

except that right-of-way easements may be granted or conveyed with minimal or no consideration being offered if:

- (i) The value of the security property will not be reduced;
- (ii) The suitability of the security property for the intended purpose will not be impaired; and
- (iii) The easement is granted to allow the borrower to develop additional lots or units that will be integrated into the housing project or for enhancement of streets, utilities or other services provided by a public body.

(4) The property that will remain as security for Agency loans, after any transaction related to security property, will fully secure the borrower's debt to the Agency.

(5) Borrowers must report to the Agency the total of all proceeds derived from the sale or other disposition of property serving as security for Agency loans. The proceeds from the disposition of the security property will be used for purposes approved by the Agency.

§ 3560.408 Lease of security property.

(a) *General.* Borrowers must obtain Agency approval prior to entering into a lease agreement related to any property serving as security for Agency loans. An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency can give lease approval for real property serving as security for Agency loans.

(b) *Leases to public housing authorities.* Borrowers may not lease all or part of their housing facilities to a housing authority. Lease agreements in place prior to the effective date of this regulation may be continued provided that leases are in a form acceptable to the housing authority and are on terms that will enable the borrower to comply with Agency program requirements, to meet Agency program objectives, and make loan and other required payments to the Agency on an Agency approved schedule.

(c) *Lease of a portion of the security property.* The Agency may, subject to the applicable provisions governing loan purposes found in of §3560.53, §3560.553 and §3560.603, approve the

leasing of facilities related to a housing project (e.g., central kitchens, recreation facilities, laundry rooms, and community rooms) when the borrower will continue to operate the facilities for the purposes for which the loan was made. Agency approval is not required for leases with a term of less than 30 days. The Agency will only approve a lease with a term over 30 days if the following conditions are met:

(1) The lease is in the best interest of the borrower, the tenants, and the Federal Government.

(2) The amount of the consideration agreed to in the lease is adequate 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.

(3) All compensation and considerations, whether payments, a share of proceeds, or improvements to the property paid for by the lessee, must be disclosed to the Agency. No payments or compensation for entering into a lease shall flow to the borrower or any identity-of-interest related to the borrower.

(4) The lease provides at its termination for the restoration of the leased space to its original condition or a condition acceptable to the owner and the Federal Government.

(5) Consent to the lease will not exceed 3 years at a time unless the Agency determines that a longer lease is advantageous to the borrower, the tenants, and the Federal Government.

(6) When another lienholder's mortgage requires that lienholder's consent to a lease, the borrower must obtain written consent from the lienholder before the Agency will consider approving the lease.

(d) *Mineral leases.* Mineral leases will be handled according to 7 CFR 3550.159 except that all references to County Supervisor will be construed to mean District Director when applied to the MFH Programs.

§ 3560.409 Subordinations or junior liens against security property.

(a) *General.* Borrowers must obtain Agency consent prior to entering into

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any financial transaction that will require a subordination of the Agency security interest in the property (i.e., granting of a prior interest to another lender.) An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency can consent to a subordination or junior lien against the property. Borrowers must use an Agency approved subordination agreement.

(1) If a lien is placed against property serving as security for an Agency loan without prior Agency consent, the Agency will declare the borrower to be in default and will pursue liquidation of the borrower's loans in accordance with the procedures specified in § 3560.457, unless an agreement can be reached between the borrower and the Agency to work out removal of the lien or post approve the lien.

(2) Subordinations or junior liens need not encompass the entire site, (e.g., a subordination or junior lien requested to permit an interim lender to advance construction funds may only cover the portion of the site proposed for construction.)

(3) The subordination or junior lien must be for a specific amount.

(4) The subordination or junior lien must not adversely impact the Agency's ability to service the loan according to the requirements of this part.

(b) *Consent request requirements.* Borrowers proposing to have the Agency subordinate its interest to another lender or to give a creditor a junior lien against property serving as security for an Agency loan must submit a consent request to the Agency. The consent request must document the following:

(1) The action will enable the borrower to obtain financial resources for improvements or repairs on the security property that are consistent with the purposes of the Agency loan secured by the property.

(2) The action will not adversely impact the borrower's financial condition and the borrower's ability to repay the Agency loan being secured by the property.

