

§ 1965.69 [Reserved]

§ 1965.70 Reamortization.

(a) *General.* State Directors may approve the reamortization of RRH, RCH, and LH loan accounts within their approval authority for the type of loan involved. RHS loans will not be reamortized and will be serviced according to program requirements. If an RHS loan becomes seriously delinquent and efforts to sell the lots are not successful, the account will be liquidated according to subpart A of part 1955 of this chapter. The reamortization of an account will make the borrower subject to the restrictive-use provisions contained in exhibit A-1 of subpart E of this part.

(b) *Conditions for reamortization.* The conditions under which a reamortization will be considered are:

(1) The borrower has made extra payments and/or refunds totaling 10 percent or more of the original loan amounts being reamortized (from sources other than the sale of units within the LH, RRH, or RCH project), and the State Director determines that the borrower and the tenants cannot reasonably be expected to meet their obligations unless the account is reamortized to reduce substantially the FmHA or its successor agency under Public Law 103-354 installments and rental rates; or,

(2) The borrower has a substantial delinquency which was caused by circumstances beyond the ultimate control of the borrower that cannot be cured within one year, and the borrower has acted in good faith and has complied with all applicable FmHA or its successor agency under Public Law 103-354 procedures and policies governing the particular program under which the loan is made; or

(3) The borrower has received an equity loan as an incentive to avert prepayment, or a subsequent loan has been made to a nonprofit corporation or public agency to purchase a project to avert prepayment; or

(4) And, all of the following conditions exist and are adequately documented in the official case file and on Form FmHA or its successor agency under Public Law 103-354 1951-33, "Reamortization Request," as appropriate:

(i) The reamortization will not operate to the financial detriment of the FmHA or its successor agency under Public Law 103-354 or impair the security rights of the FmHA or its successor agency under Public Law 103-354.

(ii) The budget or plan of operations for the borrower provides reasonable assurance that the newly scheduled payments will be made according to the terms of the proposed reamortization, and that the charges for the use of the facility or service are within the payment ability of those it is intended to serve and are comparable to other similar units in the area; and, the rent increase procedures set forth in exhibit C of subpart C of part 1930 of this chapter will be followed if any increase in rental rates is required.

(iii) The Board of Directors and membership will retain, or have definite plans for obtaining, membership and community support; and, will provide competent management for the continued operation of the borrower entity and the facility financed with the loan.

(iv) The State Director believes that reamortization will enable the borrower to operate successfully and carry out the purpose of the loan.

(v) The FmHA or its successor agency under Public Law 103-354 lien position remains unchanged.

(vi) The approval official must be satisfied that the security (including the potential income for debt service) will be adequate to protect the FmHA or its successor agency under Public Law 103-354's interests over the term of the reamortization. An appraisal as required by FmHA or its successor agency under Public Law 103-354 Instruction 1922-B (available in any FmHA or its successor agency under Public Law 103-354 office) must be made and must reflect that the security is adequate for the principal and interest being reamortized when the reamortization will extend the term of the repayment period more than 5 years.

(vii) The borrower has corrected any management deficiencies which may have contributed to the borrower's previous inability to generate sufficient income to bring or keep the account

current. Such actions may include revision of the management plan or employment of professional management services.

(viii) All MFH loans being reamortized must be closed on PASS, except LH loans specified in §1951.501(a)(2)(i) of subpart K of part 1951 of this chapter. All initial and subsequent loans must convert to PASS in connection with the reamortization.

(ix) When recoverable cost items are involved, they are first capitalized by adding them to the principal loan balance outstanding on the oldest loan and then the entire indebtedness (principal plus outstanding interest, overage and late fees) is reamortized.

(x) Audit receivables may not be reamortized.

(c) *Submission to National Office.* When the unpaid indebtedness of the borrower's account(s) to be reamortized exceeds the State Director's approval authority and the State Director determines that the conditions of paragraph (b) of this section can be met, the request for reamortization, official case file and all other pertinent information, along with complete comments and recommendations by both the State and District Directors, will be sent to the National Office. The State Director shall submit all subsequent reamortization requests for the same project to the National Office for prior authorization.

(d) *Processing reamortizations.* To reamortize the account, the following actions will be taken:

(1) Form FmHA or its successor agency under Public Law 103-354 1965-16, "Multiple Family Housing Reamortization Agreement," will be completed according to the FMI. The effective date and the due date for all payments will be the first of the month, except for LH loans whose due date will be established in accordance with the FMI.

(2) If the note or assumption agreement being reamortized is not held in the District Office, the District Director will obtain the promissory note and any assumption agreement from the Finance Office before processing the reamortization.

