

The National Agricultural
Law Center



University of Arkansas
System Division of Agriculture

NatAgLaw@uark.edu | (479) 575-7646

An Agricultural Law Research Article

**FmHA Loan Servicing:
Alternatives to Foreclosure**

by

Guy R. Montag

Originally published in DRAKE LAW REVIEW
35 DRAKE L. REV. 561 (1986)

www.NationalAgLawCenter.org

NOTES

FmHA LOAN SERVICING: ALTERNATIVES TO FORECLOSURE

I. INTRODUCTION

The United States farm economy is currently in the midst of a severe financial crisis. The crisis, brought on by overproduction, low commodity prices, declining land values, and poor weather conditions, has already forced many farmers out of business and has thousands more on the brink of financial disaster. The Farmers Home Administration (FmHA) sent 800 Iowa farmers adverse action notices.¹ These notices inform the farmers that they will face foreclosure if they do not make loan payments or seek debt restructuring.² The FmHA has several debt servicing options designed to help farmers avoid foreclosure, such as deferral,³ reamortization,⁴ rescheduling and consolidation,⁵ debt set-aside,⁶ and limited resource financing.⁷ This Note will discuss the legal controversy surrounding these new regulations, including the sufficiency of the FmHA notices and outline the particular requirements of the servicing options.

II. THE FmHA'S STATUTORY AND REGULATORY BACKGROUND

The FmHA, a federal agency, was created by Congress pursuant to the Farmers Home Administration Act of 1946.⁸ This Act reenacted the Bankhead-Jones Farm Tenant Act of 1937,⁹ which was enacted to provide supervised, long-term farm ownership loans to farmers who were unable to obtain credit elsewhere.¹⁰ The purpose of the new act was "[t]o simplify and im-

-
1. Des Moines Register, Feb. 13, 1986, at 55, col. 2-3. See appendix A.
 2. Des Moines Register, Feb. 13, 1986, at 55, col. 1-4. See appendices B, C.
 3. See *infra* notes 116-66 and accompanying text.
 4. See *infra* notes 167-86 and accompanying text.
 5. See *infra* notes 187-201 and accompanying text.
 6. See *infra* notes 209-31 and accompanying text.
 7. See *infra* notes 202-07 and accompanying text.
 8. Farmers' Home Administration Act of 1946, Pub. L. No. 731, 60 Stat. 1062.
 9. Bankhead-Jones Farm Tenant Act, Pub. L. No. 210, 50 Stat. 522, 522-33 (1937).
 10. Curry v. Block, 541 F. Supp. 506, 510 (S.D. Ga. 1982), *aff'd*, 738 F.2d 1556 (11th Cir. 1984).

prove credit services to farmers and promote farm ownership."¹¹

Historically, the primary mission of the Farmers Home Administration has been to help farmers with limited resources become successfully established in agriculture. It also assists farmers with loans to keep them in business by refinancing, restructuring debts and recouping losses caused by disasters.

There are many benefits to farmers receiving FmHA loans that cannot be measured in dollars and cents, namely the humanitarian aspect — the sense of security, preferred type of living, pride of ownership — these are traits not measured by statistics.¹²

The FmHA is also the agricultural sector's lender of last resort.¹³ A farmer/borrower cannot receive a FmHA loan unless he is unable to "secure adequate credit from other sources at reasonable rates."¹⁴ The purpose of this "credit elsewhere test" is to prevent the FmHA from competing with private lending institutions.¹⁵ It must be remembered, however, that the FmHA is a government lender and has a duty to protect the government's interest.¹⁶ FmHA loans are made "with the expectation that they will be repaid and must be adequately secured to assure such repayment."¹⁷

Through the years, Congress has amended the agricultural laws to reflect the changing credit needs of farmers.¹⁸ In 1972, Congress combined the farmer loan programs with the rural housing programs and passed the Rural Development Act to be administered through the FmHA.¹⁹ The CFRDA has four subtitles.²⁰ Subtitle A authorizes the Secretary of Agriculture to make

11. Farmers' Home Administration Act of 1946, Pub. L. No. 731, 60 Stat. 1062, 1062.

12. H. R. REP. No. 986, 95th Cong., 2d Sess. 3, *reprinted in* 1978 U.S. CODE CONG. & AD. NEWS 1106, 1127.

13. *Id.* at 1125.

14. *Id.* The County Supervisor reviews the prevailing rates for similar loans among the local lenders, and then he considers the borrower's actual credit needs. 7 C.F.R. § 1941.6 (1986). *See* appendix G, line 23.

15. H.R. REP. No. 986, 95th Cong., 2d Sess. 3, *reprinted in* 1978 U.S. CODE CONG. & AD. NEWS at 1125.

16. *Curry v. Block*, 541 F. Supp. at 513.

17. *Id.* *See* appendices H, I.

18. *See* The Consolidated Farmers Home Administration Act of 1961 (as Title III of the Agriculture Credit Act), Pub. L. No. 87-128, 75 Stat. 294, 307. Congress was responding to changes brought about by the "mechanization of farming operations generally, the change in character and extent of resources necessary to successful operation of family farms, and the increase in farming technology . . ." S. REP. No. 566, 87th Cong., 1st Sess. 2, *reprinted in* 1961 U.S. CODE CONG. & AD. NEWS 2243, 2306.

19. Rural Development Act of 1972, Pub. L. No. 92-419, 86 Stat. 657, 657-77. The programs were consolidated for convenience in administration and "to provide an effective program to enable rural America to offer living conditions and employment opportunities adequate to impede the steady flow of rural Americans to our nation's large population centers." H. R. REP. No. 835, 92d Cong., 2d Sess. 2, *reprinted in* 1972 U.S. CODE CONG. & AD. NEWS 3147, 3147.

20. Agricultural Act of 1961, Pub. L. No. 87-128, 75 Stat. 294, 307.

loans for real estate acquisition and improvement purposes,²¹ for nonfarm enterprises necessary to supplement farm income,²² and to finance existing indebtedness.²³ Persons eligible for these loans are family farmers²⁴ who are unable to obtain credit elsewhere.²⁵ The Secretary is required to take adequate security to insure repayment.²⁶

Subtitle B of the Act authorizes the making of operating loans for the purpose of financing the farming operation, such as livestock production,²⁷ feed purchases,²⁸ family expenses,²⁹ and financing existing indebtedness.³⁰ The eligibility requirements for these loans are the same as those for farm ownership loans.³¹ Under this subtitle, the Secretary shall make the loan "upon the full personal liability of the borrower and upon such security as the Secretary may prescribe."³² These loans can be consolidated and rescheduled.³³

Subtitle C of the Act authorizes the making of emergency loans.³⁴ These loans are made to established farmers whose operations "have been substantially affected by a natural disaster . . . or emergency designated by the President under the Disaster Relief Act of 1974."³⁵ Emergency loans are

21. 7 U.S.C. § 1923(a)(1) (1982).

22. *Id.* at § 1923(a)(3). A "nonfarm enterprise" is any "business enterprise which supplements farm income." 7 C.F.R. § 1924.61 (1986). It must produce "goods or services for which there is a need and a reasonably reliable market." *Id.* See appendix F.

23. 7 U.S.C. § 1923(a)(4) (1982). This statute also authorizes loans to be made for recreational uses and facilities. *Id.* at § 1923(a)(2).

24. "Family farm" is defined as a farm which produces a sufficient amount of agricultural commodities so that the community recognizes it as a farm and not simply a rural residence. 7 C.F.R. § 1943.4(d)(1) (1986). The farm must produce enough income to pay the necessary "family and operating expenses, . . . maintain essential chattel and real property . . . and pay debts." *Id.* at § 1943.4(d)(2)(i) - (iii). The family farm is one that "is managed by the borrower, . . . [and] [h]as a substantial amount of the labor requirements for the farm and nonfarm enterprise provided by . . . [t]he borrower and any family . . ." *Id.* at §§ 1943.4(d)(3)(i) and 1943.4(d)(4)(i).

25. 7 U.S.C. § 1922(4) (1982). See *supra* note 16 and accompanying text. To be eligible for a farm ownership loan, the borrower must be a United States citizen, have sufficient farming or training experience "to assure reasonable prospects of success in the proposed farming operation," be an owner of a family sized farm, and be unable to obtain credit elsewhere. 7 U.S.C. § 1922 (1982).

26. 7 U.S.C. § 1927(c) (1982).

27. *Id.* at § 1942(a)(2).

28. *Id.* at § 1942(a)(3).

29. *Id.* at § 1942(a)(8).

30. *Id.* at § 1942(a)(7).

31. See *supra* note 24 and accompanying text.

32. 7 U.S.C. § 1946(a)(1) (1982). But see *supra* note 25 and accompanying text.

33. 7 U.S.C. § 1946(b) (1982). See *infra* notes 187-201 and accompanying text.

34. 7 U.S.C. § 1961(a) (1982).

35. *Id.* (referring to 42 U.S.C. § 5122 which defines disaster to include "hurricane, tornado, storm, flood, high-water . . . landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe . . .")

available to any farmer in a designated disaster area,³⁶ and are made for any Subtitle A³⁷ or Subtitle B³⁸ purpose.³⁹ To qualify, the farmer must show that "a single enterprise which constitutes a basic part of the applicant's farming, ranching, or aquaculture operation has sustained at least a 30 per centum loss of normal per acre or per animal production"⁴⁰ The Secretary is directed to take security for the loan and make the borrower personally liable to insure repayment.⁴¹ The FmHA, pursuant to Subtitle C, also provides economic emergency loans,⁴² soil and water conservation loans,⁴³ and special limited resource loans to low-income farmers.⁴⁴

Subtitle D of the Act contains the administrative provisions used by the Secretary to implement the program.⁴⁵ There are also numerous administrative regulations governing the program. One regulation requires the FmHA to provide management assistance to borrowers.⁴⁶ FmHA management assistance includes: credit counseling with borrowers;⁴⁷ the planning of farm operations with borrowers;⁴⁸ "record keeping by borrowers;"⁴⁹ supervision of borrowers;⁵⁰ and "analysis of borrower operations and/or enterprises by the

36. 7 U.S.C. § 1961(a) (1982). Loans to borrowers who can obtain credit elsewhere are reviewed, and the borrower can be required to obtain a non-federal loan upon request of the Secretary. 7 U.S.C. § 1964(d) (1982).

37. See *supra* notes 20-25 and accompanying text.

38. See *supra* notes 26-32 and accompanying text.

39. 7 U.S.C. § 1963 (1982).

40. *Id.* at § 1970.

41. *Id.* at § 1964(d).

42. *Id.* at § 1947; Subchapter III, § 202 (1982).

43. 7 U.S.C. § 1924(a) (1982).

44. *Id.* at § 1934. See *infra* notes 202-07 and accompanying text.

45. 7 U.S.C. § 1981 (1982). The Secretary is given the authority to service loans through section 1981(d).

46. 7 C.F.R. § 1941.3 (1986). See also 7 C.F.R. § 1924 Subpart B (1986).

47. 7 C.F.R. § 1924.55(a) (1986). The County Supervisor is to provide credit counseling to borrowers regarding the use of credit in making "profitable adjustments in operations, sources of available credit, general conditions under which credit is usually available, and methods of presenting requests for credit to lenders." 7 C.F.R. § 1924.56 (1986).

48. 7 C.F.R. § 1924.55(b) (1986). The borrower is required to fill out the Farm and Home Plans (appendices D, E). 7 C.F.R. § 1924.57(a)-(b) (1986). The supervisor is required to stress the need to "correlate long-time and annual plans when both are being developed." 7 C.F.R. § 1924.57(c)(1) (1986). The County Supervisor is also required to determine the feasibility of the plan. 7 C.F.R. § 1924.57(c)(5) (1986). There should be sufficient net income and cash flow to allow the borrower to pay all operating costs, make necessary debt payments, maintain necessary home and farm equipment, livestock, buildings, and to maintain a "reasonable standard of living." 7 C.F.R. § 1924.57(c)(5)(i)-(iv) (1986).

49. 7 C.F.R. § 1924.55(c) (1986). Borrowers are required to "select and maintain a record keeping system which adequately meets the needs of their farming operations." 7 C.F.R. § 1924.58(b)(1) (1986). The system selected must provide, "as a minimum, a record of the annual cash flow, beginning and end of year balance sheets, and an income statement." *Id.* The County Supervisor is required to determine whether a borrower has established and maintained the system. 7 C.F.R. § 1924.58(b)(2) (1986).

50. 7 C.F.R. § 1924.55(d) (1986). Supervision is undertaken "to protect the Government's

borrower and FmHA."⁵¹ The management assistance regulations indicate that the FmHA programs are a form of social welfare legislation, while the security requirements reveal the basic nature of the FmHA as a lender that seeks repayment.⁵² The tension between the FmHA social role and its status as a lender underlies the legal controversy surrounding the issuance of new rules regarding the loan servicing options of the FmHA.

III. LEGAL CONTROVERSY

The new regulations discussed in this Note are the result of extensive litigation that began in 1982.⁵³ The controversy centers on two basic issues. The first issue is whether Title 7, U.S.C. section 1981a requires the implementation of a deferral program;⁵⁴ the second issue is, if implementation is necessary, what standards and procedures are necessary and do the current FmHA regulations meet those standards.⁵⁵

Congress has given the Secretary of Agriculture the discretion to defer the principal and interest on outstanding FmHA loans at the borrower's request.⁵⁶ The text of section 1981a reads as follows:

In addition to any other authority that the Secretary may have to defer principal and interest and forego foreclosure, the Secretary may permit, at the request of the borrower, the deferral of the principal and interest on any outstanding loan made, insured, or held by the Secretary under this chapter, or under the provisions of any other law administered by the Farmers Home Administration, and may forego foreclosure of any such loan, for such period as the Secretary deems necessary upon a showing by the borrower that due to circumstances beyond the borrower's control, the borrower is temporarily unable to continue making payments of such principal and interest when due without unduly impairing the standard of living of the borrower. The Secretary may permit interest that accrues during the deferral period on any loan deferred under this section to bear no interest during or after such period: *Provided*, That if

interest and to assist the borrower in accomplishing the purpose of the loan." 7 C.F.R. § 1924.59(a) (1986). The County Supervisor must choose the supervision method(s) appropriate for each case. 7 C.F.R. § 1924.59(b) (1986). Supervision methods include "farm visits, review of farm records, collateral inspection, meetings with borrowers on an individual or group basis, letters, telephone, etc." 7 C.F.R. § 1924.59(c) (1986).

51. 7 C.F.R. § 1924.55(e) (1986). The purpose of the analysis is to assist the borrower in a review and evaluation of the farm operation in order to determine the progress, problems, and any corrective actions that need to be taken. 7 C.F.R. § 1924.60 (1986).

52. *Curry v. Block*, 541 F. Supp. 506, 512 (S.D. Ga. 1982).

53. *Id.* See also *Shick v. Farmers Home Admin.*, 748 F.2d 35 (1st Cir. 1984); *Curry v. Block*, 738 F.2d 1556 (11th Cir. 1984); *Ramey v. Block*, 738 F.2d 756 (6th Cir. 1984); *United States v. Markgraf*, 736 F.2d 1179 (7th Cir. 1984), *cert. dismissed*, 105 S. Ct. 1154 (1985); *Matzke v. Block*, 732 F.2d 799 (10th Cir. 1984); *Allison v. Block*, 723 F.2d 631 (8th Cir. 1983).

54. See *supra* note 52.

55. *Curry v. Block*, 738 F.2d 1556 (11th Cir. 1984).

56. 7 U.S.C. § 1981a (1982).

the security instrument securing such loan is foreclosed such interest as is included in the purchase price at such foreclosure shall become part of the principal and draw interest from the date of foreclosure at the rate prescribed by law.⁵⁷

A. *Mandatory v. Permissive Duty*

The federal district court in *Curry v. Block*,⁵⁸ was the first to hold that section 1981a imposed a mandatory duty on the Secretary to implement a deferral program.⁵⁹ The *Curry* court held that the language which states: "The Secretary . . . may permit . . . the deferral of principal and interest on any outstanding loan . . . and may forego foreclosure . . ." gave the Secretary discretion to grant a deferral, but required the Secretary to implement the program.⁶⁰ The *Curry* court also found that the legislative history of the statute indicated that Congress intended section 1981a be implemented.⁶¹ Several other courts have followed the same analysis and reached similar conclusions.⁶² These courts have granted, as did the *Curry* court, injunctive relief until the FmHA satisfactorily implemented section 1981a.⁶³ The court in *Neighbors v. Block*,⁶⁴ however, held that the same language was unambiguous and imposed a permissive rather than mandatory duty upon the Secretary.⁶⁵ The *Neighbors* court also noted that the legislative history revealed that any mandatory requirement was removed.⁶⁶ The court, therefore, denied injunctive relief.⁶⁷

57. *Id.* The legislative history of the statute can be found at 1978 U.S. CODE CONG. & AD. NEWS 1106.

58. *Curry v. Block*, 541 F. Supp. 506, 521 (S.D. Ga. 1982), *aff'd*, 738 F.2d 1556 (11th Cir. 1984).

59. *Id.* at 515-16. The *Curry* court noted that the language "in addition to" indicated that section 1981a imposed a mandatory duty of implementation. *Id.* at 516. For further discussion see *Note*, 33 DRAKE L. REV. 407, 414-28 (1983-84).

60. *Curry v. Block*, 541 F. Supp. at 522.

61. *Id.*

62. See *Ramey v. Block*, 738 F.2d 756, 761 (6th Cir. 1984) (dairy farmers sue to enjoin foreclosure sale until given an opportunity to apply for deferral relief); *United States v. Markgraf*, 736 F.2d 1179, 1184 (7th Cir. 1984) (appeal from a foreclosure judgment by Wisconsin farmers); *Matzke v. Block*, 732 F.2d 799, 801 (10th Cir. 1984) (class action by Kansas FmHA borrowers to require implementation of section 1981a); *Allison v. Block*, 723 F.2d 631, 635 (8th Cir. 1983) (Missouri farmer seeks injunction to stop FmHA foreclosure until regulations implementing section 1981a are promulgated); *Coleman v. Block*, 580 F. Supp. 194, 201 (D.N.D. 1984) (class action by North Dakota farmers to require implementation of section 1981a); *Gamradt v. Block*, 581 F. Supp. 122, 128 (D. Minn. 1983) (class action by some FmHA borrowers in Minnesota to restrain adverse action by FmHA until regulations implementing section 1981a are promulgated).

63. See *supra* note 61.

64. *Neighbors v. Block*, 564 F. Supp. 1075 (E.D. Ark. 1983).

65. *Id.* at 1077.

66. *Id.* (quoting 124 CONG. REC. 12133 (1978) (remarks of Senator Eagleton)).

67. *Id.* at 1085.

B. Sufficiency of FmHA Regulations

The courts also addressed the issue of whether the FmHA's existing regulations implemented the deferral provisions satisfactorily. The court in *Allison v. Block*⁶⁸ found that section 1981a "creates a right to have certain uniform procedures established and requires the Secretary to develop substantive standards applicable to deferral applications."⁶⁹ That court rejected the Government's argument that the current regulations fulfilled the section 1981a requirements.⁷⁰ Section 1981a requires some substantive standards because "any other construction would render the statute mere procedural 'window dressing,' a result abhorrent to the language and purpose of the 1978 agricultural credit legislation and absurd as a matter of policy."⁷¹

An important procedural requirement found by the *Allison* court was the need for the FmHA to give borrowers notice of section 1981a deferral relief.⁷² "The requirement of a request by the borrower prior to consideration for section 1981a relief presupposes that the borrower has knowledge of the availability of such relief."⁷³ The *Allison* court also required the development of an administrative procedure to determine a borrower's deferral eligibility.⁷⁴ The Government's "reliance on regulations passed as general loan servicing guidelines appears as more of an afterthought than an earnest attempt to comply with the specific mandates of section 1981a."⁷⁵

In 1983, the first of several *Coleman v. Block* decisions was handed down.⁷⁶ *Coleman* involved a class-action suit brought by North Dakota

68. *Allison v. Block*, 723 F.2d 631 (8th Cir. 1983).

69. *Id.* at 634.

70. *Id.* at 636-37. The Secretary argued that no special standards were needed because section 1981a was merely a discretionary statute that the Secretary could use at his discretion. *Id.* at 633.

71. *Id.* at 636-37.

72. *Id.* See also *Curry v. Block*, 738 F.2d at 1562 (borrowers should be notified of deferral rights when any delinquency notice is sent); *Gamradt v. Block*, 581 F. Supp. 122, 131 (D. Minn. 1983) (personal notice must be given before FmHA takes any adverse action against borrower); but see *Ramey v. Block*, 738 F.2d 756, 762 (6th Cir. 1984) ("we find nothing in the text of § 1981a or its legislative history which requires the Secretary to formally notify the borrower that deferral relief is available"); *United States v. Markgraf*, 756 F.2d 1179, 1185-86 (7th Cir. 1984) ("everyone is charged with notice of the contents of our federal statutes", thus the FmHA is not required to give personal notice); *Matzke v. Block*, 564 F. Supp. 1157, 1166 (D. Kan. 1983) (constructive notice sufficient).

73. *Allison v. Block*, 723 F.2d at 634.

74. *Id.*

75. *Id.* at 636.

76. *Coleman v. Block*, 593 F. Supp. 367 (D.N.D. 1984) (appeal from order granting attorneys fees); *Coleman v. Block*, 589 F. Supp. 1411 (D.N.D. 1984) (attorneys fees awarded to plaintiffs); *Coleman v. Block*, 580 F. Supp. 194 (D.N.D. 1984) (requiring the FmHA to revise its appeals procedure and to provide notice); *Coleman v. Block*, 580 F. Supp. 192 (D.N.D. 1984) (extends injunction to cover a national class); *Coleman v. Block*, 100 F.R.D. 705 (D.N.D. 1983) (statewide class expanded to national class because the case involved legal issues of national scope); *Coleman v. Block*, 562 F. Supp. 1353 (D.N.D. 1983) (issues original injunction to enjoin

farmers seeking to enjoin the FmHA from taking any adverse action on their loans before the FmHA promulgated regulations implementing section 1981a.⁷⁷ The plaintiffs also sought to enjoin the FmHA from depriving them of property necessary for farm operations or terminating living expenses until regulations were promulgated giving plaintiffs notice of the reason for the action and an opportunity to be heard.⁷⁸

The first *Coleman* decision held that the farmers had a legitimate property interest because when "a borrower begins a loan program he has a strong expectation that it will continue to its scheduled date of completion."⁷⁹ Because a property interest existed, the court had to decide whether due process required a hearing before the FmHA terminated the borrower's loan program.⁸⁰ Applying *Mathews v. Eldridge*,⁸¹ the court found the termination procedure in regard to erroneous deprivation, "woefully inadequate if not non-existent."⁸² Whether administrative procedures are constitutionally sufficient requires consideration of three distinct factors:

[f]irst, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.⁸³

To implement the hearing process, the *Coleman* court ordered the FmHA to "provide the borrower with notice of his opportunity to request a hearing on the validity of his termination and a statement of the reasons for termination."⁸⁴

The *Coleman* court also determined that the FmHA was "obligated to set up a meaningful appeal process."⁸⁵ The court, however, ruled that the Administrative Procedure Act did not apply to the FmHA denial of deferral, acceleration, or foreclosure hearings.⁸⁶ The *Coleman* court set forth four

the FmHA from foreclosing on the state class).

77. *Coleman v. Block*, 562 F. Supp. at 1359.

78. *Id.*

79. *Id.* at 1364.

80. *Id.* at 1365. The court applied the standards enumerated in *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976), and determined that a hearing was required. *Id.* at 1365.

81. *Mathews v. Eldridge*, 424 U.S. 319 (1976) (administrative procedure must provide the claimant with an effective process for asserting his claim prior to any administrative action).

82. *Coleman v. Block*, 562 F. Supp. at 1366.

83. *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976).

84. *Id.*

85. *Coleman v. Block*, 580 F. Supp. at 208.

86. *Id.* at 202. The APA does not apply because, under *Mathews v. Eldridge*, "a constitutionally mandated hearing may be held without requiring the formality of making a record of the proceedings, [and] [u]nless the constitutionally required adjudication must be determined on the record, the APA does not apply." *Id.*

procedural requirements;⁸⁷ the borrower is entitled to notice and an opportunity to be heard before liquidation begins;⁸⁸ the hearing can be informal, but notes must be made and kept by the FmHA;⁸⁹ the FmHA review procedure must be changed in order to complete the review process before liquidation begins;⁹⁰ and bias on the part of the hearing officer can be determined at later stages of the appeals process if the borrower raises the issue.⁹¹

Other courts presented with these issues have also ruled that the FmHA must develop substantive standards for deferral through either the rulemaking or adjudicative process.⁹² In order to ensure that those standards were developed, the courts enjoined the FmHA from initiating any foreclosure

87. *Id.* at 208.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* The FmHA appeals process can be found at 7 C.F.R. section 1900.51 *et seq.* (1986). The appeals process begins when a FmHA borrower receives notice that a FmHA action is going to directly and adversely affect his interest. 7 C.F.R. § 1900.56(b)(1986). To appeal an adverse decision, the borrower must request a hearing. C.F.R. § 1900.56(c) (1986). A "hearing" is defined as an "informal proceeding at which an appeal from an adverse decision is heard." 7 C.F.R. § 1900.52(b) (1986). The hearing request must be received within the authorized time or the appeal rights are terminated. 7 C.F.R. § 1900.56(c)(1) (1986). In loan acceleration cases, the request must be received within thirty days. 7 C.F.R. § 1900.56(b)(3) (1986). A hearing will be set within forty-five calendar days at a place that is convenient to the borrower, hearing officer, and decisionmaker. 7 C.F.R. § 1900.56(c)(3) (1986). The hearing officer will select a place if a location cannot be agreed on. *Id.* Failure of the borrower or the borrower's representative to appear without reasonable cause concludes the appeal. 7 C.F.R. § 1900.56(c)(4) (1986).

The hearing itself will be informal and the borrower will have the burden to prove that the initial decision was erroneous. 7 C.F.R. § 1900.57(a) (1986). The borrower will have the opportunity to present whatever evidence he believes is relevant in reaching a decision. *Id.* The FmHA will also present any necessary evidence to uphold the initial decision. 7 C.F.R. § 1900.57(b) (1986).

There is no requirement for a formal transcript of the hearing to be made. *Id.* at 1900.57(d)(1)(ii). Informal notes will be taken by a FmHA employee. 7 C.F.R. § 1900.57(d)(2) (1986). A copy of the notes will be included with the letter informing the borrower of the decision. 7 C.F.R. § 1900.57(d)(3) (1986).

The decision will be made on the facts presented during the hearing, rebuttal by the borrower of any new evidence, any additional information the hearing officer requests, the FmHA file, and the "hearing officer's general knowledge of FmHA program functions." 7 C.F.R. § 1900.57(f) (1986). The decision will be rendered within thirty days of the hearing. 7 C.F.R. § 1900.57(g) (1986). The borrower can request, within thirty days, a review of the hearing officer's decision, and if he fails to do so the appeal will be concluded. 7 C.F.R. § 1900.57(j) (1986). The review officer's decision will be based on the evidence produced for the hearing and any additional information he may request. 7 C.F.R. § 1900.58(c) (1986). The review officer's decision concludes the administrative appeals process. 7 C.F.R. § 1900.58(d) (1986).

92. See *Ramey v. Block*, 738 F.2d at 762 (Secretary may use either rulemaking or adjudication to create substantive standards); cf. *Curry v. Block*, 738 F.2d at 1563-64 (the rulemaking process must be used).

actions until the injunctions were satisfied.⁹³ When a farmer becomes delinquent in repayment, the County Supervisor is required to notify the borrower and "develop specific plans for making the payment."⁹⁴ If a borrower refuses or is unable, within a reasonable time, to make the payment, the Supervisor is directed to take action to protect the Government's interest.⁹⁵ The FmHA policy is to service accounts when the borrower has "exercised due diligence in an effort to pay [his] indebtedness but cannot pay on schedule because of circumstances beyond [his] control."⁹⁶ The Supervisor sends the delinquent borrower a special FmHA form (1924-26) that describes the various options available.⁹⁷ The borrower is then required to complete the Form and indicate what course of action he wants to pursue.⁹⁸ The borrower must choose at least one of the available servicing options, appeal the adverse decision, cure the default, or liquidate the loan.⁹⁹ If the borrower fails to choose one of the aforementioned plans, the FmHA will accelerate the loan and proceed to liquidate the account.¹⁰⁰ The Form must be returned within thirty days or the FmHA will proceed with the threatened adverse actions,¹⁰¹ and the actions are not appealable.¹⁰²

The first part of Form 1924-26 lists the servicing options available to the borrower.¹⁰³ The options available are: deferral,¹⁰⁴ reamortization,¹⁰⁵ consolidation and rescheduling,¹⁰⁶ limited resource loans,¹⁰⁷ and restructuring of the debt and business by selling a portion of the assets.¹⁰⁸ There is also a special debt set-aside program for a limited class of borrowers.¹⁰⁹ If a borrower chooses one of these servicing alternatives, he is required to meet with his County Supervisor and to prepare the necessary financial documents which the FmHA will then use in determining his eligibility for the requested servicing relief.¹¹⁰ If the servicing request is granted, the adverse

93. *Coleman v. Block*, 580 F. Supp. at 210-212 (injunction extended to cover a national class); *Gamradt v. Block*, 587 F. Supp. at 134-35 (injunction protecting Minnesota farmers).

94. 7 C.F.R. § 1951.7(d) (1986). See appendices A-C.

95. *Id.*

96. *Id.* at 7 C.F.R. § 1951.2 (1986). See *infra* notes 122-32 and accompanying text.

97. 7 C.F.R. § 1924.72 (1986). See *infra* notes 100-12 and accompanying text.

98. *Id.*

99. *Id.*

100. 7 C.F.R. § 1924.72(a) (1986).

101. *Id.*

102. *Id.* See appendix B.

103. 7 C.F.R. § 1924.72(b) (1986). See appendices A, C. Appendix C explains the various servicing options.

104. See *infra* notes 116-66 and accompanying text.

105. See *infra* notes 167-86 and accompanying text.

106. See *infra* notes 187-201 and accompanying text.

107. See *infra* notes 202-07 and accompanying text.

108. 7 C.F.R. § 1924.72 (1986). The appropriate restructuring plan is, of course, dependent of the particular financial situation of the borrower.

109. 7 C.F.R. § 1951.41 (1986). See *infra* notes 209-31 and accompanying text.

110. 7 C.F.R. § 1924.72(b) (1986). These documents include financial statements and pro-

action notice is terminated and the borrower completes the servicing requirements.¹¹¹ If the request is denied, the County Supervisor must notify the borrower in writing and explain the denial.¹¹² The borrower can appeal this denial under the Agency's rules.¹¹³ It is important to note that this appeal hearing "will cover both the denial of the request for servicing and [any] other adverse action the FmHA intends to take."¹¹⁴ Failure by the borrower to attend the conference will result in automatic denial, and this denial will not be appealable.¹¹⁵

IV. LOAN SERVICING ALTERNATIVES

The FmHA sent the adverse action notice (1924-26) to borrowers "whose loans are at least three years past due or who are believed to have violated their loan agreements by disposing of collateral without permission."¹¹⁶ The *Coleman* court recently ruled that this notice was sufficient to notify the borrowers of their rights.¹¹⁷ The only deficiency was the lack of the hearing officer designation.¹¹⁸

1. *Deferral*. The new rules create an entirely new and separate deferral regulation.¹¹⁹ Loan deferral is an "approved delay in making regularly scheduled payments."¹²⁰ A borrower may request a loan deferral when "circumstances occur which will not permit borrowers to pay as scheduled."¹²¹ A deferral will only be considered if rescheduling, consolidation, reamortization, or debt set-aside have been considered and are not able to "provide the cash flow needed to service the debt, operate the farm and provide family living expenses."¹²² Deferral will be approved for the number of loans necessary to create the required cash flow.¹²³

The eligibility requirements for a deferral are stringent. A borrower must meet *all* of the conditions set forth in order to qualify.¹²⁴ The first condition requires the need for the deferral to be "due to circumstances be-

posed operating plans. *Id.* See appendices D, E, F.

111. *Id.*

112. *Id.* The appeal will cover the servicing denial and the other adverse actions decisions.

Id.

113. *Id.* See *supra* note 88 and accompanying text.

114. 7 C.F.R. § 1924.72(b) (1986).

115. *Id.*

116. Des Moines Register, Feb. 13, 1986, at 55, col. 2-3.

117. *Coleman v. Block*, 632 F. Supp. 1005, 1014-15 (D.N.D. 1986).

118. *Id.* at 1015.

119. 7 C.F.R. § 1951.44 (1986).

120. 7 C.F.R. § 1951.44(a)(2) (1986).

121. 7 C.F.R. § 1951.44 (1986).

122. *Id.*

123. 7 C.F.R. § 1951.44(e) (1986). See appendix J, ex. IV.

124. 7 C.F.R. § 1951.44(b) (1986).

yond the borrower's control."¹²⁵ The *only* circumstances that qualify are a reduction in income which causes the operation's expenditures to exceed revenues,¹²⁶ and "unplanned, but essential, farm expenses and/or, . . . essential family living expenses."¹²⁷

An income reduction caused by poor management decisions is not adequate for a deferral "since the borrower had control over the situation."¹²⁸ Acceptable reasons include reduction of essential non-farm income due to underemployment or unemployment caused by "circumstances beyond the borrower's control,"¹²⁹ illness, injury, or the death of the borrower who operated the farm;¹³⁰ a natural disaster, uncontrollable insect damage, or disease, which produces a severe loss of production creating reduced repayment ability;¹³¹ or "economic factors that are widespread . . . such as high interest rates or low market prices . . . that reduce the repayment ability of the borrower"¹³²

Unplanned expenses are defined as "those which were not listed in the most current farm plan of operation and can be paid from the authorized sale of chattel security."¹³³ Unplanned expenses can result from the illness, injury, accident, or death of the borrower or of a borrower's dependent,¹³⁴ or from the cost to repair damage to uninsured security (crops are excluded), "provided the loss occurred because adequate insurance coverage was not available."¹³⁵

The second condition is that the "need for the deferral must be temporary."¹³⁶ The borrower must be able to show that "the debt will be paid current by the end of the deferral period,"¹³⁷ or that payments can be resumed through the use of rescheduling, consolidation, or reamortization when the deferral period ends.¹³⁸

The third condition is that by continuing to make the scheduled payments the borrower will unduly impair his standard of living.¹³⁹ The standard of living is impaired when a borrower, due to circumstances beyond his control, is unable to pay for essential family expenses, pay normal "farm" operating expenses, maintain real estate and essential chattels, and "meet

125. 7 C.F.R. § 1951.44(b)(1) (1986).
126. 7 C.F.R. § 1951.44(b)(1)(i) (1986).
127. 7 C.F.R. § 1951.44(b)(1)(ii) (1986).
128. 7 C.F.R. § 1951.44(b)(1)(i) (1986).
129. 7 C.F.R. § 1951.44(b)(1)(i)(A) (1986).
130. 7 C.F.R. § 1951.44(b)(1)(i)(B) (1986).
131. 7 C.F.R. § 1951.44(b)(1)(i)(C) (1986).
132. 7 C.F.R. § 1951.44(b)(1)(i)(D) (1986).
133. 7 C.F.R. § 1951.44(b)(1)(ii) (1986).
134. 7 C.F.R. § 1951.44(b)(1)(ii)(A) (1986).
135. 7 C.F.R. § 1951.44(b)(1)(ii)(B) (1986).
136. 7 C.F.R. § 1951.44(b)(2) (1986).
137. *Id.*
138. *Id.*
139. 7 C.F.R. § 1951.44(b)(3) (1986).

the scheduled payments of *all* debts."¹⁴⁰

The final two conditions require the borrower to attend a special conference, and provide financial and production records, along with cash flow projections, to the County Supervisor so that a decision can be made on the deferral request.¹⁴¹ Also, the borrower must have attempted "voluntary debt adjustment and/or rescheduling of payments with other creditors."¹⁴²

In addition to fulfilling these conditions, the FmHA must make several determinations before a deferral will be granted.¹⁴³ The FmHA official must find that the borrower made an honest effort to pay his FmHA obligations and acted in good faith, but was unable to do so "due to reasons beyond" his control;¹⁴⁴ requested the deferral and can document the conditions creating the need for the deferral;¹⁴⁵ paid all the real estate taxes and other property insurance premiums, and complied with the terms of the loan agreement;¹⁴⁶ plans to continue farm operations and can resume payments at the end of the deferral period;¹⁴⁷ "applied recommended and recognized successful production and financial management practices;"¹⁴⁸ accounted for and properly maintained the security;¹⁴⁹ has "disposed of all nonessential assets in accordance with agreements made with FmHA, and applied the proceeds to the FmHA loan account(s) or paid other creditors . . . ;"¹⁵⁰ can demonstrate through realistic financial projections that "during the deferral period, the borrower can at least pay essential family living expenses . . . , repay any loans made during the deferral period;"¹⁵¹ and meet all other creditor obligations, and non-deferred FmHA loans.¹⁵²

A borrower who has a loan deferred may get additional loans deferred if, during the deferral period, "the borrower is unable to make the scheduled payments and meets the conditions for an initial deferral."¹⁵³ The deferral period for the additional loans may not go beyond the expiration date of the initial deferral.¹⁵⁴ A borrower can also request a subsequent deferral if he meets the conditions and "at least two years have lapsed from the date of

140. *Id.*

141. 7 C.F.R. § 1951.44(b)(4) (1986). If the borrower fails to attend this conference, the deferral will be automatically denied, and the denial will not be appealable. 7 C.F.R. § 1951.44(h) (1986).

142. 7 C.F.R. § 1951.44.(b)(5) (1986).

143. 7 C.F.R. § 1951.44(c) (1986).

144. 7 C.F.R. § 1951.44(c)(1) (1986).

145. 7 C.F.R. § 1951.44(c)(2) (1986).

146. 7 C.F.R. § 1951.44(c)(3) (1986).

147. 7 C.F.R. § 1951.44(c)(4) (1986).

148. *Id.*

149. 7 C.F.R. § 1951.44 (c)(6) (1986).

150. 7 C.F.R. § 1951.44(c)(7) (1986).

151. 7 C.F.R. § 1951.44(c)(8) (1986).

152. *Id.*

153. 7 C.F.R. § 1951.44(f)(1) (1986).

154. *Id.*

expiration of prior deferrals,"¹⁵⁵ unless the State Director gives special approval to the subsequent deferral.¹⁵⁶

There are other important limitations on the deferral of FmHA loans. Any portion of a loan that was set aside under section 1951.41¹⁵⁷ will have the set-aside cancelled when a deferral for that loan is granted.¹⁵⁸ The borrower, upon request for the deferral of the set-aside loan, must agree to the cancellation.¹⁵⁹ If a deferral is granted, the deferred loan(s) will be rescheduled, consolidated, or reamortized according to the applicable regulations.¹⁶⁰ The borrower's account must be current before the new notes are signed and servicing actions will be taken to make the account current.¹⁶¹ Deferrals are granted for five annual installments, except for subsequent deferrals.¹⁶² The interest that accrues during the deferral period will be "repaid in equal amortized installments during the term of the loan remaining after the deferral period."¹⁶³ The final limitation is that if a borrower has a "substantial increase in income and repayment ability,"¹⁶⁴ he can be asked to graduate to other credit sources, if possible,¹⁶⁵ or to "make some payments during the deferral period."¹⁶⁶ If the borrower fails to sign the agreement to take such action, his account will be liquidated.¹⁶⁷

This new regulation consolidates the FmHA deferral provisions into one regulation and makes the eligibility requirements markedly tougher.¹⁶⁸ The new regulation also sets up a hearing procedure by incorporating the FmHA's regular procedure into the deferral process.¹⁶⁹

2. *Reamortization.* Reamortization is available for farm ownership loans, economic emergency loans, and emergency loans made for estate purposes.¹⁷⁰ The FmHA expects all borrowers to repay their debts according to schedule,¹⁷¹ but realizes that there may be circumstances that prevent a borrower from meeting the schedule.¹⁷² County Supervisors have the authority

155. 7 C.F.R. § 1951.44(f)(2) (1986).

156. *Id.*

157. 7 C.F.R. § 1951.41 (1986).

158. 7 C.F.R. § 1951.44(g) (1986).

159. *Id.*

160. 7 C.F.R. § 1951.44(j)(1) (1986).

161. *Id.*

162. 7 C.F.R. § 1951.44(i) (1986).

163. 7 C.F.R. § 1951(j)(1) (1986).

164. 7 C.F.R. § 1951.44(k) (1986).

165. *Id.*

166. *Id.*

167. *Id.*

168. Compare 7 C.F.R. § 1951.44 (1986) with 7 C.F.R. §§ 1951.33 and 1951.40 (1986).

169. See, e.g., 7 C.F.R. § 1951.44(j)(3) (1986).

170. 7 C.F.R. § 1951.40 (1986).

171. *Id.*

172. *Id.*

to reamortize a borrower's existing loans.¹⁷³

Reamortization of a loan means to "rearrange the installments of a loan which may include changing the interest rate and terms of the loan."¹⁷⁴ The Supervisor can authorize reamortization when it is determined that such action "will assist in the orderly collection of the loan."¹⁷⁵ The Supervisor, however, cannot approve a reamortization that will be used to circumvent the FmHA's graduation requirements.¹⁷⁶ Reamortization cannot be given in cases where the borrower's account is being handled by the United States Attorney's office,¹⁷⁷ where the borrower will not be able to make satisfactory progress with the revised repayment term,¹⁷⁸ and where the borrower is not co-operating in the servicing or proper maintenance of the security.¹⁷⁹

The FmHA prefers that any reamortized loan be rescheduled for repayment "within the remaining period of the note or assumption agreement being reamortized."¹⁸⁰ In the case of a repayment extension, the repayment period cannot exceed "40 years from the date of the original note or assumption agreement or the useful life of the security, whichever is less."¹⁸¹ There is no limit on the number of times reamortization can be sought provided that the requirements are met.¹⁸² Also, any loans that are deferred under section 1951.44 cannot be reamortized in the deferral period.¹⁸³

The interest presently accrued on the loan "will be added to the principal at the time of reamortization."¹⁸⁴ The first installment due on the reamortized loan has to be at least equal to the amount of the interest that will accrue on the principal between the date of reamortization and the succeeding first of January, unless there are deferred installments.¹⁸⁵ The interest rate on the new loan will be the lesser of the current rate on the date of reamortization or the rate of the original loan.¹⁸⁶ The interest rate can be further reduced to the limited resource loan rate provided the borrower meets the eligibility requirements for the lower rate.¹⁸⁷

This new regulation removes the use of deferral as a loan servicing ac-

173. *Id.*

174. 7 C.F.R. § 1951.40(a) (1986). See appendix J, exs. I, II, VI.

175. 7 C.F.R. § 1951.40(b) (1986).

176. 7 C.F.R. § 1951.40(b)(1) (1986).

177. 7 C.F.R. § 1951.40(b)(2) (1986).

178. 7 C.F.R. § 1951.40(b)(3) (1986).

179. 7 C.F.R. § 1951.40(b)(4) (1986).

180. 7 C.F.R. § 1951.40(c)(1) (1986).

181. *Id.*

182. 7 C.F.R. § 1951.40(e)(5) (1986).

183. 7 C.F.R. § 1951.40(c)(4) (1986).

184. 7 C.F.R. § 1951.40(c)(3) (1986).

185. *Id.*

186. 7 C.F.R. § 1951.40(d) (1986). Lower interest rates are reviewed and can be raised to meet the current level. 7 C.F.R. § 1943.18(c)(3) (1986).

187. 7 C.F.R. § 1951.40(d) (1986). References to these requirements can be found at 7 C.F.R. §§ 1941.4(g) and 1943.4(g) (1986).

tion from the previous regulation.¹⁸⁸ The regulation also makes it impossible to reamortize a deferred loan during the deferral period.¹⁸⁹

3. *Rescheduling/Consolidation.* Consolidation and rescheduling are generally available for existing operating loans, economic emergency operating type loans,¹⁹⁰ and emergency loans made for Subtitle B purposes.¹⁹¹ Consolidation means "to combine and reschedule the rates and terms of two or more of the same type" of loan.¹⁹² Reschedule means to "rewrite the rates and/or terms" of the loan.¹⁹³ The general requirements in order to receive consolidation or rescheduling are the same as those for reamortization.¹⁹⁴

There are, however, several limitations on consolidations and rescheduling. An eligible loan that is secured by real estate will not be rescheduled or consolidated until the County Supervisor reviews the government's lien priority and security value and "determines such an action will be in the best interest of the Government and the borrower."¹⁹⁵ To be consolidated, the loans must be of the same type and have the same interest rate.¹⁹⁶ An emergency loan for an actual loss will not be consolidated.¹⁹⁷ Also, any loan that has been deferred will not be eligible for consolidation or rescheduling in the deferral period.¹⁹⁸

Loans that are consolidated and rescheduled are to be repaid "according to the borrower's repayment ability, but never in excess of fifteen years from the date" the new note is signed.¹⁹⁹ The outstanding accrued interest "will be added to the principal at the time of consolidation and rescheduling."²⁰⁰ The new interest rate will be the lesser of the original loan rate or the current loan rate.²⁰¹

This new regulation adds certain farmer loan programs under which this alternative was not previously available.²⁰² Deferral is also eliminated as a servicing option from this section.²⁰³ The regulation also prohibits deferred

188. See 7 C.F.R. § 1951.40 (1986).

189. 7 C.F.R. § 1951.40(c)(4) (1986).

190. 7 C.F.R. § 1951.33 (1986).

191. 7 C.F.R. § 1951.33(a)(1) (1986). They are loans made for the purposes stated in 7 C.F.R. § 1941.16 (1986).

192. 7 C.F.R. § 1951.33(a)(4) (1986).

193. 7 C.F.R. § 1951.33(a)(3) (1986). See appendix J, exs. III, V, VII, VIII, IX.

194. 7 C.F.R. § 1951.33(b)(1)-(4) (1986). See *supra* notes 167-86 and accompanying text.

195. 7 C.F.R. § 1951.33(c)(1) (1986).

196. 7 C.F.R. § 1951.33(c)(2) (1986).

197. 7 C.F.R. § 1951.33(c)(7) (1986).

198. 7 C.F.R. § 1951.33(c)(9) (1986).

199. 7 C.F.R. § 1951.33(c)(4) (1986).

200. 7 C.F.R. § 1951.33(c)(3) (1986).

201. 7 C.F.R. § 1951.33(c)(5) (1986). These rates are also subject to review and revision.

See *supra* note 183.

202. 7 C.F.R. § 1951.33 (1986).

203. Cf. 7 C.F.R. § 1951.33 (1986).

loans from being serviced in this manner during the deferral period.²⁰⁴

4. *Limited Resource.* The FmHA administers a program which provides loans to limited resource borrowers. A limited resource borrower is a farmer who is an "operator of a small or family farm (a small farm is a marginal family farm) including a new operator, with a low income who demonstrates a need to maximize farm" income.²⁰⁵ The limited resource borrower has to meet the same eligibility requirements for a farm ownership loan²⁰⁶ or operating loan,²⁰⁷ but "due to low income, cannot pay the regular interest rate on such loans."²⁰⁸

Limited resource borrowers often face problems such as "underdeveloped managerial ability, limited education, [a] low-producing farm due to lack of development or improved production practices and other related factors."²⁰⁹ Because of these problems, a limited resource borrower will not have the income needed "to have a reasonable standard of living when compared to other residents of the community."²¹⁰ In regard to loan servicing, a borrower who feels he is eligible for the limited resource interest rate should ask his County Supervisor.²¹¹

5. *Debt Set-Aside.* The FmHA has a special debt set-aside program available to a limited class of borrowers.²¹² The regulation *excludes* borrowers who have had their accounts accelerated before October 19, 1984;²¹³ those convicted of security conversion;²¹⁴ those who are able to graduate to other credit;²¹⁵ those who are under the jurisdiction of the bankruptcy court;²¹⁶ borrowers whose files are being handled by the United States Attorney;²¹⁷ those who have "voluntarily conveyed and the deed has been recorded;"²¹⁸ and importantly, those borrowers "who were not indebted to the FmHA on September 18, 1984."²¹⁹

Under this plan the FmHA will postpone payment of part of the borrower's debt, "not to exceed 25 percent of the total unpaid principal and interest owed or \$200,000, whichever is less, for a period of 5 years at zero

204. 7 C.F.R. § 1951.33(c)(9) (1986).

205. 7 C.F.R. § 1941.4(g) (1986). *See also* 7 C.F.R. § 1943.4(g) (1986).

206. *See supra* note 24.

207. *See supra* notes 30 & 24.

208. 7 C.F.R. § 1941.4(g) (1986). *See also* 7 C.F.R. § 1943.4(g) (1986).

209. *Id.*

210. *Id.*

211. FmHA FARM LOAN HANDBOOK 56 (1983).

212. 7 C.F.R. § 1951.41 (1986).

213. *Id.* at 7 C.F.R. § 1951.41(b)(1) (1986).

214. 7 C.F.R. § 1951.41(b)(2) (1986).

215. 7 C.F.R. § 1951.41(b)(3) (1986).

216. 7 C.F.R. § 1951.41(b)(5) (1986).

217. 7 C.F.R. § 1951.41(b)(6) (1986).

218. 7 C.F.R. § 1951.41(b)(8) (1986).

219. 7 C.F.R. § 1951.41(b)(7) (1986).

percent rate of interest."²²⁰ The amount of the set-aside will only be as much "as is needed to create a positive cash flow projection within the next 5 years."²²¹ The basic requirement for set-aside is for the County Supervisor to determine that a positive cash flow projection is impossible without servicing.²²²

The cash flow projection will be determined by using the other possible servicing options at the limited resource rate, if the borrower qualifies.²²³ "If a positive cash flow projection is possible, the borrower is not eligible for a special set-aside."²²⁴ If a positive projection cannot be achieved with the maximum set-aside, the borrower, with the assistance of the County Supervisor, must seek debt adjustment with other creditors.²²⁵ If adjustments can be made and will result in a positive projection, a set-aside may be approved.²²⁶ If, after the adjustments are made, using the maximum set-aside, a positive cash flow projection is not achieved in the next five years, then the borrower will be denied a set-aside.²²⁷

The other requirements and limitations for special debt set-aside are similar to those for deferral.²²⁸ There are similar interest provisions and servicing alternatives;²²⁹ the borrower can get only one special set-aside;²³⁰ and a set-aside will be cancelled if the borrower violates any of the covenants contained in his FmHA agreements.²³¹ Rescheduled notes that are not set aside can be rescheduled or reamortized during the set-aside period.²³² Consolidation, during the set-aside period, is not available for notes that are rescheduled and set-aside.²³³

These set-aside provisions present a servicing option available to a limited class of severely distressed borrowers.²³⁴ The FmHA restricts the borrower's actions severely as a requirement of receiving the assistance. It should also be noted that when a borrower with a set-aside requests a defer-

220. 7 C.F.R. § 1951.41(c) (1986).

221. 7 C.F.R. § 1951.41(d)(3) (1986).

222. 7 C.F.R. § 1951.41(d)(1) (1986). The cash flow projections are determined under section 1951.41(c)(4). The Farm and Home plan must show "a balance available (line 16 in Table J) of at least 110 percent of the amount needed to pay all the year's debts due including tax liability shown Table K." *Id.* See appendix E.

223. 7 C.F.R. § 1951.41(d)(1) (1986). See *supra* notes 202-07 and accompanying text.

224. 7 C.F.R. § 1951.41(d)(1) (1986).

225. 7 C.F.R. § 1951.41(d)(4) (1986).

226. *Id.*

227. 7 C.F.R. § 1951.41(d)(5) (1986).

228. 7 C.F.R. § 1951.41(d)(6)-(11) (1986). See *supra* notes 153-64 and accompanying text.

229. 7 C.F.R. § 1951.41(e) (1986). See *supra* note 160 and accompanying text.

230. 7 C.F.R. § 1951.41(d)(10) (1986).

231. 7 C.F.R. § 1951.41(g)(1) (1986). The decision to cancel is appealable but the actual cancellation is not. *Id.* at 7 C.F.R. § 1951.41(g)(2) (1986).

232. 7 C.F.R. § 1951.41(h)(2) (1986).

233. 7 C.F.R. § 1951.41(h)(1) (1986).

234. See *supra* notes 209-16 and accompanying text.

ral he risks a possibility of having the set-aside cancelled.²³⁵

V. CONCLUSION

As a result of several recent court decisions the Farmers Home Administration was required to revise its regulations in order to implement the deferral provisions of Title 7, U.S.C. section 1981a.²³⁶ The regulations that provide the major loan servicing devices such as deferral,²³⁷ reamortization,²³⁸ rescheduling and consolidation,²³⁹ limited resource borrowing,²⁴⁰ and debt set-aside,²⁴¹ are the result of those decisions. There are other servicing alternatives, such as release of security, debt restructuring through sale of assets, subordination, and informal carrying of the borrower in default by the FmHA.²⁴²

The potential effect of these regulations is to implement the deferral provisions and streamline the appeals process. It should be reiterated that when a borrower appeals a denial of servicing he must also appeal the adverse decisions by the FmHA to accelerate and liquidate his account.²⁴³ The effect of this change will probably be to speed up the foreclosure process against borrowers who are not eligible for servicing. These servicing regulations may be able to help some financially stressed farmers, but, in view of the FmHA's responsibility as a credit agency to collect its loans, there are many for whom foreclosure is inevitable.²⁴⁴

Guy R. Montag

235. *See supra* notes 155-56 and accompanying text.

236. *See supra* notes 52-90 and accompanying text.

237. *See supra* notes 116-66 and accompanying text.

238. *See supra* notes 167-86 and accompanying text.

239. *See supra* notes 187-201 and accompanying text.

240. *See supra* notes 202-07 and accompanying text.

241. *See supra* notes 209-31 and accompanying text.

242. *See* appendices B, C.

243. *See supra* note 109 and accompanying text.

244. *See supra* note 18 and accompanying text.

APPENDIX A

Position 3

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

Form FmHA 1924-25
(1-86)

Notice of Intent to Take Adverse Action

(Date)

Dear:

As outlined below, your account with Farmers Home Administration (FmHA) is delinquent or there are other problems affecting your borrowing relationship with us.

We need to jointly attempt to work out a satisfactory solution to your credit problems through the various servicing options available. For your information and review, we have included with this material a copy of the FmHA notice entitled "Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities" (Form FmHA 1924-14).

This notice requires a response from you within 30 days, using the attached Form FmHA 1924-26. That form offers you the opportunity to request consideration for a number of servicing options. Further details are provided below.

We have conducted a review of your Farmers Home Administration (FmHA) loan accounts and determined the following where checked:

- Four checkbox options regarding loan delinquency, property disposition, farming cessation, and reasons for adverse action.

If the above listed violation(s) is not corrected by one or more of the actions described in the attached Form FmHA 1924-26, FmHA will need to accelerate your FmHA debts and eventually foreclose on your real estate and/or chattels.

You may with regard to your Operating, Economic Emergency, Emergency, Farm Ownership, Soil and Water, Special Livestock, Economic Opportunity, Rural Housing for farm service buildings, and/or Recreation loan(s), apply for servicing options, including deferrals, that are explained in the enclosed Form FmHA 1924-14 "Notice-Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities." Please read this form carefully.

If you wish to apply for any of the servicing options you must complete Part I of the enclosed Form FmHA 1924-26, sign the form, and return the form to the address listed on the letterhead of this notice within 30 days after you receive this notice.

At the conference you will be given the opportunity to present information you believe will show you are eligible for the servicing option(s) you requested. FmHA will make a decision on your request based on the information submitted by you, the information in your FmHA case file and the plans developed by you and FmHA at the conference.

APPENDIX A

If you do not wish to request servicing options, you have the opportunity to appeal the adverse action(s) FmHA intends to take. In this case, you should complete only Part II of Form FmHA 1924-26, sign the form and return it to the address shown in the letterhead of this notice within 30 days after you receive this notice. You may appear in person, with or without an attorney or other representative, to present your information. The hearing officer will be an FmHA employee who has not been previously involved in your case. The hearing officer will arrange a mutually convenient time and place for the appeal hearing.

Several methods of curing defaults or liquidating your FmHA loan accounts are available. If you prefer to use one of those methods listed in Part III (Curing Defaults) or Part IV (Liquidation Action) of Form FmHA 1924-26, check the appropriate box, sign the form and return it to the address listed in the letterhead of this notice within 30 days of receipt of this notice.

Please note that Form FmHA 1924-26 must be postmarked within 30 days of the day you received this notice. If you fail to respond to this notice by completing, signing, and returning Form FmHA 1924-26 in the prescribed time, FmHA will need to accelerate your FmHA debts and eventually foreclose on your real estate and/or chattels without further notice or right of administrative appeal by you.

(The following paragraph applies for individual borrowers only)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (*provided that the applicant has the capacity to enter into a binding contract*); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

FmHA County Supervisor

Enclosures:

Form FmHA 1924-14

Form FmHA 1924-26

FmHA 1924-25 (1-86)
(REVERSE)

APPENDIX B

Form FmHA 1924-26 (9-85)

Position 4

FORM APPROVED OMB NO. 5878-0111 EXP. DATE AVAIL. ON REQUEST

United States Department of Agriculture Farmers Home Administration

Borrower Acknowledgement of Notice of Intent to Take Adverse Action

(Date)

County Supervisor, FmHA

This acknowledges that I(we) received your Notice of Intent To Take Adverse Action dated _____.

(Complete Part I, II, III, or Part IV and Part V)

I. Servicing Actions

I(we) request FmHA to consider the following servicing actions (check one or more)

- A. Rescheduling B. Reamortization C. Consolidation D. Deferral E. Limited Resource F. Subordination G. Restructuring the business and debt by selling a portion of my(our) assets

I(we) understand that if, after I(we) attend a mandatory conference and present necessary information, FmHA denies my(our) request, I(we) will be given opportunity to appeal.

(If you completed this part, proceed to Part V)

II. Appeal

I(we) do not wish to apply for the servicing options in Part I above. I(we) understand that I(we) may appeal FmHA's intended adverse action and I(we) wish to have the appeal hearing handled as follows:

(check appropriate box)

A. I(we) request an appeal hearing and I(we) believe FmHA's intended action is wrong for the following reason(s).

I(we) am(are) enclosing the following information for the hearing officer's consideration (Itemize specific documents).

B. I(we) request an appeal hearing and I(we) will present information at the hearing which I(we) believe will prove FmHA's decision is incorrect.

This information is to be collected by FmHA from the borrower in order to learn whether the borrower wants to apply for specific loan servicing options, to appeal FmHA's intended actions, to cure the default or to liquidate. The information is required so that FmHA understands what actions the borrower wishes to pursue. This statement is furnished pursuant to P.L. 96-511.

APPENDIX B

C. _____ I(we) will not attend an appeal hearing but request the hearing officer to review the existing written record, and based on the review, determine whether FmHA's decision is correct.

D. _____ I(we) do not want to appeal the intended action and waive my(our) right to do so.

(If you completed this part, proceed to Part V)

III. Curing Defaults. (Complete this only if you have checked none of the boxes in I or II above).

I(we) do not wish to request a servicing option in Part I or to appeal the intended adverse action as allowed in Part II. I(we) wish to take the following action to correct the security agreement violations noted in Form FmHA 1924-25 and request a conference with you to discuss this action.

A. _____ Pay my(our) delinquent loan accounts current.

B. _____ Make restitution to FmHA for unauthorized disposition of security.

I will take this action within 60 days of the date this Form FmHA 1924-26 is postmarked. If I cannot accomplish this action within the 60 days, FmHA will proceed to take adverse action against me, and I will not be allowed to appeal the adverse action.

(If you completed this part, proceed to Part V)

IV. Liquidation Actions. (Complete this only if you have checked none of the boxes in I, II, or III above).

I(we) do not wish to request a servicing option in Part I, appeal the adverse action as permitted in Part II, or correct the security agreement violations as permitted in Part III. I(we) wish to take the following action to liquidate my (our) FmHA accounts and request a conference with you to discuss this action.

A. _____ Sell my (our) security for cash.

B. _____ Convey my (our) security to FmHA.

C. _____ Transfer my (our) security to someone who will assume the FmHA debt.

D. _____ Refinance my (our) debt with another lender.

I will take this action within 120 days of the date this Form FmHA 1924-26 is postmarked. I understand that I may be considered for FmHA debt settlement should sale, transfer, or conveyance of secured property fail to satisfy my(our) entire FmHA debt. I understand that if I cannot accomplish this action within 120 days, FmHA will proceed to take adverse action and I will not be allowed to appeal that action.

(Proceed to Part V)

V. Certification

I(we) hereby request one of the above actions. I(we) understand that if I(we) do not request any of the actions in Parts I, III, or IV or desire an appeal hearing in Part II, FmHA may proceed to take immediate action on my(our) loan accounts.

Sincerely,

(Signature of borrower)

(Signature of borrower)

APPENDIX C

FmHA 1924-14
(Rev. 9/85)

Position 3

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

NOTICE

**FARMER PROGRAM BORROWER SERVICING OPTIONS INCLUDING
DEFERRALS AND BORROWER RESPONSIBILITIES**

Servicing Options

All borrowers are expected to repay their loans according to planned repayment schedules. However, sometimes borrowers will not be able to pay as scheduled. If this happens, you may inquire about the following servicing options:

I. Deferral:

An approved delay in making regularly scheduled payments. Such a delay may be granted if FmHA finds that, due to circumstances beyond your control, you are temporarily unable to continue making the scheduled payments on such loan(s) without unduly impairing your standard of living. A more detailed description is available at any FmHA Office.

II. Limited Resource Program:

The Farmers Home Administration (FmHA) has authority to make limited resource farm ownership and operating loans to qualified applicants.

The program provides credit at an interest rate which is lower than FmHA's regular interest rate.

In addition to making loans at reduced interest rate, borrowers with existing farm ownership and operating loans who qualify as limited resource operators may have their loans rewritten at the lower interest rate.

III. Consolidation:

Combining and rewriting similar type loans made for operating purposes at new rates and terms.

IV. Rescheduling:

Rewriting loans made for operating purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

V. Reamortization:

Rewriting loans made for real estate purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

VI. Subordination of the FmHA lien to the lien of another creditor.

VII. Restructuring the business and debt by selling a portion of your assets.

If you would like additional information regarding any of the above items and how to apply you should contact the FmHA County Supervisor. You will be asked to attend a conference with the FmHA County Supervisor and you must furnish the information necessary for FmHA to make a decision on your request. The County Supervisor can advise you of the information needed for a decision.

APPENDIX C

FARMER PROGRAM BORROWER RESPONSIBILITIES

Please read carefully the following summary of major FmHA requirements. Farmer Program insured borrowers should understand what the Farmers Home Administration (FmHA) expects of them and how FmHA can be of better service. This is *not* a complete list of all responsibilities of an FmHA borrower; this highlights only *some* of those responsibilities.

RESPONSIBILITIES CONSIST OF, BUT ARE NOT LIMITED TO, THE FOLLOWING:

- PAYMENTS:** Payments are due as agreed upon in the note(s). It is essential that payments be made on time. Extra payments are encouraged whenever possible.
- SECURITY:** The loan(s) is secured by a Financing Statement and Security Agreement and/or a real estate mortgage or other security instruments (depending upon the type of loan or security). These instruments give FmHA a valid lien on crops, chattels, land, etc., as applicable.
- USE OF LOAN FUNDS:** FmHA loan funds will be used for the purpose(s) shown on the Farm and Home Plan or other plan of operation acceptable to FmHA, and/or Development Plan in cases of real estate improvements.
- RELEASES AND SALES:** The Form FmHA 1962-1, "Agreement For The Use of Proceeds/Release of Chattel Security," which you signed is the agreement between FmHA and you which explains what sales you plan to make, approximately when and to whom those sales will be made, and how the proceeds from those sales will be used. You must inform FmHA if you want to make any sales which are not listed on the form, if you want to sell to a purchaser not listed on the form, or if you make a sale and you receive an amount of proceeds different from the amount listed on the form. It may be a violation of Federal criminal law to make sales which have not been authorized on Form FmHA 1962-1 or to fail to account for sales proceeds.
- CHANGES IN OPERATION:** FmHA agreed to lend you money based on facts which you supplied about your operation. If any changes occur in your operation you should notify the FmHA County Supervisor at once.
- VIOLATION OF RESPONSIBILITIES:** Violation of any of the above responsibilities may result in denial of further FmHA assistance, and could cause your FmHA loan(s) to be accelerated.

APPENDIX E

USDA-FmHA
Form FmHA 431-2
(Rev. 12-14-78)

Position 3

FORM APPROVED OMB NO. 5715-0041
APPROVAL EXPIRES 4/75

FARM AND HOME PLAN

COUNTY

NAME OF BORROWER, NAME OF CO-BORROWER, ADDRESS & TELEPHONE NO., AGES OF PERSONS IN HOUSEHOLD, TERMS OF LEASE, PERIOD OF LEASE

A. FINANCIAL STATEMENT AS OF , 19

PROPERTY OWNED, DEBTS OWED, REAL ESTATE, LIVESTOCK, MACHINERY AND EQUIPMENT, OTHER PERSONAL PROPERTY, NET WORTH, TOTAL LAND DEBT, TOTAL DEBTS OTHER THAN LAND

The information requested on this form is being collected in order (1) for FmHA to make loan and/or servicing decisions and (2) to provide management assistance to borrowers. The FmHA retains the form in the borrower's file for future reference. The information collected on this form is required for a borrower to obtain the benefits of a Farmer Program loan from FmHA.

APPENDIX E

NOTE: All "actual" data to be completed by end of crop year

B. CROPS, PASTURE, ETC.—PRODUCTION AND SALES

CROPS, PASTURE, SET-ASIDE PROGRAM PAYMENTS, ETC.	PLANNED					ACTUAL						
	ACRES	YIELD PER ACRE	OPERATOR'S SHARE			ACRES	YIELD PER ACRE	OPERATOR'S SHARE			CASH INCOME	
			UNITS FOR:					UNITS				
			FARM USE	SALE	⊙ DOLLAR SALES			FARM USE	HELD FOR SALE	SOLD	⊙	
1.												
2.												
3.												
4.												
5.												
6.												
7.												
8.												
9.												
10.												
11.												
12.												
13.												
14. FARMSTEAD, GARDEN AND ROADS												
15. TOTAL (ENTER TABLE J, LINE 1)												

C. LIVESTOCK AND PRODUCTS—PRODUCTION AND SALES

LIVESTOCK AND PRODUCTS AND WOOL-MONAIR PROGRAM PAYMENTS	PLANNED					ACTUAL						
	NO.	PROD. PER ANIMAL	OPERATOR'S SHARE			NO.	PROD. PER ANIMAL	OPERATOR'S SHARE			CASH INCOME	
			UNITS FOR:					UNITS				
			FARM USE	SALE	⊙ DOLLAR SALES			FARM USE	HELD FOR SALE	SOLD	⊙	
1.												
2.												
3.												
4.												
5.												
6.												
7.												
8.												
9.												
10.												
11.												
12.												
13. MILK (LBS.)												
14. EGGS (DOZ.)												
15. TOTAL (ENTER TABLE J, LINE 2)												

APPENDIX G

Position 3
United States Department of Agriculture
FARMERS HOME ADMINISTRATION
APPLICATION FOR FmHA SERVICES

FORM APPROVED
OMB No. 0875-0088

FOR COUNTY OFFICE USE
Race Ethnic Color Check One
W 1 N 2 O 3 A 4 S 5

(Please Print or Write Plainly)

1. NAME (FIRST) (MIDDLE) (LAST) SOCIAL SECURITY NO. NICKNAME OR AKNOW AN
2. WIFE'S NAME (FIRST) (MIDDLE) (MAIDEN) SOCIAL SECURITY NO. TELEPHONE NO.
3. COMPLETE ADDRESS (ROUTE POST OFFICE, STATE, ZIP CODE, COUNTY)
4. AREA OF PERSONS IN HOUSEHOLD HUSBAND WIFE SONS DAUGHTERS OTHERS
5. HIGHEST GRADE OF SCHOOL COMPLETED BY APPLICANT (CIRCLE APPROPRIATE YEAR) ELEMENTARY: 1 2 3 4 5 6 7 8 HIGH SCHOOL: 1 2 3 4 COLLEGE: 1 2 3 4 5 6 OR MORE
6. ARE YOU A CITIZEN OF THE UNITED STATES? YES NO IS YOUR WIFE A CITIZEN OF THE UNITED STATES? YES NO
7. ARE YOU A VETERAN? YES NO IF "YES" INDICATE SERVICE FROM TO
8. MY FARM OR RESIDENCE IS LOCATED (DIRECTION) MILES FROM (TOWN) ON ROAD
14. AMOUNT BORROWED FOR OPERATING PURPOSES OR BUSINESS LAST YEAR FROM WHOM?
18. HAVE YOU OR YOUR SPOUSE EVER OBTAINED A LOAN FROM FARMERS HOME ADMINISTRATION? YES NO IF YES, WAS THE LOAN PAID IN FULL? YES NO
16. WHAT KIND OF NONFARM WORK DO YOU AND MEMBERS OF YOUR FAMILY DO? (HUSBAND) (WIFE) (OTHER)
17. NAME AND ADDRESS OF EMPLOYER(S) (HUSBAND) (WIFE) (OTHER) NUMBER OF YEARS WITH EMPLOYER(S) AND INCOME LAST YEAR
19. TOTAL CASH INCOME LAST YEAR: LIVESTOCK AND WOODSTOCK PRODUCTS SOLD CROPS SOLD OTHER FARM INCOME NONFARM INCOME (SALARY, PENSIONS, DIVIDENDS, RENTS, ETC.) TOTAL
19. TOTAL CASH EXPENSES LAST YEAR: FAMILY LIVING FARM OPERATING NONFARM OPERATING PERSONAL, REAL ESTATE AND INCOME TAXES PAID OTHER (CAPITAL GOODS PURCHASED, DEBTS PAID, ETC.) TOTAL EXPENSE
20. CASH VALUE OF FOOD PRODUCED FOR HOME USE LAST YEAR

APPENDIX G

21. FINANCIAL STATEMENT AS OF DATE OF APPLICATION
(Show property owned and debts owed by applicant and spouse)

LIST ALL PROPERTY OWNED			LIST ALL DEBTS OWED					
REAL ESTATE (LOCATION):	ACRES	VALUE	NAME AND ADDRESS OF CREDITOR	FINAL DUE DATE	INTEREST RATE	ANNUAL INSTAL.	AMOUNT DELINQ.	UNPAID BALANCE
FARM		\$	LIENS ON REAL ESTATE:					
OTHER REAL ESTATE						\$	\$	\$
TOTAL REAL ESTATE						\$	\$	\$
LIVESTOCK:	NO.	VALUE	LIENS ON CHATTELS AND CROPS:					
LIVESTOCK HELD FOR SALE		\$	TOTAL LIENS ON R. E.					
DAIRY COWS						\$	\$	\$
BEEF COWS						\$	\$	\$
OTHER CATTLE								
BROOD SOWS AND GILTS								
OTHER HOGS								
EWES								
OTHER SHEEP								
POULTRY								
TOTAL LIVESTOCK						\$	\$	\$
MACHINERY AND EQUIPMENT:			JUDGMENTS:					
AUTO \$		\$						
TRUCK \$		\$						
TRACTOR(S)								
OTHER FARM MACHINERY								
TOTAL MACHINERY AND EQUIPMENT			TOTAL LIENS CHATTELS & CROPS					
		\$				\$	\$	\$
OTHER PERSONAL PROPERTY:			TOTAL JUDGMENTS:					
CROPS HELD FOR SALE	QUAN.	VALUE				\$	\$	\$
GROWING CROPS			TAXES DUE: REAL ESTATE \$			PERSONAL \$		
FEED			INCOME & SOCIAL SECURITY \$			TOTAL TAXES DUE \$		
			ALL OTHER DEBTS - DOCTOR, STORE, ETC., DESCRIBE:					
								\$
SEED AND SUPPLIES								
HOUSEHOLD GOODS								
CASH ON HAND								
BONDS AND INVESTMENTS								
ACCTS OWED US-COLLECTIBLE								
TOTAL OTHER PERSONAL PROP.		\$						\$
TOTAL PROPERTY OWNED		\$						TOTAL ALL DEBTS \$

22. FOR WHAT PURPOSE DO YOU NEED FARMERS HOME ADMINISTRATION SERVICES?

23. I am unable to provide the above items on my own account, and I am unable to secure the credit necessary for such items from other sources upon terms and conditions which I can reasonably fulfill. I CERTIFY that the statements made by me in this application are true, complete and correct to the best of my knowledge and belief, and are made in good faith to obtain a loan.

DATE _____, 19____

(SIGNATURE OF APPLICANT)

(SIGNATURE OF SPOUSE)

24. TO BE COMPLETED BY COUNTY SUPERVISOR

TYPE OF LOAN APPLIED FOR: OL EM PD RH SR EO OTHER _____ (SPECIFY)

CONDITION OF HOUSE: 1 2 3

PLUMBING FACILITIES IN HOUSE: 1 2 3

SYSTEM OF FARMING LAST YEAR: _____

APPENDIX H

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the Borrower. Refunds and extra payments, as defined in the regulations (7 CFR §1861.2) of the Farmers Home Administration according to the source of funds involved, shall, after payment of interest, be applied to the last installment to become due under this note and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this note and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder. While this note is held by an insured holder, prepayments made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on an installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an installment due date basis shall be the date of the prepayment by Borrower, and the Government will pay the interest to which the holder is entitled accruing between such date and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection of this note or to preserve or protect any security for the loan or otherwise expended under the terms of any security agreement or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand.

Property constructed, improved, purchased, or refinanced in whole or in part with the loan evidenced hereby shall not be leased, assigned, sold, transferred, or encumbered, voluntarily or otherwise, without the written consent of the Government. Unless the Government consents otherwise in writing, Borrower will operate such property as a farm if this is a Farm Ownership loan.

If "Consolidation and subsequent loan," "Consolidation," "Rescheduling," or "Reamortization" is indicated in the "Action Requiring Note" block above, this note is given to consolidate, reschedule or reamortize, but not in satisfaction of the unpaid principal and interest on the following described note(s) or assumption agreement(s) (new terms):

FACE AMOUNT	INT. RATE	DATE	ORIGINAL BORROWER	LAST INSTALL. DUE
\$	%	, 19		, 19
\$	%	, 19		, 19
\$	%	, 19		, 19
\$	%	, 19		, 19
\$	%	, 19		, 19
\$	%	, 19		, 19
\$	%	, 19		, 19

Security instruments taken in connection with the loans evidenced by these described notes and other related obligations are not affected by this consolidating, rescheduling or reamortizing. These security instruments shall continue to remain in effect and the security given for the loans evidenced by the described notes shall continue to remain as security for the loan evidenced by this note, and for any other related obligations.

REFINANCING (GRADUATION) AGREEMENT: If at any time it shall appear to the Government that the Borrower may be able to obtain financing from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept a loan(s) in sufficient amount to pay this note in full and, if the lender is a cooperative, to pay for any necessary stock.

DEFAULT: Failure to pay when due any debt evidenced hereby or perform any covenant of agreement hereunder shall constitute default under this and any other instrument evidencing a debt of Borrower owing to, insured or Guaranteed by the Government or securing or otherwise relating to such debt; and default under any such other instrument shall constitute default hereunder. **UPON ANY SUCH DEFAULT,** the Government at its option may declare all or any part of any such indebtedness immediately due and payable.

This Note is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farm and Rural Development Act, or the Emergency Agricultural Credit Adjustment Act of 1978 and for the type of loan as indicated in the "Kind of Loan" block above. This Note shall be subject to the present regulations of the Farmers Home Administration and to its future regulations not inconsistent with the express provisions hereof.

APPENDIX H

Presentment, protest, and notice are hereby waived.

(SEAL)

(Borrower)

(SEAL)

(Borrower)

RECORD OF ADVANCES					
AMOUNT	DATE	AMOUNT	DATE	AMOUNT	DATE
\$		\$		\$	
\$		\$		\$	
\$		\$		\$	
\$		\$		\$	
TOTAL				\$	

APPENDIX I

Position 1

USDA-FmHA
Form FmHA 440-4
(Rev. 6-21-83)

SECURITY AGREEMENT
(CHATTELS AND CROPS)

I. THIS SECURITY AGREEMENT, dated _____, 19____, is made between the United States of America
acting through the Farmers Home Administration (herein called Secured Party) and _____
and _____ (herein called Debtor), whose mailing address is _____

II. WHEREAS Debtor is justly indebted to Secured Party as evidenced by one or more certain promissory note(s) or other instru-
ment(s), and in the future may incur additional indebtedness to Secured Party which will also be evidenced by one or more promissory note(s)
or other instrument(s), all of which are herein called "note", which has been executed by Debtor, is payable to the order of Secured Party, and
authorizes acceleration of the entire indebtedness at the option of Secured Party upon any default by Debtor; and

The note evidences a loan to Debtor, and Secured Party at any time, may assign the note and insure the payment thereof to any extent
authorized by the Consolidated Farm and Rural Development Act or any other act administered by the Farmers Home Administration and

It is the purpose and intent of this instrument that, among other things, at all times when the note is held by Secured Party, or in the
event Secured Party should assign this instrument without insurance of the note, this instrument shall secure payment of the note; but when
the note is held by an insured holder, this instrument shall not secure payment of the note or attach to the debt evidenced thereby, but as to
the note and such debt shall constitute an indemnity security agreement to secure Secured Party against loss under its insurance contract by
reason of any default by Debtor; and

NOW THEREFORE, in consideration of said loan(s) and (a) at all times when the note is held by Secured Party, or in the event Secured
Party should assign this instrument without insurance of the payment of the note, to secure the prompt payment of all existing and future
indebtedness and liabilities of Debtor to Secured Party and of all renewals and extensions thereof and any additional loans or future advances
to Debtor heretofore or hereafter made or insured by Secured Party under the then existing provisions of the Consolidated Farm and Rural
Development Act or any other act administered by the Farmers Home Administration all with interest, (b) at all times when the note is held by
an insured holder, to secure performance of Debtor's agreement herein to indemnify and save harmless Secured Party against loss under its
insurance contract by reason of any default by Debtor, (c) in any event and at all times to secure the prompt payment of all advances and
expenditures made by Secured Party, with interest, as hereinafter described, and the performance of every covenant and agreement of Debtor
contained herein or in any supplementary agreement:

DEBTOR HEREBY GRANTS to Secured Party a security interest in Debtor's interest in the following collateral, including the proceeds
and products thereof:

Item 1. All crops, annual and perennial, and other plant products now planted, growing or grown, or which are hereafter planted or
otherwise become growing crops or other plant products (a) within the one-year period or any longer period of years permissible under State
law, or (b) at any time hereafter if no fixed maximum period is prescribed by State law, on the following described real estate:

Table with 4 columns: Farm(s) or Other Real Estate *Owner, Approximate No. of Acres, County and State, Approximate Distance and Direction from a Named Town or other Description

Including all peanut and tobacco poundage allotments existing on or leased and transferred or to be leased and transferred to the above de-
scribed farms as well as any proceeds derived from the conveyance or lease and transfer by the debtors to any subsequent party.

*Owner shown in related Financing Statement, except if informed of ownership change show reputed new owner.

APPENDIX I

--	--	--	--	--	--	--	--

Item 4. All accounts, contract rights and general intangibles, as follows:

III. DEBTOR WARRANTS, COVENANTS, AND AGREES THAT:

A. Debtor is the absolute and exclusive owner of the above-described collateral, and any marks or brands used to describe livestock are the holding brands and carry the title, although the livestock may have other marks or brands, and such collateral is free from all liens, encumbrances, security and other interests except (1) any existing liens, encumbrances, security or other interests in favor of Secured Party which shall remain in full force and effect, (2) any applicable landlord's statutory liens, and (3) other liens, encumbrances, security or other interests, as follows:

and Debtor will defend the collateral against the claims and demands of all other persons. Reference to the above liens, encumbrances, security and other interests is for warranty purposes only and does not indicate their priority.

B. Statements contained in Debtor's loan application(s) are true and correct; and Debtor will (1) use the loan funds for the purposes for which they were or are advanced, (2) comply with such farm and home management plans as may be agreed upon from time to time by Debtor and Secured Party, (3) care for and maintain the collateral in a good and husbandlike manner, (4) insure the collateral in such amounts and manner as may be required by Secured Party, and if Debtor fails to do so, Secured Party, at its option, may procure such insurance, (5) permit Secured Party to inspect the collateral at any reasonable time, (6) not abandon the collateral or encumber, conceal, remove, sell or otherwise dispose of it or of any interest therein, or permit others to do so, without the prior written consent of Secured Party, and (7) not permit the collateral to be levied upon, injured or destroyed, or its value to be impaired, except by using harvested crops in amounts necessary to care for livestock covered hereby.

C. Debtor will pay promptly when due all (1) indebtedness evidenced by the note and any indebtedness to Secured Party secured hereby, (2) rents, taxes, insurance premiums, levies, assessments, liens, and other encumbrances, and costs of lien searches and maintenance and other charges now or hereafter attaching to, levied on, or otherwise pertaining to the collateral or this security interest, (3) filing or recording fees for instruments necessary to perfect, continue, service, or terminate this security interest, and (4) fees and other charges now or hereafter required by regulations of the Farmers Home Administration. At all times when the note is held by an insured holder, Debtor shall continue to make payments on the note to Secured Party, as collection agent for the holder.

D. If the note is insured by Secured Party, Debtor will indemnify and save harmless Secured Party against any loss by reason of any default by Debtor.

E. At all times when the note is held by an insured holder, any amount due and unpaid under the terms of the note to which the holder is entitled may be paid by Secured Party to the holder of the note for the account of Debtor. Any amount due and unpaid under the terms of the note, whether it is held by Secured Party or by an insured holder, may be credited by Secured Party on the note and thereupon shall constitute an advance by Secured Party for the account of Debtor. Any advance by Secured Party as described in this paragraph shall bear interest at the note rate from the date on which the amount of the advance was due to the date of payment to Secured Party, provided that Borrower shall be required to pay interest on only the principal portion of such advance unless otherwise provided in the regulations of the Farmers Home Administration.

APPENDIX I

F. Whether or not the note is insured by Secured Party, Secured Party may at any time pay any other amounts required herein to be paid by Debtor and not paid when due, including any costs and expenses for the preservation or protection of the collateral of this security interest, as advances for the account of Debtor. All such advances shall bear interest at the rate borne by the note which has the highest interest rate.

G. All advances by Secured Party as described in this instrument, with interest, shall be immediately due and payable by Debtor to Secured Party without demand at the place designated in the latest note and shall be secured hereby. No such advance by Secured Party shall relieve Debtor from breach of the covenant to pay. Any payment made by Debtor may be applied on the note or any indebtedness to Secured Party secured hereby, in any order Secured Party determines.

H. In order to secure or better secure the aforesaid obligations or indebtedness, Debtor will execute and deliver to Secured Party at any time, upon demand, such additional security instruments on such real and personal property as Secured Party may require.

IV. IT IS FURTHER AGREED THAT:

A. Until default Debtor may retain possession of the collateral.

B. Default shall exist hereunder if Debtor fails to perform or discharge any obligation or to pay promptly any indebtedness hereby secured or to observe or perform any covenants or agreements herein or in any supplementary agreement contained, or if any of Debtor's representations or warranties herein prove false or misleading, or upon the death or incompetency of the parties named as Debtor, or upon the bankruptcy or insolvency of anyone of the parties named as Debtor. Upon any such default.

1. Secured Party, at its option, with or without notice as permitted by law, may (a) declare the unpaid balance on the note and any indebtedness secured hereby immediately due and payable, (b) enter upon the premises and take possession of, cultivate and harvest crops, repair, improve, use, and operate the collateral or make equipment unusable, for the purpose of protecting or preserving the collateral or this lien, or preparing or processing the collateral for sale, and (c) exercise any sale or other rights accorded by law.

2. Debtor hereby (a) agrees to assemble the collateral and make it available to Secured Party at such time(s) and place(s) as designated by Secured Party, and (b) waives all notices, exemptions, compulsory disposition and redemption rights.

3. A default shall exist under any other security instrument held or insured by Secured Party and executed or assumed by Debtor on real or personal property. Likewise, default under any such other security instrument shall constitute default hereunder.

C. Proceeds from disposition of collateral shall be applied first on expenses of retaking, holding, preparing for sale, selling and the like and for payment of reasonable attorneys' fees and legal expenses incurred by Secured Party, second to the satisfaction of prior security interests or liens to the extent required by law and in accordance with current regulations of the Farmers Home Administration, third to the satisfaction of indebtedness secured hereby, fourth to the satisfaction of subordinate security interests to the extent required by law, fifth to any other obligations of Debtor owing to or insured by Secured Party, and sixth to Debtor. Any proceeds collected under insurance policies shall be applied first on advances and expenditures made by Secured Party, with interest, as hereinabove provided, second on the debt evidenced by the note, unless Secured Party consents in writing to their use by Debtor under Secured Party's direction for repair or replacement of the collateral, third on any other obligation of Debtor owing to or insured by Secured Party, and any balance shall be paid to Debtor unless otherwise provided in the insurance policies. Debtor will be liable for any deficiency owed to Secured Party after such disposition of proceeds of the collateral and insurance.

D. It is the intent of Debtor and Secured Party that to the extent permitted by law and for the purpose of this Agreement, no collateral covered hereby is or shall become realty or accessioned to other goods.

E. This Agreement is subject to the present regulations of the Secured Party and to its future regulations not inconsistent with the express provisions hereof.

F. If any provision of this Agreement is held invalid or unenforceable, it shall not affect any other provisions hereof, but this Agreement shall be construed as if it had never contained such invalid or unenforceable provision.

G. The rights and privileges of Secured Party under this Agreement shall inure to the benefit of its successors and assigns. All covenants, warranties, representations, and agreements of Debtor contained in this Agreement are joint and several and shall bind personal representatives, heirs, successors, and assigns.

H. If at any time it shall appear to Secured Party that Debtor may be able to obtain a loan from a production credit association, a Federal land bank, or other responsible cooperative or private credit source, at reasonable rates and terms for loans for similar purposes and periods of time, Debtor will, upon Secured Party's request, apply for and accept such loan in sufficient amount to pay the note and any indebtedness secured hereby and to pay for any stock necessary to be purchased in a cooperative lending agency in connection with such loan.

I. Secured Party shall have the sole and exclusive rights as the secured party hereunder, including but not limited to the power to grant or issue any consent, release, subordination, continuation statement or termination statement, and no insured holder shall have any right, title, or interest in or to the security interest created by this Agreement or any benefits hereof.

J. Secured Party will make or insure future loans or advances to Debtor to enable Debtor to raise or harvest farm crops or raise livestock or other animals, provided funds are available and the Debtor meets all then current requirements imposed by regulations of the Secured Party.

K. SECURED PARTY HAS INFORMED DEBTOR THAT DISPOSAL OF PROPERTY COVERED BY THIS SECURITY AGREEMENT WITHOUT THE CONSENT OF SECURED PARTY, OR MAKING ANY FALSE STATEMENT IN THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT, MAY CONSTITUTE A VIOLATION OF FEDERAL CRIMINAL LAW.

L. Failure by the Secured Party to exercise any right—whether once or often—shall not be construed as a waiver of any covenant or condition or of the breach thereof. Such failure shall also not affect the exercise of such right without notice upon any subsequent breach of the same or any other covenant or condition.

(Debtor) (SEAL) _____ (Debtor) (SEAL)

APPENDIX J

(Forms Manual Insert - Form FmHA 1940-17) -6-

The County Supervisor has the responsibility for determining the appropriate loan repayment schedule for each borrower. The repayment schedule and the reasons for using the particular schedule will be fully discussed with each borrower. During this discussion, the County Supervisor should also make sure that the borrower is aware that all payments will be applied first to accrued interest and then to principal. If deferred payments are scheduled, the borrower should be aware that principal will show little, if any, reduction in the first part of the repayment period. FMI example VII may be used to illustrate this to the borrower.

The following examples are given to illustrate the mechanics of computing installments.

EXAMPLE I – EQUAL AMORTIZED INSTALLMENTS

A loan is made for \$23,800 at 8½ percent interest and closed on March 1, 1979. It is determined that the loan will be repaid in 7 years (due to this method of determining the installments, the loan will be repaid in slightly less than 7 years if all installments are paid as scheduled). The first installment is scheduled on January 1, 1980.

Equal amortized installments are determined as follows:

\$23,800 Amount of loan.
× 19537 Factor for 8½% interest, 7 years (FmHA Instruction 440.1, Exhibit F-5, Page 3).
 \$ 4650 Equal amortized annual installments of principal and interest (rounded).

Insert \$4650 in Item (15) and Item (16). Determine amount of interest to be entered on Form FmHA 1940-41: as follows:

\$32,550 (Amount of installments (\$4650) times number of years over which loan is amortized (7)).
-23,800 Less amount of loan.
 \$ 8,750 Amount of interest to be entered on Form FmHA 1940-41.

This method of determining interest slightly overstates the amount of interest since a full year did not lapse between loan closing and the first installment.

EXAMPLE II – FIRST INSTALLMENT, INTEREST ONLY, REMAINING ARE EQUAL AMORTIZED INSTALLMENTS.

A loan is made for \$23,800 at 8½ percent interest and closed on September 25, 1978. It is determined the loan will be repaid in 7 years. The first installment must be scheduled on January 1, 1979. Since the borrower is not expected to have sufficient income to reduce the principal on January 1, 1979, an interest only installment is scheduled.

<u>Date of Installment</u>	<u>Amount of Installment</u>
1-1-79	\$ 543 ¹
1-1-80	4650 ²
1-1-81	4650
1-1-82	4650
1-1-83	4650
1-1-84	4650
1-1-85	4650
9-25-85	4650 ³

APPENDIX J

-7- (Forms Manual Insert - Form FmHA 1940-17)

Example II (cont.)

¹ Interest only installment, determined as follows:

\$23,800 Amount of loan.

x .022822 Factor for 8½% interest (FmHA Instruction 440.1, Exhibit C-14).

\$ 543 Interest September 25, 1978 thru January 1, 1979 (Rounded).

Insert in Item (15). Only one amount is to be inserted in Item (15).

² Equal amortized payment.

\$23,800 Amount of loan.

x .19537 Factor for 8½% interest, 7 years (FmHA Instruction 440.1, Exhibit F-5, Page 3).

\$ 4650 Equal amortized installment of principal and interest (Rounded). Insert in Item (16).

NOTE: Equal amortized installments do not have to be used when the first installment is interest only. Installments are supposed to be scheduled in accordance with the borrower's ability to repay.

³ Amount of last installment not entered on note.

To compute interest to be entered on Form FmHA 1940-41.

\$33093 Sum of all installments.

-23800 Amount of loan.

\$ 9293 Amount of interest to be entered on Form FmHA 1940-41.

This slightly overstates the amount of interest since the last installment is due before a full year has lapsed.

EXAMPLE III - FUTURE ADVANCE OF LOAN FUNDS AND UNEQUAL INSTALLMENTS SCHEDULED

A loan is made for \$23,800 at 8½ percent interest and closed on September 25, 1978. An advance of \$18,800 is received at loan closing and a future advance of \$5,000 is planned for February 2, 1979. The borrower's income is expected to be insufficient to repay any principal in the January 1, 1979 installment. The \$5,000 future advance is for annual operating expenses and is scheduled for repayment in the first installment following receipt of income (January 1, 1980). The borrower's repayment ability is insufficient to repay the entire loan in 7 years which results in scheduling a balloon installment at the end of 7 years (8th installment).

<u>Date of Installment</u>	<u>Principal Scheduled</u>	<u>Accrued Interest</u>	<u>Total⁷ Installment</u>	<u>Principal Balance</u>
1-1-79	\$ 0	\$ 429 ¹	\$ 429	\$18,800
1-1-80	7000	1971 ²	8971	16,800 ³
1-1-81	2000	1428 ⁴	3428	14,800
1-1-82	2000	1258	3258	12,800
1-1-83	2000	1088	3088	10,800
1-1-84	2000	918	2918	8,800
1-1-85	2000	748	2748	6,800
9-25-85	6800	578 ⁵	7378 ⁶	0

¹ Interest only installment.

\$18,800 Amount advanced September 25, 1978.

x .022822 Factor for 8½% (FmHA Instruction 440.1, Exhibit C-14).

\$ 429 Interest September 25, 1978 thru January 1, 1979 (Rounded).

APPENDIX J

(Forms Manual Insert - Form FmHA 1940-17) -8-

Example III (cont.)

² Interest for second installment.

\$ 18,800 Principal balance previous January 1.

x .085 Annual interest rate.

\$ 1598 Partial interest.

\$ 5000 Future advance

x .074521 Factor for 8½% (FmHA Instruction 440.1, Exhibit C-14).

\$ 373 Interest on future advance February 15, 1979 thru January 1, 1980 (Rounded).

\$ 1598 + 373 = \$1971 Total interest accrued and due for second installment.

³ Principal balance (\$16,800) equals previous principal balance (\$18,800) plus future advance of February 15, 1979 (\$5,000) minus principal scheduled (\$7,000).⁴ Interest computed by multiplying previous principal balance times annual interest rate. (\$16,800 x .085 = \$1428 for January 1, 1981.)⁵ Interest computed for full year. This slightly overstates the amount of interest that will actually be paid. If a more accurate calculation of interest is needed, it can be figured by calculating the fractional portion of a full year's interest based on the number of full months from the annual installment date to the end of the month in which the final due date of the note is set.⁶ Amount of final installment not entered on note.⁷ Insert all installments except the last installment in Item (15).Sum of accrued interest (\$8418) is to be entered on Form FmHA 1940-41.**EXAMPLE IV - DEFERRED PAYMENTS FIRST FIVE INSTALLMENTS AFTER RESCHEDULING, REMAINING INSTALLMENTS COMPUTED ON EQUAL AMORTIZED INSTALLMENTS, INCLUDING DEFERRED PORTION ADDED**

An OL was made for \$80,000 at 13.00 percent on February 26, 1981. The borrower requests a deferral. The balance on the date of approval, April 30, 1986, was \$67,487 principal and \$10,453 accrued interest for a total of \$77,940 that will be rescheduled at 10.25 percent for 15 years.

Date of Install.	Amortized Portion	Deferred Portion	Scheduled Install.	Accrued Interest ²	Unpaid Accrued Interest ³	Principal Balance
1-1-87	-	-	-	5,385 ¹	5,385	77,940
1-1-88	-	-	-	7,989 ⁴	13,374	77,940
1-1-89	-	-	-	7,989	21,363	77,940
1-1-90	-	-	-	7,989	29,352	77,940
1-1-91	-	-	-	7,989	37,341	77,940
1-1-92	12,139 ⁵	3,735 ⁶	15,874 ⁷	7,989	-	73,790 ⁸
1-1-93	12,139	3,735	15,874	7,564 ⁹	-	69,215
1-1-94	12,139	3,735	15,874	7,095	-	64,171
1-1-95	12,139	3,735	15,874	6,578	-	58,610
1-1-96	12,139	3,735	15,874	6,008	-	52,479
1-1-97	12,139	3,735	15,874	5,379	-	45,718
1-1-98	12,139	3,735	15,874	4,687	-	38,266
1-1-99	12,139	3,735	15,874	3,923	-	30,050
1-1-2000	12,139	3,735	15,874	3,080	-	20,991
1-1-2001	12,139	3,735	15,874	2,151	-	11,003
4-30-2001	-	-	11,281 ¹⁰	278	-	0

APPENDIX J

-9- (Forms Manual Insert - Form FmHA 1940-17)

¹ Interest accrued from April 30, 1986 to January 1, 1987.

\$77,940 Principal balance

x .069082 Factor for 10.25% (FmHA Instruction 440.1)

\$ 5,385 Amount of Interest (Rounded) (Exhibit C-56)

² Accrued interest equals previous year's principal balance times the interest rate.

³ Unpaid accrued interest equals accrued interest that year plus the previous year's unpaid accrued interest.

⁴ Previous principal balance (\$77,940) times annual interest rate (.1025) equals accrued interest (\$7,989).

⁵ Equal amortization of principal balance over remaining installments.

\$77,940 Amount to be amortized

x .15574 Factor for 10.25% for remaining 11 installments

\$12,139 Amortized portion of installment

NOTE: Equal amortized installments do not have to be used following a deferral. Installments are supposed to be scheduled in accordance with the borrower's ability to pay.

⁶ Deferred portion equals the sum of the accrued interest during the deferment period {5,385 + (4 x \$7,989) = \$37,341} divided by the number of installments remaining (10) (37,341 ÷ 10 = \$3,735)

⁷ Scheduled installment (\$15,874) following the deferment period equals the equally amortized portion (\$12,139) plus the deferred portion (\$3,735). Insert this in Item 16.

⁸ Principal balance (\$73,790) equals previous principal balance (\$77,940) plus accrued interest (\$7,989) plus deferred portion (\$3,735) minus the scheduled installment (\$15,874).

⁹ Accrued interest (\$7,564) equals previous principal balance (\$73,790) times annual interest rate (10.25).

¹⁰ Estimated final installment (\$11,281) equals principal balance (\$11,003) plus accrued interest (\$278) for 3 months. Not entered on note.

EXAMPLE V — REDUCED PAYMENTS FIRST THREE INSTALLMENTS, REMAINING INSTALLMENT ARE UNEQUAL WITH FINAL BALLOON INSTALLMENT

A loan is made for \$23,800 at 8½ percent interest and closed on September 25, 1978. Payments will be scheduled consistent with the borrower's repayment ability for the first three installments. Successive unequal installments, including the balloon installment, are based on the borrower's repayment ability.

<u>Date of Installment</u>	<u>Principal Scheduled</u>	<u>Total⁹ Scheduled Installment</u>	<u>Accrued Interest</u>	<u>Unpaid Accrued Interest</u>	<u>Principal Balance</u>
1-1-79	\$ 0	\$ 250 ¹	\$ 543 ²	\$ 293 ³	\$23,800
1-1-80	0	1000 ¹	2023 ⁴	1316 ⁵	23,800
1-1-81	0	1000 ¹	2023	2339	23,800
1-1-82	1000 ⁶	5362 ⁷	2023	0	22,800
1-1-83	4000	5938	1938	0	18,800
1-1-84	4500	6098	1598	0	13,800
1-1-85	5000	6173	1173	0	9,300
9-25-85	9300	10090 ⁸	790	0	0

APPENDIX J

(Forms Manual Insert - Form FmHA 1940-17) -10-

- ¹ Repayment ability based on Farm and Home Plan. Insert First three installments in Item (15).
- ² Interest accrued to first installment
 \$23,800 Principal balance September 25, 1978 thru January 1, 1979.
.022822 Factor for 8½% (FmHA Instruction 440.1, Exhibit C-14)
 \$ 543 Amount of interest (Rounded).
- ³ Unpaid accrued interest (\$293) equals accrued interest (\$543) minus amount of installment (\$250).
- ⁴ Previous principal balance (\$23,800) times annual interest rate (.085) equals accrued interest (\$2023).
- ⁵ Unpaid accrued interest (\$1316) equals accrued interest (\$2023) plus previous unpaid accrued interest (\$293) minus scheduled installment (\$1000).
- ⁶ When scheduling the principal amount it must be recognized that all payments will be applied first to accrued interest and then to principal.
- ⁷ Total scheduled installment following the reduced payment period (\$5362) equals previous unpaid accrued interest (\$2339) plus accrued interest (\$2023) plus principal scheduled (\$1000).
- ⁸ Final installment not entered on note.
- ⁹ Insert all installments except last installment in Item (15).
- ¹⁰ Interest computed for full year. This slightly overstates the amount of interest that will actually be paid. If a more accurate calculation of interest is needed, it can be figured by calculating the fractional portion of a full year's interest based on the number of full months from the annual installment date to the end of the month in which the final due date the note is set.

EXAMPLE VI – REAL ESTATE LOAN – EQUAL AMORTIZED INSTALLMENTS

A loan is made for \$100,000 at 8½% to be repaid over 40 years. Loan is closed June 1, 1978.

<u>Date of Installment</u>	<u>Scheduled Installment</u>
1-1-79	5706 ¹
1-1-80	8839 ²

- ¹ Interest accrued from the day of closing to date of first installment
 \$100,000
.057055 Factor for 8½% (FmHA Instruction 440.1, Exhibit C-14).
 \$ 5,706 Amount of interest (rounded). Insert this amount in the first line of Item 15.
- ² Regular amortized installment
 \$100,000
.08839 Factor for 8½% for 40 years
 \$ 8,839 Insert this amount in Item 16.

APPENDIX J

-11- (Forms Manual Insert - Form FmHA 1940-17)

EXAMPLE VII - REAL ESTATE LOAN - REDUCED SCHEDULED PAYMENTS

A loan is made for \$100,000 at 8½% to be repaid over 40 years. The Farm and Home Plan indicates the borrower can pay \$2,000 the first year and \$4,000 each for the next two years. The loan is closed on June 1, 1978.

<u>Date of Installment</u>	<u>Scheduled Installment</u>	<u>Accrued Interest</u>	<u>Unpaid Accrued Interest</u>	<u>Unpaid Principal</u>
1-1-79	2000 ¹	5706	3,706	100,000
1-1-80	4000 ¹	8500	8,206	100,000
1-1-81	4000 ¹	8500	12,706	100,000
1-1-82	9281 ²			

¹ Repayment ability based on the Farm and Home Plan. Insert these figures and dates on the first three lines of Item 15.

² Regular installment after the reduced payment period calculated as follows:

\$100,000
x .08937 Factor for 8½% for 37 years.
 \$ 8,937

\$12,706 ÷ 37 = \$344

(Total unpaid accrued interest at the end of the reduced payment period divided by the number of years remaining on the loan)

\$8,937
 + 344

\$9,281 This is regular installment after the reduced payment period. Insert this amount in Item 16.

In this particular example, the borrower will make 16 installments after the reduced payment period before the principal begins to reduce. This will also result in a rather substantial balloon payment at the end of the 40 year period. In this particular example, the balloon payment will be \$59,298.

EXAMPLE VIII - REAL ESTATE LOAN - UNEQUAL INSTALLMENTS, ALL INTEREST SCHEDULED

A loan is made for \$100,000 at 8½% interest to be repaid over 40 years. First five installments are to be unequal with equal installments thereafter. Loan is closed May 1, 1978.

<u>Date of Installments</u>	<u>Scheduled Installment</u>	<u>Amount Applied to Principal</u>	<u>Unpaid Principal</u>
1-1-79	5706 ¹	0	100,000
1-1-80	8500 ²	0	100,000
1-1-81	8600 ²	100	99,900
1-1-82	8700 ²	208	99,692
1-1-83	8800 ²	326	99,366
1-1-84	8962 ³		

APPENDIX J

(Forms Manual Insert - Form FmHA 1940-17) -11-

- 1 Interest accrued to date of first installment.
 $\$100,000$
 $\times .057055$ Factor for 8½% (FmHA Instruction 440.1, Exhibit C-14).
 $\$ 5,706$ Insert this amount on the first line of Item 15.
- 2 These amounts would be determined by the borrower's repayment ability. Each amount in this example would have to be \$8,500 or more to cover each year's interest. Insert these amounts and dates on the next four lines of Item 15.
- 3 Regular installment
 $\$99,366$ Unpaid principal after fifth installment.
 $\times .09019$ Factor for 9¼% for 35 years.
 $\$ 8,967$ (Rounded) Insert this figure in Item 16.

If equal installments had been scheduled throughout the life of the loan, the borrower's payment would have been:

$\$100,000$
 $\times .08839$ Factor for 8½% for 40 years.
 $\$ 8,839$

EXAMPLE IX - REAL ESTATE LOAN - BALLOON PAYMENT

A loan is made for \$100,000 at 8½% interest to be repaid over 40 years. A balloon payment of \$30,000 is to be scheduled. The loan is closed June 1, 1978.

<u>Date of Installment</u>	<u>Scheduled Installment</u>
1-1-79	5706 ¹
1-1-80	8759 ²

- 1 Interest accrued to date of first installment.
 $\$100,000$
 $\times .057055$ Factor for 8½% (FmHA Instruction 440.1, Exhibit C-14).
 $\$ 5,706$ Amount of interest (rounded). Insert this amount in the first line of Item 15.
 - 2 Regular installment
 $\$70,000$ Amount of principal to be paid during life of loan.
 $\times .08869$ Factor for 8½% for 39 years
 $\$ 6,209$ (Rounded)
 - $\$30,000$ Amount to be ballooned
 $\times .085$ Interest each year on amount ballooned
 $\$ 2,550$
 - $\$6,209$
 $\pm 2,550$
 $\$8,759$ Regular installment. Insert this amount in Item 16.
- If a balloon payment had not been scheduled, the borrower's regular payment would have been.
- $\$100,000$
 $\times .08839$
 $\$ 8,839$