

PART 1962 - PERSONAL PROPERTY

Subpart A - Servicing and Liquidation of Chattel Security

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PART 1962 - PERSONAL PROPERTY

Subpart A - SERVICING AND LIQUIDATION OF CHATTEL SECURITY

§1962.1 Purpose.

This subpart delegates authorities and gives procedures for servicing, care, and liquidation of Rural Development chattel security, Economic Opportunity (EO) loan property, and note only loans. Security servicing for Nonprogram (NP) loans on farm property will be according to Subpart J of Part 1951 of this chapter. This subpart is inapplicable to FSA, Farm Loan Programs. (Revised 01-09-08, PN 417.)

§1962.2 Policy.

Chattel security, EO property and note only loans will be serviced to accomplish the loan objectives, and protect Rural Development financial interest. To accomplish these objectives, security will be serviced in accordance with the security instruments and related agreements, including any authorized modifications, provided the borrower has reasonable prospects of accomplishing the loan objectives, properly maintains and accounts for the security, and otherwise satisfactorily meets the loan obligations including repayment.

§1962.3 Authorities and responsibilities.

(a) Redelegation of authority. Authority will be redelegated to the maximum extent possible consistent with program requirements and available resources. The State Director, District Director and County Supervisor are authorized to redelegate, in writing, any authority delegated to them in this subpart to any employee determined by them to be qualified.

(b) Responsibilities.

(1) Rural Development personnel. The State Director, District Director and County Supervisor are responsible for carrying out the policies and procedures in this subpart.

(2) Borrower. The borrower is responsible for repaying the loans, maintaining, protecting, and accounting to Rural Development for all chattel security, and complying with all other requirements specified in promissory notes, security instruments, and related documents.

(c) Exception authority. The Administrator may, in individual cases, make an exception to any requirement or provision of this

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subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

(d) Farms in more than one jurisdiction. If the farm is situated in more than one State, County, or Parish, the loan will be serviced by the County Office servicing the County in which the borrower's residence is located. If the borrower is a corporation, cooperative, partnership or joint operation or if the borrower's residence is not on the farm, the loan will be serviced by the County Office serving the County in which the farm or a major portion of the farm is located. (Added 4-23-86, SPECIAL PN.)

§1962.4 Definitions. (Revised 10-14-88, SPECIAL PN.)

As used in this subpart, the following definitions apply.

Abandonment. Voluntary relinquishment by the borrower of control of security or EO property without providing for its care.

Acquired chattel property. Former security or EO property of which Rural Development has become the owner (see §1955.20 of subpart A of Part 1955 of this chapter).

Basic security. Consists of all equipment serving as security for Rural Development loans. It also consists of real estate and all foundation herds and flocks, including replacements, which serve as a basis for the farming operation outlined in the Farm and Home Plan or yearly budget which serve as security for Rural Development loans. With respect to livestock herds and flocks, animals that are sold as a result of the normal culling process are basic security unless the borrower has replacements that will keep numbers and production up to planned levels. However, if a borrower plans to make a significant reduction in his basic livestock herd or flocks, the animals or birds that are sold in making this reduction will be considered basic security.

Borrower. When a loan is made to an individual, the individual is the borrower. When a loan is made to an entity, the cooperative, corporation, partnership or joint operation is the borrower.

Chattel security. Chattel property which may consist of, but is not limited to, inventory; accounts; contract rights; general intangibles; crops; livestock; fish; farm, business, and recreational equipment; and supplies, and which is covered by financing statements and security agreements, chattel mortgages, and other security instruments.

Civil action. Court proceedings to protect Rural Development's financial interests such as obtaining possession of property from borrowers or third parties, judgments on indebtedness evidenced by notes or other contracts or judgments for the value of converted property, or judicial foreclosure. Bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors and probate and similar proceedings to settle and distribute estates of incompetents or of decedents under a will, or otherwise, and pay claims of creditors are not included.

Criminal action. Prosecution by the United States to exact punishment in the form of fines or imprisonment for alleged violations of criminal statutes. These include but are not limited to violations such as:

- (a) Unauthorized sale of security.
- (b) Purchase of security with intent to defraud and without payment of the purchase price to Rural Development;
- (c) Falsification of assets or liabilities in loan applications;
- (d) Application for a loan for an authorized purpose with intent to use and use of loan funds for an unauthorized purpose;
- (e) Decision after obtaining a loan to use and using the funds for an unauthorized purpose and then making false statements regarding their use;

(f) By scheme, trick, or other device, covering up or concealing misuse of funds or unauthorized dispositions of security or EO property or other illegal actions; or

(g) Any other false statements or representations relating to Rural Development matters. To establish that a criminal act was committed by selling EO property, it is necessary to show that the borrower, at the time the loan agreement or the check on the supervised bank account was signed, intended to sell the property in violation of the loan agreement. The Federal criminal statute of limitations bars institution of criminal action 5 years after the date the act was committed. Unauthorized disposition of even minor items by the borrower will be considered criminal violations

Default. Failure of the borrower to observe the agreements with Rural Development as contained in notes, security instruments, and similar or related instruments. Some examples of default or factors to consider in determining whether a borrower is in default are when a borrower:

(a) Is delinquent, and the borrower's refusal or inability to pay on schedule, or as agreed upon, is due to lack of diligence, lack of sound farming or other operation, or other circumstances within the borrower's control.

(b) Ceases to conduct farming or other operations for which the loan was made or to carry out approved changed operations.

(c) Has disposed of security or EO property without Rural Development approval, has not cared properly for such property, has not accounted properly for such property or the proceeds from its sale, or taken some action which resulted in bad faith or other violations in connection with the loan.

(d) Has progressed to the point to be able to obtain other credit from other sources, and has agreed in the note or other instrument to do so but refuses to comply with that agreement.

EO property. Nonsecurity chattel property purchased, refinanced, or improved with EO loan funds.

EO property essential for minimum family living needs. Non-security chattel or real property required to provide food, shelter, or other necessities for the family or to produce income without which the family would not have such necessities. This includes livestock, poultry, or

other animals used as food or to produce food for the family or to produce income for minimum essential family living needs; modest amounts of real property needed for family shelter or to produce food or income for minimum essential family living needs, and items such as equipment, tools, and motor vehicles, which are of minimum value and are essential for family living needs or to produce income for that purpose. Any such item of a value in excess of the minimum need may be sold and a portion of the sale proceeds used to purchase a similar item of less value to meet such need. The remainder of the proceeds will be paid on the EO loan.

Farm Income. Proceeds from the sale of chattel security which is normally sold annually during the regular course of business such as crops, feeder livestock and other farm products.

Farmer Program loans. These loans are Farm Ownership (FO), Operating (OL), Soil and Water (SW), Recreation (RL), Economic Emergency (EE), Emergency (EM), Economic Opportunity (EO) and Special Livestock (SL) loans and Rural Housing loans made for farm service buildings (RHF).

Rural Development. The United States of America, acting through the Farmers Home Administration and its predecessor administrative agencies.

Foreclosure sale. Act of selling security either under the "Power of Sale" in the security instrument or through court proceedings.

Liquidation. The act of selling security or EO property to close the loan when no further assistance will be given; or instituting civil suit against a borrower to recover security or EO property or against third parties to recover security or its value or to recover amounts owed to Rural Development; or filing claims in bankruptcy or similar proceedings or in probate or administrative proceedings to close the loan.

Normal income security. All security not considered basic security, including crops, livestock, poultry products, Agricultural Stabilization and Conservation Service payments and Commodity Credit Corporation payments, and other property covered by Farmers Home Administration liens that is sold in conjunction with the operation of a farm or other business, but shall not include any equipment (including fixtures in States that have adopted the Uniform Commercial Code), or foundation herd or flock, that is the basis of the farming or other operation, and is the basic security for a Farmers Home Administration farmer program loan.

## §1962.4 (Con.)

Office of the General Counsel (OGC). The Regional Attorneys, Attorneys-in-Charge, and National Office staff of the Office of the General Counsel of the United States Department of Agriculture.

Purchase money security interest. Special type of security interest which, if properly perfected, takes priority over an earlier-perfected security interest. A security interest is a purchase money security interest to the extent that it is taken by the seller of the collateral to secure all or part of its purchase price or by a lender who makes loans or is obligated to make loans or otherwise gives value to enable the debtor to acquire the particular collateral or obtain rights in it. Such value must be given not later than the time the debtor acquires the collateral or obtains rights in it.

Repossessed property. Security or EO property in the Agency's custody, but still owned by the borrower.

Security. Also means "Chattel security" when appropriate.

§1962.5 Security instruments.

County Supervisors are responsible for maintaining security instruments that will cover all security, including replacements, increases, and other after-acquired property, and for obtaining additional security as needed. They will execute continuation, extension, or renewal of security instruments as needed to protect the Government's security interests.

(a) Financing statement. The Financing Statement is effective as notice for 5 years from the date of filing. A new statement needs to be taken and filed only if the debt is to be secured by property not described specifically or by type, or by crops growing or to be grown, or fixtures located or to be located on land not described on the filed statement.

(b) Continuing the financing statement. A filed statement must be continued to notify third parties after the original 5-year period. Form RD 462-12, "Statements of Continuation, Partial Release, Assignment, Etc.," must be filed within 6 months before the end of the original 5-year period. On filing Form RD 462-12, the filed Financing Statement is effective for 5 more years after the date to which the original filing was effective. Successive Continuation Statements may be filed to continue the notice to third parties. A lien search is unnecessary provided the Continuation Statement is properly filed. Form RD 462-11, "Request for Continuation Statement Filing Fee," may be used to notify the borrower to continue the Financing Statement and to submit the amount of the filing fee.

- (c) Security agreement. A new security agreement will be taken when:
- (1) Property not covered by specific description or the printed language of the previous security agreement is to serve as security for the debt; or
  - (2) It is necessary to obtain or maintain a security interest in crops; or
  - (3) It is necessary to supplement the security agreement to obtain an asset for security. A State supplement will be issued when considered necessary by the State Director and OGC to further explain the situations requiring the taking of an additional security agreement. Such additional security agreement usually will be taken at the time of inspections of the security; or  
(Revised 06-21-96, SPECIAL PN.)
  - (4) An initial Operating (OL) loan or Emergency (EM) loan is made to an applicant, including a paid-in-full OL or EM borrower.
- (d) Chattel mortgage. In those States which require the use of chattel mortgages, such a mortgage may be extended or renewed by obtaining a new chattel mortgage or by using a form approved for this purpose by OGC. However, it is preferable to renew or extend chattel mortgages by obtaining new ones unless there are intervening liens or other legal reasons. A State supplement will be issued stating the actions to follow to ensure that:
- (1) Agency liens and their priority are maintained by renewing or extending security instruments or by obtaining new instruments.
  - (2) Lien searches are made as necessary to determine that the Agency will obtain the required priority of liens.
- (e) Filing. Financing Statements must be filed in all Uniform Commercial Code (UCC) States. In those States where a Central Filing System (CFS) has been adopted and certified by the Packers and Stockyards Administration, the Agency must file under both the UCC (or other applicable State law) and the CFS to protect a security interest in farm products chattel property. If State law provisions of the Uniform Commercial Code allow for electronic filing of financing statements without the debtor's signature, this action will be taken for all FLP borrowers to further protect the Government's interest.  
(Revised 03-14-97, SPECIAL PN.)

§1962.6 Liens and assignments on chattel property.

(a) Chattel property not covered by Agency lien. (Revised 06-21-96, SPECIAL PN.)

(1) When additional chattel property not presently covered by an Agency lien is available and needed to protect the Government's interest, the County Supervisor will obtain one or more of the following:

(i) A lien on such property.

(ii) An assignment of the proceeds from the sale of agricultural products when such proceeds are not covered by the lien instruments.

(iii) An assignment of other income, including FSA Farm Programs (formerly ASCS) payments. (Revised 06-21-96, SPECIAL PN.)

(2) When a current loan is not being made to a borrower, a crop lien will be taken as additional security when the County Supervisor determines in individual cases that it is needed to protect the Government's interests. However, a crop lien will not be taken as additional security for Farm Ownership (FO), Rural Housing (RH), Labor Housing (LH), and Soil and Water (SW) loans. When a new security agreement or chattel mortgage is taken, all existing security items will be described on it.

(b) Lien Search. When a lien is taken on chattel property not covered by an Agency lien, a lien search will be made. It will not be needed, however, if crops or other chattel property are covered by a filed Financing Statement but not by an Agency security agreement or assignment of income. The search will be made at a time which will assure that the Agency obtains the desired lien on chattel property as set forth by a State supplement. (Revised 06-21-96, SPECIAL PN.)

(c) Assignments of upland cotton, rice, wheat and feed grain payments. Borrowers may assign FSA Farm Programs (formerly ASCS) payments under upland cotton, rice, wheat and feed grain programs. (Revised 06-21-96, SPECIAL PN.)

(1) Obtaining assignments. Assignments will be obtained as follows:

(i) Only when it appears necessary to collect operating-type loans, (Renumbered 06-21-96, SPECIAL PN.)

(ii) Only for the crop year for which operating-type loans are made, and (Renumbered 06-21-96, SPECIAL PN.)

(iii) For only the amount anticipated for payments as indicated on Form RD 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," of the applicable upland cotton, rice, wheat and feed grain programs. (Renumbered 06-21-96, SPECIAL PN.)

(2) Selecting counties. The County Supervisors then will: (Revised 06-21-96, SPECIAL PN.)

(i) Determine, at the time of loan processing for indebted borrowers and new applicants, who must give assignments and obtain them no later than loan closing. Special efforts will be made to obtain the bulk of assignments before the sign-up period for enrolling in the annual Feed Grain and Wheat set aside programs. (Revised 04-17-91, SPECIAL PN.)

(ii) Obtain assignments from selected borrowers on Form ASCS-36, "Assignment of Payment," which will be obtained from FSA Farm Programs. (Revised 06-21-96, SPECIAL PN.)

(3) Releasing assignments and handling checks.

(i) The County Supervisor will inform FSA Farm Programs that it is releasing its assignment whenever a borrower pays the amount due for the year on the operating-type loan debt or pays the debt in full. (Revised 06-21-96, SPECIAL PN.)

(ii) Checks obtained as a result of an assignment will be made only to the Agency, and the proceeds used as indicated on Form RD 1962-1. (Revised 06-21-96, SPECIAL PN.)

§1962.7 Securing unpaid balances on unsecured loans.

The County Supervisor will take a lien on a borrower's chattel property in accordance with §1962.6 if it is necessary to rely on such property for the collection of the borrower's unsecured indebtedness, or if it will assist in accomplishing loan objectives. (Revised 06-21-96, SPECIAL PN.)

§1962.8 Liens on real estate for additional security.

The County Supervisor may take the best lien obtainable on any real estate owned by the borrower, including any real estate which already serves as security for another loan. Additional liens will be taken only when the borrower is delinquent, the existing security is not adequate to protect the Government's interest, the borrower has substantial equity in the real estate to be mortgaged, and taking such mortgage will not prevent making a real estate loan, if later needed. (Revised 04-17-91, SPECIAL PN.)

(a) Documentation. Before taking real estate as additional security for a loan, the following information will be put in the running record:

- (1) Facts justifying the real estate lien;
- (2) An estimate of the present market value of the real estate to be mortgaged (no appraisal of the property to be mortgaged is needed);
- (3) A brief description of any existing liens on the property and the unpaid balance on the debts secured by such existing liens; and
- (4) Name of the titleholder and how title of the property is held. (Title evidence is not required.)

(b) Forms. Form RD 1927-1 (State), "Real Estate Mortgage or Deed of Trust For \_\_\_\_\_," will be used for each real estate lien taken as additional security unless a State supplement requires a form of mortgage comparable to that which secures the existing loans. The notes evidencing the loans for which the additional security will be taken will be described in the same mortgage. (Revised 06-21-96, SPECIAL PN.)

§1962.9 Liens on chattel property as security for a real estate loan.

Form RD 440-15, "Security Agreement (Insured Loans to Individuals)," and Form RD 440-A25, "Financing Statement (Carbon-Interleaved)," or Form RD 440-25, "Financing Statement," as appropriate, will be used in UCC States. State Supplements may provide for use of other forms in Puerto Rico, Guam, American Samoa, and the Northern Mariana Islands. (Revised 06-21-96, SPECIAL PN.)

§§1962.10 - 1962.11 [Reserved]

§1962.12 Marking FSA Farm Programs (formerly ASCS) peanut and tobacco marketing cards. (Revised 06-21-96, SPECIAL PN.)

The County Supervisor will mark borrowers' FSA Farm Programs peanut and tobacco crop marketing cards when advancing Farm Credit Programs loan funds or subordinating its crop lien for the purpose of financing the production of the crops. The marking of cards is optional in cases other than the above when Farm Credit Programs has a crop lien.

(a) Marking cards. Just before Farm Programs prepares the cards, the County Supervisor will give the Farm Programs lists of the names and addresses of Farm Credit Programs borrowers whose cards are to be marked and inform the office that Farm Credit Programs will mark the cards of each borrower whose name is on the list before delivery. After the cards are ready for delivery, the County Supervisor or someone designated by the County Supervisor will go to the Farm Programs and:

(1) Stamp or insert "FSA Farm Credit Programs lien" in script in indelible ink on the cards for peanuts and tobacco, except flue-cured and burly tobacco, wherever decided by the County Supervisor and the Farm Programs Manager.

(2) Stamp or insert "FSA Farm Credit Programs lien" in script in indelible ink on borrower's Form MQ 76, "Tobacco Marketing Card," for flue-cured and burly tobacco. The stamp will be placed on the left at the bottom of the signature strip under "Tobacco Marketing Card."

(3) If the borrower satisfies the lien or repays the amount due the current year, stamp "canceled" across "FSA Farm Credit Programs lien" followed on the same line by the name of the official making the cancellation and the date.

(b) Notice to borrowers. The County Supervisor will inform borrowers of the marking arrangement, including the requirements for canceling the lien notice on the card.

(c) Notice to buyers. Whenever possible, the County Supervisor will explain these arrangements personally to buyers (warehousemen and dealers in the case of tobacco) in the area. The County Supervisor will also explain that the lien notice on the cards is not in place of the notice given by filed or recorded lien instruments but is a courtesy

§1962.12(c) (Con.)

and is to provide them with readily available current information. However, this information may not always be accurate and commodities covered by a card not stamped "FSA Farm Credit Programs lien" may still be subject to the Agency's lien. If too many buyers are in the area to enable the County Supervisor to make such a personal explanation, the County Supervisor may write them a letter explaining the arrangements.

§1962.13 Notification to potential purchasers. (Revised 06-21-96, SPECIAL PN.)

(a) In States without Central Filing System (CFS), all Farm Credit Programs borrowers prior to loan closing or prior to any servicing actions which require taking a lien on farm products, such as crops or livestock, must provide the names and addresses of potential purchasers. A written notice will be sent by the County Supervisor, certified mail, return receipt requested, to these potential purchasers to protect the Government's security interest. The notice will contain the following:

- (1) The name and address of the debtor. (Revised 03-14-97, SPECIAL PN.)
- (2) The name and address of any secured party.
- (3) The Social Security number or tax ID number of the debtor.
- (4) A description of the farm products given as security by the debtor, including the amount of such products where applicable, the crop year, the county in which the products are located, and a reasonable description of the farm products.
- (5) Any payment obligation imposed on the potential purchaser by the secured party as a condition for waiver or release of lien. The original or a copy of the written notice also must be sent to the purchaser within 1 year before the sale of the farm products. The written notice will lapse on either the expiration period of the Financing Statement or the transmission of a letter signed by the County Supervisor and showing that the statement has lapsed or the borrower has performed all obligations to the Agency.

(b) Lists of borrowers whose chattels or crops are subject to an Agency lien may be made available, upon request, to business firms in a trade area, such as sale barns and warehouses, that buy chattels or crops or sell them for a commission. These lists will exclude those borrowers

whose only crops for sale require FSA Farm Programs (formerly ASCS) marketing cards. The list is furnished only as a convenience and may be incomplete or inaccurate as of any particular date.

(1) The list will contain the statement: "The crop and chattel liens or financing statements of the Farm Service Agency (FSA) (formerly FmHA) are recorded or filed as required by law. This list of borrowers is furnished only as a convenience. It may be incomplete or inaccurate as of any particular date. The fact that a name is not on this list does not necessarily mean that the FSA does not have security interest in or lien on the crops, livestock, and other chattels."

(2) Lists will be sent by Form RD 1962-3, "List of Farmers Home Administration Borrowers," or the County Supervisor may consider it advisable to personally deliver and explain the form and list to the buyers. The County Supervisor will update all lists that have been distributed by notifying buyers in writing, on Form RD 462-14, "Change in List of Farmers Home Administration Borrowers," at least every 3 months, of the names of borrowers to add and to delete.

§1962.14 Account and security information in UCC cases. (Revised 06-21-96, SPECIAL PN.)

Within 2 weeks after receipt of a written request from the borrower, the Agency must inform the borrower of the security and the total unpaid balance of the Agency indebtedness covered by the Financing Statement.

(a) If the Agency fails to provide the information, it may be liable for any loss caused the borrower and, in some States, other parties, and also may lose some of its security rights. The UCC provides that the borrower is entitled to such information once every 6 months without charge, and that the Agency may charge up to \$10 for each additional statement. However, the Agency provides them without charge.

(b) Although the UCC only requires the Agency to give information pursuant to the borrower's written request, the Agency will also answer oral requests. Furthermore, the UCC does not prohibit giving this information to others who have a proper need for it, such as a bank or another creditor contemplating advancing additional credit to the borrower.

§1962.15 [Reserved]

§1962.16 Accounting by the borrower. (Revised 06-21-96, SPECIAL PN.)

The County Supervisor will maintain a current record of each borrower's security. Whenever an inspection is performed, the borrower must complete and sign Form RD 1962-1, in accordance with §1924.56 if it has not been previously completed for the year.

(a) County Supervisor's responsibilities. Chattel security will be inspected annually except in cases where the County Supervisor has justified in the assessment or analysis review that no undue risk exists. An FO borrower who has been current with the Agency and who has provided chattels as additional security is an example of a case where an inspection may not be needed. All inspections will be recorded in the running record of the borrower's file. More frequent inspections should be made for delinquent borrowers or borrowers that have been indebted for less than 1 full crop year. The County Supervisor will discuss the provisions of §§1962.17 and 1962.18 and assist the borrower in completing the form. If a borrower does not plan to dispose of any chattel security, the form should be completed to show this and should be signed. When the County Supervisor has other contacts with the borrower, the County Supervisor should also check for dispositions and acquisitions of security. Changes will be recorded on the form, dated and initialed by the borrower and the County Supervisor. The purpose of all inspections is to:

§1962.16(a) (Con.)

- (1) Verify that the borrower possesses all the security,
- (2) Determine security is properly maintained, and
- (3) Supplement security instruments.

(b) Dispositions. The County Supervisor will record all dispositions of chattel security on Form RD 1962-1, and on the file copy of the security agreement or chattel mortgage. The original security instrument must not be altered. Additional acquired chattel security should be entered on the file copy of the security agreement or chattel mortgage and must be described on subsequent security instruments.

(c) Unapproved dispositions. Unapproved dispositions of security will be handled in accordance with §§1962.18 and 1962.49.

§1962.17 Disposal of chattel security, use of proceeds and release of lien.

(a) General. The County Supervisor will instruct borrowers of their responsibility to account for security when loans are made and as often thereafter as necessary. Purchasers of security who inquire should be informed that the property is subject to the Agency's lien and checks should be made payable jointly to the borrower and the Agency. A borrower's account is accelerated under this paragraph when Exhibit D, E, or E-1 to subpart A of part 1955 is sent to the borrower. (Revised 06-21-96, SPECIAL PN.)

(1) The borrower must account for all security. When the borrower sells security, the property and proceeds remain subject to the Agency's lien until the lien is released. All checks, drafts, or money orders which the borrower receives for the sale of collateral listed on Form RD 1962-1 must be payable to both the borrower's name and the Agency unless all Agency loan installments for the period of the form have been paid including any past-due installments. If the borrower disposes of collateral or uses the proceeds in a way not listed on Form RD 1962-1, the borrower will have violated the loan agreement, and the Government will not release its security interest in the collateral. The Agency will take actions required by §1962.18 when the borrower fails to account for security. Releases of sales proceeds will be terminated when the borrower's accounts are accelerated. Termination of such releases will not occur prior to acceleration.

(2) Section 1924.56 requires that there must always be a current Form RD 1962-1 in the file of a borrower with a loan secured by chattels. If a borrower asks the Agency to release proceeds from the sale of chattels and there is a current Form RD 1962-1 in the file, the request will be approved or disapproved in accordance with paragraph (b) of this section. If the borrower's request for release is denied, the borrower must be given attachment 1 of exhibit A of subpart S of part 1951, a written explanation of the reasons for the denial, and the opportunity for an appeal in accordance with 7 CFR part 780. Immediately upon determining that the borrower does not have a current Form RD 1962-1 in the file, the County Supervisor will immediately contact the borrower to develop one. (Revised 06-21-96, SPECIAL PN.)

(3) If the borrower requests a change(s) to Form RD 1962-1, and the County Supervisor can approve the change(s), the borrower and the County Supervisor will initial and date each change in accordance with item (6) in the Forms Manual Insert (FMI) for Form RD 1962-1. The form will be marked "Revised" and the borrower will be notified in writing confirming that the change(s) has been approved.

(b) Use of Form RD 1962-1.

(1) County Supervisors are authorized to approve or disapprove dispositions of chattel security in accordance with this subpart. The County Supervisor, with the assistance of the borrower, will complete Form RD 1962-1 in accordance with the Forms Manual Insert to show how, when, and to whom the borrower will sell, exchange, or consume security and use sale proceeds (include milk sale proceeds). Government payments, crop insurance and insurance proceeds derived from the loss of security will also be accounted for on Form RD 1962-1. This includes, for example, sale proceeds on hand and crops in storage. Only the proceeds from the sale of

normal income security can be used to pay essential family and farm operation expenses. Proceeds from the sale of basic security will not be used for essential family living and farm operating expenses. In addition to payment of prior liens, basic security can only be released for the purposes listed in paragraphs (b) (2) (iv) through (b) (2) (vii). When proceeds from the disposition of normal income security are to be used to pay essential family living or farm operating expenses, County Supervisors must approve the disposition. Any disposition of basic or normal income security must be recorded on Form RD 1962-1. However, the borrower is responsible for providing the County Supervisor with the necessary information to update the Farm and Home Plan and Form RD 1962-1. (Revised 09-01-93, PN 212.)

(2) Under all circumstances, sale proceeds must be remitted to creditors with liens on the proceeds, in order of priority of those liens. Proceeds which are released by a prior lienholder or which are in excess of the amount due to prior lienholder or which come to Rural Development can be used as follows: (Revised 8-26-87, PN 62.)

(i) The Form RD 1962-1 must provide for releases of normal income security so that the borrower can pay essential family living and farm operating expenses. However, proceeds from the sale of basic security will not be used to pay essential family living or farm operating expenses. (Revised 09-01-93, PN 212.)

(ii) Essential expenses are those which are basic, crucial or indispensable. The following items are guidelines of what normally may be considered essential family living and farm operating expenses: (Revised 04-17-91, SPECIAL PN.)

- Household operating
- Food, including lunches
- Clothing and personal care
- Health and medical expenses, including
  - medical insurance
- House repair and sanitation
- School, church, recreation
- Personal insurance
- Transportation
- Furniture
- Hired Labor
- Machinery repair
- Farm building and fence repair

Interest on loans and credit or  
purchase agreement  
Rent on equipment, land, and buildings  
Feed for animals  
Seed  
Fertilizer  
Pesticides, herbicides, and spray materials  
Farm supplies not included above  
Livestock expenses, including medical  
supplies, artificial insemination,  
and veterinarian bills  
Machinery hire  
Fuel and oil  
Personal property tax  
Real estate taxes  
Water charges  
Property and crop insurance  
Auto and truck expenses  
Utilities payments  
Payments on contracts or loans secured  
by farmland, necessary farm equipment,  
livestock, or other chattels  
Essential farm machinery. An item of  
essential farm machinery which is beyond  
repair may be replaced when the County  
Supervisor determines that replacement  
is a better choice than alternatives such  
as the lease of a similar piece of machinery  
or the hiring of the service.

(iii) All of the items in paragraph (B) (2) (ii) may not always be considered essential for every family and farming operation. County Supervisors must consider the individual borrower's operation, what is typical for that type of operation in the area administered by the County Supervisor, and what would be an efficient method of production considering the borrower's resources. County Supervisors will refer to Exhibit E of this subpart for guidance in determining whether an expense will be considered essential and the amount of proceeds which should be released. When the borrower and County Supervisor cannot agree that an expense is essential, the County Supervisor will notify the borrower, in writing, of why the requested release was denied, including why it is not basic, crucial, or indispensable to the family and/or

the farming operation. This notice will also give the borrower an opportunity to appeal in accordance with Subpart B of Part 1900 of this chapter and paragraphs (a) (2) and (b) (5) of this section. (Revised 09-01-93, PN 212.)

(iv) Proceeds can be applied to the Rural Development debt. (Renumbered 10-14-88, SPECIAL PN)

(v) Proceeds can be used to purchase property better suited to the borrower's needs if Rural Development will acquire a lien on the new property. The new property, together with any proceeds applied to the Rural Development indebtedness, will have a value to Rural Development at least equal to the value of the lien formerly held by Rural Development on the old security. (Renumbered 10-14-88, SPECIAL PN)

(vi) Proceeds can be used to preserve the security because of a natural disaster or other severe catastrophe, when the need for funds cannot be met by other means or with a Rural Development loan or a Rural Development loan cannot be made in time to prevent the borrower and Rural Development from suffering a substantial loss. (Renumbered 10-14-88, SPECIAL PN.)

(vii) Property can be exchanged, with prior Rural Development approval and in accordance with paragraph (b) (5) of this section, for property which is better suited to the borrower's needs if Rural Development will acquire a lien on the new property, at least equal in value to the lien held on the property exchanged. (Revised 09-01-93, PN 212.)

(viii) Property can be consumed by the borrower as follows: (Renumbered 10-14-88, SPECIAL PN.)

(A) Livestock can be used by the borrower's family for subsistence.

(B) If crops serve as security and usually would be marketed, the County Supervisor can allow such crops to be fed to livestock, provided, this is preferable to direct marketing and also provided that Rural Development obtains a lien (or assignment) on the livestock and livestock products at least equal to the lien on the crops.

§1962.17(b) (Con.)

(3) The borrower must maintain records of dispositions of property and the actual use of proceeds and must make these records available to the County Supervisor at the end of the period covered by the Form RD 1962-1, or when requested by the County Supervisor. The County Supervisor will complete the "Actual" columns on that form, indicating approval or disapproval, making sure that the dispositions of property and uses of proceeds were as agreed upon. If they were not, the County Supervisor will take the actions required by §1962.18. On the form, the County Supervisor will note approval or disapproval of each disposition. (Revised 06-21-96, SPECIAL PN.)

(4) If, for any sale, the amount of proceeds actually received is above or below the amount of proceeds planned to be received as shown on Form RD 1962-1, the borrower will immediately notify the County Supervisor. If the borrower sells security to a purchaser not listed on the Form RD 1962-1, the borrower must immediately notify the County Supervisor of what property has been sold and of the name and business address of the purchaser. Such notification may be by telephone to the County Office, by letter, by visit to the County Office, or any other method the borrower chooses. (Revised 08-26-87, PN 62.)

(5) If a borrower wants to dispose of chattel security which is not listed on Form RD 1962-1 or wants to dispose of chattel security in a way not listed in the "How" section or wants to use proceeds in a way not listed in the "Use of Proceeds" section on Form RD 1962-1, the borrower must obtain the Agency's consent before the disposition or before the proceeds are used. The County Supervisor must give consent for the release of normal income security if the change is necessary for the borrower to meet essential family living and farm operating expenses. Consent must also be given if the conditions set out on the form and in paragraph (b) (2) of this section are met. The borrower may obtain prior consent by telephoning the County Office, by letter, by visiting the County Office, or by any other method the borrower chooses. When revisions are agreed to over the telephone, the County Supervisor must revise the Form RD 1962-1 contained in the borrower's case file, initial and date the change, and mark the form "Revised." The County Supervisor will then either write to the borrower and send a copy of the "Revised" form to the borrower asking the borrower to date and initial the change and return the form to the County Office, or the County Supervisor will ask the borrower to date and initial the change the next time the borrower is in the County Office. Changes that would result in a major change (examples of major changes are:

feeder pig to sow operation, cow/calf to feeder steer operation, dairy to row crop, etc.) in a borrower's operation will always require a visit to the County Office so that the County Supervisor and the borrower can complete a new farm and home plan and revise Form RD 1962-1. The County Supervisor will be responsible for determining if the requested change is major or not. If a revision cannot be agreed upon, see §1924.56. (Revised 06-21-96, SPECIAL PN.)

(c) Release of liens. (Revised 04-30-92, SPECIAL PN.)

(1) Liens will be released by the County Supervisor when security is sold, exchanged or consumed, provided the conditions set out on Form RD 1962-1 and in this subpart are met.

(2) Junior liens on chattels and crops serving as security for Agency loans can be released when such property has no present or prospective security value or enforcement of the Agency lien would be ineffectual or uneconomical. The following information will be documented in the running case record:

(i) The present market value of the chattels or crops, as determined by the County Supervisor, on which the Agency has a valueless junior lien. (Revised 06-21-96, SPECIAL PN.)

(ii) The names of the prior lienholders, amount secured by each prior lien, and the present market value of any property which serves as security for the amount. The value of all property which serves as security for amounts owed to prior lienholders must be considered to determine whether the junior lien has any present or prospective value.

(3) Liens obtained through a mutual mistake can be released. The reasons for the release must be documented in the running case record.

(4) Liens can be released when there is no evidence of an existing indebtedness secured by the lien in the records of the Agency's County, State, or Finance Office. (Revised 06-21-96, SPECIAL PN.)

(5) Liens on separate items of chattels can be released to another creditor for any authorized Farm Credit Programs loan purpose when it has been determined by a current appraisal that the value of the remaining security is substantially greater than the remaining Agency debt. (Revised 06-21-96, SPECIAL PN.)

(d) Processing the release of chattel security.

(1) If the borrower or an interested third party requests a release of specific items which must be recorded under the UCC or chattel mortgage laws, Form RD 462-12, "Statements of Continuation, Partial Release, Assignments, etc.," Form RD 460-1, "Partial Release," or other forms approved by OGC and required by State statute will be used. Care must be used to be sure that only specific items are released; for example, if a borrower requests a release of five cows, make sure that not all the cattle are released from the Rural Development lien. When specific items are listed on the security agreement, the County Supervisor should record the disposition on the work copy of the security agreement and on Form RD 1962-1.

(2) Assignments and consent to payment of proceeds will be processed under Subpart A of Part 1941 of this chapter and recorded on Form RD 1962-1.

(i) When it is necessary to temporarily amend Form RD 441-18, "Consent to Payment of Proceeds From Sale of Farm Products," or Form RD 441-25, "Assignment of Proceeds From the Sale of Dairy Products and Release of Security Interest," Form RD 462-9, "Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Products," will be used. All amendments of assignment agreements will be made on forms approved by OGC. The State Director will issue a State Supplement with the advice of OGC and prior approval of the National Office on the use of other forms. The original form after completion will be forwarded directly to the person or firm making the payment against which the assignment is effective, and a copy will be kept in the borrower's case file. All amendments of assignment agreements will be approved and recorded on Form RD 1962-1. Conditions of this section must be met. The County Supervisor will see that payments are made in accordance with the original consent when the amendment period expires. Normally, a temporary amendment will not exceed a six month period.

(ii) When Rural Development is not expecting payment from the proceeds of a product on which it has a lien but the purchaser of the product inquires about payment, a letter should be written to the purchaser as follows:

"Rural Development has a security interest in the (name of product) being sold to you by (name and address of borrower), but at the present time is not looking to the proceeds from the sale of that product for payment on the debt owned to this agency. Therefore, until further notice, it will not be necessary for you to make payment to Rural Development for such product."

(e) Releases of liens on wool and mohair marketed by consignment.

(1) Conditions. Liens on wool and mohair may be released when the security is marketed by consignment, provided all the following conditions are met:

(i) The producer assigns to Rural Development the proceeds of any advances made, or to be made, on the wool or mohair by the broker, less shipping, handling, processing and marketing costs.

