

(iv) A separate new instrument will be required for each loan being reamortized.

(v) If amortized payments are not used, the schedule of principal installments developed will be such that combined payments of principal and interest closely approximate an amortized payment.

(d) *Reamortization with interest rate adjustment—Water and waste borrowers only.* A borrower that is seriously delinquent in loan payments may be eligible for loan reamortization with interest rate adjustment. The purpose of loan reamortization with interest rate adjustment is to provide relief for a borrower that is unable to service the outstanding loan in accordance with its existing terms and to enhance recovery on the loan. A borrower must meet the conditions of this subpart to be considered eligible for this provision.

(1) *Eligibility determination.* The State Director, Rural Development, may submit to the Administrator for approval an adjustment in the rate of interest charged on outstanding loans only for those borrowers who meet the following requirements:

(i) The borrower has exhausted all other servicing provisions contained in this subpart;

(ii) The borrower is experiencing severe financial problems;

(iii) Any management deficiencies must have been corrected or the borrower must submit a plan acceptable to the State Office to correct any deficiencies before an interest rate adjustment may be considered;

(iv) Borrower user rates must be comparable to similar systems. In addition, the operating expenses reported by the borrower must appear reasonable in relation to similar system expenses;

(v) The borrower has cooperated with Rural Development in exploring alternative servicing options and has acted in good faith with regard to eliminating the delinquency and complying with its loan agreements and agency regulations; and

(vi) The borrower's account must be delinquent at least one annual debt payment for 180 days.

(2) *Conditions of approval.* All borrowers approved for an adjustment in the rate of interest by the Administrator shall agree to the following conditions:

(i) The borrower shall agree not to maintain cash or cash reserves beyond what is reasonable at the time of interest rate adjustment to meet debt service, operating, and reserve requirements.

(ii) A review of the borrower's management and business operations may be required at the discretion of the State Director. This review shall be performed by an independent expert who has been recommended by the State Director and approved by the National Office. The borrower must agree to implement all recommendations made by the State Director as a result of the review.

(iii) If requested, a copy of the latest audited financial statements or management report must be submitted to the Administrator.

(3) *Reamortization.* At the discretion of the Administrator, the interest rate charged on outstanding loans of eligible borrowers may be adjusted to no less than the poverty interest rate and the term of the loans may be extended up to a new 40 year term or the remaining useful life of the facility, whichever is less.

[55 FR 4399, Feb. 8, 1990, as amended at 56 FR 25351, June 4, 1991; 63 FR 41714, Aug. 5, 1998; 69 FR 69105, Nov. 26, 2004]

#### § 1951.224 Third party agreements.

The State Director may authorize all or part of a facility to be operated, maintained or managed by a third party under a contract, management agreement, written lease, or other third party agreement as follows:

(a) *Leases—(1) Lease of all or part of a facility (except when liquidation action is pending).* The State Director may consent to the leasing of all or a portion of security property when:

(i) Leasing is the only feasible way to provide the service and is the customary practice as required under §1942.17(b)(4) of subpart A of part 1942 of this chapter;

(ii) The borrower retains ultimate responsibility for operating, maintaining, and managing the facility and for

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its continued availability and use at reasonable rates and terms as required under § 1942.17(b)(4) of subpart A of part 1942 of this chapter. The lease agreement must clearly reflect sufficient control by the borrower over the operation, maintenance, and management of the facility to assure that the borrower maintains this responsibility;

(iii) The lease agreement contains provisions prohibiting any amendments to the lease or any subleasing arrangements without prior written approval from FmHA or its successor agency under Public Law 103-354;

(iv) The lease document contains nondiscrimination requirements as set forth in § 1951.204 of this subpart;

(v) The lease contains a provision which recognizes that FmHA or its successor agency under Public Law 103-354 is a lienholder on the subject facility and, as such, the lease is subordinate to the rights and claims of FmHA or its successor agency under Public Law 103-354 as lienholder; and

(vi) The lease does not constitute a lease/purchase arrangement, unless permitted under § 1951.232 of this subpart.

(2) *Lease of all or part of a facility (pending liquidation action).* The State Director may consent to the leasing of all or a portion of security property when:

(i) The lease will not adversely affect the repayment of the loan or the Government's rights under the security or other instruments;

(ii) The State Director has determined that liquidation will likely be necessary and the lease is necessary until liquidation can be accomplished;

(iii) Leasing is not an alternative to, or means of delaying, liquidation action;

(iv) The lease and use of any proceeds from the lease will further the objective of the loan;

(v) Rental income is assigned to FmHA or its successor agency under Public Law 103-354 in an amount sufficient to make regular payments on the loan and operate and maintain the facility unless such payments are otherwise adequately secured;

(vi) The lease is advantageous to the borrower and is not disadvantageous to the Government;

(vii) If foreclosure action has been approved and the case has been submitted to OGC, consent to lease and use of proceeds will be granted only with OGC's concurrence; and

(viii) The lease does not exceed a one-year period. The property may not be under lease more than two consecutive years without authorization from the National Office. Long-term leases may be approved, with prior authorization from the National Office, if necessary to ensure the continuation of services for which the loan was made and if other servicing options contained in this subpart have been determined inappropriate for servicing the loan.

