UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

Notice FC-204

1980-B

For: State and County Offices

Releasing Liability for Guaranteed Loans

Approved by: Deputy Administrator, Farm Loan Programs

Carolyn B. Cooksie

1 Overview

A Background

FmHA Instruction 1980-B, section 1980.123(f), describes when a lender may release a transferor or guarantor from liability on a guaranteed loan in cases involving transfer and assumption.

FmHA Instruction 1980-B, section 1980.146(e), states that, with Agency concurrence, a lender may release a borrower or cosigner from liability when adequate compensation is received or there is very little probability of future recovery from the borrower or cosigner. This provision is made in the context of collecting future recoveries after making final loss payments.

FmHA Instructions 1980-A and 1980-B are silent on the issue of lenders granting release of liability to the borrower in other circumstances.

B Purpose

This notice provides:

- FSA guidelines when lenders request a release of liability for borrowers who are indebted for a guaranteed loan
- additional guidance regarding the information and actions that need to be considered before consenting to a lender's request for release of liability for guaranteed FLP borrowers.

Disposal Date	Distribution
June 1, 1999	State Offices; State Offices relay to County Offices

2 Releasing Borrower From Liability

A
Authority

SED's:

- may concur with a lender's request to release a borrower from liability, according to subparagraphs B, C, and D
- shall resolve any legal question concerning the lender's or borrower's activities with OGC before releasing the borrower from liability.

B
Divorce

FmHA Instruction 1980-B, section 1980.130, requires the lender to reasonably and prudently service the guaranteed loan. When borrowers have been divorced and one of the individuals has withdrawn from the operation, the individual who has withdrawn from the operation may reasonably be released from liability. The lender should provide documentation showing that **all** of the following conditions have been met:

- the lender certifies that providing the release of liability for the individual who has withdrawn from the operation under these circumstances is a practice carried out on their nonguaranteed loan portfolio
- a divorce decree or final property settlement shows the withdrawing party is not responsible for the loan payments
- the withdrawing party's interest in the security is conveyed to the person or entity with whom the loans will be continued
- the withdrawing party does not have present or future repayment ability or other assets to apply on the debt, or the financial condition of the remaining loan is such that it meets the lender's requirements for release of liability on their nonguaranteed loan portfolio.

Continued on the next page

2 Releasing Borrower From Liability (Continued)

C Withdrawal

Partners, members, or stockholders who have withdrawn from the operation, or who wish to withdraw from the operation and receive a release of liability, also may reasonably be released from liability. The lender shall provide documentation showing that **all** of the following conditions have been met:

- the lender certifies that providing release of liability for partners, members, or stockholders withdrawing from operations is a practice carried out on their nonguaranteed loan portfolio
- the withdrawing party's interest in the security is conveyed to the person or entity with whom the loans will be continued
- the withdrawing party does not have present or future repayment ability or other assets to apply on the debt, or the financial condition of the remaining loan is such that it meets the lender's requirements for release of liability on their nonguaranteed loan portfolio.

D Liquidation of the Account

According to FmHA Instruction 1980-B, section 1980.146(d)(1)(iii), the lender is responsible for making the maximum collection possible when liquidating guaranteed loans. Making the maximum collection possible on the indebtedness includes more than just collections resulting from the disposal of collateral. The lender must specify in its liquidation plan how to collect any remaining loan balances after the collateral has been liquidated from any guarantor or through judgments. Any proposal to release the borrower or guarantor from liability should be addressed in the liquidation plan.

To ensure that adequate consideration has been given before requesting a release of a borrower or guarantor from liability, the lender should consider the following:

- potential income of the borrower or guarantor
- inheritance prospects of the borrower or guarantor
- the possibility that collateral has not been properly accounted for
- the availability of other income or assets which are not security for the guaranteed debt

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2 Releasing Borrower From Liability (Continued)

D Liquidation of the Account (Continued)

- the possibility that assets have been canceled or improperly transferred
- the effect of other guarantors on collection of the loan
- cash consideration or other collateral in exchange for the release of liability.

E Contact

Direct questions about this notice to LSPMD, Guaranteed Loan Servicing and Inventory Property Branch.

Note: State Offices may implement the requirements of this notice through issuance of State notices or instructions. Any revisions or modification to this notice must be approved by DAFLP, unless the revision is specifically required by State law.