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 exemptions or a summary of those exemptions with respect to property to which FmHA or its successor agency under Public Law 103–354 normally would look for payment such as real estate, livestock, equipment, and income.

(3) When a borrower has not properly accounted for the proceeds of the sale of security, it is the general policy to look first to the borrower for restitution rather than to third-party purchasers. In line with this policy the remaining chattel security on which FmHA or its successor agency under Public Law 103–354 holds a first lien usually will be liquidated before demand is made, or civil action to recover from third-party purchasers.

(i) When the County Supervisor determines that full collection cannot be made from the borrower and that it will be necessary to collect the full

value of the security purchased by a converter, a demand (see Guide Letter 1962–A–1, a copy of which is available in any FmHA or its successor agency under Public Law 103–354 county office) will be sent to the purchaser at the same time that Exhibit D or E of Subpart A of Part 1955 of this chapter, is sent to the borrower.

(ii) When the County Supervisor determines that it is likely that action will have to be taken to collect from third-party pruchasers, the County Supervisor will notify such purchasers by letter (see Guide Letter 1962–A–2, a copy of which is available in any FmHA or its successor agency under Public Law 103–354 county office) that FmHA or its successor agency under Public Law 103–354 security has been purchased by them and that they may be called upon to return the property or pay the value thereof in the event restitution is not made by the borrower. If it later becomes necessary to make demand on such third-party purchasers, FmHA or its successor agency under Public Law 103–354 will do so unless the case already has been referred to OGC or the U.S. Attorney, in which event the demand will be made by one of those offices.

(iii) When restitution is made by the borrower, or a determination is made, with the advice of OGC, that the facts in the case do not support the claim against the third-party purchaser, the third-party purchaser will be informed by the County Supervisor that FmHA or its successor agency under Public Law 103–354 will take no adverse action (see Guide Letter 1962–A–3, a copy of which is available in any FmHA or its successor agency under Public Law 103–354 county office). Ordinarily, it will not be necessary to inform the third-party purchaser of OGC's decision when OGC determines that the facts support the claim against the third-party purchaser but no substantial part of the claim can be collected. If OGC makes such a determination and the third-party purchaser asks what determination has been made, the County Supervisor will say that no further action is to be taken on the claim ''at this time.''

(iv) In addition, unless personal contacts with the third-party purchaser, or other efforts to collect demonstrate that further demand would be futile, and a satisfactory compromise offer has not been received, a follow-up letter (see Guide Letter 1962–A–4, a copy of which is available in any FmHA or its successor agency under Public Law 103–354 county office) will be sent by the State Director as soon as possible after the 15-day period set forth in the demand letter has expired. Unless response to the State Director's followup letter or personal contacts or other efforts indicate that further demand would be futile, an additional follow-up letter will be sent to the third-party purchaser by OGC after the case has been referred to that office.

(c) *Handling civil and criminal cases.* All cases in which court actions to effect collection or to enforce the rights of FmHA or its successor agency under Public Law 103–354 are recommended, will be forwarded to OGC by the State Director in accordance with paragraph (c)(3) of this section.

(1) *County Office actions.* Forms FmHA or its successor agency under Public Law 103–354 455–1, ''Request for Legal Action,'' and FmHA or its successor agency under Public Law 103–354 455–22 will be prepared. Form FmHA or its successor agency under Public Law 103–354 455–2, ''Evidence of Conversion,'' will be prepared for each unauthorized disposal. The original and two copies of Forms FmHA or its successor agency under Public Law 103–354 455–1 and FmHA or its successor agency under Public Law 103–354 455–22 and, wh=n applicable, FmHA or its successor agency under Public Law 103–354 455–2 together with the borrower's case file, will be submitted to the State Office. Signed statements should be obtained, if possible, from the borrower, any third party purchasers, or others to support the information contained on Form FmHA or its successor agency under Public Law 103–354 455–1. Appropriate recommendations regarding civil actions will be made on Forms FmHA or its successor agency under Public Law 103–354 455–1 and FmHA or its successor agency under Public Law 103–354 455–22 against the borrower or others. When a case is referred to the State Office the County Supervisor will keep that office informed of any future developments in

the case. If Attachments 1, 2 and other appropriate attachments to Exhibit A of Subpart S of Part 1951 of this chapter have not been sent, they will now be sent to the borrower and any other obligor(s) on the note. Any appeal must be concluded before a civil action can be filed.

(2) *District Office actions*. Exhibits D, E, or E–1 of subpart A of part 1955 of this chapter will be prepared and sent after any appeal is concluded.

