

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
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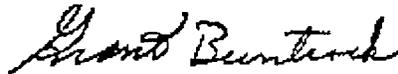
Notice FC-79

1956-B

For: State Offices

Processing Debt Settlements for Agriculture Credit Loans

Approved by: Administrator



1 Overview

**A
Background**

Since 1992, FSA has used several different methods of developing, presenting, reviewing, and approving debt settlement applications for agriculture credit loans. This has resulted in some confusion and duplication of efforts.

**B
Purpose**

This notice provides consistency in the way FSA processes debt settlement applications. Since the National Office of the Loan Resolution Task Force (LRTF) was dissolved September 30, 1996, all delegation of authority issued by the National LRTF is no longer effective. This notice establishes the minimum requirements for processing **all** settlement applications.

This notice provides direction to States on processing debt settlement applications after September 30, 1996, by:

- delegating authority to SED's to approve cancellation of debt greater than \$1 million according to FmHA Instruction 1956-B, section 1956.70(b)(3)(ii) and (iii) when **all** liable parties have been discharged under bankruptcy
- authorizing SED's to process settlement of all accounts under the jurisdiction of the Department of Justice according to FmHA Instruction 1956-B, section 1956.57(g)(3) when the settlement was approved by the U.S. Attorney's Office

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Disposal Date	Distribution
November 1, 1997	State Offices

1 Overview (Continued)

B

**Purpose
(Continued)**

- delegating authority to SED's to approve settlement of debt under the Debt Collection Act, according to FmHA Instruction 1951-J, section 1951.469(c)(2) when the claim, exclusive of interest, penalties, and administrative cost, is less than \$100,000
 - requiring States to obtain verification of current assets listed on the settlement application
 - providing a debt settlement checklist and requiring State Offices to complete the checklist before SED approval or recommendation to the National Office
 - requiring SED's to establish and use Debt Settlement Review Committees
 - establishing the documentation which must be forwarded with the debt settlement application packet for settlements requiring the Administrator's approval
 - requiring States to establish a monitoring system for all accounts which are charged off according to FmHA Instruction 1956-B, section 1956.75.
-

2 Delegation of Authority

A

**Canceling Debt
Discharged in
Bankruptcy**

SED's should exercise their authority, according to FmHA Instruction 1956-B, section 1956.84(a)(1)(ii), to approve the cancellation of debts discharged in Chapter 7 bankruptcy, according to FmHA 1956-B, section 1956.70(b)(3), regardless of the amount of the outstanding indebtedness.

SED's are hereby authorized to also approve cancellation of debts discharged under Chapter 11, 12, or 13 bankruptcy, according to FmHA 1956-B, section 1956.70(b)(3), regardless of the amount of the outstanding indebtedness. All liable parties must have received a bankruptcy discharge for SED to exercise this authority. SED may approve cancellation of debt discharged under bankruptcy even when a borrower has received previous debt forgiveness.

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2 Delegation of Authority (Continued)

B
Processing
Settlements
Approved by
U.S. Attorney's
Office

While under its jurisdiction, the U.S. Attorney's Office or the Civil Division of the Department of Justice will often negotiate settlement of an account. When directed by the U.S. Attorney's Office, SED may process a settlement negotiated and approved by the U.S. Attorney's Office, regardless of the size of the debt. The case file will be documented to reflect the U.S. Attorney's decision.

C
Approving
Settlement of
Debts Less Than
\$100,000

SED's are hereby authorized to approve settlement of debt according to FmHA Instruction 1951-J, section 1951.469(c)(2) and Notice FC-60, when the claim, exclusive of interest, penalties, and administrative costs is less than \$100,000.

D
Redelegation of
Authority

The authorities described in subparagraphs A, B, and C may not be redelegated.

3 Verification of Assets

A

Authorization

To obtain complete and accurate information from which a full determination of a borrower's financial condition can be made, refer to FmHA Instruction 1956-B, section 1956.57(b) and Form FmHA 410-7, "Notification to Applicant on Use of Financial Information From Financial Institution".

