

(1) When the seller or transferor (and cosigner, if any) is not released from liability, the account balance after the assumption is processed, or cash proceeds are applied, will be settled according to subpart B of part 1956 of this chapter or reclassified to collection only.

(2) When the transferor will be released of liability Form FmHA or its successor agency under Public Law 103-354 1965-8 "Release from Personal Liability" will be given to the borrower and otherwise distributed in accordance with the Forms Manual Insert.

(3) In the case of a sale outside the program for less than the debt owed, Form FmHA or its successor agency under Public Law 103-354 1965-8 will be given to the borrower and otherwise distributed in accordance with the Forms Manual Insert.

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§ 1965.27 Transfer of real estate security.

When the mortgage requires the consent of the Agency to any proposed sale or other transfer of real estate security, the borrower should be reminded that before firm agreements have been reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farm Loan Programs (FLP) loan borrowers must be sent attachment 1 of exhibit A of subpart S of part 1951 of this chapter within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If a proposed sale would not result in the FLP accounts being paid in full at the time of sale, the County Supervisor should explain thoroughly the requirements of this section and § 1965.13 or § 1965.26 of this subpart, as appropriate. When the transferor is receiving a substantial down payment from the sale of the property, the purchaser must be required to contact other sources of credit in an effort to secure a loan for repayment of the FLP

loan(s) in full. Transfer with assumption of real estate security on NP terms will be in accordance with subpart J of part 1951 of this chapter. When real estate security, including water, access development or other rights is to be sold and the mortgage requires the Agency's consent to the sale and the transaction cannot be approved under the appropriate sections of this subpart, the account will be liquidated as required in § 1965.26 of this subpart or will be handled in accordance with § 1965.27 (g) of this subpart. In accordance with the Food Security Act of 1985 (Pub. L. 99-198) after December 23, 1985, if a loan is being transferred and assumed by an eligible or ineligible transferee, and if an individual or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C to subpart A of part 1941 of this chapter and is available in any agency office, for the definition of "controlled substance") prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption of a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Transferee applicants will attest on 410-1, "Application for Services," that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985.

(a) [Reserved]

(b) *General policies.* The following general policies will be applicable when an FmHA or its successor agency under Public Law 103-354 borrower transfers, or proposes to transfer, real estate which is security for an FmHA or its successor agency under Public Law 103-354 loan(s). The loan account(s) will be assumed by use of Form FmHA or its successor agency under Public Law 103-354 1965-13, "Assumption Agreement for Farmer Program Loans," Form FmHA or its successor agency under Public Law 103-354 460-9, "Assumption Agreement (Same Terms—Eligible Transferee)," or Form FmHA or its successor

agency under Public Law 103-354 1965-15, "Assumption Agreement (Single Family Housing Loans)," for SFH Loans.

(1) *Agreement.* Form FmHA or its successor agency under Public Law 103-354 465-5, "Transfer of Real Estate Security," will be completed to reflect the agreement between the transferor and the transferees. This agreement will not be completed for farmer program loan borrowers until the borrower has received attachment 1 of exhibit A of subpart S of part 1951 of this chapter.

(2) *Assignment.* If an insured loan is involved, the Finance Office will have the note assigned to the insurance fund when the assumption agreement changes the terms of the note.

(3) *Amount assumed.* All transfers will be based on present market value. When the total secured FmHA or its successor agency under Public Law 103-354 debt(s) exceeds the present market value, the transferee will assume an amount of principal and interest equal to the present market value as determined under §1965.26 (a)(2) of this subpart, less prior liens and any authorized costs. Otherwise, the transferee will assume the total FmHA or its successor agency under Public Law 103-354 secured debt(s). The unpaid principal balance and accrued interest will be shown in Table I of Form FmHA or its successor agency under Public Law 103-354 1965-13 and the accrued interest will be computed from Form FmHA or its successor agency under Public Law 103-354 451-26, "Transaction Record," or obtained from the monthly payment account Status Report. Balances may be confirmed through the field office terminal system. The transferee will be informed of the amount of the principal and interest owed, the total amount paid as of the closing date which has not been credited to the account, the amount that would be required to be paid to place the account on schedule as of the previous installment due date, the amount of interest, if any, that accrued during a deferral period, and any accounts that must be paid to bring any monthly payments up to date. Whenever reasonably possible, any delinquency should be paid at the time of assumption. However, this is not required if the total FmHA

or its successor agency under Public Law 103-354 debt to be assumed is within the debt paying ability of the transferee. If the transferor received a loan deferral under subpart S of part 1951 of this chapter, the interest that accrued during the deferral period must be paid by the time the transfer takes place, or such interest will be added to the loan principal and the loan must be assumed on ineligible terms.

(4) *Payment of costs.* The payment of customary incidental costs appropriate to transfer of real estate will be the responsibility of the transferor and transferee. Costs may, for example, include real estate taxes, title examination, title insurance, abstracts, surveys, reasonable attorney's fees, real estate brokers fees and junior liens. State Directors may, in individual cases, approve the payment of transferor's costs by the transferee which are reasonable in amount and which the transferor cannot pay from personal funds provided:

(i) Cash equity due the transferor (if any) is applied first to payment of costs and the transferor will not be receiving any cash payment above costs.

(ii) Payment of any junior liens by the transferee does not exceed \$5,000.

(iii) Real estate commission does not exceed the customary rate for the type of property for the area.

(iv) The transferee's personal funds equal to the transferee's costs, including the transferor's costs to be paid by the transferee, and transferor's equity (if any) will be held in escrow by an FmHA or its successor agency under Public Law 103-354 designated closing agent for disbursing at closing of the transfer.

(v) The payment of the costs by the transferee is advantageous to the government. The probability of foreclosure, voluntary conveyance, maintenance and disposal of the security will be considered in making the determination.

(5) *Assumption on same terms.* In the following situations only, the debt will be assumed on the same terms as in the original note. The interest rate, final due date, account status (current, delinquent, ahead of schedule) and repayment schedule will not be changed at

the time of the assumption. The interest rate and repayment schedule may be changed after the assumption, in accordance with FmHA or its successor agency under Public Law 103-354 loan servicing regulations. Form FmHA or its successor agency under Public Law 103-354 1965-13 will be processed via the FmHA or its successor agency under Public Law 103-354 field office terminal system. Except as noted below, Form FmHA or its successor agency under Public Law 103-354 460-9, will be executed by the assuming parties. The name, case number, and address, as applicable, will be changed to that of the transferees on the Finance Office records. In each of the following situations, Forms FmHA or its successor agency under Public Law 103-354 465-5 and 460-9 must be prepared and distributed in accordance with the applicable FMI.

(i) EM actual loss loans may be assumed on the same terms by those who were actually involved in the operation at time of the loss and meet one of the following requirements:

(A) If an individual received the actual loss loan, the transferee must be either an individual who is an immediate family member of the borrower or an entity which is made up of only immediate family members of the borrower. Such a transferee can assume the entire amount of the actual loss loan on the same terms.

(B) If a partnership on a joint operation received the actual loss loan, the transferee must be either a partner or a joint operator who was a partner or joint operator in the partnership or joint operation at the time the actual loss loan was made, or an entity which is made up of only those who were partners in the partnership or joint operators in the joint operation at the time the actual loss loan was made. Such transferees can assume the entire amount of the actual loss loan on the same terms.

(C) If a corporation/cooperative received the actual loss loan, the transferee must be either a stockholder/member who was a stockholder/member of the corporation/cooperative at the time the actual loss loan was made or an entity which is made up of only stockholders/members who were stock-

holders/members of the corporation/cooperative at the time the actual loss loan was made. Such transferees can assume on the same terms only that portion of the actual loss loan equal to the transferee's percentage of ownership in the corporation/cooperative (or, in the case of an entity transferee, the combined percentages of the individual stockholders/members).

(ii) A deceased borrower's spouse, other relative or joint tenant who did not sign the note but who acquires title to the property will be allowed to assume the loan on the same terms. Form FmHA or its successor agency under Public Law 103-354 465-5 will not be completed.

(iii) When one of the jointly liable individual borrowers withdraws from the operation and conveys his/her interest in the security to the remaining borrower, who will repay the total indebtedness, and assumption agreement is not required. This paragraph does not apply to partners in a partnership, joint operators in a joint operation, stockholders in a corporation or members of a cooperative. The previous joint owner will be released from liability for the indebtedness by completing Parts 1 and 3 of Form FmHA or its successor agency under Public Law 103-354 1965-8, "Release from Personal Liability," provided:

(A) A divorce decree or property settlement document did not make the withdrawing party responsible for loan payments;

(B) The withdrawing party's interest in the security is conveyed to the person with whom the loan will be continued; and

(C) The person with whom the loan will be continued has adequate repayment ability.

(iv) As immediate family member of an individual borrower who wants to assume a debt with the existing borrower(s) may do so on the same terms. After the transfer, the assuming family member may own the property jointly with the existing borrower(s) or subject to a life estate of the existing borrower. Also, an entity which is made up of only the individual borrower and the borrower's immediate family members may assume on the same terms the entire amount of a loan received by

the individual borrower. Title to the real estate security would have to be transferred to the entity.

(v) If there is only one stockholder/member/partner/joint operator of a corporation/cooperative/partnership/joint operation who is personally liable on the note, and that stockholder/member/partner/joint operator withdraws from the operation or dies, *all* of the remaining individuals will be required to assume personal liability on the loan(s) or else the transfer will not be approved. A Form FmHA or its successor agency under Public Law 103-354 465-5 does not have to be processed unless title to the real estate is transferred.

(vi) If a stockholder/member/partner/joint operator or another corporation/cooperative/partnership/joint operation buy out the ownership interest of the other stockholders/members/partners/joint operators and continues to operate the farm; and if the remaining stockholder(s)/member(s)/partner(s)/joint operator(s) is not personally liable on the note(s), that stockholder(s)/member(s)/partner(s)/joint operator(s) will be required to assume personal liability on the loan(s) or else the transfer will not be approved. A Form FmHA or its successor agency under Public Law 103-354 465-5 does not have to be processed unless title to the real estate is transferred.

(vii) New stockholders/members/partners/joint operators entering the corporation/cooperative/partnership/joint operation will be required to assume personal liability on the loan or else the transfer will not be approved. A Form FmHA or its successor agency under Public Law 103-354 465-5 does not have to be processed unless title to the real estate is transferred.

(6) *Loan type.* The type(s) of loan will remain the same for all loans except that loans which are transferred to ineligible applicants will be classified as NP.

(7) *Transfer of a portion of the security.* Generally, title to all FmHA or its successor agency under Public Law 103-354 real estate security, including any water, access, development or other rights, must be conveyed to the transferee not later than the date of closing of the transfer. However, a transfer of a portion of the FmHA or its successor

agency under Public Law 103-354 real estate security with an assumption of the *total* indebtedness may be approved, provided:

(i) The portion of the FmHA or its successor agency under Public Law 103-354 security transferred has a present market value at least equal to the total indebtedness owed by the borrower or such indebtedness is reduced by a cash payment to the present market value of the property;

(ii) The transaction is advantageous to the Government; and

(iii) In cases of SFH loans, the portion of the property improved with SFH funds is conveyed to the person assuming the SFH loan.

(iv) The security retained by the transferor will be released from the Government's lien. The transferor will be released from liability if the conditions of paragraph (f) of this section are met.

(8) *Partial transfer and assumption.* When a request is made by a borrower to transfer a portion of the real estate security the transferee must assume an amount which meet the requirements of paragraph (b)(3) of this section. The considerations for approval will be as set forth in §1965.13(b) of this subpart. Whole notes must be assumed; notes cannot be split. The portion of the security transferred will be released from the transferor's mortgage by partial release. When the assumption is by an eligible transferee, or by an ineligible transferee on terms of 5 years or less, the transferor may be released of liability on the loans assumed. The transferor will not be released of liability when the transferee is ineligible and terms exceed 5 years. Before approving a partial transfer and assumption it must be determined that the transaction is necessary for the borrower to establish a debt structure compatible with repayment ability, management ability or other limiting factor such as health, labor or markets available.

(9) *Multiple sales and assumptions.* When a request is made by a borrower to transfer the real estate security as parcels to two or more transferees with each assuming a portion of the debt, the County Supervisor may send the proposed action to the State Director

for consideration if the County Supervisor recommends that the transaction would be advantageous to the Government. The total debt owed on all outstanding notes must be assumed by the transferees even though a portion of the security may be retained by the transferor. The County Supervisor will submit to the State Director the complete factual information concerning the transaction, including appraisal reports showing the present market value of each portion to be transferred; value of the total unit before subdivision; the amount of indebtedness to be assumed by each transferee; and the cases file with other pertinent information outlining the reasons for the proposed actions. If approved by the State Director, new security instruments will be required for each transferee at closing and any security retained by the transferor will be released from the Government lien. This policy is to permit transfer to two or more transferees when the transferor owes more than one note evidencing indebtedness or the indebtedness on one note is to be divided between transferees. OGC guidance will be requested in these case to ensure enforceable liens are obtained.

(10) *Dual security.* When the account(s) is secured by both chattels and real estate, all the chattel security must be transferred, sold or liquidated by the time of the transfer of real estate, except that in cases of EM, EE, or SL security, the real estate security may be transferred without transfer or liquidation of the chattel security upon prior approval of the National Office.

(11) *Consent of other lienholders.* Written consent to a proposed transfer and assumption must be obtained if required by any other lienholder(s).

(12) *Junior liens.* When the full amount of the FmHA or its successor agency under Public Law 103-354 debt is assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA or its successor agency under Public Law 103-354 liens being assumed unless the State Director determines that the liens, judgments, or claims will not adversely affect the Government's security interests and that the transferee's ability to pay the FmHA or its successor agency under Public Law 103-354

debt will not be impaired. When less than the full amount of the FmHA or its successor agency under Public Law 103-354 debt is being assumed, there must be no liens, judgments, or other claims against the security which are junior to any FmHA or its successor agency under Public Law 103-354 loans being assumed.

(13) *Loans.* A loan for which the transferee is eligible may be made in connection with a transfer, subject to the policies and procedures governing the type of loan being made. When the transfer is being made to an eligible FO applicant, FO loan funds may be used to pay for the equity in the property being transferred. When real estate security for an SFH loan is transferred to a person eligible under subpart A of part 1944 of this chapter for an SFH loan to purchase the real estate, SFH loan funds may be used to pay for the equity in the property being transferred other than income-producing land or buildings. In lieu of a subsequent loan of the kind involved, the Government's lien may be subordinated to enable the transferor to take a first mortgage, or permit another lender to take a first mortgage, in return for furnishing the funds needed in connection with the transfer. In these cases, the subordination will be processed in accordance with the applicable provisions of §1965.12 of this subpart. For other than SFH loans, the transferor may convey title to the property by warranty deed or by purchase contract or similar instrument which meets the conditions of §1943.16 (a)(3) of subpart A of part 1943 of this chapter. Prior lienholder's agreements will be obtained in accordance with subpart B of part 1927 of this chapter. When necessary to settle a divorce action, a subsequent loan may be made, or a subordination may be granted to permit the remaining borrower to obtain a loan in an amount not to exceed the equity in the property provided the purchase of land is an authorized loan purpose or the subordination is in accordance with §1965.12 of this subpart. (Also see §1965.11(d) of this subpart.)

(14) *Payments.* When a payment is made to the transferor in connection with the transfer and assumption, and the full amount of the FmHA or its

successor agency under Public Law 103-354 secured debt is not being assumed and other FmHA or its successor agency under Public Law 103-354 debts owed by the transferor are not adequately secured, the State Director may, as a condition of approving the transfer, require that all or a part of any payment be applied on the debts.

(15) *Down payment.* An eligible transferee who is financially able, will be required to make a downpayment on the FmHA or its successor agency under Public Law 103-354 secured debts. When a downpayment is required it will be collected at closing.

(16) *Date.* The effective date of the assumption will be the date on which Form FmHA or its successor agency under Public Law 103-354 1965-13 is signed.

(17) *Nondiscrimination assurance.* When the property transferred will continue to be used for the same or a similar purpose, and the assistance was subject to the Civil Rights Act of 1964 and subpart E of part 1901 of this chapter which prohibits discrimination on the basis of race, color, national origin, handicap, age, religion, marital status, or sex in programs or activities receiving Federal financial assistance, the transferees must agree to comply with requirements of the statute and the regulation. The transferee will be required to sign a Form 400-4, "Assurance Agreement."

(18) *Recapture of subsidy.* Recapture of SFH subsidy in connection with assumption will be as provided in subpart I of part 1951 of this chapter.

(19) *County Committee.* The County Committee, except for SFH loans, must find that the transferee will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan. (See paragraph (g)(6) of this section.)

(20) *Environmental requirements.* Applicable provisions of subpart G of part 1940 of this chapter are met, as well as those requirements found in exhibit M to subpart G of part 1940.

(21) Form FmHA or its successor agency under Public Law 103-354 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commer-

cial Debts." For all transfers, the County Supervisor must review Form FmHA or its successor agency under Public Law 103-354 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant. A copy of the signed and dated form will be given to the applicant and the original placed in the loan docket.

(c) *Assumption of loans by eligible transferees—(1) Eligibility.* A loan may be assumed on eligible terms by an applicant (including an entity applicant) who meets all of the eligibility and loan purpose requirements for the type of loan being assumed or whose situation after the transfer of the real estate will satisfy the eligibility and loan purpose requirements. Eligibility and loan purpose requirements can be found in the loan making regulations applicable to the type of loan being assumed. (See paragraph (b)(5) of this section for a list of situations in which the debt can be assumed on the same terms as in the existing note.) Eligible applicants can assume loans so long as their FmHA or its successor agency under Public Law 103-354 principal and interest indebtedness after the assumption does not exceed the maximum loan limits for the type(s) of loan(s) involved. Loans may also be assumed on eligible terms under the following conditions:

(i) *SFH assumptions.* An applicant who is eligible for SFH assistance under subpart A of part 1944 of this chapter may assume a low-or-moderate, or an above-moderate income SFH loan. An above-moderate loan assumed by a low-or-moderate applicant will be reclassified and serviced as a low-or-moderate loan. Where a property securing an SFH loan is located in an area which has been redesignated from rural to nonrural, the loan may be transferred without regard to the nonrural designation.

(ii) *NP loan.* An NP loan may be assumed by an applicant who is determined eligible for an FO loan if the property is a suitable farm tract, or an applicant eligible for an SFH loan if the property is a suitable dwelling on a farm or non-farm tract. When closing the assumption, the loan will be reclassified as "FO" or "SFH", as applicable.

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See subpart J of part 1951 of this chapter.

(iii) *EE, SL, and other type loans no longer being made.* EE, SL, and other type loans no longer being made may be assumed:

(A) Subject to the FO loan limitations and rates and terms set forth in subpart A of part 1943 of this chapter by an immediate family member of an individual borrower, an immediate family member of any partner of a partnership, joint operator of a joint operation, stockholder of a corporation or member of a cooperative, an entity which is made up of only immediate family members of an individual borrower, or an entity which is made up of only immediate family members of any partner(s), joint operator(s) stockholder(s) or member(s).

(B) Subject to the FO loan limitations and rates and terms set forth in subpart A of part 1943 of this chapter by an applicant who is determined eligible for an FO loan if the property has a suitable farm tract, or by an applicant eligible for an SFH loan if the property has a suitable dwelling on a farm or non-farm tract. When closing an assumption under this paragraph or paragraph (A) above, the loan will be reclassified as "FO" or "SFH," as applicable.

(C) On ineligible rates and terms in accordance with paragraph (d) of this section for all other transferees. The ineligible term assumption(s) will be serviced in accordance with § 1965.34 of this subpart.

(iv) *EM actual loss loans.* See paragraph (b)(5)(i) of this section.

(v) *Other loan types currently being made—(A) Individual transferees.* If real estate security is transferred to an individual who meets all of the eligibility requirements and loan purpose requirements for the type of loan being assumed, the loan may be assumed on eligible terms. This applies to transfers of real estate from individual borrowers and from entity borrowers, including entities in which the transferee had an interest.

(B) *Entity transferees.* If real estate security is transferred to an entity which meets all of the eligibility requirements and loan purposes requirements

for the type of loan being assumed, the loan may be assumed on eligible terms.

(C) *EM non-actual loss loans (if currently being made).* These loans can be assumed on eligible terms. The loan making regulation requirement that an applicant must have suffered an actual loss in order to be eligible for a non-actual loss loan does *not* apply, for the purposes of this paragraph. If EM non-actual loss loans are not currently being made, refer to (c)(1)(iii) of this section.

(2) *Rates and terms.* Except as provided in paragraph (b)(5) of this section and in this paragraph, an applicant may request the interest rate charged by the agency to be the lower of the rate in effect at either the time the assumption is approved or closed. If the applicant does not indicate a choice, the assumption will be closed at the rate in effect at the time of loan approval. Interest rates are specified in agency National Office issuances (available in any agency office) for the type loan involved. The approval official will approve the assumption by executing and delivering a copy of Form RD 1940-1, "Request for Obligation of Funds," to the assuming party. The field office will process the assumption via the field office terminal system in accordance with Form 1965-13. The repayment period will not exceed the repayment period for a new loan of the type involved; for example, FO—40 years, OL—7 years, EM—depends on loan purpose and SFH—33 years. An NP loan will be considered an FO or SFH loan as appropriate, if the applicant and the property meet the requirements of paragraph (c)(1) of this section. Above-moderate loans assumed by low- or moderate-income applicants will be assumed at the current low- or moderate-income SFH interest rate. (See exhibit C to subpart A of part 1944 for income categories). See subparts A of parts 1941 and 1943 of this chapter for the definition of a limited resource applicant and an explanation of limited resource eligibility criteria; FO and OL loans may be assumed at the current rate in effect for limited resource loans if the applicant is a limited resource applicant.

(d) *Assumption of loans by ineligible transferees.* When a borrower sells or

proposes to sell the real estate security to a person(s) or entity not eligible to assume the debt under paragraph (b)(5) or (c) of this section, the debt may be assumed on NP terms in accordance with subpart J of part 1951 of this chapter. No assumption can be approved if the transferee has been liable for any Farm Loan Program (FLP) loan or loan guarantee which was reduced or terminated in a manner resulting in a loss to the Government.

(e) *Consent of FmHA or its successor agency under Public Law 103-354 not required to transfer.* When the agency mortgage(s) does not require the Government's consent to the sale of the security and the borrower conveys or proposes to convey the security to a person who is ineligible or unwilling to assume the agency debt in accordance with paragraphs (c) or (d) of this section, the Government will not consent to the sale. However, the sale cannot be used as a reason for liquidation. In such cases involving SFH loans, the County Supervisor will advise the State Director of the sale. If the SFH loan account is delinquent or the loan is otherwise in default, the County Supervisor will also advise the State Director of the nature of the default and any specific plans that may have been made to correct the default. If the State Director decides to continue with the account, it will be serviced in the name of the original agency borrower, in the usual manner. In such cases involving farmer program loans, they will be serviced in accordance with the provisions of subpart S of part 1951 of this chapter.