(ii) The producer assigns to Rural Development the proceeds of the sale of the wool or mohair, less any remaining costs in shipping, handling, processing, and marketing, and less the amount of any advance (including any interest which may have accrued on the advance) made by the broker against the wool or mohair.

(iii) The producer and broker agree that the net proceeds of any advances on, or sale of, the wool or mohair will be paid by checks made payable jointly to the producer and Rural Development.

(2) Authority. The County Supervisor may execute releases of the Government's lien on wool and mohair on Form RD 462-4, "Assignment, Acceptance, and Release." Since Form 462-4 is not a binding agreement until executed by all parties in interest, including the producer, the broker and the Government, the County Supervisor may execute it before other parties sign it.

(f) Notice of termination of security interest to purchasers of farm products under consents or assignments upon payment in full. County Supervisors will notify purchasers of farm products as soon as the Rural Development has received payment in full of indebtedness for collection of which it has accepted assignments or consents to payment of proceeds from the sale of the farm products. When Form RD 441-18 is in effect under the UCC, the notice to the purchaser will be made on Form RD 460-8, "Notice of Termination of Security Interest in Farm Products." When assignments have been used, the notice to the purchaser will be by letter or by forms prescribed by State Supplements.

(g) Release of Rural Development's interest in insurance policies. When an Rural Development lien on property covered by insurance has been released, the County Supervisor is authorized to notify the insurance company of the release.

§1962.18 Unapproved disposition of chattel security.

(a) General. When the County Supervisor learns that a borrower has made a disposition of chattel security in a manner not provided for on Form RD 1962-1 or becomes aware of the misuse of proceeds by a borrower, corrective action must be taken to protect the Government's interest. (revised and renumbered 4-12-89, PN 106)

(b) Notice to borrowers. When a borrower has not properly accounted for the use of proceeds from the sale of chattel security, the County Supervisor must request restitution by use of a letter similar to Guide letter 1962-A-5. (Renumbered 4-12-89, PN 106)

(1) If the borrower makes restitution or provides sufficient information to enable the County Supervisor to post-approve the transaction on Form RD 1962-1, no further action will be taken against the borrower. Post-approval can only be given under the conditions set out in §1962.17(b) of this subpart. Only one such transgression can be allowed in any period covered by the Form RD 431-2, or other similar plan of operation acceptable to Rural Development, between annual security inspections, whichever is appropriate, and this must be made clear to the borrower.

(2) If the borrower does not make restitution, if the County Supervisor cannot post-approve the transaction, or if the borrower makes a second unauthorized disposition of security or misuse of proceeds after settling the first offense as provided in paragraphs (a) and (b) of this section, the County Supervisor will proceed in accordance with §1962.49 of this subpart. (Revised and renumbered 4-12-89, PN 106)

(Continued on page 19)

§1962.19 Claims against Commodity Credit Corporation (CCC).

This section is based on a Memorandum of Understanding between CCC and Rural Development (see Exhibit A of this subpart). The memorandum sets forth the procedure to follow when producers sell or pledge to CCC as loan collateral under the Price Support Program, commodities on which Rural Development holds a prior lien, and when the proceeds, or an agreed amount from them, are not remitted to Rural Development to apply against the producer's indebtedness to Rural Development. In addition to the procedures outlined in Exhibit A, the following apply:

(a) County Office action.

(1) Claims will not be filed with CCC until it is determined that the amount involved cannot be collected from the borrower. Therefore, after preliminary notice is given of this fact to CCC by the State Director, the County Supervisor will make immediate demand on the borrower for the amount of the CCC loan or the portion of it which should have been applied to the borrower's account. If payment is made, the State Director will be notified.

(i) If payment is not made, the County Supervisor will determine whether or not the case should be liquidated in accordance with §1962.40 of this subpart. Any liquidation action will be taken immediately. If the borrower has no property from which recovery can be made through liquidation or, if after liquidation, an unpaid balance remains on the indebtedness secured by the commodity pledged or sold to CCC, the County Supervisor will make a full report to the State Director on Form RD 455-1, "Request for Legal Action," with a recommendation that a claim be filed against CCC. However, if the indebtedness is paid through liquidation action, the State Director will be notified by memorandum.

(ii) If the facts do not warrant liquidation action, the State Director will be notified, and a recommendation will be made that no claim be filed against CCC.

(2) On receiving information from the State Director that CCC has called the borrower's loan, the County Supervisor will act to protect Rural Development's interest with respect to the commodity if CCC is repaid.

(b) State Office action.

(1) The State Director, on receipt of reports and recommendations from the County Supervisor, will:

(i) If in agreement with the County Supervisor's recommendation not to file a claim against CCC or if notice is received that the indebtedness has been paid, forward notice to CCC.

RD Instruction 1962-A  
§1962.19 (b) (Con.)

(ii) If in agreement with the County Supervisor's recommendation to file a claim against CCC, refer the case to OGC with a statement of facts.

(iii) If OGC determines that Rural Development holds a prior lien on the commodity and the amount due on its loan is not collectible from the borrower, send CCC a copy of the OGC memorandum with a complete statement of facts supporting the claim through the applicable ASCS office or notify CCC if the OGC memorandum does not support Rural Development's claim.

(2) The State Director will notify the County Supervisor promptly on receiving information from CCC that the borrower's loan is being called.

(3) If collection cannot be made from the borrower or other party (see paragraph 5 of Exhibit A of this Subpart), the State Director will give CCC the reasons. Rural Development will then be paid by CCC through the applicable ASCS office.

§§1962.20-1962.25 [Reserved]

§1962.26 Correcting errors in security instruments.

The County Supervisor may use Form RD 462-12, to correct minor errors in a financing statement when the errors are not serious (i.e., a slightly misspelled name). OGC will be asked to determine whether or not such errors are in fact minor. The County Supervisor may also use Form RD 462-12 to add chattel property to the financing statement (i.e., a new type or item of chattel or crops on land not previously described).

§1962.27 Termination or satisfaction of chattel security instruments.

(a) Conditions. The County Supervisor may terminate financing statements and satisfy chattel mortgages, chattel deeds of trust, assignments, severance agreements, and other security instruments when:

(1) Payment in full of all debts secured by collateral covered by the security instruments has been received; or

(2) All security has been liquidated or released and the proceeds properly accounted for, including collection or settlement of all claims against third party converters of security, even though the secured debts are not paid in full. This includes collection-only and debt settlement cases; or

(3) The U.S. Attorney has accepted a compromise offer in full settlement of the indebtedness and has asked that action be taken to satisfy or terminate such instruments; or

(4) Rural Development has a financing statement or other lien instrument which describes the real estate upon which crops are located but neither the borrower nor Rural Development has an interest in the crops because the borrower no longer occupies or farms the premises described in the lien instrument. Such action will only relate to the crops.

(b) Form of payment.

(1) Security instruments may be satisfied or the financing statements may be terminated on receipt of final payment in currency, coin, U.S. Treasury check, cashier's or certified check, bank draft, postal or bank money order, or a check issued by a party known to be financially responsible.

(2) When the final payment is tendered in a form other than those mentioned above, the security instruments will not be satisfied until 15 days after the date of the final payment. However, in UCC States the termination statement will be signed and sent to the borrower within 10 days after receipt of the borrower's written request but not until the 10th day unless it previously has been ascertained that the payment check or other instrument has been paid by the bank on which it was drawn. (See subsection (c) of this section for the reason for the 10-day requirement.)

(c) Filing or recording termination statements. Financing statements will be terminated by use of Form RD 462-12 if provided by a State supplement.

(1) Under UCC provisions if Rural Development fails to give a termination statement to the borrower within 10 days after written demand, it will be liable to the borrower for \$100 and, in addition, for any loss caused to the borrower by such failure unless otherwise provided by a State supplement. In the absence of demand for a termination statement by the borrower, a termination statement will be delivered to the borrower when the notes have been paid in full.

(2) However, if Rural Development has been meeting the borrower's annual operating credit needs in the past and expects to do so the next year, the financing statements need not be terminated in the absence of such demand unless a loan for the succeeding year will not be made or earlier termination is required by a State supplement.

(d) Filing or recording satisfactions. Satisfactions of chattel mortgages and similar instruments will be made on Form RD 460-4, "Satisfaction," or other form approved by the State Director. The original of the satisfaction form will be delivered to the borrower for recording or filing and the copy will be retained in the borrower's case file. However, if the State supplement based on State law requires recording or filing by the mortgagee, a second copy will be prepared for the borrower and the original will be recorded or filed by the County Supervisor. When State statutes provide that satisfactions may be accomplished by marginal entry on the records of the recording office, or when Form RD 460-4 is not legally sufficient because special circumstances require some other form of satisfaction, County Supervisors are authorized to make such satisfactions according to State supplements. In such cases, Form RD 460-4 will not be prepared but a notation of the satisfaction will be made on the copy of Form RD 451-1, "Acknowledgment of Cash Payment," or Form RD 456-3, "Journal Voucher for Write-Off or Judgment," which will be retained in the borrower's case folder.

(e) Satisfaction or termination of lien when old loans cannot be identified. When a request is received for the satisfaction of a crop or chattel lien, or for the termination of a financing statement and the status of the account secured by the lien cannot be ascertained from County Office records, the County Supervisor will prepare a letter to the Finance Office reflecting all the pertinent information available in the County Office regarding the account. The letter will request the Finance Office to tell the County Supervisor whether the borrower is still indebted to Rural Development and, if so, the status of the account. If the Finance Office reports to the County Supervisor that the account has been paid in full or otherwise satisfied or that there is no record of an indebtedness in the name of the borrower, the County Supervisor is authorized to issue a satisfaction of the security instruments on Form RD 460-4 or other approved form or to effect the satisfaction by marginal release, or a termination on Form RD 462-12 as appropriate.

§1962.28 [Reserved]

§1962.29 Payment of fees and insurance premiums.

(a) Fees.

(1) Security instruments. Borrowers must pay statutory fees for filing or recording financing statements or other security instruments (including Form RD 462-12, or other renewal statements) and any notary fees for executing these instruments. They also must pay costs of obtaining lien search reports needed in properly servicing security as outlined in this subpart. Whenever possible, borrowers should pay these fees directly to the officials giving the service. When cash is accepted by Rural Development employees to pay these fees, Form RD 440-12, "Acknowledgment of Payment for Recording, Lien Search and Releasing Fees," will be executed.

§ 1962.29 (Con.)

If the borrower cannot pay the fees, or if there are fees referred to in paragraph (a) (2) and (3) of this section that must be paid by the Agency, the field office may pay them in accordance to RD Instruction 2024-A, Exhibit D, Program Loan Cost Expenses. (Revised 04-07-04, PN 373.)

(2) Satisfactions. The borrower must pay fees for filing or recording satisfactions or termination statements unless a State law requires the Agency to pay them.

(3) Notary fees. The Agency will pay fees for notary service for executing releases, subordinations, and related documents for and on behalf of the Agency if the service cannot be obtained without cost.

(b) Insurance premiums. Field offices are authorized to voucher for the payment of bills for insurance premiums on chattel security, in accordance with RD Instruction 2024-A. Bills may be paid when:  
(Revised 08-13-92, SPECIAL PN.)

(1) A borrower cannot pay the premiums from their own resources at the time due;

(2) Anticipated crop income does not materialize which would normally be released for the payment of crop insurance;

(3) It is not practical to process a loan for that purpose;

(4) It is necessary to protect the Agency's interest; and

(5) The amount advanced can be charged to the borrower under the provisions of the security instrument.

§ 1962.30 Subordination of liens on chattel security. (Revised 05-26-98, SPECIAL PN.)

(a) Purposes. Subject to the limitations set out in paragraph (b) of this section, the Agency chattel liens may be subordinated to a lien of another creditor in either of the following situations:

(1) The prior lien will soon mature or has matured and the prior lienholder desires to extend or renew the obligation, or the obligation can be refinanced. The relative lien position of the Agency must be maintained; and

(2) The subordination will permit another creditor to refinance other debt or lend for an authorized direct loan purpose.

(b) Conditions. Agency chattel liens may be subordinated to a lien of another creditor if all of the following conditions are met:

(1) If the lien is on basic chattel security, the amount of subordination is necessary to provide the lender with the security it requires to make the loan.

(2) The subordination is limited to a specific amount and the loan to be secured by the subordination is closed within a reasonable time and has a definite maturity date.

(3) Only one subordination to one creditor may be outstanding at any one time in connection with the same security.

(4) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or State law. "Borrower" for purposes of this provision, specifically includes an individual or entity borrower and any member stockholder, partner, or joint operator, of an entity borrower and any member, stockholder, partner, or joint operator of an entity borrower. "Controlled substance" is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. Applicants must attest on the Agency application form that it and its members, if an entity, have not been convicted of such a crime.

(5) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to RD Instruction 1940-G.

(6) The borrower can document the ability to repay the total amount due under the subordination and pay all other debt payments scheduled for the operating cycle.

(7) The Agency loan is still adequately secured after the subordination, or the value of the loan security will be increased by at least the amount of the advances to be made under the terms of the subordination, including advances made to purchase crop inputs or livestock. (Revised 07-15-98, PN 293.)

(c) Approval. Loan approval officials may approve subordinations if the amount of the subordination, plus the principal balance of existing

## § 1962.30(c) (Con.)

subordinations is not more than their approval authority for the type of loan being subordinated. When the lien priority for more than one type of loan is subordinated, the total amount the approval official's authority will be limited to the loan with the lowest approval authority for that official. The State Executive Director may approve subordinations regardless of the amount. The State Executive Director may delegate their authority for approving subordinations to qualified State Office employees.

(d) Subordination to make a guaranteed loan. Notwithstanding the requirements of this section, subordinations on chattel security to make a guaranteed loan will be approved in accordance with § 1980.108 of FSA Transferred Instruction 1980-B.

(e) Forms. A chattel subordination will be requested by completing items 1, 10, 27A, 27B, 41A, 41B, 42A, and 42B on Form FSA 410-1. Form FSA 431-2 or other similar plan of operation acceptable to FSA will show the subordination and repayment. (Revised 04-07-04, PN 373.)

(1) The application data for the subordination request will be entered in the Management of Agricultural Credit (MAC) and coded as a subordination. (Revised 04-07-04, PN 373.)

(2) Subordinations will be executed on Form FSA 460-2, "Subordination by the Government," or on other forms approved by the State with OGC's advice. If Form FSA 460-2 does not conform to a State's recording requirements, a State supplement may be used, if approved by OGC, to modify the form.

(f) Loans under CCC program. A subordination or lien waiver to allow a borrower to obtain a CCC price support loan will be processed in accordance with Exhibits B and C of this subpart and FSA transferred Instruction 2000-AAA. (Revised 07-15-98, PN 293.)

(1) When a bank, ginner, or warehouseman advances the full value of a CCC loan on cotton to the borrower, the local loan servicing official may execute the lienholder's waiver on Form CCC Cotton A even though item 2 of that form shows that the CCC loan will be distributed to such a bank, ginner, or warehouseman. Loan servicing officials may approve waivers of crop liens in accordance with paragraph (c) of this section as they would a subordination.

(2) Rotation or exchanges of crops stored under the CCC Grain Reserve Program will be processed in accordance with Exhibit C of this subpart.

(g) Rescheduling existing Agency debts. The Agency may consent to rescheduling of an existing Agency debt when a subordination is granted to the debt of another lender. The rescheduling will be allowed only when the borrower cannot reasonably be expected to meet all currently scheduled installments when due and the conditions of FSA Transferred Instruction 1951-S are met.

(h) Appraisal. A chattel appraisal report will be obtained when the existing appraisal report is more than 2 years old or the information in the file is inadequate to make the value determination required in this section. The Agency may use an appraisal submitted by the borrower if it is substantially similar to Form RD 440-21, "Appraisal of Chattel Property," and prepared by a qualified appraiser according to USPAP.

§§ 1962.31 - 1962.33 [Reserved]

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

Chattel and EO property may be transferred to eligible or ineligible transferees who agree to assume the outstanding loan, subject to the provisions of this section. A transfer and assumption may also be made when a borrower or the former spouse and co-obligor of a divorced borrower withdraws from the operation or dies. The transfer of accounts secured by real estate or both real estate and chattels will be processed under FSA Transferred Instruction 1965-A. Attachment 1 of FSA Transferred Instruction 1951-S must be sent to the transferor/borrower as soon as they inquire with the loan servicing official about a transfer. The transferee/applicant must not have been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. "Applicant " for purposes of this provision, specifically includes an individual or entity and any member stockholder, partner, or joint operator, of an entity and any member, stockholder, partner, or joint operator of an entity. "Controlled substance" is defined at 21 CFR part 1308. The applicant will be ineligible for a transfer and assumption for the crop year in which the conviction occurred and the four succeeding crop years. Applicants as individuals, or as members of an entity, must attest on Form FSA 410, "Application for FSA Services," that it has not been convicted of such a crime. A decision to reject an application for transfer and assumption for this reason is not appealable. (Revised 05-26-98, SPECIAL PN.)

(a) Transfer to eligibles. Transfers of chattel security and EO property to a transferee who is eligible for the kind of loan being assumed or who will become eligible after the transfer may be approved, provided:

## § 1962.34(a) (Con.)

(1) The transferee assumes the total outstanding balance of the Rural Development debts or that portion of the outstanding balance equal to the present market value of the chattel security or EO property, less any prior liens, if the property is worth less than the entire debt.

(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Form RD 460-9, "Assumption Agreement (Same Terms-Eligible Transferee)," will be used. Any delinquency and any deferred interest outstanding will be scheduled for payment on or before the date the transfer is closed. If the existing loan repayment period is extended, the debt being assumed may be rescheduled using Form RD 1965-13, "Assumption Agreement (Farmer Program Loans)." The new repayment period may not exceed that for a new loan of the same type and the current interest rate for such loans will be charged. If any deferred interest is not paid by the time the transfer takes place, it must be added to the principal balance and the loan must be assumed at new rates and terms. Upon request of an applicant assuming a loan at new rates and terms and/or an applicant eligible to receive limited resource rates and terms, the interest rate charged by Rural Development will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of RD Instruction 440.1 (available in any Rural Development office) for the type assistance involved. (Revised 10-14-88, SPECIAL PN)

(3) The transfer of EM actual loss loans, or EM loans made before September 12, 1975, will be made as provided under paragraph (b) of this section. However, when one or more of the borrowers or jointly obligated partners or joint operators withdraw from the operation and those remaining desire to assume the total indebtedness and continue the operation, a transfer to the remaining borrowers, partners, or joint operators may be made as an eligible transferee. (Revised 4-23-86, SPECIAL PN.)

