

§§ 1956.140–1956.141 [Reserved]

§ 1956.142 **Delinquent adjustment agreements.**

(a) The servicing official is responsible for notifying debtors in advance of the due dates of payments on debt settlement agreements and for monitoring compliance with the terms of settlement agreements. If a payment is delinquent, the servicing official should contact the debtor promptly to determine the reason for the delinquency and the debtor's plan for completing the agreement.

(b) Delinquencies of 30 days or more will be reported to the State Director along with other pertinent information and the recommendation of the servicing official regarding further handling of the case.

(c) The State Director may extend, for ninety days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon the recommendation of the County Committee and the servicing official.

(d) When the debtor is financially unable to meet the terms of the debt settlement agreement, the State Director may void the existing agreement and process a new settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action.

(e) If the State Director determines that the debtor cannot or will not meet the terms of the settlement agreement and if the facts do not justify approval of a new settlement agreement, the State Director will void the existing agreement and direct the servicing official to take other servicing actions appropriate to the circumstances of the case.

(f) When an adjustment agreement is voided, the State Director will notify the debtor giving the reasons in writing, with a copy to the Finance Office and to the servicing official. Upon receipt, the Finance Office will return the original Form FmHA or its successor agency under Public Law 103-354 1956-1 to the State Office.

§ 1956.143 **Debt restructuring—hospitals and health care facilities.**

This section pertains exclusively to delinquent Community Facility hospital and health care facility loans. Those facilities which are nonprogram (NP) loans as defined in §1951.203 (f) of subpart E of part 1951 of this chapter are excluded. The purpose of debt restructuring is to keep the hospital or health care facility in operation with manageable debt.

(a) *Definitions.* As used in this section, the following definitions apply:

Consolidation. The combining of two or more debt instruments into one instrument, normally accompanied by reamortization.

Debt writedown. A one-time reduction of the debt owed to FmHA or its successor agency under Public Law 103-354 including principal and interest. This reduction will be the minimum amount necessary to meet the level of the facility's ability to service the debt. The writedown will be applied first to interest and then principal.

Delinquency due to circumstances beyond the control of the debtor. Includes situations such as: The debtor has less money than planned due to unexpected and uncontrollable events such as unexpected loss of service area population, unforeseeable costs incurred for compliance with State or Federal regulatory requirements, or the loss of key personnel.

Delinquent debtor. For purposes of this section, delinquency is defined as being 180 days behind schedule on the FmHA or its successor agency under Public Law 103-354 payments. That is, one full annual installment or the equivalent for monthly, quarterly, or semiannual installments.

Eligibility. Applicants must be delinquent due to circumstances beyond their control and have acted in good faith by trying to fulfill the agreements with FmHA or its successor agency under Public Law 103-354 in connection with the delinquent loans.

Interest rate reduction. Reduction of the interest rate on the restructured loan to as low as the poverty line interest rate in effect on community and business programs loans.

Loan deferral. The temporary delay of principal and interest payments for up

to 6 months. The debtor must be able to demonstrate the ability to pay the debt, as restructured, at the end of this delay period.

Net recovery value. A calculation of the net value of the collateral and other assets held by the debtor. This value would be determined by adding the fair market value of FmHA or its successor agency under Public Law 103-354's interest in any real property pledged as collateral for the loan, plus the value of any other assets pledged or otherwise available for the repayment of the debt, minus the anticipated administrative and legal expenses that would be incurred in connection with the liquidation of the loan. This value of the assets should be calculated based upon the facility continuing to operate as a going concern. Therefore, the facility should be valued not merely as an empty building but as a facility continuing to offer health care services which may, or may not, be similar to those offered by the current operators.

Operations review. A study of management and business operations of the facility by an independent expert. For example, a study of a hospital and nursing home would include such areas as: general and administrative, dietary, housekeeping, laundry, nursing, physical plant, social services, income potential, Federal, State, and insurance payments, and rate analysis. Also, recommendations and conclusions are to be included in the study which would indicate the creditworthiness of the facility and its ability to continue as a going concern. In analyzing a debtor's proposed restructuring plan, FmHA or its successor agency under Public Law 103-354 may contract for the completion of an operations review. These reviews will be developed by individuals and entities who have demonstrated an expertise in the analysis of health care facilities from an operational and administrative standpoint. FmHA or its successor agency under Public Law 103-354 will consider the following criteria for selection: past experience in health care facility analysis, a familiarity with the problems of rural health care facilities, a knowledge of the particular area currently served by the facility in question, and a willingness to work with both FmHA or its successor

agency under Public Law 103-354 and the debtor in developing a final plan for restructuring.

