

## PART 1951 - SERVICING AND COLLECTION

## Subpart F - Analyzing Credit Needs and Graduation of Borrowers

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PART 1951 - SERVICING AND COLLECTIONS

Subpart F - Analyzing Credit Needs and Graduation of Borrowers

§1951.251 Purpose.

This subpart prescribes the policies to be followed when analyzing a direct borrower's needs for continued Agency supervision, further credit, and graduation. All loan accounts will be reviewed for graduation in accordance with this subpart, with the exception of Guaranteed, Rural Development Loan Funds, and Rural Rental Housing loans made to build or acquire new units pursuant to contracts entered into on or after December 15, 1989, and Intermediary Relending Program loans. The term "Agency" used in this subpart refers to the Rural Utilities Service (RUS), Rural Housing Service (RHS), or Rural Business-Cooperative Service (RBS), depending upon the loan program discussed herein. This subpart does not apply to Farm Service Agency, Farm Loan Programs and to RHS direct single family housing (SFH) customers. In addition, this subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, or Resource Conservation and Development loans, which are serviced under part 1782 of this title. (Revised 01-09-08, PN 417.)

§1951.252 Definitions.

Commercial classified. These are FSA's highest quality Farm Credit Programs (FCP) accounts. The financial condition of the borrowers is strong enough to enable them to absorb the normal adversities of agricultural production and marketing. There is ample security for all loans, there is sufficient cash flow to meet the expenses of the agricultural enterprise and the financial needs of the family, and to service debts. The account is of such quality that commercial lenders would likely view the loans as a profitable investment. This is the same definition as found in FSA Transferred Instruction 2006-W.

Farm Credit Programs (FCP) loans. FSA Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Emergency (EM), Economic Emergency (EE), Economic Opportunity (EO), Special Livestock (SL), Softwood Timber (ST) loans, and Rural Housing loans for farm service buildings (RHF).

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Graduation, FCP. The payment in full of all FCP loans or all FCP loans of one type (*i.e.*, all loans made for chattel purposes or all loans made for real estate purposes) by refinancing with other credit sources either with or without an Agency loan guarantee. A loan made for both chattel and real estate purposes, for example an EM loan, will be classified according to how the majority of the loan's funds were expended. Borrowers must continue with their farming operations to be considered as graduated.

Graduation, other programs. The payment in full of any direct loan for Community and Business Programs, and all direct loans for housing programs, before maturity by refinancing with other credit sources. Graduated housing borrowers must continue to hold title to the property. Graduation, for other than FCP, does not include credit which is guaranteed by the United States.

Prospectus, FCP. Consists of a transmittal letter similar to FSA Transferred Guide Letter 1951-3 with a current balance sheet and projected year's budget attached. The applicant's or borrower's name and address need not be withheld from the lender. The prospectus is used to determine lender interest in financing or refinancing specific Agency direct loan applicants and borrowers. The prospectus will provide information regarding the availability of an Agency loan guarantee and interest assistance.

Reasonable rates and terms. Those commercial rates and terms which borrowers are expected to meet when borrowing for similar purposes and similar periods of time. The "similar periods of time" of available commercial loans will be measured against, but need not be the same as, the remaining or original term of the loan. In the case of Multi-Family Housing (MFH) loans, "reasonable rates and terms" would be considered to mean financing that would allow the units to be offered to eligible tenants at rates consistent with other MFH.

Servicing official. The district or county office official responsible for the immediate servicing functions of the borrower.

Standard classified. These loan accounts are fully acceptable by Agency standards. Loan risk and potential loan servicing costs are higher than would be acceptable to other lenders, but all loans are adequately secured. Repayment ability is adequate, and there is a high probability that all loans will be repaid as scheduled and in full. This is the same definition as found in FSA Transferred Instruction 2006-W.

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Trial referral. A program whereby lenders voluntarily participate in reviewing selected financial information supplied by servicing officials on non-FCP borrowers who have been selected for graduation.

§1951.253 Objectives.

- (a) The credit programs will be administered in a manner that will assure they do not supplant or compete with credit available to rural families and groups from other reliable credit sources.
- (b) Borrowers must graduate to other credit at reasonable rates and terms when they are able to do so.
- (c) If a borrower refuses to graduate, the account will be liquidated under the following conditions:
  - (1) The borrower has the legal capacity and financial ability to obtain other credit.
  - (2) Other credit is available from a commercial lender at reasonable rates and terms. In the case of Labor Housing (LH), Rural Rental Housing (RRH), and Rural Cooperative Housing (RCH) Programs, reasonable rates and terms must also permit the borrowers to continue providing housing for low and moderate income persons at rental rates tenants can afford considering the loss of any subsidy which will be cancelled when the loan is paid in full. The District Director will do a comparative analysis of rents and incomes of tenants living in the Agency projects eligible for graduation and conventionally financed projects of the local area.
- (d) The Agency will enforce borrower graduation. Most, but not all, promissory notes, security instruments, and loan agreements contain clauses requiring a borrower to graduate when other credit can be obtained. The clause may say "upon reasonable terms and conditions," "on terms prevailing in the area for loans for similar periods or time and purpose," or "at reasonable rates and terms for loans for similar purposes and periods of time." These three provisions are all construed to mean the borrower agrees to, and the Agency can take, legal action to enforce graduation when the Agency has evidence that commercial credit can be obtained at reasonable rates and terms.

