

§ 1956.144

(2) [Reserved]

(3) When the amount of the recapture has been paid and credited to the debtor's account, the debtor will be released from liability by using Form FmHA or its successor agency under Public Law 103-354 1965-8, "Release from Personal Liability," modified as appropriate.

(h) *No recapture due.* If FmHA or its successor agency under Public Law 103-354 determines there is no recapture due, the Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA or its successor agency under Public Law 103-354 Office) or Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA or its successor agency under Public Law 103-354 Office) will be appropriately annotated, the Recapture Agreement released from the record, and the Agreement returned to the debtor.

[59 FR 46160, Sept. 7, 1994, as amended at 68 FR 61332, Oct. 28, 2003; 69 FR 69106, Nov. 26, 2004]

§ 1956.144 [Reserved]

§ 1956.145 Disposition of essential FmHA or its successor agency under Public Law 103-354 records.

FmHA or its successor agency under Public Law 103-354 Instruction 2033-A (available in any FmHA or its successor agency under Public Law 103-354 office) identifies an "essential FmHA or its successor agency under Public Law 103-354 record" as the original of any document or record which provides evidence of indebtedness or obligation to FmHA or its successor agency under Public Law 103-354 and includes, but is not limited to: promissory notes, assumption agreements and valuable documents, such as bonds fully registered as to principal and interest.

(a) Essential FmHA or its successor agency under Public Law 103-354 records evidencing debts settled by compromise, completed adjustment or cancelled with application will be returned to the debtor or to the debtors' legal representative. The appropriate legend, such as "Satisfied by Approved Compromise," and the date of the final action will be stamped or typed on the original document. This same informa-

7 CFR Ch. XVIII (1-1-08 Edition)

tion plus the date the original document is returned to the debtor will be shown on a copy to be placed in the debtor's case folder.

(b) Essential FmHA or its successor agency under Public Law 103-354 records evidencing debts cancelled without application will be placed in the debtor's case folder and disposed of pursuant to FmHA or its successor agency under Public Law 103-354 Instruction 2033-A (available in any FmHA or its successor agency under Public Law 103-354 office). However, if the debtor requests the document(s), they must be stamped "Satisfied by Approved Cancellation" and returned.

(c) Essential FmHA or its successor agency under Public Law 103-354 records evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after chargeoff pursuant to FmHA or its successor agency under Public Law 103-354 Instruction 2033-A (available in any FmHA or its successor agency under Public Law 103-354 office).

[53 FR 13100, Apr. 21, 1988, as amended at 58 FR 21346, Apr. 21, 1993]

§ 1956.146 [Reserved]

§ 1956.147 Debt settlement under the Federal Claims Collection Act.

The U.S. Department of Justice (DOJ) and the General Accounting Office are charged with the responsibility for implementing the Federal Claims Collection Act and have promulgated the Federal Claims Collection Act Joint Standards (FCCAJS) (4 CFR parts 101-105) to inform Government Agencies on how to settle debts and claims which the Agency does not have independent statutory authority to settle. With the exception of loans and claims with outstanding balances of \$20,000 or less, exclusive of interest, penalties, and administrative costs, settlements must be submitted to and approved by the United States Attorney or the DOJ. Debt Settlement of Economic Opportunity Cooperative loans, Claims Against Third Party Converters, Nonprogram loans, Industrial Development Grants, Rural Development Loan Fund loans, Intermediary

Relending Program loans, Nonprofit National Corporations Loans and Grants, Indian Tribal Land Acquisition Loans (to the extent settlement cannot be effected pursuant to §1956.137), and 601 Energy Impact Assistance Grants are programs that must be settled under the FCCAJS.

(a) Debt settlement of the subject loans and claims falls in the following categories:

(1) Settlement of loans and claims may be approved by the Administrator when the outstanding balance of the indebtedness involved in the settlement is \$20,000 or less, exclusive of interest, penalties, and administrative costs. These loans and claims will be submitted to the National Office on Form FmHA or its successor agency under Public Law 103-354 1956-1, "Application for Settlement of Indebtedness," for debt settlement. Subsequent to approval, Form FmHA or its successor agency under Public Law 103-354 1956-1 will be distributed in accordance with the Forms Manual Insert (FMI).

(2) Loans and claims with an outstanding balance of \$200,000 or less inclusive of interest, penalties, and administrative costs, but with an outstanding balance greater than \$20,000, exclusive of interest, penalties, and administrative costs, after approval by the State Director will be referred to your Regional Office of the General Counsel (OGC) for referral to the United States Attorney in whose judicial district the debtor can be found. The form to be used is the Claims Collection Litigation Report (CCLR). This form should be available through the U.S. Attorney. A memorandum from the State Director should be attached to the CCLR recommending acceptance of the debt settlement. If the State Director after reviewing the CCLR does not recommend acceptance, the State Director has the authority to reject the debt settlement.

(3) Loans and claims with an outstanding balance over \$200,000, inclusive of interest, penalties, and administrative costs, will be referred to the Administrator and will include the following:

- (i) The case file(s).
- (ii) A completed CCLR.

(iii) Copies of the notes, security agreements, and mortgages.

(iv) A current appraisal of any security owned by the debtor.

(v) A narrative which will include:

(A) Recommendation for the acceptance of the debt settlement.

(B) The type of loan involved, a short history of the loan, and why the debtor failed.

(C) Steps taken to collect the loan(s).

(D) An analysis of the debtor's future repayment ability. This should discuss if the debtor has any other assets or has concealed or improperly transferred assets, if known. If the debtor is an individual, this should include consideration of the debtor's present and potential income and inheritance prospects.

(E) Why acceptance of the debt settlement offer is in the best interest of the Government.

(4) If the Administrator concurs with the recommendation for the debt settlement, it will be referred by the FmHA or its successor agency under Public Law 103-354 National Office to OGC for referral to the Commercial Litigation Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530.

(b) When a debtor has a Community Programs or Business and Industry loans(s) and defined in this subpart, these loan(s) will be debt settled under the authority of the Consolidated Farm and Rural Development Act. In such cases, the subject loans and claims should be listed under part II(B) on Form FmHA or its successor agency under Public Law 103-354 1956-1, as other debts owed FmHA or its successor agency under Public Law 103-354. Normally, all the security for the subject loans and claims should be disposed of prior to the submission for debt settlement.

(c) It is not necessary to obtain approval of the United States Attorney or the DOJ (as the case may be) in cases where FmHA or its successor agency under Public Law 103-354 decides not to settle a loan or claim.

[55 FR 30197, July 25, 1990, as amended at 59 FR 46162, Sept. 7, 1994]