

whether borrowers are operating successfully, are complying with their loan obligations, and are likely to continue with compliance. This includes conducting all civil rights compliance reviews to determine compliance with all appropriate legislation regarding nondiscrimination in federally financed programs, in accordance with Subpart E of Part 1901 of this chapter.

(3) Promptly report to the State Director the failure of any borrower to comply with the terms and conditions of its agreements with FmHA or its successor agency under Public Law 103-354 after noncompliance has been brought to the attention of the borrower and recommended corrective action has not been taken.

(4) Furnish training and technical guidance not readily available through other sources to borrowers to protect the FmHA or its successor agency under Public Law 103-354's interests. This training and guidance may relate to business operations, project management, personnel training, membership activities, fair housing requirements and policy, or any other phase which vitally affects the borrower's operations.

(5) Maintain the Management Card System according to FmHA or its successor agency under Public Law 103-354 Instruction 1905-A (available in any FmHA or its successor agency under Public Law 103-354 office) to assure prompt compliance by borrowers with FmHA or its successor agency under Public Law 103-354 requirements relating to repayments, budgets and reports, taxes, insurance and bond renewals, reports required by State law or regulations as indicated in State Supplements, security instrument expirations, and other items of loan and security servicing.

(6) Maintain the official borrower case files according to the requirements of FmHA or its successor agency under Public Law 103-354 Instruction 2033-A (available in FmHA or its successor agency under Public Law 103-354 State and District offices), and MISTR according to FmHA or its successor agency under Public Law 103-354 Instruction 2033, and

(7) Promptly collect FmHA or its successor agency under Public Law 103-

354 loan payments and service security for the FmHA or its successor agency under Public Law 103-354 loans.

(b) State Director will:

(1) Coordinate and direct loan servicing activities relating to borrowers and perform other functions as prescribed by this subpart.

(2) Delegate in writing any authority delegated to the State Director in this subpart unless otherwise restricted, to only those State Office staff members who, in the opinion of the State Director, have been adequately trained and who demonstrate their knowledge in understanding and administering the MFH policies and procedures of FmHA or its successor agency under Public Law 103-354. The individual delegation of responsibility and authority may be limited or expanded in scope, or revoked, as deemed appropriate by the State Director and will be prepared according to FmHA or its successor agency under Public Law 103-354 Instruction 2006-F (available in any FmHA or its successor agency under Public Law 103-354 office). Unless specifically authorized elsewhere in this subpart, the authorities of the State Director may not be delegated below the State Office staff level. (The State Office staff does not include District Office staff for the purposes of this subpart.)

(3) Ensure that District Directors carry out their responsibilities for loan servicing and provide the District Office with appropriate technical guidance, training and follow-up supervision to service loans.

(4) Coordinate as appropriate with OGC.

(5) Maintain necessary liaison with State and local officials.

§§ 1965.59-1965.60 [Reserved]

§ 1965.61 General loan servicing requirements.

(a) *Payments.* Payments will be handled in accordance with subpart A of part 1951 of this chapter, and subparts D and E of part 1944 of this chapter.

(b) *Borrower reports, audits, and analyses.* Borrower reports, audits, and analyses, including the approval or disapproval of annual operating budgets, requests for rent and occupancy charge changes, and occupancy problems will

be processed and handled according to subpart C of part 1930 of this chapter.

(c) *Maintenance.* Project maintenance is of utmost importance. All projects must be adequately maintained by the borrower not only to protect the FmHA or its successor agency under Public Law 103-354's interest, but also to attract potential clients (tenants for rental projects, members for cooperative projects, purchasers for RHS). Maintenance should be reviewed during each supervisory visit and appropriate recommendations made to the borrower. The District Director will inspect the real estate security as required by subpart C of part 1930 of this chapter.

(d) *Actions by third parties affecting FmHA or its successor agency under Public Law 103-354 security.* Cases including third party action will be handled according to the provisions of 7 CFR part 3550, except that references to the County Supervisor shall be construed to mean District Director when applied to multiple housing type programs.

(e) *Lease of security property.* The leasing of property (except to tenants for specific program purposes) serving as security for multiple housing loans and grants other than as indicated in this section is not authorized. Approval of leases by the State District is authorized in the following cases:

(1) *Leases to public housing authorities.* RRH and RCH borrowers may be permitted to renew and continue leasing all or part of the housing facilities to a housing authority with the benefits of the HUD Section 23 leasing program. No new leases will be entered into. The lease will be on a form provided by the housing authority and must be on terms that will enable the borrower to continue the objectives of the loan and make payments on schedule.

(2) *Lease of a portion of the security property.* When the RRH or RCH or LH borrower will continue to operate the facilities for the purpose for which the loan or grant was made, the State Director or his/her designee may approve the leasing of related facilities such as kitchens, recreation facilities and community buildings, subject to the applicable provisions of §1944.212 of subpart E of part 1944 of this chapter for RRH and RCH and §1944.158 of subpart D of

part 1944 of this chapter for LH and under the following conditions:

(i) The lease is advantageous to the borrower and the tenants, and will not impair the FmHA or its successor agency under Public Law 103-354's interest.

