

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

**Guaranteed Loan Making and Servicing  
2-FLP**

**Amendment 9**

**Approved by:** Acting Deputy Administrator, Farm Loan Programs



**Amendment Transmittal**

**A**

**Reasons for  
Amendment**

Subparagraph 267 K has been added to provide reference to Exhibit 16.

Exhibit 16 has been added to include a Memorandum of Understanding between FSA and FDIC.

<b>Page Control Chart</b>		
<b>TC</b>	<b>Text</b>	<b>Exhibit</b>
7	11-15 through 11-36	1, pages 1-4 16, pages 1-8 (add) page 9 (add)



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## 267 FSA Loan Servicing Responsibilities (Continued)

**F****Authorized Agency Official Review of Loan Servicing Reports Provided by Lender**

The Authorized Agency Official is responsible for obtaining all required information from lenders regarding the servicing of guaranteed loans. This includes the annual financial analysis performed to determine the borrower's progress on loan payback and goal achievement (paragraph 265), loan status reports (paragraph 266), and all other materials submitted to FSA, including requests by lenders to perform certain servicing actions.

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**G****Authorized Agency Official Approval Authority**

Authorized Agency Officials can approve the following servicing actions:

- alterations in loan conditions that do not prejudice the government's interest
  - replacement of collateral
  - the use of proceeds from the disposition of collateral.
- 

**H****DD Servicing Responsibilities**

DD servicing responsibilities include:

- providing guidance and assistance to the Authorized Agency Official in monitoring guaranteed loans
  - reviewing a sample of lender visit reports and loan reviews, making recommendations or comments, and forwarding reports of deficiencies to SED
  - make recommendations to the Authorized Agency Official on all delinquent loans
  - conducting other servicing actions as directed by SED.
- 

**I****SED Servicing Responsibilities (Continued)**

SED's have broad management responsibilities for the guaranteed loan program. SED servicing responsibilities include, but are not limited to, the following:

- review deficiencies identified by the Authorized Agency Official and provide recommendations for resolution
  - perform an annual review of each lender's CLP and PLP status, and if the lender is found to be deficient in meeting the minimum criteria, then upon notification to the lender, remove the status
- 

Continued on the next page

267 FSA Loan Servicing Responsibilities (Continued)

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**I**  
**SED Servicing Responsibilities (Continued)**

- perform appraisal reviews according to the requirements of Standard 3 of USPAP (as defined in 7 CFR 762.170) and perform at least 1 appraisal review per FY either for each appraiser, or for each lending institution that prepares, or uses, real estate appraisals for guaranteed loans

**Note:** In addition, SED must provide:

- the framework for the real estate appraisal review and monitoring function and the documentation thereof
  - appraisal training guidance to assist State and field personnel in making guaranteed loan approval decisions and serve as a resource to approval and underwriting officials performing administrative appraisal reviews, as needed.
  - maintain a lender file for each guaranteed lender in the State Office.
- 

**J**  
**Addressing Deficiencies**

If deficiencies in loan servicing are detected by FSA, the Authorized Agency Official will work with the lender to correct any problems. If the lender fails to correct a major loan servicing deficiency, and the deficiency results in a loss, the loss claim may be reduced or denied.

Subparagraph 52 H contains the definition of major and minor deficiencies. Refer to paragraphs 48 and 54 for follow-up actions and consequences of not correcting deficiencies for SEL's and PLP lenders, respectively.

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**\*--K**  
**MOU Between FSA and FDIC**

If a lender who participates in FSA's Guaranteed Farm Loan Programs fails, FDIC may, as Receiver, assume responsibility for FSA-1980-15, FSA-1980-27, and/or FmHA-449-34 for all guaranteed loans to which the closed bank was a party.

Exhibit 16 outlines the responsibilities of FSA and FDIC in such cases.--\*

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268-277 (Reserved)

**Reports, Forms, Abbreviations, and Delegations of Authority**

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**Reports** None

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**Forms** This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026	Highly Erodible Land Conservation and Wetland Conservation Certification		69.5, 208
FEMA-81-93	Standard Flood Hazard Determination Form		138
FmHA-431-2	Farm and Home Plan		72
FmHA-449-34	Loan Note Guarantee		281, 267
FSA-440-32	Request for Statement of Debts and Collateral		69.6, 152
FSA-1940-10	Cancellation of U.S. Treasury Check and/or Obligation		249
FSA-1980-01	Lender's Processing Checklist		69, 95
FSA-1980-02	Guaranteed Loan Processing Checklist		69
FSA-1980-03	Annual File Review Checklist for SEL and CLP Lenders		267
FSA-1980-04	Annual File Review Checklist for PLP Lenders		267
FSA-1980-05	Debt Writedown Review Checklist		329
FSA-1980-06	Guaranteed Estimated Loss Review Checklist for SEL and CLP Lenders		342, 359
FSA-1980-07	Guaranteed Loan Final Loss Review Checklist		360
FSA-1980-15	Conditional Commitment		Text
FSA-1980-22	Lender Certification		247
FSA-1980-24	Request for Interest Assistance Payment		228, 326
FSA-1980-25	Application for Guarantee		47, 69.5, 69.7, 72, 96, 181, 208, 209, 244, 245
FSA-1980-26	Report on Collection Activities on Liquidated Accounts		266, 362
FSA-1980-27	Loan Guarantee		267