(4) The requirements found in Exhibit M of Subpart G of Part 1940 of this chapter are met. (Revised 3-4-88, SPECIAL PN.)

(b) Transfer to ineligible. Transfer of the chattel security and EO property to a transferee who is not eligible for the kind of loan being assumed may be approved, provided:

§1962.34 (b) (Con.)

(1) It is in the Agency's financial interest to approve the transfer of security or EO property and assumption of the debts rather than to liquidate the security or EO property immediately.

(2) The transferee assume the total outstanding balance of the Agency debt, or an amount equal to the present market value of the security of EO property as determined by the County Supervisor, less any prior liens, if the value is less than the entire debts.

(3) Agency debts assumed will be repaid in amortized installments not to exceed 5 years using Form RD 1965-13. The Farm Credit Programs NP interest rate for chattel property set forth in a National Office issuance in effect at the time of loan approval will be charged. Any deferred interest not paid by the time the transfer takes place must be added to the principal balance. The transferred property, including EO property, will be subject to any existing Agency lien. In the absence of an existing Agency lien, new lien instruments will be executed. (Revised 03-14-97, SPECIAL PN.)

(4) The transferee can repay the Agency debt in accordance with the assumption agreement and can legally enter into a contract. (Revised 06-21-96, SPECIAL PN.)

(5) The requirements found in Exhibit M of Subpart G of Part 1940 are met. (Revised 06-21-96, SPECIAL PN.)

(6) The transferee has never been liable for a previous Farm Loan Programs (FLP) loan or loan guarantee which was reduced or terminated in a manner that resulted in a loss to the Government. (Added 03-14-97, SPECIAL PN.)

(c) Effect of signature. In all cases the purpose and effect of signing an assumption agreement or other evidence of indebtedness is to engage separate and individual personal liability, regardless of any State law to the contrary.

(d) Release of transferor from liability. The borrower and any cosigner may be released from personal liability to the Agency when all the chattel security or EO property is transferred to an eligible or ineligible applicant and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. However, no such release will be granted to any borrower who was liable for any direct FLP loan which was reduced or terminated in a manner that resulted in a loss to the Government. The appropriate official is authorized to approve releases from liability in accordance with §1962.34(h) of this subpart. When there will be no releases from

liability, the transferor and cosigner of a Farm Credit Programs loan must be sent a letter similar to Exhibit F of subpart A of part 1955. (Revised 03-14-97, SPECIAL PN.)

(e) Agency actions. The County Supervisor will clearly document the determinations in the county case file. (Revised 06-21-96, SPECIAL PN.)

(1) Transfer to eligible applicant. The Agency will determine the transferee's eligibility for the type of loan to be assumed. The determination will be clearly documented in the county case file.

(2) Release from liability. If the total outstanding debt is not assumed, the County Supervisor must make the following determinations before he or she releases the transferor from personal liability:

(i) The transferor and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer;

(ii) The transferor and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability; and

(iii) The transferee will assume a portion of the indebtedness at least equal to the present market value of the security.

(f) Transfer and assumption docket. The County Supervisor will assemble the following statements and forms for transfer and assumption.

(1) A statement of the current amount of the indebtedness.

(2) A description of the security or EO property to be transferred and a statement about its value.

(3) Form RD 410-1, "Application for FSA Services."  
(Revised 02-03-86, SPECIAL PN.)

(4) Appropriate recommendation if the transferor is to be released from liability. (Revised 06-21-96, SPECIAL PN.)

(5) Statement of justification for the transfer, including a plan of repayment, if not otherwise shown in the docket.  
(Renumbered 03-27-91, PN 161.)

(6) Reserved.

§ 1962.34(f) (Con.)

(7) Transferee's Farm Business Plan, or other similar plan of operation acceptable to Farm Service Agency (FSA), or Form RD 1944-3, "Budget and/or Financial Statement."  
(Revised 05-18-05, PN 386.)

(8) Form FSA 1965-13. (Revised 05-18-05, PN 386.)

(9) Form RD 1965-8, "Release From Personal Liability," when appropriate.

(10) Form RD 1940-1, "Request for Obligation of Funds."

(11) Form RD 465-5, "Transfer of Real Estate Security," will be used to transfer real estate security.

(g) Processing assumption agreements. Additional security instruments will be obtained in accordance with advice from OGC.  
(Revised 05-18-05, PN 386.)

(1) Upon processing the assumption, the Rural Development St. Louis Office (KCFO for FSA) will establish an account in the name of the assuming transferee and the Local Office will be notified.

(2) If a collection is received from the transferee after the assumption agreement is approved but before the Rural Development St. Louis Office (KCFO for FSA) notification to the Local Office, Form RD 451-2, "Schedule of Remittances," will be prepared as follows:

(i) During the period that a transfer is pending in the Local Office, payments received by the Rural Development St. Louis Office (KCFO for FSA) will continue to be applied to the transferor's account, and Form RD 451-26, "Transaction Record," will be forwarded to the Local Office. This includes any downpayments made in connection with the transfer for reducing the amount of the debt to be assumed. On receiving a payment on the account not included in the latest transaction record or monthly payment account status report, the County Supervisor should deduct such amounts from the total amount of principal and interest calculated from the latest information available before completing the assumption agreement and having it signed.

(ii) When the borrower has made a direct payment to the Rural Development St. Louis Office (KCFO for FSA) and there is no record of it in the Local Office, the account will be assumed based on the latest record in the Local Office. The application of the direct payment will be reversed from the account, and the assumption agreement will be processed in the Rural Development St. Louis Office (KCFO for FSA). The Deputy Chief Financial Officer (KCFO for FSA), will contact the FLM to determine how to dispose of the proceeds from the direct payment.

(iii) For payments received on the date of transfer, Form RD 451-2 will be prepared to show "Transfer in process for account owned by (borrower's name and case number) to be transferred to (name of transferee and case number, if known)." If the borrower number portion of the case number has not yet been assigned for a transferee, only the State and Local Office portion of the case number will be shown. A statement for the information of the Rural Development St. Louis Office (KCFO for FSA) will be attached to the assumption agreement showing the date of Form RD 451-2 and the amount paid.

(iv) When a payment is due on the assumption agreement shortly after the transfer is completed, it should be collected if possible, at the time of transfer and remitted in the transferee's name.

(h) Approval. Loan approval officials are authorized to approve transfer and assumption of FLP accounts to eligible or ineligible transferees when the debts are within their respective loan approval authorities in accordance with §29D of FSA Handbook 1-FLP. When the Agency debt less the market value and prior liens is \$1 million or more (including principal, interest and other charges), release of liability must be approved by the Administrator or designee. FLM's may approve release of liability when all of the FLP security is transferred and the total outstanding FLP debt is assumed, otherwise, the State Executive Director (SED) must approve the release of liability. All cases requiring a release of liability from the SED will be submitted for review in accordance with Exhibit A of subpart B of part 1956 of this chapter (available in any FSA office).

§§ 1962.35 - 1962.39 [Reserved]

§ 1962.40 Liquidation.

(a) Voluntary liquidation.

(1) General. When a borrower contacts the Agency and asks about voluntarily liquidating security, the borrower will be sent Attachments 1 and 2 of Exhibit A of Subpart S of Part 1951 of this chapter or Attachments 1, 3 and 4, and the preliminary application forms by certified mail, or the forms will be hand delivered at the County Office. The servicing notices which provide possible alternatives to liquidation provide a maximum of 60 days for the borrower to apply for servicing. Therefore, the Agency will not discuss liquidation or methods of liquidation until 60 days after the borrower receives the notices except in serious situations which are documented in the case file. During the 60-day time period, the servicing official may answer questions regarding the servicing notices. After 60 days, the borrower will be told that liquidation can be accomplished by: (Revised 04-17-91, SPECIAL PN.)

- (i) Selling the security under §1962.41 of this subpart.
- (ii) Transferring the security under §1962.34 of this subpart.
- (iii) Conveying the security to the Agency under RD Instruction 1955-A, or
- (vi) Refinancing the debt with another lender.

(2) Lien search. The servicing official will obtain a current lien search report to determine the effect that liens of other parties will have on liquidation, the record lienholders to whom notices of sale will be given, and the distribution that will be made of the sale's proceeds. Normally, lien searches should be obtained from the same sources as is used when making a loan. If obtaining the searches from third party sources causes undue delay which interferes with orderly liquidation, searches may be made by the servicing official. If the lien search is made by third parties, the borrower will pay the cost from personal funds or if the borrower refuses, the Agency will pay the cost and charge it to the borrower's account in accordance with the security instrument or EO Loan Agreement. The records to be searched and the period covered by the search will be in accordance with a State supplement.

(b) Involuntary Liquidation. (Revised 04-17-91, SPECIAL PN.)

(1) General. When a borrower makes an unapproved disposition of security, the directions in §§1962.18 and 1962.49 of this subpart will be followed. In all other cases, when the servicing official, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that further servicing cannot be justified under the policy stated in §1962.2 of this subpart, liquidation of the account(s) will be accomplished as quickly as possible under this section and Subpart A of Part 1955 of this chapter. When liquidation is begun, it is FSA policy to liquidate all security and EO property, except EO property that the servicing official determines is essential for minimum family living needs. The present market value of security that may be retained by the borrower for minimum family living needs will not exceed \$600. However, only so much of the security and EO property will be liquidated as necessary to pay the indebtedness.

(2) Farm Loan Programs loan cases. In Farm Loan Programs loan cases, borrowers who are 90 days past due on their payments must receive Exhibit A with Attachments 1 and 2, or Attachments 1, 3 and 4 of Exhibit A of Subpart S of Part 1951 of this chapter in cases involving nonmonetary default. The servicing official will send these forms to the borrower as soon as a decision is made to liquidate. The procedures set out in Subpart S of Part 1951 of this chapter shall be followed and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. If the borrower fails to return Attachment 2 of Exhibit A of Subpart S of Part 1951 of this chapter and a preliminary application within 60 days, the servicing official will send Attachments 9 and 10, or 9A and 10A, as appropriate, of Exhibit A of Subpart S of Part 1951 of this chapter. If the borrower fails to return Attachments 4, 6, 6-A, 10, or 10-A of Exhibit A of Subpart S of Part 1951 of this chapter within 60 days, the borrower's account will be accelerated in accordance with §1955.15(d)(2) of Subpart A of Part 1955 of this chapter and paragraphs (b)(2)(i) and (ii) of this section. The servicing official will then attempt to repossess the security in accordance with §1962.42 of this subpart. If this is not possible, the case will be referred for civil action in accordance with §1962.49 of this subpart. Unmatured installments will be accelerated as follows: (Revised 04-07-04, PN 373.)

(i) The District Director will accelerate all unmatured installments by using Exhibits D, E or E-1 of Subpart A of Part 1955 of this chapter except in cases referred to OGC for civil action, if the notice has previously been given.

§1962.40(b) (2) (Con.)

(ii) Exhibits D, E, or E-1 of subpart A of part 1955 will be sent to the last known address of each obligor, with a copy to the Finance Office in those cases referred to OGC for civil action. County Office and Finance Office loan records will be adjusted to mature the entire indebtedness only.  
(Revised 06-21-96, SPECIAL PN.)

(3) Lien search. The County Supervisor will follow the directions set out in paragraph (a) (2) of this section.

(c) Multiple loans and loans secured by both real estate and chattels. Follow the provisions of §1965.26(c) for liquidating these loans.  
(Revised 06-21-96, SPECIAL PN.)

(d) Assignment of direct loans. When liquidation of a direct loan is approved, the State Director will be asked by the official who approved the liquidation to immediately obtain an assignment of the loan if the promissory note is not held in the County Office. Pending the assignment, preliminary steps to effect liquidation should be taken, but civil or other court action will not be started and claims will not be filed in bankruptcy or similar proceedings or in probate or administration proceeding with respect to the direct loan claim, unless essential to protect the Government's interests and OGC recommends such action. However, other steps need not be held up pending assignment. If any problems are encountered in obtaining the assignment, OGC may be contacted for advice. (Revised 06-21-96, SPECIAL PN.)

(e) Protective advances.

(1) After attachments 1 and 2 or 1, 3, and 4 of exhibit A of subpart S of part 1951 have been sent and if security is in danger of loss or deterioration, the State Director will protect the Government's interest and approve protective advances in payment of:  
(Revised 06-21-96, SPECIAL PN.)

(i) Delinquent taxes or assessments that constitute prior liens which would be paid ahead of the Agency under §1962.44(a). (Revised 06-21-96, SPECIAL PN.)

(ii) Premiums on insurance essential to protect the Government's interest, and

(iii) Other costs including transportation necessary to protect or preserve the security.

(2) However, such advances may not be made unless the amount advanced becomes a part of the debt secured by the Agency's lien, or is for expenses of administration of estates or for litigation. If a case is in the hands of the U.S. Attorney, such advances may not be made without the U.S. Attorney's concurrence. Moreover, such advances may not be made in any case to pay expenses incurred by a U.S. Marshal or other similar official such as a local sheriff. However, if the official seizes the property and delivers it to the Agency for sale by the Agency, costs incurred by the Agency after delivery to the Agency will be paid.

(3) The County Supervisor will submit a report on the need for such advances to the State Director, including:

(i) Borrower's County Office case file;

(ii) Current lien search report;

(iii) Statement of the type and value of the property and of the circumstances which may result in the loss or deterioration of such property; and

(iv) A recommendation as to whether or not the advance should be approved.

(4) Costs incurred by the Government in protecting its interest in security or EO property may be paid in accordance with RD Instruction 2024-A, and may be charged to the borrower's loan account, or paid from proceeds of the sale of security or EO property. (Revised 06-21-96, SPECIAL PN.)

(f) When a borrower's security property is liquidated voluntarily or involuntarily and there is an unpaid balance on the account, the County Supervisor will meet with the borrower within 30 days to assist the borrower in developing a debt settlement offer in accordance with subpart B of part 1956. (Revised 06-21-96, SPECIAL PN.)

§1962.41 Sale of chattel security or EO property by borrowers.

Borrowers who are liquidating voluntarily and who have not been sent Exhibit A and Attachments 1 and 2 or 1, 3, and 4 of subpart S of part 1951 will be processed in accordance with paragraph (a) (1) of §1962.40 before any sale occurs. (Revised 06-21-96, SPECIAL PN.)

## § 1962.41 (Con.)

(a) Public sale. A borrower may voluntarily liquidate chattels by selling the property at auction in the borrower's own name. Form RD 455-3, "Agreement for Sale by Borrower (Chattels and/or Real Estate)," will be executed by the borrower, all lienholders, and the clerk of the sale or other person who will receive the sale proceeds before execution by the servicing official. When EO property is involved, delete from the form the reference to the Agency lien wherever it appears on the forms. No Agency official is authorized to bid at such sales. The Servicing official will arrange to promptly receive the proceeds of the sale due the Agency for application on the borrower's indebtedness.

(b) Private sale. The borrower may sell chattel security or EO property at a private sale if:

- (1) (i) The borrower has ready purchasers and can sell all of the property for its present market value; or
  - (ii) The property is perishable; or
  - (iii) The property is of a type customarily sold on a recognized market; or
  - (iv) The property consists of items of small value or a limited number of items which do not justify public sale.
- (2) Form RD 1962-1 may be used to approve liquidation of such security. The servicing official will document in the running case record the reasons that a public sale was not justified.
- (3) Form RD 455-3 is completed before the sale.

(c) Government takes possession. The borrower may also turn over possession of the chattels to the Agency by signing Form RD 455-4, "Agreement for Voluntary Liquidation of Chattel Security." This form authorizes the Agency to sell the security at either public or private sale. If the Agency hires a caretaker, services should be obtained by use of Form AD-838, "Purchase Order." (Revised 12-16-92, PN 196.)

(d) Record of sale. The sale will be recorded on Form RD 1962-1.

(e) Unpaid debt. If the sale of all security results in less than full payment of the debt, the borrower may request debt settlement of the remaining debt. The servicing official will consult with the County Committee before determining if the borrower's account can be debt settled in accordance with subpart B of part 1956 of this chapter. (Revised 09-10-03, PN 363.)

§ 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.

(a) Repossession. Except as provided in paragraph (d) of this section, prior to any repossession of FLP security a borrower and all co-signers on the note must receive Exhibit A and Attachments 1 and 2 or 1, 3, and 4 of Subpart S of Part 1951 of this chapter, and the application forms. The appropriate procedures of Subpart S of Part 1951 of this chapter must be followed and any appeal must be concluded. The servicing official will take possession of security or EO property for the Agency when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, and if the prior lienholder does not intend to enforce the lien. See § 1955.20 of Subpart A of Part 1955 of this chapter. (Revised 04-17-91, SPECIAL PN.)

(1) Conditions. The servicing official will take possession under any of the following conditions:

(i) When Form RD 455-4 has been executed. For EO property this form will be reviewed by placing a period after "interest" in the first sentence beginning "The Debtor" and deleting the remainder of the clause; deleting the words "collateral covered by the security instruments" in the second part of that sentence and inserting instead "property covered by the debtor's loan agreement which is referred to as the collateral."

(ii) When the borrower has abandoned the property.

(iii) When peaceable possession can be obtained, but the borrower has not executed Form RD 455-4.

(iv) When the property is delivered to the Agency as a result of court action.

(v) When Form RD 455-5, "Agreement of Secured Parties to Sale of Security Property," is executed by all prior lienholders. If prior lienholders will not agree to liquidate the property, their liens may be paid if their notes and liens are assigned to the Agency on forms prepared or approved by OGC. When prior liens are paid, the payment will be made in accordance with RD Instruction 2024-A and charged to the borrower's account. (Revised 08-13-92, SPECIAL PN.)

§1962.42(a)(1) (Con.)

(vi) When arrangements cannot be made with the borrower or a member of the borrower's family to sell EO property in accordance with the loan agreement.