Restructured loan. A revision of the debt instruments including any combination of the following: writing down of accumulated interest charges and principal, deferral, consolidation, and adjustment of the interest rates and terms, usually followed by reamortization.

(b) *Debtor notification.* All servicing actions permitted under subpart E of part 1951 of this chapter are to be exhausted prior to consideration for debt restructuring under this section. To this end, the servicing official must ensure that the casefile clearly documents that all servicing actions under subpart E of part 1951 of this chapter have been exhausted and that the debtor is at least 1 full year's debt service behind schedule for a minimum of 180 days. The debtor then should be informed of the debt restructuring available under this section by using language similar to that provided in Guide 1 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office) as follows:

- (1) Any introductory paragraph;
- (2) A paragraph concerning prior servicing attempts;
- (3) A discussion of eligibility, as defined in this section, including the provision that the debtor acted in good faith in connection with their FmHA or its successor agency under Public Law 103-354 loan and that the delinquency was caused by circumstances beyond their control;
- (4) Two paragraphs that explain the goal of the debt restructuring program;
- (5) A paragraph stating that debt restructuring may include a combination of servicing actions listed in paragraph (a) of this section;
- (6) Information that details what the debtor must do to apply for restructuring. A response must be received within 45 days of receipt of this letter to request consideration for debt restructuring and the request must include projected balance sheets, budgets, and cash-flow statements which include and clearly identify funding of the FmHA or its successor agency under Public Law 103-354 reserve account for the next 3 years;

(7) A discussion of FmHA or its successor agency under Public Law 103-354's analysis and calculation process; and

(8) A paragraph identifying the FmHA or its successor agency under Public Law 103-354 official who may be contacted for assistance.

(c) *State Director's restructuring determination.* Upon receipt of the delinquent debtor's request for debt restructuring consideration, the State Director will:

(1) Within 15 days of receipt of debtor's request, if an operations review is deemed necessary, send a memorandum to the Administrator asking for program authority to contract for the review in accordance with Exhibit D of 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). The name of the debtor involved and the projected amount of funds anticipated to be spent for the contract should also be provided. It is anticipated that an operations review will be necessary in most cases and that the only exceptions would be for smaller health care facilities or facilities that have developed a proposed plan that is comprehensive and realistic. Upon receipt of the Administrator's program contracting approval authority, a contract is to be awarded to an organization qualified to perform an operations review as defined in paragraph (a) of this section. The operations review normally will be completed and delivered to FmHA or its successor agency under Public Law 103-354 within 60 days of the award date.

(2) Contract for an appraisal to be performed by an independent, qualified fee appraiser. Note: To the extent possible, the appraisal should be scheduled for completion no later than the completion date of the operations review.

(3) Complete an analysis of the operations review, appraisal, and other documented information, and make an eligibility determination.

(i) Eligibility determination. The State Director must conclude that the debtor is eligible for debt restructuring consideration. This conclusion will be clearly documented in the casefile based on a review of the following:

(A) The debtor acted in good faith with regard to the delinquent loan. The casefile must reflect the debtor's cooperation in exploring servicing alternatives. The casefile should contain no evidence of fraud, waste, or conversion by the debtor, and no evidence that the debtor violated the loan agreement or FmHA or its successor agency under Public Law 103-354 regulations.

(B) The delinquency was caused by circumstances beyond the control of the debtor. This determination will be based on the debtor's narrative on this issue, which is a required part of the application for debt restructuring, and a separate review of the debtor's casefile and operations.

(C) As part of the application for debt restructuring, the debtor submitted a proposed operating plan that presents feasible alternatives for addressing the delinquency.

(ii) *Debtor determined eligible.* If the debtor is determined to be eligible for debt restructuring, a determination of a net recovery value and level of debt the facility will support will be made. It is anticipated that meetings with the debtor, the contractor who performed the operations review, and others, as appropriate, could be necessary to develop these values; although it should be emphasized throughout these meetings that any calculations and conclusions reached are preliminary in nature, pending final review by the Administrator. For debt restructuring calculations and computing a feasible cash-flow projection, the following order and combinations of loan servicing actions will be followed:

(A) Loan deferral for up to 6 months.

(B) Interest rate reduction to not less than the poverty line rate as determined by FmHA or its successor agency under Public Law 103-354 Instruction 440.1, exhibit B (available in any FmHA or its successor agency under Public Law 103-354 Office). Interest rate reduction will be considered only in conjunction with an extension of the term of the loan to the remaining useful life of the facility or 40 years, whichever is less.

