasibility of debt cancellation.* The servicing official will determine whether or not the borrower, if provided the amount of debt cancellation allowed by paragraph (VII) coupled with other servicing options will be able to develop a feasible plan for farm operations for the current and coming year. In no instance will the total debt cancellation exceed the maximum amount calculated in paragraphs (A) or (B) above. If the borrower would not be able to develop a feasible plan, the servicing official will notify the borrower of the reason that the contract has been denied and that the borrower may appeal this adverse decision after the servicing official has decided whether the borrower qualifies for the additional servicing programs in this subpart.

(D) *The boundaries of the contract area will be determined by the most appropriate method including rectangular surveys, and aerial photographs.* A professional survey of the contract area will not be required but can be used where needed.

(E) *Reaching an agreement with the borrower.* The borrower will be informed of the contract's value, the impact on the remaining financial obligation, and the terms and conditions of the contract. The borrower also will be provided a copy of the contract review team's report. If the borrower decides to enter into the contract, approval will be made by the servicing official, and the borrower by signing Form FSA 1951-39.

(F) *Recording of noncash credit.* The total credit to the borrower's account will not exceed the greater of the value of the land on which the contract is acquired; or the

difference between the amount of the outstanding indebtedness secured by the real estate, and the value of the real estate taking into consideration the term of the contract. In the case of a non-delinquent borrower, the amount to be credited will not exceed 33 percent of the amount of the loan secured by the real estate on which the contract is obtained taking into consideration the term of the contract. In all cases, the amount credited will be applied on the FSA loan as an extra payment in order of lien priority on the security. The loan may be reamortized if needed for both current and delinquent borrowers.

(H) *Contract Records.* If State law allows, the CC will be recorded in the real estate records.

#### VIII. Violation of Terms and Conditions

If the borrower violates any of the terms or conditions of the contract, the violations will be handled in accordance with the provisions outlined in the contract.

#### IX. Authorization Requests

When under the circumstances stated in the contract's terms and conditions (Form FSA 1951-39), the grantor needs the Government's written authorization to proceed with an action, a written request for such authorization must be provided by the grantor to the servicing official. In order to provide the requested written authorization, the servicing official must determine that the request does not violate the contract's terms and conditions and must receive the written concurrence of the enforcement authority.

26. Exhibit J-1 is revised to read as follows:

**EXHIBIT J-1—The Debt and Loan Restructuring System (DALRS) (For applications filed for primary loan servicing on or after November 28, 1990)**

#### I. INTRODUCTION TO DALRS.

Farm Service Agency (FSA) primary loan service programs provide a large number of alternatives for restructuring an agency loan. Additionally, borrowers may request consideration for the Softwood Timber (ST) and Conservation Contract (CC) Programs. The number of loans a borrower has increases the number of combinations of possible servicing alternatives. It is difficult and virtually impossible to manually calculate all the potential combinations of servicing actions. To assure that all the various possible combinations of programs are considered, FSA has developed the Debt and Loan Restructuring System (DALRS) for operation on the county office computer system.

DALRS is a menu driven computerized support tool that assists FSA field offices in determining and evaluating the effects of primary loan servicing in accordance with 7 CFR part 1951, subpart S. DALRS will complete a series of mathematical calculations based on information regarding the borrower's cash flow and loan status obtained from the borrower's case file. This information is used in attempting to restructure the borrower's debt and maximize their repayment ability, while avoiding or

minimizing loss to the Government. DALRS will provide a printed summary of the computations and outcome of the calculations.

FSA personnel will not manually perform the calculations in this exhibit. This exhibit is provided as a benefit to those who may want to perform manual calculations, or understand the procedures DALRS utilizes during the execution of the program.

#### II. ADVANTAGES OF DALRS

The DALRS system provides the following benefits to FSA borrowers:

A. *Speed of Calculation*—Calculations which would take hours or days are reduced to minutes. This not only speeds the processing of servicing requests, but provides the flexibility to consider several alternative plans of operation within the same time constraints.

B. *Consistency*—The use of DALRS assures that the feasibility of all requests for primary loan servicing will be evaluated on using the same calculation methods.

C. *Full Consideration*—DALRS considers primary loan service programs and combinations of those programs for every borrower entered into the system. Thus, borrowers can be assured that they will be considered for as many of these actions as necessary to develop a feasible plan, if a feasible plan is possible.

D. *Reduction of Errors*—Use of DALRS greatly reduces the potential for errors and inadvertent denial of assistance due to those errors. DALRS eliminates errors in the calculations. The only potential errors related to the calculations are input errors, which are much easier to detect and correct than calculation errors. However, DALRS results are only as reliable as the input data.

#### IV. OVERVIEW

When computing debt restructuring, DALRS will consider all primary loan service programs, if necessary in attempting to develop a feasible plan. A combination of loan service programs may be necessary. DALRS will consider each combination until a feasible plan is developed, or it is determined that a feasible plan is not possible with full utilization of primary loan servicing, ST and CC.

DALRS will attempt to provide the maximum margin available up to ten percent above the total amount needed for payment of farm operating, family living expenses and debt repayment after restructuring. If a feasible plan cannot be developed, DALRS will determine if the writeoff with market value buyout (less prior liens) is less than or equal to the statutory ceiling for writedown and writeoff. A DALRS report can be printed which will detail the offer to restructure the borrower's FSA debt, offer to buyout the FSA Farm Loan Programs (FLP) loans at the market value, less prior liens, or inform the borrower that the borrower is not eligible for primary loan servicing or debt forgiveness.

The DALRS calculations proceed in the following general order:

A. DALRS calculates the net recovery value (NRV) for FSA security and nonessential assets.

B. DALRS computes new loan and annual operating expense payments at regular interest rates.

C. DALRS applies loan payments that will pay loans in full on the proposed restructure date.

D. DALRS considers conservation contract, if requested, to the maximum extent permitted under the regulations. Conservation contract (CC) will not be provided unless a feasible plan is developed after considering CC and other loan servicing options.

E. DALRS reschedules or reamortizes all delinquent loans at the maximum term with an interest rate at the lower of the original note rate or current loan program rate. Limited resource rate loans will be rescheduled or reamortized at the lower of the original note rate or the current limited resource loan rate. After rescheduling or reamortizing all delinquent loans, DALRS will determine if a feasible plan has been developed with the appropriate debt service margin.

F. DALRS reschedules or reamortizes non-delinquent loans at the maximum term and with an interest rate at the lower of the original note rate or the current loan program rate. Limited resource rate loans will be rescheduled or reamortized at the lower of the original note rate or the current limited resource rate. Non-delinquent loans are rescheduled or reamortized one loan at a time until a feasible plan is developed with the appropriate debt service margin, or until all non-delinquent loans have been processed.

G. DALRS reschedules or reamortizes limited resource eligible loans at the maximum term and with an interest rate at the lower of the original note rate or the current limited resource program interest rate. Limited resource eligible loans are rescheduled or reamortized one at a time until a feasible plan has been developed with the appropriate debt service margin, or all limited resource eligible loans have been processed.

H. DALRS reschedules or reamortizes unequal payment loans at the maximum term and with an interest rate at the lower of the original note rate or the current loan program rate (limited resource, if applicable). Unequal payment loans are rescheduled or reamortized one at a time until a feasible plan has been developed with the appropriate debt service margin, or all unequal payment loans have been processed.

I. DALRS determines the cash available to repay the FSA debt for the first year and the year after the deferral period by subtracting non-FSA payments, farm operating expenses, excluding interest, and family living expenses from the adjusted balance available. If the first year cash available is negative, DALRS will proceed with paragraph M of this section. If the first year cash available is positive and less than the cash available for the year after the deferral period, DALRS will consider loan deferral. Loans will be selected for deferral so as to minimize the debt repayment in the year after the deferral period. If the full deferral of a loan will result in a cash flow for the first year that exceeds the appropriate debt service margin, a partial deferral of the loan is used to eliminate the excess cash flow margin. A partial deferral has the added benefit of reducing the

payment amount in the years after the deferral period.

J. DALRS considers ST loan deferral, when requested by the borrower, to the maximum limits permitted. Previously calculated regular deferrals will be cancelled prior to DALRS considering ST loan deferral. If the cash available after the deferral period is greater than the first year cash available, and ST loan deferral fails to produce a feasible plan at the applicable debt service margin, non-ST deferred loans will be reconsidered. Regular loan deferrals are recalculated after selecting loans for ST to:

1. Minimize any decrease in present value caused by the conversion to ST, and
2. Minimize the increase in payments in the year after the deferral period.

A ST loan deferral has the same effect on the debt repayment ability as a writedown of the same amount. However, a ST loan deferral will always have a greater present value. Therefore, after a loan is selected for ST loan deferral, it will not be considered for writedown since this will always decrease the present value of restructured loans.

K. DALRS considers writedown of FSA debt for those borrowers who have not received their lifetime limit for writedown and writeoff (with market value buyout).

1. If the cash available for the first year is greater than the cash available for the year after the deferral period, DALRS considers writedown, in combination with other primary loan service programs (except ST deferrals as noted in paragraph K of this section). When considering a borrower for writedown, DALRS will attempt to maximize the borrower's repayment ability and minimize losses to the Government.

The amount of writedown cannot exceed the \$300,000 limitation. In addition, the present value of the restructured loan plus the amount of the CC cannot be less than the total NRV of the FSA security and non-essential assets.

2. If the cash available after the deferral period is greater than the cash available in the first year, DALRS will consider a combination of deferral and writedown.

Loans are selected for deferral to achieve a cash flow in the first year. If deferral of loans will result in a cash flow in the first year that exceeds the applicable debt service margin, DALRS partially defers the loan to reduce the excess cash flow. If there is a negative cash flow after the expiration of the deferral period, DALRS provides writedown of one loan to attempt to develop a feasible plan in the year after the deferral period. This process is repeated until a feasible plan is developed for both the first year and the year after the deferral period, or until all loans have been processed. The amount of the writedown cannot exceed the \$300,000 limitation and the present value of the restructured loans plus the value of the CC cannot be less than the total NRV of the FmHA security and non-essential assets.

L. DALRS considers market value buyout when a feasible plan cannot be developed after considering the borrower for all combinations of the above servicing options and the borrower has not received the lifetime limitation for writedown and writeoff. The amount of FSA debt to be

written off must be less than or equal to the \$300,000 limitation, otherwise the borrower is not eligible for primary loan servicing or market value buyout.

M. DALRS determines the amount of cash improvement needed in the first year Balance Available to cash flow with a zero percent debt service margin when a feasible plan cannot be developed.

N. DALRS offers to print a servicing report which provides a summary of the computations and the outcome of the calculations.

#### V. Information Entered in DALRS

The following information will be entered in DALRS prior to beginning the calculations.

A. Borrower Case Number and Name—The borrower's case number is a concatenation of the State Code, County Code, and Borrower ID (usually the borrower's social security number or tax identification number). Borrowers are entered as either an individual or entity.

B. Date Servicing Actions Requested—This is the date that the borrower submitted a complete application for primary loan servicing. The discount rate used in the calculations of the present value of restructured loans and the NRV will be the rate in effect on this date.

C. Proposed Restructure Date—This is the projected effective date of the restructuring. The interest rate used for restructuring loans and the net recovery constants used in the calculation of the NRV will be those in effect on this date as of the date DALRS was prepared.

D. Eligibility for Writedown or Writeoff—This field determines if writedown or writeoff (with buyout) should be considered when attempting to restructure the borrower's debt. Borrowers that are not delinquent, or that have met the lifetime limitation regarding writedown and writeoff are not eligible for writedown or writeoff. If the borrower is not eligible, DALRS will consider the borrower for all primary loan servicing except writedown and market value buyout.

E. Period of Deferral—DALRS will default to the maximum deferral period of 5 years. The field can be cleared and a lesser period entered if applicable.

F. Adjusted Balance Available—The adjusted balance available for the first year is obtained from Form FmHA 431-2, "Farm and Home Plan" developed for the current production cycle or the typical plan, if applicable. Adjusted balance available is the sum of total planned family living expenses from Table F, total planned cash farm operating expenses, less interest from Table G, and line 16, "Balance Available," from Table J of the Farm and Home Plan. If loan deferral or debt writedown is anticipated or needed, the balance available for the year after the deferral period must also be calculated and entered.

G. Non-Agency Debts, Family Living Expenses and Adjusted Operating Expenses—This is the sum of total planned family living expenses from Table F, total planned cash farm operating expenses, less interest, from table G, and total non-Agency debt repayment (principal and interest) from Table K of Form FmHA 431-2, "Farm and

Home Plan". If future non-agency loans are planned that will affect the first year or the year after the deferral, the annual debt repayment for these loans should be included. Debt repayment on FSA nonprogram loans should be included when determining this amount. FSA nonprogram debts must be entered here to assure that these loans are not included in the present value calculations or when determining if the \$300,000 writedown or writeoff limitation was exceeded.

H. FSA Loan for Annual Operating Expense—The amount of FSA loan for annual operating expenses is the amount of annual operating expense loan principal which is due in the applicable planning year. The estimated average number of months the annual operating loan will be outstanding is also entered.

If some of the principal will be carried over to future years, then that amount is either:

1. Included in the new loan payments computed using the amortization factor over the applicable loan term at the regular loan program interest rate, or

2. If the amount to be carried over was entered as an existing loan, it is rescheduled with the applicable term and interest rate permitted by the program regulation.

I. New FSA Loans and Scheduled Advances—The amount of the loan, loan type, regular program interest rate, and year that the cash flow will be affected will be entered. DALRS will consider a reduction from the regular program interest rate to the limited resource interest rate (if applicable) during the rescheduling or reamortizing process if necessary to develop a feasible plan.

J. NRV Data—Information pertaining to FSA security and nonessential assets owned by the borrower will be entered in accordance with Exhibit I of part 1951, subpart S. Prior liens will include other creditors debts that hold a prior lien to FSA on the security property. Prior liens may also include FSA nonprogram loans if the same security is cross-collateralized with the program loans and they hold a prior lien to the program loans.

K. Existing Loan Data—Loan information will be obtained from the borrower's case file and Finance Office status inquiry screens. The date of status screens must be after the date of the last payment or other transaction on the loan. The loan information includes the consideration for servicing actions, unpaid principal and interest, amount of next payment, maximum term, original and existing interest rate, security priority, information regarding any portion of the loan not to be rescheduled, and proposed payment in full on the restructure date.

1. If the interest accrual date of the status screen precedes the proposed restructure date, DALRS will calculate the additional interest accrual. Interest accrual is calculated in accordance with section I of attachment 1 to this exhibit.

2. Loan selection for many of the calculation processes is based partly on the security priority identified for each loan. There are three priorities:

a. Low—These loans are unsecured. If FSA loan security was liquidated, the proceeds

would not be sufficient to result in a payment on this loan.

b. Medium—These loans are undersecured. If FSA security was liquidated, the proceeds would be sufficient to result in a partial payment on this loan.

c. High—These loans are fully secured. If FSA security was liquidated, the proceeds would be sufficient to pay this loan in full.

L. Conservation Contract Data—If the borrower requested a conservation contract, the total acreage of the farm, acres to be included in the conservation contract, unpaid debt secured by the farm, and the current market value of the farm must be entered.

M. Softwood Timber (ST) Loan Data—If ST deferral was requested by the borrower, the acreage eligible for ST must be entered.

N. Interest Rate Tables—Interest rates and the effective date provided in Exhibit B of FmHA Instruction 440.1 will be entered.

O. Discount Rate Tables—The discount rate and the effective date provided in Exhibit B of FmHA Instruction 440.1 will be entered.

P. Net Recovery Constants Tables—Net Recovery Constants and the effective date determined in accordance with exhibit I of part 1951, subpart S will be entered.

## VI. CALCULATION PROCESS.

As described in section IV of this exhibit, the DALRS calculations are a repetitive process. During the first phase of the calculations, DALRS will attempt to restructure the borrower's debt utilizing all necessary combinations of loan servicing and provide a ten percent debt service margin. Debt service margin is calculated in accordance with section II of attachment A of this exhibit. If a feasible plan cannot be developed after considering all combinations of loan servicing, the debt service margin will be reduced to nine percent and all combinations of servicing will again be considered. DALRS will continue to reduce the debt service margin by one percent until a feasible plan is developed or the debt service margin falls below zero and a feasible plan is not possible with any combination of servicing options.

The calculation process proceeds as follows:

### A. Calculation of NRV

As required by §§ 1951.909 and 1951.910 of title 7, DALRS computes total NRV of agency loan security and non-essential assets. Exhibit I of part 1951, subpart S, "Guidelines for Determining Adjustments for Net Recovery Value", provides guidance in determining the value of specific items utilized in the net recovery calculations outlined below.

NRV is computed for all Farm Loan Programs loan security, other non-essential assets owned by the borrower, and assets not in the borrower's possession. If the agency's lien position, or the amount of prior liens vary from item to item, separate NRV will be computed for each item which has a different lien structure.

Example: FSA has a first lien on a borrower's equipment, except for two tractors. One tractor was financed by non-agency credit, and FSA has a junior lien

subject to the purchase money financing. In the case of the second tractor, FSA subordinated its lien to another lender to finance repairs, thus, FSA has a junior lien to the amount subordinated. In this example, there would be three net recovery calculations. One for each tractor, and one for the remaining equipment. The same logic applies to real estate security. The total of all net recovery calculations will be the total NRV.

The general formula for calculating NRV is as follows:

- \* Current market value of the security
- \* Minus prior liens
- \* Minus property taxes while in inventory
- \* Minus depreciation on buildings and improvements
- \* Minus management charges
- \* Minus repairs necessary for resale
- \* Minus legal and administrative costs

- \* Minus sales cost
- \* Minus advertising cost
- \* Minus miscellaneous expenses
- \* Minus interest cost while in inventory

- \* Plus or minus the increase or decrease, as applicable, in value while in inventory
- \* Plus anticipated income while in inventory

- \* Equals NRV of the individual property items

The sum of the NRV of individual property items minus:

- \* Real estate property management costs
- \* Real estate or real estate and chattel costs, and
- \* Chattel only costs as applicable, equals the total NRV of FSA security, non-essential assets, and assets not in possession.

The factors listed above do not apply to the calculation of NRV for non-essential assets and assets not in possession.

### B. Calculation of Payments for New FSA Loans

DALRS calculates debt repayment for new FSA term loans and FSA loans for annual operating expenses as follows:

1. Repayment for new term loans will be calculated based on the regular loan program interest rate and the term of the loan. The payment will be calculated in accordance with section III A of attachment 1 to this exhibit.

2. Repayment of loans for annual operating expenses will be calculated based on the regular interest rate and the projected number of months the loan will be outstanding determined in accordance with section III B of attachment 1 to this Exhibit. DALRS will calculate interest accrual for the annual operating loan by multiplying the amount of principal to be repaid during the period of the plan by the monthly decimal equivalent for the regular program interest rate. This amount is then multiplied by the average number of months that the loan will be outstanding. The amount of debt repayment due on annual operating expense will be the total of interest accrual plus the principal amount of the loan.

DALRS will initially calculate payments for new FSA loans and FSA loans for annual operating expenses at the regular program interest rate. If a feasible plan cannot be developed, DALRS will reduce the interest rate to limited resource rates (if applicable) during the calculations completed in paragraph F of this section.

#### C. Application of Payment on the Effective Date of Servicing.

DALRS will apply loan payments to be made on the effective date of loan servicing. DALRS can only consider a full payoff of a loan. If a payment for less than the full amount of the loan is expected or received, the payment must be applied to the loan prior to completing the DALRS calculations.

If after the application of payments to pay loans in full, there is a debt repayment margin of ten percent or more and none of the borrowers remaining loans are delinquent, no further servicing action in DALRS is required.

#### D. Conservation Contract.

DALRS will consider Conservation Contract (CC), if requested by the borrower, prior any other loan servicing option. CC can be requested by both current and delinquent borrowers. Only FLP loans secured by real estate are eligible. A borrower will not be offered CC unless, the CC or CC in combination with other loan servicing options results in a feasible plan. Debt cancellation as a result of CC will be applied against the borrowers loans as a noncash credit and will not affect the borrowers debt repayment unless the loan is fully written down.

CC eligible loans will be selected in the order of lowest security priority first. For loans with equal security priority, the secondary selection will be the loan with the largest amortization factor determined in accordance with section IV of attachment 1 to this Exhibit.

The calculations completed during this process are as follows:

1. Determine the maximum amount of CC in accordance with attachment 1 of exhibit H of part 1951, subpart S.

2. Deduct the lessor of the unpaid loan balance or the maximum CC from the first loan selected. Repeat this step until the maximum CC debt cancellation has been deducted, or all CC eligible loans have been written down in full.

3. If a feasible plan was developed with a debt service margin greater than or equal to ten percent, and the borrower does not have any remaining delinquent loans, no further servicing is required. DALRS will offer the user the opportunity to print the servicing report.

4. If the borrower has delinquent loans, or the debt service margin is less than five percent after consideration of CC, DALRS will proceed with paragraph E of this section.

#### E. Rescheduling or Reamortization of Delinquent Loans

DALRS will reschedule or reamortize existing loans to eliminate any delinquency. All delinquent loans will be restructured. Loans with regular interest rates will be restructured at the lower of the original note

rate or the current program rate. Loans that currently have a limited resource rate will be restructured at the lower of the original note rate or the current limited resource rate.

Only loans that are delinquent will be restructured during this process. Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with an equal amortization factor, the final selection will be based on the loan with the lowest present value calculated in accordance with section V of attachment 1 of this Exhibit.

The calculations completed during this process are as follows:

1. Combine recoverable cost items with parent loans.

2. Reschedule or reamortize the delinquent loan over the maximum term entered for the loan.

3. Calculate debt repayment for the first year for the rescheduled or reamortized loan based on the new interest rate and term.

4. Repeat steps 2 and 3 until all delinquent loans have been processed.

5. Determine if a feasible plan was developed with the appropriate debt service margin by rescheduling or reamortizing all delinquent loans.

6. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALRS will provide the user with the opportunity to print the servicing report.

7. If a feasible plan was not found, DALRS will reschedule or reamortize non-delinquent loans in accordance with paragraph F of this section.

#### F. Reschedule or Reamortize Non-Delinquent Loans

DALRS will reschedule or reamortize non-delinquent loans one at a time to attempt to develop a feasible plan. Loans with regular interest rates will be restructured at the lower of the original note rate, or the current program rate. Loans that currently have a limited resource rate will be restructured at the lower of the original note rate or current limited resource rate.

Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with equal amortization factors, the final selection will be based on the loan with the lowest present value.

After each non-delinquent loan has been rescheduled or reamortized, DALRS will determine if a feasible plan was developed with the appropriate debt service margin prior to proceeding to the next loan.

The calculations completed during this process are as follows:

1. Reschedule or reamortize the non-delinquent loan over the maximum term entered for the loan.

2. Calculate debt repayment for the first year for the restructured loan based on the new interest rate and term.

3. Determine if a feasible plan was developed with the appropriate debt repayment margin.

4. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALRS will provide the user with the opportunity to print the servicing report.

5. If a feasible plan is not found, repeat steps 1 through 3 until a feasible plan is found with the appropriate debt service margin, or all non-delinquent loans have been rescheduled.

6. If a feasible plan was not found, DALRS will reschedule or reamortize delinquent and non-delinquent loans at limited resource rates (if applicable), in accordance with paragraph G of this section.

#### G. Rescheduling or Reamortization of Limited Resource Eligible Loans at Limited Resource Rates

DALRS will attempt to reschedule or reamortize limited resource eligible loans at the limited resource rate to develop a feasible plan. Debt repayment for new FSA term loans and for annual operating expenses will be recalculated at limited resource rates (if applicable). The interest rate for existing loans will be the lessor of the original note rate or the current limited resource rate.

Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with equal amortization factors, the final selection will be based on the loan with the lowest present value.

After each limited resource eligible loan has been rescheduled or reamortized at the limited resource rate, DALRS will determine if a feasible plan was developed with the appropriate debt service margin prior to proceeding to the next loan.

The calculations completed during this process are as follows:

1. Recalculate repayment for new FSA term loans and annual operating loans at the limited resource rate.

2. Determine if a feasible plan was found with the appropriate debt service margin after reducing the interest rate on new loans.

3. If a feasible plan was developed, no further servicing is required. Proceed to step 7.

4. Reschedule or reamortize an existing limited resource eligible loan at the limited resource interest rate.

5. Calculate debt repayment for the first year for the rescheduled or reamortized loan at the maximum term entered for the loan with limited resource rates.

6. Determine if a feasible plan was found with the appropriate debt service margin.

7. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALRS will provide the user with the opportunity to print the servicing report.

8. If a feasible plan was not found, repeat steps 4 through 6 until a feasible plan is found with the appropriate debt service

margin, or until all limited resource eligible loans have been processed.

9. If a feasible plan was not found, DALRS will reschedule or reamortize loans with unequal payment schedules in accordance with paragraph H of this section.

#### H. Rescheduling or Reamortizing Loans with Unequal Payment Schedules

DALRS will reschedule or reamortize loans with unequal payment schedules. These loans were not previously restructured in sections F or G as rescheduling or reamortization would have resulted in an increase in debt repayment in the first year. However, if the loan was delinquent, the loan would have been rescheduled or reamortized under section E regardless of the impact on the first year debt repayment. Loans will be restructured at the lower of the original note rate or the current loan program rate (limited resource if applicable).

Loans selected for rescheduling or reamortization in this process will not have been restructured during any of the earlier calculations and cannot be a ST loan.

Loans will be selected in the order of lowest security priority first. For loans with equal security priorities, the secondary selection will be based on the loan with the lowest amortization factor. For loans with equal amortization factors, the final selection will be based on the loan with the lowest present value.

After each loan with an unequal payment schedule has been rescheduled or reamortized, DALRS will determine if a feasible plan was developed with the appropriate debt service margin prior to proceeding to the next loan.

The calculations completed during this process are as follows:

1. Reschedule or reamortize an unequal payment loan over the maximum term.
2. Calculate the debt repayment for the first year for the restructured loan based on the new term and interest rate.
3. Determine if a feasible plan was developed with the appropriate debt service margin.
4. If a feasible plan was developed, no further servicing is required. The combination of a recoverable cost item with the parent loan will be reversed if the combined loans did not require servicing. DALRS will offer the user the opportunity to print the servicing report.

5. If a feasible plan is not developed, repeat steps 1 through 3 until a feasible plan is developed with the appropriate debt service margin, or until all unequal payment schedule loans have been processed.

6. If a feasible plan is not developed, calculate the necessary cash improvement required to cash flow in the first year using the rescheduling or reamortization process. Retain this amount for later use in the cash improvement process.

7. If a feasible plan was not developed, DALRS will consider deferrals in accordance with paragraph I of this section.

#### Rescheduling or Reamortization with Deferral

If a feasible plan cannot be developed by utilization of rescheduling or reamortizing delinquent and non-delinquent loans with

the maximum terms and lowest interest rates available under the regulations with a ten percent margin, deferral data must be entered in DALRS. DALRS will not consider the borrower for writedown (discussed in paragraph J of this section) unless deferral data has been entered.

DALRS will attempt to develop a feasible plan for the first year by deferring payments on FSA loans until the end of the deferral period (1–5 years). A deferral will decrease the payment during the period of the deferral, and increase the payment for the remaining term after the deferral period. Deferrals will only be beneficial if the debt repayment margin increases in the year after the deferral period. This improvement must be no later than six years after the current planning year, since the maximum deferral period is five years.

To determine the appropriate deferral period, the servicing official and borrower will review the farm operation over the next five years. Loans should be deferred to the year when the improvement from the first planning year is the greatest and the improvement in the following years are at least as good.

Loans will be deferred at the lower of the original note rate, or current program interest rate (limited resource, if applicable). ST will not be considered for regular deferral.

To select loans for deferral, DALRS will calculate the payment after the deferral period for each loan as if the loan had been fully deferred. (This is only a side calculation to determine the best order of selection.) The ratio of the difference between the post deferral year payment and first year payment will be calculated as follows:

(Post Deferral Payment—First Year Payment)

#### First Year Payment

The loan with the smallest ratio will be deferred first and so forth.

The calculations completed during this process are as follows:

1. Defer the selected loan and calculate debt repayment in the first year and the year after the deferral period.

2. Determine if a feasible plan was developed for the first year with the appropriate debt service margin. If a feasible plan was developed proceed with step three, otherwise, repeat step one until a feasible plan for the first year is developed or all loans have been deferred.

3. If the applicable debt service margin for the first year was exceeded (this indicates that the last loan deferred did not require a full deferral), the following will occur:

a. DALRS will determine the amount of the partial deferral needed on the last loan selected to maintain the feasible plan developed for the first year. See section VI of attachment 1 of this Exhibit for formulas used in calculating partial deferral.

b. DALRS will calculate the debt repayment for this loan for the first year and the year after the deferral period.

4. Calculate total debt repayment for the year after the deferral period.

5. If a feasible plan exists for the year after the deferral period, then no further servicing actions are required. DALRS will offer the user the opportunity to print the servicing report.

6. If the deferral of loans will not permit the borrower to cash flow in the first year, DALRS will calculate the cash improvement required to cash flow in the first year using deferral. This amount will be retained for later use in the cash improvement process.

7. If a feasible plan does not exist for the year after the deferral period, DALRS will consider the borrower for ST, if requested in accordance with paragraph J of this section. Otherwise, DALRS will consider the borrower for debt writedown in accordance with paragraph K of this section.

#### J. Softwood Timber (ST)

DALRS will consider ST, if requested by the borrower, to the maximum limit permitted under the regulations. Deferral of payment on ST until the end of the ST deferral period must improve the borrowers debt repayment ability during the first year and the year after the deferral period. All previously calculated regular deferrals will be cancelled. Only loans eligible for ST will be considered. If the entire unpaid balance of a loan is not converted to a ST loan, the loan will be split into two loans. The interest rate for the ST portion will be the lesser of the original note rate or the current ST loan program interest rate. The non ST portion of the loan will retain the interest rate and term determined prior to ST consideration.

Loans will be selected to maximize the present value of the loan after ST deferral. This will minimize or eliminate loss to the Government. DALRS will calculate the present value for each eligible loan before and after ST and compute the decrease in present value using the following formula: (Present Value w/ Full ST Deferral—Present Value if not Deferred)

#### Nondeferred First Year Payment

Note: For loans in which the present value increases, this will be a negative number.

The ratio of the decrease in present value to the first year payment will be calculated. The loan with the smallest (or most negative) ratio will be selected first. For loans with equal ratios, the secondary selection will be based on the loan with the lowest security priority.

The calculations completed during this process are as follows:

1. Starting with the first loan selected for ST, defer the loan. The amount of ST deferral cannot exceed the maximum limit permitted under the regulations.

2. Determine if a feasible plan was developed for the first year with the appropriate debt service margin. If a feasible plan was found, proceed with step three, otherwise, repeat step one until a feasible plan is found or the maximum for ST deferral has been reached.

3. If the full deferral of a loan results in the applicable debt service margin being exceeded, DALRS will determine the amount of partial deferral required for a feasible plan. If a loan is only partially deferred, DALRS will create a new loan identity for the partially deferred portion of the loan. The portion not deferred will maintain the interest rate and term prior to the deferral.

4. If full utilization of the ST program does not result in a positive cash flow in the first

year, repeat the regular deferral process (see paragraph J of this section. Loans selected for ST will not be deferred when repeating the regular deferral calculations.

5. If the deferral of loans under the ST program results in a positive cash flow with the applicable debt service margin for the first year, no further servicing is required. DALRS will provide the user with the opportunity to print the servicing report.

6. If the deferral of loans under the ST program will not permit the borrower to cash flow in the first year, DALRS will calculate the cash improvement required to cash flow in the first year using the ST program. This amount will be retained for later use in the cash improvement process.

7. If a feasible plan is not found, DALRS will consider the borrower for writedown in accordance with paragraph K of this section.

#### K. Writedown

If a feasible plan could not be developed utilizing CC, rescheduling or reamortization, limited resource rates, regular deferral and ST deferral, and the borrower is eligible for writedown or writeoff, DALRS will attempt to develop a feasible plan by writing down the borrower's FSA debt. Borrowers who have met the lifetime limitation for writedown or writeoff will not be considered for writedown. The amount of the writedown necessary to develop a feasible plan must be less than or equal to \$300,000 in accordance with section 1951.909 of part 1951, subpart S.

DALRS will prioritize the loans for writedown and attempt to develop a feasible plan (pass one). If a feasible plan is not found, DALRS will re-order the loans based on different criteria and again attempt to develop a feasible plan with writedown (pass two). Loans deferred under the ST program will not be considered for writedown.

For the first attempt to writedown (pass one), loan selection will be based on an attempt to maximize the amount of writedown. The loan with the lowest security priority will be selected first. For loans with an equal security priority, the secondary selection will be based on the loan with the largest amortization factor.

If a feasible plan was not developed, DALRS will re-order the loans based on new criteria, and will again attempt writedown (pass two). Loan selection will be based on lowest security priority. For loans with equal security priority, the secondary selection will be based on the loan with the smallest present value factor. For loans with an equal present value factor, the final selection will be based on the loan with the highest amortization factor.

The calculations completed during this process are as follows:

1. From the list of loans for the first method of loan prioritization (pass one), select the first from the list ordered and apply writedown. This step will be repeated until the borrower cash flows in the first year, or until all selected loans have been written down. The writedown amount for each loan will be retained and added to the total writedown amount.

2. If a cash flow for the first year was achieved and the full writedown of the last loan selected results in the applicable debt

service margin being exceeded, this implies that a full writedown was not required. DALRS will compute the amount of partial writedown on the last loan selected necessary to achieve a cash flow in the first year at the appropriate debt service margin and reschedule or reamortize the remaining unpaid balance.

3. If the present value of all FSA remaining debt plus the total CC equals or exceeds the NRV, and the total writedown amount is less than or equal to \$300,000, no further servicing is required. DALRS will offer the user the opportunity to print the servicing report.

If this step fails, the process will be repeated from step one using the second method for ordering loans for writedown.

4. If step three fails after repeating the writedown calculations based on the second method of prioritizing loans for writedown, DALRS will consider the borrower for a combination of deferral and writedown in accordance with paragraph L of this section.

#### L. Writedown with Deferral

This process will defer payment on FSA loans in combination with debt writedown in an effort to develop a feasible plan for the first year and the year after the deferral period. Regular and ST deferrals did not result in a feasible plan for the first year and the year after the deferral period.

The deferral period will be 1–5 years as entered by the user.

To select loans for deferral, DALRS will calculate the payment for each loan as if it had been fully deferred. (This is a side calculation used only to prioritize the loans.) The ratio between the post deferral year payment and the first year payment will be calculated as follows:

$$\frac{\text{(Post Deferral Payment—First Year Payment)}}{\text{First Year Payment}}$$

The loan with the smallest ratio is deferred first and so on until the borrower cash flows in the first year with the appropriate debt service margin or all loans have been deferred.

Loans will be selected for writedown based on the selection criteria established in paragraph J of this section. The deferred portion of the loan is considered a separate loan in this process and must be prioritized for selection with the remaining loans.

The calculations completed during this process are as follows:

1. Loans are deferred to obtain a positive cash flow in the first year as described in paragraph J of this section.

2. DALRS will create a new loan identity for the partially deferred portion of any loan.

3. If the borrower cash flows with the appropriate debt service margin in both the first year and the year after the deferral period, no further servicing is required. DALRS will offer the user the opportunity to print the servicing report.

Otherwise, using the first method of loan selection (pass one) described in paragraph L of this section, DALRS will select one loan at a time and attempt to develop a feasible plan by utilization of full or partial writedown.

4. If the borrower does not cash flow in the year after the deferral period, or the cash flow

in the first year exceeds the appropriate debt service margin, DALRS retains the writedown amount, all loans not completely written down are converted to non-deferred status, and the process will begin again at step one.

5. If the present value of all FSA remaining debt plus the total CC equals or exceeds the NRV, and if the writedown amount is less than or equal to \$300,000, a feasible plan has been found and no further servicing is required. Otherwise, repeat this process beginning from step one using the second method of prioritizing loans for writedown described in paragraph L of this section.

6. If step three fails after repeating the writedown calculations based on the second method of prioritizing loans for writedown, DALRS will determine if the borrower will be offered buyout at the current market value. If the writeoff amount (total principal and interest minus the total market value) is less than or equal to \$300,000, DALRS will compute an offer to the borrower for buyout at the current market value. Otherwise, the borrower is not eligible for debt forgiveness. DALRS will offer the user the opportunity to print the servicing report.

#### M. Cash Improvement

If a feasible plan could not be developed after considering all available primary loan servicing, DALRS will provide the user with the opportunity to determine the amount of cash improvement in the first year balance available to produce a feasible plan.

The calculations completed during this process are as follows:

1. Collect cash improvement solutions from the reschedule or reamortize debt process, the regular deferral process, and the softwood timber deferral process.

2. Determine the cash improvement required in the first year to cash flow using conservation contract, if applicable.

3. Determine the cash improvement required in the first year to cash flow using writedown, if applicable.

4. Determine the cash improvement required in the first year to cash flow using writedown with deferrals, if applicable.

5. Select the lowest of all the cash improvements and display it to the screen. DALRS will offer the user the opportunity to print the servicing report.

#### O. SUMMARY

At this point, DALRS has finished its calculations. A feasible plan has been developed, or all possible combinations of servicing actions has been considered. DALRS will provide a report of the results of the calculations performed.

If DALRS does not find a solution that will provide a feasible plan, FSA will proceed with the other actions authorized in this subpart, including mediation, offer the opportunity to purchase collateral for market value, and consideration for Homestead Protection.

#### Attachment 1—Formulas Used in DALRS Calculations

##### I. INTEREST ACCRUAL ON EXISTING LOANS

If the interest accrual date for an existing loan precedes the proposed restructure date,

DALRS will determine the amount of additional interest which will accrue between these dates. This amount will be added to the unpaid interest that was outstanding as of the accrual date. The calculations used are as follows:

A. Interest Accrual After the Loan Status Date Equals

$$[(\text{Principal} \times \text{Interest Rate})/365] \times (\text{Effective Date} - \text{Accrual Date})$$

B. Total Accrued Interest Equals

Interest Accrual After the Loan Status Date +  
Accrued Interest as of the Loan Status Date

II. DEBT SERVICE MARGIN

DALRS will attempt to develop a feasible plan that provides the borrower with a ten percent margin above the amount needed for family living expenses, farm operating expenses and debt service obligations. If a feasible plan cannot be found with a ten percent debt service margin, DALRS will reduce the margin in increments of one percent until a feasible plan is found, or the debt service margin falls below zero. DALRS will consider all loan servicing options prior to reducing the debt service margin.

The debt service margin is applicable in both the first year and the post deferral year calculations if deferral is being considered. The debt service margin is used to calculate the cash available restructure FSA debt and is calculated as follows:

$$\text{Cash Available} = (\text{balance available} + \text{family living expenses} + \text{farm operating expenses} - \text{interest expense}) / \text{applicable debt service margin} - \text{family living expenses} - \text{farm operating expenses (excluding interest)} - \text{non-agency debt repayment}$$

The debt service margin used in the above calculations is set initially at 1.10. If a feasible plan is not found after consideration of all loan servicing options, the margin is reduced incrementally by .01. After the reduction is completed, DALRS will reconsider the borrower for all loan servicing requested. DALRS will continue to reduce the debt service margin until a feasible plan is developed, or until it has been determined that a feasible plan is not possible with a debt service margin of 1.00.

III. LOAN PAYMENT CALCULATIONS

Loan payments are calculated using amortization factors rounded to the nearest five places. All payments are rounded up to the next dollar. The equations used to calculate loan payments are as follows:

A. Payments on New FSA Loans

$$\text{Payment} = \text{Principal Amount} \times \text{Amortization Factor}$$

B. Payments on FSA Loans for Annual Operating Expenses

1. Determine the average number of months that the loan for annual operating expenses will be outstanding. It may be estimated or calculated from the projected advance and payment schedule for the loan.

For example, the loan for annual operating expenses is estimated to be \$15,000 and the projected advance and repayment schedule is planned as follows:

Principal balance outstanding	Number of months outstanding
\$15,000 .....	3
\$8,000 .....	2
\$6,000 .....	4

$$\text{Average Months} = (3 \times 15,000) + (2 \times 8,000) + (4 \times 6000) 15,000$$

$$\text{Average Months} = 45,000 + 16,000 + 24,000 15,000$$

$$\text{Average Months} = 85,000 15,000$$

$$\text{Average Months} = 5.7$$

2. Determine interest accrual on annual operating expense loan.

$$\text{Interest Accrual} = [(\text{Principal Amount} \times \text{Interest Rate})/12] \times \text{Number of Months Outstanding}$$

3. Determine total payment.

$$\text{Total Payment} = \text{Principal Amount} + \text{Interest Accrual}$$

C. Payments for Rescheduled or Reamortized Loans

1. Determine interest accrual if loan status date precedes the proposed restructure date in accordance with section I of this attachment.

2. Determine unpaid loan balance.

$$\text{Unpaid Loan Balance} = \text{Principal Amount} + \text{Unpaid Interest (as of the loan status date)} + \text{Interest Accrual}$$

3. Determine payment amount.

$$\text{Payment} = \text{Unpaid Balance} \times \text{Amortization Factor}$$

D. Payments for Deferred Loans

1. Determine term of loan entered in DALRS.

2. Determine remaining term after deferral period.

$$\text{Remaining Term} = \text{Term} - \text{Deferral Period}$$

$$\text{Remaining Term} = \text{Term} - \text{Deferral Period}$$

3. Determine payment during deferral period.

$$\text{Payment} = \text{Nondeferred Principal} \times \text{Amortization Factor}$$

Note: Amortization factor is based on the full term of the loan.

4. Determine payment after deferral.

a. Determine interest accrual on deferred principal.

$$\text{Interest Accrual} = \text{Deferred Principal} \times \text{Interest Rate} \times \text{Deferral Period}$$

$$\text{Payment} = \text{Interest Accrual} / \text{Remaining Term}$$

c. Determine payment on deferred principal.

$$\text{Payment} = \text{Deferred Principal} \times \text{Amortization Factor}$$

Note: Amortization factor is based on the remaining term after the expiration of the deferral period.

d. Determine total payment after deferral.  
Payment = Payment of Nondeferred Principal + Payment on Interest Accrual + Payment on Deferred Principal

IV. LOAN AMORTIZATION FACTORS

Loan amortization factors are calculated using the following equations:

A. Non-deferred loan

$$A = [(i(1+i)^n)/((1+i)^n - 1)]$$

A—amortization factor

i—interest rate

n—term

B. Deferred loan

$$A = [((i(1+i)^n - t)/((1+i)^n - t - 1)) + ((i \times t)/(n-t))]$$

A—amortization factor

i—interest rate

n—term

t—deferral period

C. Deferred interest

$$A = 1/(n - t)$$

A—amortization factor

n—term

t—deferral period

V. Present value calculations

A. The net present value factors for each loan are calculated using the following equations:

1. Non-deferred loan

$$P = [(1+i)^n - 1/(i(1+i)^n)]$$

P—net present value factor

i—discount rate

n—term

2. Deferred loan

$$P = [((1+i)^n - t - 1/(i(1+i)^n - t))/(1+i)^t]$$

P—net present value factor

i—discount rate

n—term

t—deferral period

B. The loan net present is calculated using the following equation:

$$\text{NPV} = (P)(p)$$

NPV—loan net present value

P—loan net present value factor

p—loan payment

VI. Partial deferral calculations

Whenever full deferral of a loan results in excess cash flow (above the applicable debt service margin) in the first year, a partial deferral of that loan will decrease future payments on that loan and eliminate the excess cash flow in the first year. A partial loan is created by apportioning the loan balance into two distinct parts (nondeferred and deferred).

Partial deferrals are calculated as follows:

A. Determine the amount of deferral necessary to achieve cash flow in the first year.

$$d = 1 - (r/R)$$

d = The fraction of the loan which must be deferred.

r = The amount of excess cash flow in the first year with full deferral.

R = The debt repayment on the loan in the first year with out deferral.

B. Determine the deferred and nondeferred portion of the loan.

$$1. P1 = (1-d) \times P$$

$$P1 = (r/R) \times P$$

P1—Nondeferred Portion

d—Fraction of the Loan which must be deferred

P—Principal Balance  
 2. P2 = P—P1  
 P2—Deferred Portion  
 P—Principal Balance  
 P1—Nondeferred Portion

VII. \$300,000 Debt writedown and buyout limitation

DALRS will attempt to develop a feasible plan with a ten percent margin. All loan servicing, including writedown will be considered prior to reducing the debt service margin. However, DALRS will only consider writedown for those borrowers that have not received the lifetime limitations for writedown or writeoff (with buyout). If a feasible plan is found with writedown, DALRS will:

A. Writedown

1. Determine the amount of writedown that was necessary for the borrower to have a positive cash flow.
  2. If the amount of the writedown is less than or equal to \$300,000, a feasible plan has been found.
  3. If the amount of the writedown is greater than \$300,000, and the debt service margin exceeds 1.00, reduce the debt service margin by .01 and repeat from step 1.
  4. If the amount of writedown is greater than \$300,000, and the debt service margin equals 1.00, or a feasible plan cannot be developed, determine the amount of writeoff (with buyout at the current market value).
  5. If the amount of writeoff (with buyout at the current market value) is less than or equal to \$300,000, the borrower will be offered buyout.
  6. If the amount of writeoff (with buyout at the current market value) is greater than \$300,000, the borrower is not eligible for loan servicing or buyout.
27. Exhibit K is revised to read as follows:

Exhibit K—Notification of Consideration for Homestead Protection

Purpose: To notify borrowers of preacquisition homestead protection consideration when there is a dwelling on the security property and a complete application was submitted for primary and preservation loan servicing or requested from the notice of intent to accelerate notice.

Dear (Borrower's Name)  
 This notice is to inform you that, per your request, you are being considered for Homestead Protection.

We will need the following additional information to complete our processing of your request:

- 1.
- 2.
- 3.

Please provide the above information within 30 days from the date of this letter. If we do not receive the above requested information within 30 days, we will deny your request for Homestead Protection.

If you wish to withdraw your request for Homestead Protection, please complete and return the enclosed Attachment 1, "Response to Notification of Consideration for Homestead Protection," within 15 days of the date of this letter.

[FOR INDIVIDUAL BORROWERS ONLY—  
 INSERT EQUAL CREDIT OPPORTUNITY  
 PARAGRAPH]

Sincerely,

Attachment 1—Response to Notification of Consideration for Homestead Protection

TO: Farm Service Agency  
 FROM: (Please Print your Name and Address)

I have read the Notification of Consideration for Homestead Protection which I received with this response form.

I want to withdraw my request for Homestead Protection.

\_\_\_\_\_  
 Borrower's Signature

\_\_\_\_\_  
 (Date)

28. Exhibit L is revised to read as follows:

Exhibit L—Homestead Protection Program Agreement

This agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, by and between the Farm Service Agency (FSA) of the United States Department of Agriculture and \_\_\_\_\_ ("Borrower").

Concurrently, with the execution of the pre-acquisition Homestead Protection Program Agreement, the borrower will deliver a completed Form FmHA 1955-1 to FSA. The Homestead Protection Program Agreement is subject to the provisions of 7 CFR part 1955, subpart A.

A. Borrower has received a loan or loans from FSA secured by real property which includes the Borrower's dwelling, and adjoining land that is used to maintain the Borrower and the Borrower's family (the Homestead Protection property). In some cases the FSA loans may also have been included one or more outbuildings that are useful to the Borrower and the Borrower's family and in such cases these outbuildings are included in the definition of Homestead Protection property.

B. Borrower's FSA loan is in default which could result in the loss of the borrower's Homestead Protection property.

C. Borrower wants to continue to occupy the Homestead Protection property after FSA acquires title to it.

D. FSA has already determined that Borrower has satisfied the requirements for its Homestead Protection Program.

E. FSA agrees to permit Borrower to retain occupancy of the Homestead Protection property on the following terms and conditions:

1. Subject to the terms and conditions set forth below FSA agrees to lease the Homestead Protection property, as more particularly described in attachment 1 hereto, to Borrower on the terms and conditions set forth in the lease as attachment 2 (the "lease"). Borrower agrees to enter into the lease of the Homestead Protection property.

2. FSA's obligation to enter into the lease of the Homestead Protection property is subject to the occurrence of the following conditions:

a. FSA acquires fee title to the Homestead Protection property in connection with the

liquidation of the farm property of which the Homestead Protection property is a portion.

b. All State and local governmental laws, ordinances and regulations concerning the creation of the Homestead Protection property as a separate legal parcel which can be leased and sold have been satisfied.

3. The term of the lease will begin on the date the later of the conditions set forth in paragraph 2 is satisfied and such date will be inserted into the lease.

4. The term of the lease will be \_\_\_\_ years. This term will be inserted in the lease.

5. The rent to be charged during the term of the lease will be determined by FSA as of the commencement date of the lease and will be in an amount substantially equivalent to rents charged for similar residential properties in the area. The borrower will be notified by letter of the amount of the rent and the amount of the rent will be inserted in the lease form, Form FmHA 1955-20.

6. Borrower agrees to cooperate with FSA in applying for and securing whatever local governmental approvals are necessary in order for the Homestead Protection property to be a separate legal parcel. FSA will bear the cost and expense of obtaining such approvals.

