

§§ 1956.140–1956.141

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that payment will accompany the settlement application at the time the application is filed with the servicing official.

(b) [Reserved]

(c) Checks or check transmittal letters containing restrictive notations such as “Settlement in full” or “Payment in full,” will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(d) All payments evidenced by Form FmHA or its successor agency under Public Law 103–354 451–2, “Schedule of Remittances,” bearing the legend “Compromise Offer—FmHA or its successor agency under Public Law 103–354” or “Adjustment Offer—FmHA or its successor agency under Public Law 103–354,” will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer.

(1) Upon receipt of an approved Form FmHA or its successor agency under Public Law 103–354 1956–1, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds, the Finance Office will prorate the amount received on the basis of the total principal balance due the respective revolving funds.

(2) Upon notification of a rejection of a debtor’s offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the servicing official, the amount held in the Deposits Fund Account.

(e) When a debtor’s adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form FmHA or its successor agency under Public Law 103–354 1956–1 will be held in a suspense file pending payment of the full amount of the approved offer.

(f) If an approved debt settlement agreement is later voided by the State Director in accordance with §1956.142(e)

of this subpart, any payments which have been received shall be retained as payments on the debt owed at the time the compromise or adjustment offer was approved.

[53 FR 13100, Apr. 21, 1988, as amended at 68 FR 61332, Oct. 28, 2003]

§§ 1956.140–1956.141 [Reserved]

§ 1956.142 Delinquent adjustment agreements.

(a) The servicing official is responsible for notifying debtors in advance of the due dates of payments on debt settlement agreements and for monitoring compliance with the terms of settlement agreements. If a payment is delinquent, the servicing official should contact the debtor promptly to determine the reason for the delinquency and the debtor’s plan for completing the agreement.

(b) Delinquencies of 30 days or more will be reported to the State Director along with other pertinent information and the recommendation of the servicing official regarding further handling of the case.

(c) The State Director may extend, for ninety days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon the recommendation of the County Committee and the servicing official.

(d) When the debtor is financially unable to meet the terms of the debt settlement agreement, the State Director may void the existing agreement and process a new settlement more consistent with the debtor’s repayment ability, provided the facts in the case justify such action.

(e) If the State Director determines that the debtor cannot or will not meet the terms of the settlement agreement and if the facts do not justify approval of a new settlement agreement, the State Director will void the existing agreement and direct the servicing official to take other servicing actions appropriate to the circumstances of the case.

(f) When an adjustment agreement is voided, the State Director will notify the debtor giving the reasons in writing, with a copy to the Finance Office

and to the servicing official. Upon receipt, the Finance Office will return the original Form FmHA or its successor agency under Public Law 103-354 1956-1 to the State Office.

§ 1956.143 Debt restructuring—hospitals and health care facilities.

This section pertains exclusively to delinquent Community Facility hospital and health care facility loans. Those facilities which are nonprogram (NP) loans as defined in §1951.203 (f) of subpart E of part 1951 of this chapter are excluded. The purpose of debt restructuring is to keep the hospital or health care facility in operation with manageable debt.

(a) *Definitions.* As used in this section, the following definitions apply:

Consolidation. The combining of two or more debt instruments into one instrument, normally accompanied by reamortization.

Debt writedown. A one-time reduction of the debt owed to FmHA or its successor agency under Public Law 103-354 including principal and interest. This reduction will be the minimum amount necessary to meet the level of the facility's ability to service the debt. The writedown will be applied first to interest and then principal.

Delinquency due to circumstances beyond the control of the debtor. Includes situations such as: The debtor has less money than planned due to unexpected and uncontrollable events such as unexpected loss of service area population, unforeseeable costs incurred for compliance with State or Federal regulatory requirements, or the loss of key personnel.

Delinquent debtor. For purposes of this section, delinquency is defined as being 180 days behind schedule on the FmHA or its successor agency under Public Law 103-354 payments. That is, one full annual installment or the equivalent for monthly, quarterly, or semiannual installments.

Eligibility. Applicants must be delinquent due to circumstances beyond their control and have acted in good faith by trying to fulfill the agreements with FmHA or its successor agency under Public Law 103-354 in connection with the delinquent loans.

Interest rate reduction. Reduction of the interest rate on the restructured loan to as low as the poverty line interest rate in effect on community and business programs loans.

Loan deferral. The temporary delay of principal and interest payments for up to 6 months. The debtor must be able to demonstrate the ability to pay the debt, as restructured, at the end of this delay period.

Net recovery value. A calculation of the net value of the collateral and other assets held by the debtor. This value would be determined by adding the fair market value of FmHA or its successor agency under Public Law 103-354's interest in any real property pledged as collateral for the loan, plus the value of any other assets pledged or otherwise available for the repayment of the debt, minus the anticipated administrative and legal expenses that would be incurred in connection with the liquidation of the loan. This value of the assets should be calculated based upon the facility continuing to operate as a going concern. Therefore, the facility should be valued not merely as an empty building but as a facility continuing to offer health care services which may, or may not, be similar to those offered by the current operators.

Operations review. A study of management and business operations of the facility by an independent expert. For example, a study of a hospital and nursing home would include such areas as: general and administrative, dietary, housekeeping, laundry, nursing, physical plant, social services, income potential, Federal, State, and insurance payments, and rate analysis. Also, recommendations and conclusions are to be included in the study which would indicate the creditworthiness of the facility and its ability to continue as a going concern. In analyzing a debtor's proposed restructuring plan, FmHA or its successor agency under Public Law 103-354 may contract for the completion of an operations review. These reviews will be developed by individuals and entities who have demonstrated an expertise in the analysis of health care facilities from an operational and administrative standpoint. FmHA or its successor agency under Public Law 103-354 will consider the following criteria