UNITED STATES DEPARTMENT OF AGRICULTURE
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Caution to County FSA Supervisors (and Their Unit Office Personnel) as to Their Financial Liability to the Government in Cases Involving Financial Losses to the Government Resulting from Their Negligence in Failing to Handle Repossessed Property (and Other Similar Situations) as Prescribed by FSA Instructions

There have been numerous cases of financial losses to the Government as the result of Supervisors and other responsible personnel failing to follow instructions or failing to use reasonable care in the performance of their duties. In most of such cases, the losses occurred through the negligence of county FSA Supervisors in (1) handling repossessed property of borrowers, (2) taking care of inventory property, and (3) the performance of their duties (prescribed in Regional and FSA Instructions or by law) to protect the Government's financial interests in security property. In many of these cases, Supervisors have received a formal written demand from the Farm Security Administration for immediate payment of a substantial sum of money to cover or "make good" such losses. In most cases, these Supervisors apparently did not know that their negligence could or would result in their having to make good such losses to the Government. In some cases, they did not know that financial liability existed as well as liability to disciplinary action, although both liabilities may arise from the same negligence. The purpose of this memorandum, therefore, is twofold: (1) to make all FSA Supervisors and their unit personnel thoroughly aware of the fact that financial liability usually will follow in cases where it is clearly established that their negligence resulted in a financial loss to the Government; and (2) to state clearly their principal duties, the negligent performance of which has heretofore most frequently resulted in such financial liability, so that they may be able to recognize such situations, the consequences thereof, and avoid them.

I Repossessed Property

Repossessed (security) property is defined in FSA Instruction 466.1 as security property over which the Government has accepted or assumed custody either with or without the written consent of the borrower, title to which still remains in the borrower. The principal duties prescribed by said Instruction for the handling of such property are summarized briefly as follows:

1. Upon acceptance of mortgaged property by a supervisor for public sale or private sale he should have the proper documents, such as offers and agreements, signed by himself, the borrower, or lienors. Where the borrower has surrendered the property under a voluntary liquidation agreement, the disposition of the property must conform strictly with the terms of said agreement.

2. Repossessed property pending sale should be stored in a safe place or placed in the custody of a caretaker. The supervisor or other collecting official must use reasonable care in selecting a reliable caretaker.

3. Before delivery of the repossessed property to the caretaker, he should be required to execute a caretaker's agreement providing for the care of the property for a reasonable compensation. (Paragraph VII of FSA Ins. 466.1)

4. There is a duty to cause such property to be sold promptly, or as soon as practicable and legally permissible, either at a public or private sale in accordance with FSA procedure. Leaving such property in the custody of a caretaker longer than required to sell it may result in the FSA Supervisor being held responsible. (Paragraph IX of FSA Ins. 466.1)

5. At sales of such property, and where the FSA Supervisor or the collecting official concerned has the authority to represent the Government, such officials have the duty of making bids on behalf of the Government to prevent the property from being sold to others than the Government at less than its fair market value, unless the amount of indebtedness owing to the Government plus the cost incident to repossession and sale is less than the fair market value. In this latter event, the sale price should not be less than the Government's debt plus such costs. Where Supervisors make the sales themselves, they should also exercise care by not selling property for less than its fair market value since they might incur some liability either to the owners of such property or to the holders of junior liens on the property. (Paragraph IX B 3 a and b of FSA Ins. 466.1)

6. When such sales are consummated, there is a duty to dispose of the proceeds in accordance with applicable regulations. (Paragraph IX B 4 of FSA Ins. 466.1)

7. The moneys which belong to the Government after the sale of such property are "public funds", and the person having custody of them is under an absolute obligation to keep them safely. (See Paragraph VII A of FSA Ins. 461.1, which also requires such funds, with certain exceptions, to be transmitted on the day received.)

If there is a negligent failure to perform the foregoing duties, or if they are performed in such a manner as may be deemed to constitute negligence, financial liability may attach to the responsible employee, provided such property is lost, damaged or destroyed as a direct result of such negligence. It should be noted here that the responsible employees are not guarantors - i.e., their liability is not absolute, except in the handling of public funds. They are bound , however, to exercise reasonable care in performing their duties so that loss will not result to the Government. It is not the Government's policy to enforce financial liability against those employees who do use reasonable care in discharging the functions of their office. Of course, the question of when there is negligence is one of fact and can be determined only in connection with individual sets of circumstances as they arise.

II Acquired Security Property

The term "acquired security property", also known as "inventory property", is defined in FSA Instruction 466.1. This Instruction is very specific as to the manner in which this type of property should be handled. (See Paragraph IX B 8 and XII) With respect to the handling of such property, it may be stated that financial liability may attach to the responsible employee and a written demand may be made upon him for the payment of any loss suffered by the Government if this property is handled negligently (i.e., without the use of reasonable care), so as to cause it to be damaged, destroyed or lost. Some of the principal duties of county FSA Supervisors concerning this type of property are:

1. To establish inventory records immediately following the acquisition of title by the Government.

2. To make arrangements for its care and/or storage in the same manner as for repossessed property pending sale. In making such arrangements, the supervisors must (a) use reasonable care in the selection of a competent caretaker, and (b) withhold deliveries of such inventory property until after a caretaker's agreement has been obtained.

3. To take any necessary action to prevent loss or damage to inventory property.

III Protection of Government's Security Interest

The above two categories of property should be distinguished from property strictly regarded as security property. The latter class of property is that in which the Government only has a security interest while possession of the property remains with the mortgagor. In such cases the mortgagor is legally bound to account for all property included on the mortgage, however, county FSA Supervisors are charged with the responsibility of taking or recommending appropriate action to protect the Government's financial interests in security property. This duty is clearly stated in Paragraph I A of FSA Instruction 465.1 in the following language:

> "All property mortgaged to the Government must be accounted for. It will be the responsibility of collecting officials to maintain sufficient control and supervision over security property in order to preserve its value and to protect it from destruction or undue depreciation, and to see that no action is taken in connection with such security property which may jeopardize the ultimate collection of the loan."

Paragraph V of FSA Instruction 465.1 specifically enumerates various other protective actions which must be taken by county FSA Supervisors with respect to the security interests of the Government. As in the case of repossessed security property and acquired security property, discussed above, the negligence of a county FSA Supervisor in performing these prescribed duties may result in a financial liability on his part to the Government. Likewise, upon discovery that security property has been abandoned by a borrower, it is the duty of the county FSA Supervisor to immediately take or recommend appropriate action to protect the Government's financial interests.

In concluding we wish to repeat that the purpose of this memorandum is to make Supervisors clearly aware (1) of their financial liability in the case of loss to the Government because of their negligence or failure to follow instructions, and (2) that the FSA is legally bound to hold such employees financially responsible for such losses. It is our hope that it will help county FSA Supervisors to avoid situations which may result in financial liability. The situations specifically mentioned herein are by no means the only ones in which financial liability may be incurred. They are cited merely to illustrate how financial liability may be incurred and in the hope that they will be of assistance in helping supervisors to recognize and avoid the same or similar situations. FSA Instructions should be followed closely. Where there is any doubt as to what action should be taken in a given situation, the employee should consult his immediate superior for specific instructions without delay.

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