7. If the term of the lease has not begun on or before 2 years from the date of this agreement, the agreement shall end and be of no further force or effect.

Farm Service Agency

By: \_\_\_\_\_

Borrower: \_\_\_\_\_

\_\_\_\_\_  
 Attachment 1, Legal Description of the Property.

\_\_\_\_\_  
 Attachment 2, Lease Form, Form FmHA 1955-20.

29. Exhibit M is revised to read as follows:

Exhibit M—Notice of the Availability of Homestead Protection

(Insert Borrower's Name and Address)

(Date)

On [acquisition date], FSA acquired the property which was security for your FSA loan. FSA has a program called the Homestead Protection Program under which you may be allowed to lease (with an option to purchase) the house which you owned and used as your principal residence, a reasonable number of farm buildings located near the house that are useful to the occupants of the house, and not more than 10 acres of land adjoining the house. If you would like to be considered for the Homestead Protection Program, you must notify this office, in writing, by [date 30 days from acquisition date] of the buildings and land you wish to retain.

If you would like more information about the Homestead Protection Program, you should contact the FSA servicing official at [insert county office telephone number].

Failure to respond by the above date will terminate any rights that you have to lease

and purchase the property under the Homestead Protection Program.  
Sincerely,

**Exhibits N, O, P and Q [Removed]**  
30. Exhibits N, O, P and Q are removed.

**Subpart T—Disaster Set-Aside Program**

**§ 1951.958 [Amended]**

31. Section 1951.958 is amended in paragraph (a)(2) by revising the words “net recovery buyout in accordance with subpart S of part 1951, or operating loan assistance in accordance with § 1941.14 of subpart A of 7 CFR part 1941” to read “buyout in accordance with subpart S of this part.”

**PART 1956—DEBT SETTLEMENT**

32. The authority citation for part 1956 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3711; 42 U.S.C. 1480.

**Subpart B—Debt Settlement—Farm Loan Programs and Multi-Family Housing**

33. Subpart B is amended by revising the heading of the subpart to read as set forth above.

34. Section 1956.54 is amended in the definition of “Farmer programs loans” by revising the words “Farmer programs loans” to read “Farm Loan Programs (FLP) loans;” and by adding a definition of “Debt Forgiveness” as follows:

**§ 1956.54 Definitions.**

\* \* \* \* \*  
*Debt forgiveness.* For the purposes of servicing Farm Loan Programs loans, debt forgiveness is defined as a reduction or termination of a direct FLP loan in a manner that results in a loss to the Government. Included, but not limited to, are losses from a writedown or writeoff under subpart S of part 1951 of this chapter, debt settlement, after discharge under the provisions of the bankruptcy code, and associated with release of liability. Debt cancellation through conservation easements or contracts is not considered debt forgiveness for loan servicing purposes.  
\* \* \* \* \*

35. Section 1956.57 is amended in paragraph (b) by revising the words “Agricultural Stabilization and Conservation Service” to read “Farm Service Agency” in the second sentence and by revising the term “FP” to read “FLP” in the third sentence and by revising paragraph (k) and adding a paragraph (l) to read as follows:

**§ 1956.57 General provisions.**

\* \* \* \* \*

(k) *Settlement where debtor owes more than one type of Agency loan.* It is not the policy to settle any loan indebtedness of a debtor who is also indebted on another agency loan and who will continue as an active borrower. In such case, the facts will be fully documented in part VIII of Form RD 1956-1.

(l) *No previous debt forgiveness.* Debt settlement may not be approved for any direct Farm Loan Programs loan if the borrower has received debt forgiveness on any other direct loan as defined in § 1956.54 of this subpart.

**§ 1956.66 [Amended]**

36. Section 1956.66 is amended in the introductory text by revising the words “FmHA or its successor agency under Public Law 103-354” to read “RD” in the second sentence and by revising the words “FmHA or its successor agency under Public Law 103-354” to read “the Agency” in the fourth sentence and in paragraph (a), introductory text, by revising the term “FP” to read “FLP” each time it appears.

**PART 1962—PERSONAL PROPERTY**

37. The authority citation for part 1962 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

**Subpart A—Servicing and Liquidation of Chattel Security**

**§ 1962.13 [Amended]**

38. Section 1962.13 is amended in paragraph (a)(1) by removing the words “, with signature.”

39. Section 1962.34 is amended in paragraph (b)(3) by revising the words “exhibit B of Agency Instruction 440.1 (available in any Agency office) to read “a National Office issuance” and by adding a new paragraph (b)(6) and a new second sentence in paragraph (d) to read as follows:

**§ 1962.34 Transfer of chattel security and EO property and assumption of debts.**

\* \* \* \* \*

(b) \* \* \*

(6) The transferee has never been liable for a previous Farm Loan Programs (FLP) loan or loan guarantee which was reduced or terminated in a manner that resulted in a loss to the Government.  
\* \* \* \* \*

(d) \* \* \* However, no such release will be granted to any borrower who was liable for any direct FLP loan which was reduced or terminated in a manner that resulted in a loss to the Government. \* \* \*

\* \* \* \* \*

**§ 1962.40 [Amended]**

40. Section 1962.40 is amended by revising the words “FmHA or its successor agency under Public Law 103-354” to read “the agency” every time it is mentioned in paragraph (a) and paragraph (b)(1) and by revising the words “Farmer Program” to read “Farm Loan Programs” in the heading and first sentence of the introductory text of paragraph (b)(2) and by revising the words “180 days delinquent” to read “90 days past due (60 days delinquent) on their payments” in the first sentence of the introductory text of paragraph (b)(2).

41. Section 1962.41 is amended by revising in paragraph (a) the words “FmHA or its successor agency under Public Law 103-354” to read “RD” in the second sentence and by revising the words “FmHA or its successor agency under Public Law 103-354” to read “Agency” in the third and fourth sentence and by revising the words “FmHA or its successor agency under Public Law 103-354” to read “the Agency” in the fifth sentence; and by revising paragraphs (c), (d), (e), and (f) to read as follows:

**§ 1962.41 Sale of chattel security or EO property by borrowers.**

\* \* \* \* \*

(c) *Government takes possession.* The borrower may also turn over possession of the chattels to the agency by signing Form RD 455-4, “Agreement for Voluntary Liquidation of Chattel Security.” This form authorizes the agency to sell the security at either public or private sale. If the agency hires a caretaker, services should be obtained by use of Form AD-838, “Purchase Order.”

(d) *Record of Sale.* The sale will be recorded on Form FmHA 1962-1.

(e) *Unpaid debt.* If the sale results in less than full payment of the debt, the servicing official will have the County Committee review the case to determine if the borrower can be released of personal liability in accordance with paragraph (f) of this section. The borrower will be notified of the County Committee’s recommendation for or against a release of personal liability.

(f) *Release of liability.* The borrower and any co-signer may be released from personal liability to the agency when all the chattel security or EO property is sold at the present market value and the proceeds are applied on the loan accounts. If the County Committee recommends a release of liability based on the following comment, the comment will be typed on the County Committee Certification and executed by the committee, and be further processed

and approved in accordance with § 1962.34(h) of this subpart:

In our opinion (name of borrower and any co-signer) does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of his or her ability. (Name of borrower and any cosigner) has not been liable for a previous Farm Loan Programs (FLP) loan which was reduced or terminated in a manner that resulted in a loss to the Government. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the indebtedness upon completion of the transaction.

Form RD 1965-8, "Release From Personal Liability" will be given to the borrower to release him/her from liability. If a release from liability cannot be granted, the borrower will be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any agency office). The account will then be considered for debt settlement.

42. Section 1962.42 is amended by revising in the introductory text of paragraph (a) the words "FmHA or its successor agency under Public Law 103-354" to read "agency" in the first sentence; by revising in paragraphs (a)(1)(i) and (a)(1)(iii) the words "FmHA or its successor agency under Public Law 103-354" to read "RD;" by revising in paragraph (a)(1)(iv) the words "FmHA or its successor agency under Public Law 103-354" to read "the agency;" and by revising paragraphs (a)(1)(v) and (a)(2) and the first sentence in paragraph (b)(1) to read as follows:

**§ 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.**

- (a) \* \* \*
- (1) \* \* \*

(v) When Form RD 455-5, "Agreement of Secured Parties to Sale of SecurityProperty," is executed by all prior lienholders. If prior lienholders will not agree to liquidate the property, their liens may be paid if their notes and liens are assigned to the agency on forms prepared or approved by OGC. When prior liens are paid, the payment will be made in accordance with RD Instruction 2024-A (available in any agency office) and charged to the borrower's account.

