

UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Development Utilities Programs

STAFF INSTRUCTION 1782-1

SUBJECT: Staff Instruction for the Servicing of the Water and Waste Disposal Program

TO: State Directors, Rural Development

ATTN: Program Managers for Water and Waste Loans and Grants

EFFECTIVE DATE: Date of approval.

OFFICE OF PRIMARY INTEREST: Assistant Administrator, Water and Environmental Programs.

INSTRUCTIONS: This staff instruction supersedes all previous versions.

AVAILABILITY: This staff instruction is available on the Rural Development intranet at <http://teamrd.usda.gov/rd/rus>.

PURPOSE: This staff instruction sets forth the policies and procedures for servicing Water and Waste loans and grants. This staff instruction includes regulatory text found in 7 CFR 1782 (formatted as regular text) and instructions to staff (*formatted as bold italic text*) which provides for the administration of the servicing of the WWD Program by the Rural Development staff. This *bold italic* text is not published on the public website; rather, it is intended for internal use only.



10/29/2007

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Date

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§ 1782.1 Purpose.

This part outlines the Rural Utilities Service's (RUS), an Agency delivering the United States Department of Agriculture's (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or Agency, policies and procedures for servicing direct and insured Water and Waste Disposal (WWD) loans and grants; Watershed loans and advances; Resource Conservation and Development loans; Technical Assistance and Training grants; Emergency Community Water Assistance grants; Solid Waste Management grants; and section 306C WWD loans and grants. ***Staff instructions will be indicated with bold italic type, and will be published only for Rural Development staff use.***

§ 1782.2 Objectives.

Loan and grant servicing is provided by Rural Development in order to assist recipients in complying with the established objectives and requirements for loans and grants, repaying loans on schedule, acting in accordance with any necessary agreements, and protecting Rural Development's financial interest. Servicing by Rural Development includes, but is not limited to, the review of budgets, management reports, audits, and financial statements; performing operational inspections; providing, arranging, or recommending technical assistance; evaluating environmental impacts of proposed actions by the borrower; and performing civil rights compliance and graduation reviews. ***In cases of sales or exchanges of property, re-amortizations, transfers and assumptions, debt settlements, liquidations, management and disposal of security property, the servicing official should request the advice of the Office of General Counsel (OGC), bond counsel, and/or local counsel, State Director, and National Office as required, to resolve the situation, protect the Government's interest, and fulfill the purpose of the loan.***

§ 1782.3 Definitions.

Acceleration. A written notice informing the borrower that the total unpaid principal and interest is due and payable immediately.

Adjustment. Satisfaction of a debt, including release of liability, when acceptance by the Agency is conditioned upon completion of payment of the adjusted amount at a specific time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement have been made.

Administrator. Administrator of the Rural Utilities Service, an Agency delivering the United States Department of Agriculture's Utilities Programs.

Agency. The Rural Utilities Service, an Agency delivering the United States Department of Agriculture's Rural Development Utilities Programs, or any employee acting on its behalf in accordance with appropriate delegations of authority.

Assumption of debt. Agreement by one party to legally bind itself to pay the debt incurred by another.

Borrower. Recipient of Agency or predecessor Agency loan assistance.

Cancellation. Final discharge of debt with a release of liability.

Charge-off. Write off of a debt and termination of servicing activity without release of liability. A charge-off is a decision by the Agency to remove debt from Agency receivables, however, future payments may be received.

Compromise. Satisfaction of a debt including a release of liability by accepting a lump-sum payment of less than the total amount owed.

Defeasance. Defeasance is the use of invested proceeds from a new bond issue to repay outstanding bonds in accordance with the repayment schedule of the outstanding bonds. The new issue supersedes the contractual agreements from the prior issue.

Disposition of facility. Relinquishing control of a facility to another entity.

Essential Agency records. Original version of any document or record that provides evidence of indebtedness or obligation to the Agency. Includes, but is not limited to, promissory notes, assumption agreements, grant agreements, and valuable documents such as bonds fully registered as to principal and interest.

False information. Information, known by the applicant to be incorrect, provided with the intent to obtain benefits which would not have been obtainable based on correct information.

Foreclosure. A termination of all rights of the mortgagor or his grantee in the property covered by the mortgage.

Government. The United States of America acting through the Agency, USDA. USDA Rural Development and Agency may be used interchangeably throughout this part.

Graduation. Payment in full with funds from other lenders or borrower resources of one or more Agency loan(s) before maturity.

Grantee. Recipient of the Agency or predecessor Agency grant assistance, technical assistance, or services.

Inaccurate information. Incorrect information provided inadvertently without intent to obtain benefits fraudulently.

Involuntary conveyance. *A transfer of real property to the Agency without the consent of the owner.*

Judgment debt. *A monetary obligation that is evidenced by a judgment obtained through a successful legal action against the debtor.*

Letter of Conditions. A written document that describes the conditions which the borrower and/or grantee must meet for funds to be advanced and the loan and/or grant to be closed.

Liquidation. Satisfaction of a debt through the sale of a borrower's assets and discharge of liabilities.

Non-program loan (NP). *A NP loan exists when credit is extended to an ineligible applicant and/or transferee in connection with loan assumptions, sale of inventory property, and any recipient of unauthorized assistance. A borrower with NP loans is not eligible for any program benefits or rights of appeal, and is not subject to graduation requirements. As outlined in §1782.20 of this Staff Instruction, debt settlement actions related to NP loans must be handled in accordance with the Federal Claims Collection Act.*

Obligation. *An agreement by the Agency to provide funds to an applicant for a specific amount and purpose. An obligation is established when the request for obligation is entered in the appropriate program funding system.*

Parity Lien. A lien having an equal lien position to another lender's lien on a borrower's asset.

Program loan expense – non-recoverable. *A contractual or non-contractual program loan expense not chargeable to a borrower or property account.*

Program loan expense - recoverable. *A contractual or non-contractual program loan expense chargeable to a borrower or property account.*

Protective advance. *Expenses paid by Agency on behalf of the borrower to protect the Government's interest in the security property as provided for in the debt instrument.*

Reasonable rates and terms. The prevailing commercial rates and terms in the industry that borrowers are expected to pay when borrowing for similar purposes and periods of time.

Rural Development. The mission area of the Under Secretary for Rural Development. Rural Development State and local offices administer the water and waste programs on behalf of the Agency.

Rural Utilities Service (RUS). An Agency of the United States Department of Agriculture's Rural Development mission area established pursuant to section 232 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354).

Servicing office. The USDA office which maintains the official file of the borrower or grantee and is responsible for the routine servicing of the loan and/or grant account.

Servicing official. A USDA official who has been delegated loan and grant approval and servicing authorities subject to any dollar limitations within applicable programs.

Settlement. Compromise, adjustment, cancellation, or charge-off of a debt owed USDA. The term “settlement” is used for convenience in referring to compromise, adjustment, cancellation, or charge-off action, individually or collectively.

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

Unauthorized assistance. Any loan, interest subsidy, grant, or portion thereof received by a recipient for which there was no regulatory authorization or for which the recipient was not eligible. Interest subsidy includes subsidy benefits received because a loan was closed at a lower interest rate than the recipient was entitled, whether the incorrect interest rate was selected erroneously by the approval official, or the documents were prepared in error.

USDA. United States Department of Agriculture.

Unliquidated obligations. Obligated loan or grant funds that have not been advanced.

Voluntary conveyance. A method by which title to security is voluntarily transferred to the Government.

Workout agreement. The delinquent loan borrower and the Agency; at its discretion, may enter into a written workout agreement. When a workout agreement is negotiated, the servicing official will use Form RD 1951-10, "Workout Agreement" to commit the agreement to writing.

§ 1782.4 Availability of forms and regulations.

Information about the availability of forms, regulations, bulletins, and procedures referenced in this chapter are available in any office of Rural Development, USDA, Washington, D.C. 20250-1500 or at the Web site www.usda.gov/rus/water.

§ 1782.5 Nondiscrimination.

Each instrument of conveyance required for a transfer, assumption, sale of facility, or other servicing action under this subpart will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Title IX of the Education Amendments of 1972 (Pub. L. 92-318), section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), and other Federal statutes and regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age, or sex in programs or activities receiving Federal financial assistance. Such provisions apply for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended, or for so long as the purchaser owns it, whichever is later. ***Compliance reviews will be carried out in accordance with the requirements of RD Instruction 1901-E.***

(a) Scheduling of reviews. The State Director will schedule Civil Rights compliance reviews each fiscal year.

(b) Initial reviews. The initial compliance review will be conducted before loan or grant closing or before construction begins, whichever occurs first.

(c) Subsequent reviews. The State Director is responsible for requiring subsequent compliance reviews at intervals not more than 3 years after the previous compliance review.

(1) If a borrower has had at least two compliance reviews after loan closing covering a six-year period, and where no discriminatory practices are indicated, the frequency of subsequent reviews may be increased to six years.

(2) If two or more borrowers merge to form a new organization, two reviews will be conducted at three-year intervals after the merger. After the three-year intervals, one review will be conducted at six-year intervals, provided no discriminatory practices are noted.

§ 1782.6 [Reserved]

1782.7 Grants.

Servicing actions relating to Agency grants are governed by the provisions of several regulations and executive orders, including, but not limited to, 7 CFR parts 3015, 3016, 3017, 3018, 3019, 3021, and 3052 as applicable, and Executive Order (E.O.) 12803. Grantees remain responsible for property acquired with grant funds in accordance with terms of a grant agreement and applicable regulations. ***The borrower is responsible for managing day-to-day operations of grant and sub-grant activities. The servicing official is responsible for ensuring that all applicable administrative actions under the grant are completed.***

(a) Applicable grant rules and regulations. Servicing actions relating to Agency grants are governed by provisions of this Staff Instruction, terms of the grant agreement, and if applicable, provisions of (See Agency Website for Regulations Below):

(1) 7 CFR Part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(2) 7 CFR Part 3017, Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for a Drug-free Workplace (Grants);

(3) 7 CFR Part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations;

(4) 7 CFR Part 3021, Government-wide Requirements for Drug-Free Workplace; and

(5) Executive Order (E.O.) 12803, Infrastructure Privatization

(b) After grant close out. No monitoring action is required after grant close out. Grant close out occurs when all planned development is completed, all grant funds have been expended, a final accounting of expenditures has taken place, and Rural Development has accepted final expenditure information. Grantees remain responsible for property acquired with grant funds in accordance with terms of the grant agreement. The grant agreement is terminated ten years after the grant is made or five years after the last outstanding loan is paid off, whichever is longer. After the grant agreement is terminated, no grant recoup is required and there is no further servicing of the grant.

§ 1782.8 Payments.

Payments will be applied in accordance with the terms of the debt instrument. Information on nontypical payments can be obtained from the Servicing official or office. All new borrowers will use pre-authorized debits as required in their Letter of Conditions. ***For further information on payments see 7 CFR 1780.***

§ 1782.9 Environmental requirements.

