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FARMERS HOME ADMINISTRATION REGULATIONS AFFECTING DELINQUENT BORROWERS

Farmers Home Administration (FmHA) in February 1986 began sending form letters entitled "Notice of Intent to Take Adverse Action" to its borrowers who had at least one loan on which no payment had been made for three years, that is, since December 31, 1982. The notice also was sent to borrowers who violated the loan agreement by unauthorized sale of secured property, ceasing farm operation, or no longer meeting loan objectives.

United States District Judge Bruce Van Sickle issued a ruling on March 3, 1986, denying a request by FmHA borrowers to enjoin the agency from sending the notices. By early March 1986, Notice of Intent to Take Adverse Action had been sent to approximately 600 North Dakota borrowers. BORROWERS WHO RECEIVE THESE LETTERS MUST RETURN THEM TO FmHA WITHIN 30 DAYS. The notice lists several options available for borrowers to select from as their plan to remedy the situation. This publication explains these options after a brief review of events that resulted in FmHA's decision to prepare and send the notices.

An additional 1,100 North Dakota borrowers received letters requesting a conference to discuss the financial status of their operation. It is in the borrower's best interest to comply with the request even though these are not Notice of Intent to Take Adverse Action.

Federal Government's Historical Involvement in Agricultural Credit

Federal laws and programs for more than a century reflect a continuing commitment to foster family farms. Legislation as early as the Homestead Act of 1862 was designed to help establish small family farms on the frontier. A farmer could obtain legal ownership of a tract of land farming it for a specified period of time. Thus, a farmer "paid" for the land by settling and improving it.

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During the Depression era of the 1930s, President Franklin D. Roosevelt issued an executive order creating the Rural Resettlement Administration. It served to assist farmers in settling their land. In the same era, Congress passed the Bankhead-Jones Tenancy Act creating the Farm Security Administration. Its function was similar to the FmHA of today; it acted as a lender of last resort for farmers who were unable to obtain credit in the private sector. Congress incorporated the Bankhead-Jones Act into the Farmers Home Administration Act in 1946.

The advancement and adaptation of technology by farm operators since World War II had three major impacts upon agriculture. First, technology increased productivity and expanded the need for capital to purchase necessary equipment and other production inputs. Credit often served as the source of the needed capital. Second, technological changes allowed farmers to continue to shift from raising crops necessary to meet family needs and a state of general self-sufficiency to planting a reduced number of commodities and selling most of the production. Consequently, farm families, like urban residents, rely on retail outlets and merchants as their primary source for acquiring food and other personal necessities. Finally, agriculture shifted from being a labor-intensive industry to a capital-intensive industry.

Congress responded to these changes by enacting the Consolidated Farmers Home Administration Act of 1961. Congress later amended this act with the passage of the Consolidated Farm and Rural Development Act (CFRDA). Congress' express purpose in passing CFRDA was to "foster and encourage the family farm system of agriculture in this country," making it clear that the family farm was a social institution worth preserving. This legislation continues to govern FmHA.

Recent lawsuits brought by farmer-borrowers against the FmHA focus on defining the role of the agency. Should FmHA provide credit to borrowers as though it is a commercial lender or as though it is a social welfare institution? Should FmHA pursue legal remedies as aggressively as commercial lenders typically do when a borrower is delinquent, or should FmHA be willing to forgo legal remedies and renegotiate loan terms during harsh economic conditions?

The questions have been addressed in several lawsuits filed in recent years. FmHA borrowers contend that the role of the agency is partially that of a social welfare institution. The courts, in granting most of the relief requested by borrowers, have generally agreed with this assertion. The decisions also have served as a legal catalyst to the promulgation of additional FmHA regulations in November 1985. A discussion of two lawsuits brought by FmHA borrowers will assist in understanding the regulations.

Curry and Coleman Decisions

Curry v. Block¹ involved a class action lawsuit brought against the FmHA by a group of Georgia borrowers. They contended that FmHA failed to implement the directives of an amendment to CFRDA entitled "Loan moratorium and policy on foreclosures." The pertinent section is 1981a which provides in part that the Secretary of Agriculture through FmHA:

"... may have to defer principal and interest and forego foreclosure, the Secretary may permit, at the request of the borrower, the deferral of principal and interest on any outstanding loan made, insured or held by the Secretary under this chapter. . . and may forego foreclosure of any such loan, for such a period as the Secretary deems necessary upon a showing by the borrower that due to circumstances beyond the borrower's control, the borrower is temporarily unable to continue making payments of such principal and interest when due without unduly impairing the standard of living of the borrowers." [Emphasis added.] 7 U.S.C.1981a.

The Georgia farmers' contention was that FmHA was created by Congress to implement its intent as manifested in this section. Specifically, they contended that this section required FmHA to serve notice to borrowers that they may be eligible for a loan deferral. The court agreed and ordered FmHA to notify borrowers of their eligibility for deferral of an FmHA loan.

Coleman v. Block² was initiated one year later by a group of FmHA borrowers located throughout the country. The action was brought in North Dakota before Judge Bruce Van Sickle. Borrowers sued FmHA for its failure to provide procedural rights to borrowers who were interested in receiving a loan deferral. They also contended that FmHA was under a duty to implement regulations which specify criteria in determining eligibility for loan deferrals. Accordingly, the borrowers petitioned Judge Van Sickle for a two-part injunction.

Part I of Requested Injunction

In addition to contending that FmHA had a duty to notify borrowers of the loan deferral (as the borrowers in Curry did), the borrowers in Coleman contended that the agency has a duty to provide borrowers with: (1) a hearing wherein borrowers may present evidence that they are eligible for deferral; (2) a written decision detailing why a deferral was denied; (3) more specific standards for determining deferral eligibility; and (4) an opportunity to appeal a decision denying deferral.

Section 1981a does not specifically direct FmHA to provide a borrower with these four procedural rights but Judge Van Sickle concluded that the first three were implicit in the section. He did rule that section 1981a does not mandate that borrowers be granted the right to appeal a decision denying a deferral (contention 4).

¹541 F.Supp. 506(S.D.Ga.1982).

²562 F.Supp. 1353 (D. N.D. 1983).

Part II of Requested Injunction

The borrowers sought through part II of the injunction the right (1) to be notified in advance of FmHA's intent to terminate further lending for farm operation and family living expenses; (2) to be advised in advance of facts which form the basis for the decision to terminate further lending; (3) to present additional evidence prior to termination; and (4) to a hearing before an impartial examiner prior to termination.

Judge Van Sickle concluded that all four privileges are implicitly mandated by section 1981a. Accordingly, he prohibited FmHA from exercising its legal remedies of foreclosure, repossession, or demanding conveyance of the mortgaged property until it complied with the court order.

FmHA issued additional regulations in November 1985 as part of its response to Judge Van Sickle's order in Coleman. The regulations included a definition of "circumstances beyond the borrower's control" since that is a consideration in determining whether FmHA should not foreclose. Soon thereafter, FmHA borrowers requested that Judge Van Sickle review the regulations and decide whether they are in compliance with his decision and order in Coleman.

Judge Van Sickle issued a 50-page ruling on March 3, 1986. Of principal concern was whether Forms 1924-25 (Notice of Intent to Take Adverse Action) and 1924-26 (Borrower Acknowledgement of Notice) clearly expressed the options available to a delinquent FmHA borrower. The farmers contended the forms were difficult to understand. Judge Van Sickle noted that even though the forms may not be readily understood by some farmers, the forms do alert farmers that action must be taken. Judge Van Sickle did not enjoin FmHA from mailing the forms to delinquent borrowers.

A second concern of the plaintiff-farmers in the Coleman rehearing focused on the procedural rights afforded to borrowers whose family living and farm operating expenses may be terminated under the new regulations. FmHA was resisting the notice and appeal requirements regarding termination at the time. Judge Van Sickle included in his March 1986 ruling that FmHA hold a hearing before deciding to discontinue releasing money for living and operating expenses. The order also grants delinquent farmers the right to appeal FmHA's decision as to the amount of money needed to cover the borrower's living and operating expenses.

Implementation of Revised Regulations

Implementation of the recent regulations from a borrower's perspective will focus upon the communication between a borrower and FmHA and the alternatives that are offered to a borrower. For this reason, the subsequent discussion will emphasize the form letters which borrowers will receive and those upon which they are to indicate their decisions.

The two forms of most importance to delinquent borrowers are Form 1924-25, "Notice of Intent to Take Adverse Action," and Form 1924-26, "Borrower Acknowledgement of Notice of Intent to Take Adverse Action." These forms are reproduced in the Appendix. Regulations initially required the forms to be sent to all borrowers who are delinquent with loan payments in the amount of \$100 or more as of December 31, 1985.

It was anticipated that the letters would be sent during January, but the mailing was delayed due to political pressure as well as the rehearing on the Coleman injunction. FmHA officials also expressed some concern about the impact of sending notices to all delinquent borrowers at one time. Notices, consequently, were sent only to borrowers who had at least one loan on which no payment was made since December 31, 1982, or who had violated their loan agreement by unauthorized sale of security, ceasing farm operation, or failing to meet loan objectives. Thus Forms 1924-25 and 1924-26 were not received by some borrowers until late February and may not be received by other delinquent borrowers until some time later. The two forms and possibly other material will be sent to a borrower in the same letter. WHEN THESE FORMS ARE RECEIVED THEY DESERVE IMMEDIATE ATTENTION TO INSURE THAT BORROWERS DO NOT JEOPARDIZE ANY RIGHTS THEY MAY HAVE WITH FmHA.

Form 1924-25, "Notice of Intent to Take Adverse Action," indicates that a borrower will be foreclosed upon UNLESS THE BORROWER MAKES AN ELECTION ON FORM 1924-26 AND RETURNS IT TO FmHA WITHIN 30 DAYS. Moreover, borrowers will lose their right to appeal any decision if they fail to send in a completed 1924-26 form acknowledging receipt of Form 1924-25. The importance of completing, signing, and returning Form 1924-26 within 30 days cannot be overemphasized.

Borrowers who return the form through the postal service should use certified mail to document the mailing date and the fact that FmHA received the letter. Borrowers who deliver the form in person should request and receive a receipt at time of delivery as evidence of delivery to FmHA and the date. Borrowers also should retain a photocopy of the completed form.

Indicating an Election Upon Form 1924-26

A second purpose for completing Form 1924-26 is to indicate which alternative a borrower has elected in response to the "Notice of Intent to Take Adverse Action." Form 1924-26 has five parts. All borrowers must complete Part V (Certification; that is, sign the form) plus one of Parts I to IV depending on the alternative a borrower elects. It is IMPORTANT that a borrower elect ONE AND ONLY ONE alternative. Consequences are likely to be adverse if a borrower returns the form to FmHA without completing one of Parts I to IV or returns the form having completed more than one of Parts I to IV. The four alternatives and the corresponding part on Form 1924-26 are:

Part I	Servicing Actions
Part II	Appeal
Part III	Curing Defaults
Part IV	Liquidation Actions

Each alternative is explained more fully in the following sections.

Part I - Servicing Action

It is likely that many delinquent borrowers will want to request a loan servicing option under Part I. This alternative requires borrowers to take the following steps. First, check one or more of the loan servicing options under Part I of Form 1924-26.

Borrowers may check as many loan servicing options as desired, and it may be in a borrower's best interest to check several or all options rather than risk losing an option by failing to check it at this initial stage. Checking an option does not bind the borrower to that servicing action. It is only a request for FmHA to consider it.

Second, attend the conference which FmHA will schedule after receiving the form. The purpose of the conference is to determine whether the borrower is eligible to receive the loan servicing option(s) which has been requested. The borrower must attend the conference or RISK AUTOMATIC REJECTION OF THE LOAN SERVICING REQUEST AND LOSS OF THE RIGHT TO APPEAL.

Third, the borrower must supply FmHA with necessary financial information to evaluate the borrower's eligibility for the loan servicing options. This information should be brought to the conference.

Servicing options available to a borrower listed in Part I of Form 1924-26 include rescheduling, reamortization, consolidation, deferral, limited resource, subordination, and liquidation. To be eligible for any of the loan servicing options under Part I, a borrower must demonstrate an ability to generate a positive cash flow during the time period for which the loan servicing option is to be received. For example, a borrower will be eligible for loan rescheduling if FmHA determines that the borrower will have positive cash flow (total revenues exceeding total expenses) by rescheduling the loan. Accordingly, BORROWERS SHOULD BRING TO THE CONFERENCE ALL FINANCIAL INFORMATION USED IN PROJECTING INCOME AND EXPENSES FOR THE PERIOD DURING WHICH LOAN SERVICING IS TO BE RECEIVED. Other eligibility requirements for loan servicing relief are discussed in detail in the following paragraphs.

Rescheduling

Rescheduling means extending the time for repayment and possibly lowering the interest rate for an existing FmHA operating loan. The option is available for existing loans of the following types: operating (OL), special livestock (SL), economic opportunity (EO), economic emergency (EE), and emergency (disaster) (EM).

Rescheduling a loan involves adding the outstanding (unpaid) interest to the principal of the loan. For example, if a borrower has \$50,000 in principal left to pay on a loan, and \$5,000 in unpaid interest, the principal on a rescheduled note will be \$55,000. The interest rate for a rescheduled note will be the current rate for that type of loan or the original loan note rate, whichever is less. Operating loans may be changed to a limited resource rate if the borrower meets the requirements for the limited resource interest rate at the time of the rescheduling.

Rescheduled notes are to be repaid according to the borrower's repayment ability. However, the repayment period must not exceed 15 years, while loans for recreational or nonfarm purposes must be repaid within 7 years, and EE loans must be repaid within 20 years of the original note. The county supervisor is authorized to reschedule a loan only if a different repayment schedule will aid in collection of the loan, provided:

1. the action taken does not circumvent FmHA's graduation requirements;

2. the borrower's account is not being serviced by the Office of General Counsel or the U.S. Attorney, and there are no plans for such servicing in the future;
3. the county supervisor determines that the borrower is making satisfactory progress with the new payment terms; and
4. the borrower is cooperating and maintaining the security.

This threshold requirement also applies to reamortization and loan consolidation options explained next.

Reamortization

Reamortization means rearranging the installments of a real estate loan. This may include changing the interest rate as well as the repayment terms of a loan. Borrowers who cannot complete payments as they are currently scheduled may seek to reamortize the note and arrange payments in a manner that assures they can be paid in a timely fashion. This option is available for loans of the following types: farm ownership (FO), soil and water (SW), recreation (RL), rural housing (RHF), economic emergency operating (EE), or emergency (disaster) (EM).

Reamortized installments usually will be scheduled for repayment within the remaining period of the note. An extended repayment period cannot exceed 40 years from the date of the original note. Repayment of a Rural Housing Loan (RHL) cannot exceed 33 years from the date of the original note.

Accrued interest at the date of reamortization will be added to the principal of the note (same as rescheduling). The interest rate on the reamortized note will be the current rate for that type of loan or the original loan note rate, whichever is less. The note may be changed to the limited resource rate at the time of reamortization if the borrower meets the requirements for the limited resource rate.

Consolidation

Consolidation involves combining and rescheduling the rates and terms of two or more loans. Loans that may be consolidated include operating loans (OL), economic opportunity loans (EO), and economic emergency loans (EE) for operating purposes. Consolidation is available only for loans of the same type and interest rate. For example, two operating loans with the same interest rate may be consolidated, but an operating loan cannot be consolidated with an economic opportunity loan, even if they have the same interest rate.

Accrued interest is added to the principal at the time of the consolidation. The interest rate will be the current interest rate for that type of loan or the rate of the original note, whichever is less. The loan may be changed to the limited resource rate at the time of the consolidation if the borrower meets the limited resource interest rate requirements.

Loans that have been consolidated may be repaid according to the borrower's repayment ability. The repayment period may not exceed 15 years, except for EE loans which must be repaid within 20 years of the date of the original note. Loans for recreation or nonfarm purposes must be repaid within 7 years.

Deferral

Deferral may be used by borrowers if consolidation, rescheduling, or reamortization will not provide the necessary cash flow to service the debt. Deferral means a delay in making the regularly scheduled payments of both interest and principal on the FmHA loan. If deferral is approved, the borrower will not be required to make any payments during the deferral period. It is important to remember that deferral is available only if other servicing options are not available.

Deferral is available if FmHA determines that a borrower is temporarily unable, due to circumstances beyond the borrower's control, to make scheduled payments without unduly impairing the family's standard of living. FmHA has defined "circumstances beyond the borrower's control" as any one of the following:

- A. reduction in income which diminishes the operation's cash flow to a point where outflows exceed inflows and the reduction is a consequence of:
 1. decreased nonfarm income due to unemployment or underemployment of the borrower or the borrower's spouse due to circumstances beyond their control;
 2. illness, injury, or death of the borrower, stockholder, member, or partner who operated the farm;
 3. natural disasters, outbreaks of uncontrollable disease or insect damage which substantially affects production so the scheduled payments cannot be made; or
 4. economic factors such as high interest rates or low commodity prices that impair the borrower's ability to pay. This section does not refer to economic factors of the individual borrower but widespread economic factors that affect the entire industry.
- B. unplanned, but essential farm expenses and family living expenses which increase cash outflows. Such unplanned expenses can be the result of:
 1. accident, death, illness, or injury to the borrower or a dependent member of the borrower's family; or
 2. repair costs of uninsured damage to security if adequate insurance coverage was not available.

In addition to showing that the need for deferral is caused by circumstances beyond the borrower's control, certain other conditions must be satisfied before deferral will be granted.

First, the need for deferral must be temporary. This means that the borrower must be able to show that the debt will be paid current at the end of the deferral period or that new payments can be resumed at the end of the deferral period.

Second, it must be shown that continuing payments as currently scheduled will unduly impair a borrower's

standard of living. A borrower's standard of living is considered impaired if there is an inability to pay essential family living expenses, reasonable farm operating expenses, and scheduled payments of all debts.

Third, the borrower must attend a conference with the county supervisor at which the borrower must provide sufficient financial and production records and cash flow projections to allow FmHA to make a decision on the deferral request.

Finally, the borrower must have attempted voluntary debt readjustment of payments with other creditors.

Borrowers who meet all of the criteria are not guaranteed that their loans will be deferred. The requirements only define a farmer as eligible for deferral. It is not essential that all of a borrower's loans be deferred. FmHA will approve deferral for only as many loans as needed to provide necessary cash flow for a borrower. A deferral, upon approval, will be for five annual installments (five years). Interest that accrues during the deferral period will not bear interest during the remainder of the deferral. Interest will begin to accrue on this interest only if FmHA receives a deficiency judgment.

Limited Resource

The interest rate charged on all FmHA loans is the agency's current rate. Certain borrowers, however, may be eligible for the limited resource program which provides lower interest rates for operating loans (OL) and farm ownership loans (FO). The limited resource rate is available if a borrower can make the scheduled payments at the lower interest rate but cannot make the payments at the regular FmHA interest rate. A borrower whose repayment ability increases may be graduated to the higher rate.

Subordination

FmHA will subordinate its lien to liens of other creditors in certain instances. The option encourages other lenders to extend credit to FmHA borrowers because the other lender will have been granted priority over FmHA's security interest in the collateral. Priority implies that the lender with priority will be paid before FmHA if collateral is sold to repay creditors. By subordinating, FmHA assumes the risk that the value of property which secures the debts may decline to an extent that it is less than the amount of debt.

Certain conditions must be met before FmHA will subordinate its security interest. First, it must be shown that the borrower cannot refinance the FmHA debt on terms which reasonably can be expected to be met. Second, the terms and conditions of the prior lien must be such that the borrower can reasonably expect to meet them. Third, the amount of the prior lien plus the balance of the FmHA debt cannot exceed the market value of the collateral. Fourth, the transaction will further the objectives for which the FmHA loan was made. Fifth, an assignment of the beneficial interest in any stock required in connection with a loan will be obtained as collateral in cases when it is needed and possible. Finally, after subordination, FmHA's secured interest will be adequately secured and not adversely affected by the transaction.

Restructuring

Another servicing option is to restructure the business and debt by selling a portion of the business' assets. After considering all available resources and income with their creditors, debtors should negotiate for an adjustment of their debts. The county supervisor is responsible for evaluating a borrower's financial situation and informing the borrower of debt structuring needed to meet FmHA objectives.