(2) *Recording.* A list, dated and signed by the servicing official, of all security or EO property repossessed except for those items on Form RD 455-4, will be maintained in the borrower's case file.

Whenever the servicing official is transferred to another position or leaves the agency or there is a change in jurisdiction, the District Director will give the succeeding servicing official in writing, the names of such borrowers and a list of the property repossessed in the custody of the servicing official and caretakers, its location, and the names and addresses of the caretakers.

- (b) \* \* \*

(1) \* \* \* Care and feeding of livestock will be obtained by contract pursuant to subpart B of part 1955 of this chapter. \* \* \*

\* \* \* \* \*

43. Section 1962.46 is amended by adding a new paragraph (g)(2)(iv) to read as follows:

**§ 1962.46 Deceased borrowers.**

\* \* \* \* \*

- (g) \* \* \*
- (2) \* \* \*

(iv) The transferee has never been liable for a previous Farm Loan Programs direct farm loan or loan guarantee which was reduced or terminated in a manner that resulted in a loss to the Government.

\* \* \* \* \*

**Exhibit D-1 of Subpart A [Removed]**

44. Exhibit D-1 of subpart A is removed and reserved.

**PART 1965—REAL PROPERTY**

45. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

**Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases**

46. Subpart A is amended to revise the heading of the subpart to read as set forth above.

47. Section 1965.26 is amended by revising paragraph (a)(1)(iv), by revising paragraph (a)(2), by revising paragraph (b), by revising paragraphs (c)(1) and (c)(3), by revising paragraphs (f)(4), (f)(5)(ii), adding a new paragraph (f)(5)(iii) and revising paragraph (f)(6) to read as follows:

**§ 1965.26 Liquidation action.**

\* \* \* \* \*

- (a) \* \* \*
- (1) \* \* \*

(iv) Refinancing the Farm Loan Programs debt with another lender. The servicing official will explain the provisions of these regulations to the borrower.

(2) *Sale or transfer for less than secured debt.* If the property is to be sold or transferred for less than the total

secured debts against it, the property will be appraised immediately to determine its present market value. The appraisal will be completed by an authorized agency employee in accordance with subpart E of part 1922 of this chapter and placed in the borrower's case file. If a qualified agency appraiser is not available, the State Executive Director may contract for an appraisal in accordance with RD Instruction 2024-A (available in any agency office).

(b) *Involuntary liquidation—(1) General.* When the servicing official, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that further servicing cannot be justified under the policy stated in § 1965.2 of this subpart, liquidation of the account will be accomplished as quickly as possible under this section and subpart A of part 1955 of this chapter.

(2) *Farm Loan Programs loan cases.* In Farm Loan Programs loan cases, borrowers who are 90 days past due (60 days delinquent) on their payments, must receive Exhibit A with attachments 1 and 2, or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving nonmonetary default. The servicing official will send these forms to the borrower as soon as a decision is made to liquidate. The procedures set out in subpart S of part 1951 of this chapter shall be followed and any appeal must be concluded before any liquidation action, including termination of releases of sales proceeds, is taken. If the borrower fails to return attachment 2 of exhibit A of subpart S of part 1951 of this chapter and a complete application within 60 days, the servicing official will send attachments 9 and 10 or 9-A and 10-A of exhibit A of subpart S of part 1951 of this chapter. If the borrower fails to return attachment 4, 6, 6-A, 10, or 10-A of exhibit A of subpart S of part 1951 of this chapter within 60 days, the servicing official will submit the case to the District Director in accordance with the provisions of § 1955.15 of subpart A of part 1955 of this chapter.

(3) Reserved.

(4) *Acceleration of account.* When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable paragraphs of § 1955.15 of subpart A of part 1955 of this chapter.

(c) \* \* \*

(1) When a borrower is indebted to the agency for more than one type of FLP loan, a thorough study should be made of each loan and the effect

liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FLP loans secured by real estate and chattels is necessary, and it will jeopardize the repayment of or the accomplishment of the purpose of the other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under subpart A of part 1962 of this chapter, except when real estate is transferred in accordance with § 1965.27 of this subpart.

\* \* \* \* \*

(3) RHS SFH loans on farm tracts must be considered for payment assistance and/or moratorium at the time servicing options are being considered for the FLP loan(s) prior to acceleration. The RHS county office file will be documented to show that payment assistance and moratorium were considered. When the Notice of Intent notices, set forth in subpart S of part 1951 of this chapter are sent to a borrower who also has an RHS loan, and the dwelling is security for the farm loan(s) and is located on the farm tract, it will not be necessary for RHS to meet the additional requirements of subpart G of part 1951 of this chapter prior to accelerating the RHS loan accounts. The RHS accounts will be accelerated at the same time the Notice of Intent notices, set forth in subpart S of part 1951 of this chapter are sent to the borrower. If it is later determined that the FLP loan(s) is to receive additional servicing in lieu of liquidation, the RHS loan will be reinstated simultaneously with the FLP servicing actions and may be reamortized in accordance with § 1951.315 of subpart G of part 1951 of this chapter.

\* \* \* \* \*

(f) \* \* \*

(4) The agency's liens against the security property are not released until the appropriate sale proceeds for application on the Government's claim are received. The release will be made on forms approved or prepared by OGC.

(5) \* \* \*

(ii) When the Agency debt less the market value and prior liens is \$1 million or more (including principal, interest, and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Executive Director must approve the release of liability. All cases requiring a release of liability will be submitted in accordance with exhibit A of subpart B of part 1956 of this chapter (available in any agency office).

(iii) The borrower has never been liable for any direct FLP loan or loan guarantee which was reduced or terminated in a manner resulting in a loss to the Government.

(6) If a release from liability cannot be granted, the borrowers will be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any agency office). The servicing official will meet with the borrower within 30 days to assist the borrower in the development of a debt settlement offer in accordance with subpart B of part 1956 of this chapter. (available in any agency office).

\* \* \* \* \*

**§ 1956.27 [Amended]**

48. Section 1965.27 is amended by:

a. In the introductory paragraph by revising the words "FmHA or its successor agency under Public Law 103-354" to read "Agency" in the first sentence; revising the words "Farmer program" to read "Farm Loan Programs (FLP)" in the second sentence; revising the words "FmHA or its successor agency under Public Law 103-354" to read "FLP" in the third and fourth sentence; by revising the words "FmHA or its successor agency under Public Law 103-354" to read "the Agency's" in the sixth sentence; by revising the words "FmHA or its successor agency under Public Law 103-354" to read "agency" in the seventh sentence; by removing the words "FmHA or its successor agency under Public Law 103-354" in the eighth sentence in both places they appear;

b. In paragraph (c)(2) by revising the words "FmHA or its successor agency under Public Law 103-354" to read "the

agency" in the first sentence; by revising the third sentence to read "Interest rates are specified in agency National Office issuances (available in any agency office) for the type of loan involved."; by revising the words "FmHA or its successor agency under Public Law 103-354" to read "RD" in the fourth sentence; by revising the fifth sentence to read "The field office will process the assumption via the field office terminal system in accordance with Form 1965-13.";

c. In paragraph (d) by adding a sentence to the end of the paragraph to read "No assumption can be approved if the transferee has been liable for any Farm Loan Program (FLP) loan or loan guarantee which was reduced or terminated in a manner resulting in a loss to the Government.";

d. In paragraph (e) by revising the words "FmHA or its successor agency under Public Law 103-354" to read "agency";

e. In paragraph (f) by adding a new sentence after the first sentence to read "Release shall not be granted to any borrower or cosigner who was liable for any FLP direct loan which was reduced or terminated in a manner resulting in a loss to the Government"; by revising the word "FP" to read "FLP" in the third and fifth sentence; by revising the words "FmHA or its successor agency under Public Law 103-354" to read "agency" in the third sentence; by removing the fourth sentence that read "SFH borrowers will be released from liability in accordance with § 1965.127 of subpart C of part 1965 of this chapter."; and by removing the words "FmHA or its successor agency under Public Law 103-354" in the seventh sentence."

Dated: February 13, 1997.

James W. Schroeder,  
*Acting Under Secretary for Farm and Foreign Agricultural Services.*

Dated: February 14, 1997.

Jill Long Thompson,  
*Under Secretary for Rural Development.*  
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