

RHS, RBS, RUS, FSA, USDA**§ 1956.85**

upon a report and favorable recommendation of the employee in charge of the account provided:

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

(2) The requirements of §1956.70(b)(2) have been met, or two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it can presently be made a lien.

(b) *Nonjudgment debts.* Debts which cannot be settled under other sections of this subpart may be charged off using Form FmHA or its successor agency under Public Law 103-354 1956-1 or Form FmHA or its successor agency under Public Law 103-354 1956-2 for housing loans without the debtor's signature subject to the following provisions:

(1) When the principal balance is \$2,000 or less and efforts to collect have been unsuccessful or it is apparent that further collection efforts would be ineffectual or uneconomical,

(2) When the OGC advises in writing that the claim is legally without merit.

(3) Even though FmHA or its successor agency under Public Law 103-354 considers the claim to be valid, when efforts to induce voluntary payments are unsuccessful and the OGC advises in writing that evidence necessary to prove the claim in court cannot be produced, or

(4) When the employee in charge of the account recommends the chargeoff and has made the following determinations on the basis of information in FmHA or its successor agency under Public Law 103-354's official files or from other informed reliable sources:

(i) That the debtor is:

(A) Unable to pay any part of the debt and has no apparent future debt repayment ability as specified in §1956.66(a); or

(B) Able to pay part or all of the debt but is unwilling to do so, it is clear that the Government cannot enforce collection of a significant amount from assets or income, and an opinion is received from OGC to that effect; and

(ii) There is no security for the debt.

(c) For debts identified as being part of an unsecured claim under a confirmed Chapter 11 plan, the chargeoff

will be documented with a copy of the organization plan, a copy of the court order confirming the plan, an opinion by OGC that the order confirming the plan has discharged the debtor(s) of liability on the unsecured part of the debt.

§§ 1956.76-1956.83 [Reserved]**§ 1956.84 Approval or rejection.**

(a)-(d) [Reserved]

(e) *Appeal rights.* A debtor whose debt settlement offer is rejected will be notified of appeal rights pursuant to 7 CFR part 11.

[58 FR 21345, Apr. 21, 1993, as amended at 68 FR 7700, Feb. 18, 2003]

§ 1956.85 Payments and receipts.

(a) *Servicing office handling.* (1) An application with which the debtor offers a lump-sum payment in compromise, or with which the debtor offers an initial payment on an adjustment offer, will be accompanied by the payments required at the time such application is filed in the servicing office.

(2) [Reserved]

(3) Checks or check transmittal letter containing restrictive notations such as "Settlement in full" or "Payment in full," or in those exceptional instances when the debtor refuses to sign the Form FmHA or its successor agency under Public Law 103-354 1956-1 in connection with a compromise offer, 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.

(b) *Finance Office handling.* (1) 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. In cases of approved offers, remittances will be applied in accordance with established policies, beginning with the oldest loan included in

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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. 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 employee in charge of the account, the amount held in the Deposits Fund Account representing a rejected compromise or adjustment offer.

(2) 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. The original Form FmHA or its successor agency under Public Law 103–354 1956–1 in approved cases will be retained in the Finance Office.

[56 FR 10147, Mar. 11, 1991, as amended at 58 FR 21345, Apr. 21, 1993; 68 FR 61332, Oct. 28, 2003; 69 FR 69106, Nov. 26, 2004]

§§ 1956.86–1956.95 [Reserved]

§ 1956.96 Delinquent adjustment agreements.

A 90-day extension for making the payments may be given by the Agency when the circumstances of the case justify an extension. A decision not to extend the time for making payments is not appealable. If the debtor is delinquent under the terms of the adjustment agreement and is likely to be financially unable to meet the terms of the agreement, the Agency may cancel the existing agreement and process a different type of settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action. The cancellation of an adjustment agreement is appealable. If an agreement is cancelled, any payments received shall be retained as payments on the debt owed at the time of the adjustment agreement.

[68 FR 7700, Feb. 18, 2003]

§ 1956.97 Disposition of promissory notes.

(a) Notes evidencing debts settled by completed adjustments, completed compromise with or without signature, or canceled with signature will be returned to the debtor or to the debtor's legal representative. The original and copies of notes will be stamped "Satisfied by Approved Compromise," "Satisfied by Approved Cancellation," or "Satisfied by Completed Adjustment Offer." In such cases, the security instrument(s) will be released of record according to State law.

(b) Notes evidencing debts canceled 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 notes, they may be stamped "Satisfied By Approved Cancellation" and returned.

(c) Notes 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 charged off 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).

(d) In case of a transfer of security with assumption for less than the debt, the promissory note will be attached to the assumption agreement covered by the note and kept in the transferee's file.

[56 FR 10147, Mar. 11, 1991. Redesignated and amended at 58 FR 21346, Apr. 21, 1993]

§ 1956.98 [Reserved]

§ 1956.99 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director