

**Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations**

**AMENDMENT**

AGENCY: Farmers Home Administration, USDA.

ACTION: Final Rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its regulations regarding the obligation of loan funds for Rural Housing Site loans. The intended effect of this action is to decrease the amount of time involved in obligating loan funds for rural housing site projects. In doing this a more accurate status of obligations will be available for planning purposes. This action is taken as a result of an administrative improvement to the obligation process.

**EFFECTIVE DATE:** January 21, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Paul R. Conn, (202) 447-7207.

**SUPPLEMENTARY INFORMATION:** §§ 1822.271 and 1822.272 of Subpart G, Part 1822, Chapter XVIII of Title 7 in the Code of Federal Regulations are amended to use sexually neutral terms, connect references, provide for FmHA's internal reorganization and allow the State Director to telephone the Finance Office Check Request Station and request that loan funds for a particular project be obligated and to make other additional changes. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. This amendment, however, is being published effective as a final rule. A copy of the Impact Statement prepared by FmHA is available at the FmHA National Office in Washington, D.C. Publication for comment is unnecessary because this amendment is reviewing the internal procedure for the obligation of funds. This determination was made by Russell Gibler, Loan Officer, Room 5331.

As amended § 1822.271 reads as follows:

**§ 1822.271 [Amended]**

1. In § 1822.271, paragraph (f), line 4, change the first two words, "County Supervisor's" to "District Director's."

2. In § 1822.271, paragraph (g)(2), lines 9 and 10, delete the words "he may have."

3. In § 1822.271, paragraph (g)(3), line 4, change "County Supervisor

with his" to "District Director with any."

4. In § 1822.271, paragraph (g)(4), line 2, change "him" to "The State Director."

5. In § 1822.271, paragraph (g)(5), lines 4 and 5, change "County Supervisor" to "District Director."

6. § 1822.272 is revised to read:

**§ 1822.272 Approval or disapproval of a loan.**

"The provisions of paragraph (b)(2) of § 1822.93 Subpart D of this Part will be followed.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

This regulation has not been determined significant under the USDA criteria implementing Executive Order 12044.

Dated: January 10, 1979.

GORDON CAVANAUGH,  
Administrator,  
Farmers Home Administration.  
[FR Doc. 79-2162 Filed 1-19-79; 8:45 am]

**[3410-07-M]**

**SUBCHAPTER E—ACCOUNT SERVICING**

[FmHA Instructions 451.3 and 451.5]

**PART 1861—ROUTINE**

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

**SUMMARY:** The Farmers Home Administration amends its regulations regarding the servicing of group type loans. The intended effect of this action is to consolidate and reduce the number of forms required to service loans. This action is taken as a result of an administrative decision.

**EFFECTIVE DATE:** January 22, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Lynn L. Pickinpaugh, 202-447-5044.

**SUPPLEMENTARY INFORMATION:** The Farmers Home Administration amends various sections of Subparts C and F of Part 1861, Chapter XVIII, Title 7 in the Code of Federal Regulations by changing the number and title of an FmHA Form used for servicing loans, and by changing a reference from one Part to another. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This regulation, however, is being published as a final

rule. A copy of the Impact Statement prepared by FmHA is available in the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room, 6316, Washington, D.C. 20250.

Publication for comment is unnecessary because the actions taken are simply the substitution of one form number for another and a change in reference from one Part to another. Also, because the change of forms will increase service to the public and decrease the Government's cost of providing this service, any delay in changing program regulations would result in a delay in using the new form which would be contrary to the public interest. This determination was made by Mr. Lynn L. Pickinpaugh, Director, Production Loan Division, Farmers Home Administration. This regulation has not been determined significant under the USDA criteria implementing Executive order 12044.

Therefore, Part 1861 is amended as follows:

**§ 1861.46 [Amended]**

1. In subparagraph (i) (2) of § 1861.46, line 7, change "460-6, 'Release (UCC States)'" to "462-12, 'Statements of Continuation, Partial Release, Assignment, etc.'"

**§ 1861.84 [Amended]**

2. In paragraph (d)(1) of § 1861.84, line 5, change "§ 1871.8" to "§ 1962.17," in line 10 change "§ 1871.13" to "§ 1962.27" and in lines 13 and 14, change "460-6 'Partial Release (UCC States)'" to "462-12, Statements of Continuation, Partial Release, Assignment, etc."

(7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegation of authority by Director, OEO 29 FR 14764, 33 FR 9850.)

Dated: December 22, 1978.

GORDON CAVANAUGH,  
Administrator,  
Farmers Home Administration.  
[FR Doc. 79-2160 Filed 1-19-79; 8:45 am]

**[3410-07-M]**

**SUBCHAPTER J—REAL PROPERTY**

[FmHA Instruction 1933-I]

**PART 1933—LOAN AND GRANT PROGRAM (GROUP)**

**Subpart I—Self-Help Technical Assistance**

AGENCY: Farmers Home Administration, USDA.



**ACTION: Final Rule.**

**SUMMARY:** The Farmers Home Administration (FmHA) amends its regulations regarding the obligation of grant funds for Self-Help Technical Assistance Grants. The intended effect of this action is to decrease the amount of time involved in obligating grant funds for Technical Assistance grant projects. In doing this a more accurate status of obligations will be available for planning purposes. This action is taken as a result of an administrative improvement in the obligation process.

**EFFECTIVE DATE:** January 21, 1979.

**FOR FURTHER INFORMATION CONTACT:**

Paul R. Conn, (202) 447-7207.

**SUPPLEMENTARY INFORMATION:** §§ 1933.414 and 1933.416 of Subpart J, Part 1933, Chapter XVIII, Title 7 in the Code of Federal Regulations are amended to allow the State Director to telephone the Finance Office Check Request Station and request that grant funds for a particular project be obligated. Changes have also been made to reflect the administrative reorganization. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. This amendment, however, is being published effective as a final rule. A copy of the Impact Statement prepared by FmHA is available at the FmHA National Office in Washington, D.C. Publication for comment is unnecessary because this amendment is revising the internal procedures for the obligation of funds. This determination was made by Russell Gibler, Loan Officer, Room 5331.

Sections 1933.414 and 1933.416, are amended as follows:

**§ 1933.414 [Amended]**

1. In § 1933.414, paragraph (a), line 5, change "County Supervisor" to "District Director."

2. In § 1933.414, paragraph (b)(1), lines 1 and 2, change "County Supervisor" to "District Director."

3. In § 1933.416, paragraph (b) is amended to read as follows:

**§ 1933.416 Approval and closing.****(b) Approval of grant.**

The provisions of paragraph (b)(2)(i) of § 1822.93 Subpart D of Part 1822 Subchapter B of this chapter will be followed.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant

Secretary for Rural Development, 7 CFR 2.70)

This regulation has not been determined significant under the USDA criteria implementing Executive Order 12044.

**Dated:** January 10, 1979.

GORDON CAVANAUGH,

Administrator,

Farmers Home Administration.

[FR Doc. 79-2166 Filed 1-19-79; 8:45 am]

[3410-07-M]

[FmHA Instructions 1930-A and 1962-A]

**CHattel Servicing Regulations****Redesignation and Revision**

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule with comments requested.

**SUMMARY:** The Farmers Home Administration is redesignating and revising its chattel servicing regulations. The intended effect of this action is to simplify the regulations. This action is being taken as a result of an administrative restructuring of its program regulations.

**DATES:** Effective date: January 22, 1979. However, comments must be received on or before March 23, 1979.

**ADDRESSES:** Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Lynn L. Pickinpaugh, 202-447-5044.

**SUPPLEMENTARY INFORMATION:** The Farmers Home Administration amends its regulations by deleting Part 1930 Subpart A, establishing a new subpart A Part 1962, in Chapter XVIII, Title 7, in the Code of Federal Regulations and by making corresponding reference changes.

In addition to redesignation, the following changes are made for clarification or to include provisions of the Agricultural Credit Act of 1978:

1. Authorize the use of Form FmHA 462-12, "Statement of Continuation, Partial Release, Assignment, etc." in lieu of FmHA Forms 460-7, "Termination Statement"; 460-6, "Release (U.C.C. States)"; 462-7, "Continuation Statement"; and Form FmHA 462-12,

"Continuation of Termination Statement."

2. Section 1962.26 authorizes the County Supervisor to use Form FmHA 462-12 to correct minor errors in a Financing Statement.

3. Section 1962.30 (a) authorizes the subordination of chattel liens securing operating loans for any authorized operating loan purposes.

4. Section 1962.30 (c) restricts the approval of a subordination of a chattel lien securing an EM loan to the State Director if the State Director approved the EM loan.

5. Section 1962.34 paragraphs (a) and (b) establish the interest rate for transfers to eligibles and ineligibles at the current interest rate except for applicants eligible for limited resource loans, the interest rate will be 5 percent.

6. Section 1962.34 (c) deletes reference to the effect of wife's signature.

7. Section 1962.49 (a)(2) increases the maximum amount of claim that will not be referred to the OGC from \$400 to \$600.

8. Section 1962.49 (a)(3)(4) transfers responsibility for accelerating a borrower's account and sending converters' demand letters from the District Director to the County Supervisor.

9. Section 1962.49 (c)(2) emphasizes the need for FmHA to thoroughly investigate and obtain the information necessary to account for security property and the preparation of requests for legal action before requesting the assistance of the Office of Investigation.

10. The requirement for the County Supervisor to report the amount of other credit used by borrowers who do not receive a subsequent OL is deleted.

11. The requirement for the County Committee to certify the amounts of loans to be assumed by an eligible applicant is deleted.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This regulation, however, is being published as a rule, with a request for comments, since the purpose of the change is to restructure existing regulations and incorporate provisions of the Agricultural Credit Act of 1978. Also, due to the demand for loans and the financial condition of farmers, any delay in issuing the regulations would be contrary to the public interest. The only substantive changes are those authorized by the Agricultural Credit Act of 1978. Any other change is the reorganization and redesignation of present regulations.

The Agency is, however, interested in receiving public comments which



should be submitted to the address given above.

Accordingly, Part 1930, Subpart A, is deleted, the new Subpart A of Part 1962 is added, and all cross reference changes are made as follows:

**SUBCHAPTER B—LOANS AND GRANTS  
PRIMARILY FOR REAL ESTATE PURPOSES**

**PART 1822—RURAL HOUSING  
LOANS AND GRANTS**

1. In Subpart A, Exhibit E, paragraph 8 (b) (2), last line, change “§ 1871.22” to “Part 1962 Subpart A”. In paragraph 8 (c) (3) (i), third line, change “§ 1871.22 (c)” to “Part 1962 Subpart A”.

**SUBCHAPTER E—ACCOUNT SERVICING**

**PART 1861—ROUTINE**

§ 1861.1 [Amended]

2. In § 1861.1 (b) (2), change the reference from “Part 1930, Subpart A” to “§ 1962.48 (b) of Subpart A of Part 1962”.

3. In § 1861.8 (a), change the reference from “Part 1930, Subpart A” to “§ 1962.27 of Subpart A of Part 1962”.

**PART 1864—DEBT SETTLEMENT**

§ 1864.2 [Amended]

4. In § 1864.2, paragraphs (d) and (k) change the reference from “Part 1930, Subpart A” to “Part 1962 Subpart A”.

§ 1864.17 [Amended]

5. In § 1864.17 (a) (1) change the reference from “Part 1930 Subpart A” to “Part 1962, Subpart A”.

**PART 1866—FINAL PAYMENT ON  
LOANS SECURED BY REAL ESTATE**

§ 1866.1 [Amended]

6. In § 1866.1 (b) (1), change the reference from “Subpart A of Part 1930” to “Part 1962 Subpart A”.

**SUBCHAPTER F—SECURITY SERVICING AND  
LIQUIDATIONS**

**PART 1872—REAL ESTATE SECURITY**

§§ 1872.11, 1872.14, 1872.15, 1872.17 and 1872.22 [Amended]

7. In §§ 1872.11 (b), 1872.14, 1872.15 (c), 1872.17 (e) and 1872.22, change the reference from “Subpart A of Part 1930” to “Part 1962 Subpart A”.

**SUBCHAPTER I—LOAN AND GRANT  
PROGRAMS (INDIVIDUAL)**

**PART 1930—BORROWER PROPERTY  
SECURITY SERVICING (INDIVIDUAL)**

**Subpart A—[Reserved]**

8. Part 1930, Subpart A [Deleted and Reserved].

**SUBCHAPTER K—PROPERTY MANAGEMENT**

**PART 1955—REAL ESTATE AND  
CHATTEL PROPERTIES**

§ 1955.15 [Amended]

9. In § 1955.15 (d) (15) (i) change the reference from “Subpart A of Part 1930” to “§ 1962.49 (e) of Subpart A of Part 1962”.

**SUBCHAPTER L—LOAN AND GRANT MAKING**

**PART 1941—OPERATING LOANS**

§ 1941.42 [Amended]

10. In § 1941.42, change the reference from “Subpart A of Part 1930” to “Part 1962 Subpart A”.

**PART 1943—FARM OWNERSHIP AND  
SOIL AND WATER**

§ 1943.19 [Amended]

11. In § 1943.19(c)(5), change the reference from “Subpart A of Part 1930” to “Part 1962 Subpart A”.

§ 1943.42 [Amended]

12. In § 1943.42, change the reference from “Subpart A of Part 1930” to “Part 1962 Subpart A”.

§ 1943.69 [Amended]

13. In § 1943.69(c)(7), change the reference from “Subpart A of Part 1930” to “Part 1962 Subpart A”.

§ 1943.92 [Amended]

14. In § 1943.92, change the reference from “Subpart A of Part 1930” to “Part 1962 Subpart A”.

§ 1943.119 [Amended]

15. In § 1943.119(d)(6), change the reference from “Subpart A of Part 1930” to “Part 1962 Subpart A”.

§ 1943.142 [Amended]

16. In § 1943.142, change the reference from “Subpart A of Part 1930” to “Part 1962 Subpart A”.

**SUBCHAPTER N—SECURITY SERVICING**

17. Part 1962, “Personal Property”, is added to Subchapter N and Subchapter A, “Servicing and Liquidation

of Chattel Security” is added and reads as follows:

**PART 1962—PERSONAL PROPERTY**

**Subpart A—Servicing and Liquidation of  
Chattel Security**

- Sec.
- 1962.1 Purpose.
  - 1962.2 Policy.
  - 1962.3 Authorities and responsibilities.
  - 1962.4 Definitions.
  - 1962.5 Security Instruments.
  - 1962.6 Liens and assignments on chattel property.
  - 1962.7 Securing unpaid balances on unsecured loans.
  - 1962.8 Liens on real estate for additional security.
  - 1962.9 Liens on chattel property as security for a real estate loan.
  - 1962.10-1962.11 [Reserved]
  - 1962.12 Marking ASCS peanut and tobacco marketing cards.
  - 1962.13 Lists of borrowers given to business firms.
  - 1962.14 Account and security information in UCC cases.
  - 1962.15-1962.16 [Reserved]
  - 1962.17 Releasing chattel security.
  - 1962.18 Accounting for security.
  - 1962.19 Claims against Commodity Credit Corporation (CCC).
  - 1962.20-1962.21 [Reserved]
  - 1962.22 Amendments of consents and releases or suspensions of assignments.
  - 1962.23 Releases of liens on wool and mohair marketed by consignment.
  - 1962.24 Notice of termination of security interest to purchasers of farm products under consents or assignments upon payment in full.
  - 1962.25 Release of FmHA's interest in insurance policies.
  - 1962.26 Correcting errors in security instruments.
  - 1962.27 Termination or satisfaction of chattel security instruments.
  - 1962.28 Assignment of notes and security instruments.
  - 1962.29 Payment of fees and insurance premiums.
  - 1962.30 Subordination and waiver of FmHA liens on chattel security.
  - 1962.31-1962.33 [Reserved]
  - 1962.34 Transfer of chattel security and EO property and assumption of debts.
  - 1962.35-1962.39 [Reserved]
  - 1962.40 Liquidation.
  - 1962.41 Sale of chattel security or EO property by borrowers.
  - 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.
  - 1962.43 Liquidation of chattel security or EO property by other parties.
  - 1962.44 Distribution of liquidation sales proceeds.
  - 1962.45 Reporting sales.
  - 1962.46 Deceased borrowers.
  - 1962.47 Bankruptcy and insolvency.
  - 1962.48 Setoffs.
  - 1962.49 Civil and criminal cases.
  - 1962.50 [Reserved]

Exhibit A—Memorandum of Understanding Between Commodity Credit Corporation and Farmers Home Administration.  
Appendix 1—Furnishing Notice or Information to Commodity Credit Corporation.  
Exhibit B—Memorandum of Understanding and Blanket Commodity Lien Waiver.



AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 2942; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO, 29 FR 14764, 33 FR 9850.

### Subpart A—Servicing and Liquidation of Chattel Security

#### § 1962.1 Purpose.

This subpart delegates authorities and gives procedures for servicing, care, and liquidation of Farmers Home Administration (FmHA) chattel security, Economic Opportunity (EO) loan property, and note only loans.

#### § 1962.2 Policy.

(a) Chattel security, EO property and note only loans will be serviced to accomplish the loan objectives and protect to FmHA's 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.

(b) If the objectives of Paragraph (a) of this section cannot be met, or if the chattel security must be liquidated for other reasons, the security will be liquidated promptly to protect FmHA's financial interest. Normally, the borrower will dispose of chattel security and EO property at a public or private sale. However, when this cannot be done, the County Supervisor will take possession of and sell chattel security in accordance with this subpart.

#### § 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) *FmHA 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 FmHA for all chattel security, and complying with all other requirements specified in promissory notes, security instruments, and related documents.

#### § 1962.4 Definitions.

(a) *Abandonment.* Voluntary relinquishment by the borrower of control

of security or EO property without providing for its care.

(b) *Acquired chattel property.* Former security or EO property of which FmHA has become the owner (See § 1955.20 of Subpart A of Part 1955 of this chapter).

(c) *Chattel property.* Crops; livestock; fish; farm, business, and recreational equipment; supplies; farm products; other personal property; and fixtures.

(d) *Chattel security.* Chattel property covered by FmHA financing statements and security agreements, chattel mortgages, and other security instruments. As used in this Subpart, the term "security" also means "chattel security" when appropriate.

(e) *Civil action.* Court proceedings to protect FmHA'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.

(f) *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:

(1) Unauthorized sale of security with intent to defraud;

(2) Purchase of security with intent to defraud and without payment of the purchase price to FmHA;

(3) Falsification of assets or liabilities in loan applications;

(4) Application for a loan for an authorized purpose with intent to use and use of loan funds for an unauthorized purpose;

(5) Decision after obtaining a loan to use and using the funds for an unauthorized purpose and then making false statements regarding their use;

(6) 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

(7) Any other false statements or representations relating to FmHA 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 five years after the date the act was committed. When actions by borrowers represent minor de-

viations from the policies expressed in FmHA regulations, such actions are not considered criminal violations for the purposes of this Subpart. Examples of such minor deviations are failure of the borrower to account properly for nominal amounts derived from the sale of security or for minor items of security. However repeated, unauthorized disposition of even minor items by the borrower will be considered criminal violations.

(g) *Default.* Failure of the borrower to observe the agreements with FmHA 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:

(1) 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.

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

(3) Has disposed of security or EO property without FmHA 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.

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

(h) *EO property.* Nonsecurity chattel property purchased, refinanced, or improved with EO loan funds.

(i) *EO property essential for minimum family living needs.* Nonsecurity 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.



(j) *FmHA*. The United States of America, acting through the Farmers Home Administration and its predecessor administrative agencies.

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

(l) *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 FmHA; or filing claims in bankruptcy or similar proceedings or in probate or administrative proceedings to close the loan.

(m) *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.

(n) *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.

(o) *Repossession property*. Security or EO property in FmHA's custody, but still owned by the borrower.

#### § 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 FmHA's security interests.

(a) *Financing statement*. An FmHA 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 FmHA 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 FmHA 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 FmHA 462-11, "Request for Continuation Statement Filing Fee," may be used to notify the borrowers to continue the Financing Statement and to submit the amount of the filing fee.

(v) *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 about the time of the annual inspection of the security required by § 1962.18 of this Subpart; or

(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) FmHA 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 FmHA will obtain the required priority of liens.

#### § 1962.6 Liens and assignments on chattel property.

(a) *Chattel property not covered by FmHA lien*. (1) When additional chattel property not presently covered by an FmHA lien is available and needed to protect FmHA'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 Agricultural Conservation Program payments.

(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 FmHA 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 FmHA lien, a lien search will be made. It will not be needed, however, if crops or other chattel property are covered by a filed FmHA Financing Statement but not by an FmHA security agreement or assignment of income. The search will be made at a time which will assure that FmHA obtains the desired lien on chattel property as set forth by a State supplement.

(c) *Assignment of wheat certificates payments and feed grain payments*. Borrowers may assign Agricultural Stabilization and Conservation Service (ASCS) price support and certificate payments under ASCS wheat and feed grain programs.

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

(i) In selected cases in counties agreed to by FmHA State Directors and ASCS State Committees,

(ii) Only when it appears necessary to collect the FmHA operating-type loans,

(iii) Only for the crop year for which FmHA operating-type loans are made, and

(iv) For the full amount of the wheat certificate payment and an advance and/or final feed grain payment.

(2) *Selecting counties*. State Directors will inform ASCS State Committees of the counties in which FmHA desires to obtain assignments from borrowers. When counties have been agreed to by FmHA State Directors and ASCS State Committees, the State Directors will notify the appropriate County Supervisors about obtaining the assignments. The County Supervisors then will:

(i) Determine, at the time of loan processing for indebted borrowers and new applicants, who must give assignments and obtain them not 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.

(ii) Obtain assignments from selected borrowers on Form FmHA 462-8.



**"Wheat and Feed Grain Programs—Assignments."**

(3) *Determining payments.* Under the Agricultural Act of 1970, the per bushel rates of payments to participating producers are determined in part by the average market prices for corn, grain sorghums, barley, and wheat during the first 5 months of the respective marketing years. Preliminary payments, at specified rates for corn, grain sorghums, and barley and at 75 percent of the estimated final rate for wheat, will be made promptly after July 1. Final payments, if any, will be made after determining the rates of payment.

(4) *Releasing assignments and handling checks.* (i) The County Supervisor will inform the ASCS County Office that it is releasing its assignment whenever a borrower pays FmHA the amount due for the year on the operating-type loan debt or pays the debt in full.

(ii) Checks obtained as a result of an assignment will be made jointly to the producer and FmHA. Such checks may be endorsed by both parties and scheduled as a payment or payments to FmHA, or endorsed and released, including partial release, to the borrower if the borrower has paid FmHA the amount due for the year on the operating-type loan or has paid the debt in full.

**§ 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 of this Subpart 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.

**§ 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. Such liens will be taken only when the existing security is not adequate to protect FmHA interests, and the borrower has substantial equity in the real estate to be mortgaged, and taking such mortgage will not prevent making an FmHA real estate loan, if needed, later.

(a) *Documentation.* Before taking real estate as additional security for an FmHA 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 FmHA 427-1 (State), "Real Estate Mortgage 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 FmHA loans for which the additional security will be taken will be described in the same mortgage.

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

Form FmHA 440-15, "Security Agreement (Insured Loans to Individuals)," and Form FmHA 440A25, "Financing Statement (carbon-interleaved)," or Form FmHA 440-25, "Financing Statement," as appropriate, will be used in Uniform Commercial Code (UCC) States. State supplements may provide for using other forms in Louisiana, Puerto Rico, Guam, American Samoa and the Northern Mariana Islands.

