

## § 1955.12

(2) The conveyance will permit a substantial recovery on the FmHA or its successor agency under Public Law 103-354 debt; and

(3) FmHA or its successor agency under Public Law 103-354 will acquire title free of all liens and encumbrances except FmHA or its successor agency under Public Law 103-354 liens.

(b) *Fees and deed.* (1) FmHA or its successor agency under Public Law 103-354 may pay any necessary and proper fees approved by the bankruptcy court in connection with the conveyance. Before paying a fee to a trustee for a Trustee's Deed in excess of \$300 for any loan type(s) other than Farmer Programs or \$1,000 for Farmer Program loans, prior approval of the Administrator must be obtained. The State Director will process the necessary documents as outlined in §1955.5(d) of this subpart for payment of fees as recoverable costs.

(2) Conveyance may be by Trustee's Deed instead of a warranty deed. If upon advice of OGC it is determined a deed from any other person or entity (including the borrower) is necessary to obtain clear title, a deed from such person or entity will be obtained.

(c) *Acceptance.* The conveyance will be accepted for an amount of credit to the borrower's FmHA or its successor agency under Public Law 103-354 account(s) as set forth in §1955.18(e)(4) of this subpart.

(d) *Reporting.* Acquisition of property under this section will be reported in accordance with §1955.18(a) of this subpart.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27827, July 25, 1988]

## **§ 1955.12 Acquisition of property which served as security for a loan guarantee by FmHA or its successor agency under Public Law 103-354 or at sale by another lienholder, bankruptcy trustee, or taxing authority.**

When the servicing regulations for the type of loan(s) involved permit FmHA or its successor agency under Public Law 103-354 to acquire property by one of these methods, the acquisition will be reported in accordance with §1955.18(a) of this subpart.

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## **§ 1955.13 Acquisition of property by exercise of Government redemption rights.**

When the Government did not protect its interest in security property in a foreclosure by another lienholder, and if the Government has redemption rights, the State Director will determine whether to redeem the property. This determination will be based on all pertinent factors including the value of the property after the sale, and costs which may be incurred in acquiring and reselling the property. For Farmer Program loans, the County Supervisor will document the determination on exhibit G of this subpart. The decision must be made far enough in advance of expiration of the redemption period to permit exercise of the Government's rights. If the property is to be redeemed, complete information documenting the basis for not acquiring the property at the sale and factors which justify redemption of the property will be included in the case file. The assistance of OGC will be obtained in effecting the redemption. If the State Director decides not to redeem the property, the Government's right of redemption under Federal law (28 U.S.C. 2410) may be waived without consideration. If a State law right of redemption exists and may be sold, it will not be disposed of for less than its value.

[53 FR 35762, Sept. 14, 1988]

## **§ 1955.14 [Reserved]**

## **§ 1955.15 Foreclosure by the Government of loans secured by real estate.**

Foreclosure will be initiated when all reasonable efforts have failed to have the borrower voluntarily liquidate the loan through sale of the property, voluntary conveyance, or by entering into an accelerated repayment agreement when applicable servicing regulations permit; when either a net recovery can be made or when failure to foreclose would adversely affect FmHA or its successor agency under Public Law 103-354 programs in the area. Also, in Farmer Program cases (except graduation cases under subpart F of part 1951 of this chapter), the borrower must have received exhibit A with attachments 1 and 2 of subpart S of part 1951

of this chapter, and any appeal must have been concluded. For real property located within the confines of a federally recognized Indian reservation and owned by a Native American borrower, proper notice of voluntary conveyance must be given as outlined in §1955.9 (c)(1) of this subpart.

(a) *Authority*—(1) *Loans to individuals*. The District Director is authorized to approve or disapprove foreclosure and accelerate the account.

(2) *Loans to organizations*. (i) The State Director or District Director is authorized to approve or disapprove foreclosure of MFH loans when the amount of the FmHA or its successor agency under Public Law 103-354 secured debt does not exceed their respective loan approval authority. The State Director is authorized to approve or disapprove foreclosure of I&D, Shift-In-Land-Use (Grazing Association), loans to Indian Tribes and Tribal Corporations, and EOC loans, regardless of the amount of debt.

