

§ 1951.912 Mediation.

(a) *States with a USDA certified mediation program.* The FmHA or its successor agency under Public Law 103-354 is required to participate in USDA Certified State Mediation Programs. The purpose of mediation is to participate with farm borrowers, and their creditors, in an effort to resolve issues necessary to overcome the borrower's financial difficulties. Any negotiation of an FmHA or its successor agency under Public Law 103-354 appraisal pursuant to §1951.909(i) of this subpart will be completed prior to mediation.

(1) FmHA or its successor agency under Public Law 103-354 shall participate in a USDA Certified Mediation Program under the same terms and conditions as other creditors. Decisions will not be binding on FmHA or its successor agency under Public Law 103-354 unless approved by the representative assigned by FmHA or its successor agency under Public Law 103-354 in accordance with paragraph (a)(4) of this section.

(2) FmHA or its successor agency under Public Law 103-354 will pay the same mediation fees to the USDA Certified State Mediation Board that are charged to all creditors that participate in mediation. The Contracting Officer (CO) will complete Form AD-838, "Purchase Order," to establish a mediation contract and submit Form FmHA or its successor agency under Public Law 103-354 838-B, "Invoice-Receipt Certification," for payment upon receipt of an invoice from the Mediator or the Contracting Officer's Representative (COR) recommending payment.

(3) Failure of creditors and/or borrowers to participate in mediation will not preclude FmHA or its successor agency under Public Law 103-354 from granting Primary Loan Service Programs to assist borrowers.

(4) The FmHA or its successor agency under Public Law 103-354 State Director will designate a representative to represent FmHA or its successor agency under Public Law 103-354 in the mediation process. Authorities of the representatives can vary from complete authority to act for FmHA or its successor agency under Public Law 103-354, to a requirement for review and concurrence by the State Director or

designee prior to approving a mediation agreement. The State Director will set forth in writing the specific authority delegated to the designated representative.

(5) The FmHA or its successor agency under Public Law 103-354 State Director will arrange for adequate training for representatives designated to represent FmHA or its successor agency under Public Law 103-354 in mediation.

(6) When mediation is not successful in resolving the borrower's financial difficulty, the County Supervisor will send the borrower attachments 5 and 6, or 5-A and 6-A, of exhibit A of this subpart, as applicable.

(7) The FmHA or its successor agency under Public Law 103-354 State Director will develop a State supplement that describes how FmHA or its successor agency under Public Law 103-354 will participate in the State Mediation Program. In developing the State supplement the State Director should confer with the State Attorney General's Office, farm organizations that are interested in the development of the State's Certified Agricultural Loan Mediation Program, and Departments of State Governments to ensure that all interested parties have input on the content of the State supplement. The State Director will consult with the Regional OGC as necessary to develop the State supplement. State supplements will be submitted to the National Office for post approval in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2006-B (available in any FmHA or its successor agency under Public Law 103-354 office).

(b) *States without a Certified Mediation Program.* To service those borrowers in States where there is no USDA Certified Mediation Program established, the State Director will provide the means of conducting a voluntary meeting of creditors, either with a mediator or a designated FmHA or its successor agency under Public Law 103-354 representative. "Creditors," for purposes of this paragraph, means all the borrower's undersecured creditors holding a substantial part of the borrower's debt in accordance with §1951.909(h)(3)(i) of this subpart. State Directors are encouraged to contract

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for qualified mediators within their jurisdictional areas to conduct the voluntary meeting of creditors in an effort to help farmers resolve their financial difficulty. The National Office will provide the State a list of qualified mediators for contracting purposes. Any negotiation of an FmHA or its successor agency under Public Law 103-354 appraisal pursuant to §1951.909(i) of this subpart will be completed prior to meeting with other creditors.

(1) When a mediator is available, the County Supervisor will assist the mediator in scheduling a meeting with the borrower and all of the borrower's creditors and will encourage them to participate in such a meeting. The mediator will be responsible for conducting the meeting in accordance with accepted mediation practices and to develop an Agreement to assist the farmer in resolving their financial difficulties.

(2) When a mediator is not available, the State Director will designate an FmHA or its successor agency under Public Law 103-354 representative to conduct a meeting of creditors and attempt to develop a plan with borrowers and their creditors that will assist the borrowers to resolve their financial difficulty. The State Director will designate a representative not previously involved in servicing the borrower's account. State Directors will designate a representative, or FmHA or its successor agency under Public Law 103-354 employees who have demonstrated good human relations skills and ability to resolve problems and settle disputes.

