

Notice FC-114

2 Action (Continued)

A Immediate Actions (Continued)

- In all cases, accelerations or subsequent actions will be halted until:
- the National Office review is completed
 - written approval to proceed is received from the USDA Independent Review Team.
-

B Checklist for Primary Loan Servicing

Local Agriculture Credit Officials shall complete Exhibit 1 on all cases, unless it was previously completed under Notice FC-94.

The checklist should become a part of the borrower's running case file record. Credit officers will complete Sections I and II where applications for servicing have been filed. Sections III and IV should be completed if writedown or buyout were considered. If an application was not received, make a note of this and any other appropriate comments in Exhibit 1, Section V.

SED's or their designee should review the checklist. State Offices are to establish a followup system to ensure that deficiencies will be corrected in a timely manner.

C Checklist for Reviewing Inconsistencies

Exhibit 3 must be completed and signed by SED certifying that no evidence of inconsistencies or discrimination complaints, written or oral, exist before submitting a case to the USDA Independent Review Team.

Inconsistency means processing loan and security requests differently for applicants or borrowers with similar circumstances.

The SED's certification authority must not be redelegated.

Documentation from Exhibit 2 will be used to assist in completing Exhibit 3.

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Notice FC-114

2 Action (Continued)

D

Cases Currently Held by Department of Justice (DOJ)

The highest review priority will be given to the foreclosure cases in DOJ. State Offices shall complete the exhibits for DOJ cases and forward them to the Independent Review Team within 5 workdays of the date of this notice.

The independent review will be completed within 5 workdays of receipt in the National Office. If no exceptions are found, the State will be promptly notified to continue the action on the account.

E

Priority for Reviews

State Office reviews on foreclosure cases will be done in the following order of priority.

Priority	Foreclosure Cases
1	Cases currently in DOJ scheduled for immediate sale.
2	All other cases previously submitted to DOJ and legal counsel for foreclosure.
3	All million dollar accelerated accounts and other cases when the Government's security is at risk
4	All remaining accelerated accounts.
5	Future cases before acceleration.

Note: The review process established by this notice should be completed on every existing accelerated account within 60 calendar days from the date of this notice.

F

Contact

If there are any questions concerning the Independent Review Team:

- County Offices shall contact the State Office
 - SED's shall contact Richard Chavez, Chairman, USDA Independent Review Team at the address in subparagraph A or by telephone at 202-720-1150.
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Notice FC-114

2 Action (Continued)

G

**Material for
Review Process**

The following information will be used as a part of the review process:

- 1992 census data
- Exhibits 1, 2, and 3
- FOCUS Reports.

Note: Census data and FOCUS reports for Exhibit 2 will be sent to State Offices under separate cover. Upon receipt, they should immediately be used with the review required in this notice.

H

Obsolete Notices

Notices FC-94 and FC-106 are obsolete.

For: State and County Offices

Delay of Accelerations or Subsequent Actions Pending Review by USDA Independent Team

Approved by: Acting Administrator



do not send to NO AS of 9-12-97. New notice to come. do not proceed with foreclosure until new notice

Note: No accelerations or subsequent actions on foreclosures are to proceed until compliance with this notice is achieved.

1 Overview

A

Background

On December 18, 1996, the Secretary ordered FSA to temporarily halt foreclosure sales on delinquent farm loans until a determination could be made on each case as to whether there is any evidence of discrimination or inconsistency in program delivery. To implement that policy, FSA issued Notice FC-94.

In addition, the Civil Rights Action Team (CRAT) recommended that the Secretary:

- require that all pending foreclosures or actions leading to foreclosure be halted until all appeals of any formal civil rights complaint could be completed
- issue policy halting foreclosure proceedings until the customer has exhausted all other rights
- require independent review of all pending foreclosures to determine whether discrimination in USDA programs contributed to the foreclosure action.

Note: To facilitate implementation of that policy, FSA issued Notice FC-106 which temporarily halted all foreclosure sales until the independent review process could be established.

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Disposal Date	Distribution
April 1, 1998	State Offices; State Offices relay to County Offices

Notice FC-114

1 Overview (Continued)

A Background (Continued)

The Department has temporarily established a diverse independent team to review all pending accelerated accounts and other potential foreclosure cases ready for acceleration. This team:

- consists of representatives from programs and civil rights
 - will be housed in the Washington, D.C. area
 - will be dedicated to accomplishing the review as timely as possible.
-

B Purpose

This notice:

- provides policy and guidelines for implementing the CRAT recommendations
 - provides worksheets that are to be completed and submitted to the USDA Independent Review Team for approval before proceeding with accelerations or the subsequent steps in the foreclosure process
 - obsoletes Notices FC-94 and FC-106.
-

2 Action

A Immediate Actions

SED's shall:

- immediately complete Exhibits 1, 2, and 3, on all cases pending acceleration or subsequent steps

Note: If Notice FC-94, Exhibit 1, has already been completed, use it instead of Exhibit 1 to this notice.