(2) Recording. A list, dated and signed by the servicing official, of all security or EO property repossessed except for those items on Form RD 455-4 will be maintained in the borrower's case file. Whenever the servicing official is transferred to another position or leaves the Agency or there is a change in jurisdiction, the District Director will give the succeeding servicing official in writing, the names of such borrowers and a list of the property repossessed in the custody of the servicing official and caretakers, its location, and the names and addresses of the caretakers.  
(Revised 03-14-97, SPECIAL PN.)

(b) Care. The servicing official will arrange for the custody and care of repossessed property as follows:

(1) Livestock. Care and feeding of livestock will be obtained by contract pursuant to RD Instruction 1955-B. The value of animal products (such as milk) may constitute all or part of the contractor's quotation, and if this is desired, such a statement should be included in the solicitation. Possession of the livestock will be turned over to the contractor only after the contract is awarded using Form AD-838, "Purchase Order." If a contractor's services are needed for a longer period than is authorized in paragraph (c)(4)(i) of this section, the State Director may authorize the servicing official to continue obtaining the necessary services for the time needed. (Revised 08-13-92, SPECIAL PN.)

(2) Machinery, equipment, tools, harvested crops, and other chattels. Property will be stored and cared for pending sale. Storage and necessary services may be obtained by contract using Form AD-838. Use of property by the contractor is not authorized.  
(Revised 08-13-92, SPECIAL PN.)

(3) Crops. Form AD-838 will be used for obtaining services for the custody, care, and disposition of growing crops and for unharvested matured crops unless the crops are to be sold in place.  
(Revised 08-13-92, SPECIAL PN.)

Where a landlord is involved, written consent of the landlord should be obtained. If landlord consent cannot be obtained, where applicable, the circumstances should be reported to the State Director for advice.

(c) Sale. Repossessed property may be sold by Rural Development at public or private sale for cash under Form RD 455-4, "Agreement for Voluntary Liquidation of Chattel Security," Form RD 1955-41 "Notice of Sale," the power of sale in security agreements under the UCC or in crop and chattel mortgages and similar instruments if authorized by a State supplement. Also, repossessed property may be sold at private sale when the borrower executes Form RD 455-11, "Bill of Sale 'B' (Sale by Private Party)." (Revised 04-17-91, SPECIAL PN.)

(1) Tests and inspections of livestock. If required by State law as a condition of sale, livestock will be tested or inspected before sale. A State supplement will be issued for those States.

(2) Public sales. Such sales will be made to the highest bidder. They may be held on the borrower's farm or other premises, at public sale barns, pavilions, or at other advantageous sales locations. No Rural Development employee will bid on or acquire property at public sales except on behalf of Rural Development in accordance with §1955.20 of Subpart A of Part 1955 of this Chapter. The County Supervisor will attend all public sales of repossessed property.

(3) Private sales. Rural Development will sell perishable property such as fresh fruits and vegetables for the best price obtainable. Rural Development will sell staple crops such as wheat, rye, oats, corn, cotton, and tobacco for a price in line with current market quotations for products of similar grade, type, or other recognized classification. Chattel property sold under Form RD 455-4, other than perishable property and staple crops, will not be sold for less than the minimum price in the agreement. Rural Development will sell other property, including that sold when the borrower executes Form RD 455-11, for its present market value. (Revised 04-17-91, SPECIAL PN.)

(4) Selling period. Repossessed property will be sold as soon as possible. However, when notice is required by subparagraph (c)(5) of this section, the sale will not be held until the notice period has expired.

(i) The sale will be made within 60 days, unless a shorter period is indicated by a State supplement because of State law. Crops will be sold when the maximum return can be realized but not later than 60 days after harvesting, or the normal marketing time for such crops. The State Director may extend the sale time within State law limits. (Revised 04-17-91, SPECIAL PN.)

(ii) These requirements do not apply to irrigation or other equipment and fixtures which, together with real estate, serve as security for Rural Development real estate loans and will be sold or transferred with the real estate. However, a State Supplement will be issued for any State having a time limit within which such items must be sold along with or as a part of the real estate.

(5) Notice.

(i) Notice of public or private sale of repossessed property when required will be given to the borrower and to any party who has filed a financing statement or who is known by the County Supervisor to have a security interest in the property, except as set forth below. The notice will be delivered or mailed so that it will reach the borrower and any lienholder at least 5 days (or longer time if specified by a State supplement) before the time of any public sale or the time after which any private sale will be held. Form RD 1955-41, "Notice of Sale," may be used for public or private sales. (Revised 10-14-88, SPECIAL PN.)

(A) Notice of the borrower or lienholder is not required when the property is sold under Form RD 455-4 because the parties are placed on notice when they execute the form. When the sale involves only collateral which is perishable, will decline quickly in value, or is a type customarily sold on a recognized market, notice is not required but may be given if time permits to maintain good public relations. (Revised 04-17-91, SPECIAL PN.)

(B) Notice only to lienholder is required when repossessed property is sold at private sale and the borrower executes Form RD 455-11.

(C) If the property is to be sold under a chattel mortgage, the manner of notice will be set forth in a State Supplement or on an individual case basis.

(ii) Notice of Internal Revenue Service (IRS). If a Federal tax lien notice has been filed in the local records more than 30 days before the sale of the repossessed security, notice to the District Director of IRS must be given at least 25 days before the sale. It should be given by sending a copy of Form RD 1955-41 and a copy of the filed Notice of Federal Tax Lien (Form IRS 668).

If the security is perishable, the full 25 days' notice must be given to the District Director by registered or certified mail or by personal service before the sale. Also, the sale proceeds must be held for 30 days after the sale so that they may be claimed by IRS on the basis of its tax lien priority. In such perishable property cases, the proceeds or an amount large enough to pay the IRS tax lien will be forwarded to the Finance Office with a notation "Hold in suspense 30 days because of Federal Tax Lien." OGC will advise the Finance Office about disposing of the funds. (Revised 10-14-88, SPECIAL PN.)

(6) Advertising.

(i) Private sales and sales at established public auctions will be advertised by Rural Development only if required by a State supplement based on State law.

(ii) Other public sales, whether under power of sale in the lien instrument or under Form RD 455-4, will be widely publicized to assure large attendance and a fair sale by one or more of the following methods customarily used in the area.

(A) The sale may be advertised by posting or distributing handbills, posting Form RD 1955-41, or a revision of it approved by OGC to meet State law requirements, or by a combination of these methods. The length of time and place of giving notice will be covered by a State supplement. (Revised 10-14-88, SPECIAL PN)

(B) Advertising in newspapers or spot advertising on local radio or TV stations may be used depending on the amount of property to be sold and the cost in relation to the value of the property, the customs in the area, and State law requirements. When newspaper advertising is required, a State supplement will indicate the types of newspapers to be used, the number and times of insertions of the advertisement, and the form of notice of sale. All advertising must contain non-discrimination clauses. (Revised 04-17-91, SPECIAL PN.)

(7) Payment of costs and prior lienholders. If expenses must be paid before the sale or if cash proceeds are not available from the sale of the property to pay costs referred to in §1962.44(b) of this subpart or to pay prior lienholders, such costs or prior liens will be paid in accordance with

RD Instruction 2024-A (available in any Rural Development office). The amount of the voucher will be charged to the borrower's account, except as limited by State law in a State Supplement. No costs in the repossession and sale of security should be incurred unless they can be charged to the borrower's account, and in no event will the Government pay them. However, if costs are not legally chargeable to the borrower, they may be paid as provided in this subpart, and charged to an account setup for the officials or other persons found responsible for them. (Revised 08-13-92, SPECIAL PN.)

(8) Bill of sale or transfer of title. If a purchaser requests a written conveyance of repossessed property sold by Rural Development at public or private sale, the County Supervisor will execute and deliver to the purchaser Form RD 455-12, "Bill of Sale 'C' (Sale through Government as Liquidating Agent)," or other necessary instruments to convey all the rights, title, and interest of the borrower and Rural Development. A State supplement will be issued as necessary for conveying title to motor vehicles and boats.

(d) Risk of injury. If a farmer program loan borrower has abandoned security and the security is in danger of being substantially harmed or damaged, the County Supervisor will attempt to repossess the security as explained in paragraph (a) of this section. Then the County Supervisor will send the borrower and all co-signers on the note Attachments 1, 3, and 4 of Exhibit A of Subpart S of Part 1951 of this chapter. The security will be cared for as explained in paragraph (b) of this section until all appeal rights have been given and any appeal has been concluded. When the appeal process is concluded, the security will be returned to the borrower or sold in accordance with paragraph (c) of this section, depending on the outcome of any appeal. The County Supervisor will document the abandonment and the danger of substantial damage in the borrower's case file. In the case of livestock, abandonment occurs if a borrower stops caring for the animals, as determined by the County Supervisor. However, an independent third-party (not an Rural Development employee) must determine that livestock is in danger of substantial damage. Protective advances may be made in accordance with §1962.40 (e) of this subpart. (Revised 04-17-91, SPECIAL PN.)

§1962.43 Liquidation of chattel security or EO property by other parties.

§1962.43 (Con.)

(a) Sale by prior lienholders and other parties. See §1955.20 of Subpart A of Part 1955 of this Chapter for the County Supervisor's authority to bid at such sales.

(b) Sale by junior lienholders. On learning through formal notice or otherwise that a junior lienholder has begun foreclosure, the County Supervisor will inform the foreclosing junior lienholder in writing as to the property on which the Agency holds a prior lien; and that if the junior lienholder's foreclosure sale is held, the County Supervisor will announce at the sale that the Agency holds a prior lien on each item of such property as security for an indebtedness of \$\_\_\_\_\_ (total principal and interest), and that any such property sold will continue to be subject to the Agency's prior lien. (Revised 06-21-96, SPECIAL PN.)

(c) Retention by other lienholders without sale. If another lienholder notifies the Agency that it has taken possession of the security after default and proposes to keep it in satisfaction of its secured claims, the County Supervisor should promptly reply in writing that the Agency objects and insists that the property be sold in accordance with law. The County Supervisor will only write the lienholder when the Agency's estimated recovery will be substantially greater than the amount of the claim, prior liens and sale expense. After such notice, the case will be referred to the State Director for advice. (Revised 06-21-96, SPECIAL PN.)

§1962.44 Distribution of liquidation sale proceeds.

This section applies to proceeds of nonjudicial liquidation sales conducted under the power of sale in lien instruments or under Form RD 455-4, Form RD 455-3, or Form RD 462-2.

(a) Lien priorities.

(1) Federal liens. For Federal income, social security, other Federal tax liens, or liens of other Federal agencies, OGC's advice will be obtained as to lien priorities.

(2) State and local tax liens. A State supplement, if considered necessary by the State Director and OGC, will list priorities of these liens, or may provide for referral of these cases to the State Office.

§1962.44(a) (Con.)

(3) Chattel mortgages and other liens of private parties. A State Supplement, if considered necessary by the State Director and OGC, will list priorities of chattel mortgages, landlord's liens, mechanics and materialmen liens, and other liens of private parties.

(4) Security interest under UCC. Liens on the same collateral that are perfected by filing a financing statement under the UCC and that are still effective as constructive notice, unless otherwise provided by a State supplement, will be paid in the order of their perfection. Exceptions to this rule are listed below. A State supplement will be issued whenever necessary to explain any State deviations from these listed exceptions.

(i) A purchase money security interest in personal property 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 collateral or within 10 days thereafter. However:

(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 of the collateral or within 10 days thereafter. In some States, filing a financing statement to perfect a security interest is not required. A State supplement will be issued as necessary.

(B) Inventory. A purchase money security interest in inventory will take priority over an earlier perfected security interest provided a security agreement is taken and a financing statement is filed not later than the time the purchaser receives possession of the property. Also, before the purchaser receives possession, the purchase money creditor will notify the earlier perfected security party, in writing, that he or she had, or expects to acquire, a purchase money security interest in inventory described by item or type.

(Renumbered 06-21-96, SPECIAL PN.)

(ii) A security interest taken in goods before they become fixtures has priority over real estate interest holders. A security interest taken in goods after they become fixture, is valid against all persons subsequently acquiring an interest in the real estate. It is not valid, however, against persons who had an interest in the real estate when the goods became fixtures, unless they execute a consent disclaimer or subordination agreement.

(iii) When new value is given, a security interest taken in and to finance crops not more than 3 months before they are planted or otherwise become growing crops, has priority over an earlier perfected security interest for obligations that were due more than 6 months before the crops became growing crops.

(b) Order of payment. Sales proceeds will be distributed in the following order of priority.

(1) To pay expenses of sale including advertising, lien searches, tests and inspection of livestock, and transportation, custody, care, storage, harvesting, marketing, and other expenses chargeable to the borrower, including reimbursement of amounts already paid by the Agency and charged to the borrower's account. Bills can be paid, after liquidation has been approved, for essential repairs and parts for machinery and equipment to place it in reasonable condition for sale, provided written agreements from any holders of liens which are prior to those of the Agency state that such bills may be paid from the sales proceeds ahead of their liens.

(Revised 06-21-96, SPECIAL PN.)

(i) However, any such expenses incurred by the U.S. Marshal or other similar official such as a local sheriff may not be paid from sale proceeds turned over to the Agency.

(Revised 06-21-96, SPECIAL PN.)

(ii) On the other hand, if the U.S. Marshal or other similar official such as a local sheriff has taken possession of the property and delivered it to the Agency for sale, such costs incurred by the Agency after delivery of the property to it may be paid from the proceeds of the sale. (Revised 06-21-96, SPECIAL PN.)

(2) To pay liens which are prior to Agency liens provided that:

(Revised 06-21-96, SPECIAL PN.)

(i) State and local tax liens on security or EO property which are prior to the liens of Rural Development will be paid only when demand is made by tax collecting officials before distributing the sale proceeds. The sale proceeds will not be used to pay real estate, income, or other taxes which are not a lien against the security, or to pay substantial amounts of personal property taxes on nonsecurity personal property.

(ii) If action is threatened or taken by the sheriff or other official to collect taxes not authorized in subparagraph (b) (2) (i) of this section to be paid out of the security or the sale proceeds, the sale will be postponed unless an arrangement can be made to deposit in escrow with a responsible, disinterested party, an amount equal to the tax claim, pending determination of priority rights. When the sale is postponed, or an escrow arrangement is made, the matter will be reported promptly to the State Director for referral to OGC.

(iii) If Rural Development subordinations have been approved, their intent will be recognized in the use of sale proceeds even though the creditor in whose favor the Rural Development lien was subordinated did not obtain a lien. If there are other third party liens on the property, however, the lienholders must agree to the use of the sale proceeds to pay such creditor first.

(3) To pay rent for the current crop year from the sale proceeds of other than basic security or EO property. However, there must be no liens junior to Rural Development's other than the landlords' lien, if any, and the borrower must consent in writing to the payment.

(4) To pay debts owed Rural Development which are secured by liens on the property sold.

(5) To pay liens junior to those of Rural Development in accordance with their priorities on the property sold, including any landlord's liens for rent unless such liens already have been paid. Junior liens will not be paid unless, on request, the lienholder gives proof of the existence and the amount of his or her lien.

(6) To pay on any EO unsecured debt.

(7) To pay rent for the current crop year if the borrower consents in writing to payment and if such rent has not already been paid as provided in subparagraphs (b) (2), (3), or (5) of this section.

(8) To pay on any other Rural Development debts, either unsecured or secured by liens on property which is not being sold. However, in justifiable circumstances, the State Director may approve the use of a part of all of the remainder of such sale proceeds by the

borrower for other purposes, provided the other Rural Development debts are adequately secured, or the borrower arranges to pay the other debts from income or other sources and these payments can be depended upon.

(9) To pay the remainder to the borrower.

(c) Receipts. Receipts are required for all amounts paid from the sale proceeds and are kept in the borrower's case file. Form RD 451-2 will be prepared only for the total amount remitted to Rural Development for credit to the borrower's indebtedness.

§1962.45 Reporting sales.

Form RD 1955-3, "Advice of Property Acquired," will be prepared and distributed according to the FMI when property is acquired by Rural Development.

§1962.46 Deceased borrowers.

Immediately on learning of the death of any person liable to Rural Development, the County Supervisor will prepare Form RD 455-17, "Report on Deceased Borrower," to determine whether any special servicing action is necessary unless the County Supervisor recommends settlement of the indebtedness under Subpart B of Part 1956 of this chapter. If a survivor will not continue with the loan, it may be necessary to make immediate arrangements with a survivor, executor, administrator, or other interested parties to complete the year's operations or to otherwise protect or preserve the security. (Revised 1-20-87, SPECIAL PN.)

(a) Reporting. The borrower's case files including Form RD 455-17 will be forwarded promptly to the State Director for use in deciding the action to take if any of the following conditions exist: (When it is necessary to send an incomplete Form RD 455-17, any additional information which may affect the State Director's decision will be sent as soon as available on a supplemental Form RD 455-17 or in a memorandum.)

(1) Probate or other administration proceedings have been started or are contemplated.

(2) The debts owed to Rural Development are inadequately secured and the estate has other assets from which collection could be made.

(3) Rural Development's security has a value in excess of the indebtedness it secured and the deceased obligor owes other debts to Rural Development which are unsecured or inadequately secured.

(4) The County Supervisor recommends continuation with a survivor who is not liable for the indebtedness or recommends transfer to, and assumption by, another party.

§1962.46(a) (Con.)

(5) The County Supervisor recommends, but does not have authority to approve liquidation.

(6) The County Supervisor wants advice on servicing the case.

(b) Probate or administration proceedings. Generally, probate or administration proceedings are started by relatives or heirs of the deceased or by other creditors. Ordinarily, the Agency will not start these proceedings because of the problems of designating an administrator or other similar official, posting bond, and paying costs. If probate or administration proceedings are started by other parties or at the Agency's request, and any security is to be liquidated by the Agency instead or by the administrator or executor or other similar official, it will be liquidated in accordance with the advice of OGC. The State Director may request OGC to recommend that the U.S. Attorney bring probate or administration proceedings when it appears that:  
(Revised 06-21-96, SPECIAL PN.)

(1) Such proceedings will not be started by other parties;

(2) The Agency's interests could best be protected by filing a proof of claim in such proceedings, and

(3) Public administrators or other similar officials or private parties, including banks and trust companies, are eligible to, and will serve as administrator or other similar official and will provide the required bond.

(c) Filing proof of claim. When a proof of claim is to be filed, it will be prepared on a form approved by OGC, executed by the State Director, and transmitted to OGC. It will be filed by OGC or by an Agency official as directed by OGC or it will be referred by OGC to the U.S. Attorney for filing if representation of the Agency by counsel may be required. If a judgment claim is involved, the notification to the U.S. Attorney will be the same as for judgment claims in bankruptcy. If a direct loan is involved, the proof of claim will not be prepared until the note has been assigned to the Government. A proof of claim will be filed when probate or administration proceedings are started, unless:  
(Revised 06-21-96, SPECIAL PN.)

(1) After considering liens and priority rights of the Agency and other parties, costs of administration, and charges against the estate, the Agency cannot reach the assets in the estate except for the Agency's own security and the Agency will liquidate the security by foreclosure or otherwise if necessary to collect its claim, or

(2) Continuation with an individual or transfer to and assumption by another party is approved, and either the debt owed to the Agency is fully secured, or the amount of the debt in excess of the value of the security which could be collected by filing a claim is obtained in cash or additional security, or

(3) The debt owed to the Agency by the estate is settled under subpart B of part 1956 well ahead of the deadline for filing proof of claim.

(d) Priority of claims.

(1) Each secured claim will take its relative lien priority to the extent of the value of the property serving as security for it. These claims include those secured by mortgages, deeds of trust, landlord's contractual liens, and other contractual liens or security instruments executed by the borrower on real or personal property. However, tax, judgment, attachment, garnishment, laborer's, mechanic's materialmen's landlord's statutory liens, and other noncontractual lien claims may or may not be secured claims. Therefore, if any noncontractual claims are allowed as secured claims and the Agency's claim is not paid in full, the advice of OGC will be obtained as to whether they constitute secured claims and as to their relative priorities. (Revised 06-21-96, SPECIAL PN.)

(2) Unsecured claims will be handled as follows:

(i) The remaining assets of the estate, including any value of security for more than the amount of the secured claims against it, are to be applied first to payment of administration costs and charges against the estate and second to unsecured debts of the deceased.

(ii) If the total of the remaining assets in the estate being administered is not enough to pay all administration costs, charges against the estate, and unsecured debts of the deceased, the Government's unsecured claims against the remaining assets will have priority over all other unsecured claims, except the costs of administration and charges against the estate. Under such circumstances unsecured claims are payable in the following order of priority:

§1962.46(d)(2)(ii) (Con.)

(A) Costs of administration and charges against the estate unless under State law they are payable after the Government's unsecured claims. Such costs and charges include costs of administration of the estate, allowable funeral expenses, allowances of minor children and surviving spouse, and dower and curtesy rights.

(B) The Government's unsecured claims.

(3) A State supplement will be issued as needed taking into consideration 31 U.S.C. §3713 lien waivers and subordinations, and notice and other statutory provisions which affect lien priorities.

(e) Withdrawal of claim. It may not be necessary to withdraw a claim when it is paid in full by someone other than the estate or when compromised. However, when it is necessary to permit closing of an estate, compromise of a claim, or for other justifiable reasons, the State Director will recommend to OGC that the claim be withdrawn on receipt of cash or security, or both, of a value at least equal to the amount that could

be recovered under the claim against the estate. When the Agency keeps existing security, arrangements must be made to assure that withdrawal of the claim will not affect its right under the existing notes or security instruments with respect to the retained security. In some cases, with OGC's advice, the claim may be properly handled without filing a formal petition for withdrawal of the claim. However, if the claim has been referred to the U.S. Attorney, or if a formal withdrawal of the claim is necessary, the matter will be referred by OGC to the U.S. Attorney.

(f) Liquidation of security. When the servicing official determines that the account of a deceased borrower is in monetary or nonmonetary default, and liquidation is necessary because no survivor or third-party has applied to assume the borrower's FLP loan, chattel security and real estate security will be liquidated promptly in accordance with this subpart and Subpart A of Part 1965 of this chapter. Before liquidation, the notices required by Subpart S of Part 1951 of this chapter, will be sent to the executor of the estate and/or other appropriate person(s) or entity(ies) as advised by OGC. If a survivor(s) or heir(s) who will continue with the borrower's operation applies for servicing, the Agency will determine whether these individuals meet the requirements of paragraph (g) of this section. If a third-party who will not continue with the borrower's operation applies for servicing, the requirements of §1962.34 of this subpart, or §1965.47 of Subpart A of Part 1965 of this chapter as applicable, must be met. To qualify for servicing, the eligibility and feasibility requirements in §1951.909 of Subpart S of Part 1951 of this chapter must also be met. However, the borrower's estate is not eligible for servicing. After the provisions of Subpart S of Part 1951 of this chapter have been complied with, and the opportunity to appeal has expired, the State Director will request OGC to effect collection if the proceeds from the sale of security are insufficient to pay in full the indebtedness owed to the Agency and other assets are available in the estate or in the hands of heirs. (Revised 04-17-91, SPECIAL PN.)

(g) Continuation of secured debt and transfer of security. When a surviving member of a deceased borrower's family or other person is interested in continuing the loan and taking over the security for the benefit of all or a part of the deceased borrower's family who were directly dependent on the borrower for their support at the time of the borrower's death, continuation may be approved subject to the following:

- (1) Any individual who is liable for the indebtedness of the deceased borrower may continue with the loan provided that individual can comply with the obligations of the notes or other evidence of debt and chattel or real estate security instruments and so long as liquidation is not necessary to protect the interest of the Agency. When an individual who is liable for the indebtedness

is to continue with the account, Form RD 450-10, "Advice of Borrower's Change of Address or Name," will be sent to the Finance Office to change the account to that individual's name. A new case number will be assigned or, if the continuing individual already has a case number, that number will be used regardless of whether that individual assumed all or a portion of the amount of the debt owed by the estate of the deceased.

(2) When a surviving member of a deceased borrower's family, a relative or other individual who is not liable for the indebtedness desires to continue with the farming or other operations and the loan, the State Director may approve the transfer of chattel or real estate security or both to the individual and the assumption of the debt secured by such property without regard to whether the transferee is eligible for the type of loan being assumed, subject to the following conditions:

(i) The transferee will continue the farming or other operations for the benefit of all or a part of the deceased borrower's family who were directly dependent on the borrower for their support at the time of death.

(ii) The amount to be assumed and the repayment rates and terms will be the same as provided in §1962.34(a) of this subpart.

(iii) The State Director determines that the continuation will not adversely affect repayment of the loan.

(iv) The transferee has never been liable for a previous Farm Loan Programs direct farm loan or loan guarantee which was reduced or terminated in a manner that resulted in a loss to the Government. (Added 03-14-97, SPECIAL PN.)

(3) In determining whether to continue with individuals, whether they are already liable or assume the indebtedness, all pertinent factors will be considered, including whether:

(i) Probate or administration proceedings have been or will be started and, with OGC's advice, whether the filing of a claim on the debt owed to the agency in such proceedings is necessary to protect the agency's interests.

(ii) Arrangements can be made with the heirs, creditors, executors, administrators, and other interested parties to transfer title to the security to the continuing individual and to avoid liquidating the assets so that the individual can continue with the loan on a feasible basis.

§ 1962.46(g) (Con.)

(4) If continuation is approved, all reasonable and practical steps short of foreclosure or other litigation, will be taken to vest title to the security in the joint debtor or transferee.

(5) The deceased borrower's estate may be released from liability for the Rural Development indebtedness if title to the security is vested in the joint debtor or transferee, and:

(i) The full amount of the debt is assumed, or

(ii) If only a portion of the debt is assumed, the amount assumed equals the amount as determined by OGC which could be collected from the assets of the estate of the deceased borrower, including the value of any security or EO property.  
(Revised 09-10-03, PN 363.)

## § 1962.46 (Con.)

(h) Special servicing of deceased EO borrower cases. If the EO loan is secured, all paragraphs in this section will be followed. If the EO loan is unsecured, paragraphs (a), (b), (c), (d), and (e) of this section will be followed along with the following requirements.

(1) An individual who is liable for the indebtedness of the deceased borrower and wishes to continue with the EO debt and the EO property, may do so in accordance with paragraph (g)(1) of this section.

(2) A surviving member of the deceased borrower's family, a joint operator with the deceased borrower, a relative, or other individual who is not liable for the EO debt who desires to continue with the farming or other operation may do so in accordance with paragraph (g)(2) of this section. This individual must execute a loan agreement in addition to the assumption agreement and secure the EO debt with a lien on the remaining EO property when title to the property is vested in the individual and the servicing official determines that security is necessary to protect the interests of the deceased borrower's family or the Agency.

(3) If no individual listed in paragraphs (h)(1) and (2) of this section wishes to continue, but a member of the borrower's family turns over to the Agency the EO property in which the estate has an interest and which is not essential for minimum family living needs, the servicing official will take possession of EO property and sell it in accordance with § 1962.42 of this Instruction. If this cannot be done, or if real property is involved, the case will be referred to OGC. If the property is sold, notice will be delivered to any of the borrower's heirs who are in possession of the property and to any administrator or executor of the borrower's estate.

§ 1962.47 Bankruptcy and insolvency. (Revised 05-27-98, PN 291.)

(a) General. This section provides guidance for servicing cases involving bankruptcies. Since bankruptcies are handled differently in each State, together with OGC, a State Supplement shall be issued to provide guidance to local servicing officials on how to handle bankruptcies and explain any rules or practices of local bankruptcy judges or trustees which affect the provisions of this section.

(b) Borrower files bankruptcy. If a borrower becomes a debtor in proceedings under any State or Federal bankruptcy or State insolvency law, the servicing official will immediately suspend all pending servicing actions and proceed as follows:

(1) Flag the account. Prepare Form RD 1951-6, "Borrower Account Description Flag," and process a 5G transaction through the "Automated Discrepancy Processing System." This will flag the account "BAP" for "Bankruptcy Action Pending." The flag shall remain on the account until after the borrower is discharged and the case has been closed, a reorganization plan is confirmed, or the bankruptcy is dismissed.

(2) Notices to Farm Loan Programs borrowers. Within 15 days of receiving a notice of bankruptcy filing, the servicing official will send the borrower's attorney (and the Bankruptcy Trustee unless advised by OGC) Exhibit D of this Instruction, by certified mail, return receipt requested. A copy of the notice will be sent to the borrower. Exhibit D will explain what servicing options are available to the borrower and those that have been exhausted as explained below. If the borrower does not have an attorney, a letter similar to Exhibit D will be sent to the borrower.

(i) If the borrower was not previously notified of primary loan servicing as a delinquent or nonmonetary default borrower prior to filing bankruptcy, the borrower and the borrower's attorney will be sent Exhibit D of this Instruction, Attachments 1 and 2 of Exhibit A (and not Exhibit A) of FSA Transferred Instruction 1951-S, and any required application forms. (NOTE: Borrowers who were notified as a less than 180 day delinquent borrower and did not submit a complete application, will be notified under this paragraph. If such borrower submitted a complete application, then the borrower will be notified under paragraph (ii).)

(ii) If the borrower was previously notified of primary loan servicing prior to filing bankruptcy as a delinquent or nonmonetary default borrower, and there are still 1951-S servicing options available, the borrower and the borrower's attorney will be sent Attachment 1 of Exhibit A of FSA Transferred Instruction 1951-S and Exhibit D of this Instruction explaining what notification and servicing consideration has taken place and what stage the servicing process is in. Servicing suspended under FSA Transferred Instruction 1951-S as of the date the bankruptcy was filed

§ 1962.47(b) (2) (ii) (Con.)

will resume as of the date the attorney receives Exhibit D of this Instruction as indicated in paragraph (iii). No notices will be sent if no servicing options remain at the time the borrower files bankruptcy. A lift of stay must be requested to continue liquidation. The account will not be accelerated without the approval of OGC. (Revised 02-17-99, PN 300.)

(iii) The borrower, or the borrower's attorney on behalf of the borrower, will be provided 60 days from the date the borrower's attorney receives Exhibit D of this Instruction, or the borrower's time remaining from a previous notice that was suspended when the bankruptcy was filed, whichever is greater, to return the appropriate response form or similar written request for servicing, and any forms or information requested by the Agency. A copy of the previous notice or letter will be attached to Exhibit D for those cases involving a continuation of a previous notice or letter.

Example: The borrower was sent Exhibit A and Attachments 1 and 2 of FSA Transferred Instruction 1951-S prior to filing bankruptcy. The borrower applied and was determined not eligible. Exhibit E of FSA transferred Instruction 1951-S was sent and mediation held with no success. Attachments 5-A and 6-A of Exhibit A of FSA Transferred Instruction 1951-S were sent to the borrower on May 1 with an offer of market value buyout. The borrower filed bankruptcy on June 1 with 30 days remaining to respond to the buyout offer. Exhibit D would explain the actions completed and offer the borrower the opportunity to accept the buyout offer within 60 days from the date Exhibit D is received. A copy of Attachments 5-A and 6-A would be attached to Exhibit D.

(iv) The Agency will consider a request for servicing options to be an acknowledgment that the Agency will not be interfering with any rights or protections under the Bankruptcy Code and its automatic stay provisions.

(v) The Agency's processing of any request for servicing may include consideration of primary and preservation loan servicing options, notification of the Agency's decision on the request or application for servicing, mediation, and holding of any meetings or appeals requested by the borrower. If the borrower or attorney does not request remaining servicing options from Exhibit D of this Instruction, no further action will be taken to liquidate the account without a lift of stay.

If a lift of stay is not granted, and the bankruptcy is dismissed, the borrower will be renotified of any servicing options remaining according to paragraph (e) of this Instruction. The account will not be accelerated or offset without the concurrence of OGC. (Revised 02-17-99, PN 300.)

(vi) If court approval is required for the borrower to exercise these servicing rights, it will be the borrower or borrower's attorney's responsibility to obtain that approval prior to finalizing any restructure, buyout, or preservation request.

(vii) If a plan is confirmed before servicing and any appeal is completed under Agency regulations, the Agency will complete the servicing or appeals process and may consent to a post-confirmation modification of the plan if it is consistent with the Bankruptcy Code and Agency regulations, as appropriate.

(viii) In Chapter 7 cases, the Agency will not provide primary loan servicing to a borrower discharged in bankruptcy unless the borrower reaffirms the entire Agency debt. If the Chapter 7 debtor obtains the permission of the court and reaffirms the debt, the loan servicing application will be processed in accordance with FSA Transferred Instruction 1951-S. If the borrower reaffirms the Agency debt in order to be considered for restructuring but is later denied restructuring, the borrower may revoke the reaffirmation subject to the provisions of the Bankruptcy Code. No reaffirmation is necessary for any discharged Chapter 7 borrower to be eligible for preservation loan servicing in accordance with § 1951.911 of FSA Transferred Instruction 1951-S.

(3) Notify State Office. Promptly report the facts, including the name, address, and phone number of the borrower's attorney, if any, and forward the borrower's case file and other pertinent information and documents to the appropriate State Office program section for appropriate handling. Refer to State Supplement for guidance.

(i) If the servicing office does not have possession of the promissory note, the servicing official will write a memorandum to the Finance Office explaining why the note is needed. (Promissory notes dated before 11-01-73 may still be held by investors.) The request to Finance Office should give the name and case number of the borrower, date and original amount of the loan, type of loan, and loan code.

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(ii) The servicing official shall keep the State Office informed of any developments, and take no action against the account or the security unless directed by the State Executive Director or OGC.

(c) Filing proof of claim. On receipt of the file and related material, the State Office will determine whether the Agency has security for the debt and whether the debtor has other assets from which the Agency could make a substantial collection. Additional information, such as a current appraisal, may be requested from the servicing official in order to allow the State Office to make these decisions.

(1) Chapter 7 cases with no security and no other assets. In Chapter 7 cases only, if there is no security and no other assets from which a substantial recovery could be made, the file and related material will be returned to the servicing official with a memorandum indicating the State Executive Director's determination and advising that a proof of claim will not be filed unless the servicing official learns that the debtor has assets not previously known to exist. If assets are found before the time for filing claims has expired (90 days from the first date set for the first meeting of creditors), the servicing official will resubmit the case to the State Office.

(2) Chapters 11, 12, and 13 cases, and Chapter 7 cases with substantial recovery. In all Chapter 11, 12, and 13 cases, and in Chapter 7 cases where a substantial recovery can be made, the State Office will take the following actions:

(i) Form RD 1965-14, "Proof of Claim of the United States of America," or other form approved by OGC will be executed. The proof of claim will cover all indebtedness to the Agency, except any judgments obtained by a U.S. Attorney. If the proof of claim is submitted to OGC, the State Executive Director will identify for OGC in a memorandum (not on the proof of claim) the security which was taken for each Agency loan.

(ii) If the State Executive Director knows that a judgment has been obtained by a U.S. Attorney, the State Director will notify OGC even though that judgment has been charged off.

(iii) The State Executive Director, on OGC's advice, will instruct the servicing official about actions to take with respect to meetings of creditors.

(iv) The State Executive Director will take no other action without OGC's or DOJ's approval.

(d) Adjustment of debts when debtors are in bankruptcy. If the borrower files a bankruptcy reorganization plan covering the Agency's debt, the Agency will evaluate the merits of the plan and inform OGC of its recommendation for voting for or objecting to the plan. Agency employees do not have the authority to accept or reject a reorganization plan on behalf of the United States for debtors filing under Chapter 11, 12, or 13 when the plan calls for part of the debt to be cancelled.

(1) Referral and recommendation. Plans submitted by debtors must be sent to the State Executive Director who will refer them to the United States Attorney through the Regional Office of the General Counsel. The State Executive Director will provide the OGC with a recommendation on acceptance or rejection of the plan when the plan calls for an adjustment of the Agency debt.

(2) Actions after confirmation.

(i) Upon notification of the confirmation, the State Executive Director will notify the Rural Development St. Lou on Form FSA 1962-21, "Confirmation Reorganization Plan Worksheet", of the terms and conditions of the bankruptcy reorganization plan including any adjustment of the debtor's debt. A copy of the reorganization plan, signed order of confirmation, and discharge order, if applicable, will be attached.  
(Revised 05-18-05, PN 386.)

(ii) The Rural Development St. Louis Office (KCFO for FSA) will set up the account according to the reorganization plan and flag the account "SAA," "Subject to Approved Adjustment, if applicable." The SAA flag will remain on the account until after the bankruptcy plan is completed and the case is closed, or the bankruptcy is dismissed. (Revised 05-18-05, PN 386.)

