

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

[62 FR 10120, Mar. 5, 1997]

**§ 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 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.

[62 FR 10121, Mar. 5, 1997, as amended at 68 FR 7698, Feb. 18, 2003]

**§ 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 DALR\$ 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.

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(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.

[62 FR 10121, Mar. 5, 1997]

## § 1951.905 [Reserved]

## § 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.

*CONACT or CONACT 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 re-scheduling 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.

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*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 or past-due borrower.* A borrower who has failed to make all or part of a payment by 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