- either FAX exhibits to 202-720-6095 or send by overnight FedEx to the following address:

OFFICE OF CIVIL RIGHTS
USDA, INDEPENDENT REVIEW TEAM
ROOM 1371-S
1400 INDEPENDENCE AVE SW
WASHINGTON DC 20250.

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Primary Loan Servicing Checklist

State: _____

Borrower: _____

I. Completed Application. Check the following items that were found with the application. If a complete application was not received, provide details in the comment section if the borrower attempted to file the application.

- ____ 1. Attachment 2 or 4 of Exhibit A to FmHA Instruction 1951-S.
- ____ 2. Form FmHA 410-1, Application for FmHA Services. Current Financial Statements on all liable parties required.
- ____ 3. Form FmHA 410-8, Applicant Reference Letter (if applicable).
- ____ 4. Form FmHA 410-9, Statement Required by the Privacy Act.
- ____ 5. Form FmHA 431-2, Farm and Home Plan (FHP).
- ____ 6. Form FmHA 440-32, Request for Statement of Debts and Collateral (if applicable).
- ____ 7. Form FmHA 1910-5, Request for Verification of Employment (if applicable).
- ____ 8. Form FmHA 1924-1, Development Plan (if applicable).
- ____ 9. Form AD-1026, Highly Erodible Land Conservation (HELCS) and Wetland Conservation (WC) Certification.
- ____ 10. Form CPA-026, Highly Erodible Land and Wetland Determination.
- ____ 11. Form FmHA 1956-1, Application for Settlement of Indebtedness (if applicable).
- ____ 12. Production history for the last 5 years immediately preceding the year of production. Production history must be reconciled with Farm Program (formerly ASCS) records, if available.
- ____ 13. Income and expense history for the last 5 years immediately preceding the year of application.

Continued on the next page

Primary Loan Servicing Checklist (Continued)

State: _____

Borrower: _____

I. Completed Application (Continued)

____ 14. Copies of income tax returns and any needed supporting documents for the last 5 years immediately preceding the year of application.

Comments for Section I:

II. Application Processing. Enter the dates to questions 1 through 7. If no application was filed, go to Exhibit 2.

1. _____ The date that 1951-S FmHA Instruction package was mailed to the borrower.
2. _____ The date that the borrower filed a complete application for servicing.
3. _____ The date FSA approved or rejected the application. Circle Approved or Rejected.
4. _____ The date that FmHA Instruction 1951-S, Exhibit E with Attachment 1 or 2 was provided to the borrower. Applicable in most cases where a complete application was filed and loans could not be restructured. Attachment 2 is to be used for all applications submitted on or after November 28, 1990.
5. _____ The date that a current, completed real estate and/or chattel appraisal was obtained on all FmHA security and nonessential assets. An appraisal of nonessential assets is only required for applications filed after November 28, 1990.
6. _____ The date a current automated Farm and Home Plan with all appropriate dates and signatures was completed. Place a check by the following items to indicate that they were completed properly.
 - a. _____ Nonfarm and other farm income has been verified and correctly entered on FHP.

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Primary Loan Servicing Checklist (Continued)

State: _____

Borrower: _____

Section II (Continued)

- b. _____ All debts and collateral have been verified and correctly entered on FHP. A credit report, which was obtained at FSA expense, is included in the case file.
- c. _____ The projected income, expenses, and production figures are based upon the borrower's documented 5-year history according to FmHA Instruction 1924-B.
- d. _____ The unit commodity prices used on FHP are documented and comply with FmHA Instruction 1924-B.
7. _____ The date that the correct version of DALRS Analysis Report was signed and dated by the local Agriculture Credit Officer. Place a check by the following items to indicate that they were completed properly.
- a. _____ The correct discount rate, interest rates, and net recovery constants were used in the DALRS calculations.
- b. _____ The "Balance Available" and "Payments and non-FSA Debt" in DALRS correspond to the figures from FHP, Tables J and K, and if applicable, Notice FC-60, Exhibit 1.
- c. _____ The projected loans on FHP have been correctly entered into DALRS.
- d. _____ The correct interest rates (original and existing), terms and unpaid principal and interest (including noncapitalized interest for DALRS Version 4.2) figures for all FLP FSA debts were entered into DALRS.
- e. _____ The entries pertaining to existing loans regarding limited resource rates loan type, existing payment schedule, and consideration for loan servicing are correct.
- f. _____ The value of the borrower's assets, as documented by appraisals, have been correctly entered into DALRS.
- g. _____ Prior liens and amounts of prior liens have been verified and correctly entered into DALRS.