(f) *Release of transferor from liability.* The borrower may be released from personal liability when all of the real estate security is transferred under paragraph (c) or (d) of this section and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. Release shall not be granted to any borrower or cosigner who was liable for any FLP direct loan which was reduced or terminated in a manner resulting in a loss to the Government. When the Agency debt less the market value and prior liens is \$1 million or more (including principal, interest and other charges), release of liability

must be approved by the Administrator or designee; otherwise, the State Director must approve the release of liability. When the total outstanding debt is not assumed and an FLP borrower is to be released from liability, the borrower must be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any agency office). In FLP cases, the County Committee must take certain action if it is to recommend that the transferor(s) and any cosigner be released from liability. They must determine that the transferor(s) and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer; that the transferor and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability; and recommend that the transferor and any cosigner be released of personal liability upon the transferees' assumption of that portion of the indebtedness equal to the present market value of the security. This action will be documented by checking the appropriate block on Form 440-2, "County Committee Certification or Recommendation," as specified in the Forms Manual Insert.

(g) *Processing transfers and assumptions of indebtedness.* When the transfer is not within the County Supervisor's approval authority, the docket with the transferor's case file will be sent to the District Director or the State Office, as appropriate, for approval or disapproval.

(1) *Refund of unused funds, loan funds not advanced, transaction record.* Unexpended funds in the supervised bank account will be applied as a refund unless FO, SW, RL, or EM security is transferred to an eligible applicant and the funds are needed for completing planned development. Any obligations of or request for loan funds not yet advanced will be cancelled. Form FmHA or its successor agency under Public Law 103-354 451-26, or the monthly payment account Status Report will be used to compute the unpaid balance due on the effective date of the transfer.

(2) *Preparation and distribution of transfer docket.* Loan docket processing and forms required will be the same as for an initial or subsequent loan of the type(s) involved.

(i) *Checking docket forms.* When the transfer docket forms, including those applicable forms, shown in exhibit C (available in any FmHA or its successor agency under Public Law 103-354 office) of this subpart have been completed, the approval official will determine that the proposed transfer conforms to the applicable procedural requirements, each form is prepared correctly in accordance with the FMI or other appropriate instructions, and items such as names, addresses, and the amount of the indebtedness to be assumed are the same on all forms in which the items appear.

(ii) *Information on the availability of other credit.* An eligible transferee must meet the "no credit elsewhere" requirements for the type of loan being assumed. The County Supervisor will record in the running case record the pertinent information concerning the negotiations made by an eligible transferee and the discussion by FmHA or its successor agency under Public Law 103-354 personnel with the applicant's creditors and other lenders. The investigation and availability of other credit for eligible transferees will be documented as required for the kind of loan being assumed. This must be sufficiently clear and adequate to establish that other credit is not available to pay the debt in full, which would make the transfer unnecessary. Any letters from lenders or other evidence which may have been obtained indicating that the applicant is unable to obtain satisfactory credit elsewhere will be included in the loan docket.

(iii) *Transferor records.* The transferor's copies of notes, mortgages and other instruments in connection with the security are to be made available to the transferee.

(iv) *Distribution of transfer docket forms.* The necessary forms will be distributed in accordance with the appropriate loan processing regulation and the FMI for the form. See exhibit C (available in any FmHA or its successor agency under Public Law 103-354 office) of this subpart which identifies

the FmHA or its successor agency under Public Law 103-354 forms that will be used as appropriate.

(v) *Other transfer docket items when applicable.* Other transfer docket items may include a mortgage title policy, title evidence or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property to be taken as additional security, purchase contract or other instrument of ownership, and information on prior mortgage(s) and cosigner(s). When the County Supervisor is the approval official, in lieu of including the document evidencing ownership, he or she may include a statement in the docket indicating that the document has been seen and reviewed. When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making regulation.

(3) *Collections and receipts.* During the period that a transfer is pending in the County Office, payments received by the Finance Office will continue to be applied to the transferor's account and Form FmHA or its successor agency under Public Law 103-354 451-26 will be forwarded to the County Office. When the County Supervisor has received a payment on the account which is not included in the latest transaction record or monthly payment account Status Report, the amount will be deducted from the total amount of principal and interest only when received in the form of currency and coin, treasury check, cashier's check, certified check, postal or bank money order, or bank draft (this figure will be based on the latest information available) before completing the assumption agreement and having it signed. The following will also be done:

(i) *Transaction record.* When the borrower has made a direct payment to the Finance Office and there is no record of the payment in the County Office, the account will be assumed on the basis of the latest record in the County Office. In those cases, the application of the direct payment will be reversed from the account and the assumption agreement will be processed

in the Finance Office. The Finance Office will contact the County Supervisor to determine the disposition of the proceeds from the direct payment.

(ii) *Identification of payments.* For payment received on the date of transfer, Form FmHA or its successor agency under Public Law 103-354 451-2, "Schedule of Remittances," will be prepared to show "Transfer in process for account owed by (borrower's name and case number), to be transferred to (name of borrower and case number, if known)." If the borrower number portion of the case number has not yet been assigned for a transferee, only the State and County portion of the case number will be shown. A statement for the information of the Finance Office will be attached to the assumption agreement showing the date of Form FmHA or its successor agency under Public Law 103-354 451-2 and the amount paid.