B

**Obtaining
Borrower's
Authorization**

Current assets listed on a request for debt settlement will be verified with those sources indicated by the borrower as holding, directing, or managing the investment.

The borrower will be requested to provide authorization for FSA to obtain confidential financial information necessary to verify the value of each:

- savings account
- checking account
- certificate of deposit
- individual retirement account
- retirement and pension funds
- mutual funds
- stocks
- bonds
- accounts receivable.

A request for verification will be made of any entity that the FSA investigation indicates may be able to contribute information concerning the borrower's financial condition.

When authorization is provided, the FSA official responsible for assembling the application documentation will contact the appropriate institution and obtain the following information:

- type of account
- account number
- dollar value
- maturity date.

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3 Verification of Assets (Continued)

**B
Obtaining
Borrower's
Authorization
(Continued)**

The request from FSA to the applicable institution will contain the following certification:

This certifies that the United States Department of Agriculture acting through the Farm Service Agency has complied with Title XI of the "Right to Financial Privacy Act of 1978", Public Law 95-630 in seeking information regarding the above named borrower.

**C
Settlement
Without
Signature**

If the borrower refuses to provide authorization, or if the borrower is uncooperative or has disappeared and the debt settlement is proposed without a signature, the responsible FSA official will attempt to verify financial information using the authorization cited in this notice.

If a borrower requests debt settlement, refuses to provide authorization, and investments and financial data cannot be verified, the application will be rejected for failure to provide complete financial information according to FmHA Instruction 1956-B, section 1956.57(b).

The results of this effort will be documented in the borrower's case file.

**D
Exceptions**

Investments do not require verification if:

- the debt being settled has been discharged in bankruptcy
 - the account has been settled by the Department of Justice
 - FSA has been advised by OGC that the debt is uncollectible.
-

4 Processing Debt Settlements

A

Debt Settlement Checklist

Effective immediately, Exhibit 1 will be completed by State Agriculture Credit Staffs on **all** debt settlement applications before SED approval or recommendation to the National Office. The only exception to this requirement is when the settlement was negotiated and approved by the U.S. Attorney's Office.

Documentation listed under item number 5 of the checklist generally is required in all cases except bankruptcy. If there are extenuating circumstances, such as the tolling of the limitations period, which make these requirements impractical, contact LSPMD through the Area Office.

B

Debt Settlement Review Committees

SED's will immediately establish Debt Settlement Review Committees to review all debt settlements before approval. The only exception to this requirement is when the settlement was negotiated and approved by the U.S. Attorney's Office or the Civil Division of the Department of Justice.

The Debt Settlement Review Committee will consist of at least 3 members including SED, the Agriculture Credit Director, and a member of the State Agriculture Credit Staff selected by SED. Additional members may be added at the discretion of SED.

The recommendation of the Debt Settlement Review Committee will be noted on the debt settlement checklist. The checklist will be attached to the debt settlement application and retained in the case file.

C

Debt Settlement Application Package for Administrator

When the settlement is recommended for applications requiring the Administrator's approval, farm credit program debt settlement of \$1 million or more and nonprogram claims over \$500,000, SED will forward the debt settlement application package through the Area Office to DAFCP. The debt settlement application package will consist of the following:

- a memorandum from SED recommending approval
 - Form FmHA 1956-1, "Application for Settlement of Indebtedness", prepared according to Forms Manual Insert and FmHA Instruction 1956-B and signed by the appropriate parties
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Continued on the next page

4 Processing Debt Settlements (Continued)

C

**Debt Settlement
Application
Package for
Administrator
(Continued)**

- Attachment 1 to FmHA Instruction 1956-B, Exhibit A, completed and signed as required by FmHA Instruction 1956-B, Exhibit A
- a legal opinion from the Regional Attorney addressing the statute of limitations and the possibility of collection through a deficiency judgment, garnishment, or offset
- the Debt Settlement Checklist completed and signed by the State review official and Debt Settlement Review Committee
- a case file that includes documentation supporting the review official's findings on the Debt Settlement Checklist
- the additional documentation required if the account is being referred for settlement according to FmHA Instruction 1951-J, section 1951.469(c)(4).