Continued on the next page

Primary Loan Servicing Checklist (Continued)

State: _____

Borrower: _____

Section II (Continued)

- h. _____ For all applications received on or after November 28, 1990, the value of nonessential assets and properly documented unrelated security has been correctly entered into DALRS.

Comments:

III. Processing Writedown of FmHA Debt. Place a check by the following items to indicate if they were completed properly.

- ____ 1. Attachment 1 or 2 of Exhibit F to FmHA Instruction 1951-S was signed by the borrower. Attachment 2 will be used for all applications received on or after November 28, 1990.
- ____ 2. Exhibit D to FmHA Instruction 1951-S was properly prepared and executed when the loan or loans were secured by real estate.
- ____ 3. Form FmHA 1940-17, "Promissory Note" was properly prepared and executed.
- ____ 4. Form FmHA 1927-1 (State), Real Estate Mortgage or Deed of Trust, was properly filed, if applicable.
- ____ 5. For all applications received on or after November 28, 1990, liens were taken on other assets as required by FmHA Instruction 1951-S.
- ____ 6. Complete AGCREDIT Borrower History Report.
- ____ 7. Original Promissory Note or Notes are marked, "Rescheduled or Reamortized with Writedown Debt," and stapled to the new Note or Notes.

Continued on the next page

Primary Loan Servicing Checklist (Continued)

State: _____

Borrower: _____

III. Processing Writedown of FmHA Debt (Continued)

- _____ 8. The Management Record System (MRS) was updated for the 24-month review of County records.

Comments:

IV. Processing Buyout. Place a check by the following items to indicate if they were completed properly.

- _____ 1. Attachment 5-A or 6-A of Exhibit A to FmHA Instruction 1951-S was signed and returned by the borrower. Attachment 6-A is to be used for all applications that are submitted on or after November 28, 1990.
- _____ 2. Form FmHA 451-2, "Schedule of Remittance" was properly prepared to process the buyout payment.
- _____ 3. Form FmHA 1927-1 (State), Real Estate Mortgage or Deed of Trust, was properly completed and filed if the FSA loan or loans were secured by real estate. The appropriate lien should be taken and old security interments released.
- _____ 4. Complete AGCREDIT Borrower History Report.
- _____ 5. MRS was updated for the 24-month review of County Records.

Comments:

Continued on the next page

Primary Loan Servicing Checklist (Continued)

State: _____

Borrower: _____

V. Additional Comments

Date

Signature of local Ag Credit Officer
who reviewed case.

Date

Signature of SED or designee certifying that the
borrower received all primary loan servicing
options.

Review Data for Inequitable Treatment

This information should be used when reviewing individual cases for inequitable treatment as required under Exhibit 3.

1. Number of existing minority and women borrowers compared to census data for minorities and women operators by county and State.

Each State Office will use the 1992 census data to obtain this information by county. State Offices will use the same format as shown in the census data and FOCUS Reports, Attachments 1-A and 1-B, to provide the county data.

2. Direct Loan Application Processing Timeframes

When reviewing individual cases, States shall compare the direct loan application processing timeframes (completed application to final disposition) of the most recent applications filed on or after October 1, 1995, with their State's processing timeframe for each loan program.

The National Office shall provide each State with its processing timeframe cutoff for each loan program for the purpose of evaluating application processing under this notice. The State's processing timeframe cutoff will be based on 20 percent of all direct loan applications that took the longest time to process for that particular loan program.

The National Office derives each State's processing timeframe numbers from MRS data. If the MRS data in the State is not correct, up to date or uploaded to the Kansas City mainframe, the State must use case file or management card data and consult with the National Office to obtain the processing timeframe for each loan program. This data can only be obtained manually. States must document the data source used.

3. Number of existing minority and women borrowers with accounts currently accelerated. This is provided on a State-by-State basis by the National Office and compared to the National total. See FOCUS Report, Attachment 2. These are flagged ACL, FAP, and CAP.
 4. Number of existing minority and women borrowers that are delinquent. This is provided on a State-by-State basis by the National Office and compared to the National total. See FOCUS Report, Attachment 3.
 5. Number of existing minority and woman borrowers who have received loan restructuring during FY 1996 on a State-by-State basis compared to National total. See FOCUS Report, Attachment 4.
 6. Number of existing minority and women borrowers who currently have limited resource rates on a State-by-State basis compared to the National total. See FOCUS Report, Attachment 5.
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Review Checklist for Determining Inconsistencies in Delivery of Farm Loan Programs

State: _____

Borrower: _____

Case Number: _____

Amount P&I Owed FSA: \$ _____

Is case currently in DOJ? Yes No

Is account accelerated? Yes No

This checklist is to be completed by each State FSA Office. SED must certify (authority may not be redelegated) to show that no evidence of discrimination or inequitable treatment exists in delivery of FLP before submitting the case to the Independent Review Team for review.

