of the lessee to possession and occupancy of the dwelling and property under this section. If a lease default is not cured within 30 days of notice, the servicing official will notify the lessee in writing of the termination of the lease and option.

(D) Any interference by the lessee with the Government's efforts to lease or sell the remainder of farm inventory property shall constitute cause for the termination of all rights of the lessee to possession and occupancy of the dwelling and property including the right to exercise the option to purchase.

(ii) Exercising the option to purchase.

(A) The lessee may exercise the option in writing at any time prior to the expiration of the lease by delivering to the servicing official a signed, written statement notifying the Agency that the lessee is exercising the option to purchase the property. Failure to exercise the option within the lease period will end the lessee's rights under the option to purchase.

(B) When the lessee exercises the option to purchase the property, the purchase price will be the current market value of the property. That value will be determined by an appraisal in accordance with paragraph (b)(6) of this section providing the appraisal is not more than 1 year old. If the appraisal is more than 1 year old, the current market value will be determined by a new appraisal requested in accordance with paragraph (b)(6) of this section.

(C) At the time the lessee exercises the option, the lessee must notify the servicing official if he or she wants to purchase the property for cash or finance it through a credit sale from the Agency.

(D) If a credit sale is involved, the applicant must furnish the servicing official the information required by § 1951.907 (e) to assist in determining whether or not the applicant has adequate repayment ability.

(8) *Rates and terms for a credit sale.* Terms for a credit sale of homestead protection property when the lessee is exercising the option to purchase will be in accordance with subpart J of this part.

(9) *Closing.* A credit sale will be closed in accordance with subpart J of this part.

(10) *Conflict with State law.* In the event of a conflict between a borrower's homestead protection rights and any provisions of the law of any State relating to the right of a borrower to designate for separate sale or redeem part or all of the property securing a loan foreclosed on by a lender, such provision of State law shall prevail. A State supplement will be prepared as necessary to supplement paragraph (b) of this section.

(11) *Servicing homestead protection loans.* Homestead protection loans will be serviced as set forth in subpart J of this part.

[62 FR 10132, Mar. 5, 1997]

§ 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 Meditation 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 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 meditator 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 borrower 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