

**§ 1965.6 Consent of lienholders.**

When this subpart requires the consent of other lienholders, consent will be obtained and furnished in writing to the FmHA or its successor agency under Public Law 103-354 by the borrower before the FmHA or its successor agency under Public Law 103-354 enters into a transaction which affects its security or its lien. This consent will, unless otherwise provided in a State Supplement, include an agreement as to the disposition of any funds involved in the transaction.

**§ 1965.7 Definitions.**

As used in this subpart, the following definitions apply:

(a) *Borrower*. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership, or joint operation is the borrower.

(b) *County Supervisor* also includes Assistant County Supervisor who has written delegated authority to carry out purposes of this subpart.

(c) *District Director* also includes Assistant District Director who has written delegated authority to carry out purposes of this subpart.

(d) *FmHA or its successor agency under Public Law 103-354 loans, FmHA or its successor agency under Public Law 103-354 accounts, FmHA or its successor agency under Public Law 103-354 interests, FmHA or its successor agency under Public Law 103-354 security, FmHA or its successor agency under Public Law 103-354 debts* and similar terms apply to indebtedness owed to, or insured by, the United States of America acting through the FmHA or its successor agency under Public Law 103-354, and to related security instruments.

(e) *Farmer Program loan* includes only Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), Economic Opportunity (EO), Softwood Timber (ST) and Special Livestock (SL) loans, and/or Rural Housing Loans for farm service buildings (RHF).

(f) *Foreclosure sale*. The act of selling security either under the "Power of Sale" in the security instrument or through court proceedings.

(g) *Leasehold*. A right to use farm property for a specific period of time under conditions provided for a lease agreement.

(h) *Mortgage*. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term "mortgage" also refers to any security interest in chattel property.

(i) *Non-Program (NP) Loan*. An NP loan results when credits are extended to ineligible applicants and/or transferees in connection with loan assumptions and sale of inventory properties.

(j) *Note* includes any note, bond, assumption agreement or other evidence of indebtedness.

(k) *Security*. Property of any kind subject to a real or personal property lien including, among other things, appurtenant rights of development, leasehold, grazing or other use privileges.

(l) *Servicing action* includes, among other things, the cash sale or transfer of real estate and chattel property and the assumption of loans.

[51 FR 4140, Feb. 3, 1986, as amended at 52 FR 26138, July 13, 1987; 53 FR 35794, Sept. 14, 1988]

**§§ 1965.8-1965.10 [Reserved]****§ 1965.11 Preservation of security and protection of liens.**

(a) *Inspection of security*. The County Supervisor will inspect farm real estate security a minimum of one time every 3 years for accounts that are current. More frequent inspections will be made when a borrower is delinquent or otherwise in default or when problems exist involving the security. If all or part of the security is located in another County Office area, the County Supervisor for that area may be requested to inspect the property. Security on non-farm tracts will be inspected when:

- (1) Liquidation action is likely to be taken;
- (2) The property has been abandoned;
- (3) Necessary to protect the interest of the Government; or
- (4) Requested by the borrower.

(b) *Action by FmHA or its successor agency under Public Law 103-354 for account of borrower*. When necessary to protect the interest of the Government, actions will be taken by FmHA

or its successor agency under Public Law 103-354 for the account of the borrower as provided below. Any advances made for the following purposes will be considered protective advances and will be paid in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office). Loans may be reamortized without regard to loan limits to include protective advances when authorized on an individual case basis by the State Director.

(1) *Abandoned and Custodial Property.* Determinations of abandonment will be made according to §1955.55 of Subpart B of Part 1955 of this chapter. Services for the management, care, and maintenance of custodial property will be obtained according to §1955.55 of Subpart B of Part 1955 of this chapter. Custodial property may be leased according to the provisions of §1955.66(a)(1) of Subpart B of Part 1955 of this chapter.

(2) *Maintenance.* Complete information concerning the borrower's failure to adequately maintain the security will be documented in the case file. If there is a prior lien, expenditures for maintenance will not be made unless the prior lienholder refuses to make them. Evidence of this unwillingness to do so should be included in the case file.

(3) *Taxes and assessments.* Real estate taxes and assessments will be handled in accordance with subpart A of part 1925 of this chapter.

(4) *Insurance.* For FmHA or its successor agency under Public Law 103-354 loans secured by liens on real estate, property insurance will be obtained and serviced in accordance with requirements for the kind of loan involved, and in accordance with Subpart A of part 1806 of this chapter (FmHA or its successor agency under Public Law 103-354 Instruction 426.1), and when appropriate, Subpart B of Part 1806 of this chapter (FmHA or its successor agency under Public Law 103-354 Instruction 426.2).

(c) *Actions by third parties which affect security—(1) General provisions.* When third parties bring suit or take any other action which could affect property servicing as security, borrowers

are expected to protect their own interests in the property. A few examples of actions by third parties are: condemnation proceedings, foreclosure, trespass suits, and actions to quiet title.

(i) *County Supervisor's responsibility.* When the County Supervisor learns about a third party action which could jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will immediately send the borrower exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office) if another lienholder is foreclosing, and attachments 1, 3 and 4 of exhibit A of subpart S of part 1951 of this chapter. Then the County Supervisor will send the following documents to the State Director: the County Office case file, complete with information concerning the action; recommendations for FmHA or its successor agency under Public Law 103-354 servicing action; a copy of any petition or complaint, as soon as available; current account balances; a current appraisal report; the name and address of the borrower's attorney, if any; and other information which the County Supervisor believes important such as unpaid taxes, judgments, or other liens.

(ii) *State Director's responsibility.* The State Director will consult OGC about all lawsuits involving the property and any other third party actions when OGC's advice would be helpful. The State Director will then advise the County Supervisor of the actions to be taken to protect the Government's interest in the property. The payment of other liens by FmHA or its successor agency under Public Law 103-354 will be authorized by the State Director only to protect the Government's interest, not for the protection of the borrower's interest or the interest of any third party. When foreclosure by another creditor or any other action which would cause the borrower to lose possession of the property is imminent, the State Director may consider making a subsequent loan or guaranteed loan, or approving a subordination to permit another lender to make a loan, provided:

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(A) The requirements for the primary servicing program(s), a subsequent loan, guaranteed loan or subordination are met, and such assistance is necessary to enable the borrower to retain the property, and

(B) The borrower has the ability and resources necessary to overcome the problems that caused the foreclosure or other action, and

(C) The third party agrees to postpone further action pending the processing of the primary servicing programs, a subsequent loan, guaranteed loan or subordination.

(iii) *Other actions.* The State Director may also approve a transfer and assumption under this subpart provided the action will adequately protect the Government's interest and the third party agrees to delay further action pending processing of the transfer and assumption. The State Director will notify the County Supervisor of the actions to be taken to protect the Government's interest.

(2) *Sale by a prior lien foreclosure.* When FmHA or its successor agency under Public Law 103-354 learns that a prior lienholder is contemplating foreclosure, the prior lienholder will be contacted to determine the amount of the prior lien indebtedness and the estimated cost of a foreclosure sale. An insured note which is not held by the insurance fund will, whenever possible, be assigned to the insurance fund before a foreclosure sale. Otherwise, the assignment will be completed as soon as feasible after the foreclosure sale.

(i) *Decision to pay off the prior lien.* When, under State law, it is necessary prior to foreclosure to acquire the prior lienholder's rights to protect the Government's junior lien interest, title evidence will be obtained. Information clearly supporting the need to acquire the prior lienholder's rights must be documented and made a part of the file. Payment of the prior lien and required costs may be made with the advice of OGC, provided:

(A) The Government will obtain a greater recovery of the secured debt (not an inventory profit) than it could by bidding at the foreclosure sale, and

(B) After acquisition of the prior lien and completion of any appeals in favor of FmHA or its successor agency under

Public Law 103-354, the account will be accelerated and liquidated in accordance with §1965.26(b) of this subpart. No exception will be made to this provision.

(ii) *Decision not to pay off the prior lien.* If FmHA or its successor agency under Public Law 103-354 decides not to pay off the prior lien, one of the following actions will be taken.

(A) *Making a bid.* Bidding will be completed in accordance with §1955.15(f) (6) and (7) of subpart A of part 1955 of this chapter. Information clearly supporting the bid as being to the Government's financial advantage must be documented and made a part of the file. When FmHA or its successor agency under Public Law 103-354 enters a bid, actions will be taken in accordance with §§1955.15(g) and 1955.18 of subpart A of part 1955 of this chapter.

(B) *Making no bid.* When the State Director determines that no bid will be entered by FmHA or its successor agency under Public Law 103-354, the County Supervisor will, at the discretion of the State Director, attend the sale and make a narrative report to the State Director outlining the results of the foreclosure sale and plans for future servicing of the account. If the Government is to rely on its redemption rights, that fact will be indicated in the report. Unsatisfied farmer program loan accounts will be handled in accordance with §1955.18 (f) of subpart A of part 1955 of this chapter.

(iii) *Acquisition of property by exercise of Government redemption rights.* If the Government for any reason did not protect its interest at the time of the foreclosure sale and if the Government has any redemption rights, the State Director will determine whether to redeem the property in accordance with §1955.13 of subpart A of part 1955 of this chapter.

(3) *Foreclosure sale subject to FmHA or its successor agency under Public Law 103-354 mortgage.* When FmHA or its successor agency under Public Law 103-354 learns that a junior lienholder is foreclosing, the County Supervisor will send the borrower attachments 1 and 3 and 4 of exhibit A of subpart S of part 1951 of this chapter and exhibit B of this subpart. If the borrower contacts FmHA or its successor agency under

Public Law 103-354 and wants to apply for servicing relief, the request will be processed in accordance with subpart S of part 1951 of this chapter. If the junior lienholder forecloses and the property is sold subject to the FmHA or its successor agency under Public Law 103-354 mortgage, following the resolution of any appeal in favor of FmHA or its successor agency under Public Law 103-354, the borrower's account will be accelerated and liquidated in accordance with the applicable portion of §1955.15 of subpart A of part 1955 of this chapter.

(d) *Divorce actions.* See §1965.27 (b)(5)(iii) of this subpart for directions on servicing security after divorce. A subsequent loan made as a result of a divorce action will be handled in accordance with §1965.27(b)(13) of this subpart.

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#### §1965.12 Subordination of an Agency mortgage.

(a) *Conditions.* A subordination may be granted if all of the following conditions are met:

(1) The subordination is to refinance debt or for an authorized direct loan purpose;

(2) The Agency debt cannot be refinanced without a subordination;

(3) The borrower can document the ability to repay the total amount due under subordination and pay all other debt payments scheduled for the subject operating cycle;

(4) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to subpart G of part 1940 of this chapter;

(5) Any planned development is performed in a manner directed by the creditor and agreed to by the Agency and reasonably attains the objectives of subpart A of part 1924 of this chapter;

(6) Funds to be used to develop or to acquire land will be deposited in a supervised bank account that is subject to signature by the Agency and the

borrower, or in a similar arrangement, to ensure that funds will be spent for the planned purposes;

(7) In cases of land purchase or exchange of property, the Agency will obtain a valid mortgage on the acquired land. Title clearance and loan closing will be required as for an initial or subsequent FO loan, as appropriate;

(8) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. "Borrower" for purposes of this provision, specifically includes an individual or entity borrower and any member stockholder, partner, or joint operator, of an entity borrower and any member, stockholder, partner, or joint operator of an entity borrower. "Controlled substance" is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. An applicant must attest on the Agency application form that it and its members, if an entity, have not been convicted of such a crime;

(9) The Agency loan is still adequately secured after the subordination, or the value of the loan security will be increased by at least the amount of the advances to be made under the terms of the subordination;

(10) The subordination is limited to a specific amount and the loan to be secured by the subordination is closed within a reasonable time; and

(11) Only one subordination to one creditor may be outstanding at any one time in connection with the same security.

(b) *Subordination on real estate owned by an entity member.* Notwithstanding the provisions of paragraph (a) of this section, when the borrower is an entity and the Agency has taken real estate as additional security on property owned by an entity member, a subordination for any authorized Farm Loan Programs loan purpose may be approved when it is needed for the entity member to finance a separate operation. The subordination, however, may be approved only if it does not cause the unpaid principal and accrued interest balance of the Agency loan to