(3) *State Office actions*. (i) upon receipt of Form FmHA or its successor agency under Public Law 103–354 455–1 and, when applicable, Form FmHA or its successor agency under Public Law 103–354 455–2, the State Director will analyze each form to determine if all of the necessary information is documented and, if not, whether an appropriate effort was made to obtain the information. If all the necessary information is not documented, the State Director will return the case and request the County Supervisor to obtain the information to complete Forms FmHA or its successor agency under Public Law 103–354 455–1 and 455–2. The State Director may assign any qualified FmHA or its successor agency under Public Law 103–354 employee to help a County Supervisor obtain the information necessary to complete the reports. After diligent efforts, if FmHA or its successor agency under Public Law 103–354 employees are unable to obtain the additional information, the case will be returned to the State Office with an explanation of why the information is unavailable.

(ii) After all of the pertinent information available has been obtained, the State Director will refer the case to OGC for civil action, if referral is required under the policy expressed in this section. If such referral is not required, the State Director will set forth in Item 19 of Form FmHA or its successor agency under Public Law 103–354 455–1 the basis for the determination not to refer the case and instructions for follow-up servicing action. The State Director will not recommend a third-party conversion claim to the OGC if more than one year has run from the date of the annual accounting following the disposition of security, unless the Administrator or delegate determines a longer period of time should be applied either because of compelling circumstances such as the case has been referred to and accepted by OIG for criminal or civil investigation. The period of time during which a suit may be filed is set by federal statute and is not changed by this section. Demands on third-party purchasers will be made in accordance with paragraph (b) of this section. In cases referred to OGC, the State Director will make comments and recommendations regarding the civil aspects of the case on Form FmHA or its successor agency under Public Law 103–354 455–1.

(A) When cases are referred to OGC, the County Office case file, Form FmHA or its successor agency under Public Law 103–354 455–1, and, when appropriate, Form FmHA or its successor agency under Public Law 103–354 455–2 will be transmitted. In addition, when the institution of civil court proceedings by FmHA or its successor agency under Public Law 103–354 is recommended, the notes, financing statements, security agreements, loan agreements, other legal instruments and copies thereof, as required by OGC, and Form FmHA or its successor agency under Public Law 103–354 451–11, ''Statement of Account,'' and Form FmHA or its successor agency under Public Law 103–354 455–22 will be submitted to OGC. The State Director, with the advice of OGC, will determine the number of copies of such instruments needed and the information required on the certified statement of account. Each request for a certified statement of account will specify the type of information needed.

(B) Notes, statements of account, files, or other documents and copies thereof needed in referring cases to OGC for civil court or other action will be obtained from the Finance Office, or County Office, by the State Director. When the time required for obtaining the above material or documents may jeopardize FmHA or its successor agency under Public Law 103–354's interest by permitting the diversion or dissipation of assets which otherwise could be expected as a source of payment, the Finance Office, upon the request of the State Director, will forward such material or documents directly to OGC or

(at the State Director's direction) to the U.S. Attorney.

(d) *Actions on cases referred to OGC.* When a civil case is referred to OGC, the State Director will notify the County Supervisor of the referral and will return the County Office case file when it is no longer needed. The State Director will also prepare and distribute Form FmHA or its successor agency under Public Law 103–354 1951–6 according to the FMI. The FmHA or its successor agency under Public Law 103–354 field office will process the descriptive code via the FmHA or its successor agency under Public Law 103–354 field office terminal system. This will flag the borrower's account indicating court action is pending (CAP). After notice of the referral is received by the County Supervisor, no collection or servicing action will be taken except upon specific instructions from the State Director or OGC. However, when a borrower voluntarily proposes to make a payment on an account, the County Supervisor will accept the collection unless notice has been received that the case has been referred to the U.S. Attorney for civil action. The County Supervisor will immediately notify OGC directly by memorandum, with a copy sent to the State Director, of any collections received. The County Supervisor also will notify the State Director and OGC of any developments which may affect a case which has been referred to OGC.

(e) *Actions on cases referred to the U.S. Attorney and on judgement cases* (*including third-party judgements*). OGC will notify the State Director, the Finance Office, and the County Supervisor when a case is referred to the U.S. Attorney or is otherwise closed. When a case is referred to the U.S. Attorney, the Finance Office will discontinue mailing Form FmHA or its successor agency under Public Law 103–354 1951–9, Annual ''Statement of Loan Account,'' to such borrowers. OGC will also notify the State Director when a judgement (including third-party) is obtained.

(1) When the County Supervisor receives notice from OGC that a judgment (including third-party) has been obtained, the County Supervisor will establish a judgment account by completing Form FmHA or its successor agency under Public Law 103–354 1962–20, ''Notice of Judgment,'' in accordance with the FMI. The FmHA or its successor agency under Public Law 103–354 field office will process the judgment or the third party judgment via the FmHA or its successor agency under Public Law 103–354 field office terminal.