§1951.254 Responsibility.

- (a) State Directors are responsible for:
  - (1) Monitoring the review of the graduation process to ensure this subpart is complied with in each State under their jurisdiction.
  - (2) Meeting with members of the financial community to discuss graduation requirements.
  - (3) The Business and Industry (B&I) Chief is responsible for the graduation review and follow-up on all direct B&I loans.
- (b) The District Director, except for B&I loans, is responsible for:
  - (1) Monitoring the County Office graduation process for compliance with this subpart.
  - (2) Meeting with local lenders to discuss borrower graduation, underwriting criteria, and to assess general interest in refinancing community program and MFH borrowers.
  - (3) Graduation reviews and follow-up on all community program (except B&I) and MFH borrowers.
  - (4) Follow-up to ensure that County Supervisors are in compliance with this subpart. District Directors will report their findings as set forth in RD Instruction 2006-M.
- (c) The County Supervisor is responsible for:
  - (1) Performing graduation reviews and following up on all affected FCP and Rural Housing (RH) accounts.
  - (2) Meeting with the representatives of the financial community such as insurance and mortgage companies, commercial banks, savings and loan associations, Farm Credit System institutions, and State lender agencies to stay informed of current lending activities, practices, and standards to facilitate borrower graduation.
- (d) The Agency may use private contractors to assist in graduation activities. See exhibit D of RD Instruction 2024-A for contracting program authority guidance.

§ 1951.255 Nondiscrimination.

All loan servicing actions described in this subpart will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or physical or mental handicap.

§§ 1951.256 - 1951.259 [Reserved]

§ 1951.260 Reaching an understanding with applicants and borrowers.

(a) Prior to loan closing, Agency officials will thoroughly discuss the graduation requirements, along with those items contained in exhibit C of subpart A of part 1910, if applicable, with the applicant and document the discussion in the running case record or other form provided for this purpose. For Farm Loan Programs (FLP), Agency official must discuss use of prospectus information to assist in graduation. During the discussion, the applicant will also be informed that: (Revised 08-05-98, PN 294.)

(1) Agency loans are a temporary source of credit; and that borrowers are required to refinance their loans when credit is available at reasonable rates and terms.

(2) The Agency expects them to comply with graduation requirements, evidenced by the legally binding graduation clauses in the promissory note, security instrument, and loan agreement.

(3) Borrower accounts are periodically reviewed for graduation.

(4) The borrower will be required to provide financial information upon request.

(5) In certain cases, prepayment restrictions or other limiting conditions will be considered in the graduation process.

(6) Requests for an additional loan, subordination, or consent to incur additional indebtedness will not normally be approved until an outstanding graduation request is resolved. (See § 1951.265.)

(b) The servicing official will periodically discuss graduation requirements with borrowers during routine field and office visits, and document discussion in borrowers' file. (Revised 08-05-98, PN 294.)

§ 1951.261 Survey of lender criteria and policies.

Borrower graduation efforts are more effective if Agency officials understand the commercial credit environment. During routine lender contacts and meetings, Agency officials should explain the graduation requirements and solicit lender underwriting criteria, as well as advice and assistance as to how Agency borrowers can obtain financing at their institution. Information gathered from these contacts will be summarized in narrative form for each Agency program and placed with the graduation review list in the Servicing Office operational file on other credit. (The servicing official, in lieu of writing a narrative for all programs, may use exhibit A of this subpart for FLP loans and exhibit B of this subpart for RH loans.) For Community Program borrowers, the State Director will provide Statewide information to the servicing official pursuant to § 1942.2(a)(2)(i) to supplement that obtained at the Servicing level. At a minimum, the narrative for each loan program will contain the following:

- (a) Lenders' interest in refinancing Agency borrowers.
- (b) Lenders' rates, terms, fees, loan conditions, and policies.
- (c) The amount of estimated credit available to Agency borrowers.
- (d) Lenders' interest in screening borrowers under the trial referral provisions of § 1951.263(d).

§ 1951.262 Farm Loan Programs (FLP) - graduation of borrowers.