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**Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)**


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**Forms  
(Continued)**

<b>Number</b>	<b>Title</b>	<b>Display Reference</b>	<b>Reference</b>
FSA-1980-27	Loan Guarantee		247, 248, 250, 281, 373, 374, 376
FSA-1980-28	Preferred Lender Application for Guarantee		70, 96, 181, 244
FSA-1980-36	Assignment of Guarantee		373-375
FSA-1980-37	FSA Purchase of a Guaranteed Loan Portion		375
FSA-1980-38	Lender's Agreement		Text
FSA-1980-41	Guaranteed Farm Loan Status Report as of		266, 355, 376
FSA-1980-42	Notice of Substitution of Lender (Transaction 4034)		287
FSA-1980-44	Guaranteed Farm Loan Default Status Report		266, 300, 313, 314, 326, 329, 355, 357-359
FSA-1980-49	Guaranteed Loan Status Update Adjustment (Transaction 4048)		288
FSA-1980-64	Interest Assistance Agreement		224, 225, 227, 228, 230, 231, 287
FSA-1980-84	Modification of Loan Guarantee		281, 313, 326
FSA-1980-86	Notification of Transfer and Assumption of a Guaranteed Loan Transaction Code 4037		281
FSA-1980-88	Farm Loan Programs Guaranteed Writedown Worksheet		328
FSA-1980-89	Shared Appreciation Agreement for Guaranteed Loans		181, 288, 328, 341
G-641	Application for Verification of Information From Immigration and Naturalization Records		108
I-151	Alien Registration Receipt Card		108
I-551	Alien Registration Receipt Card		108
RD-449-30	Loan Note Guarantee Report of Loss		136, 288, 328, 342, 344, 355, 360, 362, 376

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Reports, Forms, Abbreviations, and Delegations of Authority (Continued)

Forms  
(Continued)

Number	Title	Display Reference	Reference
RD-1910-5	Request for Verification of Employment		69.6, 152
RD-1940-3	Request for Obligation of Funds Guaranteed Loans		226, 230, 244, 245, 326
RD-1951-C-1	Notice of Intent to Collect by Administrative Offset		376
RD-1980-7	Notification of Transfer and Assumption of a Guaranteed Loan		281
RD-1980-19	Guaranteed Loan Closing Report		227, 247, 249, 286
RD-1980-43	Lender's Guaranteed Loan Payment to USDA		376
RD-1980-45	Notice of Liquidation Responsibility		362
RD-1980-47	Guaranteed Loan Borrower Adjustments		281, 284, 288, 313, 329
W-2	Wage and Tax Statement		152

Abbreviations  
Not Listed in  
1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
ALP	Approved Lender Program	34
CLP	Certified Lender Program	Text
CMS	Credit Management System	52-54, 151, 262, 287
CONACT	Consolidated Farm and Rural Development Act	108
ECOA	Equal Credit Opportunity Act	31, 210
EFT	Electronic Funds Transfer	360

Continued on the next page

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Abbreviations  
Not Listed in  
1-CM  
(Continued)

Approved Abbreviation	Term	Reference
EIS	Executive Information System	84
EM	emergency loans	108, 138, 244
FmHA	Farmer's Home Administration (formerly by FSA)	108
FMI	Forms Manual Inserts	226, 328, 359, 362
FO	farm ownership loan	Text
GLS	Guaranteed Loan System	84, 95, 248, 266, 287, 300, 313, 360
IA	interest assistance	Text
INS	Immigration and Naturalization Service	108
LOC	line of credit	Text
MOU	Memorandum of Understanding	Ex. 16
OL	operating loan	Text, Ex. 2
PLP	Preferred Lender Program	Text
SAA	Shared Appreciation Agreement	286, 288
SEL	Standard Eligible Lender	Text
SW	soil and water loan	49, 50, 52, 108, 244, 281, 326
USPAP	Uniformed Standards of Professional Appraisal Practice	181, 183, 267

Redelegations  
of Authority

This table lists the redelegations of authority in this handbook.

Redelegation	Reference
Administering handbook provisions	20

**\*--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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**\*--Memorandum of Understanding (Continued)**

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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**\*--Memorandum of Understanding (Continued)**

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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**\*--Memorandum of Understanding (Continued)**

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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**\*--Memorandum of Understanding (Continued)**

- 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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**\*--Memorandum of Understanding (Continued)**

- 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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\*--Memorandum of Understanding (Continued)

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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**\*--Memorandum of Understanding (Continued)**

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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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