(C) Debt writedown. Other creditors of the debtor, representing a substantial portion of the total debt, are expected to participate in the development of a restructuring plan which includes debt writedown. Debt writedown participation by other creditors should be on a pro rata basis with the FmHA or its successor agency under Public Law 103-354 writedown. However, failure of these creditors to agree to participate in the plan shall not preclude the use of principal and interest writedown by FmHA or its successor agency under Public Law 103-354 if it is determined that this option results in the least cost to the Federal Government.

(iii) *Debtor determined ineligible.* If the State Director concludes that the debtor is not eligible for debt restructuring consideration for any of the reasons listed in paragraph (c)(3)(i) of this section, then the debtor will be notified by a letter that includes the following information:

(A) The basis for the determination;

(B) The next step in servicing the loan: possible acceleration if the delinquency is not cured; and

(C) The debtor may appeal this determination in accordance with subpart B of part 1900 of this chapter.

(iv) *State Director's recommendation.* Upon completion of the determination of net recovery value and restructured debt in accordance with paragraph (c)(3)(ii) of this section, and prior to formal presentation to the borrower, the State Director will forward a recommendation to the National Office with the following documentation:

(A) That all other servicing efforts have been exhausted as required in paragraph (b) of this section.

(B) Financial statements including balance sheets, income and expense, cash-flows for the most recent actual year, and projections for the next 3 years. The amount of FmHA or its successor agency under Public Law 103-354's restructured debt and reserve account requirements are to be clearly indicated on the projected statements. Also, operating statistics including number of beds, patient days of care, outpatient visits, occupancy percentage, etc., for the same periods of time must be included.

(C) Copies of the operations review, developed for the particular loan, and appraisal.

(D) Calculations of the net recovery value.

(E) Debt restructuring calculations including a listing of the various servicing combinations used in these calculations as contained in paragraph (c)(3)(ii) of this section. For example:

(1) Interest rate reduced from the applicant's current rate on all loans to the poverty line rate as determined by FmHA or its successor agency under Public Law 103-354 instruction 440.1, exhibit B (available in any FmHA or its successor agency under Public Law 103-354 Office); and

(2) Extension of the terms from 25 to 30 years.

(F) Information concerning discussions with the debtor and their agreement or disagreement with the calculations and recommendations.

(G) If debt restructuring is proposed:

(1) A draft of Form FmHA or its successor agency under Public Law 103-354 1951-33, if applicable, and any other necessary comments or requirements that may be required by OGC and Bond Counsel in § 1951.223 (c)(3) and (4) of subpart E of part 1951 of this chapter.

(2) A draft of Form FmHA or its successor agency under Public Law 103-354 1956-1, if applicable. Complete only parts I, II, VI, and VIII. Part VI, "Debtor's Offer and Certification," will be in a separate attachment and contain the adjusted unpaid principal amount for which FmHA or its successor agency under Public Law 103-354 approval is requested. In Part VI of the form, type "see attached."

(H) If the proposed restructured debt will not cash-flow or is less than the net recovery value, omit the items in paragraph (c)(3)(iv)(G) of this section.

(d) *National Office processing of State Director's request.*

(1) After reviewing the recommendation to either debt restructure or liquidate for the net recovery value, the Administrator, after concurring, modifying, or not concurring in the recommendation, will return the submission for further processing.

(2) If a debt writedown is used in the restructuring process, the amount will be included in the National Office

transmittal memorandum. The draft Form FmHA or its successor agency under Public Law 103-354 1956-1 will not need to be finalized and returned to the Administrator for signature. The State Director's signature on the final copy will be sufficient. However, a copy of the National Office memorandum is to be attached to the form when completed.

(e) *Debtor notification of debt restructuring and net recovery value calculations.* The State Director will provide a copy of the basis for the debt restructuring or net recovery determination to the debtor.

(1) If the value of the restructured loan is equal to, or greater than, the recovery value, the debtor will be made an offer to accept the restructured debt by using language similar to that provided in Guide 2 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office) and including the following paragraphs:

(i) An introductory paragraph indicating that FmHA or its successor agency under Public Law 103-354 has concluded its consideration of the debtor's request;

(ii) A paragraph indicating FmHA or its successor agency under Public Law 103-354's approval of the debt restructuring request and that acceptance must be received by FmHA or its successor agency under Public Law 103-354 within 45 days from receipt of this letter; and

(iii) That the debtor's acceptance will require the execution of a Shared Appreciation Agreement similar to Guide 4 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office) and possible new debt instruments accompanied by Bond Counsel opinions.