(2) After notice has been received that a case has been referred to the U.S. Attorney or a judgment has been obtained and has not been returned to FmHA or its successor agency under Public Law 103–354 5by the U.S. Attorney, no action will be taken by the County Supervisor except upon specific instructions from the State Director, OGC, or the U.S. Attorney. However, the County Supervisor will keep the State Director informed of any developments which may affect the FmHA or its successor agency under Public Law 103–354 security interest or any pending court action to enforce collection. If information is obtained indicating that such debtors have assets or income not previously reported by the County Supervisor to the State Director from which collection of such judgment accounts can be obtained, the facts will be reported to the State Director. The State Director immediately will notify OGC of any developments which might have a bearing on cases referred to the U.S. Attorney, including such judgment cases.

(i) If the debtor proposes to make a payment, FmHA or its successor agency under Public Law 103–354 employees will not accept such payment but will offer to assist in preparing a letter for the debtor's signature to be used in transmitting the payment to the U.S. Attorney. In such case, the debtor will be advised to make payment by check or money order payable to the Treasurer of the United States.

(ii) Collection items received through the mail from the debtor or from other sources by the County Office to be applied to such accounts will be forwarded by the County Supervisor through OGC to the appropriate U.S. Attorney. Likewise, collections received by the District Director or the State Office will be forwarded through OGC to the appropriate U.S. Attorney.

Such items will be forwarded in the form received except that cash will be converted into money orders made payable to the Treasurer of the United States. The money order receipts will remain attached to the money orders. Form FmHA or its successor agency under Public Law 103–354 451–1 will not be issued in any such case. The debtor will be informed in writing by the County Supervisor of the disposition of the amount received.

(3) When the U.S. Attorney has returned a judgment case to FmHA or its successor agency under Public Law 103–354, the County Supervisor is responsible for servicing it as follows:

(i) When the judgment debtor has the ability to make periodic payments, action will be taken by the County Supervisor to make arrangements for the judgment debtor to do so.

(ii) [Reserved]

(iii) At the time of the annual review of collection-only or delinquent and problem cases, the County Supervisor will determine whether such judgment debtors, whose judgments have not been charged off and who are not making regular and satisfactory payments, have assets or income from which the judgment can be collected. If such debtors have either assets or income from which collection can be made and they have declined to make satisfactory arrangements for payment, the facts will be reported by the County Supervisor to the State Director. The State Director will notify OGC of developments when it appears that collections can be enforced out of income or assets.

(iv) Such judgments will not be renewed or revived unless there is a reason to believe that substantial assets have or may become subject thereto.

(v) Such judgments may be released only by the U.S. Attorney when they are paid in full or compromised.

(4) In all judgment cases, any proposed compromise or adjustment will be handled in accordance with Subpart B of Part 1956 of this chapter.

(5) If the debtor requests information as to the amount of outstanding indebtedness, such information, including court costs, should be obtained from the Finance Office if the County Supervisor does not have that information. If questions arise as to the payment of court costs, information as to such costs will be obtained through the State Office from OGC.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 45439, Dec. 18, 1986; 53 FR 35787, Sept. 14, 1988; 54 FR 42799, Oct. 18, 1989; 55 FR 35296, Aug. 29, 1990; 57 FR 60085, Dec. 18, 1992; 68 FR 61332, Oct. 28, 2003]

§ 1962.50 [Reserved]

EXHIBIT A TO SUBPART A OF PART 1962—MEMORANDUM OF UNDERSTANDING BETWEEN COMMODITY CREDIT CORPORATION AND FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354

IT IS HEREBY AGREED by and between the Farmers Home Administration or its successor agency under Public Law 103–354 (hereinafter referred to as ''FHA'') and the Commodity Credit Corporation (hereinafter referred to as ''CCC'') that the following procedure will be observed in those cases where producers sell to CCC or pledge to CCC as loan collateral under the Price Support Program, agricultural commodities such as, but not limited to, cotton, tobacco, peanuts, rice, soybeans, grains, on which FHA holds a prior lien and the proceeds from such sales or loans are not remitted to FHA for application against the loan(s) secured by such lien:

1. When an FHA County Supervisor learns that an FHA borrower has obtained a loan from CCC on a commodity or sold a commodity to CCC under such circumstances, he shall immediately notify his State Director. The State Director, immediately upon receipt of the notice, shall furnish CCC (see Appendix 1) with the name and address of such borrower, the county of his location at the time the commodity was placed under loan or sold, and the amount of the FHA loan secured by the lien.

2. When CCC receives such a notice from FHA, CCC shall take steps to prevent the making of any further loans on or purchases of the commodity of the borrower. If the CCC loan is still outstanding and CCC calls the loan, CCC shall notify the FHA State director of the demand.

3. If the CCC loan is repaid, whether prior to or after the receipt by CCC of the notice from FHA, the FHA State Director shall be notified immediately, at which time CCC will have discharged its responsibility under this agreement.

4. FHA shall, in each case in which the CCC loan is not repaid or the commodity has been sold to CCC, endeavor to collect from the borrower the amount due on the FHA loan. Such collection efforts shall include the making of demand on the borrower and the