

## CHAPTER 2: REGULAR SERVICING

### 2.1 INTRODUCTION

Once loan funds are fully disbursed, the loan is transferred to the Servicing and Asset Management Office (Servicing Office) for servicing, as described in Section 1 of this Chapter. While “servicing” can have connotations of special actions taken to deal with borrowers who are behind in their payments, the bulk of the loans serviced by the Servicing Office will be current loans that require normal day-to-day and year-to-year attention. The Servicing Office undertakes a wide variety of regular servicing activities as discussed below.

- **Handling payments and fees.** Each month the Servicing Office must ensure that each borrower knows how much to pay and when the payment is due. The Servicing Office must process the payment and credit it to the proper account. The Servicing Office also must assess fees for late payments and payments that do not clear. Section 2 of this chapter describes policies for conducting these basic payment collections and handling activities, including paper check processing through electronic funds transfer (EFT) as required by Check 21.
- **Approving borrower actions.** During the term of the loan, the borrower may request permission to undertake actions that could affect the value of the security property. Section 3 of this chapter describes these policies and working with the Field Office to act upon the borrower’s request.
- **Reviewing escrow, taxes, and insurance.** All borrowers are required to pay real estate taxes and maintain acceptable hazard insurance and flood insurance, if applicable. For borrowers with Agency escrow accounts, the Servicing Office is responsible for tracking the escrow funds and paying tax and insurance bills on behalf of the borrower. For borrowers who do not have escrow accounts, the Servicing Office must be prepared to act when the Agency learns that the borrower is not carrying out these obligations. Chapter 3 outlines the Agency’s policies for maintaining escrow accounts for taxes and insurance. Although this is a regular servicing activity, it is discussed in a separate chapter because of the technical nature of the information provided.

- **Assessing eligibility for payment subsidy.** Borrowers who are receiving payment assistance or interest credit subsidies must have their incomes reviewed annually to ensure that they are receiving the appropriate amount of payment subsidy. In addition, borrowers who are not receiving payment subsidy may request it if their financial situation changes. Chapter 4 describes the Agency's policies for annual reviews of a household's income and for providing payment subsidies during the course of the loan. Like handling escrow, taxes, and insurance, assessing eligibility for payment subsidy is generally a regular servicing activity, but the technical nature of the discussion requires a separate chapter.
- **Refinancing with private credit.** Because Agency credit is not intended to replace private credit sources, borrowers who have the means to obtain private financing are required to do so. Every 2 years, the Field Office must review a borrower's ability to refinance with private credit. The Servicing Office's role in facilitating the Field Office's review is outlined in Section 4 of this chapter.
- **Calculating recapture amounts.** The Agency's subsidy recapture policy requires borrowers to repay some or all of the subsidy received over the life of the loan. When borrowers pay off the principal and interest balance of their loan, subsidy recapture must be calculated and the borrower informed of the recapture amount. Borrowers can elect to defer recapture as long as they occupy the property as their permanent residence and do not transfer title. Upon ceasing to occupy the property or transfer of title, they will be required to repay the recapture within 60 days. If the recapture is not paid within 60 days, the account will be referred to the Foreclosure Unit to collect subsidy recapture due. Section 5 of this chapter describes the recapture policy and provides an explanation of the formula used to calculate the precise amount of recapture due.
- **Deceased borrower.** During the term of the loan, the Servicing Office may become aware that a borrower is deceased. In these cases, the Servicing Office will contact the persons responsible for the deceased borrower's estate to request a death certificate and legal documents showing appointment of a personal representative, administrator, or an executor. The Servicing Office will inform such persons of available servicing options, such as same rates and terms assumptions described in Section 3 of this Chapter, and service the account accordingly. In cases where there was a joint borrower and only one borrower is deceased, the loan servicing system will be coded to reflect the deceased borrower. No further servicing actions are necessary. When the Servicing Office determines that all borrowers associated with an account are deceased, the Servicing Office will code the account to reflect the deceased borrowers and determine if there is an open active loan or a recapture receivable account. If a recapture receivable account, the account will be referred to the Foreclosure Unit to recover the subsidy recapture due.

## Paragraph 2.1 Introduction

- **Final payment.** Section 6 of this chapter describes policies regarding how payoff amounts are calculated and provided to the borrower. It also covers how the Field Office releases the security instruments and the Servicing Office processes the final payment.
- **Servicing borrowers with both Rural Housing Service (RHS) and Farm Service Agency (FSA) Farm Credit Program (FCP) loans.** Through our predecessor Agency, the Farmers Home Administration, several loans were made to borrowers who had agricultural and housing loans. The majority of these loans is cross-collateralized and described on the same mortgage deed of trust. Reorganization shifted agricultural loans to the Farm Service Agency, another Agency within USDA. Ownership of these loans is now divided between the two Agencies which requires that separate case files and servicing procedures be maintained. Attachment 2-C of this Chapter provides guidance on how to handle servicing for these borrowers.
- **Servicemembers Civil Relief Act of 2003 (SCRA).** Formerly known as the Soldier's and Sailor's Civil Relief Act of 1940 (SSCRA), this federal law gives military members certain rights when mobilized to active duty status. A major benefit of SCRA is the ability to reduce pre-service consumer debt and mortgage interest rates to 6 percent when a service member is called to active duty. The difference between the full note rate and the 6 percent required under this Act is not subject to recapture. If a borrower qualifies for a payment subsidy after reduction to 6 percent, the amount of subsidy during this period of reduced interest rate would be the difference between the payment subsidy and the 6 percent interest, not the full note rate payment. To obtain a reduction to the 6 percent mortgage interest rate, the borrower must submit a written request and a copy of their mobilization orders to:

USDA, Servicing and Asset  
Management Office FC-244 ATTN:  
SCRA  
P.O. Box 66818  
St. Louis, MO 63166-6818

FAX: (314) 457-4545


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## SECTION 1: GETTING STARTED WITH NEW BORROWERS

### 2.2 GETTING A BORROWER INTO THE SERVICING OFFICE SYSTEM

#### A. Types of Loans

All loans are originated at the Field Office. Borrowers receive either permanent or construction loans, depending on when they will be able to occupy the property. As a result, funds are disbursed differently for permanent loans and construction loans.

- **Permanent loan.** Borrowers receive permanent loans if they can occupy the property within 30 days. The funds are requested in a single advance and disbursed in full at closing. If funds for repairs are not fully disbursed at loan closing, the undisbursed loan proceeds are deposited into an escrow account supervised by the closing agent, or into a supervised bank account and disbursed in accordance with RD Instruction 1902-A. 
- **Construction loan.** Borrowers receive construction loans if the funds will be used to build a new dwelling or to undertake repairs that will prevent them from occupying the dwelling for more than 30 days. Funds for construction loans are disbursed in multiple advances that begin to accrue daily simple interest at the borrower's Equivalent Interest Rate (EIR) as of disbursement. Because borrowers cannot afford to repay the Agency loan while paying for other housing, payments are deferred during the construction period. Once the construction is completed, the Loan Originator adjusts the principal amount reflected on the borrower's promissory note to include the interest accrued during the construction period and amortizes the loan. The loan is then converted from a construction loan to a permanent loan.

## B. Loan Activation


Loans are passed on to the Servicing Office for servicing once loan funds are fully disbursed. To begin servicing a loan, the Servicing Office must obtain key information gathered or generated during the origination process. Basic applicant information used for closing the loan will be automatically uploaded to LoanServ from the local UniFi systems on a daily basis. This means that applicant information will be available on LoanServ before the loan is closed. The Loan Originator activates the loan in LoanServ on the day of loan closing as either a permanent or a construction loan. The Servicing Office begins servicing permanent loans immediately; construction loans are not serviced until they are converted to permanent loans.

## C. Loan Docket

The Loan Originator provides the Servicing Office with a Loan Docket that contains copies of key documents for servicing legal documents and other documents that are not automated, such as the applicant's insurance policy and *Form RD 3550-15, Tax Information* after all funds

have been fully disbursed. The Loan Originator should complete *Form RD 3550-19, Transmittal-Closing Documents*, and attach copies of the required documents. The check received for the escrow account also should be sent with the Loan Docket. For construction loans, the Loan Originator should not wait until the loan funds are fully disbursed to send the check for the escrow account, but should send it immediately after loan closing.

When the Loan Docket arrives, the Servicing Office must first ensure that all required documents are present. Then, the Servicing Office must scan them into LoanServ, verify that the information contained in the system is consistent with the loan documents, and enter any additional information not keyed in during the loan origination process. If there are any inconsistencies or missing documents, the Servicing Office will work with the Field Office to coordinate corrections or to obtain the missing documentation. For example, tax and insurance information used for the initial escrow calculations needed at closing will be entered into LoanServ by the Loan Originator, but the Servicing Office will need to enter detailed information about taxing authorities and the insurance company into LoanServ. If the Loan Originator has mistakenly provided original documents, they should be returned to the Field Office for placement in the borrower's case file.

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|--|--------------------|
|   | <b>Loan Docket</b> |
| Remember, the Field Office only provides copies of the documents in the Loan Docket. The originals are kept at the Field Office. |                    |

### **2.3 INTRODUCING THE BORROWER TO THE SERVICING OFFICE**

Throughout the origination process, the borrower's only contact with the Agency is the Field Office. Once the loan funds are fully disbursed, the borrower needs to understand that the Servicing Office will be the primary contact.

The borrower's transition from Field Office to the Servicing Office should begin at the Field Office level. During the applicant orientation, the Loan Originator should explain that the transition to the Servicing Office will take place after the funds are fully disbursed and instruct the borrower to direct all servicing-related communication to the Servicing Office.

Once the permanent loan is closed, the Servicing Office must contact the borrower in writing before the first billing statement to explain the role the Servicing Office will play and the Agency's servicing policies, and provide the 1-800 numbers the borrower may need in the future. The borrower should receive this information before or with the first billing statement.

### **2.4 WORKING WITH BORROWERS OVER THE LONG TERM**

Part of the Agency's mission is to provide supervised credit and counseling to help borrowers succeed as homeowners. The Servicing Office's rigorous system of follow ups and reminders for borrowers who are late with their payments is a key to enhancing the likelihood of success.

The quality of contact with borrowers who have difficulty keeping up with their payments is as important as the frequency of those contacts. The Servicing Office must help borrowers understand the seriousness of making late mortgage payments and identify any special servicing actions that could aid borrowers experiencing particular difficulties.

The counseling effort hinges on the ability of the Servicing Office staff to work as a team. Because the borrower may speak with different representatives during each contact, notes in the borrower's file must be thorough and accurate so the next Servicer can avoid duplication of effort. The goal of thorough documentation is not developing large quantities of notes; rather, it is to ensure that any Servicer who picks up the file will be able to offer immediate high-quality service to the borrower.

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## **SECTION 2: PAYMENTS AND FEES [7 CFR 3550.152 AND 3550.153]**

### **2.5 FREQUENCY OF PAYMENTS**

Borrowers must make monthly payments unless the loan documents specify other repayment terms. The borrower's scheduled payment consists of principal, interest, taxes, and insurance (PITI) for borrowers who have an escrow account, and principal and interest (PI) only for borrowers who do not have an escrow account. Payments are not credited to a borrower's account until the scheduled payment is received.

Some loans have annual payment terms that require the borrower to make a single annual payment. Annual-pay borrowers may submit partial payments at any time during the year.

### **2.6 PAYMENT METHOD**

In general, borrowers make loan payments monthly, either through preauthorized debits or in response to billing statements. Preauthorized debit is the preferred method, since payments are automatically withdrawn from a borrower's checking or savings account, which increases the likelihood of receiving payments on time. If a borrower has multiple loans secured by a single property, a single billing statement or debit will cover all payments due. Annual-pay borrowers are not eligible for preauthorized debit.

#### **A. Preauthorized Debit**

Under the preauthorized debit payment method, payments are automatically withdrawn from a borrower's checking or savings account. After a borrower's account has been debited, the borrower receives a statement, indicating the amount of the debit. An annual statement that summarizes the total amount debited from the account also will be provided.

New borrowers can authorize preauthorized debit at loan closing. Existing borrowers can convert to preauthorized debit at any time, as long as their account is current but not ahead of schedule. To activate a preauthorized debit, the borrower must complete *Form SF-5510, Authorized Agreement for Preauthorized Payments* and attach a voided check if a checking account is to be used or complete the bottom portion of *Form SF-5510* if a savings account is to be used.

When the Agency asks a bank to transfer funds from a borrower's account under a preauthorized debit, no transfer is made unless the scheduled payment amount is available in the borrower's account. If funds are not available, the borrower will be notified that payment must be mailed to the lockbox, and if payment is not received at the lockbox within 15 days of the due date, a late fee will be assessed.

### **B. Billing Statement**


Billing statements are sent at least 2 weeks before payment is due to borrowers who are not subject to preauthorized debit. The borrower sends the payment, along with the coupon attached to the billing statement, to the lockbox address indicated on the statement. Borrowers who pay on a monthly basis should receive a statement each month. Borrowers who pay annually should receive a billing statement at least 2 weeks before the annual payment is due. If an annual pay borrower makes a partial payment during the course of the year, the borrower should be notified of the remaining amount owed.

### **C. Conversion from Annual to Monthly Payments**

Annual-pay borrowers should be encouraged to convert to monthly payments and may request conversion at any time. Whenever a borrower's payment schedule is converted from an annual to monthly basis, the borrower must agree to accrue interest on an amortized schedule, and establish an escrow account.

Annual-pay borrowers **must** convert to a monthly payment schedule, if the borrower has monthly income or the ability to make monthly payments and:

- Obtains a subsequent loan;
- Requires any servicing action that results in reamortization of the loan or obtains new payment subsidy; or
- Must establish an escrow account.

| <b>Subsequent Loans</b>  |   |
|--|---|
|  | Whenever an annual borrower obtains a subsequent loan to be repaid monthly, the Field Office must inform the Servicing Office so that the payment schedule on the existing loan can be converted from an annual to a monthly basis. Good communication between the Field Office and the Servicing Office is vital to the process. |

## Paragraph 2.6 Payment Method

Borrowers who are converted will be notified by the Servicing Office to contact the local field office for an appointment to sign *Form RD 3550-18, Reamortization Agreement*. The Servicing Office will process the reamortization and forward the original and a copy of the agreement to the field office with a letter outlining handling instructions. The field office will provide a copy to the borrower and place the original in the borrower's case file.



If the borrower is currently receiving subsidy, the Servicing Office will continue with the existing agreement unless it appears the borrower's circumstances have changed sufficiently to process a new agreement.

## 2.7 ACCEPTABLE FORMS OF PAYMENT

Acceptable forms of payment include checks, money orders, or bank drafts. Foreign currency is not an acceptable form of payment. Cash payments are discouraged but must be accepted. Any cash payment should be accompanied by a fee to cover the conversion to a money order. If the borrower does not provide extra money for the conversion to a money order, the conversion fee is deducted from the payment.

## 2.8 LOCKBOX SERVICES

Borrower payments are received by a lockbox service which processes them on behalf of the Agency. When the payment is received it is date-stamped. The lockbox service data captures the payment information and the loan account number, endorses payment, prepares it for deposit, records the payment amount, and downloads the information to an electronic file for the Servicing Office. If any excess, partial, or "miscellaneous" payments are received, the lockbox reports these to the Servicing Office, which is responsible for determining how the payment should be handled.

### A. Crediting Accounts at The Servicing Office

Once the Servicing Office receives payment information from the lockbox, the data is uploaded to LoanServ. The upload updates the accounts for which payments were received. If the amount received was less than the scheduled payment and the remainder is not received by the 15th day after the due date, LoanServ automatically assesses a late fee, which appears on the borrower's next statement.

## **B. Payments Received at The Servicing Office**

While most borrower payments are sent directly to the lockbox, funds occasionally arrive at the Servicing Office. In the rare case that the Servicing Office does receive a borrower's payment, the payment will be processed by the Servicing Office and forwarded to the lockbox for final processing. If the payment arrives at the Servicing Office more than 15 days after the due date, the borrower is responsible for the late fee.

Employees are personally accountable for losses that occur while funds are in their custody. Exceptions can be made only when a loss occurs without fault or negligence on the part of the employee. To avoid problems, all cash, checks, and money orders received at the Servicing Office will be recorded and secured immediately.

## **2.9 IRREGULAR PAYMENTS**

From time to time, borrowers submit payments that do not meet the definition of a scheduled payment, such as partial or excess payments, or payments on a closed account. The lockbox processes irregular payments and reports them to the Servicing Office. The payments should be applied as described below.

### **A. Partial Payments**

If a borrower makes a payment that is less than the scheduled payment, the payment is held in suspense in the borrower's account. Suspense means that the payment is deposited (for example, check cashed), but not "credited" to the borrower's account until an amount equal to the scheduled payment is received. When subsequent payments are received in an amount sufficient to equal a scheduled payment, the payment is applied.

#### ***1. Loans on an Annual Payment Schedule***

Any partial payment made on an annual-pay loan is held in suspense until the full payment is received. A letter is sent to the borrower, indicating the amount of the payment received and the remaining balance.

#### ***2. Multiple Loans***

When a borrower with multiple loans for the same property makes less than the combined scheduled payment for all loans, the payment is applied when the scheduled payment for the oldest loan is received. Additional payments are applied to the borrower's other loans in order of declining age.

**B. Excess Payments**

When a payment in excess of the scheduled payment is received, it is applied first to any outstanding fees or charges. Any additional funds should be used to reduce the principal balance. A borrower’s year-end statement must indicate how any excess payments were applied.

If a borrower wishes to prepay a scheduled installment, the payment must be for exactly the scheduled amount and must be accompanied by an indication from the borrower that it is intended as a payment rather than as a reduction of principal.

If the borrower makes excess payments that total 10 percent of the loan balance, or excess loan funds from a construction loan total 2 percent of the loan balance, the borrower’s account may be reamortized to reduce the borrower’s monthly payment.

**C. Payments on Closed Accounts**

Occasionally, payments are made on accounts that are closed. When a payment is received for an account that has been charged off or canceled as described in Section 3 of Chapter 7, the Agency accepts the payment and credits the appropriate account accordingly.

**2.10 FEES [7 CFR 3550.153]**

The Agency will assess late fees and insufficient funds fees when appropriate. The fees will appear on the borrower’s next statement.

- Late fees equal to 4 percent of the principal and interest due are assessed for any scheduled payment not received at the lockbox by the 15th day after the due date unless State law imposes other requirements.
- A \$15 fee is assessed for checks returned for insufficient funds. This fee is in addition to any late fee.



In very limited circumstances, fees may be waived. A waiver may be appropriate as a tool to encourage a borrower to agree to a delinquency workout agreement. A waiver also may be appropriate if a late payment fee is assessed due to circumstances beyond the borrower’s control. The Servicing Office should follow consistent standards in determining when a waiver is appropriate. The reason for a waiver should be documented carefully.



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## **SECTION 3: BORROWER ACTIONS REQUIRING APPROVAL**

*[7 CFR 3550.159]*

### **2.11 OVERVIEW**

A borrower must obtain approval from the Agency before taking actions that may affect the security value of the property. Since these actions involve security property, they are handled in Field Offices. Key actions that require approval from the Agency include subordination, lease of mineral rights, partial release of security, lease of security property, and assumption of indebtedness.

When the Servicing Office becomes aware of borrower actions requiring approval, they will refer the customer to the local Field Office and cue the Field Office regarding the borrower's request. The Servicing Office will provide any information needed by the Field Office to process the request. Field Offices will approve or disapprove the actions outlined in this section and will cue the Servicing Office with the outcome.

This section first covers general guidelines and procedures for evaluating a borrower's request for approval of an action, with the exception of assumptions of indebtedness. Specific guidelines for each of the actions, including assumptions, follow the discussion of general guidelines.

### **2.12 GENERAL GUIDELINES**

#### **A. Reviewing Requests**

To request approval for subordination, mineral leases, partial release of security, and lease of security property, a borrower must submit *Form RD 465-1, Application for Partial Release, Subordination, or Consent*, to the local Field Office. If the information provided is not sufficient to allow for a thorough evaluation, the Field Office will request additional information from the borrower. The Servicing Office may be cued by the Field Office, as necessary, to supplement the borrower's information.

#### **B. Obtaining an Appraisal and an Environmental Review**

An appraisal is required for the Agency to subordinate its interests or to approve a partial release of security if the amount of consideration exceeds \$5,000. The borrower must pay for the appraisal, although the cost for an appraisal can be charged to the borrower's account.

An existing appraisal may be used if it is less than 1 year old and appears to reflect market value. An Agency appraisal is not required if a lender is involved and can provide an appraisal that adequately reflects market value.

Actions requiring Agency approval of mineral leases are subject to the environmental requirements of RD Instruction 1970 series prior to approval.

### **C. Evaluating and Approving the Request**

Once the information needed to evaluate the request has been submitted, the Field Office must analyze the effect of the proposed action on the security property and document the conclusions on *Form RD 465-1*. Some factors to consider in the analysis include:

- The market value of the property before and after the transaction;
- The physical effects of the action on the security property; and
- The assignment of initial and subsequent payment proceeds.

If the analysis indicates that the Agency's security will not be put at risk by the action, an approval official in the Field Office may sign *Form RD 465-1*. The Office of General Counsel (OGC) may need to provide relevant forms needed to complete the approval. Signed copies of *Form RD 465-1* should be distributed to the Servicing Office, the borrower and lender, as appropriate. The original should be maintained in the borrower's case file at the Field Office.

### **D. Using Proceeds**

Proceeds that arise from the sale of a portion of the security, granting an easement or right-of-way, damage compensation, and all similar transactions should be used in the following order.

- To pay customary and reasonable costs related to the transaction that must be paid by the borrower, such as:
  - ◇ Real estate taxes that must be paid to conclude the transaction;
  - ◇ Cost of title examination, survey, abstract, and reasonable attorney's fees; and
  - ◇ Costs necessary to determine a reasonable price, such as appraisal of minerals, when the necessary appraisal cannot be obtained without costs.



Paragraph 2.12 General Guidelines

- To be applied on a prior lien debt, if any.
- To be applied to the Agency indebtedness or used for improvements to the security property in keeping with the purposes and limitations applicable for the use of Agency loan funds. Proposed development will be planned and performed in accordance with RD Instruction 1924-A and supervised to ensure that the proceeds are used as planned.



The use of proceeds should be reflected on *Form RD 465-1* and agreed to by the borrower and the Agency. Proceeds from the transaction to be applied to the Agency indebtedness will be remitted to the Cash Management Branch in the Servicing Office by Field Offices using *Form RD 3550-17, Funds Transmittal Report*, with Reason Code “00,” together with a brief statement as to the source of proceeds, a copy of *Form RD 465-1*, and any related documentation. The Field Office will also notify the Servicing Office using Task 178, “Legal Description Correction.”


**2.13 SUBORDINATION [7 CFR 3550.159(b)]**

The Agency will consider subordination of its lien position to allow a borrower to gain access to private sources of credit. Subordinations are generally handled by the Servicing Office. The most common type of subordination request will be when a borrower refinances their Agency loan with private credit, and the borrower elects to defer payment of recapture. Field Offices are responsible for handling subordination requests in cases where the borrower is obtaining a subsequent loan for repairs or improvements to the property (not associated with refinancing). In cases where a borrower is refinancing, and has included in the refinancing package additional funds for repairs or improvements, the Servicing Office will coordinate such requests with the Field Office.

**A. Criteria for Subordination**

Requests for subordination can be approved if:

- The other lender verifies that the funds will be used for Agency-eligible purposes;
- Based on repayment ratios, the prior lien debt will be on terms and conditions that the borrower can reasonably be expected to meet without jeopardizing repayment of the Agency indebtedness;



**Nonprogram Borrowers**  
Subordination cannot be authorized for nonprogram loans.

- Any proposed development will be planned and performed in accordance with Agency construction standards, as described in RD Instruction 1924-A or directed by the other lender in a manner that is consistent with that subpart; and
- The prior lien holder agrees in writing to provide at least 30 days prior written notice to the Agency before initiating any foreclosure action on the prior lien.



To document that the subordination conforms to the Agency's requirements, the borrower should ask the other lender to provide the Agency with a memorandum that states the purpose of the loan, along with its terms and conditions.

### **B. Amount of Subordination**

The total amount of debt permitted when the Agency subordinates its interest depends on whether the borrower pays off the Agency loan.

- **Repay Agency loan but defer recapture.** If the borrower will repay the loan and is requesting that the Agency subordinate only a deferred recapture amount, the prior lien debt plus the deferred recapture amount must not exceed the market value of the security. These cases are handled by the Servicing Office.
- **Retain Agency loan.** If the borrower is obtaining a subsequent loan from another source and will not pay off the Agency debt, the prior lien debt plus the unpaid balance on all Agency loans, exclusive of recapture, must not exceed the market value of the security. These cases are handled by the Field Office.

## **2.14 MINERAL LEASES [7 CFR 3550.159(a)]**

Borrowers must obtain Agency authorization before leasing mineral rights on their security property. Such requests are rare, but do occur in situations such as a property in a town located above a coal mine or a property located on a water source. OGC should be involved in mineral lease decisions because State and local laws vary. In addition, an environmental review is required in accordance with RD Instruction 1970 series, prior to approval. Subordination of an Agency loan to a mineral lease does not entitle the leaseholder to any proceeds from the sale of the security property. If the lease of mineral rights is approved, rental proceeds not assigned to the Agency are treated as income and any payment subsidy must be adjusted accordingly.



## Paragraph 2.14 Mineral Leases [7 CFR 3550.159(a)]

The Field Office will consent to the lease of mineral rights and the subordination of its liens to the lessee's rights and interests in the mineral activity if the security property will remain suitable as a residence, and the Government's security interest will not be adversely affected.

To make this determination, the Field Office must consider the effects of leasing on the security property, including the potential for the lessee's rights of surface entry on the property. They also must ensure that the property remains decent, safe, and sanitary and the value of the security property is not decreased below the amount of the loan.

- **No decrease in value.** If the proposal is not likely to decrease the value of the security property, the lease may be approved if the borrower agrees: (1) to use any damage compensation received from the lessee to repair damage to the site or dwelling; or (2) to assign it to the Agency to be applied to reduce principal.
- **Likely decrease in value.** If the proposed activity is likely to decrease the value of the security property, the Field Office may consent to the lease of mineral rights only if: (1) the borrower assigns 100 percent of the lease income to the Agency to be applied to reduce principal; and (2) the rent to be paid is at least equal to the estimated decrease in market value.

When an assignment of income is required, the borrower must submit an assignment of income in a format that is designed to comply with State law and approved by OGC.



## 2.15 PARTIAL RELEASE OF SECURITY [7 CFR 3550.159(c)]

A borrower may request a partial release of security to accommodate a need to sell or exchange part of the property or grant a right-of-way across the security property. For example, the owner of an adjoining property may want to trade 10 feet of the side yard for 10 feet of the back yard, or the local government may wish to purchase land that borders a highway slated for widening.

The Agency may consent to transactions affecting the security and grant a partial release of security if the following conditions are met.

- The borrower will receive adequate compensation:
  - ◊ The sale of any part of the security property must result in a payment equal to the value of the security being released or rights granted;
  - ◊ The exchange of security property must result in another parcel of property acquired that has value equal to or greater than that being released; or
  - ◊ The granting of an easement or right-of-way must result in benefits that are equal to or greater than the value of the security property being released.
- The security property, after the transaction is completed, must be adequate, decent, safe, and sanitary. For a program loan, the security after the transaction is completed must also remain modest.
- Repayment of the Agency debt must not be jeopardized.



In accordance with RD Instruction 1970-A, 1970.8 (e), “servicing actions are directly related to financial assistance already provided, do not require separate NEPA review, and are not actions for the purposes of this part”.

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To process a partial release, the Field Office must complete the following actions.



- Complete any required State release forms. The unrecorded documents will be uploaded to the imaging repository as “Loan Documents Class – Deeds of Trust Mortgages” as part of the borrower’s permanent record. The party requesting a partial release is responsible for recording costs.
- For an **exchange** of all or a portion of the security property, obtain title clearance for the new security before the release of the existing security. Security instruments must be obtained for the new property.
- For a **sale** of all or a portion of the security property, deliver the release when full payment is received.
- Update the legal descriptions of the property, as necessary.

## Paragraph 2.15 Partial Release of Security [7 CFR 3550.159(c)]

The Field Office may approve, after notifying the Servicing Office of the approval, the following releases:

- **Additional security.** At any time prior to payment of the loan in full, the Agency may authorize a release from the Agency's lien any real estate taken as additional security. This is authorized provided the market value of the remaining security is adequate to secure the loan balance. Additional security does not include any part of the tract purchased with Section 502 loan funds or part of the minimum adequate site on which the dwelling is located.
- **Mutual Mistake.** The Agency may authorize the release of property from the Agency's lien caused through mutual mistake when substantiated by facts and when the Agency can determine, with the advice of OGC, that a mutual error existed at the time the property was included in the security instrument.
- **No evidence of indebtedness.** The Agency's lien may be released in situations where there is no evidence of an existing secured indebtedness in the Field Office or in the Servicing Office. Before releasing the lien, the Field Office should consult with the Borrower Assistance Branch in the Servicing Office.
- **Valueless Lien.** In liquidation cases, if a net recovery valuation indicates the Agency's lien is valueless (that is, there is no or a negative potential recovery), the lien may be released. The Field Office will contact the Borrower Assistance Branch in the Servicing Office to ensure that taxes and insurance are no longer paid by the Agency, and a debt settlement package is sent to the borrower by the Servicing Office.

