

***--Memorandum of Understanding**

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is between Farm Service Agency (FSA), formerly known as the Farmers Home Administration (FmHA), as to farm loans, and the Federal Deposit Insurance Corporation (FDIC).

General Purpose

The purpose of this MOU is to clarify and define certain responsibilities of FSA and the FDIC, in its capacity as receiver (Receiver) of a failed insured depository institution (closed bank), with regard to FSA Loan Note Guarantees, Contracts of Guarantee and Conditional Commitments for Guarantee to which the closed bank was a party. It is also the purpose of this MOU to outline joint policies that will assist in the preservation of the value of FSA guaranteed loans and of borrowers' operations. It acknowledges that cooperative action is necessary to preserve these values for the benefit of the Receiver, the borrower, and FSA. It is not the purpose of this MOU to abrogate existing statutes, rules or regulations of either the FDIC or FSA. This MOU does not create any legal rights or obligations on the part of any third parties.

Identification and Analysis of FSA Guaranteed Loans After a Bank is Closed

On the first business day following the closing of a bank that has FSA guaranteed loans, the Receiver will notify the FSA's Deputy Administrator for Farm Loan Programs in Washington, DC. The FSA's Deputy Administrator for Farm Loan Programs will advise the Receiver of the proper FSA contacts for the State or States in which the closed bank has guaranteed loans. The Receiver's notice to these FSA contacts will provide FSA with the name of the closed bank, the FDIC closing manager and other key FDIC personnel, the address to which any written correspondence regarding the closed bank is to be sent, the telephone number of the FDIC at the closed bank, and a copy of the FDIC's public notice regarding the latest date that claims can be filed against the closed bank's estate.

As long as the Receiver retains any FSA guaranteed loans, the Receiver will promptly notify FSA of any change in such contact information. FSA may rely upon the prior contact information until it receives the changed information from the Receiver.

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Not later than 30 days after receipt of the above-mentioned notification of bank closing FSA will:

- provide the Receiver with a list of:
 - (i) all FSA guaranteed loans in the closed bank's loan portfolio together with a list of any FSA Conditional Commitments for Guarantee which have been issued to the closed bank; for each guaranteed loan this list will include the FSA case number, borrower's name, the loan date, and original principal amount; and
 - (ii) collateral for the loans to the extent reflected in FSA's records; at the option of FSA, this information may be furnished by providing copies of the lender's original request for guarantee.
- commence a review:
 - (i) of the closed bank's records of FSA guaranteed loans in order to determine whether, and in what manner, the closed bank failed to meet FSA's standards in servicing or originating the loans; and
 - (ii) of each FSA guaranteed operating loan with the Receiver and jointly determine if it is financially feasible to continue with the operation (including advancing funds for lines of credit) through the current crop year.

Such review shall take place at the closed bank's premises, or such other place as the Receiver and the FSA shall agree, and shall be completed within 30 days after commencement.

Notwithstanding the foregoing, if the Receiver receives a request for advancement of funds from a borrower under an FSA guaranteed operating loan prior to FSA's and the Receiver's initial determination that it is financially feasible to continue to fund such loan, the Receiver will forward the request with a recommendation to FSA for concurrence. Any request not denied by FSA within 7 days of FSA's receipt of the borrower's request will be deemed to be approved.

Servicing FSA Guaranteed Loans

To the extent feasible, FSA will provide the full and timely cooperation of its staff in support of the FDIC's closing teams and the Receiver's loan servicing responsibilities. Without in any way limiting the foregoing, FSA will assist the Receiver with any necessary completion of loan status reports and physical inspections of the loan security for any Performing Loan or Non-performing Loan, each as defined on Exhibit A hereto.

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During the period commencing with the closing of the bank and ending 60 days after the Receiver's receipt of FSA's listing of any deficiencies in the servicing or origination of the guaranteed loans, the Receiver may postpone compliance with FSA servicing requirements promulgated for FSA guaranteed loans with the exception of those requirements pertaining to:

- payment processing,
- insurance policy maintenance,
- tax payments,
- UCC filings necessary to perfect and protect the security interests of the lender and FSA, and
- all other appropriate action reasonably necessary to protect the security interests of the lender and FSA where the Receiver has actual knowledge of conversion activity, deterioration or destruction of security property, or filing of bankruptcy by the borrower.

Thereafter, the Receiver will service (whether directly or through a servicer) any remaining FSA guaranteed loans in accordance with the Lender's Agreement, FSA reporting requirements and any applicable loan agreements until such time as these loans are sold or the debt is paid.

The Receiver shall not be responsible for any unilateral actions on the part of FSA which cause a loss on a loan serviced by the Receiver.

When a borrower has both FSA guaranteed loans and other unguaranteed loans in a closed bank, collateral and lien positions as set forth in the loan documents will govern payment distributions. Before set-asides, windfalls or any other FSA guaranteed borrower income is applied against any loan balances, the Receiver and FSA will agree as to the distribution of these funds.

The Receiver will not be required to subordinate its lien position without prior consent.

