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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 1001

Employee Responsibilities and Conduct

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its internal standards of conduct regulations to permit OPM employees and special Government employees to attend certain widely-attended events where complimentary food and refreshments are provided by otherwise prohibited sources of gifts, and to incorporate provisions on privacy.

EFFECTIVE DATE: May 23, 1988.

FOR FURTHER INFORMATION CONTACT: Stuart D. Rick (202 or FTS), 632-5030.

SUPPLEMENTARY INFORMATION: Executive Order 11,222 and 5 CFR Part 735 authorize agencies to provide in their internal standards of conduct necessary and appropriate exceptions to the rules that prohibit employees and special Government employees from accepting anything of value from certain sources. There are occasions when it is in OPM's interest for an OPM employee or special Government employee to attend a reception or another widely-attended event where complimentary food and refreshments are provided by a prohibited source of gifts. The exception being promulgated will permit acceptance of gifts of this nature under certain circumstances.

The Privacy Act of 1974, at 5 U.S.C. 552a(e)(9), requires agencies to "establish rules of conduct" for employees who deal with records covered by the Act. Formerly, OPM included such rules in its Privacy Act regulations, at 5 CFR Part 297. These Privacy Act rules of conduct are now being consolidated and placed in the internal standards of conduct regulations.

Implementation of OPM regulations is subject to 5 U.S.C. 1193(b) and 1105; specifically excluded from this process are regulations that apply solely to OPM or its employees. Likewise, the regulations of an agency that are solely internal in applicability are not subject to Executive Order 12291, Federal Regulation; or the Regulatory Flexibility Act.

List of Subjects in 5 CFR Part 1001

Conflict of interests, Government employees, Privacy, Records.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, 5 CFR Part 1001 is amended as follows:

PART 1001—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for Part 1001 is revised to read as follows:

Authority: E.O. 11222, 30 FR 6469, 3 CFR 1964-65 Comp. p. 306; 5 CFR 735.101 et seq.; Reorganization Plan No. 2 of 1978; Section 1001.735-203 also issued under Pub. L. 95-454; Section 1001.735-206a also issued under 5 U.S.C. 552a.

2. In § 1001.735-202, a new paragraph (b)(5) is added, to read as follows:

§ 1001.735-202 Gifts, entertainment, and favors.

* * * * *

(b) * * *

(5) The acceptance of food and refreshments at widely-attended gatherings of mutual interest to the government and the private sector such as receptions, seminars, conferences, and training sessions, so long as:

(i) The food and refreshments offered in conjunction with the event are not excessive;

(ii) The timing or the reason for the event would not create an appearance of impropriety; and

(iii) The employee's supervisor and the designated agency ethics official are informed of the invitation to the event and determine in advance that it is in the interest of OPM for the employee to attend the event.

* * * * *

3. Section 1001.735-206a is added, to read as follows:

§ 1001.735-206a Conduct and responsibilities mandated by the Privacy Act of 1974.

(a) An employee should avoid any action which results in the appearance of using public office to collect or gain access to personal data about individuals beyond that required by or authorized for the performance of assigned duties.

(b) An employee should not use any personal data about individuals for any purpose other than required and authorized in the performance of assigned duties; or disclose any such information to other agencies or persons not expressly authorized to receive or have access to such information, and should make any such authorized disclosures in acordance with established regulations and procedures.

(c) Each employee, and especially an employee who has access to or is engaged in any way in the handling of information subject to the Privacy Act of 1974, shall acquaint himself or herself with the regulations of this subsection as well as the pertinent provisions of the Privacy Act relating to the treatment of such information. Particular attention is directed to the following provisions of the Privacy Act:

(1) 5 U.S.C. 552a(e)(7)—The prohibition against maintaining any information regarding how any individual exercises First Amendment rights (including political or religious beliefs, and the freedom of speech, press, and assembly) unless expressly authorized by statute or the individual.

(2) 5 U.S.C. 552a(b)—The prohibition against disclosure of certain personal data without the prior written consent of the individual, except under certain limited conditions.

(3) 5 U.S.C. 552a(e)(1)—The prohibition against collecting or maintaining any personal data about individuals, except as necessary and relevant to perform a function of the Office which is authorized by statute or Executive order.

(4) 5 U.S.C. 552a(e)(2)—The requirement to collect information which may result in an adverse determination about an individual from that individual whenever practicable.

(5) 5 U.S.C. 552a(e)(3)—The requirement to inform individuals from whom information about themselves is solicited of the authority under which the solicitation is made and whether the

disclosure of the information is mandatory, the purposes for which the information will be used, the routine uses which may be made of the information, and the consequences of failure to provide such information.

(6) 5 U.S.C. 552a(b) and (e)(10)—The obligation of employees to comply with established safeguards and procedures to protect personal data from anticipated threats or hazards to the security or integrity of the data which could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual about whom information is maintained.

(7) 5 U.S.C. 552a(c) (1), (2), and (3)—The obligation of employees to maintain an accounting of all disclosures of personal information from systems of records, except for those disclosures made within the Office to persons having an official need to know or to the public under the Freedom of Information Act (5 U.S.C. 552).

(8) 5 U.S.C. 552a(e) (5) and (6)—The obligation of employees to assure that any personal information about individuals is as accurate, relevant, timely and complete as is reasonably necessary to assure fairness to the individual at such time as any such information is utilized by the Office in making a determination about the individual or when the information is disclosed.

(9) 5 U.S.C. 552a(d) (1), (2), and (3)—The obligation of employees to permit individuals to have access to records pertaining to themselves in accordance with established Office procedures and to have an opportunity to request that such records be amended.

(10) 5 U.S.C. 552a(c)(4) and (d)(4)—The obligation to inform prior recipients of personal data when a record is amended pursuant to the request of an individual or a statement of disagreement has been filed, and to advise any subsequent recipients of the disputed information.

(11) 5 U.S.C. 552a(n)—The prohibition against renting or selling lists of names and addresses unless specifically authorized by law.

(12) 5 U.S.C. 552a(i) (1), (2), and (3)—The criminal penalties to which an employee may be subject for failing to comply with certain provisions of the Privacy Act of 1974.

4. In § 1001.735-303, a new paragraph (b)(5) is added, to read as follows:

§ 1001.735-303 Gifts, entertainment, and favors.

* * * * *

(b) * * *

(5) The acceptance of food and refreshments at widely-attended gatherings of mutual interest to the government and the private sector such as receptions, seminars, conferences, and training sessions, so long as:

(i) The food and refreshments offered in conjunction with the event are not excessive;

(ii) The timing or the reason for the event would not create an appearance of impropriety; and

(iii) The special Government employee's supervisor and the designated agency ethics official are informed of the invitation to the event and determine in advance that it is in the interest of OPM for the special Government employee to attend the event.

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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1864, 1927, 1951, 1955, and 1956

Debt Settlement; Community and Business Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends the Agency's policies and procedures governing the debt settlement of Community Program loans and insured Business and Industry loans. This rule is necessary to comply with section 1309 of the Food Security Act of 1985, Public Law (Pub. L.) 99-198. The effect of this action is to remove debt settlement actions appropriate to Community and Business Programs from tbe present regulation to a new regulation. The new Community and Business Programs regulation eliminates the numerous restrictions and time intervals for debt settlement contained in the present regulation.

EFFECTIVE DATE: April 21, 1988.

FOR FURTHER INFORMATION CONTACT: Susan G. Wieferich, Senior Loan Officer, Program Management Branch, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6320, South Agriculture Building, Washington, DC 20250; telephone (202) 382-1490.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be nonmajor. The action is not likely to result in any of the following: (a) An annual effect on the economy of $100 million or more, (b) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This action affects the following FmHA programs as listed in the catalog of Federal Domestic Assistance:

Sec.
10.414 Resource, Conservation and Development Loans.
10.418 Water and Waste Disposal Systems for Rural Communities.
10.419 Watershed and Flood Prevention Loans.
10.422 Business and Industry Loans.
10.423 Community Facility Loans.

These programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985, as appropriate and any subsequent notices that may apply.)

Regulatory Flexibility Act

FmHA has determined that this action will not have a significant economic impact on a substantial number of small entities, because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Background

Debt settlement for Community and Business Programs is governed by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921-1996). The major reason for removing debt settlement actions appropriate to Community and Business Programs from the present regulation to a new regulation is to comply with section 1309 of the Food Security Act of 1985 (Pub. L. 99–198). Public Law 99–198 provides the Secretary with greater flexibility in administering the debt settlement claims for Community and Business Programs, including compromise, adjustment, cancellation, and chargeoff actions. In addition, the action will correct inconsistencies, delete obsolete material, clarify wording and, where applicable, update references in other program regulations. Form FmHA 456–1, "Application for Settlement of Indebtedness," will be renumbered to Form FmHA 1956–1 and revised to make the form more appropriate for use by Community and Business Programs. The changes will result in more efficient service to the public, while continuing protection of the Government's interest.

Comments

A proposed rule was published in the **Federal Register** (52 FR 44600) on November 20, 1987, and invited comments for 30 days ending December 21, 1987. No responses were received. As a result, FmHA is adopting that proposed rule as a final rule without change.

List of Subjects

7 CFR Part 1864

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 1927

Accounting, Administrative practice and procedure, Credit, Loan programs—Agriculture, Rural areas.

7 CFR Part 1951

Account Servicing, Credit, Loan programs—Housing and community development, Mortgages.

7 CFR Part 1955

Foreclosure, Government acquired property.

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1864—DEBT SETTLEMENT

1. The authority citation for Part 1864 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

2. Section 1864.1 is revised to read as follows:

§ 1864.1 Purpose and scope.

This part sets forth the policies and procedures for settlement of debts owed the United States and administered by the Farmers Home Administration (FmHA) under any of its programs, except Farmer Program loans, Housing loans, Community Program loans, insured Business and Industry loans, nonprogram (NP) loans, Economic Opportunity (EO) loans, and claims against third party converters. This regulation does not cover releases from personal liability in transfer or voluntary conveyance cases. Debts owed under Farmer Programs or Single Family Housing programs will be settled in accordance with Subpart B of Part 1956 of this chapter. Debts owed under Community Programs and the insured Business and Industry Program will be settled in accordance with Subpart C of Part 1956 of this chapter. Settlement of claims against third party converters and settlement of nonprogram (NP) loans, Economic Opportunity (EO) loans, and Housing loans other than Single Family Housing is not authorized under this part and proposed settlements of these types of claims should be submitted to the National Office for settlement pursuant to the Federal Claims Collection Standards, 4 CFR Parts 101–105.