## 2.16 LEASE OF SECURITY PROPERTY [7 CFR 3550.159(d)]

Program borrowers must notify the Agency if they lease the property. If the Agency becomes aware of a borrower who is leasing their property, the borrower is not eligible for payment subsidy or special servicing benefits during the period of the lease. Field Offices will notify the Servicing Office, and provide any applicable documentation, if they become aware that a borrower has leased the security property. The Agency also should assess the borrower's ability to refinance with private credit. If the lease is for a term of more than 3 years or contains an option to purchase, the Agency may liquidate the loan. Nonprogram borrowers are free to lease their properties without restriction.

## 2. 17 ASSUMPTION OF INDEBTEDNESS [7 CFR 3550.163]

### A. New Rates and Terms Assumptions

In most cases, Agency indebtedness is only assumed as part of a sale. In these situations the debt is assumed on new rates and terms as part of loan origination and is handled by the Field Office. Field Offices are authorized to release the former borrower from personal liability for the amount of debt being assumed utilizing *Form RD 3550-16, Release from Personal Liability*. In cases where the debt is not being assumed in full, the Servicing Office will handle the settlement of the remaining debt and any release of liability for the portion of debt not being assumed.

### B. Same Rates and Terms Assumptions

In certain limited cases, generally those involving transfers of title between family members, a standard industry assumption is permitted. It is known in the Section 502 program as a *same rates and terms assumption*. Same rates and terms assumptions are handled and approved in the Field Office. Under this type of assumption, the loan is not reamortized and the existing note terms, including the interest rate and the remaining repayment period, do not change. If the account is past due at the time an assumption is executed, the Field Office will refer the new owner to the Servicing Office. The account may be brought current by using any of the servicing methods discussed in Chapter 5 for which the new owner is eligible.

The new owner need not have a low or moderate income. However, payment subsidy can be continued for the new owner only if he or she is eligible for assistance and only at the level for which the new household qualifies. If the transferee is a very low- or low-income person, it may be more beneficial for the transferee to assume the loan under new rates and terms. For example, if current interest rates are lower or a longer repayment period is necessary, a new rates and terms assumption may be of benefit to the new owner. In those cases, if the new owner applies and is program-eligible, the loan will be assumed under new rates and terms. In cases where the assuming party has a moderate- or above moderate-income, the party will be informed of the Agency's refinancing requirements, and if applicable, the loan will be reviewed for refinancing.

Same rates and terms assumptions are permitted for the following types of transfers:

- A transfer from the borrower to a spouse or children not resulting from the death of the borrower;

## Paragraph 2.17 Assumption of Indebtedness [7 CFR 3550.163]

- A transfer to a relative, joint tenant, or tenant by the entirety resulting from the death of the borrower;
- A transfer to a spouse or ex-spouse resulting from a divorce decree, legal separation agreement, or property settlement agreement;
- A transfer to a person, other than a deceased borrower's spouse, who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, if the dwelling will be occupied by one or more persons who were dependent on the borrower at the time of death and there is a reasonable prospect of repayment;
- A transfer into an inter vivos trust in which the borrower does not transfer rights of occupancy in the property; and
- Any subsequent transfer of title, except upon death of the inheritor or between inheritors to consolidate title, will be treated as a sale.

**C. Agency Approval**

The due-on-sale clause contained in all Agency mortgages stipulates that the borrower must obtain approval from the Agency before the title of a security property can be transferred with an assumption of the indebtedness.

The Agency will approve a transfer of title and assumption of indebtedness if it is in the best interest of the Government. The new owner will be liable for the loan, and the terms and conditions of the assumption depend upon the eligibility of the new purchaser and the property's characteristics.

In most cases, if the borrower sells a security property with a due-on-sale clause without obtaining prior authorization from the Agency, the assumption will not be approved and the loan may be liquidated. If the Agency determines it is in the best interest of the Government to continue the loan, the account will be serviced in the original borrower's name, and the original borrower will remain liable for the loan under the terms of the security instrument.

A new owner who obtains property through a transaction eligible for a same rates and terms assumption is not required to obtain Agency approval or assume the loan. The Agency is not permitted to liquidate the loan if the new owner continues to make scheduled payments and meets all other obligations of the loan. However, a new owner who does not assume the loan is not eligible for payment assistance or a moratorium.

#### **D. Procedural Requirements**

The new owner must sign *Form RD 3550-22, Assumption Agreement Single Family Housing*. For assumptions, the original note is not returned to the seller. Instead, the note is filed with other original notes, with the original *Form RD 3550-22* attached.

#### **E. Releasing a Departing Borrower From Liability**

Changes in household composition may trigger the need to adjust who is responsible for repayment of the loan. The need for a change most often occurs when one party to the note wishes to be released of liability. For example, after a divorce the departing spouse may wish to be relieved of responsibility for the balance of the mortgage. The Agency will authorize such a release only when:

- The divorce decree or property settlement document did not make the departing borrower responsible for loan payments;
- The departing borrower's interest in the security property is conveyed to the person with whom the loan will be continued; and
- The remaining borrower meets the maximum total debt ratio requirements and credit history requirements or, the account has been current for at least six months.

*Form RD 3550-16* is used to release the departing borrower from liability. The Servicing Office generally handles these releases, but may cue the Field Office for assistance.

The following items need to be submitted to apply for a release of liability:

1. A written request from the departing borrower to be released of liability;
2. New address and phone number of the departing borrower;
3. Divorce decree and property settlement (if applicable);
4. Recorded deed conveying ownership to the remaining borrower(s);
5. Financial Statement of remaining borrower;
6. Verification of all income sources (such as pay stubs, award letters, etc. as described in HB1, Chapter 3.15) for remaining borrower; and
7. Copy of latest Federal income tax return, including W2 form, for remaining borrower.



**SECTION 4: REFINANCING WITH PRIVATE CREDIT [7 CFR 3550.160]**

**2.18 OVERVIEW**

The Agency’s loan programs are not intended to compete with or replace private *credit* sources. To ensure that Section 502 loans are only used to assist borrowers unable to obtain credit from other sources, periodic reviews are conducted to determine borrowers’ ability to refinance 100 percent of their Agency loans with private credit. This process was formerly known as “graduation.” A borrower who fails to comply with requests for information to determine their ability to refinance, or who fails to refinance upon request by the Agency, is in default of the mortgage agreement and is subject to liquidation.

The Servicing Office staff determines whether a borrower is able to refinance with private credit and when a borrower will be reviewed. The Servicing Office will compile a list of borrowers and generate all appropriate letters to applicable borrowers pertaining to the refinance process. The Servicing Office will answer borrower inquiries and provide all payoffs and recapture information when requested. If a borrower fails to cooperate in this process, the Servicing Office may initiate acceleration of the account.

**2.19 SELECTING BORROWERS FOR REVIEW**

**A. Criteria**

All Section 502 borrowers are considered for refinancing once every 2 years. The Servicing Office reviews the borrower’s payment history, and outstanding loan balance to determine whether they can possibly refinance with private credit. If there is a reasonable likelihood that a borrower will be able to refinance based on indicators available on LoanServ, the borrower is selected for further review.

A borrower’s ability to refinance may also be reviewed any time the Agency becomes aware that a borrower’s circumstances have changed. Such change in circumstances might include: an inheritance, a new job, or any other change that might lead to a substantial increase in household income. The Agency must be consistent when initiating reviews where information is obtained that indicates a possible change in circumstances. The Servicing Office will initiate selection for a refinancing review based on the following criteria:




- Loan is active
- Program borrower

- Not under Servicemembers Civil Relief Act of 2003 (SCRA)
- Credit score equal to minimum used for loan origination
- Not a 504 loan
- Account not in foreclosure
- Account not in bankruptcy
- Account not on a Delinquency Workout Agreement
- No court action pending
- Not subject to approved adjustment action
- Account not on a moratorium
- Not a collection only account
- Principal balance equal to or more than \$15,000
- Borrower is not over one month delinquent
- Account has not been delinquent more than once in the past 12 months
- Refinancing is not currently pending
- No reamortizations in the past two years
- 16 percent difference from original loan vs. unpaid principal and interest
- Full note or subsidized interest rate is two percent over 30-year fixed conventional rate
- Loan is not within 5 years of maturity
- Account is not in a county declared a disaster in the past 12 months

### **B. Subsequent Credit**

If field staff is in the process of reviewing a borrower's request for a subsequent loan when that borrower is selected for a refinancing review, the subsequent loan should be processed before initiating the review. If the review for the subsequent loan shows that the borrower would be able to get private credit for the amount of the subsequent loan, the

borrower's request for a subsequent loan should be denied. The refinancing review should then be initiated to determine the borrower's ability to obtain credit to refinance the existing loan.

| <b>Subsequent Loan</b>  |  |
|---|--|
|  | Borrowers who have been asked to refinance will not be considered for additional credit until the refinancing issue is resolved, unless additional assistance is necessary to protect the Government's interest in the property. |

### **C. Subordination of Recapture**


When a borrower refinances a Section 502 loan, recapture will be calculated. The recapture may be paid at the time of refinancing, or if the borrower will continue to occupy the property, the Agency may subordinate its interest in any deferred recapture amount to facilitate a borrower's efforts to refinance with private credit, as long as: (1) the total value of all secured

Paragraph 2.19 Selecting Borrowers for Review

loans does not exceed the market value of the property; (2) the borrower continues to occupy the property; and (3) title does not transfer. The amount to which the Agency’s loan may be subordinated can include:

- The amount required to repay the Agency debt, exclusive of recapture;
- Reasonable closing costs;
- Up to one percent of the loan amount for the lender’s loan servicing costs; and
- The cost of any necessary repairs or improvements to the security property.

**SCRA OF 2003**



The Servicemembers Civil Relief Act requires that the difference between the full note rate and the 6% required under this Act is not subject to recapture.

**2.20 PROCESSING REQUEST TO REFINANCE**

When a borrower is reviewed for refinancing and it appears they can refinance with private credit, the Servicing Office will send *Handbook Letter 111 (3550), Request for Borrower to Refinance With Private Credit* to request that the borrower refinance with private credit within 90 days from the date of the letter. This letter supplies the borrower with telephone numbers necessary for obtaining payoff and subsidy recapture information. It also instructs borrowers who are unable to secure private credit to provide a rejection letter from at least one lender. The rejection letter should contain the following information:

- Lender’s name;
- Amount of the loan requested;
- Information the borrower provided to the lender regarding purpose of the loan; and
- Rates and terms offered by the lender, and specific reasons why credit was denied.

If the rejection letter is sufficient to document the borrower’s inability to refinance, the Servicing Office will send *Handbook Letter 110 (3550), Notification that the Agency Will Continue With Loan*, advising that the Agency will continue with the loan and the borrower’s ability to refinance will be reviewed again in 2 years.

**2.21 UNCOOPERATIVE BORROWERS AND ACCELERATION**

If the borrower fails to respond, the Servicing Office will send *Handbook Letter 112 (3550), Reminder Letter*, 45 days after the initial letter is sent. This letter reminds the borrower of the 90-day deadline and warns them of violation of their security instruments for failure to respond. The Servicing Office may elect to contact these borrowers via a calling campaign to remind them of their obligation.

During the 90-day refinancing review period, the borrower may contact the Servicing Office to provide financial information. The next appropriate action by the Servicing Office depends on an analysis of the financial information provided.

- The borrower may not qualify for refinancing with a private lender based on their credit report. In this case, *Handbook Letter 110 (3550), Notification that the Agency Will Continue With Loans*, will be sent by the Servicing Office indicating that the Agency will continue with the loan and the borrower's ability to refinance will be reviewed again in 2 years.
- If the borrower's income and debt shows the potential to refinance depending on current market conditions but the borrower fails to do so, *Handbook Letter 113 (3550), Follow up Request for Borrower to Refinance With Private Credit*, will be sent to encourage the borrower to take advantage of refinancing opportunities. If the borrower fails to refinance or respond to the Servicing Office within the 90-day review period, *Handbook Letter 114 (3550), Unresponsive*, will be sent to further encourage the borrower to refinance and to advise that the loan remains subject to refinancing.

**SECTION 5: RECAPTURE [7 CFR 3550.162]**

Many borrowers receive substantial amounts of payment subsidy over the course of their loan repayment period. The Agency’s subsidy recapture policy is required by statute and is designed to require borrowers to repay some or the entire subsidy received, yet provide borrowers with the opportunity to realize a benefit from increased equity in their properties. Borrowers who repay a loan are permitted to defer payment of the recapture amount as long as they continue to occupy the property and retain title. Loans approved prior to October 1, 1979, are not subject to recapture unless they were assumed on new rates and terms after that date.

**2. 22 TRIGGERING RECAPTURE**


Once the principal and interest on a loan is paid in full, subsidy recapture must be repaid whenever the borrower ceases to occupy the property or transfers title. When repayment of recapture is triggered, the Servicing Office will send a notification to inform the borrower of

the amount of recapture due. If the borrower’s current address cannot be located, the notification letter should be sent to the last known address. If the borrower does not pay the recapture amount within 60 days of the date of the notification letter, the account should be referred for acceleration and foreclosure, regardless of the amount of recapture owed.

**A. Ceasing to Occupy the Property**

Recapture will be collected when the borrower ceases to occupy the property. Ceases to occupy the property is defined as the borrower is no longer using the dwelling as their permanent residence. In cases where the borrower has elected to defer recapture, upon receipt of notice that the borrower may have vacated the property, the Servicing Office will investigate to determine if all borrowers associated with the recapture account have ceased to occupy the property. If it is determined that all borrowers cease to occupy the property, the foreclosure process will begin to recover the recapture due. If the property is temporarily unoccupied for reasons that are acceptable to the Agency recapture is not triggered.

**SCRA OF 2003**



The Servicemembers Civil Relief Act requires that the difference between the full note rate and the 6% required under this Act is not subject to recapture.

**The Servicing Office may become aware of rented or vacated property by:**

- Borrower notice to the Servicing Office
- Field Office referral
- Completed change of address form
- Returned mail
- Insurance policies
- Tax notices

## **B. Deceased Borrowers**

During the term of the loan, the Servicing Office may become aware that a borrower is deceased. In these cases, the Servicing Office will contact the persons responsible for the deceased borrower's estate to request a death certificate and legal documents showing appointment of a personal representative, administrator, or estate. The Servicing Office will inform such persons of available servicing options, such as a same rates and terms assumption as described in Section 3 of this chapter. The Servicing Office will also open a task to the field office to notify receipt of the deceased borrow information.

In cases where there is a joint borrower and only one borrower is deceased, the Servicing Office will code the account to reflect the deceased borrower. No further servicing actions are necessary.

When the Servicing Office determines that all borrowers associated with an account are deceased, the Servicing Office will code the account to reflect the deceased borrowers and determine if there is an open active loan or a recapture receivable account. If a recapture receivable account, the account will be referred to the Foreclosure Unit to recover the subsidy recapture due.

## **C. Transferring Title**

Recapture is usually triggered when the borrower transfers title. However, the way in which title is transferred can affect the recapture rules.

**Cash sale.** If the purchaser is not obtaining a loan from the Agency, the recapture amount will be paid by the seller.

- **Assumed loan, new rates and terms.** When a loan subject to recapture is assumed under new rates and terms, the recapture amount will either be paid by the seller or assumed by the purchaser. If the recapture amount is assumed, it will be capitalized so that it will accrue interest.
- **Deferred subsidy amount only.** When a borrower repays an Agency loan, exclusive of recapture, the deferred recapture amount may later be assumed by a purchaser who obtains Agency financing. If the purchaser does not obtain Agency financing, the deferred subsidy amount must be paid in full.
- **Assumed loan, same rates and terms.** When a loan subject to recapture is assumed under the same rates and terms, recapture will *not* be calculated or collected. When the new borrower transfers title or ceases to occupy the property, all subsidy subject to recapture before and after the assumption is due.

Paragraph 2.23 Calculating Recapture Owed

**2.23 CALCULATING RECAPTURE OWED**

The recapture calculation is automated. However, it is important for Servicers to understand the recapture calculation well enough to be able to explain it to borrowers who have questions. Attachment 2-A contains a Final Payoff Worksheet to illustrate how the final payoff amount, including recapture, is calculated for cases other than foreclosure and deed in lieu of foreclosure. Attachment 2-B contains a case study that illustrates the recapture concepts discussed in this section.

**A. Recapture Formulas**

Generally, the amount to be recaptured is determined by a calculation specified in the borrower’s subsidy repayment agreement and is based on the borrower’s equity in the property at the time of loan pay off. The recapture calculation includes the amount of Principal Reduction Attributed to Subsidy (PRAS) (applicable only to certain loans that received interest credit between October 1, 1979 and December 31, 1989), plus the lesser of:

- The amount of subsidy received, including all payment subsidy and deferred mortgage assistance; or
- The portion of value appreciation in the property subject to recapture.

If there is no equity based on the recapture calculation, the amount of PRAS is not collected.

However, in the case of foreclosure or deed in lieu of foreclosure, the amount to be recaptured is the full amount of subsidy received, not including PRAS. The recapture amount is only recoverable from the security property, not as a personal liability of the borrower.

In the case of foreclosure or deed in lieu of foreclosure sale, the funds received are applied or credited to the borrower’s debt in accordance with the security agreement in the following order:

- Recoverable costs (e.g. protective advances, foreclosure costs, negative escrow, late charges)
- Accrued interest
- Principal
- Subsidy (excluding PRAS).

**B. Principal Reduction Attributable to Subsidy**

Principal Reduction Attributable to Subsidy (PRAS) accrued on all Section 502 loans that were subject to recapture that were approved, and received interest credit, between October 1, 1979 and December 31, 1989. During this period subsidy (interest credit) was applied by reducing the effective interest rate. Because payments were applied at an interest rate below the Promissory Note interest rate, principal pay down was accelerated. PRAS is the difference between the actual principal balance and what the principal would have been had all payments been applied at the note rate. Because PRAS is directly attributable to subsidy, it is subject to recapture. PRAS continued to increase every month even after subsidy was no longer received. This occurred because the borrower was paying full note rate interest on a smaller principal

balance due to accelerated reduction in principal. Each subsequent payment resulted in a higher amount being applied to principal than if loan had never been subsidized. PRAS stopped accumulating on loans after December 1996. After subsidy was cancelled, PRAS could exceed the subsidy granted as there was always some principal reduction attributed to subsidy. The effect was greater on loans where subsidy was cancelled early in the loan and the loan continued at note rate for several years. At the end of the loan term, the system evens out the payments so that none of the principal reduction is due to subsidy. The system automatically begins to reduce the amount of PRAS after the loan is 15 years old. Loans made since January 1, 1990 do not have PRAS because the Agency changed the method of applying subsidy to loans.

**C. Value Appreciation**

As mentioned, recapture, in cases other than foreclosure and deed in lieu of foreclosure, is PRAS plus the lesser of either the subsidy received or a portion of the value appreciation of the property subject to recapture. In order for the value appreciation to be calculated, the borrower will provide a current appraisal, including an appraisal for any capital improvements, or arm's length sales contract as evidence of market value upon Agency request. "Appreciation" is generally construed to mean the difference between the value of the property when it was purchased and its current market value. "Value Appreciation" for the purposes of recapture is calculated with a specific formula that accounts for the borrower's mortgage debt, settlement costs, and equity. Exhibit 2-1 provides the basic value appreciation formula contained in Part 1 of the Final Payoff Worksheet provided in Attachment 2-A. The following paragraphs explain each element of the formula. This formula does not apply to cases of foreclosure and deed in lieu of foreclosure.

| <b>Exhibit 2-1</b>                                  |  |
|---|--|
| <b>Calculation of Portion of Value Appreciation</b> |  |
|   | <b>Current Market Value</b>  |
| <i>LESS:</i>  | Original amount of prior liens and subordinate affordable housing products Balance to be paid off on RHS loans               |
|   | Equity recapture due from Farmer Loan Program (FLP) loan (if applicable) Reasonable settlement costs                         |
|   | Principal reduction at note rate   |
|   | Principal Reduction Attributable to Subsidy (PRAS) (if applicable) Original equity   |
|   | Capital improvements (if applicable)   |
| <i>EQUALS:</i>                                      | Value Appreciation (If this is a positive value, continue. If this is a negative value or "\$0", there is no recapture due.) |
| <i>TIMES:</i>                                       | Percentage of outstanding balance of open loans (if applicable) Recapture Percentage   |
|   | Return on borrower's original equity   |
| <i>EQUALS:</i>                                      | <b>Portion of Value Appreciation</b> subject to recapture  |



## Paragraph 2.23 Calculating Recapture Owed

**1. *Current Market Value***

Value Appreciation is derived from the current market value of the property, whether it is being sold or not. The amount of recapture to be collected can only be reduced based on the Value Appreciation formula if the Agency has an accurate assessment of market value.

There are different methods of determining the market value. If a borrower requests a final payoff statement before making a final payment, the borrower is responsible for providing a current appraisal or arm's length sales contract. The Agency will use either of those to determine the market value and issue a final payoff statement, which will include the recapture amount.

If the borrower does not contact the Agency before making a final payment (which will likely not include the recapture amount), the Agency must determine the market value from an appraisal conducted by or for the Agency, an appraisal conducted by or for another lender, assessed value, tax records, or other reliable evidence. A broker's price opinion is not acceptable.

**2. *Original Amount of Prior Liens and Subordinate Affordable Housing Products***

Original amount of the prior liens and subordinate affordable housing products (grants, silent mortgages, forgivable loans, Community Land Trusts, etc.) that supplemented the Agency loan at the time of initial property acquisition and were used in determining original equity on the signed *Form RD 3550-12*.

**3. *Balance to be Paid Off on Agency Loans***

All amounts owed to the Agency that are being paid off, including principal and interest, late fees, insufficient funds fees, protective advances, and unauthorized assistance. These amounts are available in the FiServ loan servicing system.

**4. *Equity Recapture Due from Farm Loan Program Loan (if applicable)***

In rare cases, a borrower who previously had an FLP loan that was accelerated may have applied equity in the home to the farm debt. In such situations, the equity applied to the FLP loan must be included in the recapture calculation.

**5. *Reasonable Settlement Costs***

Reasonable and actual settlement costs incurred in selling or refinancing the property that are directly paid by the borrower without reimbursement from another party and are customary and typical for the type of transaction. Anticipated settlement costs for future transactions are not permissible.

## **6. *Principal Reductions***

- (a) Principal reduction at note rate is the amount of RHS loan principal paid by the borrower to date. This does not include principal payments that are attributed to the payment assistance subsidy.
- (b) PRAS is described in section 2.23(B).

## **7. *Original Equity***

Original equity, which is found on Form RD 3550-12, is calculated using the market value at the time of loan approval/obligation for both new and existing properties. Prepaid taxes and insurance are not considered original equity, nor are contributions toward settlement costs.

Original equity is the market value of the property at the time of original loan approval less prior liens, Rural Housing Service loans, and subordinate affordable housing products. For determining original equity, the definition of market value for Self-Help Loans is the appraised value as determined at the time of loan approval/obligation which is subject to completion per plans and specifications. For all other transactions (purchase with/without repairs/improvements, refinance with/without repairs/improvements, or new construction), the market value is defined as the lower of the purchase price, construction cost, or appraised value (as-is or as-improved, whichever is applicable) as determined at the time of loan approval/obligation.

## **8. *Capital Improvements***

Borrowers must identify any capital improvements in order to receive a credit for them. The value of a capital improvement will be determined by an appraiser based on the change in the property's value attributable to the improvement. The cost of making the improvement will **not** be considered when making this assessment. Borrowers who wish to receive credit for capital improvements will specifically request that the appraiser provide this service when the borrower or Agency obtains an appraisal for determining recapture.

Paragraph 2.23 Calculating Recapture Owed

### ***9. Amount Due if There is No Value Appreciation***

If Part I of the Final Payoff Worksheet, Attachment 2-A, indicates that there has been no value appreciation, the amount due will be the amount of the loan to be repaid, and, if applicable, the amount of any equity recapture due from an FLP loan. Part II of the Final Payoff Worksheet, Attachment 2-A, provides a formula for this calculation.

### ***10. Percentage of Outstanding Balance of Loans (Percentage of Total Debt Subject to Recapture to be Paid-Off)***

Part III of the Final Payoff Worksheet, Attachment 2-A, is designed to recapture value appreciation in proportion to the size of the loan or loans subject to recapture. Loans not subject to recapture are not considered in the recapture calculation. For example, if the Agency loan to be repaid accounts for 75 percent of the balance of all loans on the property, recapture would be calculated on only 75 percent of the value appreciation in the property. The formula for determining the percentage of the value appreciation attributable to loans subject to recapture is:

$$\frac{\text{Balance of loans subject to recapture being paid off}}{\text{Balance of all open (including leveraged) loans}}$$

### ***11. Recapture Percentage***

Recapture percentage is determined by the number of months the loan has been outstanding and the average subsidized interest rate paid over the years. If more than one loan is being paid off, the recapture percentage is determined by a weighted average interest factor.

### ***12. Return on Borrower's Equity***

Return on the borrower's equity is the difference between 100 percent and percent of borrower's original equity.

### ***13. Portion of Value Appreciation Subject to Recapture***

Part IV of the Final Payoff Worksheet, Attachment 2-A, calculates the amount of value appreciation to be recaptured based on a recapture factor. The percentage of value appreciation that is recaptured ranges from 9 to 50 percent, depending on the number of months the loan has been outstanding and the average subsidized interest rate the borrower has paid over the years. In addition, borrowers are given credit for their original equity as a percentage of original

market value by multiplying the Value Appreciation by that percentage. *Form RD 3550-12* specifies the percentage of original equity.

#### ***14. Amount Due if There is Value Appreciation***

Part V of the Final Payoff Worksheet, Attachment 2-A, is designed to combine all costs the borrower must repay into a single payoff amount. This amount begins with the amount of the Agency loan or loans to be repaid. It also includes any FLP equity recapture, any PRAS, plus the lesser of the amount of subsidy received, or the Portion of the Value Appreciation subject to recapture.

### **2.24 COLLECTING RECAPTURE INFORMATION**

Subsidy Recapture is calculated upon request for a final payoff amount, or when an account is paid in full (exclusive of recapture). In most cases a borrower who wishes to pay off their loan will contact the Servicing Office and request a payoff statement. Initially a statement of loan balance is sent instructing the borrower to provide certain documentation including an appraisal or an arm's length sales contract to calculate the amount of subsidy recapture due. Upon receipt of the documentation the Servicing Office will calculate recapture due and issue a final payoff statement.

In the majority of cases the field offices have no involvement in this process.

#### **A. Payoff With Final Payoff Statement**

A final payoff statement including subsidy recapture will be issued by the Servicing Office upon receipt of the following items:

- **Payoff date.** The amount of subsidy received will vary depending on the date the loan is paid off.
- **Market value of the property.** The market value of the property on the payoff date must be documented by an arm's length sales contract or a current appraisal meeting Agency appraisal standards. A Broker's Price Opinion is not acceptable.

## Paragraph 2.24 Collecting Recapture Information

- **Added value of capital improvements.** A borrower will ask the appraiser to document the portion of any increase in the property's value attributable to capital improvements in a separate Addendum to the appraisal. The Addendum will itemize the capital improvement made. Receipts cannot be used to determine the value of the improvements but may be valuable in ascertaining what improvements were made by the borrower. No credit for capital improvements will be given without an appraisal documenting the value of the capital improvements.
- **Estimated settlement statement.** A borrower who is refinancing will receive credit for settlement costs, which are reasonable and customary in the area, if they are documented by a good faith estimate provided by the lender or an estimated settlement statement provided by the closing agent. A borrower who is selling their house will receive credit for settlement costs, which are reasonable and customary in the area, if they are documented by an estimated settlement statement provided by the closing agent. The documentation must itemize costs paid by the borrower. An estimate from a real estate agent is not acceptable in either situation.

### **B. Payoff Without Contacting the Servicing Office for a Final Payoff Statement, or Final Installment Payment**

For borrowers that pay off their loan (regardless of why the loan is being paid off), without contacting the Servicing Office or the field office for a payoff statement, a "Congratulations" letter is sent from the Servicing Office informing them of the total amount of subsidy received along with instructions for calculating the actual subsidy recapture due. In these situations, the Agency is responsible for determining the market value for purposes of calculating subsidy recapture and the Servicing Office will request assistance from the field offices to determine the market value. Market value will be determined by an appraisal, an arm's length sales contract, assessed value, tax records, or other reliable evidence. If an appraisal is necessary, the costs associated with obtaining an appraisal will be paid by the Agency. If the borrower disagrees with the Agency's valuation, the borrower may provide their own appraisal for consideration meeting Agency standards.