If SED is unable to recommend a settlement application, SED should reject the application and provide the borrower with informal review, mediation, and appeal rights.

D

**Monitoring
Charged Off
Accounts**

State Offices must establish a system to monitor accounts which have been charged off according to FmHA Instruction 1956-B, section 1956.75. The system should be similar to the 1 established for collection only accounts.

Borrowers whose accounts are charged off remain liable for the debt. These accounts will be reviewed annually to determine whether further collection efforts are warranted. Each review should be documented in the case file.

5 Questions

A

Contact

If there are questions regarding this notice, contact Bruce Mair, LSPMD, through the Area Office.

Debt Settlement Checklist

BORROWER: ID#:

TYPE OF DEBT SETTLEMENT:

DEBT AS OF: PRINCIPAL: INTEREST:

Answer the following questions based on your review of the case file by circling "Y", "N", or "N/A". If "N" is circled, additional information may be needed before the debt settlement can be considered for approval. An explanation should be attached for each "N" answer.

- Y N 1. Are all liable parties included in the settlement application package?
- Y N N/A 2. Has all chattel security identified on Form FmHA 440-4, been properly accounted for on Form FmHA 1962-1?
- Y N N/A 3. Has all real estate security described on the mortgage or deed of trust been properly accounted for?
- Y N N/A 4. Have all other assets which have been pledged as security (such as assignments of insurance policies and leaseholds) been accounted for in the case file?
- Y N N/A 5. For obligors discharged under bankruptcy, does the file include a copy of the discharge notice?
6. Except for obligors discharged in bankruptcy:
- Y N a. Has an asset investigation been completed (and documented in the case file) on each obligor on the borrower's account to determine whether other assets or income are available to apply to the indebtedness? A contract asset investigation may be necessary on large or complex cases.
- Y N b. Does the case file include Form FmHA 1910-5 or other written verification of income on each obligor?
- Y N c. Does the case file include a credit report on each obligor?
- Y N d. Does the case file include Form FmHA 440-32 or other written verification on all debts greater than \$1,000 owed by each obligor?
- Y N e. Did each obligor voluntarily authorize its bank or other financial institution to release the obligor's financial records to FSA and does the case file include copies of these financial records for at least the past 24 to 36 months?

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Debt Settlement Checklist (Continued)

- Y N f. Did each obligor voluntarily provide tax returns for the past 3 years?
- Y N N/A g. If an obligor continues to farm or has other business income, is there a realistic cash flow history and forecast in the case file to determine the best possible offer?
- Y N h. Are family living expenses or draws reasonable and supported by documentation in the case file?
- Note:** When a spouse is not an obligor, the spouse's income must still be considered in meeting family living expenses.
- Y N N/A 7. Except for obligors discharged in bankruptcy, does the documentation listed under question 6 support the information provided on Form FmHA 1956-1?
- Y N 8. Does the Current/Past Debt Inquiry and Borrower Cross-Reference Inquiry System (or other documentation) show that no obligor has received prior debt forgiveness and is a copy included in the case file?
- Y N 9. Is there documentation that the Offset Program outlined in FmHA Instruction 1951-C was considered to determine repayment ability?
- Y N 10. Is there evidence that each obligor's future repayment ability was considered, including potential inheritance possibilities?
- Y N 11. Does the case file show that each obligor received all of their rights under FmHA Instruction 1951-S? Documentation should include a copy of the AGCREDIT Borrower History Report and copies of the 1951-S notices sent to each obligor.
- Y N 12. Has Attachment 1 to FmHA Instruction 1956-B, Exhibit A been completed and signed?

Notes:

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