The Receiver may make advances for the protection and preservation of collateral securing FSA guaranteed loans in accordance with 7 C.F.R. § 762.149.

FSA shall notify the Receiver and outline the details of any servicing or origination deficiencies of which FSA becomes aware. Working in coordination with FSA, the Receiver will take action to correct the identified deficiencies (regardless of whether they occurred before or after the closing of the bank) to the extent practicable. Any uncorrected deficiencies may result in the reduction or denial of a future loss claim with respect to that loan. Any remaining claim by FSA with respect to any such deficiency shall be a general liability of the closed bank under 12 U.S.C. § 1821(d)(11)(A)(iii) to the extent it arises out of or results from the closed bank's origination or servicing errors with respect to that loan. FSA claims with respect to deficiencies arising from

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the Receiver's servicing errors shall be an administrative expense of the Receiver under 12 C.F.R. § 360.3(a)(1), except as otherwise provided herein. Notwithstanding the foregoing, FSA shall not make a claim against the Receiver, nor shall it reduce or deny a future loss claim, as a result of any postponed compliance with FSA servicing requirements as permitted under this MOU. FSA will not offset amounts owed to it from the Receiver for one closed bank against amounts due from FSA to the Receiver for another closed bank.

FSA Conditional Commitment for Guarantee

When an FSA Conditional Commitment for Guarantee has been issued to the closed bank, such commitment will be deemed canceled unless (i) the Receiver determines that the funding of the loan will enhance the ability of the borrower to fulfill its obligations under any existing FSA guaranteed loan, and (ii) the Receiver so notifies FSA within 30 days after receipt from FSA of the list of Conditional Commitments for Guarantee which have been issued to the closed bank.

Disposition of FSA Guaranteed Loans

FSA will assist the Receiver in identifying eligible lenders, as defined by 7 C.F.R. § 762.105, interested in acquiring guaranteed loans. FSA and the Receiver shall resolve the specific loan scenarios for Performing and Non-Performing Loans (as defined in Exhibit A) as follows:

Performing Loans

- The Receiver will determine the Reserve Price, as defined in Exhibit A hereto, of the entire loan.
- FSA shall provide the Receiver with a letter that the Receiver may provide to prospective purchasers that either (i) indicates that no deficiencies were discovered in FSA's review of the loan, or (ii) identifying deficiencies, other than deficiencies with respect to postponed compliance in accordance with this MOU, that pursuant to 7 C.F.R. § 762.103 will result in a reduction in any loss claim payment to the extent the violation resulted in the loss. In either case such letter shall provide that FSA reserves its rights with respect to any later discovered deficiencies. FSA shall provide such letter within 60 days of its receipt of the notice of the bank's closing.
- If FSA determines that no deficiencies exist in the originating or servicing of the guaranteed loan that would nullify the guarantee under FSA regulations, FSA will permit its guarantee to remain intact (subject to reduction for violations under 7 C.F.R. § 762.103) if the Receiver contracts with an eligible lender to purchase the loan.

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- If there is an entity, other than the lender, which holds all or a part of the guaranteed portion on such loan and does not have servicing responsibilities (a "holder), the Receiver will notify the holder of any proposed sale. The Receiver shall obtain the holder's written concurrence, in accordance with 7 C.F.R. § 762.105(c), in any such sale if the rates and terms of the guaranteed loan will be changed. Where holder concurrence is required but not obtained, a new lender may not be substituted and the guaranteed loan may only be sold without FSA's guarantee. Notwithstanding the foregoing, the Receiver may repurchase the guaranteed portion from a non-concurring holder in accordance with 7 C.F.R. § 762.144(d) and thereafter sell the loan with the FSA's guarantee to an eligible lender. If such portion of the loan is sold without FSA's guarantee, the Receiver will notify the purchaser of the holder's remaining interest in the guaranteed loan.
- The Receiver will not make a claim upon FSA for any difference between the proceeds received on the sale of the loan and the amount of the outstanding principal and interest with respect to such loan as of the time of the sale.
- Nothing herein shall limit the Receiver's ability to sell the lender's interest in a Performing Loan.

Non-performing Loans

- The Receiver will determine the Reserve Price of the entire loan and shall notify the FSA. FSA shall approve or reject the Reserve Price within 5 days of receipt of such notice. If FSA rejects the Reserve Price, FSA and the Receiver shall (i) review the information and factors to be taken into account in determining the value of such Non-performing Loan and (ii) mutually determine a Reserve Price as soon as reasonably practical after the rejection notice.
- Upon FSA's approval of the Reserve Price, the Receiver will sell the loan. Proceeds from the sale will be paid to the lender and the holder, if any, on a pro-rata basis.
- If the Receiver cannot sell the loan, the Receiver will attempt to restructure the loan with the borrower on terms acceptable to FSA. If the loan is restructured (and borrower continues to perform), the restructured loan will be treated as a Performing Loan for purposes of this MOU, except as provided below. Such loan may be sold to an eligible lender with an FSA guarantee of a percentage of the restructured note amount equal to the percentage of the original loan that was guaranteed by FSA.