(a) Annual notice. All direct FLP borrowers will be sent FSA Guide Letter 1951-F-8 in October of each year. This letter will remind borrowers of Agency graduation requirements, and the lifetime eligibility limitations, and encourage them to graduate as soon as possible. (Revised 08-05-98, PN 294.)

(b) Create list of prospective lenders. During routine contacts with local lenders (but at least annually), inquire whether the institutions would be interested in receiving routine prospectus information on commercial and standard classified borrowers. A list of all lenders will be maintained in the Servicing Office operational file as required under RD Instruction 2033-A.

(c) Graduation review period. The Finance Office will furnish each Servicing Office, by each January, a loan classification report identifying all direct FLP borrowers. Graduation reviews should be completed by July 1 of each year.

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(d) Screen out borrowers who obviously cannot graduate. If there is an obvious reason(s) that the borrower will be unable to graduate, e.g., the borrower is in bankruptcy or has a confirmed bankruptcy plan, is a limited resource rate borrower or has other extenuating circumstances, the reasons will be documented in the case file and a prospectus will not be sent. Borrower classification reports must be retained as part of the Servicing Office operational file for graduations.

(e) Graduation candidates. Borrowers who are classified "commercial" or "standard" are considered graduation candidates after screening out the borrowers that obviously cannot graduate. At least every two years, all borrowers who have a current classification of commercial or standard must submit a year-end balance sheet, actual financial performance information for the most recent year, and a projected budget for the current year to enable the Agency to reclassify their status and determine their ability to graduate. In intervening years, when financial performance information is not submitted by the borrower, the Agency Official will perform a desk review of the borrower's case file. If the borrower is still unable to graduate, the reasons will be documented in the case file. Graduation will be pursued for those determined able to graduate to commercial credit, with or without an Agency loan guarantee.

(f) Sending prospectus information to lenders. (Revised 03-14-97, SPECIAL PN.)

(1) The Agency will distribute a borrower's prospectus to local lenders for possible refinancing when a borrower's financial condition and projected repayment capacity indicate that commercial credit might be available, with or without guaranteed assistance. The borrower's permission is not required; however, the borrower will be notified of this action by sending FSA Guide Letter 1951-F-9. (Revised 08-05-98, PN 294.)

(2) The borrower's prospectus will be sent to prospective lenders on the list maintained in the Servicing Office. The servicing official will send the lenders a transmittal letter similar to RD Form Letter 1951-F-3, "to provide a lender with a Farmer Program borrower prospectus", with the prospectus attached, asking them if they are interested in refinancing the borrower on a guaranteed or non-guaranteed basis. The lenders will be notified in the transmittal letter whether an Agency loan guarantee will be available. If Form RD 440-2, "County Committee Certification or Recommendation" has expired, the servicing official will

need to reconsider the applicant's eligibility and clearly document the determination in the county case file. A stamped, self-addressed envelope will be included in the prospectus package for the lenders to respond.

(3) The borrower will be notified in writing, similar to RD Guide Letter 1951-F-5, "to notify a borrower to refinance the Agency indebtedness", if a lender indicates an interest in refinancing the borrower's FLP debt. The borrower will be provided 30 days to contact a lender and refinance the loan. For good cause, the borrower may be granted a reasonable amount of additional time by the Agency.

(i) If more than one lender indicates an interest in providing credit, the borrower has the right to select a lender, or another lender if financing can be obtained. Denial from lenders other than those who indicated an interest in refinancing the borrower's loan will not satisfy the graduation requirement.

(ii) If a lender indicates a willingness to refinance the borrower without an Agency guarantee, the lender will be provided information from the Agency case file, upon request, to facilitate the graduation.

(iii) If the lender indicates an interest in refinancing with an Agency guarantee, refer to Market Placement Applications under § 1980.113 of FSA Transferred Instruction 1980-B.

(iv) Refer to § 1951.264(b) of this Instruction for handling borrowers who refuse to cooperate with any graduation requirements following notice of lender interest in refinancing.

(4) If no lender indicates an interest in refinancing the borrower from the prospectus information or application, the graduation review will be concluded for that year. Note the lender's reasons for declining to refinance in the margin of the borrower classification report. This report will be retained in the Servicing Office operational file for graduations. The borrower's case file also will be documented. The servicing official will attempt to determine the obstacles to graduation and reevaluate supervision and training strategies as part of the assessment process under FSA Transferred Instruction 1924-B.

§1951.263 Graduation of non-Farm Loan Programs borrowers.

(a) The graduation review period. Graduation review lists will be prepared as follows:

(1) By October 1 of each year, the Finance Office furnishes the County Office a list of active program borrowers, excluding FLP borrowers, who are to be considered for graduation.