Servicing actions involving lease or sale of Agency-owned property will be reviewed for compliance with 7 CFR part 1794 as required in § 1794.3. The appropriate environmental review will be completed prior to approval of the servicing action. ***Agency-owned also includes property financed by Agency. The servicing official, in consultation with the State Environmental Coordinator, will review applications to ensure that the project meets all applicable environmental requirements.***

(a) Compliance and environmental review. Servicing activities, including but not limited to, transfers, sale or exchange of security property, liquidation actions, and leasing of security property will be reviewed for compliance with 7 CFR Part 1794. The appropriate environmental review will be completed prior to approval of the servicing action. When National Office approval is required, the completed environmental review will be included with other information submitted.

(b) Servicing official evaluation of security property. Before the Government acquires real property through foreclosure, receivership, or voluntary conveyance, the servicing official shall evaluate the environmental condition of the property for releases of hazardous substances and petroleum products. If the location, type, or operations of a facility created an environmental risk for releases of hazardous substances and/or petroleum products, the servicing official shall complete, as a minimum the Transaction Screening Questionnaire (ASTM E 1528-96, Standard Practice for Environmental Site Assessments: Transaction Screen Process) or equivalent. The questionnaire will be completed in conjunction with an appraisal of the security property. If releases of hazardous substances and/or petroleum products are present, guidance should be obtained from the State Environmental Coordinator and/or the National Office.

(c) Borrower evaluation of security property. The borrower must submit evidence that security property has been evaluated for releases of hazardous substances or petroleum products before the servicing official approves transfers, third party agreements, consolidations, or exchanges of security property. The Transaction Screening Questionnaire (ASTM E 1528-96, Standard Practice for Environmental Site Assessments: Transaction Screen Process) or equivalent shall be considered minimum documentation requirements.

§ 1782.10 Audit requirements.

Audits for loans will be required in accordance with § 1780.47 of this title. If the borrower becomes delinquent or is experiencing problems, the servicing official will require an audit or other documentation deemed necessary to resolve the delinquency. The provisions of 7 CFR 3052 address audit requirements for recipients of Federal grants. ***For further information on audit requirements see 7 CFR 1780.47 and Staff Instruction 1780-4.***

§ 1782.11 Refinancing requirements.

If at any time it appears to the Government that the borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

(a) Graduation.

(1) Agency credit programs will be administered in a manner that will assure they do not supplant or compete with credit available from other reliable sources.

(2) Borrowers will graduate to other credit on reasonable rates and terms when they are able to do so.

(3) The servicing official will utilize the process set forth in Staff instruction 1780-6 and other lender contact information to carryout the graduation review process. The servicing official will monitor the graduation review process for effectiveness and conformance.

(4) The Agency may use private contractors to assist in graduation activities. See Exhibit D of RD Instruction 2024-A for contracting authority guidance.

(5) If graduation cannot be accomplished voluntarily, the Agency has the legal ability to require borrowers to graduate. However, not all security instruments contain clauses requiring a borrower to graduate when other credit can be obtained. The clause may say:

(i) "...upon reasonable terms and conditions,"

(ii) "...on terms prevailing in the area for loans for similar periods of time and purpose," or

(iii) "...at reasonable rates and terms for loans for similar purposes and periods of time"

(6) The provisions outlined in this section are construed to mean the borrower agrees to and can be forced, through legal action if necessary, to graduate. When the borrower refuses to graduate, legal action may be necessary to enforce graduation when:

(i) The borrower has both the legal capacity and financial ability to accept other credit.

(ii) Other credit appears to be available at reasonable rates and terms.

(7) Graduation of Agency borrowers to other sources of credit requires:

(i) Reaching an understanding with applicants and borrowers.

(A) Prior to loan closing, the servicing official will thoroughly discuss graduation requirements with the applicant and document the discussion in the running case record, and

(B) The servicing official will periodically reemphasize graduation requirements with borrowers during routine field visits and office contacts.

(ii) Graduation review period. Graduation reviews will be conducted as follows:

(A) The servicing official will review borrowers who have been indebted for at least five years. The first review for a borrower will be conducted in the sixth year of the newest loan, corresponding to the date of loan closing. All borrowers will be reviewed every third year thereafter. Each year, the servicing official will generate a Graduation Review Report to schedule graduation reviews simultaneously with each borrower's operational review and compliance review.

(B) The graduation review should also include any borrower whose financial circumstances have changed sufficiently to warrant consideration for graduation.

(C) The servicing official will manage the graduation process throughout the year to accomplish the goals set forth by the National Office.

(8) Guidance on surveying lenders and policies to be carried out are included in RUS Staff Instruction 1780-6.

(9) In the initial screening for graduation, the servicing official will perform an initial graduation screening to identify borrowers that are clearly unable to graduate. This initial screening will focus on information available in the borrower's case file and in the operational file on other credit.

(i) The servicing official will eliminate borrowers from review that fail to meet the established minimum lending criteria and/or policies set forth in paragraph h of this section

(ii) A borrower with a refinancing interest rate-ceiling clause in its loan instrument will be eliminated from graduation review if credit is not available within the ceiling interest rate. However, the servicing official will encourage the borrower to graduate voluntarily.

(iii) A borrower without a graduation clause in its notes, security instruments, or loan agreements will be eliminated from graduation review. However, the servicing official will encourage the borrower to graduate voluntarily.

(iv) A borrower's ability to accept other credit may be limited by factors over which the borrower has little or no control, such as a referendum required by a public body. The servicing official will determine if the existence of such factors precludes the Agency from requesting a borrower to graduate.

(v) The servicing official will briefly document the results of the screening process in the borrower's case file. If a borrower is eliminated from further graduation review, specific reasons will be included in the borrower's case file.

(10) For the graduation review, the servicing official will conduct a thorough graduation review of all borrowers not eliminated as a result of the initial screening. The thorough review will eliminate borrowers from the graduation review that are unable to meet the established minimum lending criteria and/or policies. Borrowers, upon request by the Agency, are required to supply such financial information as is necessary to determine whether they are able to graduate to other credit.

(i) The servicing official will review the borrower's annual financial statements (i.e., Form RD 442-2, Statement of Budget, Income and Equity," and Form RD 442-3, "Balance Sheet," or audit report.) If current financial data is not available, the servicing official will request updated information from the borrower.

(A) Exhibit A of this Staff Instruction, or a letter of similar format, may be used to request financial information. The borrower must provide this information to the Agency within 60 days of the date of the letter.

(B) Exhibit B of this Staff Instruction, or a letter of similar format, will be used if the borrower fails to respond to the Agency's first request. The borrower must provide this information to the Agency within 15 days of the date of the letter.

(ii) Factors to be considered during the thorough review will include:

(A) The borrower's present and potential income to meet the rates, terms, loan fees and conditions of other credit (i.e., debt repayment ability).

(B) The borrower's equity in real property and liquid assets.

(C) The impact graduation would have on typical user rates. User rates should be reasonable for the area served.

(D) The Federal, State or local statutory constraints, which may limit the borrower's ability to refinance, such as a referendum required of a public body.

(E) Potential impact upon a community's long-range development plan.

(iii) Before a borrower is requested to graduate, the servicing official may make a trial referral to interested lenders. The borrower's financial information will be submitted to these lenders for refinancing. The information will contain the borrower's name, address, original loan amount, date of the loan, the interest rate, and the unpaid loan balance.

(iv) The servicing official will provide the borrower with a list of potential lenders. If the lender is not interested in refinancing the debt, no further

effort needs to be made to graduate at this time. The lender's refinancing denial will be documented in the borrower's case file.

(v) The specific reasons a borrower was eliminated from further review will be documented in the case file.

(vi) Following the thorough review, the servicing official will prepare Form RD 1951-24, "Results of Borrower Graduation Review," listing only borrowers who will be requested to graduate. The servicing official will obtain the advice and written concurrence of the State Director prior to making a request to graduate. A copy of Form RD 1951-24 will be maintained in the operational file and provided to the State Office.

(11) When requesting the borrower to graduate, send a letter (review Exhibit C of this Staff Instruction, or a letter of similar format) which will specify the timeframe to graduate, the right to request an extension, and inform the borrower to seek financing to retire the debt.

(i) If a borrower is unable to graduate, written evidence must be provided to the Agency showing:

(A) The name(s) of other lender(s) contacted;

(B) The amount of loan requested by the borrower and the amount, if any, offered by the lender(s);

(C) The rates and terms offered by the lender(s) or the specific reason(s) why other credit is not available; and

(D) The purpose of the loan request.

(ii) Following a graduation request, any new information submitted by the borrower or other sources will be considered by the servicing official and the State Director. If the information submitted is not adequate and/or reliable, the servicing official will contact additional credit sources in the area and document the findings in the borrower's case file. An interest rate differential between the Agency and other lenders will not be sufficient reason for failure to graduate if other credit is available at reasonable rates and terms. An exception is made where there is an interest rate ceiling imposed by Federal law or contained in the note or mortgage.

(A) If additional information confirms the borrower is unable to graduate, the servicing official will notify the borrower in writing that the request has been withdrawn. The specific reasons for withdrawing

the request will be documented in the borrower's case file and the date of final action recorded on Form RD 1951-24.

(B) If additional information confirms the borrower can graduate, the servicing official will inform the borrower using Exhibit D of this Staff Instruction, or letter of similar format. This letter advises the borrower that legal action will be recommended if positive steps to graduate are not taken within 60 days. However, the servicing official may grant a longer period if conditions warrant such action.

(C) The servicing official may offer to meet with the borrower to discuss the Agency's graduation decision.

(12) When borrower fails to cooperate, respond and/or graduate, they are in default of its security instruments. The servicing official should submit the required documents recommending legal action and the borrower's case file to the State Director for approval. The approval official may, with the concurrence of the Regional Attorney, accelerate the account based on the borrower's failure to graduate. Guidance on servicing actions related to liquidation can be found in §1782.20 of this Staff Instruction.

(13) When an application for subsequent loan, or consent to additional indebtedness is received from a borrower who has been requested to graduate:

(i) Borrowers who have been requested to graduate will not normally be considered for a subsequent loan, or consent to additional indebtedness until the graduation issue is resolved. An exception may be made where the proposed action is needed to alleviate an emergency situation, such as meeting applicable health and/or sanitary standards that require immediate attention.

(ii) In situations where the borrower has been requested to graduate and has also been denied a request for a subsequent loan, or consent to additional indebtedness, appeal rights should be given simultaneously for both issues.

(iii) When Agency graduation request has been upheld through the appeals process, any request for additional assistance under this section may be denied without further appeal rights.

(b) Appeals.

(1) Borrowers or applicants receiving an adverse decision from the Agency are afforded the opportunity to appeal the decision in accordance with the procedures established in 7 CFR Part 11, "National Appeals Division Rules of Procedure".

This part sets forth procedures for proceedings before USDA's National Appeals Division (NAD).

(2) The regulations contained in Part 11 apply to adverse decisions made by the Agency including those affecting:

(i) Denial of participation in, or receipt of benefits under, any program of the Agency;

(ii) Compliance with program requirements;

(iii) The making of or relating to the amount of payments or other program benefits to a participant in any program of the Agency; and

(iv) A determination that a parcel of land is a wetland or highly susceptible to erosion.

(3) In general, borrowers or applicants receiving an adverse decision from the Agency have three options: an informal review of the adverse decision, an opportunity to utilize mediation or alternative dispute resolution (ADR), or an official written appeal to the NAD. The procedures to be followed and the timeframe for filing appeal motions are specified in 7 CFR Part 11. See Exhibit H for a sample appeal letter to borrower.

§ 1782.12 Sale or exchange of security property.

A cash sale of all or a portion of a borrower's assets or an exchange of security property may be approved subject to the conditions set forth in this section. ***The State Director may approve a sale or exchange that does not involve a loss to the Government of more than \$100,000. Administrator approval is required when the sale or exchange results in a loss to the Government in excess of \$100,000.***

(a) Approval conditions. Approval may be given when the servicing official determines that:

(1) The consideration is for the full amount of the debt or the present fair market value as determined by an appraisal completed by a qualified Rural Development Employee or an independent appraiser as determined appropriate by the approval official;

- (2) The sale or exchange will not prevent carrying out the purpose of the loan;
- (3) The remaining property is adequate security for the loan and the transaction will not adversely affect the Agency's security position;
- (4) If the property to be sold or exchanged will be used for similar purposes that the loan was made, the purchaser will:
 - (i) Execute Form RD 400-4, "Assurance Agreement." The instrument of conveyance will contain the civil rights covenant referenced in 7 CFR 1901.202(e); and
 - (ii) Provide the Agency with a written agreement assuming all rights and obligations of the original borrower *or grantee*, and
- (5) Proceeds remaining after paying any reasonable and necessary selling expenses are to be used for one or more of the following purposes:
 - (i) To pay Agency debt, pay on debts secured by a prior lien, and pay on debts secured by a parity or subsequent lien if it is to the Agency's advantage;
 - (ii) To purchase or acquire property more suited to the borrower's needs, providing the Agency's security position is maintained; and
 - (iii) To develop or enlarge the facility if necessary to improve the borrower's debt-paying ability, place the operation on a sounder financial basis, or further the loan objectives and purposes.

(b) Sale of assets financed with Agency grants. The requirements for the sale or disposition of assets financed with Agency grants are determined by the terms of the grant agreement, 7 CFR parts 3015, 3016, and 3019, and E.O. 12803, as applicable.

(1) If the sale is to a public or non-profit entity, repayment of all or a portion of the grant is not required if the facility will be used for the same purpose and the new owner provides a written agreement to abide by the terms of the original grant agreement.

(2) If the sale or disposition of a public facility is to a For-Profit, repayment of all or a portion of the grant is determined by the terms of the grant agreement or E.O. 12803.

(c) Release from liability. If a borrower can no longer meet the objectives of the loan, the property may be sold. If the full amount of the borrower's debt is paid or assumed, the State Director may release the borrower from liability. ***However, if the full amount of the debt is not paid or assumed, the balance of the borrower's debt will be settled in accordance with §1782.20 of this Staff Instruction.***

(d) Processing.

(1) *The case file will contain the following:*

- (i) *An appraisal report, if appropriate;*
- (ii) *Name of purchaser, anticipated sales price, and proposed terms and conditions;*
- (iii) *Release from liability and State Director's recommendations, if appropriate;*
- (iv) *An executed Form RD 400-4, if applicable;*
- (v) *An executed Form RD 465-1, "Application for Partial Release, or Consent," if applicable;*
- (vi) *Form RD 460-4, "Satisfaction," if a debt has been paid in full or satisfied by debt settlement action. For cases involving real estate, a similar form may be used if approved by OGC;*
- (vii) *Exhibit F of this Staff Instruction appropriately completed and*
- (viii) *Written concurrence by the Assistance Administrator when required.*

(2) *Releasing security:*

- (i) *The servicing official is authorized to satisfy or terminate chattel security instruments provided all actions are in compliance with paragraph (a) of this section. Partial release may be made in a format acceptable to the Agency.*
- (ii) *Subject to the provisions of paragraph (a) of this section, the servicing official is authorized to release part or all of an interest in real estate security by approving Form RD 465-1. Partial release of real estate security may be made in a format acceptable to the Agency.*

(iii) Agency liens will not be released until the full amount of the sale proceeds are received for application on the Government's claim. When State law requires the lender to present the note to the recorder before releasing a portion of the land from the mortgage, the borrower must pay any postage and insurance costs while the note is in transit. The servicing office will notify the borrower that it must pay these costs when it requests a partial release. If the borrower is unable to pay the costs from its own funds, the amounts shown on the statement of actual costs furnished by the direct lender may be deducted from the sale proceeds.

(3) Prior Assistant Administrator approval is required if the property financed in part with grant funds is sold to a For-Profit entity, or if the buyer refuses to assume all the terms of the grant agreement.

§1782.13 Transfer of security and assumption of loans.

It is the Agency's policy to approve transfers and assumptions to transferees that will continue the original purpose of the loan. ***The State Director may approve a transfer within the State Director's loan approval authority that does not involve a loss to the Government of more than \$100,000.*** Assistant Administrator written concurrence is required when the transfer exceeds the State Director's loan approval authority. ***Administrator approval is required when the transfer results in a loss to the Government in excess of \$100,000.*** The transfer will be approved in accordance with the following requirements:

(a) General requirements for transferees. The fulfillment of the following requirements for transfers will be determined by the approval official, in his or her discretion:

- (1) The transferees must meet the eligibility requirements of 7 CFR 1780 and provide the same information required in 7 CFR Part 1780, subpart B, for application processing.
- (2) The transfer will not be disadvantageous to the Government as determined by the approval official.
- (3) If the Agency debt(s) exceeds the present market value of the security as determined by an appraisal, the transferee will assume an amount at least equal to the present market value.
- (4) The Agency must concur in plans for disposition of funds in any reserve account, including project construction bank accounts, ***including any supervised accounts.*** A reserve account may be considered as a transferable asset.

- (5) The transferee will assume all of the borrower's responsibilities regarding loans *and grants*. The transferee will also agree to accept the original loan *and grant* conditions plus any conditions set forth by the Agency with regard to the transfer.
- (6) A current appraisal will be completed to establish the present market value of the security when the full debt is not being assumed.
- (7) There must be no lien, judgment, or similar claims of other parties against the Agency security being transferred unless the transferee is willing to accept such claims. The Agency must also determine that the claims will not prevent the transferee from repaying the Agency's debt, meeting all operating and maintenance costs, and maintaining required reserves. The written consent of any other lien-holder will be obtained where required.
- (8) A letter of conditions establishing requirements to be met in connection with the transfer will be issued, and the transferee will be required to execute Form RD 1942-46, "Letter of Intent to Meet Conditions," prior to closing of the transfer.
- (9) The transferee will obtain insurance according to Agency requirements.
- (10) The effective date of the transfer is the date the transfer is closed, which is the same date Form RD 1951-15, "Community Programs Assumption Agreement," or other appropriate assumption agreement *is signed* which is executed and delivered by all necessary parties.
- (11) Title to all assets will be conveyed from the transferor to the transferee unless all parties concerned, including the Agency, agree upon other arrangements. All instruments of conveyance will contain the necessary nondiscrimination covenant as referred to in § 1782.5.
- (12) If the transfer and assumption is to one or more members of the borrower's organization, there must not be a loss to the Government.
- (13) The State Director is authorized to approve transfers to eligible transferees at the same interest rate as on the borrower's note(s) or bond(s) *currently reflected in the Office of the Deputy Chief Financial Officer records*. The maturity of the debt instrument for the assumed debt may not exceed the lesser of the repayment period authorized in 7 CFR 1780 for a "new" loan or the expected life of the facility.

(14) Agency National Office concurrence is required for transfers not in compliance with paragraphs (a) (1) through (13) of this section. ***The State Director must determine and document that eligibility requirements have been satisfied.***

(15) The servicing official will review Form RD 1910-11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts," with the applicant, and obtain the applicants signature on the form. Form RD 1910-11 will be maintained in the case file.

(b) Loan requirements for eligible transferees. If a loan is evidenced and secured by a note and lien on real or chattel property, Form RD 1951-15, or other appropriate assumption agreement will be executed by the transferee. ***The accrued interest to be entered on the form will be obtained using the status screen option in Automated Discrepancy Processing System.*** If a bond secures a loan, transfer documents will be developed by bond counsel and approved by the Office of the General Counsel (OGC), USDA.

(1) Loans being transferred and assumed may be combined when the security is the same, new terms are being provided, a new debt instrument will be issued, and the loans have the same interest rate and are for the same purpose. If applicable, 7 CFR 1780.94(1) will govern the preparation of any new debt instruments required.

(2) A loan may be made in connection with a transfer if the transferee meets all eligibility and other requirements for the kind of loan being made. Such a loan will be considered as a separate loan and must be evidenced by a separate debt instrument. However, it is permissible to have one authorizing loan resolution or ordinance if permitted by State statutes.

(3) Any development funds remaining in a ***supervised*** bank account that are not refunded to the Agency will be transferred to a ***supervised*** bank account for the transferee. This will occur simultaneously with the closing of the transfer, and the funds will be used in completing planned development.

(c) Release from liability. Transferors may be released from liability when their debt is paid in full or when the debt is settled in accordance with §1782.20 of this part ***The State Director will consider the borrower's income and ability to repay debt when determining if a release from liability is necessary.***

(d) Transfer of facility financed with Agency grants. The requirements for the sale or disposition of assets financed with Agency grants are determined by the terms of the grant agreement, 7 CFR parts 3015, 3016, and 3019, and E.O. 12803, as applicable.

(1) If the transfer is to a public or non-profit entity, repayment of all or a portion of the grant is not required if the facility will be used for the same purpose and the new owner provides a written agreement to abide by the terms of the original grant agreement.

(2) If the transfer or disposition of a public facility is to a For-Profit entity, repayment of all or a portion of the grant is determined by the terms of the grant agreement, 7 CFR Parts 3016, 3019, or E.O. 12803.

(e) Ineligible transferees. *This is a transferee that does not meet the eligibility requirements of 7 CFR 1780.7.*

(1) Ineligible transferee's must pay a one-time, nonrefundable transfer fee at the time they submit an application or proposal. The National Office will issue a directive annually advising the field of the amount of the fee.

(2) Costs of appraisals performed by non-Agency personnel will be handled in accordance with RD Instruction 2024-A, and added to the transfer fee.

(3) Transfer fees will be deposited in accordance with current instructions governing the handling of collections. The fees will be identified as transfer fees on Form RD 451-2, "Schedule of Remittances."

(4) The State Director is authorized to approve transfer and assumptions to ineligible public or non-profit transferees provided:

(i) The interest rate will be the greater of the transferor's note or bond rate or the market rate as of the transfer closing date, and

(ii) The transferred loan will be identified as a Non-program loan and serviced in accordance with §1782.20 of this Staff Instruction. Form RD 1951-15, will be submitted to the Office of the Deputy Chief Financial Officer. The servicing office will provide a transmittal memorandum to the Office of the Deputy Chief Financial Officer designating the loan as NP. The Office of the Deputy Chief Financial Officer will classify NP loans with an "8" as the third digit of the fund code.

