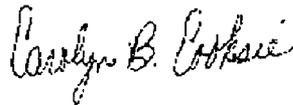


For: State and County Offices

**Processing FLP Guaranteed Loan Loss Claims
When Reorganization Bankruptcy Has Occurred**

Approved by: Deputy Administrator, Farm Loan Programs



1 Overview

**A
Background**

FmHA Instruction 1980-B, Section 1980.144, provides direction for servicing FLP guaranteed loans under the protection of the bankruptcy code. Further instruction is needed to continue to provide a uniform understanding between all field offices and the St. Louis Finance Office on processing guaranteed loan estimated or interest loss claims under Chapters 11, 12, and 13 (reorganization) of the bankruptcy code.

**B
Purpose**

This notice clarifies how to process guaranteed loan estimated and interest loss claims in reorganization cases.

**C
Contacts**

State Offices shall direct questions about this notice to the Guaranteed Loan Servicing and Inventory Property Branch, LSPMD.

Disposal Date August 1, 1999	Distribution State Offices; State Offices relay to County Offices
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Notice FC-212

2 Action

A Bankruptcy and Guaranteed Loss Claims

The term confirmation date means the approval date of the reorganization plan. The term effective date means the date the plan will go into effect. A reorganization plan confirmation date may be different than the effective date. State and County Offices must review the court order to determine these dates.

Estimated loss claims will not be approved until the bankruptcy court approves the reorganization plan as required by the Lender's Agreement and FmHA Instruction 1980-B, Section 1980.144(d)(1). Approval and confirmation are synonymous for determining when an estimated loss claim will be filed. **The borrower's performance under the reorganization plan is not complete upon confirmation of the plan.**

B Coding RD 449-30

County Offices and State FLP staffs must ensure that RD 449-30 is coded correctly:

- in a Chapter 11, 12, or 13 reorganization, block 3A, "Report Type Code," must be coded as "5", "Loss-Bankruptcy Reorganization"
- for interest loss claims, block 3A must be coded as "8", "Interest Loss Payment."

Note: The Forms Manual Insert (FMI) for RD 449-30 incorrectly indicates that code 8 for block 3A is for "Shared Appreciation Recapture."

These codes comply with the revised form and FMI for RD 449-30, which will be issued when the new Guaranteed Loan System is fully developed. However, the Finance Office accounting system has already made the conversion to the new codes.

Continued on the next page

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2 Action (Continued)

C

**Court Treatment
of Guaranteed
Debt**

The bankruptcy court may order the combining of guaranteed and section 1980.144(d)(1) nonguaranteed loans. If this occurs, FSA should recommend to the lender that separate ledgers be kept for handling the guaranteed portion of the debt, in the event of future losses. FSA cannot require the lender to keep separate ledgers.

D

**Initial Estimated
Loss Claim**

The initial estimated loss claim submitted will entitle the lender to accrued interest on the entire principal balance up to the effective date, but will not include interest paid to the date of the check. The following must be attached to the initial estimated loss claim for a bankruptcy:

- a copy of the confirmed bankruptcy plan
- a memorandum clearly indicating the plan confirmation date and the date the plan is to go into effect

Note: The bankruptcy plan will define the length and terms of the reorganization plan.

- any other relevant information concerning the loan and the loss claim.
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E

**Revised
Estimated Loss
Claims**

Any revision to the initial estimated loss claim must be based upon court-approved changes to the reorganization plan and will be coded as "5", "Loss-Bankruptcy Reorganization." FSA will review this claim to ensure that all principal and interest balances accurately reflect all previous estimated loss claim payments made during the term of the bankruptcy plan. The lender's claim will include interest paid to the effective date.

Continued on the next page

2 Action (Continued)

**F
Interest Loss
Claims**

The lender will submit interest loss claims coded as "8", "Interest Loss Payment," annually during the reorganization plan if a court-ordered interest rate reduction has occurred.

If the lender had a variable rate that remains at or below the court-ordered rate during the claim period, a loss claim will not be submitted. However, a loss claim may be submitted for the time during the claim period that the lender's interest rate was above the court-ordered rate.

All loss claims for the loss of interest because of a court-ordered interest rate reduction will be processed on the anniversary date of the effective date. The Finance Office will pay interest to this date or the completion date of the interest rate reduction, if earlier.

Interest loss incurred as a result of a permanent court-ordered interest rate reduction, which extends beyond the term of the reorganization plan, will be paid annually upon submission of the lender's loss claim. This claim will be submitted annually by the lender on the anniversary date of the effective date or the completion date of the interest rate reduction, if earlier. The Finance Office will pay the interest to that date.

**G
Completing
Bankruptcy Plan**

When performance under the confirmed reorganization plan has been completed, the Lender's Agreement and FmHA Instruction 1980-B, Section 1980.144(d)(1), require the lender to provide FSA with documentation necessary to review and adjust the estimated loss claim, if necessary, to reflect the actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured by the court. The lender must submit FSA 1980-44 at the conclusion of the bankruptcy to accurately reflect the loan status as required by FmHA Instruction 1980-B, Section 1980.144(d)(1) .

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2 Action (Continued)

H

Payments in Full

When a guaranteed loan that was included in a reorganization is paid in full under the terms of the loan without incurring an additional loss, County Offices shall advise the Finance Office that the secured portion of the loan was paid in full. This will be accomplished by having the lender complete a memorandum stating that the loan has been paid in full. County Offices will receive the memorandum and enter the information into the guaranteed loan system. Choose option 1 from the Guaranteed Loan Main Menu to input the information.

I

**Reimbursement
of Overpayments**

Whenever it is determined that the lender has been overpaid by FSA, the lender will prepare RD 449-30 to reimburse FSA the overpayment with interest accrual at the note rate, from the date of FSA's loss claim check to the date of settlement. The reimbursement of the overpayment with interest accrual at the note rate is required by the Lender's Agreement.

J

**Collecting
Unsecured Debt**

Any time the lender receives a voluntary payment on the unsecured portion of the guarantee, the lender will submit to FSA its share of the proceeds.

Field Offices will deposit the funds according to standard procedures. In addition, Field Offices must complete RD 449-30 with block 3A coded as "D", "Voluntary Payment," and the amount of payment indicated in block 44. RD 449-30 will then be submitted to the Finance Office.

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2 Action (Continued)

K

**Final Loss
Claims**

According to the Lender's Agreement and FmHA Instruction 1980-B, section 1980.144(d)(3), final loss claims for guaranteed loans that were subject to a reorganization plan reorganized under the bankruptcy code can only be processed when a liquidation takes place. Future recovery only applies when collections are made on loans in which a final loss claim has been processed and the borrower has not been released from liability.

L

Ordering Forms

Obtain forms and instructions from the KC Warehouse:

- County Offices shall order through the State Office.
 - State Offices shall submit FSA-159 to the KC Warehouse.
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