(ii) For all other organization loans, foreclosure will not be initiated without prior approval of the Administrator. The State Director will obtain OGC's opinion on the steps necessary to foreclose the loan, and forward the appropriate problem case report, a statement of essential facts, his/her recommendation, a copy of the OGC opinion, and the borrower's case file to the Administrator, Attn: Assistant Administrator (appropriate loan division) with a request for authorization to initiate foreclosure.

(b) *Problem case report*. When foreclosure is recommended, the servicing official will prepare Form FmHA or its successor agency under Public Law 103-354 1955-2 for Farmer Program or SFH loans, exhibit A to this subpart for MFH loans, or exhibit A of FmHA or its successor agency under Public Law 103-354 Instruction 1951-E (available in any FmHA or its successor agency under Public Law 103-354 office) for other organization loans. If chattel security is also involved, Forms FmHA or its successor agency under Public Law 103-354 455-1, "Request for Legal Action"; 455-2, "Evidence of Conversion"; and 455-22, "Information for Litigation"; as applicable to the case, will be prepared in accordance with the

respective FMIs and made a part of the problem case submission. A statement must be included by the servicing official in the narrative that all servicing actions required by FmHA or its successor agency under Public Law 103-354 loan servicing regulations have been taken and all required notices given to the borrower.

(1) *Appraisal*. The market value of the property may be estimated in completing the problem case report unless there are one or more prior liens other than current-year real estate taxes. Where such prior liens are involved, an appraisal report reflecting market value in existing condition will be included in the case file as a basis for determining the Government's prospects for financial recovery through foreclosure.

(2) *Recommendation for deficiency judgment*. If the debt will not be satisfied by the foreclosure, the borrower's financial situation will be assessed to determine if there is a possibility of further recovery on the account through a deficiency judgment. A summary of these determinations will be fully documented and appropriate recommendations made concerning deficiency judgment in the applicable problem case report. For SFH loans subject to recapture of subsidy, the debt includes total interest credit granted and principal reduction attributed to subsidy in addition to unpaid principal and interest. However, a deficiency judgment will not be recommended in a SFH case to recapture subsidy or where the borrower was granted a moratorium provided the borrower faithfully tried to meet loan obligations. In crediting security value against indebtedness, credit will be given first to interest, principal and recoverable costs and then to recapture of subsidy.

(3) *Historic preservation*. If it is likely that FmHA or its successor agency under Public Law 103-354 will acquire title to the property as a result of the foreclosure, and the structure(s) on the property will be in excess of 50 years old at the time of acquisition or meet any of the other criteria contained in §1955.137(c) of subpart C of part 1955 of this chapter, steps should be initiated to meet the requirements of the National Historic Preservation Act as

outlined in §1955.137(c). Formal steps should not be initiated until the conclusion of all appeals. However, any such documentation required may be completed when the problem case report is prepared. This action should eliminate delays in selling the property after acquisition.

(c) *Submission of problem case.* The servicing official will submit the completed problem case docket to the official authorized to approve the foreclosure (approval official). Before approval of foreclosure and acceleration of the account, the approval official is responsible for review of the problem case report to see that all items are complete and that all required servicing actions have been taken and all required notices given the borrower. The narrative portion of the report should provide complete information on the borrower's financial condition, deficiency judgment in case the debt is not satisfied by the foreclosure, and other pertinent background items. The approval official will approve or disapprove the foreclosure, or make a recommendation and refer the case to the National Office, if not within his/her approval authority. If foreclosure is not approved, the case will be returned to the originating office with instructions for further servicing. Problem case submission is as follows:

(1) *For loans to individuals.* The County Supervisors will submit the case to the District Director.

(2) *For loans to organizations.* The District Director will submit the case to the State Director along with a proposed liquidation and management plan covering the time the foreclosure is in process. The State Director will obtain the advice of OGC if required in connection with the type of loan being liquidated.

(d) *Approval of foreclosure.* When foreclosure is approved, it will be handled as follows:

(1) *Prior lien(s).* If there is a prior lien, all foreclosure alternatives should be explored including whether FmHA or its successor agency under Public Law 103-354 will give the prior lienholder the opportunity to foreclose; join in the action if the prior lienholder wishes to foreclose; or foreclose the FmHA or its successor agency under Public

Law 103-354 loan(s), either settling the prior lien or foreclosing subject to it. The provisions of §1965.11(c) of subpart A of part 1965 of this chapter must be followed for loans serviced under subpart A of part 1965. The assistance of OGC should be obtained in weighing the alternatives, with the objective being to pursue the course which will result in the greatest net recovery by the Government. After it is decided which option will be most advantageous to the Government, the approval official, either directly or through a designee, will contact the prior lienholder to outline FmHA or its successor agency under Public Law 103-354's position. If State laws affect this action, a State Supplement will be issued with the advice of OGC to establish the procedure to be followed. For real property located within the confines of a federally recognized Indian reservation owned by a Native American borrower-owner, an analysis of whether FmHA or its successor agency under Public Law 103-354 should acquire title must include facts which demonstrate the fair market value after considering the cost of clean-up of hazardous substances on the property.

