will be followed. If the EO loan is unsecured, paragraphs (a), (b), (c), (d), and (e) of this section will be followed along with the following requirements.

(1) An individual who is liable for the indebtedness of the deceased borrower and wishes to continue with the EO debt and the EO property, may do so in accordance with paragraph (g)(1) of this section.

(2) A surviving member of the deceased borrower's family, a joint operator with the deceased borrower, a relative, or other individual who is not liable for the EO debt who desires to continue with the farming or other operation may do so in accordance with paragraph (g)(2) of this section. This individual must execute a loan agreement in addition to the assumption agreement and secure the EO debt with a lien on the remaining EO property when title to the property is vested in the individual and the County Supervisor determines that security is necessary to protect the interests of the deceased borrower's family or the Agency.

(3) If no individual listed in paragraphs (h) (1) and (2) of this section wishes to continue, but a member of the borrower's family turns over to the Agency the EO property in which the estate has an interest and which is not essential for minimum family living needs, the County Supervisor will take possession of EO property and sell it in accordance with §1962.42 of this Subpart. If this cannot be done, or if real property is involved, the case will be referred to OGC. If the property is sold, notice will be delivered to any of the borrower's heirs who are in possession of the property and to any administrator or executor of the borrower's estate.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 4140, Feb. 3, 1986; 51 FR 45439, Dec. 18, 1986; 56 FR 15826, Apr. 18, 1991; 61 FR 35931, July 9, 1996; 62 FR 10158, Mar. 5, 1997]

§1962.47 Bankruptcy and insolvency.

(a) *Borrower files bankruptcy*. When the Agency becomes aware that a Farm Loan Programs borrower has filed for protection under Title 11 of the United States Code (bankruptcy), the borrower and the borrower's attorney, if any, will be notified in writing of the borrower's remaining servicing options.

(1) If the borrower wishes to apply for servicing options remaining, the borrower, or the borrower's attorney on behalf of the borrower, must sign and return the appropriate response form, or similar written request for servicing, and any forms or information as requested by the Agency, within 60 days from the date the borrower or the borrower's attorney received the notification, or the time remaining from a previous notification that was suspended when the borrower filed bankruptcy, whichever is greater.

(2) The Agency will consider a request for servicing options to be an acknowledgment that the Agency will not be interfering with any rights or protections under the Bankruptcy Code and its automatic stay provisions.

(3) The Agency's processing of any request for servicing may include consideration of primary and preservation loan servicing options, notification of the Agency's decision on the request or application for servicing, mediation, and holding of any meetings or appeals requested by the borrower.

(4) If court approval is required for the borrower to exercise these servicing rights, it will be the borrower or the borrower's attorney's responsibility to obtain that approval.

(5) If a plan is confirmed before servicing and any appeal is completed under 7 CFR part 11, the Agency will complete the servicing or appeals process and may consent to a post-confirmation modification of the plan if it is consistent with the Bankruptcy Code and 7 CFR part 1951, subpart S, as appropriate.

(6) In chapter 7 cases, the Agency will not provide primary loan servicing to a borrower discharged in bankruptcy unless the borrower reaffirms the entire Agency debt. If the chapter 7 debtor obtains the permission of the court and reaffirms the debt, the loan servicing application will be processed in accordance with 7 CFR part 1951, subpart S. If the borrower reaffirms the Agency debt in order to be considered for restructuring but is later denied restructuring, the borrower may revoke the reaffirmation subject to the provisions

of the Bankruptcy Code. No reaffirmation is necessary for any discharged chapter 7 borrower to be eligible for preservation loan servicing in accordance with 7 CFR part 1951, subpart S.

(b) *Borrower defaults on plan or bankruptcy is dismissed*—(1) *90 days past due on a reorganization plan while still under court jurisdiction.*

(i) If allowed by the Bankruptcy Code or court, the borrower and the borrower's attorney, if any, will be notified of any remaining servicing options under 7 CFR part 1951, subpart S, that were not exhausted prior to filing bankruptcy or during the bankruptcy proceedings according to paragraph (a) of this section.

(ii) No notices will be sent if the account was previously accelerated, such action is inconsistent with the provisions of the confirmed bankruptcy plan or the Bankruptcy Code, or the case has been referred to the Department of Justice.

(iii) If a borrower operating under a confirmed bankruptcy plan desires to apply for loan servicing and qualifies for servicing under 7 CFR part 1951, subpart S, the borrower must also comply with Bankruptcy Code rules and requirements concerning modification of the plan.

(2) *Bankruptcy is dismissed without a confirmed plan.* If the borrower's bankruptcy is dismissed without a confirmed plan, and the borrower is in default on Farm Loan Programs loans, the borrower's account will be liquidated after all remaining servicing options under 7 CFR part 1951, subpart S are exhausted. The borrower will be notified of any servicing options remaining according to 7 CFR part 1951, subpart S. Notwithstanding the previous sentence, no notices will be sent if the account was previously accelerated, the Agency is advised that such an act is inconsistent with the confirmed bankruptcy plan or the Bankruptcy Code, or the account has been referred to the Department of Justice.