#### ***1. Determining Market Value***

States vary in the methods used for obtaining appraisals; some use contract appraisers, others do their own appraisals. An abbreviated or limited appraisal (shows the market comparison only) or assessed value may also be used if the field office believes that it accurately reflects the market value of the property. If an assessed value is used, a copy of the assessment

and a written statement from the field office indicating the assessed value and that it accurately reflects the market value should be provided to the Servicing Office. Either process is acceptable based on whatever is appropriate for the state.

If capital improvements are to be considered an appraisal and an addendum to the appraisal is required. The addendum must be completed by an appraiser and should include an itemization of the added value for each capital improvement.

If an outside appraisal is needed, the Agency will incur the costs and the borrower will not be charged an appraisal fee. Costs associated with obtaining an appraisal in these instances will be paid from Program Loan Costs Funds using the "Direct Loan Financing Account" (R funds) and code "S2B1" including the borrower's account number.

## ***2. Borrower Notification – Servicing Office and Field Office Interface***

When the Servicing Office becomes aware that an account has paid off and recapture has not been calculated, they will task the field using task #590 *P & I PIF/Recap Receivable Established. DO NOT RELEASE THE SECURITY INSTRUMENTS*. The expiration timeframe will be 60 days. At the same time, task #589 *Early Payoff Notification* will be sent to the state office queue. The expiration timeframe will be 45 days to allow for follow-up before the 60 days expire. This will be an indication that the "Congratulations" letter has been sent from the Servicing Office and that the field should begin the process to have the market value established. An appraisal/evaluation should not be completed until the borrower has been given the opportunity to provide information about whether they are seeking credit for capital improvements. If the borrower does not reply within 15 days the field office can proceed in obtaining an appraisal/valuation of the property. Field offices should establish a "tickler" for the capital improvements form or contact the borrower directly for this information. The field office will have a total of 60 days to provide the market valuation to the Servicing Office. Once market value is determined, a request for calculation of recapture should be faxed to the Payoff Unit at 314- 457-4433. The information faxed to the Servicing Office should include a cover letter stating the purpose of the request, a contact person, fax and phone number, and a copy of all supporting documents.

#### Paragraph 2.24 Collecting Recapture Information

The Servicing Office will calculate recapture due and send a letter to the borrower giving 120 days to either pay the recapture amount owed, or defer payment. If the recapture is paid within 120 days and the borrower retains title and continues to occupy the property, the borrower will receive a 25% discount. The Servicing Office will also fax a copy of the letter to the field office. The case file should be marked as a recapture receivable account. If the borrower pays the recapture amount due in full, the field office will get the standard queue to prepare the release of lien.

### **2.25 DEFERRING PAYMENT OF RECAPTURE**

A borrower who repays a loan has the option of deferring payment of recapture as long as title does not transfer, and the borrower continues to occupy the property. Deferring payment of recapture typically occurs when a borrower refinances an Agency loan with private credit or pays the last loan installment.

If the borrower defers payment of recapture, an interest-free recapture receivable account must be established. The recapture receivable is not due unless the borrower ceases to occupy the property or transfers title, but payment may be made at any time. The Servicing Office must provide an annual statement indicating the unpaid recapture amount.

#### **A. Refinancing with Private Credit**

The Agency will subordinate its interests during the deferral to allow the borrower to refinance with private credit if the total amount of the proposed prior lien debt plus the recapture amount is less than or equal to the market value of the property. The amount to which the remaining Agency debt can be subordinated cannot exceed the total of: the amount required to repay the Agency debt, exclusive of recapture, reasonable settlement costs, up to 1 percent of the loan amount for servicing costs if required by lender, and the cost of any necessary repairs or improvements to the security property.

#### **B. Incentive to Pay Recapture**

It is to the Agency's advantage to reduce the number of recapture receivable accounts that must be tracked over the long term. As an incentive to encourage certain borrowers not to defer recapture, a 25 percent discount may be offered. The discount may only be offered to borrowers who are retaining title to the property and will continue to occupy the house. This generally occurs when the borrower is refinancing with private credit. The discount is not

Paragraph 2.25 Deferring Payment of Recapture

available for borrowers who sell their homes, transfer title, or no longer occupy the property. In cases where the recapture is triggered by the final installment payment or when the payoff was sent without contacting the Servicing Office for a final payoff statement, the borrower will have 120 days from the day of receipt of the letter that informs them of the recapture amount to receive the 25 percent discount.

## **2.26 TRUST ACCOUNTS**

A small number of former Agency loans that were sold to the Trust in the 1987 rural housing asset sale are no longer serviced by the Agency but are still subject to recapture. The Trust will work with their borrowers to calculate and collect recapture amounts. If a Trust borrower wishes to defer recapture payment, the account must be reassigned to the Agency. Once the Trust has reassigned the security instrument and note, and indicated the recapture amount, the Servicing Office can establish a receivable account. The Servicing Office should send the original reassigned security instrument and note to the appropriate Field Office with instructions to record the reassigned security instrument. Any costs associated with recordation are Non-recoverable.



## **SECTION 6: FINAL PAYMENTS [7 CFR 3550.161]**

### **2. 27 FINAL PAYMENT AMOUNT**

A borrower's account cannot be closed until the Agency receives payment in full. The final payment amount consists of:

- **Outstanding account balance**, including unpaid principal and interest, fees, charges, and any protective advances, FLP equity recapture, and unauthorized assistance; and
- **Recapture**, as calculated in accordance with Section 5, Paragraph 2.23. Borrowers with loans approved before October 1, 1979, are not subject to subsidy recapture.

Even if the borrower repays the full outstanding account balance, the account is not considered paid in full until recapture is paid. In cases where the Agency agrees to debt settlement as described in Section 3 of Chapter 7, the account will be considered satisfied when the settlement amount agreed to by the Agency is repaid.

Any funds remaining in a borrower's escrow account and any supervised bank account funds will be returned to the borrower separately.

### **2. 28 PAYOFF STATEMENTS**

Before paying the final payment amount due on a loan, the borrower should obtain a payoff statement from the Servicing Office. The person requesting the statement need not be the borrower as long as the borrower provides written authorization for the request. Written authorization is not needed from financial institutions or its agents as long as they can provide the borrower's social security number and account number. The Servicing Office will send a written statement to the requester (with a copy to the borrower, if the requester is someone other than the borrower, such as a real estate agent or lender). The Servicing Office will never provide a final payoff amount over the telephone. All final payment amounts must be provided through payoff statements.

Field Offices can request a payoff by completing Attachment 13-A contained in the Field Office Handbook (HB-1-3550). The attachment is faxed to the Payoff Section in the Servicing Office or payoffs may be requested by the Field Offices calling the 1-800 number.

Because the exact amount of the final payment is contingent upon the date final payment is received and the amount of recapture that must be paid, the Servicing Office will not be able to give an accurate payoff amount without specific information from the borrower. For this reason, two types of payoff statements will be provided.

#### **A. Statement of Loan Balance**

The statement of loan balance provides the current outstanding balances of the loan, which includes principal, interest, fees, late charges, and escrow (if applicable). The statement also includes the total amount of subsidy (including PRAS) granted over the life of the loan. The statement instructs the borrower to provide certain documentation including an appraisal or an arm's length sales contract to calculate the amount of recapture due.

#### **B. Final Payoff Statement**

The final payoff statement is based on the anticipated account balance at the proposed payoff date and the recapture amount calculated with whatever information has been provided by the borrower. This statement indicates the actual amount the borrower will be required to repay on the proposed payoff date.

Upon receipt of written confirmation of the information needed to calculate recapture, the Servicing Office will generate a final payoff statement and send it to the borrower. The statement will instruct the borrower where to send the final payment. If the borrower subsequently provides updated information (for example, a revised final payoff date or documentation of additional settlement costs) a new final payoff statement should be generated and sent to the borrower.

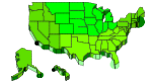
## 2.29 PROCESSING FINAL PAYMENTS

All payments will be date-stamped the day they are received and this date is used to recompute the final payoff amount. If the payoff amount based on the actual date the final payment was received is greater than the amount of the borrower's payment, the payment will be held in suspense until the borrower is contacted and the remaining funds are received. The Servicing Office should discuss the discrepancy with the borrower, agree on a new payoff date, and provide a new final payoff statement indicating the remaining amount due based on the new payoff date. If the borrower pays more than the payoff amount, the Servicing Office

After the correct payoff amount is received, the Servicing Office must take the following actions to close out the account.

### A. Release Security Documents

Since the methods and forms used to release security instruments vary by State, the Servicing Office will ask Field Offices to prepare the necessary documents when a final payment is received. Careful instructions need to be given to the Field Office in these cases since the Agency's security interests may be released. When a borrower's account is paid in full, including all subsidy recapture, all security instruments are generally released. When a borrower's loan balance is paid in full, and they defer the repayment of subsidy recapture, the security instruments are not released but may be subordinated to another lender. In these cases, clear instructions must be given to the Field Office on which documents to prepare.



## Paragraph 2.29 Processing Final Payments

**B. Release Insurance**

The Servicing Office must notify the property insurance company that the Agency's interest in the property has ended.

**C. Terminate Billing and Preauthorized Debits**

When the borrower pays off a loan, the Servicing Office must end its requests for payment through preauthorized debits or regular billing statements.

**D. Terminate Assignments of Income**

The Servicing Office must forward to the borrower any checks received as assignment of income on behalf of a borrower whose account is paid in full and notify the sender by letter that future payments should be made directly to the borrower.

## FINAL PAYOFF WORKSHEET

| <b>Part I. Value Appreciation</b>  |   |
|--|---|
| <i>(If any calculation in this section yields zero or less, stop and go to Part II.)</i> |   |
| 1.   | Current market value  |
| 2.   | <i>(less)</i> Original amounts of prior liens and subordinate affordable housing products   |
| 3.   | Balance (Line 1 - Line 2)   |
| 4.   | <i>(less)</i> RHS loans being paid off  |
| 5.   | Balance (Line 3 - Line 4)   |
| 6.   | <i>(less)</i> Equity recapture due from FLP loan  |
| 7.   | Balance (Line 5 - Line 6)   |
| 8.   | <i>(less)</i> Reasonable settlement costs   |
| 9.   | Balance (Line 7 - Line 8)   |
| 10.  | <i>(less)</i> Principal reduction (note rate) on RHS loan being paid off  |
| 11.  | Balance (Line 9 - Line 10)  |
| 12.  | <i>(less)</i> Principal reduction attributable to subsidy (PRAS) (if applicable)  |
| 13.  | Balance (Line 11 - Line 12)   |
| 14.  | <i>(less)</i> Original equity   |
| 15.  | Balance (Line 13 - Line 14)   |
| 16.  | <i>(less)</i> Capital improvements (if applicable)  |
| 17.  | Value Appreciation (Line 15 - Line 16) ( If this is a positive value, continue. If this is a negative value or "\$0", there is no recapture due.) |
| <b>Part II. Amount Due if There is No Value Appreciation</b>                             |   |
| <i>(Complete only if there is no Value Appreciation)</i>                                 |   |
| 18.  | RHS loans being paid off (Line 4)   |
| 19.  | Equity recapture from FLP loan to be collected (lesser of Line 5 or Line 6)   |
| 20.  | PRAS to be collected (lesser of Line 11 or Line 12)   |
| 21.  | Amount due (Line 18 + Line 19 + Line 20)  |
| <i>(Stop here; do not go on to Line 22)</i>  |   |

| <b>Part III. Percentage of Total Debt Subject to Recapture to Be Paid Off</b>  |   |
|--|---|
| <i>(Complete only for borrowers with leveraged loans, or if some Agency loans are not subject to recapture or will not be repaid at this time)</i> |   |
| 22. RHS loans being paid off which are subject to recapture (Line 4)   |   |
| 23. Outstanding balance of all RHS loans, prior non-Agency mortgage loans, and subordinate affordable housing products being paid off              |   |
| 24. RHS loans being paid off as a percentage of all mortgage loans (Line 22 ÷ Line 23)   | % |
| <b>Part IV. Value Appreciation Subject to Recapture</b>  |   |
| 25. Dollar value of value appreciation attributable to loans subject to recapture (Line 17; or, if Part III was completed, Line 17 x Line 24)      |   |
| 26. Recapture percentage   | % |
| 27. Value appreciation reduced by recapture percentage (Line 25 x Line 26)   |   |
| 28. Percentage of original equity (from Subsidy Repayment Agreement)   | % |
| 29. Value appreciation, reduced by recapture percentage, attributable to original equity (Line 27 x Line 28)                                       |   |
| 30. Portion of Value Appreciation subject to recapture (Line 27 - Line 29)   |   |
| <b>Part V. Amount Due if There is Value Appreciation</b>   |   |
| 31. Amount of payment subsidy received   |   |
| 32. Recapture amount (Line 12 + lesser of Line 30 or 31)   |   |
| 33. Discounted recapture amount, if applicable (Line 32 x 75%)   |   |
| 34. Final payoff amount (Line 4 + Line 6 + Line 32 or Line 33 as appropriate)  |   |

## ATTACHMENT 2-B SUBSIDY

### RECAPTURE CASE STUDY

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#### A. THE SITUATION

John and Sharon Potter bought their home 10 years ago for \$50,500. The home appraised for \$50,500 but they only qualified for a loan of \$50,000. They borrowed \$50,000 through a 33 year Section 502 loan and paid the remaining \$500 of the purchase price and \$1,000 for closing costs out of their savings.

The Potters' Note Rate is 7 percent, but they have received payment subsidy throughout the 10 years. For the first 5 years they had interest credit and a subsidized interest rate of 1 percent. Then John got a big promotion. In the midst of the family's excitement they neglected to submit the income certification information required for payment subsidy renewal. Shortly after their interest credit agreement lapsed, they submitted their information and began receiving payment assistance with an Effective Interest Rate (EIR) of 4 percent.

In year 6 of the loan the roof developed major problems. It needed to be replaced and the interior needed repairs to address the water damage. The Agency agreed to subordinate its interests to allow the Potters to obtain a loan from Big Bank for the \$5,000 needed to take care of the problem.

Last year, the Potters added a deck. The materials cost \$1,250, but since they built it themselves, there were no labor costs.

Sharon just got a great new job, and the family is selling the house and moving to a bigger place on the other side of town. They are working with Big Bank to finance the new home. They are putting down \$5,000, paying \$1,000 in points, and are financing the rest of the closing costs.

In preparation for selling the house, the Potters spent \$3,000 on new wall-to-wall carpeting and installed a new high-efficiency water heater for \$500.

The Potters have found buyers for their house and have signed a sales contract for \$65,000. They must pay \$1,500 in closing costs.

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**B. INPUTS FOR VALUE APPRECIATION CALCULATION**

- **Current market value.** Since the house is being sold in an arm's length transaction, the \$65,000 from the sales contract can be used as current market value and no appraisal is required.
- **Balance due prior lien holders.** The Potters have been making regular payments on the prior lien to Big Bank and have reduced the outstanding balance to \$1,000.
- **Balance due Agency.** The remaining loan balance due the Agency is \$38,510.
- **Unreimbursed closing costs.** The Potters are paying \$1,500 in unreimbursed closing costs to sell their home.
- **Principal reduction.** The Potters' principal reduction at the note rate was \$5,605 and principal reduction attributable to subsidy (PRAS) was \$5,885.
- **Original equity.** The difference between the purchase price on the amount of the loan was \$500.
- **Capital improvement credit.** When the new buyer's appraiser appraised the property, the Potters asked if he would document the increased value attributable to the improvements they had made. They showed him their receipts for \$1,250 for the deck and described the labor they had put into it. However, the appraiser concluded that the deck only added \$500 to the overall value of the home.

They also provided receipts for the carpet (\$3,000) and the water heater (\$500) for a total of \$3,500. The appraiser concluded that these improvements added \$2,000 to the value of the property. However, since the carpet and water heater are not capital improvements, only the \$500 value increase from the deck can be counted.

**C. INPUTS FOR RECAPTURE CALCULATION**

- **Appreciation attributable to loans subject to recapture.** The Potters' outstanding Agency balance is \$38,510, and their Big Bank balance is \$1,000, for total outstanding loans totaling \$39,510. Only the Agency loan is subject to recapture.
  - **Recapture factor from subsidy repayment agreement.** The Potters' Subsidy Repayment Agreement stipulates that a factor of 50 percent will be used to calculate subsidy subject to recapture.
  - **Appreciation attributable to original equity.** The Potters' original equity was \$500 and the original market value was \$50,500.
-



**POTTER FAMILY  
FINAL PAYOFF WORKSHEET**

| <b>Part I. Value Appreciation</b>  |          |
|--|----------|
| <i>(If any calculation in this section yields zero or less, stop and go to Part II.)</i>   |          |
| 1. Current market value  | \$65,000 |
| 2. <i>(less)</i> Original amounts of prior liens and subordinate affordable housing products   | \$5,000  |
| 3. Balance (Line 1 - Line 2)   | \$60,000 |
| 4. <i>(less)</i> RHS loans being paid off  | \$38,510 |
| 5. Balance (Line 3 - Line 4)   | \$21,490 |
| 6. <i>(less)</i> Equity recapture due from FLP loan  | 0        |
| 7. Balance (Line 5 - Line 6)   | \$21,490 |
| 8. <i>(less)</i> Reasonable Settlement costs   | \$1,500  |
| 9. Balance (Line 7 - Line 8)   | \$19,990 |
| 10. <i>(less)</i> Principal reduction (note rate) on RHS loan being paid off   | \$5,605  |
| 11. Balance (Line 9 - Line 10)   | \$14,385 |
| 12. <i>(less)</i> Principal reduction attributable to subsidy (PRAS) (if applicable)   | \$5,885  |
| 13. Balance (Line 11 - Line 12)  | \$8,500  |
| 14. <i>(less)</i> Original equity  | \$500    |
| 15. Balance (Line 13 - Line 14)  | \$8,000  |
| 16. <i>(less)</i> Capital improvements (if applicable)   | \$500    |
| 17. Value appreciation (Line 15 - Line 16) (If this is a positive value, continue. If this is a negative value or "\$0", there is no recapture due.) | \$7,500  |
| <b>Part II. Amount Due if There is No Value Appreciation</b>   |          |
| <i>(Complete only if there is no Value Appreciation)</i>   |          |
| 18. RHS loans being paid off (Line 4)  |          |
| 19. Equity recapture from FLP loan to be collected (lesser of Line 5 or Line 6)  |          |
| 20. PRAS to be collected (lesser of Line 11 or Line 12)  |          |
| 21. Amount due (Line 18 + Line 19 + Line 20)   |          |
| <i>(Stop here; do not go on to Line 22)</i>  |          |

| <b>Part III. Percentage of Total Debt Subject to Recapture to Be Paid Off</b>  |          |
|--|----------|
| <i>(Complete only for borrowers with leveraged loans, or if some Agency loans are not subject to recapture or will not be repaid at this time)</i> |          |
| 22. RHS loans being paid off which are subject to recapture (Line 4)   | \$38,510 |
| 23. Outstanding balance of all RHS loans, prior non-RHS mortgage loans, and subordinate affordable housing products being paid off                 | \$39,510 |
| 24. RHS loans being paid off as a percentage of all mortgage loans (Line 22 ÷ Line 23)   | 97.47%   |
| <b>Part IV. Value Appreciation Subject to Recapture</b>  |          |
| 25. Dollar value of value appreciation attributable to loans subject to recapture (Line 17; or, if Part III was completed, Line 17 x Line 24)      | \$7,310  |
| 26. Recapture percentage   | 50%      |
| 27. Value appreciation reduced by recapture percentage (Line 25 x Line 26)   | \$3,655  |
| 28. Percentage of original equity (from Subsidy Repayment Agreement)   | 0.99%    |
| 29. Value appreciation, reduced by recapture percentage, attributable to original equity (Line 27 x Line 28)                                       | \$37     |
| 30. Portion of Value Appreciation subject to recapture (Line 27 - Line 29)   | \$3,618  |
| <b>Part V. Amount Due if There is Value Appreciation</b>   |          |
| 31. Amount of payment subsidy received   | \$15,000 |
| 32. Recapture amount (Line 12 + lesser of Line 30 or 31)   | \$9,503  |
| 33. Discounted recapture amount, if applicable (Line 32 x 75%)   | 0        |
| 34. Final payoff amount (Line 4 + Line 6 + Line 32 or Line 33 as appropriate)  | \$48,013 |

## ATTACHMENT 2-C

# UNITED STATES DEPARTMENT OF AGRICULTURE SERVICING BORROWERS WITH BOTH RURAL HOUSING SERVICE (RHS) AND FARM SERVICE AGENCY (FSA) FARM CREDIT PROGRAM (FCP) LOANS

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### 1 Overview

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#### A

##### Background

Before reorganization, borrowers who had both RHS and FSA FCP loans, were handled according to RD Instruction 1965-A. The majority of these loans is cross-collateralized and described on the same mortgage or deed of trust. Since reorganization split the ownership of these loans into two separate Agencies, the case files and servicing procedures must also be split. FSA will now service all FCP loans and the RHS of the Rural Development mission area will service all Rural Housing (RH) (Section 502 loans and 504 loans and grants) and Labor Housing (LH) loans.

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#### B

##### Purpose

This attachment provides guidance to Field Offices on how to handle the following servicing actions for borrowers with both RHS and FSA FCP loans.

- Separating borrower case files and flagging the account. See paragraph 2.
- Identifying and servicing RH loans for FSA buildings (RHF). See paragraph 3.
- General servicing procedures, such as graduation, refinancing, partial releases, releases, and determining lien position. See paragraph 4.

## 1 Overview (Continued)

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### **B Purpose**

- Servicing delinquent and financially distressed accounts. See paragraph 5.
- Handling foreclosures and voluntary conveyances. See paragraph 6.

A Memorandum of Understanding (MOU) is being developed that will outline how accounts will be handled in the future. Until this MOU is issued, servicing will be handled according to this attachment.

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### **C Contact**

If there are questions regarding this attachment:

- Field Offices shall contact their State Office
  - FSA State Offices shall contact Kim Laris, LSPMD, through the Area Office
  - Rural Development State Offices shall contact the Deputy Administrator, Single Family Housing in the National Office.
- 

## 2 Initial Action

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### **A Separating Borrower Case Files**

Borrower case files must be split into two separate case files, if not already split. One file will be for the RHS loan and one file for the FSA FCP loan.

**Note:** RHF loans, identified with a fund code 41 and a kind code 10, are FCP loans and will be part of the FSA case file.

FSA shall retain the original case file, but move the following documents to the RHS file:

- all original documents pertinent to the RH or LH loan only

Examples: Promissory note, mortgage or deed of trust that describes only the RH or LH note, Payment Assistance Agreement

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## 2 Initial Action (Continued)

### A Separating Borrower Case Files (Continued)

- copies of all joint documents and running records that pertain to both the RHS and FSA FCP loans.

Example: Applications, farm and home plans, mortgages or deeds of trust, appraisals.

- copy of any Equity Recapture Agreement, FSA Instruction 1965-A, Exhibit D.

FSA will provide RHS with access to original documents from the borrower's case file upon request.

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### B How Accounts Will Be Flagged

To help identify borrowers who have both RHS and FCP loans described on the same security instruments:

- both Agencies must mark the front of their case files in red with, "RHS/FSA Joint Security Instruments"
- the Management Record System shall be flagged.

The following Finance Office status reports and Automated Discrepancy Processing System (ADPS) inquiry screens reflect that the borrower has an RHS and FSA FCP loan:

- for FSA, the 540 Status Report will continue to show "RH" at the right of the report under the "Scheduled Annual Installments" column

for RHS, the Dedicated Loan Origination and Servicing (DLOS) System will be flagged to show that the borrower has FCP loans

Note: There is no identifier on the RC 580 and 582 reports.

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## 2 Initial Action (Continued)

### B

**How Accounts Will Be Flagged (Continued)**

- for FSA and RHS, the Current/Past Debts Inquiry Screen will continue to show both the RHS and FSA FCP loans.

These reports and screens do not reflect that the security is cross-collateralized or that the loans are described on the same mortgage or deed of trust. Therefore, anytime the security will be subordinated, released, liquidated, etc., the security instruments will have to be carefully reviewed to determine whether both agencies must be involved.

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### C

#### **Release of Additional Security**

To simplify servicing in the future, FSA may consider releasing nonfarm dwellings that were financed with RH or LH funds and taken as additional security for the FCP loan. FSA shall refer to FSA Instruction 1965-A, section 1965.25(d) for guidance.

RHS may also consider releasing any farm property that was taken as additional security for the RH or LH loan or that was cross-collateralized because of the FCP loans. RHS shall refer to 7 CFR part 3550 for RH loans. For LH loans, an exception to the requirements of RD Instruction 1965-B, §1965.77, must be requested from the RHS Administrator.

**Note:** The mortgage or deed of trust **cannot** be released of record if it describes both the RHS and FSA FCP loan. Refer to paragraph 4 D for issuing a letter of release to the non-releasing Agency for joint mortgages or deeds of trust.

## 2 Initial Action (Continued)

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### **D Insurance Policies**

Each agency shall notify their borrowers to contact their insurance company and have the lienholder or mortgagee name changed in the mortgagee clause or declaration page to read:

UNITED STATES OF AMERICA, ACTING THROUGH THE UNITED STATES DEPARTMENT OF AGRICULTURE  
ATTN: [AGENCY NAME]  
[ADDRESS]

Both RHS and FSA should be named as mortgagee and the addresses for both should be given so that each agency will receive notices from the insurance company of cancellation, loss claims, etc. Field Offices may want to contact the insurance company directly if the company name is available. A copy of the change must be filed in the borrower's case file. Follow-up action is necessary to assure the change was made.

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## 3 RHF Loans

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### **A Identifying RHF Loans**

RHF loans shall be serviced by FSA as an FCP loan. These type loans were made with RH funds before 1974 to construct farm buildings, such as chicken houses, silos, barns, etc. These loans were officially transferred to FSA on October 2, 1995 and should no longer show on the RC 580 and 582 reports. During the transfer, the fund code was changed from a 36 or 46, kind code 10, to a fund code 41, kind code 10. These loans are now shown on the 540 Status Report.

**Note:** If any of these loans have not been transferred, FSA State Offices should prepare a memorandum:

- to KCMO, St. Louis, attention Janet Marxkors, FAX 314-539-6447
- including the borrower's name, case number, fund code, loan number, existing kind code, date of original loan, and purpose of loan

### 3 RHF Loans (Continued)

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#### A

#### Identifying RHF Loans (Continued)

- requesting that the:
    - loan be transferred to FSA
    - fund code be changed to a 41
    - kind code be changed to a 10.
- 

#### B

#### Servicing RHF Loan

When making future Farm Ownership (FO) loans and providing loan servicing, RHF loans will:

- not be counted as an FO loan for determining FO loan limitations
  - be included in DALR\$ as a fund code 46 if being considered for restructuring and:
    - be charged the lower of the original note rate or the current RH loan rate
    - be amortized up to 33 years from the date of the original note
    - require the borrower to sign Form RD 1940-17, Promissory Note
- 

### 4 General Servicing Procedures

---

#### A

#### Payoff Requests

When FSA and RHS are joint creditors and a request for payoff information is received, in addition to giving the payoff information, the contacted Agency should also alert the requestor that the other Agency also has a loan and how to secure the payoff information for that loan.

---



#### 4 General Servicing Procedures (Continued)

##### **B**

##### **Refinancing and Classification**

Refinancing and classification of accounts will be handled separately by each Agency based solely on the loans of each Agency. Copies of financial statements, cash flows, and other related documents may be shared with each Agency upon request.

##### **C**

##### **Partial Releases, Subordinations, and Consents for Joint Security Instruments**

Approval from both Agencies is required when issuing partial releases, subordinations, and consents against security instruments that describe both the RHS and FSA loan. Only one Form RD 465-1, Application for Partial Release Subordination, or Consent, is needed. The Agency receiving Form RD 465-1 shall take the lead in processing the request and obtaining the required approvals from the other Agency. The lead Agency will obtain any appraisals needed. Appraisals for farm tracts must meet the requirements of RD Instruction 1922-E, and appraisals for nonfarm tracts must meet the requirements of 7 CFR part 3550. Authority to execute these actions will be based on the established policies and procedures of each Agency.

If both Agencies cannot approve the request, it will be denied. Responses to the borrower's request may be issued in one letter by the lead Agency or separated in two letters, one from FSA and the other from RHS.