(2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section, the account will be accelerated using a notice substantially similar to exhibits B, C, D, or E of this subpart, or for multi-family housing, FmHA or its successor agency under Public Law 103-354 Guide Letters 1955-A-1 or 1955-A-2 (available in any FmHA or its successor agency under Public Law 103-354 Office), as appropriate, to be signed by the official who approved the foreclosure. The accounts of borrowers with pending Chapter 12 and 13 cases which have not been discharged will be accelerated in accordance with instructions from OGC. Upon OGC approval, accounts of these borrowers may be accelerated using a notice substantially similar to exhibit D of this subpart. Loans secured by chattels must be accelerated at the same time as loans secured by real estate in accordance with §1965.26 (c) of subpart A of part 1965 of this chapter. The notice will be sent by certified mail, return receipt requested, to each

obligor individually, addressed to the last known address. If different from the property address and/or the address the Finance Office uses, a copy of the notice will also be mailed to the property address and the address currently used by the Finance Office. (In chattel liquidation cases which have been referred for civil action under subpart A of part 1962 of this chapter, the Finance Office will be sent a copy of exhibits D, E, or E-1 (available in any FmHA or its successor agency under Public Law 103-354 office) as applicable. County Office and Finance Office loan records will be adjusted to mature the entire debt in such cases). If a signed receipt for at least one of these acceleration notices sent by certified mail is received, no further notice is required. If no receipt is received, a copy of the acceleration notice will be sent by regular mail to each address to which the certified notices were sent. This type mailing will be documented in the file. A State Supplement may be issued if OGC advises different or additional language or format is required to comply with State laws or if notice and mailing instructions are different from that outlined in this paragraph. A conformed copy of the acceleration notice will be forwarded to the servicing official. Farmer Program appeals will be concluded before acceleration. For MFH loans, a copy of the acceleration letter will also be forwarded to the National Office, ATTN: MFH Servicing and Property Management Division, for monitoring purposes. Accounts may be accelerated as follows:

(i) Where monetary default is involved, the account may be accelerated immediately after approval of foreclosure.

(ii) Where monetary default is *not* involved, the account will not be accelerated until the concurrence of OGC is obtained.

(iii) If borrower obtained the loan while a civilian, entered military service after the loan was closed, the FmHA or its successor agency under Public Law 103-354 has not obtained a waiver of rights under the Soldiers and Sailors Relief Act, the account will not be accelerated until OGC has reviewed the case and given instructions.

(iv) If the decision is made to liquidate the farm loan(s) of a borrower who also has a SFH loan(s), and the dwelling was used as security for the farm loan(s) it will not be necessary to meet the requirements of subpart G of part 1951 of this chapter prior to accelerating the account. Except that, if the borrower is in default on his/her farm loan(s), the SFH account must have been considered for interest credit and/or moratorium at the time servicing options are being considered for the FP loan(s) prior to acceleration. If it is later determined the FP loan(s) are to receive additional servicing in lieu of liquidation, the RH loan will be reinstated simultaneously with the FP servicing actions and may be reamortized in accordance with §1951.315 of subpart G of part 1951 of this chapter. Accounts of a borrower who has both Farmer Program and SFH loan(s) may be accelerated as follows:

(A) When the borrower's dwelling is financed with an SFH loan(s) is secured by and located on the same farm real estate as the Farmer Program loan(s) (dwelling located on the farm), the SFH loan(s) will be serviced in accordance with §1965.26(c)(1) of subpart A of part 1965 of this chapter.

(B) When the borrower's dwelling is financed with an SFH loan(s) and is located on a nonfarm tract which also serves as additional security for the Farmer Program loan(s), the loans(s) will be serviced in accordance with §1965.26 (c)(2) of subpart A of part 1965 of this chapter.

(C) When the borrower's dwelling is financed with an SFH loan(s) and is on a non-farm tract which does not serve as additional security for the Farmer Program loan(s), it will NOT be accelerated simultaneously with sending out attachments 5 and 6, or 5-A and 6-A, or attachment 9 and 10, or 9-A and 10-A, of exhibit A of subpart S of part 1951 of this chapter, as applicable, unless it is subject to liquidation based on provisions of §1965.125 of subpart C of part 1965 of this chapter, taking into consideration the prospects for success that may evolve when the borrower's livelihood is from a source other than the farming operation. If the SFH loan is in default and subject to liquidation

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based on provisions of § 1965.125 of subpart C of part 1965 of this chapter, the SFH loan(s) must be accelerated at the same time the borrower is sent attachment 5 and 6, or 5-A and 6-A, or attachments 9 and 10, or 9-A and 10-A, to exhibit A of subpart S of part 1951 of this chapter, as applicable. For those borrowers who are in non-monetary default on their Farmer Programs loans and fail to return attachment 4 of exhibit A of subpart S of part 1951 of this chapter, the Farmer Programs loans and SFH loans will be accelerated at the same time. If the borrower appeals, one appeal hearing and one review will be held for both adverse actions.

(D) If a borrower's FP loan(s) were accelerated prior to May 7, 1987, and the SFH loan(s) is not accelerated, the SFH loan will be accelerated at the same time the borrower is sent attachments 5 and 6, or 5-A and 6-A, or attachments 7 and 8 to exhibit A of subpart S of 1951 of this chapter, as applicable, unless the requirements of § 1965.26 of subpart A of part 1965 of this chapter are met or the liquidation of the SFH loan is based on provisions of § 1965.125 of subpart C of part 1965 of this chapter. If the borrower is sent attachments 5 and 6, or 5-A and 6-A to exhibit A of subpart S of 1951 of this chapter, as applicable, and requests an appeal, one hearing and one review will be held for both the adverse action on the FP loan restructuring request and SFH acceleration notices. If the borrower is sent attachments 7 and 8 to exhibit A of subpart S of 1951 of this chapter, there are no further appeals on the FP loans; but, the borrower is entitled to a hearing and a review on the SFH acceleration notice.

(v) For MFH loans, the acceleration notice will advise the borrower of all applicable prepayment requirements, in accordance with subpart E of part 1965 of this chapter. The requirements include the application of restrictive-use provisions to loans made on or after December 21, 1979, prepaid in response to acceleration notices and all tenant and agency notifications. The acceleration notice will also remind borrowers that rent levels cannot be raised during the acceleration without FmHA or its successor agency under Public Law 103-354 approval, even after

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subsidies are canceled or suspended. Tenants are to be notified of the status of the project and of possible consequences of these actions. FmHA or its successor agency under Public Law 103-354 Form Letters 1965-E-2, 1965-E-3 and 1965-E-5 may be used as guides, but modified appropriately. If the borrower wishes to prepay the project in response to the acceleration and FmHA or its successor agency under Public Law 103-354 makes a determination that the housing is no longer needed, a minimum of 180 days' notice to tenants is required before the project can be removed from the FmHA or its successor agency under Public Law 103-354 program. Letters of Priority Entitlement must be made available in accordance with § 1965.215(e)(4) or subpart E of part 1965 of this chapter.

(3) *Offers by borrowers after acceleration of account—(i) Farmers Programs (FP) accelerations.* This category also includes non-FP loans to the same borrower which have been accelerated as part of the same action. After the account is accelerated, the borrower will have 30 days from the date of the acceleration notice to make payment in full to stop the acceleration, unless State or tribal law requires that the foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify the requirement.

(A) Payment in full [see exhibit D of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office)] may consist of the following means of fully satisfying the debt.

- (1) Cash.
- (2) Transfer and assumption.
- (3) Sale of property.
- (4) Voluntary conveyance.

(B) Payments which do not pay the account in full can be accepted subject to the following requirements:

(1) Payments will be accepted if there is no remaining security for the debt (real estate and chattel).

(2) If the borrower is in the process of selling security or nonsecurity, payments may be accepted unless State law would require the acceleration to be reversed. In States where payments cannot be accepted unless the acceleration is reversed, the payments will not

be accepted. A State supplement will be issued to address State law on accepting payments after acceleration.