(3) The action will not result in basic rents at the security property that exceed conventional rents for comparable units in the area.

(4) The terms and conditions of the credit to be secured by the subordination or junior lien are not expected to adversely affect the borrowers ability to meet the terms and conditions of the Agency loan secured by the property.

(5) The proposed use of the funds obtained through the granting of a subordination or junior lien will not adversely affect the borrower's ability to meet Agency program requirements or to operate and manage the housing project in a manner consistent with program objectives.

(6) The creditor receiving the "subordination" of interest in the property or the junior lien will agree that a foreclosure or acceptance of a deed-in-lieu of foreclosure will not be initiated without at least 30 days prior notice to the Agency.

(7) The subordination or junior lien is not being secured with any funding from housing project financial accounts.

(8) The "subordination" of interest or junior lien will not cause the debt from all sources to exceed the value of the security property.

(9) The transaction related to the placement of a "subordination" of interest or junior lien against the property serving as security for an Agency loan is in the best interest of the Federal Government.

(c) *Required conditions for subordinations and junior liens.* Subordinations of interest in or junior liens against property serving as security for an Agency loan may be approved by the Agency only if they improve a borrower's financial condition and allow for improvements or repairs that are consistent with the purposes of the Agency loan secured by the property.

(1) Farm Labor Housing loans on farm tracts may be subordinated for essential farm improvements and operations.

(2) Any proposed development must be planned and performed according to 7 CFR part 1924, subpart A, or in a manner directed by the other lienholder that meets the objectives of 7 CFR part 1924, subpart A.

(d) *Other liens against a property or other assets.* (1) Borrowers must not enter into any agreements to place a

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lien on a housing project or any equipment related to a housing project without prior Agency approval and unless the following conditions are met:

- (i) The transaction will not adversely affect the Agency's security position;
- (ii) The lien is not related to a non-program eligible action;
- (iii) The items to be acquired by the funding related to the lien is needed for the operation of the property; and
- (iv) The financing arrangements are otherwise sound.

(2) In cases where the above criteria are met, borrowers must complete and provide the Agency a copy of the financing statement, loan document, or contract, as applicable, as well as a security agreement acceptable to the Agency.

§ 3560.410 Consolidations.

(a) *General.* With Agency approval, loans, loan agreements, or loan resolutions may be consolidated to reduce the administrative burden (i.e., record keeping, budgeting), to improve the cost effectiveness and efficiencies of housing project operations, and to effectively utilize facilities common to housing projects.

(b) *Loan consolidations.* Loan consolidations will only be considered when:

(1) Multiple loans to the one borrower entity are being transferred to a different borrower entity in accordance with § 3560.406, or

(2) One borrower entity has an initial loan and one or more subsequent loans for the same housing project and all the loans were closed on the same date and with the same rates and terms.

(c) *Loan agreement or loan resolution consolidations.* Loan agreements or loan resolutions may be consolidated, even if the loans related to the agreement or resolution are not consolidated, to allow borrowers to comply with reporting, accounting, and other Agency requirements as a single housing project.

(1) The loan agreements or loan resolutions may only be consolidated when they are related to loans made for the same purposes, to the same borrower, and operating under the same type of interest credit, if applicable.

(2) All of a borrower's loan accounts must be current after the loan agreement or loan resolution consolidation

is processed, unless otherwise approved by the Agency.

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§ 3560.450 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0189. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 18 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Subpart J—Special Servicing, Enforcement, Liquidation, and Other Actions

§ 3560.451 General.

This subpart contains special servicing, enforcement, liquidation, and other actions that the borrower may request or the Agency may implement when compliance violations, monetary defaults, or non-monetary defaults cannot be resolved through regular servicing.

(a) *Agency obligations.* The Agency is under no obligation to offer or agree to any special servicing actions.

(b) *Relationship to workout agreements.* Special servicing actions may be implemented either as a part of a workout agreement, developed in accordance with § 3560.453, or as an action approved by the Agency separate from a workout agreement unless indicated otherwise in this subpart.

§ 3560.452 Monetary and non-monetary defaults.

(a) *General.* Borrowers are in default when they have received a compliance violation notice, issued in accordance with § 3560.354, and have failed to correct the compliance violation identified in the compliance violation notice within the time period specified in the notice. Compliance violations include,