(3) The designated FmHA or its successor agency under Public Law 103-354 representative for conducting a meeting of creditors will do the following:

(i) Schedule a meeting between the borrower and the borrower's creditors and encourage them to participate in such a meeting;

(ii) State that the parties understand that the representative is neutral and does not represent any of the parties;

(iii) Inform the borrower and creditors concerning FmHA or its successor agency under Public Law 103-354 programs available to assist the borrowers;

(iv) Encourage the parties to utilize all available means to assist the bor-

rower to overcome the financial difficulty;

(v) Advise, counsel, and facilitate the development of a debt restructure agreement between the borrower and creditors which will permit the borrower to remain in farming;

(vi) Review with the parties any proposed solution to determine if it can be effectively implemented and to help the parties understand the consequences of the proposed solution;

(vii) Review the obligations of the participants, including but not limited to the maintenance of confidentiality and the promotion of good faith discussions in an effort to reach agreement; and

(viii) Develop a written document that specifies the agreements reached in the meeting. The agreement will be signed by all parties with authority to approve the agreement for the participating creditors. When signed, copies will be distributed to the borrower and participating creditors. A copy will be filed in the borrower's County Office case file.

(4) If agreements are reached which will permit the development of a feasible plan of operation, the County Supervisor will proceed with processing and approval of the borrower's request for primary loan servicing.

(5) When the FmHA or its successor agency under Public Law 103-354 representative has exhausted all efforts to develop an agreement between the borrower and creditors and an agreement cannot be reached, the FmHA or its successor agency under Public Law 103-354 representative will report the results of this meeting to the State Director by memorandum. Copies of the memorandum will be sent to the borrower and all creditors participating in the meeting. When the County Supervisor receives a copy of this memorandum indicating that an agreement cannot be reached, attachments 5 and 6, or 5-A and 6-A, of exhibit A of this subpart, as applicable, will be sent to the borrower.

(6) State Directors will provide the necessary training to ensure that the FmHA or its successor agency under Public Law 103-354 representative has the necessary skills to effectively conduct a voluntary meeting between a

borrower and creditors which may result in reaching an agreement.

(7) Failure of creditors to participate in a voluntary meeting of creditors will not preclude FmHA or its successor agency under Public Law 103-354 from using debt writedown if it would result in a greater net recovery to FmHA or its successor agency under Public Law 103-354 than liquidation. Whenever the net recovery to FmHA or its successor agency under Public Law 103-354 will be greater using the writedown than to go through foreclosure, FmHA or its successor agency under Public Law 103-354 will use the writedown, regardless of the actions of the other creditors. Voluntary meetings of creditors cannot delay consideration of a borrower for Primary Loan Service Programs, except with the consent of the borrower.

(8) If the borrower does not participate in the voluntary meeting of creditors without good cause and a feasible plan of operation cannot be developed, the County Supervisor will send the borrower attachments 5 and 6, or 5-A and 6-A, of exhibit A of this subpart, as applicable.

§ 1951.913 Servicing Net Recovery Buyout Recapture Agreements.

(a) *Death or retirement.* If upon the death or retirement of a borrower who submitted a "new application," as defined in § 1951.906 of this subpart, the borrower executed exhibit C-1 of this subpart and transferred title of the borrower's real estate security to a spouse or child who is actively engaged in farming on the property, then the transaction will not be treated as a "sale" or "conveyance" under the recapture agreement. The borrower's spouse or child, however, must assume the full liability of the borrower under the provisions of the borrower's Net Recovery Buyout Recapture Agreement and real estate lien instrument in accordance with instructions from OGC.

(b) *Record of net recovery buyout.* The Finance Office will credit the borrower's account with the net recovery value (NRV) amount paid by the borrower. An equity record will be established in accordance with the provisions of the ADPS manual.

(1) For borrowers who applied for Loan Servicing and Preservation Service Programs before November 28, 1990, and executed exhibit C of this subpart, a recapture equity record will be established in an amount equal to the difference between the NRV and the market value of the real estate security as of the date the net recovery buyout agreement was signed by the borrower.

(2) For borrowers who submit "new applications," as defined in § 1951.906 of this subpart, and execute exhibit C-1 of this subpart, an equity record will be established in an amount equal to the amount of debt secured by real estate that was written off as of the date the net recovery buyout agreement was signed by the borrower. This is the maximum amount that can be recaptured.

(c) *Review by County Supervisor.* The County Supervisor will establish a follow-up to review the County real estate records every 24 months starting from the date of the Net Recovery Buyout Recapture Agreement to determine if the borrower has sold or conveyed the real estate property covered by the agreement. Scheduled reviews to be conducted must be posted on the borrower's Form FmHA or its successor agency under Public Law 103-354 1905-1, "Management System Card—Individual," for follow-up purposes. The results of the review will be recorded in the borrower's County Office case file. These reviews will end at the expiration of the agreement. If there is no recapture due, then the County Supervisor will proceed in accordance with paragraph (g) of this section.

(d) *Notification of recapture due.* If the County Supervisor determines that the borrower has sold the real estate, the borrower will be notified in writing, certified mail, return receipt requested, of the following:

(1) The amount of recapture due in accordance with exhibits C or C-1 of this subpart, as applicable. The County Supervisor will establish an equity receivable account in accordance with the provisions of the ADPS manual;

(2) The date the recapture is due (not to exceed 30 days from the date the Notice of Recapture Letter is received by the borrower);