(2) If the debt analysis calculations indicate that a restructured debt would be less than the net recovery value of the security, a letter using language similar to that provided in Guide 3 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office), will be sent to the debtor that includes the following paragraphs:

(i) An introductory paragraph indicating that FmHA or its successor

agency under Public Law 103-354 has concluded its consideration of the debtor's request;

(ii) Paragraphs indicating that:

(A) The debtor may pay FmHA or its successor agency under Public Law 103-354 the net recovery value of the loan. The debtor will be given 30 days from receipt of this letter to inform FmHA or its successor agency under Public Law 103-354 of its intent, 90 days to finalize the payoff, and will be notified that an election to pay off FmHA or its successor agency under Public Law 103-354 would require the execution of a Net Recovery Buy Out Recapture Agreement, similar to that provided in Guide 5 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office); or

(B) If the debt is not paid off at the net recovery value, FmHA or its successor agency under Public Law 103-354 will proceed to liquidate the loan.

(f) *Debtor responses to debt restructuring and net recovery value calculations.* Responses from the debtor will be handled as follows:

(1) *Acceptance of FmHA or its successor agency under Public Law 103-354's restructured debt offer.* When a debtor accepts the offer for debt restructuring, processing will be in accordance with §1951.223 (c) of subpart E of part 1951 of this chapter using the adjusted unpaid principal and outstanding accrued interest at the Administrator's approved interest rate and terms. The debtor will be required to execute a Shared Appreciation Agreement which will provide that, should the debtor sell or transfer title to the facility within the next 10 years, FmHA or its successor agency under Public Law 103-354 is entitled to a portion of any gain realized. This agreement will include language similar to that found in Guide 4 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office). The original of Form FmHA or its successor agency under Public Law 103-354 1956-1, with appropriate attachments signed by the State Director, and a copy of the Shared Appreciation Agreement will be sent to the Finance Office. Note: All documents pertaining to this transaction will be sent to the Finance Office in one single complete package; and

(2) *Acceptance by debtor to pay off loan at the recovery value.* Processing of this transaction will be in accordance with § 1956.124 of this subpart. However, the account does not need to be accelerated. The debtor will be required to execute a Net Recovery Buy Out Recapture Agreement, similar to that found in Guide 5 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 Office). The original of Form FmHA or its successor agency under Public Law 103-354 1956-1, with appropriate attachments signed by the State Director, and a copy of the recorded Net Recovery Buy Out Recapture Agreement will be sent to the Finance Office. The executed Net Recovery Buy Out Recapture Agreement will be recorded in the county in which the facility is located. The Finance Office will credit the accounts of debtors who entered into Net Recovery Buy Out Recapture Agreements with the amount paid by the debtor (net recovery value). Note: All documents pertaining to this transaction will be sent to the Finance Office in one single complete package.

(g) *Collection and processing of recapture.* (1) When FmHA or its successor agency under Public Law 103-354 becomes aware of the sale or transfer of title to the facility on which there is an effective Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA or its successor agency under Public Law 103-354 Office) or a Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA or its successor agency under Public Law 103-354 Office) outstanding and a determination is made that a recapture is appropriate, FmHA or its successor agency under Public Law 103-354 will notify the debtor of the following:

(i) Date and amount of recapture due; and

(ii) FmHA or its successor agency under Public Law 103-354 action to be taken if debtor does not respond within the designated timeframe with the amount of recapture due.

(2) When the recapture is received, the payment will be processed on Form FmHA or its successor agency under Public Law 103-354 451-2 as a miscellaneous collection in accordance with

subpart B of part 1951 of this chapter. The Form FmHA or its successor agency under Public Law 103-354 451-2 along with a copy of the Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA or its successor agency under Public Law 103-354 Office) or Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA or its successor agency under Public Law 103-354 Office), as appropriate, will be forwarded to the Finance Office.

(3) When the amount of the recapture has been paid and credited to the debtor's account, the debtor will be released from liability by using Form FmHA or its successor agency under Public Law 103-354 1965-8, "Release from Personal Liability," modified as appropriate.

(h) *No recapture due.* If FmHA or its successor agency under Public Law 103-354 determines there is no recapture due, the Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA or its successor agency under Public Law 103-354 Office) or Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA or its successor agency under Public Law 103-354 Office) will be appropriately annotated, the Recapture Agreement released from the record, and the Agreement returned to the debtor.

[59 FR 46160, Sept. 7, 1994]

§ 1956.144 [Reserved]

§ 1956.145 Disposition of essential FmHA or its successor agency under Public Law 103-354 records.

FmHA or its successor agency under Public Law 103-354 Instruction 2033-A (available in any FmHA or its successor agency under Public Law 103-354 office) identifies an "essential FmHA or its successor agency under Public Law 103-354 record" as the original of any document or record which provides evidence of indebtedness or obligation to FmHA or its successor agency under Public Law 103-354 and includes, but is not limited to: promissory notes, assumption agreements and valuable documents, such as bonds fully registered as to principal and interest.