

security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be distributed and applied as follows:

(i) First to the account secured by the lowest priority of lien on the property from which the extra payment was obtained. Any balance will be applied to other FmHA or its successor agency under Public Law 103-354 loans in ascending order of priority.

(ii) For amortized loans, first to interest accrued to the date payment is received, and then to principal. For debt instruments with installments of principal plus interest, such payments will be applied to the final unpaid principal installment.

(b) *Soil and Water Conservation Loans.* (1) Regular payments for such loans are defined in §1951.8(a) of subpart A of part 1951 of this chapter, and are distributed according to §1951.9(a) of that subpart unless otherwise established by the note or bond.

(2) Extra payments are defined in §1951.8(b) of subpart A of part 1951 of this chapter, and are distributed according to §1951.9(b) of that subpart.

[55 FR 4399, Feb. 8, 1990, as amended at 66 FR 1569, Jan. 9, 2001; 68 FR 61331, Oct. 28, 2003; 68 FR 69952, Dec. 16, 2003]

§ 1951.222 Subordination of security.

When a borrower requests FmHA or its successor agency under Public Law 103-354 to subordinate a security instrument so that another creditor or lender can refinance, extend, reamortize, or increase the amount of a prior lien; be on parity with; or place a lien ahead of the FmHA or its successor agency under Public Law 103-354 lien, it will submit a written request to the servicing office as provided below. For purposes of this subpart, subordination is defined to include cases where a parity security position is being considered.

(a) *General.* The following requirements must normally be met:

(1) The request must be for subordination of a specific amount of the FmHA or its successor agency under Public Law 103-354 indebtedness, and the amount must be within the ap-

proval official's authority as set forth in exhibits A, B, and C of subpart A of part 1901 of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office).

(2) It must be determined that the borrower cannot refinance its FmHA or its successor agency under Public Law 103-354 debt in accordance with subpart F of part 1951 of this chapter.

(3) The transaction will further the purposes for which the FmHA or its successor agency under Public Law 103-354 loan was made, not adversely affect the borrower's debt-paying ability, and result in the FmHA or its successor agency under Public Law 103-354 debt being adequately secured.

(4) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as the requirements of all other debts.

(5) Any proposed development work will be planned and performed according to §1942.18 of subpart A of part 1942 of this chapter or in a manner directed by the creditor which reasonably attains the objectives of that section.

(6) All contracts, pay estimates, and change orders will be reviewed and concurred in by the State Director.

(7) In cases involving land purchase, the FmHA or its successor agency under Public Law 103-354 will obtain a mortgage on the purchased land.

(8) When the transaction involves more than \$10,000 or the approval official considers it necessary, a present market value appraisal report will be obtained. However, a new report need not be obtained if there is an appraisal report not over one year old which permits a proper determination of the present market value of the total property after the transaction.

(9) The proposed action must not change the nature of the borrower's activities so as to make it ineligible for FmHA or its successor agency under Public Law 103-354 loan assistance.

(10) Necessary consent and subordination of all other outstanding security interests must be obtained.

(b) *Authorities.* Proposals not meeting one or more of the above requirements will be submitted to the Administrator, Attention (appropriate program division) for prior concurrence. All

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other proposals may be approved by the official with loan approval authority under subpart A of part 1901 of this chapter.

(c) *Processing.* The case file is to include:

(1) The borrower's written request on Form FmHA or its successor agency under Public Law 103-354 465-1, "Application for Partial Release, Subordination, or Consent," if appropriate, or in other acceptable format. The request must contain the purpose of the subordination; exact amount of money or property involved; description of security property involved; type of security instrument; name, address, line of business and other general information pertaining to the party in favor of which the request is made; and other pertinent information to evaluate the need for the request;

(2) Current balance sheet;

(3) If development work is involved, an operating budget on Form FmHA or its successor agency under Public Law 103-354 442-7, "Operating Budget," or similar form which projects income and expenses through the first full year of operation following completion of planned improvements; or if no development work is involved, an income statement and budget on Form FmHA or its successor agency under Public Law 103-354 442-2, "Statement of Budget, Income, and Equity," schedules 1 and 2, or similar form;

(4) Copy of proposed security instrument;

(5) Appraisal report, when applicable;

(6) OGC opinion on the request;

(7) Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office), appropriately completed;

(8) Appropriate environmental review; and

(9) Any other necessary supporting information.

(d) *Closing.* All requests for subordination will be closed according to instructions from OGC except those which affect only chattel liens other than pledges of revenue. FmHA or its successor agency under Public Law 103-354's consent on Form FmHA or its successor agency under Public Law 103-354 465-1 will be signed concurrently with Form FmHA or its successor agency

under Public Law 103-354 460-2, "Subordination by the Government," when applicable.

[55 FR 4399, Feb. 8, 1990, as amended at 66 FR 1569, Jan. 9, 2001]

EFFECTIVE DATE NOTE: At 69 FR 70884, Dec. 8, 2004, §1951.222 was amended by revising paragraph (a)(1), effective Jan. 7, 2005. For the convenience of the user, the revised text is set forth as follows:

§ 1951.222 Subordination of security.

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(a) * * *

(1) The request must be for subordination of a specific amount of the Rural Development indebtedness.

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§ 1951.223 Reamortization.

(a) *State Director authorization.* The State Director is authorized to approve reamortization of loans under the following conditions:

(1) The account is delinquent and cannot be brought current within one year while maintaining a reasonable reserve;

(2) The borrower has demonstrated for at least one year by actual performance or has presented a budget which clearly indicates that it is able to meet the proposed payment schedule;

(3) The amount being reamortized is within the State Director's loan approval authorization; and

(4) There is no extension of the final maturity date.

(b) *Requests requiring National Office approval.* Reamortizations not meeting the above conditions require prior National Office approval. Requests will be forwarded to the National Office with the case file, including:

(1) Current budget and cash flow prepared on Form FmHA or its successor agency under Public Law 103-354 442-2, schedules 1 and 2, or similar form;

(2) Current balance sheet and income statement;

(3) Exhibit A of this subpart, appropriately completed;

(4) Form FmHA or its successor agency under Public Law 103-354 1951-33, "Reamortization Request," completed in accordance with §1951.223(c)(3) of this subpart, when applicable; and