(i) For Single Family Housing (SFH) borrowers, the list will contain the names of borrowers who meet the criteria in exhibit C of this subpart. Length of time of the indebtedness will not be a determining factor on single family housing borrowers.

(ii) The County Supervisor will, upon receipt of the list, divide RH borrowers identified in paragraph (a) (1) (i) of this section into four groups in such a manner that approximately one-fourth will be reviewed each quarter.

(2) For Community Programs except for B&I loans which are handled by the B&I Chief, the District Director, using the Rural Community Facilities Tracking System (RCFTS) will generate a list by June 1 of each year, indicating borrowers who have been indebted for at least 5 years.

(3) By March 1 of each year the State Office will furnish each District Office a list of MFH program borrowers and MFH program transferees who have assumed loans on new terms and who have been indebted for 15 years in the case of an unsubsidized project and 20 years in the case of a subsidized project. The State Office will compile the list using the Multi-Family Information Status Tracking and Retrieval System (MISTR.)

(4) By October 1 of each year, the County Supervisor, using the Management Records System, will prepare a graduation review list indicating borrowers who have been indebted for at least 6 years under the RL Program.

(i) Borrowers' names with all outstanding loans will appear on the graduation review lists in accordance with the following:

(A) SFH borrowers are first selected for review based on the outstanding loan with the earliest closing date. The graduation review lists compiled in odd-numbered years will include the names of all borrowers whose oldest outstanding loan was closed during odd-numbered calendar years. The same procedure will apply to borrowers whose oldest outstanding loan closed during even-numbered calendar years. Once a borrower has appeared on the graduation review list, the borrower will automatically reappear on the list every 2 years unless screened out by criteria in exhibit C of this subpart.

(B) For Community and Business Programs, graduation review lists will be compiled on the basis of the year in which the initial loan or transfer was closed. The graduation review lists compiled in odd-numbered years will include the names of all borrowers whose loans were closed during odd-numbered calendar years. The same procedure will apply to borrowers whose loans were closed during even-numbered calendar years.

(C) If the servicing official has knowledge of any other borrower whose financial circumstances have changed sufficiently to warrant consideration, that borrower will also be included in the graduation review.

(ii) The servicing official will manage the graduation of borrowers throughout the year to accomplish graduation prior to receiving a new graduation list. The State Director through the issuance of a State Supplement will establish program timetables. The National Office will establish reporting requirements to monitor the administration of this subpart.

§ 1951.263 (Con.)

(b) The initial screening. Upon receipt of the graduation review list, the servicing official will screen the list for borrowers who are clearly unable to graduate. This initial screening will focus upon information immediately available in the borrower's case file and in the operational file on other credit.

(1) The servicing official will not review borrowers who are clearly unable to meet minimum lending criteria.

(2) It will not be necessary to review borrowers with a specified interest rate refinancing ceiling clause in their loan instruments, as long as credit at the specific interest rate is not available from other sources. It will also not be necessary to review borrowers who have notes, security instruments, or loan agreements which do not contain a graduation clause. However, the servicing official will encourage either type of borrower to graduate voluntarily.

(3) A borrower's ability to accept other credit may be limited by factors over which the borrower has little or no control, such as a referendum required by a public body borrower. However, the existence of such factors will not preclude the Agency from requesting a borrower to graduate nor the borrower from making a diligent effort to seek other credit should such a request be made. The prepayment restrictions contained in Section 502(c)(1) of Title V of the Housing Act of 1949, as amended, for RRH, RCH, and LH loans are factors which must be considered. These prepayment restrictions are found in 7 CFR part 3560, subpart K. Tenant notification requirements and restrictive use provisions, as outlined in 7 CFR part 3560, subpart K must also be addressed. (Revised 02-24-05, SPECIAL PN.)

(4) MFH borrowers whose projects have rental assistance (RA) which is being utilized by eligible tenants will not be required to graduate.

(5) The decision reached by the servicing official during the screening process will be briefly documented next to each borrower's name on the graduation review list. If the borrower is eliminated from further review due to an inability to meet established minimum lending criteria and policies (see paragraph (b)(1) of this section), specific reasons will be included in the borrower's case file.

(c) The thorough review. Borrowers are required to supply such financial information as the Agency deems necessary to determine whether they are able to graduate to other credit. At a minimum, financial statements requested from the borrower must include a balance sheet and a statement of income and expenses. Ordinarily, the financial statements will be those normally required at the end of the particular borrower's fiscal year. For borrowers who are not requested to furnish audited financial statements, the balance sheet and statement of income and expenses may be of the borrower's own format if the borrower's financial situation is accurately reflected. The borrower has 60 days for group type loans and 30 days for individual type loans to supply the financial information requested.

(1) For borrowers who are not eliminated from the graduation review list by the initial screening, the servicing official will conduct a thorough review of financial information already in the borrower's case file and request any additional needed information.

(2) For borrowers who are required to submit annual financial statements, the most recent fiscal year's statements will be reviewed. If copies of the most recent year's financial statements are not in the borrower's case file, RD Guide Letter 1951-1, or a letter of similar format, will be used to request the borrower to provide such information. For borrower's not requested to furnish audited financial statements, the following forms may be used to show the borrower's financial situation:

(i) Form RD 431-4, "Business Analysis - Nonagricultural Enterprise," as appropriate. (Revised 03-16-18, PN 509.)

(ii) Community Programs: Form RD 442-2, "Statement of Budget, Income and Equity;" and Form RD 442-3, "Balance Sheet."

(iii) MFH: Form RD 3560-7, "Multiple Family Housing Project Budget Utility Allowance," and Form RD 3560-10, "Multiple Family Housing Borrower Balance Sheet." (Revised 02-24-05, SPECIAL PN.)

§1951.263(c) (Con.)

(3) For loans to individuals, the thorough review is based on the financial position of only the borrower, meaning the person indebted to the Agency as evidenced by the signature on the promissory note, mortgage or other security instrument. The financial position of another household member, including a spouse, who is not indebted to the Agency will not be considered in cases of loans to individuals. Financial statements will be reviewed for:

- (i) The borrower's present and potential income to meet the rates, terms, loan fees and conditions of other credit (i.e., debt repayment ability.)
- (ii) The borrower's liquid and nonessential assets.
- (iii) The borrower's equity in real property, including consideration of any subsidy recapture, and personal property.
- (iv) The borrower's repayment history.
- (v) The impact graduation would have on typical user costs. User costs, rental rates, lease fees, or other charges when borrowers rely on collection from these sources for debt repayment, should be reasonable for the area served.
- (vi) The Federal, State or local statutory constraints, which may limit the borrower's ability to refinance, such as a referendum required of a public body.

(4) The names of borrowers eliminated from the graduation review list as unable to graduate will be so noted on the list. Borrower case files will document the specific reasons for any borrower's failure to meet established minimum lending criteria or policies. The Agency official will notify borrowers in writing that no further action will be considered for the year if they were requested to provide financial information in RD Guide Letter 1951-1 or letter of similar format and were found upon review unable to graduate. RD Guide Letter 1951-7 may be used for this purpose.

(5) Following the thorough review, the servicing official will prepare Form RD 1951-24, "Results of Borrower Graduation Review," listing only borrowers who will be requested to graduate. Separate Forms RD 1951-24 will be prepared for Community Program and Multiple Family Housing borrowers. The servicing official will obtain the advice and written concurrence of the State Director prior to making a request to graduate.

(d) Trial referral. The servicing official, prior to actually requesting a borrower to graduate may make a trial referral. This trial referral can be either verbal or written with individual lenders or by group method and could include all or part of those borrowers selected for graduation. Prospectus information will be obtained from the borrower's file and will be submitted to the lender using RD Guide Letter 1951-F-4 for RH borrowers, or a letter of similar format. Other data may be added if requested by lenders. The non-Farm Credit Programs' prospectus will contain the borrower's name, address, original loan amount, date of the loan, the interest rate, and the unpaid loan balance. For borrowers selected for a trial referral, a prospectus will be prepared and provided to each lender who chooses to participate, whose lending area would include the borrower's location and whose criteria the borrower appears to meet. Lenders, following receipt and review of a prospectus, will be encouraged to indicate their willingness to contact the borrower and accept an application for further consideration. If one or more lenders express interest in a particular borrower, the borrower will be provided the lenders' names as possible sources of other credit when the servicing official requests the borrower to graduate. If the lenders participating in the trial referral represent the most likely sources of other credit in a given lending area, and if these lenders fail to show interest in a particular borrower, this is evidence that there is no credit available for that particular borrower and no further effort needs to be made to effect graduation at this time. This information will be noted next to the borrower's name on the graduation review list and the name will be removed from Form RD 1951-24 by the servicing official. The lender's participation in the trial referral provision of this paragraph will be optional. Normally, the lender's interest will be determined at the time of the servicing official's survey of lender criteria and policies (see §1951.261). If one or more lenders indicate a willingness to participate, the servicing official should use the trial referral provision if one or more of the following factors exists:

§1951.263(d) (Con.)

(1) When the servicing official is not sure that local lenders would be interested in a particular borrower due to such factors as low unpaid balance, location of the security within the lending area, or other factors not made clear at the time of the servicing official's contact with the local lender.

(2) When there is a substantial cost imposed by the lender on the borrower for filing a loan application.

(3) When the servicing official has reason to believe borrowers will not actively seek, on a voluntary basis, refinancing credit from those lenders believed to be most willing to consider such credit.

(4) When failure to employ this system would make it difficult or time consuming for the servicing official to identify potential willing lenders in the event the borrower refuses to voluntarily contact lenders.

(e) Requesting the borrower to graduate.

(1) The Agency will send written notice to borrowers found able to graduate requesting them to graduate. RD Guide Letter 1951-F-5, or a letter of similar format, will be used for this purpose. The borrower must seek a loan only in the amount necessary to repay the unpaid balance.

(2) Borrowers must provide evidence of their ability or inability to graduate within 30 days for RH borrowers, and 90 days for group type borrowers, after the date of the request. The Agency may allow additional time for good cause, for example when a borrower expects to receive income in the near future for the payment of accounts which would substantially reduce the amount required for refinancing, or when a borrower is a public body and must issue bonds to accomplish graduation. The approximate date by which the borrower must provide such evidence will be shown in the Management Records System for appropriate follow-up action.

(3) If a borrower is unable to graduate the full amount of the loan, the borrower must furnish evidence to the Agency showing:

- (i) The names of other lenders contacted;

(ii) The amount of loan requested by the borrower and the amount, if any, offered by the lenders;

(iii) The rates and terms offered by the lenders or the specific reasons why other credit is not available; and

(iv) The purpose of the loan request.

(4) The difference in interest rates between the Agency and other lenders will not be sufficient reason for failure to graduate if the other credit is available at rates and terms which the borrower can reasonably be expected to pay. An exception is made where there is an interest rate ceiling imposed by Federal law or contained in the note or mortgage.

(5) The Agency will notify the borrower in writing if it determines that the borrower can graduate. RD Guide Letter 1951-6, or letter of similar format will be used for this purpose. The borrower must take positive steps to graduate within 15 days for individual loans and 60 days for group loans from such notice to avoid legal action. The servicing official may grant a longer period where warranted.

(6) The District Director with the advice of the State Director, or the County Supervisor, will consider new information submitted by the borrower or obtained from other reliable sources following a graduation request. The servicing official must verify all information submitted or obtained and reevaluate the borrower's financial circumstances. If the information submitted is not adequate and reliable, the servicing official will contact other sources of credit in the area and document the findings in the borrower's case file. The servicing official may offer to meet with the borrower.

(7) If additional information confirms that the borrower is unable to graduate, the servicing official will notify the borrower in writing that the request to graduate has been withdrawn. The specific reasons for withdrawing the request will be recorded on Form RD 1951-24, in the borrower's case file, and noted briefly on the graduation review list.

§1951.264 Action when borrower fails to cooperate, respond or graduate.

- (a) When borrowers with other than FLP loans fail to:
- (1) Provide information following receipt of both RD Guide Letters 1951-1 and 1951-2, or letters of similar format, they are in default of the terms of their security instruments. The approval official may, when appropriate, accelerate the account based on the borrower's failure to perform as required by this subpart and the loan and security instruments.
  - (2) Apply for or accept other credit following receipt of both RD Guide Letters 1951-F-5 and 1951-6, or letters of similar format, they are in default under the graduation requirement of their security instruments. If the Agency determines the borrower is able to graduate, foreclosure action will be initiated in accordance with §1955.15(d)(2)(ii). If the borrower's account is accelerated, the borrower may appeal the decision.
  - (3) If the borrower fails to supply graduation information, or to apply for or accept other available credit, the servicing official will prepare the required documents recommending legal action and submit them with the borrower's case file and a written report to the official authorized in §1955.15 to approve foreclosure of the loan type involved. The report will outline the following: credit sources contacted by the Agency and the borrower, the reasons given by the borrower for failure to graduate, action taken by the Agency to verify the availability of credit, the borrower's available financial resources, and any other pertinent data.
  - (4) The official authorized to approve foreclosure will review those cases submitted and determine what action must be taken based on the promissory notes, security instruments, and loan agreements signed by the borrower, and the facts and recommendations of the servicing official.
  - (5) If the approval official determines that the borrower is unable to graduate, the approval official will request the servicing official to notify the borrower and withdraw the graduation request in accordance with §1951.263(e).

## §1951.264(a) (Con.)

(6) The Office of the General Counsel (OGC) should be consulted as needed during the acceleration process. OGC concurrence generally is not required prior to acceleration for nonmonetary reasons.

(b) If an FLP borrower fails to cooperate with the graduation requirements, the servicing official will notify the borrower in writing of the Agency's intent to accelerate the account and to foreclose for failure to cooperate in the graduation process. The letter to the borrower must describe how the borrower failed to cooperate. Appeal rights will be provided in the letter in accordance with 7 CFR part 780. (Revised 03-14-97, SPECIAL PN.)

(1) If the borrower does not take positive steps to refinance the FLP loan(s), or otherwise cooperate with the graduation requirements within 30 days, or appeal, the servicing official will prepare the required documents recommending legal action and submit them with the case file and a written report to the District Director, to approve foreclosure of the account.

(2) If the District Director concurs with the servicing official to foreclose, the account will be accelerated according RD Instruction 1955-A. OGC should be consulted as needed during the acceleration process. OGC concurrence generally is not required prior to acceleration for graduation reasons.

(3) If the District Director does not concur with the decision to take legal action or if the borrower successfully appeals the decision to accelerate the account, the District Director after consultation with the servicing official will return the case to the servicing official with instructions for future loan eligibility and servicing.

§1951.265 Application for subsequent loan, subordination, or consent to additional indebtedness from a borrower who has been requested to graduate.

(a) Any borrower who appears to meet the local commercial lending standards, taking into consideration the Agency's loan guarantee program, will not be considered for a subsequent loan, subordination, or consent to additional indebtedness until the borrower's ability or inability to graduate has been confirmed. An exception may be made where the proposed action is needed to alleviate an emergency situation, such as meeting applicable health or sanitary standards which require immediate attention.

(b) If the borrower has been requested to graduate and has also been denied a request for a subsequent loan, subordination, or consent to additional indebtedness, the borrower may appeal both issues.

§ 1951.266 Special requirements for MFH borrowers.

All requirements of 7 CFR part 3560, subpart K must be met prior to graduation and acceptance of the full payment from an MFH borrower. (Revised 02-24-05, SPECIAL PN.)

§ 1951.267 Documents for the Office of the General Counsel (OGC) review.

If the State Director requests advice from OGC pertaining to a graduation request, the borrower's case file will be sent to the OGC and will include:

- (a) Organizational documents;
- (b) Debt instruments;
- (c) Security instruments, including loan agreements and/or resolutions;
- (d) Recent financial data;
- (e) The servicing official's survey of lender criteria and policies.
- (f) The servicing official's narrative outlining factors considered and specific reasons for making a graduation request of the borrower.
- (g) Copies of the letter requesting borrower to graduate and all subsequent correspondence between servicing official and borrower relative to the graduation request;
- (h) Any other pertinent information, including copies of any Federal, State, or local statutory constraints which may impact on the borrower's ability to refinance.

§ 1951.268 State Supplements and guides.

State Directors may supplement this subpart to meet State and local laws, regulations, and practices in accordance with RD Instruction 2006-B.

§§ 1951.269 - 1951.300 [Reserved]

Attachments: Exhibits A, B, and C

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LENDER AGRICULTURAL LOAN UNDERWRITING STANDARDS

SHORT-TERM CREDIT

	<u>LENDER</u>	<u>LENDER</u>	<u>LENDER</u>	<u>LENDER</u>	<u>APPLICANT</u>
Date Completed					
Name					
Lending Limit	\$	\$	\$	\$	Not Appl.
Minimum Loan Size					Not Appl.
Percent Equity					
Percent Repay Margin					
Type Security Required					
Maximum Loan to Security Value					Not Appl.
Maximum Term of Loan					Not Appl.

Continue with general, or lender specific, criteria on reverse side.

INTERMEDIATE-TERM CREDIT

	<u>LENDER</u>	<u>LENDER</u>	<u>LENDER</u>	<u>LENDER</u>	<u>APPLICANT</u>
Lending Limit	\$	\$	\$	\$	Not Appl.
Minimum Loan Size					Not Appl.
Percent Equity					
Percent Repay Margin					
Type Security Required					
Maximum Loan to Security Value					Not Appl.
Maximum Term of Loan					Not Appl.

LONG-TERM CREDIT

	<u>LENDER</u>	<u>LENDER</u>	<u>LENDER</u>	<u>LENDER</u>	<u>APPLICANT</u>
Lending Limit	\$	\$	\$	\$	Not Appl.
Minimum Loan Size					Not Appl.
Percent Equity					
Percent Repay Margin					
Type Security Required					
Maximum Loan to Security Value					Not Appl.
Maximum Term of Loan					Not Appl.

DEFINITIONS

Name: The name of the lending institution and applicant.

Lending Limit: The maximum dollar amount a lender is willing/able to lend to one borrower.

Minimum Loan Size: Least amount lender will consider making a loan for.

Percent Equity: Net worth divided by total assets.

Percent Repay Margin: Most lenders use a percent of the capital debt retirement margin. This is normally the principal portion of debt due divided by the borrower's net income. Operating loan principal is not considered a capital debt and is not included. However, since each lender may use different methods to calculate repayment margins, you should obtain this information from each individual lender.