(3) *Bankruptcy is dismissed after a confirmed reorganization plan.* If a bankruptcy is dismissed after a reorganization plan was confirmed, the account will be serviced as follows:

(i) If the borrower has substantially complied with the plan, but later defaults for reasons beyond the borrower's control, (see 7 CFR 1951.909(c)), the borrower will be notified of loan servicing in accordance with 7 CFR 1951.907. No notices will be sent if the account was previously accelerated; such action is inconsistent with the provisions of the confirmed bankruptcy plan or the Bankruptcy Code; or the case has been referred to the Department of Justice.

(ii) If the borrower failed to make one full payment under the plan, or did not comply with the plan for reasons not beyond the borrower's control, the borrower will be serviced according to paragraph (b)(2) of this section.

(c) *Servicing of bankruptcy loans after the case is closed.* In chapter 11, 12, or 13 cases after the case is closed and the discharge order is issued by the court, if the borrower becomes delinquent after performing as agreed under the plan, the borrower will be sent a notice explaining the loan servicing options available under 7 CFR part 1951, subpart S. The borrower's attorney of record will be sent a courtesy copy if the bankruptcy has not been closed for at least 2 years. No notices will be sent if the account has been accelerated, such act is inconsistent with the provisions of a confirmed bankruptcy plan or other provisions of the Bankruptcy Code, or the account has been referred to the Department of Justice.

(d) *Liquidation.* The account will be liquidated after obtaining any necessary relief, if required, from the automatic stay. In chapter 7 cases after discharge, the account can be liquidated if the debt has not been reaffirmed and the property is no longer part of the estate. Liquidation can proceed prior to discharge if allowed by the court.

(1) If the borrower or borrower's attorney was not previously notified of any remaining servicing options available under 7 CFR part 1951, subpart S before or during the course of the bankruptcy proceedings, the borrower and the borrower's attorney will be sent the notices referenced in paragraph (c) of this section prior to liquidating any security property.

(2) If the borrower or the borrower's attorney had been previously notified

of loan servicing options remaining, the account will be liquidated.

[63 FR 29341, May 29, 1998]

§ 1962.48 [Reserved]

§ 1962.49 Civil and criminal cases.

All cases in which court actions to effect collection or to enforce FmHA or its successor agency under Public Law 103–354 rights are recommended, as well as actions relating to apparent violations of Federal criminal statutes, will be handled under this section.

(a) *Criminal action.* When facts or circumstances indicate that criminal violations may have been committed by an applicant, a borrower, or third party purchaser, the State Director will refer the case to the appropriate Regional Inspector General for Investigations, Office of Inspector General (OIG), USDA, in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2012–B (available in any FmHA or its successor agency under Public Law 103–354 office) for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the State Director and confirmed in writing. In order to assure protection of the financial and other interest of the government, a duplicate of the notification will be sent to the Office of General Counsel (OGC). After OIG has accepted any matter for investigation, FmHA or its successor agency under Public Law 103–354 staff must coordinate with OIG in advance regarding any administrative action on the matter/borrower other than routine servicing actions on existing loans. Cases requiring further action by OGC will be handled in accordance with paragraph (c) of this section.

(b) *Civil action.* Court action or other judicial process will be recommended to OGC when all other reasonable and proper efforts and methods to obtain payment, to remove other defaults, and to protect FmHA or its successor agency under Public Law 103–354's property/financial interests have been exhausted. However, if an emergency situation exists or criminal action is to be recommended, the case will be submitted to OGC without taking the action necessary to report the information required by Part II of Form FmHA or its successor agency under Public Law 103–354 455–22, ''Information for Litigation.'' This is because delay in submitting cases in emergency situations may affect the financial interests of FmHA or its successor agency under Public Law 103–354 and collection efforts may adversely affect the criminal investigation and/or criminal prosecution.

(1) Civil action will be recommended when one or more of the following conditions exists:

(i) There is a need to repossess security or EO property or to foreclose a lien and such action cannot be accomplished by other means authorized in this subpart.

(ii) There is a need for filing claims against third parties because of a conversion of security or other action.

(iii) Payment due on debts are not made in accordance with the borrower's ability to pay, and the borrower has assets or income from which collection can be made.

(iv) The borrower has progressed to the point that credit can be obtained from other sources, has agreed in the note or other instrument to do so, but refuses to comply with that agreement.

(v) FmHA or its successor agency under Public Law 103–354 or its security becomes involved in court action through foreclosure by a third-party lienholder or through some other action.

(vi) Other conditions exist which indicate that court action may be necessary to protect FmHA or its successor agency under Public Law 103–354's interests.

(2) Claims of less than $600 principal will not be referred to OGC for court action unless:

(i) A statement of facts is submitted as to the exact manner in which the interest of FmHA or its successor agency under Public Law 103–354, other than recovery of the amount involved, would be adversely affected if suit were not filed; and

(ii) Collection of a substantial part of the claim can be made from assets and income that are not exempt under State or Federal law. A State supplement will be issued to set forth such