1. From the case file and Exhibit 2, item 1, complete the following:

a. What racial group is this borrower a member?

minority _____ women _____ all other _____

b. In this county, what percent of the FSA borrowers are of the same racial group? What percent of the racial group is shown in the census compared to total farmers?

_____ % FSA borrowers.

_____ % of total farmers as shown in the census.

Comments:

Continued on the next page

**Review Checklist for Determining Inconsistencies in Delivery of Farm Loan Programs
(Continued)**

State: _____

Borrower: _____

- From the county records and Exhibit 2, item 2, complete the following concerning FSA loan application processing time on all applications filed since October 1, 1995, in the county. If the borrower application processing time is greater than the State's timeframe cutoff, note the reasons for time delays in the comment section below. Also, address any lengthy delays from the date the application was received until it was completed.

Date of Received Application	Date of Completed Application	Type of Application	Processing Time for Application	State Processing Timeframe (Exhibit 2)

Comments:

Continued on the next page

**Review Checklist for Determining Inconsistencies in Delivery of Farm Loan Programs
(Continued)**

State: _____

Borrower: _____

3. Refer to Exhibit 2, item 3, to complete the following concerning accounts flagged ACL, FAP, and CAP on the State basis.

a. Combined percent of minority and women borrowers: _____%.

b. Percent of total borrowers flagged ACL, FAP, and CAP: _____%.

Comments:

4. Refer to Exhibit 2, item 4, to complete the following concerning delinquent borrowers:

a. Total number of borrowers delinquent: _____

b. Percent of minorities delinquent: _____%.

c. Percent of women delinquent: _____%.

d. Percent of all other borrowers delinquent: _____%.

Comments:

Continued on the next page

**Review Checklist for Determining Inconsistencies in Delivery of Farm Loan Programs
(Continued)**

State: _____

Borrower: _____

5. Refer to Exhibit 2, item 5, to complete the following concerning debt restructure with rescheduling, reamortization, writedown, or deferral after September 30, 1995:
 - a. Total restructured: _____
 - b. Of those restructured, what percent are minority: _____
 - c. Of those restructured, what percent are women: _____
 - d. Of those restructured, what percent are all others: _____
 - e. Year borrower received debt restructure: _____

Comments:

6. Refer to Exhibit 2, item 6, to complete the following concerning limited resource rates:
 - a. Total number of borrowers with outstanding limited resource rates: _____
 - b. What percent of the total are minority? _____
 - c. What percent of the total are women? _____
 - d. What percent of the total are all other? _____
 - e. Does the borrower have limited resource rates? _____

Continued on the next page

**Review Checklist for Determining Inconsistencies in Delivery of Farm Loan Programs
(Continued)**

State: _____

Borrower: _____

Comments:

7. The running case file has been reviewed for documentation or suggestions to determine whether inconsistencies exist that indicate the borrower's account was handled differently than other borrower accounts of similar status or that borrower expressed oral or written concerns or complaints relating to discrimination or inequitable treatment. Were inconsistencies found?
 _____ Yes _____ No
8. The loan making and servicing timeframes were reviewed to determine whether the borrower's requests were handled differently from others in the local servicing area. Were inconsistencies found? _____ Yes _____ No
9. Other FSA foreclosure sales were reviewed in the area to determine whether the subject case was handled in the same manner. Were inconsistencies found? _____ Yes _____ No
10. The history of the local servicing area was reviewed to determine whether cases of discrimination or inequitable treatment have occurred. Have cases of discrimination or inequitable treatment occurred in this area before? _____ Yes _____ No

Comments:

Continued on the next page

**Review Checklist for Determining Inconsistencies in Delivery of Farm Loan Programs
(Continued)**

State: _____

Borrower: _____

_____ I certify that evidence of inconsistencies do not exist in this case and recommend that foreclosure continue. (Do not mark this statement if a discrimination claim has been filed or items 7 through 10 have been answered with "Yes".)

_____ There appear to be inconsistencies and, therefore, I cannot certify that the borrower has been treated fairly. (Note the inconsistencies in the appropriate comment section.)

Date

State Executive Director