(3) If payments are mistakenly credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenant in the real estate instruments will result. Disposition of such payments will be made after consulting OGC.

(4) The servicing official will notify the approval official of any other offer. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a proposal to cure the default(s). In all other cases, the approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan(s) involved. If an offer is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made.

(ii) *All other accelerations.* After the account is accelerated, loan servicing ceases. For example, for SFH loans, the renewal or granting of interest credit or a moratorium is not authorized. The servicing official will accept no payment for less than the unpaid loan balance, unless State law requires that foreclosure be withdrawn if the account is brought current and a State supplement is issued to specify this requirement. If payments are mistakenly accepted and credited to the borrower's account, no waiver or prejudice to any rights which the United States may have for breach of any promissory note or covenants in the real estate instruments will result. Disposition of such payments will be made after consultation with OGC. The servicing official will notify the approval official of any offer received from the borrower. This includes a request by the borrower for an extension of time to accomplish voluntary liquidation or a written proposal to cure the default(s). The receipt

of a payment with no proposal to cure the defaults is not considered a viable offer, and such payments will be returned to the borrower. The approval official will decide whether an offer from a borrower will be accepted and servicing of the loan reinstated or whether foreclosure will be delayed to give the borrower additional time to voluntarily liquidate as authorized in servicing regulations for the type loan involved. If an offer is received after the case has been referred to OGC, the approval official will consult OGC before accepting or rejecting the offer. The denial of an offer to stop foreclosure is not appealable. In all cases, the approval official will notify the servicing official of the decision made. For MFH loans, the National Office will be notified when foreclosure is withdrawn. When an account is reinstated under this section, the servicing official will grant or reinstate assistance for which the borrower qualifies, such as interest credit on an SFH loan. When granting interest credit in such a case:

(A) If an interest credit agreement expired after the account was accelerated, the effective date will be the date the previous agreement expired.

(B) If an interest credit agreement was not in effect when the account was accelerated, the effective date will be the date foreclosure action was withdrawn.

(C) For MFH loans with rental assistance, after acceleration and after any appeal or review has been concluded, rental assistance will be suspended if foreclosure is to continue. If the account is reinstated, the rental assistance will be reinstated retroactively to the date of suspension. In the interim, the tenants will continue rental payments in accordance with their leases, and all rental rates and lease renewals and provisions will be continued as if acceleration had not taken place.

(4) *Statement of account.* If a statement of account is required for foreclosure proceedings, Form FmHA or its successor agency under Public Law 103-354 451-10, "Request for Statement of Account," will be processed in accordance with the FMI. When an official statement of account is not required,

account balances and recapture information may be obtained from the field office terminal.

(5) *Appeals.* All appeals will be handled pursuant to subpart B of part 1900 of this chapter. Foreclosure actions will be held in abeyance while an appeal is pending. No case will be referred to OGC for processing of foreclosure until a borrower's appeal and appeal review have been concluded, or until the time has elapsed during which an appeal or a request for review may be made. In Farmer Programs cases, (except graduation cases under subpart F of part 1951 of this chapter), the borrower must have received the appropriate notices and consideration for primary loan servicing per subpart S of part 1951 of this chapter. Any Farmer Programs cases may be accelerated after all primary loan servicing options have been considered and all related appeals concluded, but will not be submitted to OGC for foreclosure action until all appeals related to any preservation rights have been concluded.

(6) *Petition in bankruptcy filed by borrower after acceleration of account.*

(i) When bankruptcy is filed after an account has been accelerated, any foreclosure action initiated by FmHA or its successor agency under Public Law 103-354 must be suspended until:

(A) The bankruptcy case is *dismissed* or *closed* (a discharge of debtor does not close the case);

(B) An Order lifting the automatic stay is obtained from the Bankruptcy Court; or

(C) The property is no longer property of the bankruptcy estate *and* the borrower has received a discharge.

(ii) The State Director will request the assistance of OGC in obtaining the Order(s) described in paragraph (c)(6)(i)(B) of this section.

(e) *Referral of case.* If the borrower fails to satisfy the account during the period of time specified in the acceleration notice, and no appeal is pending, the foreclosure process will continue:

(1) If the District Director is the approval official, he/she will forward the case file with all pertinent documents and information concerning the foreclosure action and appeal, if any, to the State Director for completion of the foreclosure.

(2) If the State Director is the approval official, or in cases referred by the District Director under paragraph (e)(1) of this section, the State Director will forward to OGC the case file and all documents needed by OGC to process the foreclosure. A State Supplement will be issued, with the advice and assistance of OGC, to reflect the make-up of the foreclosure docket. Since foreclosure processing varies widely from State to State, each State Supplement will be explicit in outlining step-by-step procedures. At the time indicated by OGC in the foreclosure instructions, Form FmHA or its successor agency under Public Law 103-354 1951-6, "Borrower Account Description Flag," will be processed in accordance with the FMI. After referral to OGC, further actions will be in accordance with OGC's instructions for completion of the foreclosure. If prior approval of the Administrator is obtained, nonjudicial foreclosure for monetary default may be handled as outlined in a State Supplement approved by OGC without referral to OGC before foreclosure.

(f) *Completion of foreclosure—(1) Foreclosure advertisement for organization loans subject to title VI of the Civil Rights Act of 1964—(i)* The advertisement for foreclosure sale of property subject to title VI of the Civil Rights Act of 1964 will contain a statement substantially similar to the following: "The property described herein was purchased or improved with Federal financial assistance and is subject to the non-discrimination provisions of title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and other similarly worded Federal statutes and regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age or sex in programs or activities receiving Federal financial assistance, for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended or for so long as the purchaser owns it, whichever is later." At least 30 days before the foreclosure sale, the County Supervisor will notify, in writing, the Indian tribe which has jurisdiction over the reservation, and in which the

real property is owned by a Native American member of said tribe that a foreclosure sale will be conducted to resolve this account, and will provide:

- (A) Projected sale date and location;
- (B) Fair market value of property;
- (C) Amount FmHA or its successor agency under Public Law 103-354 will bid on the property; and

(D) Amount of FmHA or its successor agency under Public Law 103-354 debt against the property.

(ii) The purchaser will be required to sign Form FmHA or its successor agency under Public Law 103-354 400-4, "Assurance Agreement," if the property will be used for its original or similar purposes.

(2) *Restrictive-use provisions for MFH loans.* For MFH loans, the advertisement will state the restrictive-use provisions which will be included in any deed used to transfer title.

(3) *Expenses.* Expenses which are incurred in connection with foreclosure, including legal fees, will be paid at the time recommended by OGC by processing the necessary documents as outlined in §1955.5 (d) of this subpart. Costs will be charged as outlined in FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

(4) *Notice of judgment.* In states with judicial foreclosure, as soon as the foreclosure judgment is obtained, Form FmHA or its successor agency under Public Law 103-354 1962-20, "Notice of Judgment," will be processed in accordance with the FMI. This will establish a judgment account to accrue interest at the rate stated in the judgment order so that an accurate account balance can be obtained for calculating the Government's foreclosure bid.

(5) *Gross investment.* The gross investment is the sum of the following:

(i) The unpaid balance of one of the following, as applicable:

(A) In States with nonjudicial foreclosure, the borrower's FmHA or its successor agency under Public Law 103-354 account balance reflecting secured loan(s) and advances; and where State law permits, unsecured debts; or

(B) In States with judicial foreclosure, the judgment account estab-

lished as a result of the foreclosure judgment in favor of FmHA or its successor agency under Public Law 103-354.

(ii) All recoverable costs charged (or to be charged) to the borrower's account in connection with the foreclosure action and other costs which OGC advises must be paid from proceeds of the sale before paying the FmHA or its successor agency under Public Law 103-354 secured debt, including but not limited to payment of real estate taxes and assessments, prior liens, legal fees including U.S. Attorney's and U.S. Marshal's, and management fees; and

(iii) If a SFH loan subject to recapture of interest credit is involved, the total amount of subsidy granted and principal reduction attributed to subsidy.