(3) On the back of the original of the note or assumption agreement (new terms), below all signatures and en-

dorsements, the District Director will insert the following: "A reamortization agreement dated _____ 19____, in the principal sum of \$_____, has been given to modify the payment schedule of the note."

(4) The end of the amortization period will be the final due date of the note being reamortized, unless the term is extended with the advice and guidance of OGC (and it is permissible according to State and local Statutes), and the FmHA or its successor agency under Public Law 103-354 lien position is not altered. (Any extension of the final due date will not exceed the lesser of the remaining useful life of the security property or the maximum term authorized by the respective loan program authorizations.)

(5) The interest rate for the account will be unchanged except when the final due date has been extended. The interest rate charged will be the rate at the time the Reamortization Request (Form FmHA or its successor agency under Public Law 103-354 1951-33) is approved, or the current interest rate at closing, whichever is less.

(6) The reamortization will be processed with the guidance of OGC.

(7) If the borrower is to receive interest credit benefits following the reamortization of the account, the current interest credit agreement will be cancelled and a new Form FmHA or its successor agency under Public Law 103-354 1944-7 will be prepared and attached to Form FmHA or its successor agency under Public Law 103-354 1965-16 for submission to the Finance Office.

(8) The prepayment restrictive-use provisions of section 502(c) of title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in exhibit A-1 of subpart E of this part for RRR, RCH or LH loans will be added with the advice of OGC, to the loan agreement/ resolution and security instruments, as a condition of FmHA or its successor agency under Public Law 103-354 approval of the action. The restrictive-use period will begin on the date the amortization agreement is effective.

(9) Reamortizations will always be closed the first day of the month. Unpaid interest to the date of closing may be capitalized.

[49 FR 49587, Dec. 21, 1984, as amended at 50 FR 8605, Mar. 4, 1985; 52 FR 24288, June 30, 1987; 55 FR 25081, June 20, 1990; 56 FR 25352, June 4, 1991; 56 FR 66964, Dec. 27, 1991; 58 FR 38930, July 21, 1993]

§ 1965.71 [Reserved]

§ 1965.72 Deceased borrower.

Deceased borrower cases will be handled according to the policy outlined in §1962.46 of subpart A of part 1962 of this chapter except that all references to the County Supervisor are now construed to mean the District Director. The advice of OGC will be obtained as necessary.

§ 1965.73 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled according to the policy outlined in §1962.47 of subpart A of part 1962 of this chapter except that all references to the County Supervisor now mean District Director. The handling of bankruptcy cases varies from state to state. Therefore, the State Director may issue State Supplements providing more specific guidance to expedite the handling of those cases. The advice of OGC will be obtained as necessary.

§ 1965.74 Divorce actions.

When individual borrowers with loans are involved in a divorce action, the District Director will review the case after the final divorce decree has been granted to determine if any action is needed for the future servicing of the account. The District Office file will be submitted to the State Director for advice if the District Director is uncertain of the servicing actions needed to protect the FmHA or its successor agency under Public Law 103-354's interest or if continuation of the loan with the remaining borrower is not authorized. No subsequent loan will be made to pay any equity as a result of a divorce action.

§ 1965.75 Abandonment.

When the District Director believes that the borrower has abandoned a project, an immediate check with the

appropriate sources (for example: tenants, management agents, assessor's office, etc.) will be made to determine if the borrower has moved and, if so, whether a forwarding address can be determined so that further servicing actions can be taken.

(a) A property is considered abandoned when any or all of the following conditions exist:

(1) The borrower cannot be located after the District Director has made diligent efforts to contact the borrower. This condition also applies to those instances where the general partner(s) of a limited partnership cannot be located and the limited partners are unknown or cannot be located.

(2) The project remains unoccupied for an extended period of time and the borrower makes no effort to maintain the security property, secure eligible occupants, and/or comply with the objectives of the loan within a reasonable period of time as specified by the District Director in a certified letter sent to the borrower requesting compliance.

(b) If the property is not being maintained and the District Director determines that the borrower has abandoned the project, the District Director will attempt to contact any prior lienholders with a request that they take control of the property and make any emergency repairs necessary. If no prior lienholder is involved or the prior lienholder cannot immediately be contacted or refuses to make the emergency repair, the District Director will immediately notify the State Director and request permission to take possession of the property pending liquidation, make emergency repairs to prevent further deterioration of the security, and to enter into a lease with the individual tenants, or a management or caretaker's agreement, on behalf of the borrower.

(c) A caretaker or management agent will normally be obtained when the borrower has abandoned the security property or has failed to maintain its operation and the State Director determines, with the advice of OGC, that the FmHA or its successor agency under Public Law 103-354 should take possession of the property to best protect the interest of the Government subject to the following: