

## § 1782.18

parity. The following factors will be considered in assessing whether the request is in the Government's interest:

(1) The value of the added assets compared with the amount of new debt to be secured;

(2) The value of the assets already pledged under the security documents, and any effects of the proposed transaction on the value of those assets;

(3) The ratio of the total outstanding debt secured under the security documents to the value of all assets pledged as security under the security documents;

(4) The borrower's ability to repay its debt owed to the Government;

(5) The overall financial viability of the borrower;

(6) The borrower's current relationship with the Agency (i.e. no defaults under the loan documents);

(7) Such other factors that may be relevant in individual cases, as determined by the Agency.

## § 1782.18 [Reserved]

### § 1782.19 Third party agreements.

The State Director may authorize third party operation, maintenance, and management of an Agency financed facility. The borrower's attorney must review the contract, management agreement, written lease, or other third party agreement and issue an opinion to the Agency as to their legal sufficiency. The borrower shall retain the legal authority necessary for owning, constructing, operating, and maintaining the facility.

### § 1782.20 Debt Settlement.

Pursuant to 7 U.S.C. 1981, this section prescribes policies for debt settlement of Water and Waste Disposal loans; Watershed loans and advances; Resource Conservation and Development loans; and 306 (c) Water and Waste Facility loans. Within the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134) is the Debt Collection Improvement Act of 1996. This law provides that any non-tax debt or claim owed to the United States that has been delinquent for a period of 180 days shall be turned over to the Secretary of the Treasury for appropriate action to collect or termi-

## 7 CFR Ch. XVII (1-1-08 Edition)

nate collection actions on the debt or claim. Debt that is in litigation or foreclosure, with a collection agency or designated Federal debt collection center, or that will be disposed of under an asset sales program, is exempt from transfer to the Secretary.

(a) *General requirements for debt settlement.* (1) The debt or any extension thereof on which settlement is requested must be due and payable. The debt will be due and payable either under the terms of the note or other instrument, or by acceleration, unless the debt is to be cancelled without application under paragraph (e)(2) of this section or charged off under paragraph (f) of this section.

(2) Normally, all security will be disposed of prior to the date of application for debt settlement unless it is necessary to abandon security through the debt settlement process. In such cases, debt settlement may proceed if the servicing official determines that further collection efforts would be ineffective, uneconomical, and not in the best interests of the Government.

(3) Debtors will not be permitted to sell security and use the proceeds as part or all of a compromise/adjustment debt settlement offer.

(4) Requests for debt settlement will consist of Form RD 1956-1 "Application For Settlement of Indebtedness," current financial information, description and estimated market value of collateral, and status of operation (i.e., number of users, compliance with environmental issues, etc.).

(5) Office of General Counsel (OGC) advice on compliance with State or Federal statutes that may affect the debt settlement action must be requested.

(b) *Debts ineligible for settlement.* Debts will not be settled if:

(1) Referral to the Office of Inspector General and/or to OGC is contemplated or pending because of suspected criminal violation,

(2) Civil action to protect the interest of the Government is contemplated or pending,

(3) An investigation for suspected fiscal irregularity is contemplated or pending, or

(4) The debtor requests settlement of a claim that has been referred to or a

judgment obtained by the United States Attorney. The settlement offer and any related payment must be submitted directly to the United States Attorney for consideration.

(c) *Types of debt settlement.* Typically, debt settlement will be accomplished through compromise/adjustment, charge-off, or cancellation. Any debt remaining after the security has been liquidated, by sale or transfer, will be cancelled if there are no other assets from which to collect the debt. The servicing official will proceed with advice from OGC and the National Office, as required.

(d) *Compromise and adjustment.* Debts may be compromised or adjusted and security retained by the debtor, provided:

(1) The debtor is unable to pay the indebtedness in full,

(2) The debtor has offered an amount equal to the present fair market value of all security or facility financed, and

(3) The debtor has offered any additional amount that the debtor is able to pay.

(e) *Cancellation.* Non-judgment debts, regardless of the amount, may be cancelled with or without application by the debtor.

(1) *With application by the debtor.* Debts may be cancelled upon application of the debtor, subject to the following conditions:

(i) The servicing official furnishes a favorable recommendation concerning the cancellation;

(ii) There is no known security for the debt and the debtor has no other assets from which the debt could be collected;

(iii) The debtor is unable to pay any part of the debt, and has no reasonable prospect of being able to do so; and

(iv) The debt or any extension thereof is due and payable under the terms of the note or other instrument or due to acceleration by written notice prior to the date of application.

(2) *Without application by debtor.* Debts may be cancelled upon a favorable recommendation of the servicing official in the following instances:

(i) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by the use of Form RD 1956-1. A

copy of the Bankruptcy Court's Discharge Order must be attached.

(ii) *Impractical to obtain debtor's signature.* Debts may be cancelled if it is impractical to obtain a signed application and the requirements of paragraphs (e)(1) of this section are met. Form RD 1956-1 will document the specific reason(s) why it was impossible or impracticable to obtain the signature of the debtor. If the debtor refused to sign the application, the reason(s) should be documented.

(f) *Charge-off—(1) Judgment debts.* Judgment debts, regardless of the amount, may be charged off without the debtor's signature upon a favorable recommendation of the servicing official provided:

(i) The United States Attorney's file is closed, and

(ii) The requirements of paragraph (e)(2)(ii) of this section, if applicable, have been met, or 2 years have elapsed since any collections were made on the judgment. The debtor must also have no equity in the property subject to the lien or upon which a lien can be obtained.

(2) *Non-judgment debts.* Debts that cannot be settled under other sections of this part may be charged off without the debtor's signature upon a favorable recommendation of the servicing official in the following instances:

(i) When OGC advises in writing that the claim is legally without merit or that evidence necessary to prove the claim in court cannot be provided; or

(ii) When there is no known security for the debt, the debtor has no other assets from which the debt could be collected, and the debtor:

(A) Is unable to pay any part of the debt and has no reasonable prospect of being able to do so; or

(B) Is able to pay part or all of the debt but refuses to do so, and OGC provides an opinion to the effect that the Government cannot enforce collection of a significant amount from assets or income.

#### § 1782.21 [Reserved]

#### § 1782.22 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part