(iii) A copy of the plan and order of confirmation will be filed with the original promissory notes in the locked fireproof safe. Copies of the plan and order of confirmation will be placed in the case file. (Revised 05-18-05, PN 386.)

(iv) The case file must be marked, and the management record system flagged, to indicate the borrower is paying under a reorganization plan.

(e) Borrower defaults on plan or bankruptcy is dismissed.

(1) 90 days past due on a reorganization plan which is under bankruptcy court jurisdiction. When a borrower becomes 90 days past due on a chapter 11, 12, or 13 reorganization plan while still under court jurisdiction, the servicing official will immediately notify the State Office with the facts pertinent to the case. State Office will refer the case to OGC or the Department of Justice as appropriate.

(i) If allowed by the Bankruptcy Code or court, the borrower and borrower's attorney, if any, will be notified of any remaining servicing options under FSA Transferred Instruction 1951-S that were not exhausted prior to filing bankruptcy or during the bankruptcy proceedings according to paragraph (b) (2) of this section. Updated information may be requested from the borrower in order to make a decision on a previous request for loan servicing. A copy of the notice will be sent to the Bankruptcy Trustee, unless advised by OGC.

(ii) Exhibit D of this Instruction will not be sent if the account was previously accelerated, such action is inconsistent with the provisions of the confirmed reorganization plan or the Bankruptcy Code, or the case has been referred to the Department of Justice.

(iii) If a borrower operating under a confirmed reorganization plan desires to apply for loan servicing and qualifies for servicing under Agency regulations, the borrower must also comply with Bankruptcy Code rules and requirements concerning modification of the plan.

(2) Bankruptcy is dismissed without a confirmed plan. If the borrower's bankruptcy is dismissed without a confirmed plan, and the borrower is in default, the borrower's account will be liquidated according to RD Instruction 1955-A after all remaining servicing options under FSA Transferred Instruction 1951-S are exhausted. The borrower will be notified of any servicing options remaining according to FSA Transferred Instruction 1951-S.

However, no servicing notices will be sent if the account was previously accelerated, the Agency is advised that such an act is inconsistent with the confirmed bankruptcy plan or the Bankruptcy Code, or the account has been referred to the Department of Justice. If the account had been accelerated, then all servicing rights are exhausted and the account will be liquidated in accordance with RD Instruction 1955-A.

(3) Bankruptcy is dismissed after a confirmed reorganization plan. If a bankruptcy is dismissed after a reorganization plan was confirmed, the account will be serviced as follows:

(i) If the borrower has substantially complied with the plan, but later defaults for reasons beyond the borrower's control in accordance with § 1951.909(c) of FSA transferred Instruction 1951-S, the borrower will be notified anew of all loan servicing programs in accordance with § 1951.907 of FSA Transferred Instruction 1951-S. No notices will be sent if the account was previously accelerated, OGC advises that such action is inconsistent with the provisions of the confirmed bankruptcy plan or the Bankruptcy Code, or the case has been referred to the Department of Justice.

(ii) If the borrower failed to make one full payment under the plan, or did not comply with the plan for reasons not beyond the borrower's control, the borrower will be serviced according to paragraph (e) (2) of this section.

(iii) The servicing official will send a memorandum to the State Office to have the SAA flag removed and the account reestablished. The State Office will forward the memorandum to the Rural Development St. Louis Office (KCFO for FSA) for processing. (Revised 05-18-05, PN 386.)

(f) Servicing account after the bankruptcy case is closed. In Chapter 11, 12, or 13 cases after the case is closed and the discharge order is issued by the court, the borrower's account will be serviced as follows:

(1) Removal of the SAA flag and writing off discharged debt. Upon receipt of the discharge order, the servicing official will review the borrower records to determine if any discharged debt will be cancelled. If all liable parties are discharged, the FSA servicing

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office will follow §1956.70(b)(3) of RD Instruction 1956-B. If all liable parties were not discharged of the debt, the account cannot be debt settled, and the servicing official will continue the debt collection process with the liable parties not discharged.

(Revised 05-18-05, PN 386.)

(2) Servicing. Bankruptcy loans will be serviced under normal Agency regulations subject to the reorganization plan. If the borrower defaults on the reorganization plan (bankruptcy loan), after the case is closed, the borrower will be sent Exhibit D-1 of this Instruction and Attachments 1 and 2 of FSA Transferred Instruction 1951-S and any required application forms, instead of Exhibit A of FSA Transferred Instruction 1951-S, or Attachments 1, 3, and 4 of Exhibit A of FSA Transferred Instruction 1951-S. The borrower's attorney of record will be sent a courtesy copy of Exhibit D-1 if the bankruptcy has not been closed for at least two years. No notices will be sent under this paragraph to the borrower or the borrower's attorney if the account has been accelerated, such act is inconsistent with the provisions of a confirmed bankruptcy plan or other provisions of the Bankruptcy Code or the account has been referred to the Department of Justice. Servicing and liquidation associated with these notices will be handled in accordance with FSA Transferred Instruction 1951-S.

(Revised 02-17-99, PN 300.)

(g) Liquidation. The account will be liquidated according to RD Instruction 1955-A and instructions from OGC after any necessary relief, if required, from the automatic stay is obtained. In Chapter 7 cases after discharge, the account can be liquidated if the borrower has not reaffirmed the debt and the property is no longer part of the estate. Liquidation can proceed prior to discharge if the court approves an abandonment order and lifts the automatic stay. If all liable parties are discharged and the FSA security is liquidated, the debt may be cancelled according to § 1956.70(b)(3) of RD Instruction 1956-B. (Revised 05-18-05, PN 386.)

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(1) If the borrower or borrower's attorney was not previously notified of any servicing options available under FSA Transferred Instruction 1951-S before or during the course of the bankruptcy proceedings, and there are servicing options remaining, the borrower will be sent Exhibit D-1 of this Instruction and Attachment 1 and 2 of Exhibit A of FSA Transferred Instruction 1951-S prior to liquidating any security property. A courtesy copy of Exhibit D-1 will be sent to the borrower's attorney of record.

(2) If notices are not required, the account will be accelerated using Exhibit E or E-1, as appropriate, of RD Instruction 1955-A, or if already accelerated, the account will be liquidated. There will be no appeal of the acceleration.

§ 1962.48 [Reserved]

§ 1962.49 Civil and criminal cases.

All cases in which court actions to effect collection or to enforce Agency rights are recommended, as well as actions relating to apparent violations of Federal criminal statutes, will be handled under this section.

(a) Criminal action. When facts or circumstances indicate that criminal violations may have been committed by an applicant, a borrower, or third party purchaser, the State Director will refer the case to the appropriate Regional Inspector General for Investigations, Office of Inspector General (OIG), USDA, in accordance with RD Instruction 2012-B for criminal investigation. Any questions as to whether a matter should be referred will be resolved through consultation with OIG for Investigations and the State Director and confirmed in writing. In order to assure protection of the financial and other interest of the government, a duplicate of the notification will be sent to the Office of General Counsel (OGC). After OIG has accepted any matter for investigation, Agency staff must coordinate with OIG in advance regarding any administrative action on the matter/borrower other than routine servicing actions on existing loans. Cases requiring further action by OGC will be handled in accordance with paragraph (c) of this section.

(b) Civil action. Court action or other judicial process will be recommended to OGC when all other reasonable and proper efforts and methods to obtain payment, to remove other defaults, and to protect the Agency's property/financial interests have been exhausted. However, if an emergency situation exists or criminal action is to be recommended, the case will be submitted to OGC without taking the actions necessary to report the information required by Part II of Form RD 455-22, "Information for Litigation." This is because delay in submitting cases in emergency situations may affect the financial interest of the Agency and collection efforts may adversely affect the criminal investigation and/or criminal prosecution. (Revised 04-17-91, SPECIAL PN.)

(1) Civil action will be recommended when one or more of the following conditions exists:

(i) There is a need to repossess security or EO property or to foreclose a lien and such action cannot be accomplished by other means authorized in this subpart.

(ii) There is a need for filing claims against third parties because of a conversion of security or other action.

(iii) Payments due on debts are not made in accordance with the borrower's ability to pay, and the borrower has assets or income from which collection can be made.

- (iv) The borrower has progressed to the point that credit can be obtained from other sources, has agreed in the note or other instrument to do so, but refuses to comply with that agreement.
  - (v) Rural Development or its security becomes involved in court action through foreclosure by a third-party lienholder or through some other action.
  - (vi) Other conditions exist which indicate that court action may be necessary to protect Rural Development's interests.
- (2) Claims of less than \$600 principal will not be referred to OGC for court action unless:
- (i) A statement of facts is submitted as to the exact manner in which the interest of Rural Development, other than recovery of the amount involved, would be adversely affected if suit were not filed; and
  - (ii) Collection of a substantial part of the claim can be made from assets and income that are not exempt under State or Federal law. A State supplement will be issued to set forth such exemptions or a summary of those exemptions with respect to property to which Rural Development normally would look for payment such as real estate, livestock, equipment, and income.
- (3) When a borrower has not properly accounted for the proceeds of the sale of security, it is the general policy to look first to the borrower for restitution rather than to third-party purchasers. In line with this policy the remaining chattel security on which Rural Development holds a first lien usually will be liquidated before demand is made, or civil action to recover from third-party purchasers.
- (i) When the County Supervisor determines that full collection cannot be made from the borrower and that it will be necessary to collect the full value of the security purchased by a converter, a demand (see Guide Letter 1962-A-1, a copy of which is available in any Rural Development county office) will be sent to the purchaser at the same time that Exhibit D or E of Subpart A of Part 1955 of this chapter, is sent to the borrower.
  - (ii) When the County Supervisor determines that it is likely that action will have to be taken to collect from third-party purchasers, the County Supervisor will notify such purchasers by letter (see Guide Letter 1962-A-2, a copy of which is available in any Rural Development county office) that Rural Development security has been purchased by them and that they may be called upon to return the property or pay the value thereof in the event restitution is not made by the borrower. If it later becomes necessary to make demand on such third-party purchasers,

Rural Development will do so unless the case already has been referred to OGC or the U.S. Attorney, in which event the demand will be made by one of those offices.

(iii) When restitution is made by the borrower, or a determination is made, with the advice of OGC, that the facts in the case do not support the claim against the third-party purchaser, the third-party purchaser will be informed by the County Supervisor that Rural Development will take no adverse action (see Guide Letter 1962-A-3, a copy of which is available in any Rural Development county office). Ordinarily, it will not be necessary to inform the third-party purchaser of OGC's decision when OGC determines that the facts support the claim against the third-party purchaser but no substantial part of the claim can be collected. If OGC makes such a determination and the third-party purchaser asks what determination has been made, the County Supervisor will say that no further action is to be taken on the claim "at this time."

(iv) In addition, unless personal contacts with the third-party purchaser, or other efforts to collect demonstrate that further demand would be futile, and a satisfactory compromise offer has not been received, a follow-up letter (see Guide Letter 1962-A-4, a copy of which is available in any Rural Development county office) will be sent by the State Director as soon as possible after the 15-day period set forth in the demand letter has expired. Unless response to the State Director's followup letter or personal contacts or other efforts indicate that further demand would be futile, an additional follow-up letter will be sent to the third-party purchaser by OGC after the case has been referred to that office.

(c) Handling civil and criminal cases. All cases in which court actions to effect collection or to enforce the rights of Rural Development are recommended, will be forwarded to OGC by the State Director in accordance with paragraph (c) (3) of this section.

(1) County Office actions. Forms RD 455-1, "Request for Legal Action," and RD 455-22 will be prepared. Form RD 455-2, "Evidence of Conversion," will be prepared for each unauthorized disposal. The original and two copies of Forms RD 455-1, 455-22, and, when applicable, RD 455-2, together with the borrower's case file, will be submitted to the State Office. Signed statements should be obtained, if possible, from the borrower, any third party purchasers, or others to support the information contained on Form RD 455-1. Appropriate recommendations regarding civil actions will be made on Forms RD 455-1 and RD 455-22 against the borrower or others. When a case is referred to the State Office, the County Supervisor will keep that office

informed of any future developments in the case. If Attachments 1, 2 and other appropriate attachments to Exhibit A of Subpart S of Part 1951 of this chapter have not been sent, they will now be sent to the borrower and any other obligor(s) on the note. Any appeal must be concluded before a civil action can be filed. (Revised 10-14-88, SPECIAL PN.)

(2) District Office actions. Exhibit D, E, or E-1 of Subpart A of Part 1955 of this chapter will be prepared and sent after any appeal is concluded. (Revised 12-16-92, PN 196.)

(3) State Office actions.

(i) Upon receipt of Form RD 455-1 and, when applicable, Form RD 455-2, the State Director will analyze each form to determine if all of the necessary information is documented and, if not, whether an appropriate effort was made to obtain the information. If all the necessary information is not documented, the State Director will return the case and request the County Supervisor to obtain the information necessary to complete Forms RD 455-1 and 455-2. The State Director may assign any qualified Rural Development employee to help a County Supervisor obtain the information necessary to complete the reports. After diligent efforts, if Rural Development employees are unable to obtain the additional information, the case will be returned to the State Office with an explanation of why the information is unavailable.

(ii) After all of the pertinent information available has been obtained, the State Director will refer the case to OGC for civil action, if referral is required under the policy expressed in this section. If such referral is not required, the State Director will set forth in Item 19 of Form RD 455-1 the basis for the determination not to refer the case and instructions for follow-up servicing action. The State Director will not recommend a third-party conversion claim to the OGC if more than one year has run from the date of the annual accounting following the disposition of security, unless the Administrator or delegate determines a longer period of time should be applied either because of compelling circumstances such as the case has been referred to and accepted by OIG for criminal or civil investigation. The period of time during which a suit may be filed is set by Federal statute and is not changed by this section. Demands on third-party purchasers will be made in accordance with paragraph (b) of this section. In cases referred to OGC, the State Director will make comments and recommendations regarding the civil aspects of this case on Form RD 455-1.

(A) When cases are referred to OGC, the County Office case file, Form RD 455-1 and, when appropriate, Form RD 455-2 will be transmitted. In addition, when the institution of civil court proceedings by Rural Development is recommended, the notes, financing statements, security agreements, loan agreements, other legal instruments and copies thereof, as required by OGC, and Form RD 451-11, "Statement of Account," or Form RD 455-22 will be submitted to OGC. The State Director, with the advice of OGC, will determine the number of copies of such instruments needed and the information required on the certified statement of account. Each request for a certified statement of account will specify the type of information needed.  
(Revised 12-16-92, PN 196.)

(B) Notes, statements of account, files, or other documents and copies thereof needed in referring cases to OGC for civil court or other action will be obtained from the Finance Office, or County Office, by the State Director. When the time required for obtaining the above material or document may jeopardize Rural Development's interest by permitting the diversion or dissipation of assets which otherwise could be expected as a source of payment, the Finance Office, upon the request of the State Director, will forward such material or documents directly to OGC or (at the State Director's direction) to the U.S. Attorney.

(d) Actions on cases referred to OGC. When a civil case is referred to OGC, the State Director will notify the County Supervisor of the referral and will return the County Office Case file when it is no longer needed. The State Director will also prepare and distribute Form RD 1951-6 according to the FMI. The Rural Development field office will process the descriptive code via the Rural Development field office terminal system. This will flag the borrower's account indicating court action is pending (CAP). After notice of the referral is received by the County Supervisor, no collection or servicing action will be taken except upon specific instructions from the State Director or OGC. However, when a borrower voluntarily proposes to make a payment on an account, the County Supervisor will accept the collection unless notice has been received that the case has been referred to the U.S. Attorney for civil action. The County Supervisor will immediately notify OGC directly by memorandum, with a copy sent to the State Director, of any collections received. The County Supervisor also will notify the State Director and OGC of any developments which may affect a case which has been referred to OGC. (Revised 8-29-90, PN 143.)

(e) Actions on cases referred to the U.S. Attorney and on judgment cases (including third-party judgments). OGC will notify the State Director, the Finance Office, and the County Supervisor when a case is referred to The U.S. Attorney or is otherwise closed. When a case is referred to the U.S. Attorney, the Finance Office will discontinue mailing Form RD 1951-9, "Annual Statement of Loan Account," to such borrowers. OGC will also notify the State Director when a judgment (including third-party) is obtained. (Revised 10-4-89, PN 120.)

(1) When the County Supervisor receives notice from OGC that a judgment (including third-party) has been obtained, the County Supervisor will establish a judgment account by completing Form RD 1962-20, "Notice of Judgment," in accordance with the FMI. The Rural Development field office will process the judgment or the third party judgment via the Rural Development field office terminal system.

(Revised 8-29-90, PN 143)

(2) After notice has been received that a case has been referred to the U.S. Attorney or a judgment has been obtained and has not been returned to Rural Development by the U.S. Attorney, no action will be taken by the County Supervisor except upon specific instructions from the State Director, OGC, or the U.S. Attorney. However, the County Supervisor will keep the State Director informed of any developments which may affect the Rural Development security interest or any pending court action to enforce collection. If information is obtained indicating that such debtors have assets or income not previously reported by the County Supervisor to the State Director from which collection of such judgment accounts can be obtained, the facts will be reported to the State Director. The State Director immediately will notify OGC of any developments which might have a bearing on cases referred to the U.S. Attorney, including such judgment cases.

(i) If the debtor proposes to make a payment, Rural Development employees will not accept such payment but will offer to assist in preparing a letter for the debtor's signature to be used in transmitting the payment to the U.S. Attorney. In such case, the debtor will be advised to make payment by check or money order payable to the Treasurer of the United States.

(ii) Collection items received through the mail from the debtor or from other sources by the County Office to be applied to such accounts will be forwarded by the County Supervisor through OGC to the appropriate U.S. Attorney. Likewise, collections received by the District Director or the State Office will be forwarded through OGC to the appropriate U.S. Attorney. Such items will be forwarded in the form received except that cash will be converted into money orders made payable to the Treasurer of the United States. The money order receipts will remain attached to the money order. Form RD 451-1 will not be issued in any such case. The debtor will be informed in writing by the County Supervisor of the disposition of the amount received.

(3) When the U.S. Attorney has returned a judgment case to Rural Development, the County Supervisor is responsible for servicing it as follows:

(i) When the judgment debtor has the ability to make periodic payments, action will be taken by the County Supervisor to make arrangements for the judgement debtor to do so.