(ii) The amount of the consideration is adequate. The consideration must be sufficient to pay all prorated operating and maintenance expenses, a prorated share of the annual reserve deposit, and the prorated part of the loan amortization at the note rate of interest.

(iii) The lease should provide at its termination for the restoration of the leased space to its original condition or a condition acceptable to the owner and FmHA or its successor agency under Public Law 103-354.

(iv) Consent to the lease shall not exceed 3 years at a time unless the State Director determines with the prior written concurrence of the National Office that a longer lease is clearly more advantageous to the borrower, the tenants, and the FmHA or its successor agency under Public Law 103-354.

(v) If foreclosure action has been approved, consent to lease and use of proceeds will be granted only under directions from OGC or the U.S. Attorney, as appropriate.

(vi) When another lienholder's mortgage requires consent of that lienholder to a lease, written consent will be obtained prior to FmHA or its successor agency under Public Law 103-354 approval of the lease.

(vii) The authority to approve the lease of laundry facilities or commissary stores may be redelegated in writing to the District Director by the State Director.

(3) *Mineral leases.* Mineral leases will be handled according to 7 CFR part 3550 except that all references to County Supervisor will be construed to mean District Director when applied to the Multiple Housing Programs.

(4) *Processing.* When a borrower requests consent to lease a portion of the security property or the District Director discovers that the borrower is leasing the security without consent, Form FmHA or its successor agency under Public Law 103-354 465-1, "Application for Partial Release, Subordination or Consent," will be prepared.

(i) The form will show the terms of the proposed lease and will specify the use of proceeds, including any proceeds to be released to the borrower.

(ii) The form will be submitted through the District Director to the State Director, along with a copy of the lease, official borrower case files, the District Director's comments and recommendations, and any other information pertinent to the transaction.

(iii) The State Director will review the material, obtain the guidance of OGC prior to indicating approval or disapproval on Form FmHA or its successor agency under Public Law 103-354 465-1, and provide additional servicing instructions to the District Director.

(f) *Consent of lienholders.* Before FmHA or its successor agency under Public Law 103-354 consents to any transaction which affects its security or lien position, the written consent of any other lienholders must be obtained. The consent will include an agreement on the disposition of any funds resulting from the transaction and will be consistent with the respective loan program requirements.

[49 FR 49587, Dec. 21, 1984, as amended at 50 FR 39640, Sept. 30, 1985; 56 FR 2257, Jan. 22, 1991; 58 FR 40956, July 30, 1993; 67 FR 78329, Dec. 24, 2002; 68 FR 61332, Oct. 28, 2003]

§ 1965.62 [Reserved]

§ 1965.63 Issuance or transfer of stock, or change in membership, or membership interests in organizations indebted to FmHA or its successor agency under Public Law 103-354.

Organizations which may be indebted to FmHA or its successor agency under Public Law 103-354 include, but are not limited to: public bodies, broadly-based nonprofit corporations, nonprofit organizations of farmworkers, associations of farmers, RCH consumer cooperatives, profit and limited profit corporations, trusts, profit and limited profit general partnerships, and limited partnerships. This section describes the policy of FmHA or its successor agency under Public Law 103-354 in approving changes of members, ownership interest, and transfer or issuance of stock in these organizations, to determine the continued eligibility of the borrower entity. It *does not* apply to the sale or exchange of title to the security prop-

erty, or the conversion from one form of ownership to another such as changing a general partnership to a limited partnership. Stock, partnership, or membership changes which the State Director is not authorized to approve under the conditions of this section will be submitted to the National Office for handling.

(a) *Profit and limited profit corporations, general partnerships, limited partnerships, and trusts.* Ownership changes within the existing borrower entity will be processed as follows:

(1) Ownership changes totalling 100 percent of the ownership interests in a project within any consecutive 12-month period will be treated as transfers and processed under the provisions of § 1965.65 of this subpart.

(2) Ownership changes in *excess of 50% but less than 100%* within the first five years of loan or assumption closing, will be subject to § 1965.65(a)(4) of this subpart which covers hardship provisions and the restrictions on subsequent changes. However, changes in only the limited partner interests in a limited partnership will not be subject to the restrictions of § 1965.65(a)(4) of this subpart when completed in accordance with the approved partnership agreement.

(3) Other ownership changes of 50% or less within any consecutive 12 month period will be processed without restriction.

(4) All changes of less than 100% will be processed according to paragraph (e) of this section.

(b) *Public bodies, broadly-based nonprofit corporations, or nonprofit organizations of farmworkers.* FmHA or its successor agency under Public Law 103-354 consent will not be required for broadly-based nonprofit corporations or nonprofit organizations of farmworkers indebted to FmHA or its successor agency under Public Law 103-354 to change or transfer membership. Each organization, however, must maintain the number and type of members required by its Articles of Incorporation and By-laws. Organizations will only permit membership changes as authorized by the organizational documents previously approved by FmHA or its successor agency under Public Law 103-