

## Farm Service Agency, USDA

## § 766.206

signed if such value cannot be obtained through another method.

### § 766.203 Payment of recapture.

(a) The borrower must pay on the due date or 30 days from Agency notification, whichever is later:

(1) Seventy-five percent of the appreciation in the real estate security if the agreement is triggered within 4 years or less from the date of the writedown; or

(2) Fifty percent of such appreciation if the agreement is triggered more than 4 years from the date of the writedown or when the agreement matures.

(b) If the borrower sells a portion of the security, the borrower must pay shared appreciation only on the portion sold. Shared appreciation on the remaining portion will be due in accordance with paragraph (a) of this section.

(c) The amount of recapture cannot exceed the amount of the debt written off through debt writedown.

### § 766.204 Amortization of recapture.

(a) The Agency will amortize the recapture into a Shared Appreciation Payment Agreement provided the borrower:

(1) Has not ceased farming and the borrower's account has not been accelerated;

(2) Provides a complete application in accordance with § 764.51(b), by the recapture due date or within 60 days of Agency notification of the amount of recapture due, whichever is later;

(3) Is unable to pay the recapture and cannot obtain funds from any other source;

(4) Develops a feasible plan that includes repayment of the shared appreciation amount;

(5) Provides a lien on all assets, except those listed in § 766.112(b); and

(6) Signs loan agreements and security instruments as required.

(b) If the borrower later becomes delinquent or financially distressed, re-amortization of the Shared Appreciation Payment Agreement can be considered under subpart C of this part.

### § 766.205 Shared Appreciation Payment Agreement rates and terms.

(a) The interest rate for Shared Appreciation Payment Agreements is the Agency's SA amortization rate.

(b) The term of the Shared Appreciation Payment Agreement is based on the borrower's repayment ability and the useful life of the security. The term will not exceed 25 years.

### § 766.206 Net Recovery Buyout Recapture Agreement.

(a) *Servicing existing Net Recovery Buyout Recapture Agreements.* Prior to July 3, 1996, the Agency was authorized to offer borrowers buy out their loans at the net recovery value. A Net Recovery Buyout Agreement was required for borrowers who bought out their loans at the net recovery value. The Agency services existing Net Recovery Buyout Recapture Agreements as described in this section.

(b) *Requirements and terms.*(1) The term of a Net Recovery Buyout Recapture Agreement is 10 years. Net Recovery Buyout Recapture Agreements are secured by a lien on the former borrower's real estate.

(2) If the former borrower sells or conveys real estate within the 10-year term, the former borrower must repay the Agency the lesser of:

(i) The market value of the real estate parcel at the time of sale or conveyance, as determined by an Agency appraisal, minus the portion of the recovery value of the real estate paid to the Agency in the buyout;

(ii) The market value of the real estate parcel at the time of the sale or conveyance, as determined by an Agency appraisal, minus:

(A) The unpaid balance of prior liens at the time of the sale or conveyance; and

(B) The net recovery value of the real estate the borrower paid to the Agency in the buyout if this amount has not been accounted for as a prior lien;

(iii) The total amount of the FLP debt the Agency wrote off for loans secured by real estate.

(3) If the former borrower does not pay the amount due, the Agency will liquidate the Net Recovery Buyout account in accordance with subpart H of this part.

(4) If the former borrower does not sell or convey the real estate within the 10-year term, no recapture is due.

§§ 766.207–766.250 [Reserved]

**Subpart F—Unauthorized Assistance**

**§ 766.251 Repayment of unauthorized assistance.**

(a) Except where otherwise specified, the borrower is responsible for repaying any unauthorized assistance in full within 90 days of Agency notice. The Agency may reverse any unauthorized loan servicing actions, when possible.

(b) The borrower has the opportunity to meet with the Agency to discuss or refute the Agency’s findings.

**§ 766.252 Unauthorized assistance resulting from submission of false information.**

A borrower is ineligible for continued Agency assistance if the borrower, or a third party on the borrower’s behalf, submits information to the Agency that the borrower knows to be false.

**§ 766.253 Unauthorized assistance resulting from submission of inaccurate information by borrower or Agency error.**

(a) *Borrower options.* (1) The borrower may repay the amount of the unauthorized assistance in a lump sum within 90 days of Agency notice.

(2) If the borrower is unable to repay the entire amount in a lump sum, the Agency will accept partial repayment of the unauthorized assistance within 90 days of Agency notice to the extent of the borrower’s ability to repay.

(3) If the borrower is unable to repay all or part of the unauthorized amount, the loan will be converted to a Non-program loan under the following conditions:

- (i) The borrower did not provide false information;
- (ii) It is in the interest of the Agency;
- (iii) The debt will be subject to the interest rate for Non-program loans;
- (iv) The debt will be serviced as a Non-program loan;
- (v) The term of the Non-program loan will be as short as feasible, but in no case will exceed:

(A) The remaining term of the FLP loan;

(B) Twenty-five (25) years for real estate loans; or

(C) The life of the security for chattel loans.

(b) *Borrower refusal to pay.* If the borrower is able to pay the unauthorized assistance amount but refuses to do so, the Agency will notify the borrower of the availability of loan servicing in accordance with subpart C of this part.

§§ 766.254–766.300 [Reserved]

**Subpart G—Loan Servicing For Borrowers in Bankruptcy**

**§ 766.301 Notifying borrower in bankruptcy of loan servicing.**

If a borrower files for bankruptcy, the Agency will provide written notification to the borrower’s attorney with a copy to the borrower as follows:

(a) *Borrower not previously notified.* The Agency will provide notice of all loan servicing options available under subpart C of this part, if the borrower has not been previously notified of these options.

(b) *Borrower with prior notification.* If the borrower received notice of all loan servicing options available under subpart C of this part prior to the time of bankruptcy filing but all loan servicing was not completed, the Agency will provide notice of any remaining loan servicing options available.

**§ 766.302 Loan servicing application requirements for borrowers in bankruptcy.**

(a) *Borrower not previously notified.* To be considered for loan servicing, the borrower or borrower’s attorney must sign and return the appropriate response form and any forms or information requested by the Agency within 60 days of the date of receipt of Agency notice on loan servicing options.

(b) *Borrower previously notified.* To be considered for continued loan servicing, the borrower or borrower’s attorney must sign and return the appropriate response form and any forms or information requested by the Agency within the greater of: