

needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the repayment requirements for the loan request. Persons who are minors (except a youth obtaining a youth loan), mental incompetents, or noncitizens will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA or its successor agency under Public Law 103-354 is to incur individual personal liability regardless of any State law to the contrary. A youth executing a promissory note shall incur full personal liability for the indebtedness evidenced by such note.

(2) *Entities.* The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all members of the entity.

[43 FR 55883, Nov. 29, 1978, as amended at 51 FR 13448, Apr. 21, 1986; 53 FR 35691, Sept. 14, 1988; 58 FR 48286, Sept. 15, 1993; 68 FR 7697, Feb. 18, 2003]

§§ 1941.55–1941.56 [Reserved]

§ 1941.57 Security instruments.

Security instruments referred to in this subpart are financing statements, security agreements, chattel mortgages, and similar lien instruments. To obtain a security interest in chattels and crops in States which have adopted the Uniform Commercial Code (UCC), both a financing statement and a security agreement are required, although only the financing statement must be filed or recorded in public records. See paragraph (g) of this section for filing or recording instructions. In Louisiana a Chattel Mortgage and Crop Pledge or Crop Pledge, as appropriate, is required to obtain a security interest in chattels and crops.

(a) *Executing security instruments by borrowers.* State supplements will be issued, as necessary, to carry out the provisions of this paragraph. In order to close the loan and obtain the desired lien, security instruments will be executed by appropriate entity officials,

on behalf of an entity borrower. Any other signatures needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the security requirements for the loan request.

(b) *Undivided interests.* An applicant obtaining a loan to finance an undivided interest in security or to refinance debts on an undivided interest in such property will secure the loan with a lien on the undivided interest in the property. All individuals having an undivided interest in the security will execute Form FmHA or its successor agency under Public Law 103-354 441-12, "Agreement for Disposition of Jointly-Owned Property", unless a written agreement to the same affect as this form has already been signed.

(c) *Security instrument forms.* (1) Form FmHA or its successor agency under Public Law 103-354 440-25, "Financing Statement," or Form FmHA or its successor agency under Public Law 103-354 440A-25, "Financing Statement (Carbon-Interleaved)"; and Form FmHA or its successor agency under Public Law 103-354 440-4, "Security Agreement (Chattels and Crops)," will be used to obtain security interests in chattel property in States which have adopted the Uniform Commercial Code (UCC), unless a State supplement requires the use of other forms.

(2) Form FmHA or its successor agency under Public Law 103-354 440-4 LA, "Chattel Mortgage and Crop Pledge (Louisiana)," or Form FmHA or its successor agency under Public Law 103-354 440-4A LA, "Crop Pledge (Louisiana)," will be used in the State of Louisiana.

(3) Other forms will be used as provided in State supplements in Puerto Rico, Guam, American Samoa and the Northern Mariana Islands.

(d) *Taking security instruments—(1) Financing statement.* A financing statement is effective for 5 years from the date of filing and as long thereafter as it is continued by filing a continuation statement.

(i) *Initial loan.* A financing statement will be required for every initial loan except when a filed financing statement covering the applicants property

is still effective, covers all types of chattel property that will serve as security for the initial loan, and describes the land on which crops and fixtures are or will be located.

(ii) *Subsequent loan.* A financing statement will not be required unless the filed financing statement is not effective, does not cover all types of chattel property that will serve as security for the subsequent loan, or does not describe the land on which crops or fixtures are or will be located. If the loan debt is being secured for the first time, however, the procedure for securing initial loans stated in paragraph (d)(1)(i) of this section will be followed.

(2) *Security Agreements—(i) Initial loan.* When an initial loan is made to an applicant, including to a paid-in-full borrower, a new security agreement will be required in all cases. The security agreement will be executed not later than the first withdrawal of loan funds from the supervised bank account or delivery of the loan check to the borrower.

(ii) *Subsequent loan.* An additional security agreement will be required if property which is to serve as security for the debt is not described either specifically or in the printed form of the previous security agreement, or if an additional agreement it is needed to obtain or maintain a security interest in crops.

(A) An additional security agreement may also be executed to reflect significant changes in security.

(B) An additional security agreement is not necessary if the existing security agreement covers all types of chattels that will serve as security for the subsequent loan, describes the land on which the crops or fixtures are or will be located, and was executed within 1 year before the crops which are offered as security became growing crops.

When determined necessary by OGC, a State supplement will be issued to further explain when a security agreement covering crops will be required.

(e) *Describing collateral in security instruments.* (1) Financing statements describe certain types of collateral. If items of collateral not covered in the printed form of the financing statement are to serve as security, they

should be described by type or specifically identified.

(2) Generally, animals, birds, fish, etc., should be described by groups in the security agreement. The serial or other identification numbers of major items of equipment should be listed in the security agreement. If a security interest is to be taken in property such as inventory, supplies, recreation or other nonfarm equipment, or fixtures which cannot be readily described under the column headings of items 2 or 3 of Form FmHA or its successor agency under Public Law 103-354 440-4, an appropriate description of such property will be inserted in item 2 or 3 below the other property, without regard to the column headings.

(3) The advice of the Office of the General Counsel (OGC) will be obtained as to how to describe in financing statements and security agreements items such as grazing permits, milk bases, and membership or stock in cooperative associations. The property to be described in security instruments should be reconciled with any existing security instruments and with Form FmHA or its successor agency under Public Law 103-354 462-1, "Record of the Disposition of Security Property."

(4) After the initial security agreement is executed, and after the borrower obtains all the property which FmHA or its successor agency under Public Law 103-354 wants specifically described, by item, in the security agreement, a new security agreement will be executed.

(f) *Executing security instruments by County Office employees.* The County Supervisor and any County Office employee authorized by the County Supervisor may execute on behalf of the Government any legal instruments necessary to obtain or preserve security for loans. This includes financing statements, security agreements, chattel mortgages and similar lien instruments, as well as severance agreements, consent and subordination agreements, affidavits and acknowledgments.

(g) *Filing or recording security instruments.* (1) Ordinarily, in States which have adopted the UCC, financing statements may be delivered by hand or mailed to the filing officers for filing

or recording when the loan is approved. However, when this is not practical, the financing statement may be filed at a later date, but not later than the first withdrawal of loan funds from the supervised bank account or delivery of the loan check to the borrower. If crops or other property of the borrower are located or will be located in a State other than that of the borrower's residence, the County Office servicing the loan will contact the County Office in the other State for information as to the security instruments to be used and the place(s) of filing or recording in the other State. The financing statement will be filed or recorded as required by State supplements.

(2) Security agreements will not be filed or recorded unless required by State supplements. Form FmHA or its successor agency under Public Law 103-354 440-4 LA or Form FmHA or its successor agency under Public Law 103-354 440-4A LA will be filed or recorded in Louisiana as provided by State supplements.

[43 FR 55883, Nov. 29, 1978, as amended at 50 FR 27415, July 3, 1985; 51 FR 13448, Apr. 21, 1986; 53 FR 35691, Sept. 14, 1988; 68 FR 7697, Feb. 18, 2003]

§§ 1941.58–1941.59 [Reserved]

§ 1941.60 Purchase money security interest.

A purchase money security interest will take priority over an earlier perfected security interest if a security agreement is taken and a financing statement is filed before the purchaser receives possession of the property or within 10 days thereafter, subject to the following limitations:

(a) *Motor vehicles.* For motor vehicles required to be licensed, any action necessary to obtain perfection in the particular State, such as having the security interest noted on the certificate of title, must be taken before the purchaser receives possession or within 10 days. In some States, it is not necessary to file a financing statement to perfect a security interest in such motor vehicles; however, FmHA or its successor agency under Public Law 103-354 will always require both a security agreement and a financing statement. A State supplement will be issued, if

necessary to set out the procedure for obtaining a lien on a motor vehicle, motorboat, or any special type of security.

(b) *Farm equipment.* A purchase money security interest in farm equipment costing \$2,500 or less (other than fixtures or motor vehicles required to be licensed), will take priority over an earlier perfected security interest if a security agreement is obtained, even though a financing statement is not executed or filed. FmHA or its successor agency under Public Law 103-354, however, will always file a financing statement. State supplements will be issued, as necessary, to further explain the requirements for complying with this section.

(c) *Inventory.* A purchase money security interest in inventory will take priority over an earlier perfected security interest, provided:

(1) A security agreement is taken and a financing statement is filed not later than the time the purchaser receives possession of the property, and

(2) Before the purchaser takes possession of the property, written notice is given to the party holding the earlier perfected interest that the purchase money creditor has acquired or expects to acquire a purchase money security interest in the inventory, which must be described by item or type. When determined necessary by OGC, a State supplement will be issued to further explain the requirements for perfecting a purchase money security interest in inventory.

(d) *Fixtures.* A security interest taken in goods before they become fixtures has priority over a security interest in the real estate to which they are attached. A security interest taken in goods after they become fixtures is valid against all persons later acquiring an interest in the real estate. It is not valid against persons who had an interest in the real estate when the goods become fixtures, unless they execute a consent disclaimer or Form FmHA or its successor agency under Public Law 103-354 440-26, "Consent and Subordination Agreement".

(e) *Crops.* A security interest taken in crops not more than 3 months before the crops are planted or otherwise become growing crops, has priority over