



FmHA AN No. 2991 (1951-S)
March 25, 1994

SUBJECT: Release of Office of the General Counsel Legal
Opinions Concerning Lack of Good Faith

TO: All State Directors, Farmer Programs Chiefs,
District Directors, and County Supervisors

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to provide guidance for release of the Office of the General Counsel (OGC) legal opinions concerning lack of good faith to subject borrowers during the appeals process, except when appeals are suspended for the Farmers Home Administration (FmHA) to pursue civil or criminal action against the borrower. The AN does not apply to releases to a borrower by the National Appeals Staff (NAS) when the borrower has requested an appeal or to any releases to third parties. The intended outcome is to release these legal opinions when the interests of the United States Government will not be harmed in an effort to further the Administration's policy of Government openness.

IMPLEMENTATION RESPONSIBILITIES:

It is acknowledged that OGC legal opinions concerning lack of good faith of a borrower, as a matter of law, may be withheld from the subject borrower under Exemption (d)(5) of the Privacy Act in some cases. These OGC legal opinions support Farmers Home Administration's (FmHA) determinations that borrowers are ineligible for debt restructuring and primary and preservation loan servicing options based on a lack of good faith due to fraud, waste, or conversion. Borrowers are allowed to appeal these FmHA decisions to the NAS of FmHA. The NAS may determine only if the facts upon which the OGC legal determination is based are accurate; however, NAS may not overrule an OGC legal opinion that fraud, waste, or conversion has occurred.

In order for NAS to make a determination of the basis of the OGC legal opinion and in order for the borrower to be allowed

EXPIRATION DATE: March 31, 1995

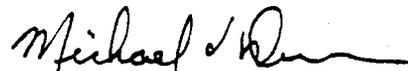
FILING INSTRUCTIONS:
Preceding FmHA
Instructions 1951-S



fair treatment in the appeal process, NAS and the borrowers must be provided with the OGC legal opinions concerning lack of good faith. However, these OGC opinions will not be released to the borrower outside the appeal setting in the following situation. OGC's legal opinions may contain recommendations and opinions of OGC Regional Attorneys concerning possible referral to the United States Department of Justice (DOJ) for civil or criminal prosecution or to the Office of the Inspector General (OIG), USDA, for investigation. These opinions concerning lack of good faith are prepared in reasonable anticipation of civil action or judicial proceeding; therefore, these legal opinions may be withheld from the subject borrower under Exemption (d)(5) of the Privacy Act. Release of these OGC opinions may prejudice the interests of the United States in a subsequent civil or criminal action against the borrower.

In cases in which an OGC legal opinion is not released as discussed above, the borrower will receive a written response from FmHA providing the correct procedure to follow in making a Privacy Act Request. If a formal Privacy Act Request is received from the borrower, it will be forwarded to the appropriate State Office for action.

If you have any questions, please contact Nancy J. Lewis, Farmer Programs Loan Servicing and Property Management Division, at 202-690-2517.


MICHAEL V. DUNN
Administrator