---

#### 4 General Servicing Procedures (Continued)

---

##### **D**

##### **Release of Joint Security Instruments**

FSA and Rural Development State Office approval is required to release security instruments that describe both an RHS and FSA loan. If all the security cannot be released because of outstanding obligations by the other Agency, then the following steps must be taken:

- if FSA's debt is paid in full or satisfied first, then FSA will forward the original joint security instruments to the Rural Development State Office with a letter indicating satisfaction of the debt
  - if RHS's debt is paid in full or satisfied first, then Rural Development will send the FSA State Office a letter indicating satisfaction of the debt
  - return of promissory notes will be handled according to RD Instruction 1951-D (for FSA), Chapter 7 of HB-2-3550 (for RHS), and applicable State Instructions.
  - a copy of the releasing Agency letter, if applicable, will be attached to the security instruments in the borrower's case file.
  - the security instruments will be released by the remaining Agency when appropriate.
- 

##### **E**

##### **Determining Lien Position When Both RHS and FSA Loan Were Made at the Same Time**

The lien position shall be shared by both RHS and FSA when the RHS and FSA FCP loans were made at the same time, or the security was taken at the same time, and included on the same mortgage or deed of trust. The amount shared will be proportionate to the total amount of debt owed on these loans.

See the "Guide for Calculating the Proportionate Share of Security Value/Proceeds from Joint Mortgages," at the end of this attachment for determining the amount to enter in DALR\$ if the borrower is being serviced under FSA Instruction 1951-S.

See "Guide for Calculating the Proportionate Share of Security Value/Proceeds from Joint Mortgages," for sales by borrower, foreclosures, deeds in lieu of foreclosure (voluntary conveyances), or losses covered by insurance.

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#### 4 General Servicing Procedures (Continued)

---

##### **F**

##### **Offsets**

Offsets for both Agencies will continue to be handled according to applicable Agency regulations. Payments received from administrative offsets that were established before reorganization will be paid to each Agency in order of lien priority. If both Agencies have the same lien priority, offset payments will be distributed on a prorata basis according to the “Guide for Calculating the Proportionate Share of Security Value/Proceeds from Joint Mortgages,” at the end of this attachment.

IRS offsets established before reorganization will be paid to each Agency based on oldest delinquency date. If both Agencies have the same delinquency date, offset payments will be distributed on a prorata basis based on percentage of borrower debt. These payments will be processed to the appropriate Agency by the St. Louis Finance Office following review of the borrower's account by Program Reporting Branch representatives from both Agencies.

---

##### **G**

##### **Losses Covered by Insurance**

Both Agencies will handle losses according to RD Instruction 426.1 or 7 CFR part 3550, as appropriate. If insurance proceeds will be used to repair or replace joint security property, then both Agencies must decide who will oversee and approve the repairs and replacements and make all required inspections. Normally, the Agency who holds a prior lien will be responsible for seeing that any repairs or replacements are completed. However, these duties may be shared by both Agencies to the extent that FSA may handle all farm property and RHS may handle Single Family Housing (SFH) property.

Copies of development plans, inspections, etc. shall be shared with the other Agency. Proceeds to be applied against the debt will be applied based on lien priority. Both Agencies must approve any release of insurance proceeds of joint secured property.

#### 4 General Servicing Procedures (Continued)

---

##### **H**

##### **ADPS**

Both Agencies still have access to all inquiry screens for both RHS and FCP loans.

##### **Inquiry**

##### **Screens and**

##### **Processing of**

##### **Transactions**

Generally, ADPS transactions will be processed separately by each Agency. However, there are transactions, for example, the 5G, 5H, 3E, and 4D (flags, acquisitions, and name and address changes), that when processed, affect both the FSA and RHS accounts. For this reason, both Agencies will have to coordinate the processing of such transactions with each other to avoid duplication and problems in the future.

---

##### **I**

##### **Labor**

##### **Housing**

##### **Loans**

Generally, LH loans will be serviced by the RHS official responsible for managing the Multi-Family Housing program. However, if the security is the same for both the FCP and LH loan, releases and liquidations will be handled according to this attachment.

---

#### 5 Servicing Delinquent and Financially Distressed Accounts

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##### **A**

##### **Debt Servicing Responsibilities**

Each Agency shall be responsible for servicing its own loans. However, in cases where the loans are cross-collateralized, it will be necessary for both Agencies to work together to protect the Government's security interest.

**Note:** Loans are cross-collateralized when property is used to secure both the RHS and FSA loans. The extent of cooperation needed between the two Agencies will depend on whether both loans are described on the same security instruments.

---

## 5 Servicing Delinquent and Financially Distressed Accounts (Continued)

---

### **B Security Is Not Cross- Collateralized**

When the security is **not** cross-collateralized, the following procedures shall be followed:

- RHS will service RH loans according to 7 CFR part 3550 and LH loans according to 7 CFR part 3560, and other RH and LH procedures.
  - FSA will service FCP loans according to FSA Instructions 1951-S and 1965-A, and other FCP procedures.
- 

### **C Security Is Cross- Collateralized and Loans Are Described on Separate Security Instruments**

When the security **is** cross-collateralized, and the RHS and FSA loans are described on separate security instruments:

- normal debt servicing will be handled as described in paragraph 5 B
  - foreclosures and conveyances will be handled according to paragraph 6.
- 

### **D Security Is Cross- Collateralized and RH and FCP Loans Are Described on Same Security Instruments**

FSA Instruction 1965-A, section 1965.26(c)(2) or (3) and the instructions in this paragraph must be followed by both Agencies when the security **is** cross-collateralized and RHS and FSA loans are described on the **same** security instrument.

Default on any one loan, whether RHS or FSA loan, constitutes default against the security instrument. Therefore, even if only one Agency's loan is in default, the borrower is in nonmonetary default with the other Agency.

## **5 Servicing Delinquent and Financially Distressed Accounts (Continued)**

---

**D  
Security Is  
Cross-  
Collateralized  
and RH and  
FCP Loans  
Are  
Described on  
Same  
Security  
Instruments  
(Continued)**

The following describes each Agency's responsibility for notifying the other when their loan is in default.

- If the FSA loan is in default for reasons other than the RHS loan is in default:
  - FSA shall notify the Rural Development Field Office when the borrower is sent the 1951-S servicing notices
  - RHS will consider the borrower for moratorium and payment subsidy.
- If RHS loan is delinquent or otherwise in default for reasons other than the FSA loan is in default:
  - RHS will service the RHS loan according to 7 CFR part 3550 up through acceleration
  - once the account is accelerated, RHS will notify FSA and send FSA a copy of the acceleration notice

**Note:** RHS will not proceed with foreclosure action until after FSA has completed its servicing process.

- after FSA is notified of the RHS acceleration, FSA will send the borrower FSA Instruction 1951-S, Exhibit A, Attachments 1, 3, and 4 for reason of nonmonetary default and service accordingly.
-

## **5 Servicing Delinquent and Financially Distressed Accounts (Continued)**

---

### **D Security Is Cross- Collateralized and RH and FCP Loans Are Described on Same Security Instruments (Continued)**

- The following are general rules that apply in all instances.
  - Each Agency will keep the other up to date on the status of the default and the servicing progress.
  - If it is determined necessary to bring the RHS account current or find a feasible farm plan, the RHS loan may be reamortized by RHS when the FSA loans are restructured. Reamortization of the RHS loan must be closed before or simultaneously with the FCP loans. Any new security instruments taken will be separate for each Agency's loans.
  - RHS will accelerate the account when notified by FSA that the borrower was notified of FSA's intent to accelerate (FSA Instruction 1951-S, Exhibit A, Attachments 1, 3 and 4, 5 and 6, 5-A and 6-A, 9 and 10, or 9-A and 10-A).
  - Acceleration notices must describe the reasons for acceleration, such as monetary or nonmonetary default, or both. Caution should be given to accepting an offer by the borrower that would deaccelerate the account as this could affect liquidation by the other Agency.
  - Each Agency shall send the other a copy of the acceleration notice. Appeals will be held separately since they are two separate adverse actions.
  - RHS will continue to flag the account "FAP," foreclosure action pending, when the RHS account is accelerated so that payments will not be credited to the RHS account.

## **5 Servicing Delinquent and Financially Distressed Accounts (Continued)**

### **D**

#### **Security Is Cross-Collateralized and RH and FCP Loans Are Described on Same Security Instruments (Continued)**

- If payments are received on the FCP account before FCP loans are accelerated, Field Offices should indicate on Form RD 451-2, Schedule of Remittances, which the payment should be applied since only the RHS account is accelerated.
- FSA will flag the account "ACL," accelerated, at the time the FCP account is accelerated.
- FSA will flag the account "FAP" in judicial foreclosures when the account is referred to OGC for foreclosure. In nonjudicial foreclosures, the account will be flagged "FAP" when the foreclosure sale is scheduled.
- If the FCP borrower is offered a buyout, and the RHS loan is delinquent, the RHS loan must be paid off at the same time the buyout is completed. RHS will be contacted for payoff information. FSA will handle collection of the RHS loan and distribute proceeds according to Notice FI-2139. The DALR\$ report must be modified to identify the RHS debt to be paid. If the RHS loan is not paid in full, the security instrument cannot be released. See subparagraph 4 D on how to handle releases of joint security instruments.

---

### **E**

#### **Special Instructions for DALR\$**

Follow these special instructions when primary loan servicing will be considered for a borrower with an RH loan.

- RHS loans will not be entered in the DALR\$ loan input screen. Instead, they will be entered as another lender's debt.
  - If the RHS loan will be reamortized, enter the reamortized RHS payment on Form FSA 431-2, Farm and Home Plan, Table K.
-



**5 Servicing Delinquent and Financially Distressed Accounts (Continued)**

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**E**

**Special  
Instructions  
for DALR\$  
(Continued)**

- If RHS holds a prior lien to the FSA debt, then the amount of the RHS debt will be entered in the net recovery value screen.
- See paragraph 4 D and the “Guide for Calculating Proportional Share of Joint Security Interest for DALR\$,” at the end of this attachment to determine the proportionate share of each Agency when RHS and FSA loans were made at the same time, or the security was taken at the same time, and described on the same mortgage or deed of trust
- If RHS loan is junior to one loan and before other FSA loans, then enter only the amount of RHS debt less the prior lien debt of the FSA loan, if any.
- If the RHS loan is to be paid in full at the time of buyout according to paragraph 4 D, add the following statement to the DALR\$ report at the bottom of the summary page:

"If you choose to buyout your FCP loans, you must also pay off your RHS loan(s). The unpaid balance on this loan(s) as of \_\_\_\_\_ is \$\_\_\_\_\_."

---

**F**

**Bankruptcy  
Filings With  
Joint Security  
Instruments**

Each Agency will handle bankruptcies separately according to their Agency regulations. Proof of Claim forms will be completed by each Agency. Any necessary legal coordination will be handled by OGC.

---

## **6 Handling Foreclosures and Voluntary Conveyances Against Joint Security**

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### **A**

#### **Loans Described on Separate Security Instruments**

The following procedures will be followed for voluntary conveyance, foreclosures by RHS and FSA, and third party foreclosures of cross-collateralized property when RHS and FSA loans are described on **separate** security instruments.

#### **Voluntary Conveyance**

If one Agency is proposing to accept a voluntary conveyance, (deed in lieu of foreclosure), the initiating Agency will obtain a current appraisal and a title opinion indicating lien position and send copies of both to the responding Agency with a request for release.

- If the lien is valueless, the responding Agency will prepare and send the initiating Agency a release.
- If the responding Agency holds a prior lien, the initiating Agency will voucher a check to pay off the responding Agency's lien before accepting the conveyance.
- If the responding Agency holds a junior lien, the initiating Agency will voucher a check to pay the responding Agency's lien up to the current market value of the security property, minus prior liens.

#### **Foreclosure**

If one Agency is initiating foreclosure, a determination must be made to do one of the following:

- pay off the other Agency's prior lien up to the current market value, minus other prior liens
  - obtain a release from the responding Agency, if their lien is valueless
-

## **6 Handling Foreclosures and Voluntary Conveyances Against Joint Security (Continued)**

---

### **A**

#### **Loans Described on Separate Security Instruments (Continued)**

- obtain an agreement to be named in the foreclosure suit, or given notice of the foreclosure.

**Note:** All efforts should be made to eliminate having to get the other Agency involved in the foreclosure.

#### **Third Party Foreclosures**

Third party foreclosures initiated by other than RHS and FSA will be handled separately by each Agency based on their regulations for handling third party actions.

- FSA will use FSA Instruction 1965-A, section 1965.11(c).
  - RHS will use RD Instruction 1965-B or 7 CFR part 3550, as applicable.
  - Both Agencies may bid according to RD Instruction 1955-A, section 1955.15(f) or 7 CFR part 3550, as applicable.
- 

### **B**

#### **Loans Described on the Same Security Instruments**

The following procedures will be followed for voluntary conveyances, (deeds in lieu of foreclosure) foreclosures by RHS or FSA, and third party foreclosures of cross-collateralized property when both the RHS and FSA loans are described on the **same** security instruments or a combination of separate and same security instruments.

#### **Voluntary Conveyance**

If one Agency is proposing to accept a voluntary conveyance (deed in lieu of foreclosure), the initiating Agency will obtain a current appraisal and a title opinion indicating lien position and send copies of both to the responding Agency with a request for release.

## **6 Handling Foreclosures and Voluntary Conveyances Against Joint Security (Continued)**

### **B**

#### **Loans Described on the Same Security Instruments (Continued)**

- if the lien is valueless, the responding Agency will prepare and send the initiating Agency a letter of release as described in paragraph 4 D and the original note (if required by State law to issue releases) and mortgage or deed of trust, if in that Agency's possession
- if the responding Agency holds a prior lien, the initiating Agency will voucher a check to pay off the responding Agency's lien before accepting the conveyance.
- if the responding Agency holds a junior lien, the initiating Agency will voucher a check to pay the responding Agency's lien up to the current market value of the security property, minus prior liens, including the initiating Agency's prior lien
- if the releasing Agency is partially secured with the acquiring Agency, the acquiring Agency will voucher a check to pay the releasing Agency its share of the amount of their debt up to the current market value, minus prior liens. See the "Guide for Calculating the Proportionate Share of Security Value/Proceeds from Joint Mortgages," at the end of this attachment for determining the amount of credit to each loan when the RHS and FCP loan were made or secured with the same property at the same time and described on the same mortgage or deed of trust.

#### **Foreclosure**

When foreclosure action is initiated by FSA, RHS, or a third party, the following procedures will be followed.

- If one Agency holds a separate security instrument filed before any joint security instruments, a decision must be made between the two Agencies about which one will bid to protect their security interest or foreclose.
  - If a separate security instrument was not filed before the joint security instruments and both Agencies share in lien priority, FSA will bid or initiate the foreclosure.
-

## **6 Handling Foreclosures and Voluntary Conveyances Against Joint Security (Continued)**

### **B Loans Described on the Same Security Instruments (Continued)**

- The Agency that determined not to bid or foreclose will assign its note or assumption agreement and security interest to the foreclosing or bidding Agency. The foreclosure complaint will identify all FSA and RHS loans.
- States shall request advice from their Regional OGC on preparing an assignment. The assignment shall contain language pertaining to the application of sale proceeds and cancellation of the assignment in the event foreclosure is canceled or the accounts decelerated or reinstated for any reason including bankruptcy. The assignment shall be recorded in the County records.
- The accounting system will not be revised to account for the assignment. The Agency that assigned its note and security interest will wait to debt settle the account after the foreclosure is completed and all proceeds or credits are applied.
- Proceeds from the sale of property or credit for acquisitions will be applied to the loans in the order of lien priority. See the “Guide for Calculating the Proportionate Share of Security Value/Proceeds from Joint Mortgages,” at the end of this attachment for determining the amount to be applied or credited to each loan when the RHS and FSA loan were made or secured with the same property at the same time and described on the same mortgage or deed of trust.
- If the foreclosure is canceled and the accounts decelerated or reinstated, each Agency will resume servicing of their note.

Each Agency will handle debt settlements of their own loans.

## **6 C Handling Foreclosures and Voluntary Conveyances Against Joint Security (Continued)**

### **Assigning Property ID Numbers**

Since the inventory property ID's cannot be duplicated, it will be necessary for each Agency within each State to use the following property ID numbers, along with their State and county code. The last 5 digits must be consecutively numbered within the following range:

- FSA - 00001-00499
- RHS - 00500-00599.

**Note:** The State and county codes are the same as those used for all St. Louis Finance Office purposes, not the former ASCS State and county codes.

Since the property ID numbers include the State and county code, the same numbers within the State can be used by all counties. Designating these ID numbers by Agency will eliminate discrepancies from occurring when counties attempt to assign a number that has already been used by the other Agency in the same county.

---

### **D Processing ADPS 3E Transaction for Acquisitions**

The ADPS 3E transaction for acquiring property is a combined transaction that affects both a borrower's FCP and RHS account. Therefore, anytime property is acquired by FSA or RHS from a borrower that has both an RHS and FCP loan, the St. Louis Finance Office must process the 3E transaction. This is the case even if the property is not cross-collateralized. Under no circumstances can a property be acquired jointly.

When property is acquired by FSA or RHS, according to this paragraph, the acquiring Agency shall:

- complete the "ADPS 3E Transaction Form."
- FAX a copy of the "Guide for Calculating the Proportionate Share of Security Value/Proceeds from Joint Mortgages," if applicable, and the "ADPS 3E Transaction" to the St. Louis Finance Office, attention Janet Marxkors, at 314-539-6447.

**Note:** If the security is cross-collateralized, a copy of "Guide for Calculating the Proportionate Share of Security Value/Proceeds from Joint Mortgages," and the "ADPS 3E Transaction" shall also be sent to the nonacquiring Agency

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**Guide for Calculating Proportionate Share of Joint Security Interest for DALRS**

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The proportionate share will be based on the market value less authorized selling expenses.

$$\text{Step 1. } \frac{\text{_____}}{\text{1/}} \text{ divided by } \frac{\text{_____}}{\text{2/}} = \frac{\text{_____}}{\text{RHS Percent of Debt}} \times \frac{\text{_____}}{\text{Market Value}} = \frac{\text{_____}}{\text{RHS Debt RHS Share of Market Value}}$$

$$\text{Step 2. } \frac{\text{_____}}{\text{RHS Percent of Debt (from Step 1)}} \times \frac{\text{_____}}{\text{Liquidation Expenses}} = \frac{\text{_____}}{\text{RHS Share of Expenses}}$$

$$\text{Step 3. } \frac{\text{_____}}{\text{RHS Share of Market Value (from Step 1)}} - \frac{\text{_____}}{\text{RHS Share of Expenses (from Step 2)}} = \frac{\text{_____}}{\text{Amount of Debt to enter in DALR\$ as RHS Prior Lien}}$$

- 1/ This is the unpaid debt that holds an equal priority in the security property. These loans were made at the same time or the security was taken at the same time to secure both type loans and described on the same mortgage or deed of trust.
- 2/ This is the total unpaid balance of the RHS and FCP loans that are equally secured. All other loans made before and after will not be counted in this calculation.

Note: Debt includes unpaid principal and interest. Recapture will not be included.

---

**Guide for Calculating the Proportionate Share of Security Value/Proceeds From Joint Mortgages**

The proportionate share is based on the market value less prior liens and selling costs.

**Calculation of FSA Share:**

$$\text{Step 1. } \frac{\text{FSA Debt}}{\underline{1/}} \text{ divided by } \frac{\text{Total RHS and FCP Debt}}{\underline{2/}} = \frac{\text{FSA Percent of Debt}}{\text{Market Value/Sales Proceeds less prior liens}} \times \frac{\text{Market Value/Sales Proceeds less prior liens}}{\text{Market Value/Sales Proceeds less prior liens}} = \frac{\text{FSA Share of Market Value/Sale Proceeds}}{\text{Market Value/Sale Proceeds}}$$

$$\text{Step 2. } \frac{\text{FSA Percent of Debt (from Step 1)}}{\text{FSA Percent of Debt (from Step 1)}} \times \frac{\text{Liquidation/Selling Expenses}}{\text{Liquidation/Selling Expenses}} = \frac{\text{FSA Share of Expenses}}{\text{FSA Share of Expenses}}$$

$$\text{Step 3. } \frac{\text{FSA Share of Market Value/Sale Proceeds (from Step 1)}}{\text{FSA Share of Market Value/Sale Proceeds (from Step 1)}} - \frac{\text{FSA Share of Expenses (from Step 2)}}{\text{FSA Share of Expenses (from Step 2)}} = \frac{\text{Net FSA Share of Market Value/Sale Proceeds}}{\text{Net FSA Share of Market Value/Sale Proceeds}}$$

1/ This is the unpaid debt that is equally secured with the other Agency's loan that were made at the same time or the security was taken at the same time to secure both type loans and described on the same mortgage or deed of trust.

2/ This is the total unpaid balance of the RHS and FCP loans that are equally secured. All other loans made before and after will not be counted in this calculation.

Note: Debt includes unpaid principal and interest and any recapture due, except RH recapture will not be included if acquired by RHS or FSA.



**Guide for Calculating the Proportionate Share of Security Value/Proceeds From Joint Mortgages  
(Continued)**

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Calculation of RHS Share:

$$\text{Step 4. divided by } \frac{\text{Market Value/}}{\text{of Debt}} \times \frac{\text{RHS Debt}}{\text{Sales Proceeds}} = \frac{\text{Total RHS}}{\text{Market Value/}} \times \frac{\text{RHS Percent}}{\text{and FCP Debt}} \times \frac{\text{RHS Share of } \underline{1/}}{\text{Sale Proceeds}}$$

$$\text{Step 5. } \frac{\text{RHS Percent}}{\text{of Debt}} \times \frac{\text{Liquidation/}}{\text{Selling Expenses}} = \frac{\text{RHS Share}}{\text{of Expenses}} \text{ (from Step 4)}$$

$$\text{Step 6. } \frac{\text{RHS Share}}{\text{of Market}} - \frac{\text{RHS Share}}{\text{of Expenses}} = \frac{\text{Net RHS Share}}{\text{of Market Value/}} \text{ (from Step 4)}$$

- 1/ This is the unpaid debt that is equally secured with the other Agency's loan that were made at the same time or the security was taken at the same time to secure both type loans and described on the same mortgage or deed of trust.
- 2/ This is the total unpaid balance of the RHS and FCP loans that are equally secured. All other loans made before and after will not be counted in this calculation.

**Note:** Debt includes unpaid principal and interest and any recapture due, except RH recapture will not be included if acquired by RHS or FSA.

---

**ADPS 3E Transaction**

---

**A**

**ADPS 3E Transaction Form** Complete the following for all acquisitions when the borrower has both an RHS and FSA loan. **Do not process an ADPS 3E transaction.** Complete 1 for each property acquired.

TO: Janet Marxkors, FAX Number 314-539-6447

FROM: \_\_\_\_\_  
Name of Preparer, Agency, and Telephone Number

SUBJECT: Acquisition - Borrower with FSA and RHS Loans

1) ACQUIRING AGENCY NAME (FSA OR RHS) \_\_\_\_\_

2) CASE NUMBER \_\_\_\_\_ 3) NAME OF BORROWER \_\_\_\_\_

4) OK CODE (Leave Blank) 5) DATE ACQUIRED \_\_\_\_\_

6) MOST SECURED FCP LOAN \_\_\_\_\_ 7) MOST SECURED RHS LOAN \_\_\_\_\_

8) PROPERTY ID OF ACQUIRING AGENCY \_\_\_\_\_

9) PROPERTY DESCRIPTION CODE \_\_\_\_ 10) PROPERTY SUITABILITY CODE \_\_\_\_

11) TAXPAYER ID \_\_\_\_\_

12) PROPERTY ADDRESS (Leave blank if chattel property being acquired)  
Street or route \_\_\_\_\_ City/Town, State \_\_\_\_\_

13) ACRES ACQUIRED: CROPLAND \_\_\_\_ PASTURE \_\_\_\_ WOODLAND \_\_\_\_ OTHER \_\_\_\_

14) MARKET VALUE - ACQUISITION \_\_\_\_\_ 15) DATE LAST APPRAISAL \_\_\_\_\_

16) AMOUNT CREDITED-FSA \_\_\_\_\_ RHS \_\_\_\_\_ TOTAL \_\_\_\_\_

17) DATE SUBMITTED \_\_\_\_\_ 18) BUSINESS CODE \_\_\_\_ 19) HOW ACQUIRED \_\_\_\_

20) FORM CODE \_\_\_\_ 21) CARD CODE (Leave Blank)

22) LOANS TO ACQUIRE: (ENTER FUND CODE AND LOAN NUMBER, LEAVE BLANK IF ALL FSA AND RHS LOANS ARE TO BE ACQUIRED)

FSA: \_\_\_\_\_ RHS: \_\_\_\_\_

\_\_\_\_\_

**ADPS 3E Transaction (Continued)**

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**B**

**Instructions** Complete ADPS 3E transaction form according to the following table

| Item  | Instructions  |
|-------|---|
| 1-4   | Self-explanatory.   |
| 5     | Enter the date the deed was recorded.   |
| 6     | Complete if FSA acquired the property or both Agencies will share in the market value credit, otherwise, leave blank.   |
| 7     | Complete if RHS acquired the property or both Agencies will share in the market value credit, otherwise leave blank.  |
| 8     | Enter the next available property ID of the acquiring Agency. The first 5 digits must be the first 5 digits of the borrower's case number. The last 5 digits must be in the following range: <ul style="list-style-type: none"> <li>• FSA - 00001 - 00499</li> <li>• RHS - 00500 - 00599.</li> </ul>  |
| 9     | Enter 1 of the following property description codes: <ul style="list-style-type: none"> <li>• 01 - Single Family Residence</li> <li>• 02 - Lot Only (Nonfarm tract without Residence)</li> <li>• 03 - Farm (Includes Range or Pasture Land)</li> <li>• 04 - Chattel Property</li> <li>• 08 - Recreation Property</li> <li>• 10 - Nonfarm Property Securing Farm Program Loan</li> <li>• 11 - Other</li> <li>• 15 - Farm with Secretarial Easement</li> <li>• 17 - Indian Land Reservation</li> <li>• 19 - Indian Land Reservation with Secretarial Easement.</li> </ul> |
| 10    | Enter 1 of the following property suitability codes: <ul style="list-style-type: none"> <li>• 1 - SFH-program/FCP-suitable</li> <li>• 2 - SFH-nonprogram/FCP-surplus</li> <li>• 5 - Other.</li> </ul>   |
| 11-12 | Self-explanatory.   |
| 13    | Enter the number of acres acquired to the nearest tenth by type if item 9 is 03, 15, 17, or 19.   |

**ADPS 3E Transaction (Continued)**

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**B  
Instructions  
(Continued)**

| <b>Item</b> | <b>Instructions</b>   |
|-------------|---|
| 14-15       | Self-explanatory.   |
| 16          | Enter dollars and cents. "TOTAL" must equal the FSA and RHS amount added together.  |
| 17          | Enter the date the exhibit was prepared and Faxed to the St. Louis Finance Office.  |
| 18          | <ul style="list-style-type: none"> <li>• Enter 1 of the following if item 9 is 03, 15, 17, or 19:</li> <li>• 0110 - Cash Grain</li> <li>• 0130 - Field Crops other than Cash Grain</li> <li>• 0160 - Vegetables</li> <li>• 0171 - Berries</li> <li>• 0172 - Grapes</li> <li>• 0174 - Citrus Fruits</li> <li>• 0175 - Deciduous Tree Fruits</li> <li>• 0181 - Floriculture and Nursery</li> <li>• 0182 - Food Crops Grown Under Cover (Greenhouse)</li> <li>• 0211 - Beef Cattle Feedlot</li> <li>• 0212 - Beef Cattle other than Feedlot (cow/calf, etc.)</li> <li>• 0213 - Hog Farm</li> <li>• 0214 - Sheep and Goats</li> <li>• 0219 - General Livestock</li> <li>• 0241 - Dairy Farm</li> <li>• 0251 - Chickens-Broilers</li> <li>• 0252 - Chickens-Layers</li> <li>• 0253 - Turkeys</li> <li>• 0270 - Special Enterprises (Veal, Rabbits, Mink, etc.).</li> </ul> |
| 19          | <p>Enter 1 of the following codes:</p> <ul style="list-style-type: none"> <li>• 1 - Foreclosure</li> <li>• 2 - Voluntary Conveyance</li> <li>• 3 - Third party Foreclosure (Other than FSA or RHS).</li> </ul>  |

ADPS 3E Transaction (Continued)

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**B**  
**Instructions**  
**(Continued)**

| Item | Instructions   |
|------|--|
| 20   | Enter 1 of the following codes: <ul style="list-style-type: none"><li>• 1 - Released from Liability (Involved in Bankruptcy)</li><li>• 2 - Released from Liability (Not Involved in Bankruptcy)</li><li>• 3 - Not Released from Liability.</li></ul> <p><b>Note:</b> This applies only to the Agency that acquired the property. Any remaining debt of the other Agency will not be written off with this transaction. It is the responsibility of each Agency to settle its own accounts after confirming that the acquisition was processed.</p> |
| 21   | Leave blank.   |
| 22   | List the loan or recoverable cost items, if a separate loan number from the parent loan, to be credited in the order of lien priority. The first loan for each Agency entered must be the loan indicated as the most secured loan.   |