**§§ 1962.10-1962.11 [Reserved]**

**§ 1962.12 Marking ASCS peanut and tobacco marketing cards.**

The County Supervisor will mark ASCS marketing cards for all borrowers who have peanut or tobacco crops under lien to FmHA.

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

(1) Stamp or insert "FmHA lien" in script in indelible ink on the cards for peanuts and tobacco, except flue-cured and burley tobacco, wherever decided by the FmHA County Supervisor and the ASCS County Office Manager.

(2) Stamp or insert "FmHA lien" in script in indelible ink on borrower's Form MQ 76, "Tobacco Marketing Card," for flue-cured and burley 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 "FmHA

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 marking arrangements, 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 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 "FmHA lien" may still be subject to an FmHA 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 Lists of borrowers given to business firms.**

List of borrowers whose chattels or crops are subject to an FmHA lien may be made available to business firms in a trade area, such as sales-barns and warehouses, that buy chattels or crops or sell them for a commission. The County Supervisor will give these lists to any such firm on its request. These lists will exclude those borrowers whose only crops for sale require ASCS marketing cards.

(a) The list will contain the statement: "The crop and chattel liens or financing statements of the Farmers Home Administration 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 Farmers Home Administration does not have security interest in or lien on the crops, livestock, and other chattels."

(b) Lists will be sent by Form FmHA 462-3, "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 FmHA 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.**

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

(a) If FmHA 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 FmHA may charge up to \$10 for each additional statement. However, FmHA provides them without charge. The requested information goes on Form FmHA 462-10, "Farmers Home Administration's Answer to Request for Information."

(b) Although the UCC only requires FmHA to give information pursuant to the borrower's written request, FmHA 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.

**§§ 1962.15-1962.16 [Reserved]**

**§1962.17 Releasing chattel security.**

Chattel security may be released only when release will not be to the financial detriment of FmHA. Borrowers will be strictly accountable to FmHA for the proper use of proceeds from the sale of security. Insurance proceeds derived from the loss of security will be treated the same as sale proceeds. The authority to release security for FmHA loans is different for basic security than for normal income security.

(a) *Basic security.* Basic security is all equipment (including fixtures in UCC States) and foundation herds and flocks securing FmHA loans which serve as a basis for the farming or other operation outlined in Form FmHA 431-2, "Farm and Home Plan," Form FmHA 431-3, "Family Budget," or Form FmHA 431-4, "Business Analysis Nonagricultural Enterprise," and replacement of such property. It also includes animals sold as a result of the normal culling process, unless the borrower has replacements that will keep numbers and production up to planned levels and animals or birds sold when a borrower plans to significantly reduce the basic livestock herd or flocks. County Supervisors may release basic security when the property has been sold or exchanged for its present market value, and the proceeds are used for one or more of the following purposes:

(1) To apply to the debts owed to FmHA which are secured by liens on the property sold.

(2) To purchase from the proceeds of the sale, or to acquire through exchange, property more suitable to the borrower's needs. The new property, together with any proceeds applied to the indebtedness, will have security value to FmHA at least equal to that of the lien formerly held by FmHA on the old property and subject to the following:

(i) UCC cases. Under the after-acquired property provisions of the security agreement, the new property, except fixtures, will be subject to the security interest of FmHA provided the financing statement on file and the security agreement cover the class of property. Therefore, new security instruments will not be needed.

(A) However, if either the financing statement or security agreement does not cover such property, a new instrument will be taken.

(B) Since the after-acquired property clause in the security agreement does not cover fixtures, a new security agreement would have to be taken for them. A new financing statement also will have to be taken and filed unless the existing filed financing statement covers fixtures by class and describes the land on which the new fixtures are or are not to be located.

(ii) Chattel mortgage cases. The new property is made subject to a lien in favor of FmHA by the execution of a new security instrument (or by operation of the "replacement" or "after-acquired property" clauses in lien instruments in accordance with State supplements).

(iii) Time of taking new security instruments. New security instruments are taken at the time of the acquisition of the new property referred to in paragraphs (a) (2) (i) and (ii) of this section. In individual cases, however, County Supervisors may delay as long as 1 year or until new instruments are necessary for other reasons, whichever is earlier, when adequate security will continue to exist. Security is considered adequate if its value, as determined by a chattel appraisal of the borrower's chattel property remaining under lien to FmHA, is substantially greater than the amount of the debt.

(3) To make payments to other creditors having liens on the property sold which are superior to the liens of FmHA. However, any amount remaining after payments to the other creditors will be used in accordance with subparagraphs (a) (1) and (2) of this section.

(4) To pay costs to preserve the security because of an emergency or catastrophe, when the need for funds cannot be met through an FmHA loan, or an FmHA loan cannot be made in

time to prevent the borrower or FmHA from suffering a substantial loss.

(b) *Normal income security.* This is all security not considered basic security including crops, livestock, poultry, products, and other property covered by FmHA liens which are sold in operating the farm or other business. County Supervisors may release normal income security when the property has been sold or exchanged for its present market value and the proceeds are used for one or more of the following purposes:

(1) To pay debts owed to FmHA.

(2) To pay farm and home or other operating expenses provided for in tables of Form FmHA 431-2, Form FmHA 431-3, or Form FmHA 431-4.

(3) To pay necessary farm and home or other operating expenses shown as debts in the financial statement on Form FmHA 431-2 or Form FmHA 431-3 and to be paid during the year as shown by the debt payment table, provided these debts were incurred in the production, harvesting, or marketing of crops, livestock, poultry or products sold during the year or were for family subsistence for that year.

(4) To pay an amount not more than the equivalent of 1 year's income taxes and social security taxes.

(5) To make payments to other creditors having liens on the property sold which are superior to FmHA liens.

(6) To pay annual installments on debts owed on essential real estate to creditors other than FmHA. These amounts must be reasonable when related to the normal rental charge for similar real estate in the area, and there should be assurance that the borrower will keep the real estate at least for the next year.

(7) To make reasonable payments on debts owed to other creditors for essential home equipment and passenger automobiles provided for in the debt payment tables of Form FmHA 431-2 or Form FmHA 431-3 or approved revisions. Such debts ordinarily will be considered for payment only after the full amount agreed on for the year has been paid to FmHA. However, reasonable amounts may be paid to other creditors first if failure to make payments to other creditors when due would result in the borrower's losing possession of essential home equipment or passenger automobile, and the loss would require the borrower to replace the property or to go to substantial additional expense to continue the operation.

(8) To make payments on debts on harvesting equipment such as cotton pickers, corn pickers, combines, forage harvesters, and so forth in addition to paying essential harvesting expenses provided an OL or EM loan for the



crop year did not include funds for the payment of depreciation on such equipment, and the total amount released for such payments and harvesting costs, plus any loan funds advanced for harvesting costs, is not more than the amount that would be required during the crop year on a custom basis to harvest the crops using the harvesting equipment.

(9) To make payments on debts owed to other creditors and to make purchases or to meet expenses not otherwise covered in this section provided:

(i) Debt payments, purchases, or expenses are included in Form FmHA 431-2, Form FmHA 431-3, or Form FmHA 431-4;

(ii) Sufficient income will be available to pay an amount equivalent to that scheduled on the notes to fall due during the year, plus the amount agreed on for any delinquencies, on FmHA debts secured by liens on chattel property; and

(iii) Debt payments, purchases, or expenses are essential for the borrower to obtain or keep necessary equipment or to continue a sound operation.

(10) To pay costs required to preserve the security because of an emergency or catastrophe, when the need for funds cannot be met through an FmHA loan or an FmHA loan cannot be made in time to prevent the borrower or FmHA from suffering a substantial loss.

(11) To permit crops serving as security for FmHA loans to be fed to livestock when the County Supervisor determines that this disposal is preferable to direct marketing of the crops, provided a lien or assignment is obtained on the livestock or livestock products.

(12) When livestock is consumed by the borrower's family for subsistence.

(c) *Distribution of income from normal income security.* On finding that the amount of income originally planned for the year will not be received, the County Supervisor will determine, in consultation with the borrower, how to use income that is available or will become available during the remainder of the planned year as shown on Forms FmHA 431-2 or FmHA 431-4. If other creditors have liens on the property from which the normal income is received, they also must be consulted. Priorities in distributing the income that will be available are as follows:

(1) Pay necessary farm, home, and other expenses planned for payment by cash as incurred.

(2) Prorate repayments on credit advanced for necessary farm, home, and other operating expenses to FmHA and other creditors.

(3) Make planned payments on other debts as shown in Table K of Form FmHA 431-2 or Table H of Form

FmHA 431-3. However, minimum payments may be made on such debts along with the payment of cash farm, home, and other operating expenses on credit advanced for such purposes when necessary to enable the borrower to keep essential property.

(d) *Plans as basis for releasing chattel security.* Release of both basic and normal income security will be based on information about the borrower's operations as shown on Form FmHA 431-2, Form FmHA 431-3, or Form FmHA 431-4, as appropriate.

(1) If plans have been developed for the borrower's current crop or business year, the release will be based on them.

(2) If no recent plans have been made with the borrower, the release will be based on the County Supervisor's knowledge of the borrower's current operations, plus inquiry and documentation of the facts about the borrower's present operation in the running case record.

(e) *Release of valueless junior lien.* State Directors may release junior FmHA liens on chattels and crops serving as security for FmHA loans when such property has no present or prospective security value or enforcement of the FmHA lien would be ineffectual or uneconomical. The following information will be documented in the running case record:

(1) The present market value of the chattels or crops, as determined by the County Supervisor, on which FmHA has a valueless junior lien.

(2) 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 serving as security for amounts owed to prior lienholders must be considered to determine whether the junior FmHA lien has any present or prospective value.

(f) *Release of lien because of mutual mistake.* Chattel property serving as security for FmHA loans may be released by the State Director when the lien on such property was obtained through a mutual mistake.

(g) *Release of lien because of no evidence of indebtedness.* The County Supervisor may release the lien on chattel property when there is no evidence of an existing indebtedness secured by the lien in the records of the FmHA County, State, or Finance Office.

(h) *Release of lien on chattel property held as security for a real estate loan.* The State Director may release an interest in chattels acquired in accordance with § 1962.9.

(i) *Release forms.* The County Supervisor may execute releases covering specific items of property. If a security interest under the UCC is involved, Form FmHA 462-12, will be used in ac-

cordance with the Forms Manual Insert (FMI) to release such property from that interest. If chattel mortgages are involved, Form FmHA 460-1, "Partial Release," or other approved form will be used. If Forms FmHA 462-12 or FmHA 460-1 are not legally sufficient, other forms approved by OGC will be used. Releases need not be executed unless requested by a borrower or by an interested third party.

#### § 1962.18 Accounting for security.

(a) *Accounting by County Supervisor.* The County Supervisor is responsible for maintaining a current record of each borrower's security. When the borrower acquires additional items of chattel property which will be described on subsequent security instruments, descriptions of these items will be recorded on the work copy of the security agreement or the file copy of the chattel mortgage, as appropriate. The original of the security agreement should not be altered. Chattel security should be inspected annually for borrowers who are delinquent or who have been indebted for less than 1 full crop year. The County Supervisor will make other inspections as needed to:

(1) Verify the borrower possesses all the security,

(2) Determine security is properly maintained, and

(3) Supplement security instruments.

(b) *Accounting by borrower.* The borrower must account for all security and will be instructed regarding its care, maintenance, and disposition when a loan is made and as often afterward as necessary. When borrowers sell security, the sale will be made subject to the FmHA lien. The property and proceeds will remain subject to the lien until the lien is released or the sale is approved by the County Supervisor and the proceeds are used for one or more of the purposes stated in § 1962.17. Purchasers of security who inquire should be informed that the property is subject to FmHA's lien and will remain subject to it until they deliver any proceeds in cash to the County Supervisor or make checks payable jointly to the borrower and FmHA and the check has cleared. Form FmHA 462-2, "Written Consent to Sell and Statement of Conditions on Which Lien Will be Released," will be used by the County Supervisor to give written consent to sell when borrowers or purchasers request such a statement before the date of sale.

(c) *Recording disposition of security.* Dispositions of basic and normal income security will be recorded on Form FmHA 462-1, "Record of the Disposition of Security Property," as soon as information is available. Security which is disposed of will include items sold, exchanged, or lost through



death, theft, destruction, or deterioration and livestock consumed by the family.

(1) For normal income security, the uses made of the sale proceeds will be recorded in sufficient detail to relate them readily to the appropriate tables in Form FmHA 431-2, Form FmHA 431-3, or Form FmHA 431-4. However, these entries are not required on Form FmHA 462-1 when:

(i) The borrower is not delinquent on any FmHA debts and has paid the amount agreed on for the year; or

(ii) Farm products such as milk, eggs, or wool are sold and are accounted for on Form FmHA 441-18, "Consent to Payment of Proceeds from Sale of Farm Products," Form FmHA 441-25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," Form FmHA 441-8, "Assignment of Proceeds from the Sale of Products," or the farm and home plan shows that no payments are to be made on FmHA debts from the farm product(s) listed on the named forms.

(2) Employees having release authority will approve or disapprove the release on Form FmHA 462-1.

(3) Recording or not recording disposition of security does not release the FmHA lien on the security.

(d) *Reporting improper disposition of security.* When the borrower fails to account properly for security, the County Supervisor will report the facts in writing promptly to the State Office.

#### § 1962.19 Claims against Commodity Credit Corporation (CCC).

This section is based on a Memorandum of Understanding between CCC and FmHA (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 FmHA holds a prior lien, and when the proceeds, or an agreed amount from them, are not remitted to FmHA to apply against the producer's indebtedness to FmHA. 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. 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 FmHA 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 FmHA'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.

(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 FmHA 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 FmHA'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, FmHA will then be paid by CCC through the applicable ASCS office.

#### §§ 1962.20-1962.21 [Reserved]

#### § 1962.22 Amendments of consents and releases or suspensions of assignments.

(a) *Amendment of Form FmHA 441-18, "Consent to Payment of Proceeds from Sale of Farm Products."* The County Supervisor may temporarily amend this form to permit borrowers to use all or a part of proceeds from

the sale of products in emergencies and in other justifiable circumstances. Such action, however, must not be to the financial detriment of FmHA and the funds must be used for the purposes stated in § 1962.17 (a) and (b). Form FmHA 462-9, "Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Products," will be used for this purpose. The borrower's file will show the purpose of and justification for the amendment. The County Supervisor will see that payments are made in accordance with the original consent when the temporary amendment period expires.

(1) When a Form FmHA 441-18 has been executed and the amount of the payment to FmHA needs to be decreased for other than a temporary period, or increased for any period, a new Form FmHA 441-18 will be executed.

(2) If Form FmHA 441-18 has been executed for a particular product and FmHA is no longer looking to the proceeds from that product for payment on the FmHA indebtedness, the purchaser should be advised by letter as follows: "The Farmers Home Administration (FmHA) is not presently looking to the proceeds from the sale of (name of product) covered by the 'Consent to Payment of Proceeds from the Sale of Farm Products' executed by (name and address of borrower) and accepted by you on (date). Therefore, until further notice, you may discontinue making payments to FmHA for such product."

(3) If Form FmHA 441-18 has not been executed for a particular product because FmHA is not expecting payment from the proceeds of such product, but the purchaser of the product inquires about payment, a letter should be written to the purchaser as follows: "The Farmers Home Administration (FmHA) 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 owed to this agency. Therefore, until further notice, it will not be necessary for you to make payment to FmHA for such product."

(b) *Assignments.* (1) The County Supervisor may release, reduce, or temporarily suspend assignments including crop insurance assignments and permit borrowers to use such proceeds including those received as checks made payable jointly to the borrower and FmHA. This authority is the same as that provided in paragraph (a) of this section. The County Supervisor will see that suspended, reduced, or released assignments are reinstated, or new assignments are obtained when needed.



(2) All suspensions, reductions, or releases of assignments will be made on forms approved by OGC. The original 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. In each case, the borrower's file will show the purposes of and justification for the suspension, reduction, or release.

(3) The State Director may in justifiable cases approve requests for suspension, release, or reduction of assignments other than those specified in paragraph (b) (1) of this section, provided such action will not be detrimental to FmHA's interest.

**§ 1962.23 Releases of liens on wool and mohair marketed by consignment.**

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

(1) The producer assigns to FmHA 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.

(2) The producer assigns to FmHA 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.

(3) 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 FmHA.

(b) *Authority.* The County Supervisor may execute releases of the Government's lien on wool and mohair on Form FmHA 462-4, "Assignment, Acceptance, and Release." Since Form FmHA 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.

**§ 1962.24 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 FmHA 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 FmHA 441-18 is in effect under the UCC, the notice to the purchaser will be made on Form FmHA 460-8, "Notice of Termination of Security Interest in Farm Products." When as-

signments have been used, the notice to the purchaser will be by letter or by forms prescribed by State supplements.

**§ 1962.25 Release of FmHA's interest in insurance policies.**

When an FmHA lien on property covered by insurance has been released, the County Supervisor is authorized to notify the insurance company of the release.

**§ 1962.26 Correcting errors in security instruments.**

The County Supervisor may use Part 7 of Form FmHA 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 Part 7 of Form FmHA 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) FmHA has a financing statement or other lien instrument which describes the real estate upon which crops are located but neither the borrower nor FmHA 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 paragraph (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 FmHA 462-12 if provided by a State Supplement.

(1) Under UCC provisions if FmHA 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 FmHA 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 FmHA 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 FmHA 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 FmHA 460-4 will not be prepared but a notation of the satisfaction will be made on the copy of Form FmHA 451-1, "Acknowledgment of Cash Payment," or Form FmHA 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 FmHA 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 FmHA 460-4 or other approved form or to effect the satisfaction by marginal release, or a termination on Form FmHA 462-12 as appropriate.

**§ 1962.28 Assignment of notes and security instruments.**

(a) The State Director may accept from third parties payment in full of a borrower's notes held by FmHA and assign the notes to third parties without recourse against FmHA and assign related security instruments including financing statements without warranty by FmHA in the following situations:

(1) The borrower requests or gives written consent to such an assignment.

(2) The borrower has not requested or given written consent to such an assignment but has demonstrated an unwillingness to cooperate voluntarily with FmHA in the servicing and orderly retirement of his/her accounts which otherwise would be liquidated.

(3) An insurer has made full payment of the borrower's indebtedness as stated in Form FmHA 426-2, "Property Insurance Mortgage Clause (Without Contribution)," or other such clause outlined in § 1806.2(g) of Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1, paragraph II G).

(b) The State Director will request OGC's review of the legal matters in each proposed assignment and will request approval of the form of assignment. (See § 1872.22 of Subpart A of Part 1972 of this chapter, FmHA Instruction 465.1, paragraph XXII, for additional provisions of assigning real estate security instruments.) If the insured note is not held in the appropriate insurance fund or county office, the State Director will request the Di-

rector, Finance Office, to have the note assigned to the insurance fund and then forwarded to the State Director. Financing statements may be assigned to third parties on Form FmHA 462-12 if authorized by a State supplement.

**§ 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 FmHA 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 FmHA employees to pay these fees, Form FmHA 440-12, "Acknowledgment of Payment for Recording, Lien Search and Releasing Fees," will be executed. If the borrower cannot pay the fees, or if there are fees referred to in paragraphs (a) (2) and (3) of this section that must be paid by FmHA, the County Supervisor may pay them as a petty purchase or as the bill of a creditor of FmHA in accordance with FmHA Instructions 2024-E and 2075-A, copies of which are available in any FmHA office.

(2) *Satisfactions.* The borrower must pay fees for filing or recording satisfactions or termination statements unless a State supplement based on State law requires FmHA to pay them.

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

(b) *Insurance premiums.* County Supervisors are authorized to approve bills or invoices for payment of insurance premiums on chattel security for FmHA loans when:

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

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

(3) It is necessary to protect FmHA's interests; and

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

**§ 1962.30 Subordination and waiver of FmHA liens on chattel security.**

(a) *Purposes.* FmHA chattel liens securing OL, economic emergency (EE) and emergency (EM) loans may be subordinated to a lien of another creditor to permit that creditor to lend for any authorized OL, EE, or EM

loan (Subtitle B) purpose, including capital purchases, provided:

(1) The borrower needs the loan to continue farming operations; and

(2) The loan will help the borrower to accomplish the objectives of the FmHA loans; and

(3) FmHA's financial interest will not be adversely affected.

(b) *Limitations.* (1) When a non-FmHA loan is made to pay expenses directly related to particular crops or livestock enterprises, FmHA lien priority should be subordinated to the non-FmHA creditor's lien only so far as crops, livestock increases, feeder livestock or other normal farm income security is concerned. If the non-FmHA lender will not make a loan unless FmHA agrees to subordinate more of its priority, FmHA may subordinate any lien it holds on basic chattel security. FmHA should not give up any more of its priority to basic chattel security than is absolutely necessary to provide the non-FmHA lender with the security it requires.

(2) When an obligation secured by a lien prior to that of FmHA is about to mature or has matured and the prior lienholder desires to extend or renew the obligation, or the obligation can be refinanced, the FmHA lien may be subordinated. However, the relative lien position of FmHA must be maintained.

(3) The subordination will be limited to a specific amount.

(4) A subordination in favor of only one creditor will be outstanding at any one time in connection with the same security. A subordination also may be executed to enable a borrower to obtain necessary crop insurance if the creditor to whom a subordination has been given on that crop consents in writing to payment of the insurance premiums from the crop or insurance proceeds.

(5) When a subordination is executed to enable the borrower to obtain insurance on crops under lien to FmHA, the borrower will assign the insurance proceeds to FmHA or name FmHA in the loss-payable clause of the policy.

(6) Waivers of FmHA lien priority, instead of subordinations, may be executed in favor of a creditor who has made or will make advances to produce, harvest, process, or market crops under written contract to that creditor. Such waivers are limited to the purposes for which a subordination may be made under this Subpart.

(c) *Approval.* Loan approval officials may approve subordinations and waivers of FmHA OL lien priority if the amount of the proposed subordination or waiver, plus the principal balance of existing subordinations or waivers, is not more than their OL approval authority stated in tables which are available from any FmHA office. Loan



approval officials may approve subordinations and waivers of FmHA EM and EE loans lien priority if the amount of the subordination or waiver plus the unpaid principal balance of existing EM and EE loans and subordinations does not exceed their EM or EE loan approval authority stated in tables which are available from any FmHA Office. When the lien priority for more than one type of loan is subordinated or waived, the total amount of the approval official's authority will be limited to the loan with the lowest approval authority for that official. However, the State Director may approve subordinations or waivers regardless of the amount. State Directors may redelegate their authority for approving subordinations to qualified State Office employees.

(d) *Forms.* (1) Subordinations or lien waivers authorized in this Subpart will be made on Form FmHA 460-2, "Subordination by the Government," or on other forms approved by the State Director with OGC's advice. If Form FmHA 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.

(2) Form FmHA 431-2 will show the subordination or lien waiver and repayment.

(e) *Loans under CCC program.* See Exhibit B of this subpart.

(1) When the ASCS County Office makes CCC loans to the borrower, FmHA will not execute a form of subordination or lien waiver.

(2) When the full value of a CCC loan on cotton is to be advanced to the borrower by a bank, ginner, or warehouseman whom the County Supervisor considers financially responsible, and when a check or draft issued by the bank, ginner, or warehouseman is made payable to FmHA, or jointly to FmHA and the borrower, and is delivered to the County Supervisor, the County Supervisor may then 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 approval officials may approve waivers of crop liens in accordance with paragraph (c) of this section.

(3) If the commodity covered by the CCC loan is released by CCC or redeemed by the borrower, the FmHA lien will be restored to the priority it held before the CCC loan was made.

#### §§ 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 set out in this Section. A transfer and assumption may also be made when one or more of the borrowers 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 will be processed in accordance with Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1).

(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:

(1) The transferee assumes the total outstanding balance of the FmHA 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. Any delinquency will be scheduled for payment on or before the date the transfer is closed. Form FmHA 460-9, "Assumption Agreement (Same Terms-Eligible Transferee)," will be used. If the existing loan repayment period is extended, the debt being assumed may be rescheduled using Form FmHA 460-5, "Assumption Agreement (New Terms)." The new repayment period may not exceed that for a new loan of the same type. If Form FmHA 460-5 is used, the current interest rate for such loans will be charged to all applicants except those eligible for limited resource loans, who will be charged interest at the rate of 5 percent per year.

(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 withdraw from the operation and those remaining desire to assume the total indebtedness and continue the operation, a transfer to the remaining borrowers or partners may be made as an eligible transferee.

(b) *Transfer to ineligibles.* 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:

(1) It is in FmHA'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 assumes the total outstanding balance of the FmHA debt, or an amount substantially more than the present market value of the security or EO property as determined

by the County Supervisor, less any prior liens, if the value is less than the entire debts.

(3) FmHA debts assumed will be repaid in amortized installments not to exceed 5 years using Form FmHA 460-5. The transferred property, including EO property, will be subject to any existing FmHA lien. In the absence of an existing FmHA lien, new lien instruments will be executed. Interest rates to the transferee will be as follows:

(i) For OL and EM loans, the current interest rate in effect at the time of approval of the transfer.

(ii) For EO loans, 6 percent.

(4) The transferee can repay the FmHA debt in accordance with the assumption agreement and can legally enter into the contract.

(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 FmHA when all the chattel security 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.

(e) *County Committee actions—(1) Transfer to eligible applicant.* The County Committee will certify the transferee's eligibility for the types of loans to be assumed on Form FmHA 440-2, "County Committee Certification or Recommendations."

(2) *Transfer to ineligible applicant.* The County Committee will execute a memorandum statement on Form FmHA 440-2 as follows: "In our opinion, the transferee, (name of transferee), will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan."

(3) *Release from liability.* If the total outstanding debt is not assumed, the County Committee will execute a memorandum statement on Form FmHA 440-2 when they recommend the transferor be released from personal liability, which will read as follows: "(Name of transferor and any cosigner) in our opinion 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. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of their ability. Therefore, we recommend that the



transferor and any cosigner be released from personal liability on the transferees' assumption of a portion of the indebtedness at least equal to the present market value of the security." If the total outstanding debt is assumed, the statement is not required.

(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 FmHA 410-1, "Application for FmHA Services."

(4) Form FmHA 440-2 for an eligible transferee, with the memorandum statement of the County Committee if the transferor is to be released from liability.

(5) County Committee memorandum statement for ineligible transferee with the additional memorandum statement if the transferor is to be released from liability.

(6) Statement of justification for the transfer, including a plan of repayment, if not otherwise shown in the docket.

(7) Transferee's plan of operation shown on Form FmHA 431-2, or Form FmHA 431-3, or Form FmHA 431-4.

(8) Form FmHA 460-5 or Form FmHA 460-9, as appropriate.

(9) Form FmHA 465-8, "Release from personal Liability," when appropriate.

(10) Form FmHA 440-41A, "Disclosure Statement for Loans Not Secured by Real Estate."

(11) Form FmHA 440-41, "Disclosure Statement for Loans Secured by Real Estate."

(12) Form FmHA 440-1, "Request for Obligation of Funds."

(13) Form FmHA 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.

(1) On receipt of Form FmHA 460-5 or Form FmHA 460-9, the Finance Office will establish an account in the name of the assuming transferee and will notify the County Supervisor.

(2) Form FmHA 405-1, "Management System Card—Individual," will be prepared for the transferee, and the loan record cards of the transferor will be attached.

(3) If a collection is received from the transferee after the assumption agreement is approved but before Finance Office notification to the County Office, Form FmHA 451-2, "Schedule of Remittances," will be prepared as follows:

(i) During the period that a transfer is pending in the County Office, payments received by the Finance Office will continue to be applied to the transferor's account, and Form FmHA 451-26, "Transaction Record," or Form FmHA 451-31, "Borrower Transaction Record," will be forwarded to the County 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 Finance Office and there is no record of it in the County Office, the account will be assumed based on the latest record in the County Office. The application of the direct payment will be reversed from the account, and the assumption agreement will be processed in the Finance Office. The Director, Finance Office, will contact the County Supervisor to determine how to dispose of the proceeds from the direct payment.

(iii) For payments received on the date of transfer, Form FmHA 451-2 will be prepared to show "Transfer in process for account owed 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 County portion of the case number will be shown. A statement for the information of the Finance Office will be attached to the assumption agreement showing the date of Form FmHA 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 FmHA accounts to eligible or ineligible transferees and releases from liability when the debts are within their respective loan approval authorities stated in tables which are available from any FmHA Office (FmHA Instruction 1901-A).

(1) Loan approval officials may also approve transfers and assumptions of EO loans and releases from liability. State Directors may also approve transfers to and assumptions by ineligible transferees and releases from lia-

bility regardless of the amount of the outstanding EM loan debt.

(2) The Administrator will review for approval proposed transfers to and assumptions by eligible transferees that exceed the approval authorities of State Directors for EM loans.

#### §§ 1962.35-1962.39 [Reserved]

#### § 1962.40 Liquidation.

FmHA will continue with borrowers if they make payments in accordance with their ability, account properly for security or EO property, and otherwise meet their loan obligations. When liquidation is begun, it is FmHA policy to liquidate all security and EO property except EO property that the County Supervisor 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 is necessary to pay the indebtedness. Ordinarily, before beginning liquidation, the facts will be presented to the District Director and the County Committee for recommendations. Liquidation will be undertaken when no further assistance will be given to a borrower and the borrower is in default.

(a) *Approval of liquidation.* The County Supervisor may approve liquidation of chattle security and non-security property. Cases involving legal problems not covered by this Subpart or related State supplements and cases in which real estate serves as security for any FmHA loan will be referred to the State Director for advice before approval. When liquidation is approved without referral to the State Director, a statement of facts with reasons for the action will be recorded in the running case file. Liquidation will be considered approved on the date the County Supervisor:

(1) Executes Form FmHA 455-4, "Agreement for Voluntary Liquidation of Chattel Security," or

(2) Executes Form FmHA 455-3, "Agreement for Public Sale by Borrower," or

(3) Executes Form FmHA 462-2, "Written Consent To Sell and Statement of Conditions on Which Lien will be Released," or

(4) Executes Form FmHA 455-8, "Agreement for Temporary Custody of Property," or

(5) Executes Form FmHA 455-21, "Notice of Acceleration and Demand for Payment," when security is to be liquidated under the "Power of Sale" except when a State supplement requires the use of another form, or

(6) Takes possession of property under a security instrument or EO



Loan Agreement to exercise the power of sale contained in it, or

(7) Requests the borrower or another party in writing to sell EO property under the loan agreement, or

(8) Is notified by the State Director that liquidation is approved in cases submitted to the State Office.

(b) *Lien searches.* Before liquidation is approved, the County Supervisor 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 source as is used when making a loan. If obtaining the searches from third party sources would cause undue delay which would interfere with orderly liquidation, searches may be made by the County Supervisor. If the lien search is made by third parties, the borrower will pay the cost from personal funds or if the borrower refuses, FmHA 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.

(c) *Acceleration of unmatured installments.* (1) When liquidation has been approved, the County Supervisor will accelerate all unmatured installments by using Form FmHA 455-21, except as follows:

(i) In cases referred to OGC for civil action, a notice of acceleration is not necessary if the notice has previously been given. However, when security is to be liquidated under the "Power of Sale" in the lien instrument without referral to OGC, the County Supervisor will use Form FmHA 455-21.

(ii) When Form FmHA 455-13, "Report of Sale of Chattel Security," is used, the statement in it declaring unmatured installments immediately due and payable will suffice for loan servicing purposes. However, the County Supervisor may use Form FmHA 455-21 when its use will assist in collecting any remaining indebtedness.