(b) *Mineral leases.* Unless liquidation is pending, the State Director is authorized to approve mineral leases when:

(1) The lessee agrees, or is liable without any agreement, to pay adequate compensation for any damage to the real estate surface and improvements. Damage compensation will be assigned to FmHA or its successor agency under Public Law 103-354 or the prior lienholder by the use of Form FmHA or its successor agency under Public Law 103-354 443-16, "Assignment of Income from Real Estate Security," or other appropriate instrument;

(2) Royalty payments are adequate and are assigned to FmHA or its successor agency under Public Law 103-354 on Form FmHA or its successor agency under Public Law 103-354 443-16 in an amount determined by the State Director to be adequate to protect the Government's interest;

(3) All or a portion of delay rentals and bonus payments may be assigned on Form FmHA or its successor agency under Public Law 103-354 443-16 if needed for protection of the Government's interest;

(4) The lease, subordination, or consent form is acceptable to OGC;

(5) The lease will not interfere with the purpose for which the loan or grant was made; and

(6) When FmHA or its successor agency under Public Law 103-354 consent is required, the borrower submits a completed Form FmHA or its successor agency under Public Law 103-354 465-1. The form will include the terms of the proposed agreement and specify the use

of all proceeds, including any to be released to the borrower.

(c) *Management agreements.* Management agreements should contain the minimum suggested contents contained in Guide 24 of part 1942, subpart A of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office).

(d) *Affiliation agreements.* An affiliation agreement between the borrower and a third party may be approved by the State Director, with OGC concurrence, if it provides for shared services between the parties and does not result in changes to the borrower's legal organizational structure which would result in its loss of control over its assets and/or over the operation, management, and maintenance of the facility to the extent that it cannot carry out its responsibilities as set forth in §1942.17(b)(4) of subpart A of part 1942 of this chapter. However, affiliation agreements which result in a loss of borrower control may be approved with prior concurrence of the Administrator if the loan is reclassified as a nonprogram loan and the borrower is notified that it is no longer eligible for any program benefit. Requests forwarded to the Administrator will contain the case file, the proposed affiliation agreement, and necessary supporting information.

(e) *Processing.* The consent of other lienholders will be obtained when required. When National Office approval is required, or if the State Director wishes to have a transaction reviewed prior to approval, the case file will be forwarded to the National Office and will include:

- (1) A copy of the proposed agreement;
- (2) Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office), appropriately completed;
- (3) Any other necessary supporting information.

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 21199, May 19, 1992]

#### § 1951.225 Liquidation of security.

When the District Director believes that continued servicing will not accomplish the objectives of the loan, he or she will complete Exhibit A of this subpart (available in any FmHA or its

successor agency under Public Law 103-354 office), and submit it with the District Office file to the State Office. If the State Director determines the account should be liquidated, he or she will encourage the borrower to dispose of the FmHA or its successor agency under Public Law 103-354 security voluntarily through a sale or transfer and assumption, and establish a specified period, not to exceed 180 days, to accomplish the action. If a transfer or voluntary sale is not carried out, the loan will be liquidated according to subpart A of part 1955 of this chapter.

#### § 1951.226 Sale or exchange of security property.

A cash sale of all or a portion of a borrower's assets or an exchange of security property may be approved subject to the conditions set forth below.

(a) *Authorities.* (1) The District Director is authorized to approve actions under this section involving only chattels.

(2) The State Director is authorized to approve real estate transactions except as noted in the following paragraph.

(3) Approval of the Administrator must be obtained when a substantial loss to the Government will result from a sale; one or more members of the borrower's organization proposes to purchase the property; it is proposed to sell the property for less than the appraised value; or the buyer refuses to assume all the terms of the Grant Agreement. It is not FmHA or its successor agency under Public Law 103-354 policy to sell security property to one or more members of the borrower's organization at a price which will result in a loss to the Government.

(b) *General.* Approval may be given when the approval official determines and documents that:

- (1) The consideration is adequate;
- (2) The release will not prevent carrying out the purpose of the loan;
- (3) The remaining property is adequate security for the loan or the transaction will not adversely affect FmHA or its successor agency under Public Law 103-354's security position;
- (4) If the property to be sold or exchanged is to be used for the same or