

§ 1951.910

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

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

(j) *Processing of writedown.* The DALR\$ computer program will be used to determine the notes and amount to be written down. The borrower's account will be credited for the amount written down and the loans remaining after writedown will be rescheduled or reamortized.

(1) A separate note will be signed for each loan being reamortized.

(2) If any loan written down was secured by real estate, the borrower must enter into a "Shared Appreciation Agreement." This agreement provides for FSA to collect back all or part of the amount written down by taking a share in any positive appreciation in the value of the real property securing the SAA and the remaining debt after the writedown. The maximum amount of shared appreciation collected will not exceed the amount written down. If a borrower's FLP loan was not secured by real estate, the borrower will not be required to enter into a shared appreciation agreement.

(3) A lien will be taken on assets in accordance with §1951.910. The Agency's real estate liens will be maintained even if the writedown of the borrower's debt results in all real estate debts to the Agency being written down. The Agency's real estate lien will not be subordinated to increase the amount of the prior liens during the shared appreciation period.

[62 FR 10124, Mar. 5, 1997, as amended at 63 FR 6628, Feb. 10, 1998; 63 FR 56290, Oct. 21, 1998; 64 FR 62568, Nov. 17, 1999; 65 FR 50404, Aug. 18, 2000]

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

(2) *Eligibility.* If the NRV of the nonessential assets is sufficient to bring the delinquent FLP account current,

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

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

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

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

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

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

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

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

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

[62 FR 10132, Mar. 5, 1997, as amended at 64 FR 62568, Nov. 17, 1999]

§ 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