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- If the Receiver cannot sell or restructure the loan, the Receiver will liquidate the loan security through foreclosure and sale of the collateral. Liquidation costs will be subtracted from the sales proceeds. Any remaining proceeds will be paid to the lender and the holder, if any, on a pro-rata basis.
- The Receiver may make a claim upon FSA for the loss incurred. The Receiver's loss shall be equal to difference between the Receiver's pro-rata share of
 - (i) (x) the proceeds received on the sale of the loan, (y) the reduced principal amount of a restructured loan, or (z) the net liquidation proceeds from the loan foreclosure and subsequent sale of the collateral, as the case may be, and
 - (ii) the amount of the outstanding principal and 60 days interest with respect to such loan as of the time of the sale, restructure, or foreclosure.
- FSA will review the claim and will either pay the claim in full, reduce the claim, or reject the claim in accordance with FSA regulations.

When a loan is sold as part of a pool or asset sale, the pro-rata distribution from the sale with respect to any loan will be based upon the net present value of the estimated cash recovery for Non-performing Loans, as determined in accordance with Exhibit A hereto.

Miscellaneous

All notices and other communications hereunder shall be in writing. The parties will deem that a notice has been received, when (i) delivered personally or transmitted by telecopy (with receipt acknowledged), (ii) 5 days after being mailed by first class postage prepaid, or (iii) when sent by E-mail, if a copy is sent contemporaneously by first class mail, postage prepaid.

If any date for performing any act under this MOU falls on a Saturday, Sunday or legal holiday, the date for performance shall be extended to the next business day.

This MOU may be amended at any time by written agreement of both parties and will take effect upon execution by both parties. The parties shall act reasonably and in good faith in complying with their obligations hereunder.

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Federal Deposit Insurance Corporation	Farm Service Agency
<u>Mitchell L. Glassman</u>	<u>James R. Little</u>
Mitchell L. Glassman, Director Division of Resolutions and Receiverships	Administrator
Date: <u>12/13/01</u>	Date: <u>2/13/02</u>

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EXHIBIT A
DEFINITIONS AND PROTOCOLS

Definitions

Performing Loan - a loan that is paying as agreed (currently less than 30 days past due) and is expected to pay in full under the terms of the note. Past delinquency or file-documentation problems do not disqualify a loan as performing (although they may have an effect on the discount rate used to calculate the Market Value, as determined below).

Non-performing Loan - a loan that is 30 days or more past due or is past the note (or modification) maturity date, regardless of whether or not ongoing payments are being received from the borrower. Non-performing Loans also include all judgements, deficiency balances, and charge-offs regardless of delinquency.

Reserve Price - Reserve Price is equal to Market Value, as determined below, for Performing Loans, and shall be an amount based on the net present value of the estimated cash recovery (NPV-ECR), determined in accordance with the protocols below, for Non-performing Loans.

Protocols

Valuation of Performing Loans

The valuation of Performing Loans is normally the first step in establishing a Reserve Price when selling to the secondary market. The value of a Performing Loan is calculated through a Mark-to-Market process in which the remaining payments are present-valued using current market yield requirements for similar loans. The result of this discounting is termed the Market Value. The Market Value for Performing Loans is calculated using a current market yield for similar types and quality of loans. The current market yield is comprised of a base rate, which is the rate for good quality, market-standard loans, and an adjustment for the characteristics of the specific loan(s). The base rate may be determined either through recognized publications that quote comparable rates or through surveys of local lending institutions. Once the base rate is determined, specific characteristics that affect the required yield should be identified through a review of the loan files and the payment histories. These characteristics include delinquency rates or documentation deficiencies such as missing financial statements or geographic location if the base rate does not reflect local lending practices. The current market yield is the result of adjusting the base rate for any of these characteristics.

Valuation of Non-performing Loans

The Net Present Value of the Estimated Cash Recovery (NPV-ECR), which is based on a liquidation scenario, is established by first estimating the cash recoveries, direct expenses, and payment of any prior liens over time. The estimated net cash flows are then present-valued using the appropriate rate. These rates reflect the risks associated with the source(s) of the ultimate collection and the estimated timing of the cash flows.

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By using a liquidation scenario, decisions regarding a compromise, restructure, or the sale of a loan are based on the same established value. The liquidation scenario is broadly defined as the cash flows identified with the foreclosure/repossession; holding and sale of pledged collateral; and the collection through litigation from identifiable assets of the borrowers or guarantors.

Under normal circumstances, the Reserve Price for Non-performing Loan will range from 75% to 90% of NPV-ECR. Upward and downward adjustments may be made for both the size of individual loans and the size of the package of loans. Small loans (balances less than \$25,000) are generally reserved at 75% of NPV-ECR. Loans with balances over \$250,000 are generally reserved at 90% of NPV-ECR. Should the NPV-ECR fall below 5% of the package's aggregate book value, it may be sold without a minimum Reserve Price. Discretion is given for loans falling between \$25,000 and \$250,000.

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