(f) Processing. *Transfers and assumptions will be processed in accordance with 7 CFR 1780.42, as applicable.*

(1) Transfers will be closed in accordance with instructions provided by OGC.

(2) If the transferee is a public body, the transferee's legal or bond counsel will prepare documents necessary to effect the transfer and assumption and obtain Agency and OGC approval.

(3) The following forms, if utilized, will be sent to the Office of the Deputy Chief Financial Officer:

(i) Form RD 1951-15, or another appropriate assumption agreement;

(ii) A confirmed copy of Form RD 1965-8, "Release from Personal Liability."

(4) If an investor holds an insured loan, the Office of the Deputy Chief Financial Officer will have to repurchase the note prior to processing the assumption agreement.

(5) When National Office concurrence is required, the transfer case file will be submitted to the Assistant Administrator with a narrative explanation of the situation. Exhibit F of this Staff Instruction should be appropriately completed and included in the case file.

(g) Prior approval by Assistant Administrator. Prior Assistant Administrator approval is required if property, financed in part with grant funds, is transferred to a For-Profit entity, or if the buyer or transferee refuses to assume all the terms of the grant agreement.

§ 1782.14 Protection of service areas – 7 U.S.C. 1926(b).

(a) 7 U.S.C. 1926(b) was enacted to protect the service area of Agency borrowers with outstanding loans, or those loans sold in the sale of assets authorized by the "Joint Resolution Making Continuing Appropriations for the Fiscal Year 1987, Pub.L. 99-591, 100 Stat. 3341 (1986)," from loss of users due to actions or activities of other entities in the service area of the Agency financed system. Without this protection, other entities could extend service to users within the service area, and thereby undermine the purpose of the congressionally mandated water and waste loan and grant programs and jeopardize the borrower's ability to repay its Agency debt.

(b) Responsibility for initiating action in response to those actions prohibited by 7 U.S.C. 1926(b) rests with the borrower.

§ 1782.15 Mergers and Consolidations.

Mergers and consolidations will be processed the same as a transfer and assumption, although approvals by the Agency will give consideration to the differences under the applicable law regarding the type of transaction under consideration and the unique facts involved in each transaction. Mergers occur when two or more entities combine in such a manner that only one remains in existence. Consolidations occur when two or more entities combine to form a new consolidated entity, and the original entities cease to exist. In both mergers and consolidations, the surviving or emerging entity acquires the assets and assumes the liabilities of the entity or entities that ceased to exist.

§ 1782.16 Defeasance of Agency indebtedness.

Defeasance, or amending outstanding loan instruments and agreements to permit defeasance of Agency debt instruments, is prohibited. ***Defeasance of Agency indebtedness is not authorized because defeasance limits or eliminates the borrower's ability to comply with the graduation requirements contained in § 1782.11 of this Staff Instruction. Defeasance occurs when a borrower issues new debt and invests the proceeds in order to repay the Agency's debt at its original (old) repayment schedule. The requirements of the new debt may supersede the contractual obligations agreed to in the prior Agency issue.***

§ 1782.17 Parity lien.

In order for the Agency to agree to a parity lien position, the borrower must submit a written request to the servicing office.

(a) The written request for parity must contain the following items:

(1) An explanation of the purpose of the request for parity; amount of loan for which parity is requested; description of security property; type of security instrument; name and address of financial institution requesting the transaction; and other information determined necessary by the servicing official to evaluate the request. ***The request must be for a specific amount of Agency debt, secured by the prior lien of the other lender or a parity lien.***

(2) Current financial statements or an audit, if available or determined necessary by the servicing official.

(3) An annual operating budget which projects income and expenses for a typical year's operation. If construction is involved, the budget must be projected through the first full year of operation following completion of the planned improvements. ***Borrowers must be able to meet its debt service and reserve requirements.***

- (4) A copy of the proposed security instrument.
- (5) A certification from the borrower that the Agency debt cannot be refinanced at reasonable rates and terms.
- (6) An appraisal, when the primary security is real estate or determined necessary by the servicing official in order to determine the adequacy of loan security or repayment ability.
- (7) A certification that any development work will comply with subpart C of part 1780 of this chapter.
- (8) ***Lien accommodations or requests for parity of security are not actions subject to the provisions of 7 CFR Part 1794.***
- (9) ***The terms and conditions of the prior lien of the other lender or parity lien will be such that the borrower is expected to meet those obligations as well as the requirements of all other debts.***
- (10) ***The Agency will obtain the appropriate security interest when parity liens are taken in cases involving items such as: land purchase, leases, contracts, or other items of value. Security on such items will be the same as if Agency loan funds were used.***
- (11) ***If the primary security is real property and the servicing official considers it necessary, an appraisal shall be obtained to determine the present market value of the property. If the security property is a facility that, due to location, type, or operations, created an environmental risk for releases of hazardous substances and/or petroleum products, the property shall be evaluated for releases of hazardous substances and/or petroleum products. As a minimum, the Transaction Screening Questionnaire (ASTM E 1528-96, Standard Practice for Environmental Site Assessments: Transaction Screen Process) or equivalent will be used and performed in conjunction with the appraisal.***
- (12) ***The proposed parity must not change the nature of the borrower's activities so as to make it ineligible for Agency loan assistance.***
- (13) ***Necessary consent and subordination of all other outstanding security interests must be obtained.***
- (14) ***Exhibit F of this Staff Instruction should be appropriately completed.***

(b) Requests for parity must comply with requirements of paragraph (a) of this section, requirements as specified in the bond or loan documents, the requirements as specified in subpart D or part 1780 of this chapter, and as provided in applicable State law.

(c) If the borrower has met all of the requirements in paragraphs (a) and (b) of this section and the proposal is determined to be in the Government's interest, Agency will grant approval of the borrower's request for parity. The following factors will be considered in assessing whether the request is in the Government's interest.

- (1) The value of the added assets compared with the amount of new debt to be secured;
- (2) The value of the assets already pledged under the security documents, and any effects of the proposed transaction on the value of those assets;
- (3) The ratio of the total outstanding debt secured under the security documents to the value of all assets pledged as security under the security documents;
- (4) The borrower's ability to repay its debt owed to the Government;
- (5) The overall financial viability of the borrower;
- (6) The borrower's current relationship with the Agency (i.e. no defaults under the loan documents);
- (7) Such other factors that may be relevant in individual cases, as determined by the Agency.

(d) **Processing.** *The case file will include:*

- (1) *The borrower's written application on Form RD 465-1, if appropriate, or other acceptable form;*
- (2) *A current balance sheet;*
- (3) *If development work is involved, an operating budget on Form RD 442-7, or similar form and a PER (See Bulletin 1780-2). This information should project income and expenses through the first full year of operation following completion of the planned improvements;*
- (4) *If no development work is involved, an income statement and budget on Form RD 442-2, or similar form;*
- (5) *A copy of the proposed security instrument;*

- (6) *A brief narrative and recommendations of the State Director; and*
- (7) *OGC opinion when determined necessary by the approval official.*

*(e) **Closing.** Agency parity consent will be given in a format acceptable to the Agency and OGC. Closing will be in accordance with OGC instructions.*

§ 1782.18 [Reserved]

§ 1782.19 *Third party agreements.*

The State Director may authorize third party operation, maintenance, and management of an Agency financed facility. The borrower's attorney must review the contract, management agreement, written lease, or other third party agreement and issue an opinion to the Agency as to their legal sufficiency. The borrower shall retain the legal authority necessary for owning, constructing, operating and maintaining the facility.

*(a) **Leases.***

(1) Lease of all or part of a facility when no liquidation action is pending may be approved by the State Director when:

(i) Leasing is the only feasible way to provide service and it does not adversely affect the Government's security interest;

(ii) The borrower will retain the legal authority necessary for owning, constructing, operating and maintaining the facility. The borrower will also be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable user rates and charges;

(iii) The State Director approves the lease agreement with advice from OGC, if needed;

(iv) The lease is not a purchase agreement and does not contain provisions for the transfer of ownership.

(2) Lease of all or part of a facility when liquidation action is pending may be approved by the State Director when:

(i) The lease will not adversely affect the Government's security interest;

(ii) The lease is necessary until final liquidation can be accomplished;

(iii) The lease is not an alternative to or means of delaying liquidation action;

(iv) Rental income is used only to make regular scheduled payments and/or to operate and maintain the facility;

(v) If foreclosure action has been approved, consent to lease the facility and use of the rental income must be approved by OGC; and

(vi) The lease does not exceed a 1-year period. If the property has been leased for two consecutive years, the lease may not be extended without prior Assistant Administrator approval.

(b) Long-term lease of facility financed with Agency grants.

(1) If the long-term lease or disposition is to a public or non-profit entity, repayment of all or a portion of the grant is not required if the facility will be used for the same purpose and the new owner provides a written agreement to abide by the terms of the original grant agreement.

(2) If the long-term lease or disposition is to a private entity, repayment of all or a portion of the grant is determined by the terms of the grant agreement, 7 CFR Parts 3016, 3019, or E.O. 12803.

(c) Mineral leases. *The State Director will approve mineral leases with advice from OGC, if needed. Proceeds from a mineral lease may be used to service the debt or to operate and maintain the system.*

(d) Management agreements. *Management agreements will comply with Bulletin 1780-8.*

(e) Processing. *The consent of other lien-holders will be obtained when required. When National Office approval is required, or if the State Director wishes to have a transaction reviewed prior to approval, the case file will be forwarded to the National Office and will include:*

(1) A copy of proposed agreement;

(2) Exhibit F of this Staff Instruction should be appropriately completed;

(3) Any other necessary supporting information.

§ 1782.20 Debt settlement.

Pursuant to 7 U.S.C. 1981, this section prescribes policies for debt settlement of Water and Waste Disposal loans; Watershed loans and advances; Resource Conservation and Development loans; and 306 (c) Water and Waste Facility loans. Within the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134) is the Debt Collection Improvement Act of 1996. This law provides that any non-tax debt or claim owed to the United States that has been delinquent for a period of 180 days shall be turned over to the Secretary of the Treasury for appropriate action to collect or terminate collection actions on the debt or claim. Debt that is in litigation or foreclosure, with a collection agency or designated Federal debt collection center, or that will be disposed of under an asset sales program, is exempt from transfer to the Secretary. ***Settlement of Non-program loans is not authorized under independent statutory authority and settlement under these programs is handled pursuant to the Federal Claims Collection Joint Standards, 4 CFR Parts 101-105.***

(a) General requirements for debt settlement.

(1) The debt or any extension thereof on which settlement is requested must be due and payable. The debt will be due and payable either under the terms of the note or other instrument, or by acceleration, unless the debt is to be canceled without application under paragraph (e)(2) of this section or charged off under paragraph (f) of this section.

(2) Normally, all security will be disposed of prior to the date of application for debt settlement unless it is necessary to abandon security through the debt settlement process. ***For example, a community may be rendered uninhabitable by a toxic or hazardous substance.*** In such cases, debt settlement may proceed if the servicing official determines that further collection efforts would be ineffective, uneconomical, and not in the best interests of the Government. ***Also, that the proposal otherwise meets the requirements appropriate to the type of settlement under consideration and the approval of the Administrator is obtained. Other requirements for the disposition of assets are:***

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

(ii) Security can be retained under compromise and adjustment offers specified in this part.

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

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

(4) Requests for debt settlement will consist of Form RD 1956-1 "Application For Settlement of Indebtedness," current financial information, description and estimated market value of collateral, and status of operation (i.e., number of users, compliance with environmental issues, etc.).

(5) Office of the General Counsel (OGC) advice on compliance with State or Federal statutes that may affect the debt settlement action must be requested.

(6) If a debt is eligible for settlement, the debt settlement authorities of the Agency should be explained to the debtor. All debtors are entitled to impartial treatment and uniform consideration under this Staff instruction. Agency personnel charged with any responsibility in connection with debt settlement will adhere to this Section.

(7) Proposed settlement actions will be reviewed by the State Director except for the cancellation of debts discharged in bankruptcy or when a claim has been referred to a United States Attorney. No settlement shall be approved if it is more favorable to the debtor than recommended by the State Director.

(8) Area/Program Directors cannot approve debt settlement actions. Therefore, they will not make statements to a debtor concerning the action that may be taken upon a debtor's application. Debt settlement actions may be approved or rejected in accordance with the following:

(i) By the State Director, when the loss to the Government in the settlement does not exceed \$100,000, including principal, interest, and other charges.

(ii) By the Administrator or designee, when the loss to the Government in the settlement is \$100,000 or more, including principal, interest, and other charges.

(b) Debts ineligible for settlement. Debts will not be settled if:

(1) Referral to Office of Inspector General and/or to OGC is contemplated or pending because of suspected criminal violation,

(2) Civil action to protect the interest of the Government is contemplated or pending,

(3) An investigation for suspected fiscal irregularity is contemplated or pending, or

(4) The debtor requests settlement of a claim that has been referred to or a judgment obtained by the United States Attorney. The settlement offer and any related payment must be submitted directly to the United States Attorney for consideration. ***The servicing official will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, and therefore, Rural Development has no authority to agree to a settlement offer.***

(c) Types of debt settlement. Typically, debt settlement will be accomplished through compromise/adjustment, charge-off, or cancellation. Any debt remaining after the security has been liquidated, by sale or transfer, will be cancelled if there are no other assets from which to collect the debt. The servicing official will proceed with advice from OGC and the National Office, as required.

(d) Compromise and adjustment. ***Non-judgment debts may be compromised or adjusted upon application of the debtor(s).*** Debts may be compromised or adjusted and security retained by the debtor, provided:

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

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

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

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

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

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

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

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

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

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

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

(v) The value of the debtor's assets in relation to debts and liens of third parties is important in determining the debtor's ability to pay. It is recognized that debtors must retain a reasonable equity in essential nonsecurtiy property in order to continue normal operations and, in the

case of an individual, to meet family living expenses over a period of years. Under this policy a reasonable equity in modest nonsecurity homestead occupied by the debtor, whether or not exempt from levy and execution will not be considered as available for offer in settlement. Nonsecurity property which is in excess of minimum business and/or family living needs and which is not exempt from levy and execution should be considered when determining the debtor's ability to pay.

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

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

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

(B) Inheritance prospects within 5 years, and

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

(D) Uncertainty as to the price that the security or other property will bring at forced sale.

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

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

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

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

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

(e) Cancellation. Non-judgment debts, regardless of the amount, may be canceled with or without application by the debtor.

(1) With application by the debtor. Debts may be cancelled upon application of the debtor(s), subject to the following conditions:

(i) The servicing official furnishes a favorable recommendation concerning the cancellation;

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

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

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

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

(i) Debtors discharged in bankruptcy. If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by the use of Form RD 1956-1. A copy of the Bankruptcy Court's Discharge Order must be attached. ***No attempt should be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise***

accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

(ii) Impractical to obtain debtor's signature. Debts may be cancelled if it is impractical to obtain a signed application and the requirements of paragraphs (e)(1) of this section are met. Form RD 1956-1 will document the specific reason(s) why it was impossible or impracticable to obtain the signature of the debtor. If the debtor refused to sign the application, the reason(s) should be documented.

(f) Charge-off.

(1) Judgment debts. Judgment debts, regardless of the amount, may be charged off without the debtor's signature upon a favorable recommendation of the servicing official provided:

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

(ii) The requirements of paragraph (e)(2)(ii) of this section, if applicable, have been met, or 2 years have elapsed since any collections were made on the judgment. The debtor must also have no equity in the property subject to the lien or upon which a lien can be obtained.

(2) Non-judgment debts. Debts that cannot be settled under other sections of this part may be charged off without the debtor's signature upon a favorable recommendation of the servicing official in the following instances:

(i) When OGC advises in writing that the claim is legally without merit or that evidence necessary to prove the claim in court cannot be provided; or

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

(A) Is unable to pay any part of the debt and has no reasonable prospect of being able to do so; or

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

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

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

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

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

(h) Debtors in bankruptcy. Rural Development personnel will process reorganization plans of debtors filing under Chapter 9, Chapter 11, or Chapter 13 as follows:

Plans submitted by debtors under Chapters 9, 11, and 13 must be sent by the servicing official to the State Director who will recommend either acceptance or rejection of the plans and refer them to the OGC. OGC will send the plans, with any recommendations, to the United States Attorney for action. When the plans call for the adjustment of a debt to Rural Development, the State Director will obtain the advice of the Administrator before providing OGC with a recommendation on acceptance or rejection of the plan.

(2) The United States Attorney will advise OGC of the approval or rejection of the debtor's reorganization plan. OGC will notify the State Director of the United States Attorney's decision. The State Director will notify the Office of the Deputy Chief Financial Officer by memorandum of the terms and conditions of the bankruptcy reorganization plan, including any adjustment of the debt.

(3) The State Director will consult with OGC regarding the representation of the Agency at the creditors meeting to protect the Agency's security interest when a Chapter 7 has been filed.

(i) Processing debt settlement.

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

(i) Submit Form RD 1956-1 to the Office of the Deputy Chief Financial Officer along with any funds recovered.

(ii) Notify debtors in writing of settlement approval, including the specific amount and terms of the offer that were accepted, for compromise and adjustment offers and cancellations with application.

(iii) Notify the Portfolio Management Branch in the National Office of the amount of the debt settlement.

(iv) Not be required to notify debtors of settlement approval when debts are cancelled without application or charged off.

(2) Requesting additional information. *When rejection is necessary due to lack of information or the amount of a compromise or adjustment offer is inadequate, the State Director may request additional information or make an effort to obtain an acceptable offer. Notice of rejection of an offer will be withheld until sufficient time has elapsed to enable the debtor to present further information or a new offer.*

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

(i) Document the reasons for rejection on Form RD 1956-1.

(ii) Request the Office of the Deputy Chief Financial Officer to return any adjustment or compromise payment held by the Office of the Deputy Chief Financial Officer to the borrower, in care of the servicing official.

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

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

(v) Notify the debtor in writing of the reason(s) for rejecting the compromise and adjustment offers under paragraph d of this Section and cancellations with application under paragraph e (1) of this Section.

(4) Appeal rights. *The debtor will be given the right to appeal the rejection of any debt settlement offer made by the debtor under 7 CFR 1782.20.*

(5) **Payments.**

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

(ii) Checks or check transmittal letters containing restrictive notations such as “settlement in full” or “payment in full” will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(iii) All payments evidenced by Form RD 451-2, “Schedule of Remittances” bearing the legend “Compromise Offer – Rural Development” or Adjustment Offer – Rural Development” will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer.

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

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

(iv) When a debtor’s adjustment offer is approved, accounts involved will not be adjusted in the records of the Office of the Deputy Chief Financial Officer until all payments have been made. Form RD 1956-1 will be held in a suspense file pending payment of the full amount of the approved offer.

(v) If the State Director voids a settlement agreement for noncompliance, any payments received shall be applied against the debt owed on the date the compromise or adjustment offer was approved.

(6) Reporting to the Internal Revenue Service (IRS). Pursuant to an IRS requirement, the Agency will report debts determined to be uncollectible to the IRS. After reporting the debt to the IRS, no further collection efforts will be made. The Office of the Deputy Chief Financial Officer will report discharges of debt to the IRS on IRS Form 1099-C, "Cancellation of Debt."

(7) Delinquent adjustment agreement.

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

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

(iii) The State Director may extend, for 90 days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director and the servicing official.

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

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

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

(j) Debt settlement under the Federal Claims Collection Act.

(1) Debt settlement of Non-program loans must be settled under the Federal Claims Collection Act Joint Standards (FCCAJS).

(2) The U.S. Department of Justice (DOJ) and the General Accounting Office are charged with the responsibility for implementing and promulgating the FCCAJS (4 CFR Parts 101-105) to inform Government agencies on how to settle debts and claims which the agency does not have independent statutory authority to settle. With the exception of loans and claims with outstanding balances of \$20,000 or less, exclusive of interest, penalties, and administrative costs, settlements must be submitted to and approved by the United States Attorney or the DOJ.

(3) Debt settlement of Non-program loans and claims may be approved as follows:

(i) By the State Director when the outstanding balance of the indebtedness involved in the settlement is \$20,000 or less, exclusive of interest, penalties, and administrative costs.

(ii) By the Administrator and DOJ when the outstanding balance of the indebtedness involved in the settlement exceeds \$20,000, exclusive of interest, penalties, and administrative costs. If the State Director recommends debt settlement, a Claims Collection Litigation Report (CCLR), which is available through the U.S. Attorney, will be prepared by the State Director and submitted through OGC to the U.S. Attorney. A memorandum from the State Director should be attached to the CCLR recommending acceptance of the debt settlement. A copy of the memorandum and CCLR is to be submitted to the National Office. If the State Director does not recommend acceptance, the State Director has the authority to reject the debt settlement.

(4) Debt settlement of non-program loans settled under the FCCAJS should be listed under Part II (B) on Form RD 1956-1, as other debts owed to Agency. Normally, all security for the loans and claims should be disposed of prior to the submission for debt settlement.

(5) It is not necessary to obtain approval of the United States Attorney or the DOJ, as appropriate, in cases where the Agency decides not to settle a loan or claim.

(k) Delinquent borrower reports.

(1) The Agency's "official" listing of delinquent borrower data is published on a monthly basis through RD Data Warehouse. The Deputy Chief Financial Officer (DCFO) prepares official delinquency reports from the Program Loan Accounting System (PLAS). The report is loaded to the Data Warehouse where RD Data Warehouse can be used to extract delinquent borrower information. These reports provide delinquency information, by State and servicing office in both a summary and detailed format, respectively. A borrower is reported as delinquent on RD Data Warehouse reports if any portion of a loan payment is more than 30 days past due.

(2) In addition to providing information on delinquent borrowers, the RD Data Warehouse report also includes a listing of "borrowers with loans that may require attention." A borrower is reported as having a loan that may require attention if any portion of a loan payment is between 0 to 30 days past due.

(3) Each State and servicing office should promptly review RD Data Warehouse reports and take appropriate action to resolve both delinquent loans and loans that may require attention. Supplementary reports for monitoring delinquent borrowers should also be utilized when available. These include reports generated by RD Data Warehouse and CPAP.

(1) Servicing actions for delinquent or problem borrowers.

(1) Collections. Borrower payments should be monitored on a regular basis to ensure payments are collected before the account becomes delinquent. All new borrowers and new loans will use preauthorized debit payment. All other borrowers should use preauthorized debit payment when practicable. Several methods are available to determine if borrower payments were received by the due date. These include CPAP and RD DATA WAREHOUSE.

(2) Contacting the borrower. A borrower that is behind in its loan payment should be contacted immediately either by letter or telephone. If the account is delinquent for more than 90 days, the servicing official will make arrangements to meet the borrower and develop a workout agreement-using Form RD 1951-10 to outline the plan to eliminate the delinquency.

(3) Workout agreements. The following actions must be taken if the borrower is unable to pay the delinquent amount within 90 days of its due date:

(i) The servicing official may negotiate a Workout Agreement with the borrower using Form RD 1951-10 to eliminate the delinquency or correct the deficiencies.

(ii) The agreement should include specific actions to be taken by the borrower along with dates for completion. Effective follow-up by the servicing official is essential to ensure the actions agreed upon are completed as planned.

(iii) In developing a workout agreement, consideration should be given to utilizing supplemental human resources such as the National Rural Water Association, Rural Community Assistance Partnership, and the Agency Field Accountant.

(iv) The workout agreement should be reviewed and updated at least quarterly.

(v) If the borrower is unable to correct the deficiencies within the agreed upon timeframe, the servicing official should consider other servicing actions, including but not limited to, re-amortization or rescheduling, transfer and assumption, sale, receivership, foreclosure or referral to treasury offset.

(4) Treasury offset or cross-servicing program.

(i). The Office of the Deputy Chief Financial Officer will submit a listing of borrowers with payments 180 days past due to the National Office. The National Office will review the listing and determine which borrowers are eligible to be submitted to the Treasury Offset Program (which enables offset of Federal financial assistance) or Cross-Servicing Program (which turns the debt over to the Treasury and all Agency collection actions cease). A borrower with a workout agreement in place, in bankruptcy or litigation, or meeting other exclusion criteria, will be excluded from the Treasury Offset or Cross-Servicing Program. The National Office will identify those borrowers excluded from the Treasury Offset or Cross-Servicing Program and notify the Office of the Deputy Chief Financial Officer. A notice will be sent to borrowers subject to Treasury Offset or Cross-Servicing by mail from the Office of the Deputy Chief Financial Officer. The notice will include:

(A) The nature and amount of the debt, the intention of the Agency to collect the debt through Treasury Offset or Cross-Servicing, and an explanation of the debtor's rights;

(B) An opportunity to inspect and copy the records of the Agency;

(C) An opportunity to review the matter within the Agency; and

(D) An opportunity to enter into a written repayment agreement.

(ii) The borrower will be given 60 days to resolve any delinquency before the debt is reported to Treasury.

(5) Re-amortization/rescheduling of debt.

(i) State Director authorization. The State Director is authorized to approve the re-amortization of a loan or rescheduling of loan payments under the following conditions:

(A) The account is delinquent and cannot be brought current within 1 year while maintaining a reasonable reserve;

(B) The borrower has demonstrated for at least 1 year a satisfactory performance or has presented a budget that indicates it is able to meet the proposed payment schedule;

(C) A loan may be re-amortized once over a period not to exceed the term permitted by State law, 40 years, or the life of the facility, whichever is less; and

(D) The amount being re-amortized is within the State Director's loan approval authority.

(E) A loan may be rescheduled once without National Office approval.

(ii) Requests requiring National Office approval. Previously re-amortized or rescheduled loans or loans not meeting the above conditions require National Office approval. Requests will be forwarded to the National Office with the case file, including:

(A) A brief narrative of the situation, recommendations of the State Director, and a request for action;

(B) A current budget and cash flow statement prepared on Form RD 442-2, schedules 1 and 2, or similar forms;

(C) A current balance sheet and income statement;

(D) Form RD 1951-33 "Reamortization Request"

(E) Exhibit F of this Staff Instruction should be appropriately completed;

(F) A copy of any workout agreement; and

(G) Any other necessary supporting information.

(iii) Processing. When legally permissible and administratively acceptable, the total outstanding principal and interest balance will be re-amortized rather than only the delinquent amount. The interest rate for the re-amortized loan will be the same rate as currently reflected in Office of the Deputy Chief Financial Officer records.

(A) Re-amortizations will be perfected in accordance with OGC closing instructions.

(B) When debt instruments are modified or new debt instruments are executed, bond counsel or local counsel, as appropriate, will provide an opinion on the Agency's security position. The approval official must determine that the Government's security interest is adequately protected.

(C) Except as provided in paragraph (l)(4) of this section, loans evidenced by promissory notes will be re-amortized through a new evidence of debt unless OGC recommends modification of the existing note. Form RD 1951-33 may be used to effect such modifications or other forms, if acceptable to OGC. The new note, or any endorsement required by OGC will be attached to the existing note, and retained in the servicing office until the account is paid in full or satisfied. A copy of the note or endorsement will be forwarded to the Office of the Deputy Chief Financial Officer.

(D) Loans evidenced by bonds or notes with other than real or chattel security may be re-amortized using procedures acceptable to the servicing official. The transaction must be legally permissible under State statutes as determined by the borrower's counsel and OGC.

(iv) The re-amortization or rescheduling of debt may consist of:

(A) A new evidence of total debt, which includes the total principal and interest;

(B) A rescheduling agreement for the total debt, which includes principal and interest; or

(C) A new evidence of debt or a rescheduling agreement for only the delinquent principal and interest.

(D) A new loan number will be assigned if the total debt is re-amortized by either a new instrument or a rescheduling agreement. If only the delinquent amount is re-amortized, the original loan number will remain and a new loan number will be assigned to the delinquent amount. If only the delinquent amount is re-amortized, a payment will be made on the original note and a separate payment made on the note for the delinquent amount.

(1) If State statutes or prohibitive costs prevent a loan from being re-amortized by a new or modified note, the rescheduling agreement provided as Exhibit E of this Staff Instruction, may be used.

(2) Preparation of new notes or bonds for public bodies will be handled in accordance with 7 CFR Part 1780, Subpart D, unless precluded by State statutes or an exception is approved by the National Office.

(3) If State statutes require release of existing bonds, the exchange will be accomplished by the servicing office. Single bond instruments will be retained in the servicing office and serial bonds retained in the Office of the Deputy Chief Financial Officer.

(v) New evidence of debt or rescheduling agreement.

(A) Any new evidence of debt or rescheduling agreement will contain:

(1) The delinquent amount, which equals the total delinquency plus the principal and interest owed on any advance through the date of re-amortization;

(2) The date the re-amortization is effective;

(3) The number of years the delinquency will be amortized;

(4) The repayment schedule; and

(5) The interest rate.

(B) The re-amortized payment will be due on the next scheduled due date. Deferment of interest and/or principal is not authorized.

(C) A separate new instrument will be required for each loan being re-amortized; unless, multiple loans are being re-amortized which were obligated in the same fiscal year, have the same rates and terms and will be re-amortized for the same term. Loans meeting the above conditions may be combined under a single new instrument.

(D) If amortized payments are not used, the schedule of principal installments developed will be such that the combined principal and interest payments closely approximate an amortized payment.

(E) A copy of the bond or rescheduling agreement will be sent to the Office of the Deputy Chief Financial Officer after execution, except when serial bonds are used. If serial bonds are issued, the original bond(s) will be submitted to the Office of the Deputy Chief Financial Officer.

(m) Reamortization with interest rate adjustment. A borrower seriously delinquent in its loan payments may be eligible for loan re-amortization with an interest rate adjustment. The purpose of loan re-amortization with interest rate adjustment is to provide relief for a borrower that is unable to service the outstanding loan in accordance with its existing terms and to enhance recovery on the loan.

(1) Eligibility determination. The State Director may submit to the Assistant Administrator, for approval, an adjustment in the interest rate charged on outstanding loans for those borrowers who meet the following requirements:

(i) The borrower has exhausted all other servicing provisions contained in this Staff instruction;

(ii) The borrower is experiencing severe financial hardship;

(iii) *Any management deficiencies must have been corrected or the borrower must submit a plan acceptable to the State Office to correct any deficiencies before an interest rate adjustment may be considered;*

(iv) *The borrower's user rates can not be lower than similar systems. In addition, the operating expenses reported by the borrower must appear reasonable in relation to similar system expenses;*

(v) *The borrower has cooperated with Rural Development in exploring alternative servicing options and has acted in good faith with regard to eliminating the delinquency and complying with its loan agreements and Agency regulations; and*

(vi) *The account must be delinquent at least one annual debt payment for 180 days.*

(2) Condition of approval. *All borrowers approved for an adjustment in the rate of interest by the Assistant Administrator, shall agree to the following:*

(i) *The borrower shall agree not to maintain cash or cash reserves beyond what is reasonable at the time of interest rate adjustment to meet debt service, operating, and reserve requirements. The interest rate adjustment must also be necessary for the financial viability of the borrower.*

(ii) *A review of the borrower's management and business operations should it be required by the servicing official.*

(iii) *A copy of the latest audited financial statements or management report must be submitted to the State Director.*

(3) Interest rate and term. *At the discretion of the Assistant Administrator, and consistent with State law, the interest rate charged on outstanding loans of eligible customers may be adjusted to no less than the poverty interest rate and the term of the loans may be extended up to a new 40 year term or the remaining useful life of the facility, whichever is less.*

(n) Disposition of essential Agency records.

(1) *Disposition of borrower files will be handled in accordance with RD Instruction 2033-A.*

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

(3) *Essential agency records evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. These records will be destroyed 6 years after charge-off pursuant to RD Instruction 2033-A.*

(o) *Bonds in default.* *The State Director will approve implementation of the remedies provided in the bond to eliminate a borrower's default provided the debt is within the State Director's loan approval authority. OGC should be consulted for guidance in remedying a bond in default. Debt exceeding the State Director's loan approval authority will be submitted to the Assistant Administrator for concurrence.*

(p) *Liquidation of loans secured by real estate.* *When it is determined that further servicing will not achieve the objective of a loan and voluntary sale of the property cannot be accomplished, loan(s) secured by real estate will be liquidated by foreclosure. Voluntary conveyance will be authorized only after all other methods of liquidation have been considered. A property acquired by the Agency will be managed and disposed of in the best interests of the Government and the local community. Agency management of property shall be performed primarily to protect the Government's security interest and shall not participate in the management of a facility in such a fashion as to exercise day-to-day decision making control over the environmental compliance or operational aspect of the facility. All questions regarding the appropriateness of management actions in the context of the Comprehensive Environmental Response, Compensation, and Liability Act shall be referred to the Rural Development State Environmental Coordinator or the National Office.*

(1) *Foreclosure.* *The State Director is authorized to approve foreclosure of property providing the total Agency loss does not exceed \$100,000. The servicing official will obtain OGC opinion on the steps necessary to foreclose the loan. A copy of OGC opinion, Form RD 1951-10, the borrower's case file, and other information required by OGC will be forwarded to the State Director for approval. Foreclosures on property with total Agency loss exceeding \$100,000 will be forwarded, with the State Director's recommendation, to the Administrator for approval. Actions subsequent to foreclosure approval are as follows:*

- (i) The account will be accelerated using a notice approved by OGC. The State Director will sign the acceleration notice.*
- (ii) After the account is accelerated, loan servicing ceases. The servicing official will accept no payment for less than the unpaid loan balance.*
- (iii) If the borrower requests additional time to voluntarily liquidate the account, the approval official will decide if foreclosure should be delayed.*
- (iv) If bankruptcy is filed after an account has been accelerated, any further foreclosure action must be suspended until OGC approval is obtained.*
- (v) The borrower will be given appeal rights as required in 7 CFR Part 11. Foreclosure actions will be held in abeyance if an appeal is pending.*
- (vi) If the borrower fails to satisfy the account during the timeframe specified in the acceleration notice the foreclosure process will continue if no appeal is pending.*
- (vii) The State Director will forward the case file and all necessary documents to OGC for processing the foreclosure.*
- (viii) Exhibit F of this Staff Instruction should be appropriately completed.*
- (ix) OGC will issue instructions for completion of the foreclosure. At the time indicated by OGC in the foreclosure instructions, Form RD 1951-6, "Borrower Account Description Flag," will be processed in accordance with the Forms Manual Insert (FMI).*
- (x) The advertisement for foreclosure sale will contain a statement similar to the following: "The property described herein was purchased or improved with Federal financial assistance and is subject to the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and other similarly worded Federal statutes and regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age or sex in programs or activities receiving Federal financial assistance, for as long as the property continues to be used for the same or similar purposes for which the federal assistance was extended or for*

so long as the purchaser owns it, whichever is later.” The purchaser will be required to sign Form RD 400-4, if the property will be used for its original or similar purposes.

(xi) If permitted by State law, the State Director will designate an individual to bid on the property. The Government’s bid will be entered when no other party makes a bid or when the last bid made will result in the property being sold for less than the bid authorized.

(xii) The Government bid will be the amount of Agency’s gross investment or the market value, whichever is less. Gross investment is all debt owed to the Agency including secured loans; advances; and where state law permits, unsecured debts. The market value will be determined by an appraisal completed by a qualified appraiser.

(2) Voluntary conveyance. The State Director is authorized to approve a voluntary conveyance providing the Agency secured debt is within the State Director’s loan approval authority. The Agency will not demand a borrower voluntarily convey property. A borrower should be advised in writing of any equity in the property before accepting an offer to voluntarily convey. If the Agency receives an offer of voluntary conveyance, acceptance should only be considered when the Government will likely receive a recovery on its investment and all other servicing actions have been considered. The current market value of the property must exceed the Agency’s debt and any other liens. Voluntary conveyance should be refused if the Agency’s lien has neither present nor prospective value or recovery of the value would be unlikely or uneconomical.

(i) Processing voluntary conveyance. An offer of voluntary conveyance will consist of the following:

(A) Form RD 1955-1, “Offer to Convey Security”;

(B) A Warranty Deed or other deed approved by OGC to comply with State laws. The deed will not be recorded until it is determined the voluntary conveyance will be accepted;

(C) A current balance sheet and income statement;

(D) A duly adopted board resolution with the corporate seal affixed;

(E) If property is leased, the lease will be assigned to the Government. The effective date will be the date on which the voluntary conveyance is closed;

(F) A lien search indicating any outstanding liens against the property.

(G) An appraisal of property. After an offer of voluntary conveyance, but before acceptance by the Agency, an appraisal of the property will be made to establish the current market value of the property. The appraisal is to be completed by a qualified appraiser.

(H) The servicing official will submit items in paragraph (p)(2)(i)(A) through (G) of this section with the case file to the State Director for approval. Prior to approval, the State Director will obtain the advice of OGC and request instructions for processing and closing the conveyance.

(I) Items in paragraph (p)(2)(i)(A) through (H) of this section will be submitted to the Administrator for approval if the conveyance is not within the State Director's loan approval authority.

(ii) Costs of voluntary conveyance. Voluntary conveyance costs paid by the Government will be charged to the borrower's account as recoverable costs. These amounts include taxes, assessments, and conveyance related costs.

(iii) Actions taken after closing conveyance.

(A) If the borrower's Agency account is satisfied, the note(s) will be stamped "Satisfied by Surrender of Security and Borrower Released from Liability," and signed by the servicing official.

(B) If the account is not satisfied and the borrower has not been released from liability, the account will be accelerated. If the borrower is unable to pay the balance, the account will be processed for charge-off or cancellation

(q) Acquisition and management of property. The Government may obtain title to property by the following means: voluntary conveyance, conveyance by a trustee in bankruptcy, foreclosure, or acquisition of property by exercise of Government redemption rights.

(1) The acquisition and management of property will be accomplished in accordance with State law and with advice from bond counsel, OGC, and consultation with the National Office.

(2) *Prior to final decision under this Section, the appropriate level of environmental review must be completed. The review finding will be used to determine the disposition of the property.*

(r) **Disposal of property.** *Eligible applicants under 7 CFR 1780.7 will receive preference for acquiring property. The sale will be handled in accordance with applicable State laws and with advice from OGC*

(s) **Program loan expenses.** *Exhibit D of RD Instruction 2024-A, includes the agency's listing of recoverable or non-recoverable program loan expenses. Funds required to pay program loan expenses will be requested by submitting RD Form 1951-10 to the National Office. Invoices or documentation supporting the expenses must be included with the request for funds.*

(1) **Recoverable expenses.** *A contractual or non-contractual program loan expense that is chargeable to a borrower or property account.*

(2) **Non-recoverable expenses.** *A contractual or non-contractual program loan expense not chargeable to a borrower or property account.*

(t) **Protective advances.**

(1) *The State Director is authorized to approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to or insured by the Agency if the debt instrument provides that the Agency may voucher the account to protect its lien or security. The State Director must determine that authorizing a protective advance is in the best interest of the Government. For insurance, factors such as the amount of advance, occupancy of the structure, vulnerability to damage and present value of the structure and contents will be considered.*

(2) *Protective advances are considered due and payable when advanced. Advances bear interest at the rate specified in the most recent debt instrument authorizing such an advance.*

(3) *Protective advances are not to be used as a substitute for a loan.*

(4) *Vouchers are prepared in accordance with applicable procedures set forth in RD Instruction 2024-A.*

(u) **Unliquidated obligations.**

(1) State Offices are required to semi-annually review and certify the status of their unliquidated obligations to the Office of the Deputy Chief Financial Officer. State Offices are also required to simultaneously submit copies of the unliquidated obligation report to the National office.

(2) The DCFO will provide State Offices Report Code 743, Report of Prior Year Unliquidated Obligations semi-annually as of March 31 and September 30 for certification that obligations are accurate and valid. The DCFO will include instructions with Report Code 743 for reviewing, certifying, and annotating the report. The instructions will include canceling unliquidated obligations as appropriate. The review of the report is to be completed as follows:

(i) The status of obligations shown on the report will be annotated in the left margin based on the following categories using the codes provided:

(A) Cancellation of obligation should be accomplished through the field office terminal system. Identify by placing an "X" in the left margin. Show amount and date of cancellation; mark only those cancellations processed prior to the requested return date of the report.

(B) If a check was issued, show the date and amount of the check.

(C) Establish timeframes as follows: "1" for funds expected to be requested within 12 months, and "2" for funds expected to require over 12 months before request. Provide comments for those obligations when funds are required over 36 months.

(ii) Enter the following statement on the first page of the report, signed/dated by the State Director and submitted to the Office of the Deputy Chief Financial Officer: "I certify that RC 743 dated July 31, has been reviewed, and all obligations not shown as cancelled are valid and should be retained.

(3) State Offices will provide a copy of the annotated/certified Report Code 743 as of March 31 to the DCFO with a copy to the National Office. The annotated/certified Report Code 743 as of September 30 will be retained in the State Office files.

(4) Loan and grant funds cancelled in the fiscal year obligated will be returned to the state allocation. All other cancelled funds will be returned to the

National Reserve except loan funds obligated prior to fiscal year 1996. Loan funds obligated prior to 1996 and cancelled are not available for new obligations. Loan and grant funds returned to the National Reserve will be available for new obligations. The amount of funds available for new obligations may be different than the cancelled amount if the Agency's subsidy rate has changed.

(5) Agency Loan and Grant funds not expended under 7 CFR 1780.45 within five years of obligation will be canceled. Prior to the actual cancellation, the borrower will be notified of the Agency's intent to cancel the remaining funds. The applicant will be given appropriate appeal rights unless written approval to cancel is provided. The Processing Official will prepare and execute Form RD 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert. A copy will be submitted to the National Office. Budget authority from the de-obligated funds may be requested from the National Office Reserve.

§ 1782.21 [Reserved]

§ 1782.22 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's interest. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative course(s) of action, and show how the adverse affect will be eliminated or minimized if the exception is granted. The exception decision will be documented in writing, signed by the Administrator, and retained in the files.

§ 1782.23 Use of Rural Development Loans and Grants for other purposes.

(a) If, after making a loan or a grant, the Administrator determines that the circumstances under which the loan or grant was made have sufficiently changed to make the project or activity for which the loan or grant was made available no longer appropriate, the Administrator may allow the borrower or grantee to use property (real and personal) purchased or improved with the loan or grant funds, or proceeds from the sale of property (real and personal) purchased with such funds, for another project or activity that:

(1) Will be carried out in the same area as the original project or activity;

(2) Meets the criteria for a loan or grant described in section 381E(d) of the Consolidated Farm and Rural Development Act (Pub. L. 87-128), as amended; and

(3) Satisfies such additional requirements as are established by the Administrator.

(b) If the new use of the property is under the authority of another USDA Agency Administrator, the other Administrator will be consulted on whether the new use will meet the criteria of the other program. Since the new project or activity must be carried out in the same area as the original project or activity, a new rural area determination will not be necessary.

(c) Borrowers and grantees that wish to use the proceeds for other purposes may make their request through the appropriate Rural Development State Office. Permission to use this option will be exercised on a case-by-case-basis on applications submitted through the State Office to the Administrator for consideration. If the proposal is approved, the Administrator will issue a memorandum to the State Director outlining the conditions necessary to complete the transaction.

§ 1782.24-1782.99 [Reserved]

§ 1782.100 OMB Control Number.

The information collection requirements in this part are approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 0572-0137.

In accordance with § 1782.11 of this Staff Instruction, the following format may be used to notify a borrower the loan has become eligible for graduation review and to request current financial information.

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT UTILITIES PROGRAMS
(Location)

Dear: _____:

In accordance with the terms of your security instruments with the Rural Development Utilities Programs (RDUP), you are required to refinance the unpaid balance of your RDUP loan(s) when credit is available from a cooperative or private lending institution at reasonable rates and terms.

RDUP is required to periodically review your loan(s) for possible graduation to other credit. In order to evaluate your continued eligibility for RDUP assistance, we request that certain financial information be submitted as required by 7 CFR 1782.11. Therefore, we ask that you please provide our office with the following information within 60 days of the date of this letter:

At your request, an appointment may be arranged to discuss RDUP' graduation policies and procedures. Our telephone number is _____.

Sincerely,

In accordance with § 1782.11 of this Staff Instruction, the following format may be used as the final notice for borrower to provide current financial information.

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT UTILITIES PROGRAMS
(Location)

Dear _____:

This is a follow-up to our previous letter dated _____, concerning your Rural Development Utilities Programs (RDUP) loan(s). We requested current and complete financial information in order to determine if you are eligible for continued RDUP assistance. This important information is required by 7 CFR 1782.11, and the terms of the security instrument governing your loan(s).

If we do not receive the required financial information within 15 days of the date of this letter, you will be in violation of your obligations under your security instrument. Should a violation occur, this office will recommend legal proceedings under the security instrument without further notice.

The information required is:

Please contact us if we can assist you in preparation of the requested information or in answering questions concerning RDUP' graduation requirements. Our telephone is _____.

Sincerely,

In accordance with § 1782.11 of this Staff Instruction, the following format may be used to request a borrower to refinance RDUP indebtedness.

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT UTILITIES PROGRAMS
(Location)

Dear _____:

We have reviewed the financial progress you have made since obtaining your Rural Development Utilities Programs (RDUP) loan(s). In accordance with the terms of your RDUP security instruments, you are required to refinance the unpaid balance of your loans(s) when credit is available from responsible cooperative or private lenders.

We have contacted lenders to determine their requirements and the availability of credit to new customers. We have also evaluated your financial progress, together with the lender requirements, and find you should now be able to secure satisfactory credit to refinance your RDUP loan(s). Therefore, we request that you refinance your _____ loan(s) in full.

(Type of loan)

The approximate balance is \$ _____ for Loan No. _____.

Option A. We suggest you contact lenders that can make _____.

(Type of loan)

Option B. We suggest you contact the following lenders within 30 days:

If you are unable to graduate your loan(s) in full, you will need to provide this office with written evidence showing that an earnest effort was made to seek other credit within 90 days of the date of this letter. Such evidence should include:

- (1) The name(s) of other lender(s) contacted;
- (2) The amount of loan requested and the amount, if any, offered by the lender(s);

- (3) The rates and terms offered by the lender(s) or the specific reason(s) why other credit is not available; and
- (4) The purpose of the loan request.

At your request, an appointment may be arranged to discuss RDUP' graduation policies and procedures. Our telephone number is _____.

Sincerely,

In accordance with § 1782.11 of this Staff Instruction, the following format may be used to notify the borrower of actions to be taken by RDUP for failure to respond or refinance RDUP indebtedness.

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT UTILITIES PROGRAMS
(Location)

Dear _____:

This is a follow-up to our previous letter dated _____, requesting you to refinance your Rural Development Utilities Programs (RDUP) loan(s). We have examined the financial progress you have made since obtaining your RDUP loan. Based on the results of our review, we have determined that other credit appears available at rates and terms which you can reasonably be expected to pay.

Therefore, we request that you take positive steps to refinance your loan(s) within 60 days of the date of this letter. If you fail to respond as requested, this office will recommend legal proceedings without further notice.

Please contact us if we can assist you in arranging for other credit. Our telephone number is _____.

Sincerely,

In accordance with § 1782.11 of this Staff Instruction, the following format may be used to document a rescheduling agreement with the borrower.

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT UTILITIES PROGRAMS

RESCHEDULING AGREEMENT
(Public Bodies)

Effective Date: ____-____-____

State: _____ County: _____

Case No.: ____-____-_____ Fund Code: _____ Loan No: _____

Amount Rescheduled: \$____,____,____.____ Interest Rate: _____.____

The undersigned, a public body entity (herein called "Borrower"), being indebted for a loan made by the Rural Development Utilities Programs, United States Department of Agriculture, (herein called "Government"), as evidenced by a bond or other debt instrument (herein called the "bond") dated _____, 20 __, with an outstanding balance in the principal sum of \$ _____ plus accrued interest as of _____, 20 __, in the sum of \$ _____, and being in default under that bond, hereby agrees with the Government as follows:

1. **AMOUNT:** The amount of the debt rescheduled is \$ _____, consisting of \$ _____ principal plus _____ accrued interest.

This amount represents:

- _____ Delinquent amount only
- _____ Amount of the outstanding debt plus the delinquent amount.

2. REPAYMENT SCHEDULE: The first installment of the rescheduled amount, including interest at the bond rate shown above, in the amount of \$ _____ will be due and payable on _____, 20 __; thereafter, _____ regular installments, each in the amount of \$ _____, will be due and payable on _____ of each _____ until the rescheduled amount or, if the entire debt is being rescheduled, the entire indebtedness due under the bond, has been fully repaid. The final installment, if not sooner paid, shall be due and payable as stated in the bond. Regular payments due in accordance with the bond ____ are ____ are not required in addition to the payments specified above.
3. The Government, as consideration for this agreement, will not enforce the remedies available to it by reason of any payment default occurring prior to the effective date of the agreement.
- 4 This agreement establishes a revised payment schedule to bring the delinquent loan account involved current, and nothing herein shall be construed as effecting any of the terms or conditions of the bond other than the payment schedule or suggest the satisfaction of the outstanding bond.
5. Upon default by the borrower on any terms or conditions of this agreement or other agreement, or violation of other rights of the Government as a lender, the Government at its option may declare the entire indebtedness immediately due and payable and exercise any and all rights and remedies available to it.

By resolution duly adopted on the _____ day of _____, 20 __, the Borrower has authorized its _____ to execute this agreement and its _____ to affix its corporate seal.

ATTEST: _____
Name of Borrower

BY _____

(Title)

BY _____

(Title)

INSTRUCTIONS:

A separate exhibit will be used for each loan. When legally permissible and administratively acceptable, the entire amount of the outstanding indebtedness should be rescheduled rather than only delinquent amounts.

1. When entering the borrower's case number, use leading zeroes where necessary. For example, 11 – 12 – 123456 must be entered as:

1	1	0	1	2	0	0	0	0	1	2	3	4	5	6
---	---	---	---	---	---	---	---	---	---	---	---	---	---	---

2. Enter the total amount of principal and interest being rescheduled. If the entire outstanding indebtedness is being rescheduled, the amount must reflect balances for the original debt as well as delinquent amounts.
3. Use the rate of interest reflected in current Finance Office records.
4. When only the delinquent amount is being rescheduled for serial bonds or principal-plus-interest bonds, include the following amounts:
 - Unpaid interest on scheduled installments as of the last installment due date.
 - Interest accrued from date(s) due to the effective date of the rescheduling on past due principal installments.
 - Past due principal installments.
5. At the end of item 1, enter an "X" in the appropriate blank based on whether the full amount of the debt or only the delinquent amount is being rescheduled.
6. At the end of item 2, enter an "X" in the appropriate blank and strike through the inappropriate response based on whether the full amount of the debt or only the delinquent amount is being rescheduled.

REPORT ON SERVICING ACTION

Name of Borrower: _____ | State County Case No. _____

Address: _____ | Type of Assistance:
 | Loan ____ Insured ____ Direct ____
 | Grant ____
 | Date Facility Placed in Operation:
 | _____

Section I (Complete for all financial assistance)

1. Rural Development Financial Assistance History

Loan Amounts Schedule (Initial first)	Date Closed	Int. Rate	No. Yrs	Principal Balance	Interest Accrued	Ahead (Behind) Principal	Ahead (Behind) Interest
\$							
\$							
\$							
\$							
\$							
\$							
\$							
\$							

Grant Amounts (Initial first)	Date Closed
\$	
\$	
\$	
\$	

Principal & interest balances as of _____ for \$ _____

Annual / / Monthly / / Payment \$ _____

Membership or Connection fee \$ _____

Monthly dues or user rate

\$ _____

2. Debts Owed - Non Rural Development

To Whom Owed	Amount	Payment Annual Monthly	Amount Ahead (Delinquent)	Loan Purpose	How Secured
_____	\$ _____	\$ _____	\$ _____	_____	_____
_____	\$ _____	\$ _____	\$ _____	_____	_____
_____	\$ _____	\$ _____	\$ _____	_____	_____
_____	\$ _____	\$ _____	\$ _____	_____	_____

Were Outside Debts Authorized by Rural Development?

3. Present Market Value: (required for subordination, sales, transfers, exchanges, assumptions & mergers)

Land	\$ _____	<u>Value determined by:</u>		
Building	\$ _____	Appraisal report		
Equipment	\$ _____	(enclose copy)		
Other	\$ _____	Estimate		
Total	\$ _____	Other		

4. Memberships' Users (Recreation, Water & Waste)

(a) Number required at closing _____

(b) Actual at closing _____

(c) Members-Users, last 5 years _____

Year: () () () () ()

(d) Explain lower than required membership at loan closing and decreases in recent years.

(e) Amount of delinquency in dues or charges \$ _____ as of _____.

Number of members-users delinquent _____

(f) Past steps taken to increase members-users. _____

(g) Can members be assessed? _____ If yes, when? _____

4. Condition of Facilities

- (a) Building _____
- (b) Equipment _____
- (c) Land _____
- (d) Water Systems (well-lines, treatment plant-storage, etc.) _____
- (e) Sewer System (lines, manholes, lagoons, treatment facilities) _____

5. Is Board of Directors carrying out responsibilities? (Explain No's) _____

6. Is management adequate? (Explain No's)

7. Explain the condition and adequacy of records, financial data and reports.

8. Explain the general attitude of community leaders, civic clubs, Mayor, industry, etc. toward the facility.

9. Is there any general consensus among those interviewed on the need for any specific changes in the policies or practices of the project? For example, do they think the charges are too high or too low, certain phases should be eliminated, or certain services added? (Explain)

10. Comments on other like facilities in the area.

11. Is the Board willing to close out enterprise which is losing money or causing unsavory reputation? _____ Explain:

12. Action requested to solve the problem.

13. If liquidation is initiated, what are the alternative uses of the project?

14. Reamortization Only

- (a) Total amount to be reamortized \$ _____
- (b) New monthly /_/ annual /_/ payment \$ _____
- (c) Rate & terms _____

15. Sales, Transfers, Liquidations, Mergers, etc.

Complete as appropriate:

- (a) Sale or transfer price \$ _____
- (b) Estimate selling expense \$ _____
- (c) Anticipated loss to government \$ _____
- (d) Proposed transaction date _____
- (e) Terms & conditions:

16. Comments and Recommendations: All three must be completed

(a) Area Director

Date	Area Director
------	---------------

(b) Program Director

Date	Program Director, Community Programs
------	--------------------------------------

(c) State Director

Date	State Director
------	----------------