(6) *Amount of Government's bid.* Except for FP loans and as modified by paragraph (f)(7)(ii) of this section, the Government's bid will be the amount of FmHA or its successor agency under Public Law 103-354's gross investment or the market value of the security, whichever is less. For real property located within the confines of a federally recognized Indian reservation and which is owned by an FmHA or its successor agency under Public Law 103-354 borrower who is a member of the tribe with jurisdiction over the reservation, the Government's bid will be the greater of the fair market value or the FmHA or its successor agency under Public Law 103-354 debt against the property, unless FmHA or its successor agency under Public Law 103-354 determines that, because of the presence of hazardous substances on the property, it is not in the best interest of the Government to bid such amount, in which case there may be a deduction from the bid for the costs for hazardous material assessment and/or mitigation. For FP loans, except as modified by paragraph (f)(7)(ii) of this section, the Government's bid will be the amount of FmHA or its successor agency under Public Law 103-354's gross investment or the amount determined by use of exhibit G-1 of this subpart, whichever is less. When the foreclosure sale is imminent, the State Director must request the servicing official to submit a current

appraisal (in existing condition) as a basis for determining the Government's bid. Except for MFH properties, if an FmHA or its successor agency under Public Law 103-354 appraiser is not available, the State Director may authorize an appraisal to be obtained by contract from a source outside FmHA or its successor agency under Public Law 103-354 in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office). For MFH properties, prior approval of the Assistant Administrator, Housing, is necessary to procure an outside appraisal.

(7) *Bidding.* The State Director will designate an individual to bid on behalf of the Government unless judicial proceedings or State nonjudicial foreclosure law provides for someone other than an FmHA or its successor agency under Public Law 103-354 employee to enter the Government's bid. When the State Director determines attendance of an FmHA or its successor agency under Public Law 103-354 employee at the sale might pose physical danger, a written bid may be submitted to the Marshal, Sheriff, or other party in charge of holding the sale. The Government's bid will be entered when no other party makes a bid or when the last bid will result in the property being sold for less than the bid authorized in paragraph (f)(6) of this section.

(i) When FmHA or its successor agency under Public Law 103-354 is the senior lienholder, only one bid will be entered, and that will be for the amount authorized by the State Director.

(ii) When FmHA or its successor agency under Public Law 103-354 is not the senior lienholder and OGC advises that the borrower has no redemption rights or if a deficiency judgment will be obtained, the State Director may authorize the person who will bid for the Government to make incremental bids in competition with other bidders. If incremental bidding is desired, the State Director's instructions to the bidder will state the initial bid, bidding increments, and the maximum bid.

(g) *Reports on sale and finalizing foreclosure.* Immediately after a foreclosure sale at which the State Director has

designated a person to bid on behalf of the Government, the servicing official will furnish the State Director a report on the sale. The State Director will forward a copy of this report to OGC and, for MFH loans, to the National Office. Based on OGC's instructions, a State supplement will provide a detailed outline of actions necessary to complete the foreclosure.

[50 FR 23904, June 7, 1985, as amended at 50 FR 45782, Nov. 1, 1985; 51 FR 4138, Feb. 3, 1986; 51 FR 45433, Dec. 18, 1986; 53 FR 27827, July 25, 1988; 53 FR 35763, Sept. 14, 1988; 56 FR 6953, Feb. 21, 1991; 56 FR 15822, Apr. 18, 1991; 57 FR 18671, Apr. 30, 1992; 57 FR 31642, July 17, 1992; 57 FR 60085, Dec. 18, 1992; 58 FR 38927, July 21, 1993; 58 FR 58648, Nov. 3, 1993; 58 FR 68725, Dec. 29, 1993; 60 FR 55147, Oct. 27, 1995; 62 FR 44396, Aug. 21, 1997]

§§ 1955.16–1955.17 [Reserved]

§ 1955.18 **Actions required after acquisition of property.**

The approval official may employ the services of local designated attorneys, of a case by case basis, to process all legal procedures necessary to clear the title of foreclosure properties. Such attorneys shall be compensated at not more than their usual and customary charges for such work. Contracting for such attorneys shall be accomplished pursuant to the Federal acquisition regulations and related procurement regulations and guidance.

(a)–(d) [Reserved]

(e) *Credit to the borrower's account or foreclosure judgment account.*

(1) *For SFH accounts.* When FmHA or its successor agency under Public Law 103-354 acquired the property, the account will be satisfied unless:

(i) In a voluntary conveyance case where the debt exceeds the market value of the property and the borrower is *not* released from liability, in which case the account credit will be the market value (less outstanding liens if any); or

(ii) In a foreclosure where the bid is less than the account balance and a deficiency judgment will be sought for the difference, in which case the account credit will be the amount of FmHA or its successor agency under Public Law 103-354's bid.

(2) *For all types of accounts other than SFH.* When FmHA or its successor