Type Security Required: The type of collateral required to secure loans for short-, intermediate-, and long-term purposes.

Maximum Loan to Security Value: The loan amount divided by the appraised value of the loan security. This also may be calculated using the security's net recovery value. You should obtain each lender's method for deriving net recovery value.

Maximum Term of Loan: The maximum number of years the lender will allow for repayment for intermediate and long-term purposes. Short-term credit is assumed due within the 1-year operating cycle.

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Date: \_\_\_\_\_  
Name of Lender: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Name of County Supervisor: \_\_\_\_\_  
Service Area: \_\_\_\_\_

SUGGESTED OUTLINE FOR SEEKING INFORMATION FROM  
LENDERS ON CREDIT CRITERIA FOR GRADUATION  
OF RURAL HOUSING LOANS

1. Is the lender interested in making loans to refinance rural housing  
borrowers? Yes: \_\_\_\_\_ No: \_\_\_\_\_  
If later, when? \_\_\_\_\_

How much credit does the lender expect to have available in the next three to  
four months for making such loans? \$ \_\_\_\_\_  
In the next twelve (12) months? \$ \_\_\_\_\_

2. What are the loan terms? \_\_\_\_\_

3. What is the current interest rate? \_\_\_\_\_ /  Variable Rate  
/  Fixed Rate

If variable, how is it determined? \_\_\_\_\_

4. Is a risk differential used in establishing interest rates charged for  
new customers? Yes: \_\_\_\_\_ No: \_\_\_\_\_ If yes, explain: \_\_\_\_\_

5. What can a typical loan applicant be expected to pay for:

- a) filing an application....\$ \_\_\_\_\_ or \_\_\_\_\_%
- b) real estate appraisal....\$ \_\_\_\_\_ or \_\_\_\_\_%
- c) credit report.....\$ \_\_\_\_\_ or \_\_\_\_\_%
- d) loan origination fee.....\$ \_\_\_\_\_ or \_\_\_\_\_%
- e) loan closing costs.....\$ \_\_\_\_\_ or \_\_\_\_\_%

6. Is mortgage guarantee insurance required? Yes: \_\_\_\_\_ No: \_\_\_\_\_  
If yes, how many years? \_\_\_\_\_ Cost? \_\_\_\_\_

7. Is there a minimum or maximum loan size policy? Yes: \_\_\_\_\_ No: \_\_\_\_\_  
If yes, explain: \_\_\_\_\_

8. Is there a minimum and maximum home value the lender will loan on?  
Yes: \_\_\_\_\_ No: \_\_\_\_\_  
If yes, minimum: \$ \_\_\_\_\_ maximum: \$ \_\_\_\_\_

9. Does the lender use a loan to market value ratio? \_\_\_\_\_

10. Is there a minimum net and gross income criteria? Yes:\_\_\_ No:\_\_\_  
If yes, net: \$ \_\_\_\_\_ gross: \$ \_\_\_\_\_

11. Does the lender use a minimum loan or home value to income ratio?  
Yes:\_\_\_ No:\_\_\_ If yes, loan to income ratio: \_\_\_\_\_  
Value to income ratio: \_\_\_\_\_

12. Is there a percentage of gross income a typical applicant should have available to pay housing costs? \_\_\_\_\_

a) To pay for principal, interest, taxes and insurance (PITI)? \_\_\_%.

b) To pay for the total housing costs and other credit obligations?  
\_\_\_\_\_ %.

13. Are there any age of home, housing type, site size, and/or geographic restriction policies? Yes:\_\_\_ No:\_\_\_

If yes, List: \_\_\_\_\_

14. Other Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

15. For the purpose of reducing the number of inappropriate referrals, would the lender like the opportunity to review specific borrower financial information prior to the borrower being asked to file a formal application? Yes:\_\_\_ No:\_\_\_ If the answer is yes, only those borrowers who are listed on Form RD 1951-24 will be referred to the bank. The lenders should be advised, however, the information supplied to them will not include the borrower's name, social security number, exact address, or place of employment that could be used to link a specific borrower to the information being provided by the Agency.

Inclusions/Exclusions From Graduation Review List

	Single Family Housing (SFH)
Nonprogram (NP) Loans (but include if borrower also has program loan)	exclude
Deferrals	N/A
Limited Resource (LR)	N/A
Bankruptcy Action Pending (BAP)	exclude
Foreclosure Action Pending (FAP)	exclude
Court Action Pending (CAP)	exclude
Subject to Approved Adjustments (SAA)	exclude
Moratorium	exclude
Collection Only (CO)	exclude
Balance under \$5,000	exclude
Subsidized	exclude
Additional Payment Agreement (Delinquency Workout Agreement)	exclude
Delinquent Account	include

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