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§1962.49 (e) (3) (Con.)

(ii) Any payments received from such debtor by Rural Development will be handled by issuing Form RD 451-1 and converting and transmitting such payments as provided in Subpart B of Part 1951 of this chapter. The U.S. Attorney will be informed through OGC of payments received only when the debtor pays a judgment in full.

(iii) At the time of the annual review of collection-only or delinquent and problem cases, the County Supervisor will determine whether such judgment debtors, whose judgments have not been charged off and who are not making regular and satisfactory payments, have assets or income from which the judgement can be collected. If such debtors have either assets or income from which collection can be made and they have declined to make satisfactory arrangements for payment, the facts will be reported by the County Supervisor to the State Director. The State Director will notify OGC of developments when it appears that collections can be enforced out of income or assets.

(iv) Such judgments will not be renewed or revived unless there is a reason to believe that substantial assets have or may become subject thereto.

(v) Such judgments may be released only by the U.S. Attorney when they are paid in full or compromised.

(4) In all judgment cases, any proposed compromise or adjustment will be handled in accordance with Subpart B of part 1956 of this chapter. (Revised 1-20-87, SPECIAL PN.)

(5) If the debtor requests information as to the amount of outstanding indebtedness, such information, including court costs, should be obtained from the Finance Office if the County Supervisor does not have that information. If questions arise as to the payment of court costs, information as to such costs will be obtained through the State Office from OGC.

§1962.50 [Reserved]

Exhibits to Subpart A

Exhibit A - Memorandum of Understanding Between Commodity Credit Corporation and Rural Development.

Appendix 1 - Furnishing Notice or Information to Commodity Credit Corporation.

Exhibit B - Memorandum of Understanding and Blanket Commodity Lien Waiver.

- Exhibit C - Memorandum of Understanding Between Rural Development and Commodity Credit Corporation - Rotation of Grain Crops.
- Exhibit D - Notice to Borrower's Attorney Regarding Loan Servicing Options.
- Exhibit D-1 - Notice to Borrower Regarding Loan Servicing Options.
- Exhibit E - Releasing Security Sales Proceeds and Determining "Essential" Family Living and Farm Operation Expenses.
- Exhibit F - Agreement for the Use of Proceeds/Release of Chattel Security.

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Exhibit A and Appendix 1 not automated see manual

MEMORANDUM OF UNDERSTANDING AND BLANKET  
COMMODITY LIEN WAIVER

Rural Development sometimes makes loans to farmers on the security of agricultural commodities that are eligible for price support under loan and purchase programs conducted by the Commodity Credit Corporation (CCC). Rural Development and CCC desire that price support be made available to farmers without unnecessarily impairing or undermining the respective security interests of Rural Development and CCC in and without undue inconvenience to producers and Rural Development and CCC in securing lien waivers on such commodities.

Now, therefore, it is agreed as follows:

(1) Upon request of an official of a State ASCS office, the Rural Development State Director in such State shall furnish designated county ASCS office with the names of producers in the trade area from whom Rural Development holds currently effective liens on commodities with respect to which CCC conducts price support programs. Rural Development will try to furnish a complete and current list of the names of such producers; however, Rural Development's liens with respect to any commodity will not be affected by an error in or omission from such lists.

(2) For a loan disbursed by a county ASCS office, CCC will issue a draft in the amount (less fees and charges due under CCC program regulations) of the loan on, or purchase price of, the commodity payable jointly to Rural Development and the producer if (a) his name is on the list furnished by Rural Development, or (b) he makes Rural Development as lienholder. The draft will indicate the commodity covered by the loan or purchase.

(3) On issuance of the draft, the security interest of Rural Development shall be subordinated to the rights of CCC in the commodity with respect to which the loan or purchase is made. The word "subordinated" means that, in the case of a loan, CCC's security interest in the commodity shall be superior and prior in rights to that of Rural Development and that, on purchase of a commodity by CCC or its acquisition by CCC in satisfaction of a loan, the security interest of Rural Development in such commodity shall terminate.

(4) Nothing contained in this Memorandum of Understanding shall be construed to affect the rights and obligations of the parties except as specifically provided herein.

(5) This agreement may be terminated by either party on 30 days' written notice to the other party.

July 20, 1980  
(Date)

          /s/ Ray V. Fitzgerald            
Executive Vice President, CCC

July 14, 1980  
(Date)

          /s/ Gordon Cavanaugh            
Administrator, FmHA

Exhibit C not automated see manual

Notice to Borrower's Attorney Regarding Loan Servicing Options

Procedure Reference: RD Instruction 1962-A

Purpose : This Exhibit or a version approved by the Regional OGC will be used by the servicing official to send the Attachments 1 and 2 of Exhibit A of FSA Transferred Instruction 1951-S to the borrower's attorney when the borrower has filed for bankruptcy or is currently under the jurisdiction of the bankruptcy court. A copy of this letter should also be sent to the borrower and the bankruptcy trustee unless OGC advises otherwise.

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RETURN ADDRESS

Borrower's Attorney's Address

Dear :

This letter provides important information which the Farm Service Agency (FSA) requests you to provide to your client \_\_\_\_\_ who has filed a bankruptcy petition, or is currently under the jurisdiction of the bankruptcy court. Your client was also sent a copy of this letter. Subject to the applicable provisions of the Bankruptcy Code and FSA regulations, FSA may take action to enforce its security instrument given by \_\_\_\_\_ as security for an FSA loan. However, your client may be able to cure one or all of the problems indicated below so that it will not be necessary for FSA to enforce its security instrument.

[ ] Loan payments are \$ \_\_\_\_\_ past due.

[ ] Your client has disposed of some of the property used to secure the FSA loans. Your client did not get written approval for this action. This property is:

\_\_\_\_\_  
\_\_\_\_\_

[ ] Your client has breached the agreements contained in the security instrument executed by your client in favor of FSA by taking the following actions: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

- Your client has failed to make the required payments under a confirmed bankruptcy plan.
- Your client has
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Before FSA can act to enforce its security instruments, its regulations require FSA to provide borrowers with notice of servicing options. The enclosed forms explain some of the loan servicing options that FSA has available. Depending upon the borrower's prior servicing and previous loan history, your client may not be eligible for servicing consideration or may be eligible for only certain servicing options. The following remaining servicing options are available:

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This letter advises you that FSA can only consider eligibility for the remaining servicing options listed above, if any, and only within FSA's statutory and regulatory eligibility requirements. If there are servicing options available and your client wishes to apply for either primary or preservation loan servicing, you or your client must complete and return the enclosed application forms and any request for updated information, within   \* days of receipt of this notice. By this response, you will be acknowledging that when FSA processes your client's request for loan servicing it is not interfering with any rights or protections your client may have under the Bankruptcy Code and its automatic stay provisions. FSA's processing of the application may include considering the borrower for primary and preservation loan servicing options, notifying the borrower of FSA's decision on the application in accordance with 7 CFR part 1951, subpart S, and holding any mediation, meetings or appeals requested by your client. If your client fails to complete and return the required information within the   \* -day period, FSA will proceed to enforce its security instrument as allowed under the Bankruptcy Code and FSA regulations.

In order for FSA to ascertain whether your client is eligible for any remaining options, it may be necessary for FSA personnel to work closely with your client. If your client requests this contact in the manner described above, we hope that we can assist him or her. However, if favorable action is not possible, we will notify you, and provide your client with the opportunity to appeal the decision. WE WILL NOT ACCELERATE THE ACCOUNT OR INITIATE FORECLOSURE UNTIL WE COMPLY WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE.

If your client has recently filed under Chapter 7, in order for FSA to provide primary loan servicing to your client after discharge, your client must reaffirm the entire FSA debt in accordance with the provisions of the Bankruptcy Code. Reaffirmation requires the approval of the Bankruptcy Court. No reaffirmation is necessary for your client to be eligible for preservation loan servicing.

If your client is operating under a confirmed bankruptcy plan, and desires to apply for loan servicing and qualifies for servicing under FSA's regulations, you must also comply with provisions of the Bankruptcy Code practiced in your jurisdiction concerning modification of the plan. If your client's plan has not yet been confirmed by the Bankruptcy Court, you may choose to file a proposed plan which may or may not contain restructuring features similar to those available under FSA regulations. The Government, of course, is free to object to the proposed plan in accordance with the provisions of the Bankruptcy Code. If a plan is confirmed before servicing and any appeal is completed under FSA regulations, FSA will complete the servicing or appeals process, and may consent to a post-confirmation modification of the plan, if appropriate, in accordance with advice from FSA's legal counsel.

FSA's farm loan programs debt servicing regulation is found at 7 CFR, part 1951, subpart S. We cannot promise you or your client that a request for debt servicing will be approved. However, we can promise that a request for any servicing options which remain will be fully and fairly considered.

Sincerely,

Attachments

cc: [Borrower's name]

\* Indicate 60 days or time period remaining from last servicing action, whichever is greater.

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Notice to Borrower Regarding Loan Service Options

Procedure Reference: RD Instruction 1962-A

Purpose: After consultation with the Regional OGC on the status of this case, this exhibit will be used by a servicing official to send Attachments 1 and 2, or 1, 3, and 4 of Exhibit A FSA Transferred Instruction 1951-S, as applicable, to the borrowers who have been discharged under a Chapter 7, and to borrowers who have had Chapter 11, Chapter 12, or Chapter 13 bankruptcy plans confirmed but are no longer under the jurisdiction of a bankruptcy court. A courtesy copy of the notices will be sent to the borrower's attorney of record.

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Return Address

Borrower's Address

Dear:

This letter provides information concerning the Farm Service Agency's (FSA) Farm Loan Programs (FLP) loan servicing programs. If your FLP debt has been discharged, this letter is not intended to violate the discharge order, but merely to inform you about the primary and preservation loan service programs available. After FSA complies with its regulations, FSA may take action to enforce its security instrument which you gave as security for an FLP loan. However, you may be able to cure one or all of the problems indicated below so that it will not be necessary for FSA to enforce its security instrument.

- Loan payments are \$\_\_\_\_\_ past due.
- You have disposed of some of the property used to secure the FLP loan. You did not get written approval for this action. This property is \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- You have breached the agreements contained in the security instrument which you executed in favor of FSA by taking the following action \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You have failed to make the required payments under a confirmed bankruptcy plan.

You have \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Before FSA can act to enforce its security instruments, its regulations require FSA to provide borrowers with notice of servicing options. The enclosed forms explain some of the loan servicing options that FSA has available. Depending upon your prior servicing history and your previous loan history, you may not be eligible for servicing consideration or you may be eligible for only certain servicing options. You have the following remaining servicing options available:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This letter advises you that FSA can only consider your eligibility for the remaining servicing options listed above, if any, and only within FSA's statutory and regulatory eligibility requirements. If you have servicing options available and wish to apply for either primary or preservation loan servicing, you must complete and return the enclosed application forms and any request for updated information within   \* days of your receipt of this notice.

Depending on your financial situation, your farming operation and the bankruptcy chapter you used as indicated below, you may or may not qualify for primary or preservation loan servicing. These programs are described in Attachment 1 of 7 CFR part 1951, subpart S. To apply for these programs, you must comply with the   \* -day time period set forth above. If you apply for loan servicing and qualify, you must also comply with any applicable provisions of the Bankruptcy Code and order of the court.

1. Chapter 7 Bankruptcy

If you have received a Chapter 7 discharge, the discharge has released you from personal liability for the FLP debt. You are not eligible for primary loan servicing since you are no longer indebted to the Agency. If you wish to apply for primary loan servicing, you must reaffirm the entire FLP debt (reaffirmation requires approval

of the Bankruptcy Court). If you reaffirm the FLP debt, and do not qualify for primary loan servicing, it may be possible to revoke the reaffirmation subject to the provisions of the Bankruptcy Code and its time limitations. However, you may apply for preservation loan servicing without reaffirming the FLP debt. If you qualify for preservation loan servicing, you would be able to retain possession of your home.

2. Chapter 11 Bankruptcy

If you have had a Chapter 11 bankruptcy plan confirmed, you have been discharged from personal liability for your FLP debt and the bankruptcy case has been closed. However, you are obligated to pay FSA the amount indicated in your plan. You may still be able to cure one or all of the defaults listed above and also qualify for primary or preservation loan servicing. If you are considering applying for loan servicing, you should consult with your attorney to determine if your confirmed reorganization plan will be affected if FSA approves your loan servicing application. If any changes to the confirmed plan are necessary, please see the discussion below under Chapter 12.

3. Chapter 12 Bankruptcy

If you have had a Chapter 12 bankruptcy plan confirmed, and the bankruptcy case has been closed, you may still be able to cure one or all of the defaults listed above and also qualify for primary or preservation loan servicing. Despite any discharge of personal liability for your FLP debt, you are obligated to pay FSA the amount indicated in your plan. If you are considering applying for loan servicing, you should consult with your attorney to determine if your bankruptcy plan will be affected if FSA approves your loan servicing application. Depending on the status of your bankruptcy plan and the bankruptcy law in your jurisdiction, you might be required to file an amended plan which may or may not contain restructuring features similar to those available under FSA regulations. If amended plans are permitted in your jurisdiction and an amendment is appropriate to your situation, the Government, of course, is free to object to the amended plan in accordance with the provisions of the Bankruptcy Code. If any amended plan is approved before servicing and any appeal is completed under FSA regulations, FSA will complete the servicing or appeals process, and may consent to the amended plan if appropriate.

4. Chapter 13 Bankruptcy

If you have had a Chapter 13 plan confirmed, and the bankruptcy case has been closed, you may be legally obligated to repay some or all of your FLP debt despite any discharge resulting from the completion of your Chapter 13 plan. You may still be able to cure one or all of the defaults listed above, and also qualify for primary or preservation loan servicing. If you are considering applying for loan servicing, you should consult with your attorney to determine if your Chapter 13 confirmed plan will be affected if FSA approves your loan servicing application. If your Chapter 13 plan is affected, please see the discussion above under Chapter 12.

If you fail to complete and return the required information within the \* -day period, FSA will proceed to enforce its security instrument as allowed by the Bankruptcy Code and FSA regulations by accelerating your account with the intention of foreclosing or liquidating FSA's security. After acceleration, you may still be able to apply for preservation loan servicing (Homestead Protection) if FSA takes the property into inventory. If this event occurs, you will receive another notice with instructions on how to apply for this program. For information on the Homestead Protection program, please see Attachment 1 of 7 CFR part 1951, subpart S. To expedite any application, you may wish to consider voluntarily conveying the property to FSA. Please understand that FSA's ability to accept a voluntary conveyance is subject to its regulation which can be found at 7 CFR 1955.10.

FSA's farm loan program debt servicing regulation is found at 7 CFR part 1951, subpart S. We cannot promise you that a request for debt servicing will be approved. However, we can promise that a request for any servicing options which remain will be fully and fairly considered.

Sincerely,

Attachments

cc: Borrower's Attorney of Record

\* Indicate 60 days or time period remaining from last servicing action, whichever is greater.

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Releasing Security Sales Proceeds and Determining "Essential" Family Living and Farm Operating Expenses.

Family Living Expenses

Expenses for household operating, food, clothing, medical care, house repair, transportation, insurance and household appliances, i.e., stove, refrigerator, etc., are essential family living expenses. We do not expect there will be any disagreements over this. However, when proceeds are less than expenses, there might be disagreements about the amounts Rural Development should release to pay for particular items within these broad categories. For example, Rural Development has to release for transportation expenses, but should Rural Development release so that a borrower can buy a new car? If at planning time or during the crop year it appears that there will be sales proceeds available to pay for the borrower's operating and living expenses, including the expense of a new car, the Form RD 1962-1 can be completed to show that Rural Development plans to release for a new car. On the other hand, it would also be proper to complete the Form RD 1962-1 to release for a used car or for gas and repairs to the borrower's present car. Since it is necessary for Rural Development to release for essential family living expenses and because transportation is an essential family living expense, some proceeds must be released for transportation. However, nothing requires Rural Development to release for a specific expense; usually, there will be several ways to use proceeds to provide for essential family living expenses. We must provide the borrower with a written decision and an opportunity to appeal whenever there is a disagreement over the use of proceeds or whenever we reject a request for a release.

Farm Operating Expenses

We would expect farm operating expenses to present more of a problem than family living expenses. There will probably be a few disagreements over whether an expense is an operating expense (as opposed to a capital expense), but it is more likely that there will be disagreements over the amount Rural Development should release for operating expenses and over whether a particular farm operating expense is "essential." As is the case with family living expenses, disagreements will most likely arise when proceeds are less than expenses.

To resolve disputes over the amount to be released, remember that we must be reasonable and release enough to pay for essential farm operating expenses. Although a borrower might not always agree that enough money is being released, if the borrower's essential farm operating expenses are being paid, we are fulfilling the requirements of the statute. We must provide the borrower with an opportunity to appeal when there is a disagreement over the use of proceeds or when we reject a request for a release.

Section 1962.17 of this subpart states that essential expenses are those which are "basic, crucial or indispensable." Whether an expense is basic, crucial or indispensable depends on the circumstances. For example, feed is a farm operating expense, but it is not always an essential expense. If adequate pasture is available to meet the needs of the borrower's animals, feed is not essential. Feed is essential if animals are confined in lots. Hiring a custom harvester is a farm operating expense, but is not an essential expense if the farmer has the equipment and labor to harvest the crop just as well as a custom harvester. Hired labor is an operating expense which might be essential in a dairy operation but not in a beef cattle operation. Payments to creditors are essential if the creditor is unable to restructure the debt or to carry the debt delinquent. Renting land is not essential if the borrower plans to use it to grow corn which can be purchased for less than the cost of production. Paying outstanding bills is essential if a supplier is refusing to provide additional credit but not if the supplier is willing to carry a balance due. Of course, the long term goal of any farming operation is to pay all of its expenses, but when this is not possible, Rural Development and the borrower must work together to decide which farm operating expenses are essential and demand immediate attention and cannot be neglected. These are the essential expenses.

We absolutely must release to pay for essential family living and farm operating expenses; there are no exceptions to this. When deciding whether an expense is essential and when deciding how much to release, the choices we make must be rational, reasonable, fair and not extreme. They must be based on sound judgment, supported by facts, and explained to the borrower. Following these rules will help us avoid disagreements with borrowers.