Part II - Appeal

Part II of Form 1924-26 asks borrowers whether they wish to make a direct appeal. Similarly, borrowers should check Part II if they previously have been rejected for a loan servicing option under Part I and wish to appeal that decision. This appeal gives the borrower a chance to provide additional evidence or dispute the accuracy of evidence already on file. FmHA is bound to release income to the borrowers to cover essential living and operating expenses during this appeal process. Authority to release is terminated once the appeal process has been exhausted and the account has been accelerated. Furthermore, this termination of release of funds is not appealable.

A borrower indicates a decision to appeal by checking the Part II box, briefly stating the grounds for appeal in the space provided, signing the form, and mailing it to FmHA within 30 days. Again, FmHA will schedule a conference to discuss the merits of the appeal. An appeal will be heard by an FmHA employee who has not been previously associated with the borrower's case. The borrower may bring an attorney or other representative to the appeal hearing.

Part III - Curing Defaults

Part III of Form 1924-26 offers borrowers the option of curing a default by paying the amount in arrears. It does not seem likely that this option will be selected by many borrowers. A borrower who is behind in payments and receives the form letters presumably cannot afford to pay the loan according to schedule. Thus, Part III is not a viable alternative for borrowers who simply do not have the money. A borrower who can cure the default by paying the amount in arrears must do so within 60 days of receiving Form 1924-26. Borrowers will lose their right to appeal any adverse decision by FmHA if they elect to cure a default under Part III but then fail to do so within the 60-day time limit.

Part IV - Liquidation Actions

Part IV offers the borrower a chance to terminate the loan agreement with FmHA. The four options under Part IV are to: (1) sell the collateral which secured the loan; (2) convey the collateral over to FmHA; (3) transfer the collateral to a party who will assume the FmHA loan; or (4) refinance the loan with another lender.

A borrower should consult an attorney to consider adverse consequences of selling or conveying property under this option for the following reasons. First, the borrower loses the right to appeal FmHA's Notice to Take Adverse Action. Second, it is not clear from the regulations that the borrower has a right to appeal that decision in the event a dispute should arise

between FmHA and the borrower as to how the collateral should be liquidated. Third, FmHA will accelerate a borrower's loan if there is a failure to liquidate within 120 days. The borrower cannot appeal FmHA's decision to accelerate since the borrower waives that right by opting for Part IV.

Perhaps the most devastating consequence of a liquidation action involves the taxes a borrower may incur as a result of transferring collateral by sale or exchange. A seller may recognize taxable gain when property is sold subject to a mortgage or other debt obligation even though no cash is received. For example, assume a borrower purchased a combine in 1980 for \$50,000 and depreciated it over the past six years leaving the machine with an adjusted basis of \$10,000. Selling the combine under "part a" of the liquidation options for \$15,000 means the borrower will be taxed on the \$5,000 differential between the price received (\$15,000) and the remaining basis of \$10,000. A borrower who conveys the combine to FmHA under "part b" for which FmHA terminates a \$15,000 loan causes the borrower to be taxed on the \$5,000 differential even though no cash is received.

A borrower may escape taxation on the sale or other disposition of the mortgaged property by timely filing for bankruptcy. Borrowers should solicit legal advice if they elect a liquidation option under Part IV. A more complete discussion of tax considerations is available in Agricultural Economics Miscellaneous Report No. 87, Tax Implications of Liquidating a Farm

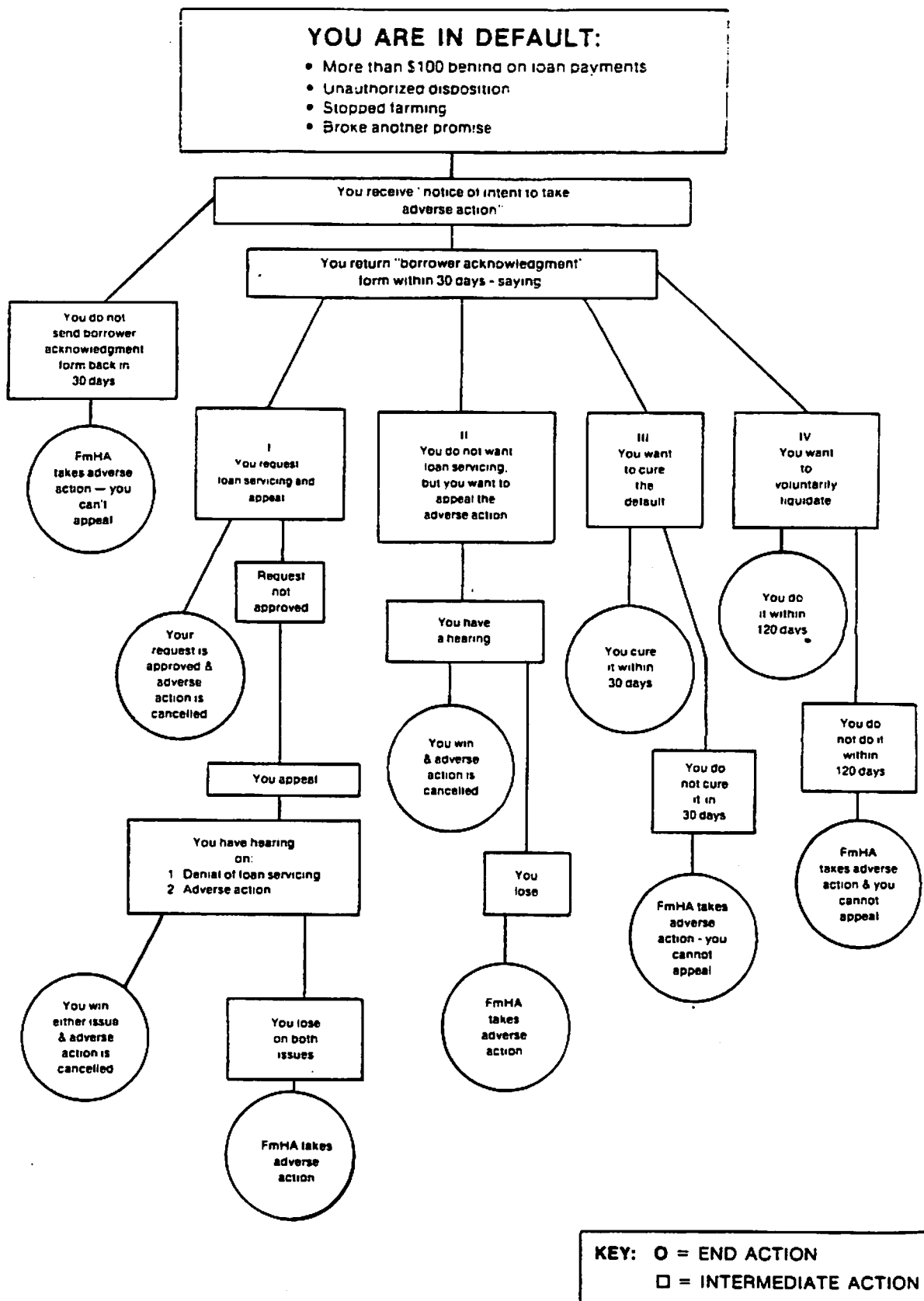
Operation, Department of Agricultural Economics, North Dakota State University, Fargo, ND 58105.

Summary and Conclusion

A borrower who wishes to receive a loan servicing option such as deferral must take affirmative steps. First, FORM 1924-26 MUST BE RETURNED TO FmHA WITHIN 30 DAYS FROM THE DAY IT IS RECEIVED. Second, THE BORROWER MUST ATTEND OR BE REPRESENTED AT THE CONFERENCE IN WHICH FmHA DETERMINES THE BORROWER'S ELIGIBILITY FOR THE VARIOUS LOAN SERVICING OPTIONS. Third, AS A MATTER OF SOUND STRATEGY, THE BORROWER SHOULD BE ABLE TO DOCUMENT THE ABILITY TO MEET THE CRUCIAL POSITIVE CASH FLOW REQUIREMENT.

The following charts appeared in Farmer's Guide to FmHA, (3d 1985). They are reprinted with permission from the Minnesota Legal Services Coalition. The first chart illustrates the likely sequence of events depending on a borrower's response on Form 1924-26. The second chart suggests considerations for borrowers in deciding which alternative to pursue.

Persons desiring additional information should contact their local Farmers Home Administration office, an attorney, accountant, professional farm manager, or financial analyst available through the Cooperative Extension Service or the State Department of Agriculture.



SOURCE: Farmer's Guide to FmHA, 3rd Ed. 1985. p 54.

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STRATEGY CHART: Form FmHA 1924-26

Borrowers Should Pick This Choice:	CHOICE #1 In Most Cases	CHOICE #2 Never	CHOICE #3 In Some Cases	CHOICE #4 Almost Never
You Should Pick This Choice if:	<ul style="list-style-type: none"> • you believe that you are not in default; or • you agree that you are in default, but you disagree with FmHA's statement of what you did wrong; or • you cannot get FmHA to tell you in writing exactly what you must do to cure your default; or • you cannot afford to cure your default without causing hardship to your family or farm operation. 	<ul style="list-style-type: none"> • if you want an appeal it is always better to pick Choice #1 because then you get an appeal and consideration for loan servicing. 	<ul style="list-style-type: none"> • you agree that you are in default; and • you know exactly what you must do to cure your default; and • you have a commitment from FmHA in writing explaining exactly what you must do to cure your default; and • you are able to cure your default without causing hardship for your family or farm operation. • If you cure your default, then you should apply for loan servicing afterwards. 	<ul style="list-style-type: none"> • you are sure that you want to end your loan and liquidate the security; and • you have consulted with at least one attorney or advocate about this decision; and • you have determined that voluntary liquidation suits your interests better than involuntary liquidation; and • you understand the tax consequences of liquidation.

SOURCE: Farmer's Guide to FmHA, 3rd Ed. 1986. p 48.
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Position 3

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

Form FmHA 1924-25

(1-86)

Notice of Intent to Take Adverse Action

(Date)

Dear:

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

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

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

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

- ☐ You are presently \$ _____ behind schedule on your FmHA loan installments which is a violation of your note and mortgage and/or security agreement.
- ☐ You have made unapproved disposition(s) of property that is covered by security instruments which secure your FmHA indebtedness. The property in question is _____ (describe property)
- ☐ You have stopped farming or ranching which is a violation of your loan agreements.
- ☐ You have _____ (insert the reason(s) for the proposed adverse action)

If the above listed violation(s) is not corrected by one or more of the actions described in the attached Form FmHA-1924-26, FmHA will need to accelerate your FmHA debts and eventually foreclose on your real estate and/or chattels. This may include repossessing your chattels or in other ways proceeding against property you own in which FmHA has a security interest or terminating the release of sales proceeds.

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

If you wish to apply for any of the servicing options you must complete Part I of the enclosed Form FmHA 1924-26, sign the form and return the form to the address listed on the letterhead of this notice within 30 days after you receive this notice. We will then arrange a conference with you to develop financial statements and farm operating plans which FmHA will use to make a determination on your request for servicing options. If you fail to attend this conference without offering a legitimate excuse or if you fail to provide necessary information, your request will be automatically denied and you will not be given an opportunity to appeal any adverse decision.

At the conference you will be given the opportunity to present information you believe will show you are eligible for the servicing option(s) you requested. FmHA will make a decision on your request based on the information submitted by you, the information in your FmHA case file and the plans developed by you and FmHA at the conference. Such a decision will be in writing and, if the decision is adverse, FmHA will explain how to appeal the decision and to have an appeal hearing. Such a hearing will cover both the denial of your request for servicing alternatives and other adverse actions FmHA intends to take against you as indicated above.

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

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

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

(The following paragraph applies for individual borrowers only)

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

Sincerely,

FmHA County Supervisor

Enclosures:

Form FmHA 1924-14

Form FmHA 1924-26

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

United States Department of Agriculture
Farmers Home Administration

**Borrower Acknowledgement of Notice of Intent to Take
Adverse Action**

(Date)

County Supervisor, FmHA

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

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

I. Servicing Actions

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

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

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

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

II. Appeal

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

(check appropriate box)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Proceed to Part V)

V. Certification

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

Sincerely,

(Signature of borrower)

(Signature of borrower,