§§ 1864.2, 1864.7, 1864.8, 1864.9, 1864.10, 1864.12, 1864.15, 1864.17, and 1864.19 [Amended]

3. The reference, "Form FmHA 456–1," is changed to read "Form FmHA 1956–1" in the following sections:

Section 1864.2 (d), (f), (h)(2), (j), (l),
Section 1864.7 (a), (a)(1)(ii), (a)(3) (two places),
Section 1864.8 title and introductory text, (two places),
Section 1864.9, 1864.9(a),
Section 1864.10(d)(1),
Section 1864.12(a),
Section 1864.15 title and introductory text, (three places),
Section 1864.15 (a), (a)(1), (b)(1), (c) and (c)(1), (five places),
Section 1864.17(a)(1),
Section 1864.19(b) (two places).

4. Section 1864.3 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 1864.3 Compromise and adjustments.

* * * * *

(b) * * *

(1) * * *

(ii) For this type of settlement an asterisk (*) will be inserted in Part VI of Form FmHA 1956–1 after "(D)" and before the word "I". In the blank space below Part VI(D) of Form FmHA 1956–1 the following will be inserted:

* With knowledge of the penalties for false statements provided by 18 United States Code 1001 ($10,000 fine and/or five years imprisonment) and with knowledge that this financial statement is submitted by me (us) to affect action by the Department of Agriculture.

* * * * *

§ 1864.9 [Amended]

5. Section 1864.9(b) is amended in the last sentence by changing the words "Part VII in lieu of completing Part IV of Form FmHA 456–1" to read "Part VIII in lieu of completing Part IV of Form FmHA 1956–1."

§ 1864.10 [Amended]

6. Section 1864.10(a) is amended in the last sentence by changing the reference "Part V of Form FmHA 456–1" to read "Part VI of Form FmHA 1956–1."

7. Section 1864.10 is amended by revising the introductory text of paragraph (d)(1) to read as follows:

§ 1864.10 Joint debtors.

* * * * *

(d) * * *

(1) Form FmHA 1956–1 will be prepared by showing at the top of the form the name of the debtor requesting settlement, followed by the name of the other debtor, for example, "John Doe, joint debtor with Mary Doe, deceased," "John Doe, joint debtor with Mary Doe, bankrupt," "John Doe, joint debtor with Mary Doe, whereabouts unknown," or "John Doe, joint debtor with Mary Doe, impossible or impracticable to obtain signature," as appropriate. In addition to the information concerning settlement of the debt as to the debtor making application, information also will be shown in Part VIII of Form FmHA 1956–1 which justifies settlement of the debt as to the debtor(s) not joining in the application as required under appropriate paragraphs of this Instruction.

* * * * *

§ 1864.15 [Amended]

8. Section 1864.15(a)(3) is amended in the first sentence by changing the reference "Part VII of the form" to "Part VIII of the form."

PART 1927—FEDERAL STATUTE OF LIMITATIONS

9. The authority citation for Part 1927 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301, 7 CFR 2.70.

Subpart A—Federal Statute of Limitations

10. Section 1927.7 is amended by revising paragraph (c)(3) to read as follows:

§ 1927.7 Servicing contract claims.

* * * * *

(c) * * *

(3) Settling the debt according to Part 1864 of this chapter (FmHA Instruction 456.1) or Subpart C of Part 1956 of this chapter when the borrower is eligible; or

* * * * *

PART 1951—SERVICING AND COLLECTIONS

11. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Account Servicing Policies

12. Section 1951.15 is amended by revising paragraph (e) to read as follows:

§ 1951.15 Return of paid-in-full or satisfied notes to borrower.

* * * * *

(e) *Debt settlement case.* See Part 1864 of this chapter (FmHA Instruction 456.1) or Subparts B or C of Part 1956 of this chapter for the handling of notes in debt settlement cases.

* * * * *

Subpart B—Collections

13. Section 1951.51 is amended by revising paragraph (a) to read as follows:

§ 1951.51 Purpose.

(a) Checks, money orders, and similar items to be remitted as payments on accounts of Farmers Home Administration (FmHA) should be made payable to the FmHA, except that offers in compromise of judgment accounts authorized in Part 1864 of this chapter (FmHA Instruction 456.1), or Subparts B and C of Part 1956 of this chapter, will be made payable to the Treasurer of the United States and transmitted to the State Director for referral to the appropriate United States Attorney through the representative of the Office of the General Counsel (OGC). All collection items in any form other than coin and currency will be accepted subject to collection, that is, subject to the items being paid. Any remittance items which currently are not payable, including postdated checks, will not be accepted for payment on indebtedness due FmHA. When such items are received, they will be returned immediately to the remitter.

* * * * *

PART 1955—PROPERTY MANAGEMENT

14. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

15. Section 1955.18 is amended by revising paragraph (f) to read as follows:

§ 1955.18 Actions required after acquisition of property.

* * * * *

(f) *Unsatisfied account.* Farmer Program loan borrowers will be sent a letter similar to exhibit F of this subpart (available in any FmHA office). If unsatisfied account balances cannot be settled in accordance with Part 1864 of this chapter (FmHA Instruction 456.1) or Subpart C of Part 1956 of this chapter, the account will be reclassified to collection-only by submitting Form FmHA 404-1, "Case Reclassification," to the Finance Office. After reclassification to collection-only, Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," or for Multiple Family Housing, Form FmHA 1944-54, "Multiple Family Housing Change/ Borrower Name/Address/Case Number/Project Number/Loan Number," will be submitted to the Finance Office to furnish the borrower's new address, if known. Collection-only accounts will be serviced in accordance with § 1951.7 of Subpart A of Part 1951 of this chapter.

* * * * *

PART 1956—DEBT SETTLEMENT

16. The authority citation for Part 1956 reads as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Debt Settlement—Farmer Programs and Single Family Housing

§§ 1956.57, 1956.58, 1956.66, 1956.70, 1956.75, 1956.85, 1956.96, 1956.99 [Amended]

17. The reference, "Form FmHA 456-1," is changed to read "Form FmHA 1956-1" in the following sections:

Section 1956.57 (b), (j)(2), (j)(3) (two places),

Section 1956.58 (b)(1), (b)(2)(i)(B),

Section 1956.66 introductory text, § 1956.66 (b), (c),

Section 1956.70 (b)(2), (b)(3), (c),

Section 1956.75(a),

Section 1956.85(a)(3), § 1956.85(b)(2) (two places),

Section 1956.96(b)(3),

Section 1956.99.

18. Subpart C of Part 1956 consisting of §§ 1956.101-1956.150 is added to read as follows:

Subpart C—Debt Settlement—Community and Business Programs

Sec.

Subpart C—Debt Settlement—Community and Business Programs

§ 1956.101 Purpose.

This subpart delegates authority and prescribes policies and procedures for debt settlement of Water and Waste Disposal System loans; Community Facility loans; Association Recreation loans; Watershed loans and advances; Resource, Conservation and Development loans; Rural Renewal loans; and insured Business and Industry loans.

§ 1956.102 Application of policies.

If a debt is eligible for settlement, the debt settlement authorities of the Farmers Home Administration (FmHA) should be explained and the privileges thereof extended to the debtor. All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly, FmHA personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations in this subpart.

§ 1956.103–1956.104 [Reserved]

§ 1956.105 Definitions.

(a) *Settlement.* The compromise, adjustment, cancellation, or chargeoff of a debt owed to FmHA. The term "settlement" is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

(b) *Compromise.* The satisfaction of a debt, including a release of liability, by the acceptance of a lump-sum payment of less than the total amount owed on the debt.

(c) *Adjustment.* The satisfaction of a debt, including a release of liability, when acceptance is conditioned upon completion of payment of the adjusted amount at a specific future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement have bee made.

(d) *Cancellation.* The final discharge of a debt with a release of liability.

(e) *Chargeoff.* To write off a debt and terminate all servicing activity *without* a release of liability. This is not a final discharge of the debt, but rather a decision upon the part of the agency to remove the debt from agency receivables.

(f) *Debtor.* The borrower of loan funds under any of the FmHA programs specified in § 1956.101 of this subpart.

(g) *Security.* All that serves as collateral for the FmHA loan(s), including, but not limited to, revenues, tax levies, municipal bonds, and real and chattel property.

(h) *Servicing official.* The FmHA official who is primarily responsible for servicing the account.

(i) *United States Attorney.* An attorney for the United States Department of Justice.

§1956.106–1956.108 [Reserved]

§ 1956.109 General requirements for debt settlement.

(a) *Debt due and payable.* The debt or any extension thereof on which settlement is requested must be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application for settlement, unless the debt is to be cancelled without application under § 1956.130(b) or charged off under § 1956.136 of this subpart.

(b) *Disposition of security.* Ordinarily, all security will be disposed of prior to the date of application for settlement. There are exceptions:

(1) It may be necessary to abandon security through the debt settlement process. For example, a community may be rendered uninhabitable by a toxic or hazardous substance. In such cases, debt settlement may proceed provided the servicing official determines:

(i) That further collection efforts with respect to the security in question would be ineffective or uneconomical,

(ii) That it is in the best interests of the Government to proceed with debt settlement,

(iii) That the proposal otherwise meets the requirements appropriate to the type of settlement under consideration, and

(iv) The approval of the Administrator is obtained.

(2) A servicing action may have been carried out which resulted in a less than complete disposition of security. For example, the Government may have consented to a voluntary sale of a debtor's real and chattel property without reference to other security, which might include, but is not limited to: an additional lien on revenue, a third party pledge of security, or a pledge of personal liability. In such cases, debt settlement may proceed provided the requirements of § 1956.109(b)(1) of this subpart are met.

(3) Security can be retained under the compromise and adjustment offers as specified in § 1956.124 of this subpart.

(4) Settlement of a claim against an estate will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, dower and curtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(c) *Proceeds from the sale of security.* Proceeds from the sale of security must be applied on the debtor's account, taking into consideration the disposition requirements of any grant agreement, prior to the date of application for settlement, except when security is retained as provided for in § 1956.109(b) of this subpart. Debtors will not be allowed to sell security and use the proceeds as part or all of the debt settlement offer.

(d) *County Committee review.* Proposed settlement actions will be reviewed by the County Committee except for the cancellation of debts discharged in bankruptcy under § 1956.130(b)(1) of this subpart or when a claim has been referred to a United States Attorney under § 1956.112(d) of this subpart. No settlement shall be approved if it is more favorable to the debtor than recommended by the County Committee.

(e) *Assistance from Office of General Counsel (OGC).* When necessary, State Directors will obtain advice from OGC in handling proposed debt settlement actions.

(f) *Format.* Form FmHA 1956–1, "Application for Settlement of Indebtedness," will be utilized for all settlement actions under this subpart.

§ 1956.110 Joint debtors.

Settlements may not be approved for one joint debtor unless approved for all debtors. Joint debtors includes all parties, individuals, and organizations, who are legally liable for payment of the debt.

(a) Individual settlement offers from joint debtors can be accepted and processed only as a joint offer. A separate Form FmHA 1956–1 will be completed by each debtor unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application.

(b) If one of the joint debtors is deceased or has received a discharge of the debt in bankruptcy, or if the whereabouts of one of the debtors is unknown, or it is otherwise impossible or impractical to obtain the signature of the debtor, the application for settlement may be accepted without that debtor's signature if it contains adequate information on each of the debtors to justify settlement of the debt as to each of the debtors. The name of the debtor requesting settlement will be shown at the top of Form FmHA 1956–1 followed by name and status of the other debtor. For example, "John Doe, joint debtor with Jane Doe, deceased."

(c) Joint debtors must be advised in writing that all debtors will remain liable for the balance of the debt until any payment(s) due under the joint offer have been made.

§ 1956.111 Debtors in bankruptcy.

FmHA personnel will process reorganization plans of debtors filing under Chapter 9, Chapter 11, or Chapter 13 as follows:

(a) Plans submitted by debtors under Chapters 9, 11, and 13 must be sent by the servicing official to the State Director who will recommend either acceptance or rejection of the plans and refer them to the United States Attorney through OGC. When the plan calls for the adjustment of a debt to FmHA, the State Director will obtain the advice of the Administrator before providing OGC with a recommendation on acceptance or rejection of this plan.

(b) The United States Attorney will advise the State Director, through OGC, as to approval or rejection of the debtor's reorganization plan. The State Director will then notify the Finance Office by memorandum of the terms and conditions of the bankruptcy reorganization plan, including any adjustment of the debt.

§ 1956.112 Debts ineligible for settlement.

Debts will not be settled:

(a) If referral to the Office of Inspector General (OIG) and/or to the OGC is contemplated or pending because of suspected criminal violation, or

(b) If civil action to protect the interests of the Government is contemplated or pending, or

(c) If an investigation for suspected fiscal irregularity is contemplated or pending, or

(d) When a claim has been referred to or a judgment has been obtained by the United States Attorney and the debtor requests settlement, the servicing official will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, and therefore, FmHA has no authority to agree to a settlement offer. If the debtor wishes to make a settlement offer, it must be submitted with any related payment directly to the United States Attorney for consideration.

§§ 1956.113–1956.117 [Reserved]

§ 956.118 Approval authority.

District Directors cannot approve debt settlement actions. Therefore, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. Subject to this subpart, the compromise, adjustment, cancellation, or chargeoff of debts will be approved or rejected:

(a) By the State Director when the outstanding balance of the indebtedness involved in the settlement is less then $50,000, including principal, interest, and other charges.

(b) By the Administrator or his designee when the outstanding balance of the indebtedness involved in the settlement is $50,000 or more, including principal, interest, and other charges.

§§ 1956.119–1956.123 [Reserved]

§ 1956.124 Compromise and adjustment.

Nonjudgment debts may be compromised or adjusted upon application of the debtor(s), or if the debtor is an individual and unable to act, upon application of the guardian, executor, or administrator of the debtor's estate.

(a) *General provisions.* Debts, regardless of the amount, may be compromised or adjusted subject to the following:

(1) The debt or any extension thereof on which compromise or adjustment is requested is due and payable under the terms of the note or other instrument, or because of acceleration by written notice, prior to the date of application for settlement.

(2) The period of time during which payments on adjustment offers are to be made cannot exceed five years without the approval of the Administrator.

(3) Efforts will be made to avoid applications for settlement in which debtors offer a specified amount payable upon notice of approval of the proposed settlement.

(b) *Debtor's ability to pay.* In evaluating the debtor's settlement application, it is essential that reliable information be obtained in sufficient detail to assure that the offer accurately reflects the debtor's ability to pay. The debtor's income, expenses, and nonsecurity assets are critical factors in determining the type of settlement and the amount which the debtor can reasonably be expected to offer. Critical information should include the following:

(1) The debtor's total present income from all sources will be determined. In addition, careful consideration will be given to the probable sources, amount, and stability of income to be received over a reasonable period of years. For individuals, public welfare assistance and pensions, including old age pensions and pensions received by veterans for pensionable disabilities will not be considered as sources of funds with which to make compromise and adjustment offers.

(2) The debtor's operation and maintenance expenses, and, in the case of individuals, probable living expenses.

(3) The priority of payments on debts to third parties.

(4) When the debtor is largely dependent on income from an occupation in which manual labor is required, age and health of the individual are vital factors in determining the ability to pay. The number in the debtor's family, their ages and condition of health, will also be weighed in determining the ability to pay. However, when the debtor's income is from investments, business enterprises, or management efforts, age and health of both individual and family are of less importance.

(5) The value of the debtor's assets in relation to debts and liens of third parties is important in determining the debtor's ability to pay. It is recognized that debtors must retain a reasonable equity in essential nonsecurity property in order to continue normal operations and, in the case of an individual, to meet family living expenses over a period of years. Under this policy a reasonable equity in a modest nonsecurity homestead occupied by the debtor, whether or not exempt from levy and execution will not be considered as available for offer in settlement. Nonsecurity property which is in excess of minimum business and/or family living needs and which is not exempt from levy and execution should be considered when determining the debtor's ability to pay.

(c) *Debtor unable to pay in full.* Debts may be compromised or adjusted and security property retained by the debtor, provided:

(1) The debtor is unable to pay the indebtedness in full, and

(2) The debtor has offered an amount equal to the present fair market value of all security or facility financed, and

(3) The debtor has offered any additional amount which the debtor is able to pay, and

(4) The total amount offered represents a reasonable determination of the debtor's ability to pay.

(d) *Debtor able to pay in full but refuses to do so.* If the debtor has the ability to pay in full but refuses to do so, debts may be compromised or adjusted and security property retained by the debtor under certain conditions:

(1) The OGC advises that the Government is unable to enforce collection in full within a reasonable time by enforced collection proceedings, and the amount offered represents a reasonable settlement considering:

(i) Availability of assets or income which may be realized by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law, and

(ii) Inheritance prospects within 5 years, and

(iii) Likelihood of debtor obtaining nonexempt property or income within 5 years out of which there could be collected a substantially larger sum than the amount of the present offer, and

(iv) Uncertainty as to the price that the security or other property will bring at forced sale, *or*

(2) The OGC advises that there is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and the amount offered represents a reasonable settlement considering:

(i) The probability of prevailing on the legal issues involved, and

(ii) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors, and

(iii) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsuccessful in litigation, *or*

(3) When the cost of collecting the debt does not justify enforced collection of the full amount. In such cases, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigious costs of collection. Such discount will not exceed $600 unless the OGC advises that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

§ 1956.125-1956.129 [Reserved]

§ 1956.130 Cancellation.

Nonjudgment debts, regardless of the amount, may be cancelled with or without application by the debtor.

(a) *With application by debtor.* Debts may be cancelled upon application of the debtor(s), or if the debtor is an individual and unable to act, upon application of the guardian, executor, or administrator of the debtor's estate. The following conditions apply:

(1) The servicing official furnishes a favorable recommendation concerning the cancellation, and

(2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected, and

(3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so, and

(4) The debt or any extension thereof is due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application.

(b) *Without application by debtor.* Debts may be cancelled upon a favorable recommendation of the servicing official in the following instances:

(1) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by the use of Form FmHA 1956-1 with a copy of the Bankruptcy Court's Discharge Order attached. No attempt will be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

(2) *Impossible or impractical to obtain a debtor's signature.* Debts may be cancelled if it is impossible or impractical to obtain a signed application and the requirements of § 1956.130(a) (1), (2), and (3) *only* of this subpart are met. Form FmHA 1956-1 will document:

(i) The sources of information obtained,

(ii) That a current effort was made to obtain the debtor's application and the date of such effort,

(iii) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

(3) *Deceased debtors (individuals only).* The following conditions must exist:

(i) There is no known security,

(ii) An administrator or executor has not been appointed to settle the debtor's estate but the financial condition of the estate has been investigated and it has been established that there is no reasonable prospect of recovery, *or*

(iii) An administrator or executor has been appointed to settle the estate of the debtor, and

(A) A final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court, but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been effected but such assets have been disposed of or lost in a manner which the OGC advises will preclude an reasonable prospect of recovery by the Government.

(4) *Disappeared debtor (individuals only).* The following conditions must exist:

(i) The debtor has disappeared and cannot be found without undue expense. Reasonable efforts either in person or in writing will be made to locate the debtor. These efforts, including the names and dates of contacts, and the information furnished by each person, will be fully documented on Form FmHA 1956-1,

(ii) There is no known security for the debt and the debtor has no other assets from which the debt could be collected, and

(iii) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

§§ 1956.131-1956.135 [Reserved]

§ 1956.136 Chargeoff.

(a) *Judgment debts.* Subject to the provisions of § 1956.112(d) of this subpart, judgment debts, regardless of the amount, may be charged off without the debtor's signature upon a favorable recommendation of the servicing official provided:

(1) The United States Attorney's file is closed, and

(2) The requirements of § 1956.130(b)(1), (2), (3), or (4) of this subpart have been met, as appropriate, or two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it can presently be made a lien.

(b) *Nonjudgment debts.* Debts which cannot be settled under other sections of this subpart may be charged off without the debtor's signature upon a favorable recommendation of the servicing official in the following instances:

(1) When the OGC advises in writing that the claim is legally without merit, or that evidence necessary to prove the claim in court cannout be produced.

(2) When there is no known security for the debt, the debtor has no other assets from which the debt could be collected, and the debtor:

(i) Is unable to pay any party of the debt and has no reasonable prospect of being able to do so, or

(ii) Is able to pay part or all of the debt but refuses to do so, and an opinion is received from OGC to the effect that the Government cannot enforce collection of a significant amount from assets or income.

(3) When the debtor is deceased (individuals only), disappeared (individuals only), or when it is impossible or impractical to obtain the debtor's signature, and the conditions of § 1956.136(b)(2) of this subpart are met.

§ 1956.137 [Reserved]

§ 1956.138 Processing.

(a) *Approval.* When a debt settlement application is approved, the State Director will:

(1) Send the original approved Form FmHA 1956-1 to the Finance Office.

(2) Notify debtors in writing of settlement approval, including the specific amount and terms of the offer that were accepted, for compromise and

adjustment offers under § 1956.124 and cancellations with application under § 1956.130(a) of this subpart.

(3) Not be required to notify debtors of settlement approval when debts are cancelled without application under § 1956.130(b) or charged off under § 1956.136 of this subpart.

(b) *Requesting additional information.* When rejection appears to be necessary either because of lack of information or because the amount of a compromise or adjustment offer is inadequate, the State Director may request the servicing official to obtain the additional information or make an effort to obtain a more acceptable offer, as the circumstances justify. Notice of rejection of an offer will be withheld in such cases until sufficient time has elapsed to enable the debtor to present further information or a new offer.

(c) *Rejection.* When a debt settlement application is rejected, the State Director will:

(1) Insert the reasons for rejection on the Form FmHA 1956-1.

(2) Retain the original Form FmHA 1956-1 in the State Office and return case files and copies of Form FmHA 1956-1 to the servicing official.

(3) Request the Finance Office to return any adjustment or compromise payment held by the Finance Office to the borrower, in care of the servicing official.

(4) Return any adjustment or compromise payment held by the State Office to the borrower, in care of the servicing official.

(5) Notify the debtor in writing of the reasons for the rejection for compromise and adjustment offers under § 1956.124 and cancellations with application under § 1956.130(a) of this subpart.

(d) *Appeal rights.* In accordance with Subpart B of Part 1900 of this chapter, the debtor will be given the right to appeal the rejection of any debt settlement offer made by the debtor under this subpart.

§ 1956.139 Collections.

(a) When the debtor offers a lump-sum payment in compromise or an intitial payment on an adjustment offer, that payment will accompany the settlement application at the time the application is filed with the servicing official.

(b) Except as provided in paragraph (c) of this section, debt settlement payments will be deposited and transmitted as required in Subpart B of Part 1951 of this chapter.

(c) Checks or check transmittal letters containing restrictive notations such as "Settlement in full" or "Payment in full," will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(d) All payments evidenced by Form FmHA 451-2, "Schedule of Remittances," bearing the legend "Compromise Offer—FmHA" or "Adjustment Offer—FmHA," will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer.

(i) Upon receipt of an approved Form FmHA 1956-1, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds, the Finance Office will prorate the amount received on the basis of the total principal balance due the respective revolving funds.

(ii) Upon notification of a rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the servicing official, the amount held in the Deposits Fund Account.

(e) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form FmHA 1956-1 will be held in a suspense file pending payment of the full amount of the approved offer.

(f) If an approved debt settlement agreement is later voided by the State Director in accordance with § 1956.142(e) of this subpart, any payments which have been received shall be retained as payments on the debt owed at the time the compromise or adjustment offer was approved.

§ 1956.140-1956.141 [Reserved]

§ 1956.142 Delinquent adjustment agreements.

(a) The servicing official is responsible for notifying debtors in advance of the due dates of payments on debt settlement agreements and for monitoring compliance with the terms of settlement agreements. If a payment is delinquent, the servicing official should contact the debtor promptly to determine the reason for the delinquency and the debtor's plan for completing the agreement.

(b) Delinquencies of 30 days or more will be reported to the State Director along with other pertinent information and the recommendation of the servicing official regarding further handling of the case.

(c) The State Director may extend, for ninety days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon the recommendation of the County Committee and the servicing official.

(d) When the debtor is financially unable to met the terms of the debt settlement agreement, the State Director may void the existing agreement and process a new settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action.

(e) If the State Director determines that the debtor cannot or will not meet the terms of the settlement agreement and if the facts do not justify approval of a new settlement agreement, the State Director will void the existing agreement and direct the servicing official to take other servicing actions appropriate to the circumstances of the case.

(f) When an adjustment agreement is voided, the State Director will notify the debtor giving the reasons in writing, with a copy to the Finance Office and to the servicing official. Upon receipt, the Finance Office will return the original Form FmHA 1956-1 to the State Office.

§ 1956.143-1956.144 [Reserved]

§ 1956.145 Disposition of essential FmHA records.

Subpart A of Part 2033, available in any FmHA office, identifies an "essential FmHA record" as the original of any document or record which provides evidence of indebtedness or obligation to FmHA and includes, but is not limited to: promissory notes, assumption agreements and valuable documents, such as bonds fully registered as to principal and interest.

(a) Essential FmHA records evidencing debts settled by compromise, completed adjustment or cancelled with application will be returned to the debtor or to the debtors' legal representative. The appropriate legend, such as "Satisfied by Approved Compromise," and the date of the final action will be stamped or typed on the original document. This same information plus the date the original document is returned to the debtor will be shown on a copy to be placed in the debtor's case folder.

(b) Essential FmHA records evidencing debts cancelled without application will be placed in the debtor's case folder and disposed of pursuant to Subpart A of Part 2033. However, if the debtor requests the document(s), they must be stamped

"Satisfied by Approved Cancellation" and returned.

(c) Essential FmHA records evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after chargeoff pursuant to Subpart A of Part 2033.

§ 1956.146–1956.147 [Reserved]

§ 1956.148 Exception authority.

The Administrator may make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. Any settlement actions approved by the Administrator under this section will be documented on Form FmHA 1956–1 and returned to the State Office for submission to the Finance Office.

§ 1956.149 [Reserved]

§ 1956.150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0124.

Dated: March 4, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–8692 Filed 4–20–88; 8:45 am]

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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 547, 548, 549, 563, 569a, 569b, 569c

[No. 88–229]

Conservators and Receivers; Interim Procedures

April 4, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of availability of interim procedures pending adoption of final regulations.

SUMMARY: The Federal Home Loan Bank Board ("Board" or "Bank Board"), in its own right and as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), hereby gives notice that the interim procedures appended hereto have been in effect since July 1, 1986, and will continue to be in effect pending adoption of final regulations governing the matters addressed herein. The interim procedures are entitled as follows: (1) "Procedures for the Administration and Determination of Requests for Expedited Relief From Decisions or Threatened Actions of the FSLIC as Receiver"; (2) "Procedures for the Processing and Determination on Review of Determinations of the FSLIC as Receiver"; and (3) "Procedures for the Administration and Determination of Claims Filed With the FSLIC as Receiver." These interim procedures were adopted pursuant to 12 U.S.C. 1437 (1982).

EFFECTIVE DATE: April 21, 1988.

FOR FURTHER INFORMATION CONTACT: Christopher Bellotto, Assistant General Counsel, (202) 377–7401; or Judith L. Friedman, Associate General Counsel, (202) 377–7399; Adjudication Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 C Street, NW., Washington, DC 20552. Copies of the interim procedures may also be obtained from this address.

SUPPLEMENTARY INFORMATION: On November 8, 1985, the Board proposed amendments and revisions to its regulations governing the conservatorship and receivership of associations chartered by the Board or the accounts of which are insured by the FSLIC. Board Res. No. 85–1007, 50 FR 48970 (November 27,1985). Pending final adoption of the proposed amendments and revisions, the Board hereby provides public notice of the interim procedures in order to assist petitioners and/or claimants in the filing of Requests for Expedited Relief, claims against the FSLIC as Receiver, and appeals from decisions of the FSLIC as Receiver.

The Board, in its proposed regulations, and its Office of General Counsel, have made it clear that the FSLIC as Receiver of an institution, the accounts of which are insured by the FSLIC, recognizes the validity of certain secured obligations of insured institutions, entered into pursuant to legal authority, and the right of a secured creditor in certain circumstances to cause the liquidation of collateral. Further, the FSLIC as Receiver may recognize the holder of a participating interest in a loan in which the Receiver also holds a participating interest, or which the Receiver services, as one having an ownership interest and not a creditor of the insured institution in receivership.

The Board, in providing this notice of procedures, is not directing the FSLIC as Receiver to require such secured creditors to observe all such noticed procedures as a precondition of exercising valid liquidation rights pursuant to valid security contracts entered into by an insured institution as authorized under its governing law prior to the appointment of the Receiver. Nor is the Board directing the FSLIC as Receiver to subject such holders of participating interests that are not creditors of the insured institution in receivership generally to such procedures. In the event, however, that a Receiver disputes a creditor's claim to a security interest in an asset of the institution or a participant's characterization of its status, the Receiver may require such creditor or other entity to establish its claimed status pursuant to these procedures; and the Receiver in such cases may take such action as is deemed necessary to protect the Receiver's interest in any asset.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

Appendix—Procedures For The Administration and Determination of Claims Filed With The FSLIC As Receiver

I. Introduction

A. Statement of Purpose

The purpose of these procedures is to provide for the uniform administration and determination of claims filed with the FSLIC as Receiver in all receiverships in the Federal Home Loan Bank/FSLIC system. These procedures are to be followed by Special Representatives and managing officers of the receiverships to assure compliance with the Federal Regulations governing the processing and