(iii) *Payment.* When a payment is due on the assumption agreement shortly after the transfer is completed, the payment should, if possible, be collected at the time of transfer and remitted in the name of the transferee.

(4) *Farms and Home plans and financial statements.* When an assumption will be for less than the amount of the indebtedness and a release of liability is involved, a current financial and income statement of the transferor will be obtained on Forms FmHA or its successor agency under Public Law 103-354 1944-3 or FmHA or its successor agency under Public Law 103-354 431-2 or other plan of operation acceptable to FmHA or its successor agency under Public Law 103-354.

(5) *Appraisal report.* Real estate appraisals meeting the requirements of 761.7 of this title will be obtained when the amount to be assumed is less than the full amount of the indebtedness, when required in connection with an initial or subsequent loan to be processed with the transfer, or when the loan approval official requests a current appraisal.

(6) *County Committee certification and recommendation.* The complete transfer docket, except SFH loans, will be presented to the County Committee for review.

(i) The transfer will be contingent upon the County Committee certification on Form FmHA or its successor agency under Public Law 103-354 440-2 for an eligible applicant. This action will be documented by checking the appropriate block on Form FmHA or its successor agency under Public Law 103-354 440-2, as specified in the Forms Manual Insert.

(ii) When the County Committee recommends a release of the transferor and any cosigner from liability when real estate security is being transferred under paragraph (c) or (d) of this section with an assumption of less than the total debt, the provisions of paragraph (f) of this section will be followed.

(iii) When the total outstanding debt is not assumed, a farmer program loan borrower who is not being released from liability must be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter.

(7) *Property insurance.* The transferee will obtain property insurance in accordance with the property insurance requirement for the loan(s) involved. If insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of new coverage by the transferee. The insurance company will be notified by the County Supervisor immediately after completion of the transfer. When the full amount of the FmHA or its successor agency under Public Law 103-354 indebtedness is being assumed and an insurance premium has been advanced to the account, the transfer will not be completed until the amount of the premium has been charged to the transferor's account.

(8) *Title clearance and legal services.* Title clearance and legal services for closing transfers will be accomplished in accordance with subpart B of part 1927 of this chapter. When the original repayment terms are altered, it may be necessary to obtain a new mortgage from the transferee to continue FmHA or its successor agency under Public Law 103-354's lien on the transferred real estate. The advice of OGC will be obtained on a state-by-state basis and implemented through State supplements to provide for new mortgages

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when required, and to further provide instructions on whether the original mortgage should be released. Title clearance and legal services for the above transfer(s) are not required when the interest of anyone liable on the note is conveyed to another liable on the note who assumes the total indebtedness on the same terms, provided a subsequent loan or subordination is not involved. For all other kinds of transfers, title clearance and loan closing services will not be required unless the approval official, with the advice of OGC, determines that the services are needed to maintain FmHA or its successor agency under Public Law 103-354's security position or for other reasons. If another mortgagee's mortgage requires the mortgagee's consent to the transfer, consent will be obtained.

(9) *Assumption agreements, releases from personal liability, receipts.* When the full amount of the debt is assumed or a release from personal liability is otherwise approved under this subpart and all of the security is being transferred, Forms FmHA or its successor agency under Public Law 103-354 1965-13; 460-9 (as applicable); 451-1, "Acknowledgment of Cash Payment;" and 1965-8, will be prepared and distributed according to the FMI.

(h) *Transfer of security without FmHA or its successor agency under Public Law 103-354 consent or approval.* When a borrower transfers or proposes to transfer real estate security to another party and FmHA or its successor agency under Public Law 103-354 is unable or unwilling to approve the transferee as either an eligible or ineligible applicant, the conveyance cannot be used as the basis for liquidation if the borrower's spouse or children become the owner of the property or if an intervivos trust becomes the owner of the property so long as the borrower is a trust beneficiary and there is no change in occupancy of the property. If the transfer is to someone other than a spouse, child or intervivos trust and the County Supervisor determines that it is not in the best interest of FmHA or its successor agency under Public Law 103-354 to liquidate to the loan(s) in accordance with §1965.26 of this subpart, the following actions will be taken in order listed:

(1) The County Supervisor will advise the State Director of the transfer or proposed transfer of the security and reasons why FmHA or its successor agency under Public Law 103-354 cannot approve the transferee as eligible or ineligible. Complete details of the transfer conditions, terms and consideration will be submitted to the State Director with the borrower (transferor) file. Current information on status of the loan(s) owed FmHA or its successor agency under Public Law 103-354 and of any debts owed other lenders on the property will be included with a current appraisal of the FmHA or its successor agency under Public Law 103-354 security and security equity position. The appraisal will be completed in accordance with §761.7 of this title. Recommendations of the County Committee, County Supervisor, and District Director will be included on the following:)

(i) Reasons why continuation of the loan would be in the best interest of the Government.

(ii) The effect continuation of the account will have on the FmHA or its successor agency under Public Law 103-354 program in the area.

(iii) Comments and opinion on adequacy of security and ability of transferor to pay the FmHA or its successor agency under Public Law 103-354 debt.

(2) The State Director will review all information submitted and request additional information needed to reach a decision. This includes advice of OGC. After deciding, the State Director will either:

(i) Return the file to the County Supervisor with instructions to proceed with liquidation of the account in accordance with §1965.26(b) of this subpart and state reasons for the decision; or

(ii) Return the file to the County Supervisor stating reasons for the decision and giving consent to continue the account as an NP loan with instructions for obtaining liability of the transferee, maintaining security position and future servicing. If FmHA or its successor agency under Public Law 103-354 is adequately secured and the entire FmHA or its successor agency under Public Law 103-354 debt will be paid in 5 years or less from date of the

transfer, the borrower-transferor can be released of liability under paragraph (f) of this section and the account serviced in the name of the transferee. If the entire FmHA or its successor agency under Public Law 103-354 debt will not be paid within 5 years from date of the transfer, the borrower will not be released of liability, the account will continue to be serviced in the borrower's name and the borrower will remain liable for the debt under the terms of the security instruments. Advice of OGC will be obtained as needed to determine the borrower's continued liability and adequacy of security.

[51 FR 4140, Feb. 3, 1986, as amended at 51 FR 6735, Feb. 26, 1986; 51 FR 13483, Apr. 21, 1986; 51 FR 40787, Nov. 10, 1986; 51 FR 45440, Dec. 18, 1986; 53 FR 7339, Mar. 8, 1988; 53 FR 35797, Sept. 14, 1988; 54 FR 29333, July 12, 1989; 56 FR 3396, Jan. 30, 1991; 56 FR 12646, Mar. 27, 1991; 56 FR 15831, Apr. 18, 1991; 56 FR 67484, Dec. 31, 1991; 58 FR 44752, Aug. 25, 1993; 58 FR 52654, Oct. 12, 1993; 60 FR 28321, May 31, 1995; 62 FR 10159, Mar. 5, 1997; 64 FR 62569, Nov. 17, 1999; 66 FR 7568, Jan. 24, 2001]

§§ 1965.28–1965.30 [Reserved]

§ 1965.31 Taking liens or real estate as additional security in servicing FmHA or its successor agency under Public Law 103-354 loans.

Additional liens will not be taken for other loans on marginal land used for the production of softwood timber if the land is presently securing an ST loan.

(a) *Liens.* When taking real estate as additional security, the best lien obtainable will be taken on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Normally, the prior concurrence of the District Director will be obtained. Liens will be taken only when:

(1) Present security for the loan is not adequate to protect the interests of the FmHA or its successor agency under Public Law 103-354, and

(2) The borrower is delinquent, has substantial equity in the real estate to be mortgaged and it is determined that the taking of the mortgage will not prevent the making of an FmHA or its successor agency under Public Law 103-354 real estate loan, which might be needed in the foreseeable future.

(b) *Real estate.* Before taking real estate as additional security for an FmHA or its successor agency under Public Law 103-354 loan the following items will be documented in the running record:

(1) the facts which justify taking the real estate lien;

(2) A conservative estimate of the present market value of the real estate to be mortgaged. (It will not be necessary to submit an appraisal of the property to be mortgaged.);

(3) A brief description of any existing liens on the property, and the repayment terms and the unpaid balance on the debts secured by existing liens, unless this is accurately reflected on a recent financial statement; and

(4) The name of the title holder and how title of the property is held. (Title evidence need not be required.)

(c) *Forms.* Each real estate lien taken as additional security for the FmHA or its successor agency under Public Law 103-354 loans will be taken on Form FmHA or its successor agency under Public Law 103-354 1927-1 (state), "Real Estate Mortgage or Deed of Trust for _____ (Insured Loans to Individuals)" unless a State supplement requires the use of a form of mortgage comparable to that which secures the existing loan(s) to be additionally secured. The notes evidencing the FmHA or its successor agency under Public Law 103-354 loans for which the additional security will be taken will be described in the same mortgage.

[51 FR 4140, Feb. 3, 1986, as amended at 52 FR 26139, July 13, 1987; 53 FR 35798, Sept. 14, 1988; 56 FR 67484, Dec. 31, 1991; 58 FR 52655, Oct. 12, 1993]

§ 1965.32 [Reserved]

§ 1965.33 Cosigners—SFH loans.

See § 1965.129 of subpart C of this part for servicing SFH loans with cosigners.

§ 1965.34 [Reserved]

§ 1965.35 Exception authority.

The Administrator or delegate may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with