

commentors disagreed with this provision and stated that this would not always allow a borrower to get a DSA if the disaster occurred late in the year or the disaster declaration was delayed. Because the process of declaring a disaster can be lengthy, FSA has modified the final rule in section 1951.954(b)(3) to allow the set-aside of either the first or second installment due after the disaster occurred.

Limitation of DSA to Borrowers Who Are Unable To Pay FSA Debt

The proposed rule stated that the amount set-aside would be limited to the amount that the borrower is unable to pay the Agency. Payments to other creditors were not considered. Three commentors disagreed with this provision and stated that this could cause a borrower to wait until the last minute to pay the FSA debt as the amount of other debt could not be set aside. However, as noted above, provisions of 7 CFR part 1962, subpart A, require the release of normal income security proceeds for essential family living and farm operating expenses until the account is accelerated. Lien priorities remain unchanged. Thus, funds due FSA can be released to other creditors for these purposes. Therefore, this limitation will be retained. It further insures that the amount of debt that is set-aside is minimized, and the resulting balloon payment and interest accrual to the borrowers account are also minimized.

Elimination of Cost Recoverable Set-Aside

The proposed rule would eliminate the set-aside of cost recoverable items. These costs, such as property taxes, are the borrower's responsibility but may have been paid by the Government to protect its lien position. Non-payment of such costs is a violation of loan agreements, including the Promissory Note, and places the account in nonmonetary default, requiring the account to be serviced in accordance with 7 CFR 1951.907(d). Two commentors disagreed with this proposal and stated that farm advocates are concerned that it can take over a year for a non-monetary default to be "removed from a borrower's record" even after it is paid. Failure to comply with borrower training requirements was stated as an example. However, the proposed rule deals specifically with cost recoverables, and cost recoverables do not include borrower training requirements. One commentor agreed with the proposal and suggested it be made part of the eligibility requirements instead of the limitations.

Based on the adverse affect on the Agency caused by a borrower's failure to pay the recoverable cost item, and the Agency's continuing need to service these items either by payment or costly servicing under 7 CFR 1951, subpart S, the final rule adopts the proposed rule.

Elimination of Language Regarding Interest Accrual

Two commentors indicated that the last sentence in section 1951.954(b)(5) as proposed duplicates the language already in sections 1951.957(b)(2) and 1951.957(b)(3). However, they preferred the due date being expressed as "with the final installment" instead of the current language "on or before the final due date." The duplicative language is removed. However, the Agency believes that all borrowers with a DSA would be well served to pay the set-aside as soon as possible to eliminate additional interest and reduce the final balloon payment even if this occurs prior to the final installment coming due. Therefore, the current language in section 1951.957(b)(3) is retained.

Eligibility Regarding Post-Disaster Primary Loan Servicing

Presently, section 1951.954(a)(11) limits set-aside to those borrowers who have not been restructured using primary loan servicing since the disaster. One commentor indicated that the criteria should be changed to limit eligibility to those who have not been restructured since the disaster designation. Since PLS restructures debt using the latest information from a borrower, and any recent disaster, whether designated or not, would be considered in restructuring loans if it impacted the borrower's operations, no change from existing policy is required.

DSA Notification

While borrower notification of DSA is not contained in the CFR (it is addressed in the Agency internal Instruction section 1951.953), four comments were received indicating some interest in the topic. At present, the Agency provides notification, to any non-accelerated borrower who has not been restructured after a disaster and who may be eligible for DSA, of all disaster designations in effect in that county or a contiguous county in any quarter in which a new designation is established. Two commentors appeared to favor regular quarterly notification to the public about all designations in effect, and stated that the Agency's notification process should be codified in the CFR. However, one of the other commentors stated that an initial notification with no quarterly

notification would be adequate. Another commentor favored the initial notification but did not express any opinion regarding the quarterly notification requirements. Based on the range of the four comments received, the Agency has decided that this procedural requirement will not be published in the CFR. The Agency's notification policy is available upon request at any local office. Also, a fact sheet on the DSA program including the notification, is contained on the FSA webpage at: <http://www.fsa.usda.gov/pas/publications/facts/html/debtset02.htm>. Additional guidance to Agency employees on notification will be considered when the Agency instruction is revised.

DSA Expansion

While not specifically addressed in the proposed rule, two commentors indicated that they would favor multiple set-asides on each loan without restructuring and a DSA program for guaranteed loans. The Agency understands the commentors desire to have as many avenues as possible to correct defaults. However, these suggestions exceed the scope of what FSA considered in the proposed rule, and adopting these comments would increase the risk of loss on direct loans. Guaranteed loans are serviced by private lenders under 7 CFR 762 and not by FSA. Lenders utilize the guaranteed program because servicing actions are the lenders' option. FSA does not dictate to lenders how to service the loans, and current guaranteed loan regulations already provide many options including deferral and debt writedown. Further, our experience with lenders indicates that these options provide all the tools that commercial lenders would realistically ever use in servicing the account. Thus, these changes are not under consideration, and they will not be included in the final rule.

Second Set-Aside Payment Application

Two commentors stated that the instructions on payment application when a borrower has obtained two set-asides should be retained for those borrowers that have received two set-asides in the past. As some existing borrowers do have two set-asides, this language will be retained in section 1951.957(b)(7). However, section 1951.954(a)(2) makes it clear that present authority is limited to setting aside one installment on each loan.

List of Subjects in 7 CFR Part 1951

Accounting, Credit, Disaster assistance, Loan programs-agriculture,