(2) Form FmHA 455-21 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 in such cases.

(d) *Assignment of insured loans.* When liquidation of an insured loan is approved, the State Director will immediately obtain an assignment of the loan to FmHA. If the County Supervisor approves the liquidation, the County Supervisor will immediately

refer the case to the State Office with a request to obtain assignment of the loan. 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 proceedings with respect to the insured loan claim, unless essential to protect FmHA's interests and OGC recommends such action. However, other steps need not be held up pending assignment.

(e) *Protective advances.* (1) When liquidation has been approved and security is in danger of loss or deterioration, the State Director will protect FmHA's interest and approve advances in payment of:

(i) Delinquent taxes or assessments that constitute prior liens which would be paid ahead of FmHA under § 1962.44 (a) of this Subpart,

(ii) Premiums on insurance essential to protect FmHA'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 FmHA'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 FmHA for sale by FmHA, costs incurred by FmHA after delivery to FmHA will be paid. Costs provided for in Form FmHA 441-19, "Loan Agreement," also may be paid to protect FmHA's interests in EO property.

(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 FmHA in protecting its interest in security or EO property may be paid by means of Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and may be charged to the borrower's loan account, or paid from proceeds of the sale of security or EO property.

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

(a) *Public sale.* Because it is in the best interest of the borrower and FmHA, when liquidation has been approved, FmHA usually will encourage the borrower to sell security or EO property at public auction in the borrower's own name. Form FmHA 455-3 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 County Supervisor. When EO property is involved, delete from the Form the reference to the FmHA lien in the first "Whereas" clause, the second sentence in item 5, and all of item 8. No FmHA official is authorized to bid at such sales. The County Supervisor will arrange to promptly receive the proceeds of the sale due FmHA for application on the borrower's indebtedness.

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

(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 FmHA 462-2 may be used to approve liquidation of such security. The County Supervisor will document in the running case record the reasons that a public sale was not justified. If the security is not sold within 30 days after executing Form FmHA 462-2, it will be liquidated in accordance with paragraph (a) of this section or § 1962.42.

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

(a) *Repossession.* The County Supervisor will take possession of security or EO property for FmHA when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, if the prior lienholder does not intend to enforce the lien. The property will not be repossessed if FmHA's estimated recovery will be small in relation to the amount of its claim, or in relation to the amount it must pay on prior liens and sale expenses if it bids on the property in accordance with § 1955.20 of Subpart A of Part 1955 of this chapter.

(1) *Conditions.* The County Supervisor will take possession under any of the following conditions:

(i) When Form FmHA 455-4 has been executed. For EO property this



form will be revised by placing a period after "interest" in the first "Whereas" paragraph and deleting the remainder of that clause; deleting the words "collateral covered by the aforesaid security instruments" in the second "Whereas" paragraph and inserting in lieu thereof "property covered by the debtor's loan agreement which is hereinafter 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 FmHA 455-4.

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

(v) When Form FmHA 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 FmHA on forms prepared or approved by OGC. When prior liens are paid, the payment will be made on Standard Form 1034 and charged to the borrower's account.

(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 County Supervisor, of all security or EO property repossessed except for those items on Form FmHA 455-4, Form FmHA 455-6, or Form FmHA 455-7, "Agreement for Cultivating, Harvesting, and Delivering Crops," will be maintained in the borrower's case file. Whenever the County Supervisor is transferred to another position or leaves FmHA or there is a change in jurisdiction, the District Director will give the succeeding County Supervisor in writing, the names of such borrowers and a list of the property repossessed in the custody of the County Supervisor and caretakers, its location, and the names and addresses of the caretakers.

(b) *Care.* The County Supervisor will arrange for the custody and care of repossessed property as follows:

(1) *Livestock.* Livestock will be delivered to a person who can care for and feed it for compensation agreed on in advance. Whenever practicable, animal products will be computed as a part of all of the caretaker's compensation. Delivery, however, will be made only after Form FmHA 455-6 is executed. Space also may be leased using Form FmHA 455-6. When more time is needed than is indicated in paragraph (c) (4) (i) of this section, the State Director may authorize Form FmHA 455-6 to be amended as appropriate and initialed by the parties or a new agreement may be executed covering

the extension. If a more favorable arrangement cannot be obtained, custody agreements may provide that FmHA will supply feed necessary to maintain livestock.

(2) *Machinery, equipment, tools, harvested crops, and other chattels.* Property will be stored and cared for pending sale. Space may be leased for this purpose, if necessary, or property may be stored and cared for by agreement on Form FmHA 455-6. This type of property will not be used by the caretaker but will be held in storage only.

(3) *Crops.* Form FmHA 455-7 will be used for the custody, care, and disposition of growing crops and for unharvested matured crops unless the crops are to be sold in place. The form will be executed by the caretaker and the landlord unless the landlord gives consent otherwise in writing. If the written consent of the landlord cannot be obtained or if the procedures in this Subpart do not cover a situation, the circumstances should be reported to the State Director for advice.

(c) *Sale.* Repossessed property may be sold by FmHA at public or private sale for cash under Form FmHA 455-4, Form FmHA 441-19, 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 FmHA 455-11, "Bill of Sale 'B' (Sale by Private Party)."

(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 FmHA employee will bid on or acquire property at public sales except on behalf of FmHA 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.* FmHA will sell perishable property such as fresh fruits and vegetables for the best price obtainable. FmHA 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 FmHA 455-4, other than perishable property and staple crops, will not be sold for less than the minimum price in the agreement. FmHA will sell other property, including that sold when the borrower

executes Form FmHA 455-11, for its present market value.

(4) *Selling period.* Repossessed property will be sold as soon as possible. However, when notice is required by paragraph (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.

(ii) These requirements do not apply to irrigation or other equipment and fixtures which, together with real estate, serve as security for FmHA 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 FmHA 455-8, "Notice of Sale," may be used for public or private sales.

(A) Notice to the borrower of lienholder is not required when the property is sold under Form FmHA 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.

(B) Notice only to lienholder is required when repossessed property is sold at private sale and the borrower executes Form FmHA 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 to 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 FmHA 455-8 and a copy of the filed Notice of Federal Tax Lien (Form IRS 668). If the security is perishable, the full 25 days' notice to the District Director is not required, but 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.

(6) *Advertising.* (i) Private sales and sales at established public auctions will be advertised by FmHA 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 FmHA 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 FmHA 455-8, 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.

(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.

(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 by voucher on Standard Form 1034 or by Standard form 1143, "Advertising Order," and Standard Form 1143a, "Memorandum Copy" for newspaper or publisher's invoice for newspaper advertising under FmHA Instruction 2024-F a copy of which is available in any FmHA Office.

(i) 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 set up for the officials or other persons found responsible for them.

(ii) Each invoice or voucher will be approved by the County Supervisor, signed by the payee or supported by signed invoices, and submitted to the Finance Office for payment. An original and one copy of Form FmHA 455-6 or Form FmHA 455-7 will be attached to invoices or vouchers in payment of such costs as custody, care, storage, harvesting, and marketing.

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

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

(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 consider whether FmHA should start liquidation. If the County Supervisor decides on liquidation, the County Supervisor will inform the junior lienholder and arrange for voluntary liquidation. If the junior lienholder has already begun foreclosure action and if voluntary liquidation cannot be effected, FmHA will foreclose its lien so that a single foreclosure sale may be held under both liens. If insufficient time or other reasons prevent holding a joint foreclosure sale, the County Supervisor will inform the foreclosing junior lienholder in writing as to the property on which FmHA holds a prior lien; and that

(1) If the junior lienholder's foreclosure sale is held, the County Supervisor will announce at the sale that FmHA holds a prior lien on each item of such property as security for an indebtedness of \$— (total principal and interest), and that any such prop-

erty sold will continue to be subject to FmHA's prior lien; and that

(2) The County Supervisor will immediately start foreclosure or other legal action to obtain the full value of each item of this property to apply on its prior lien until its lien is satisfied.

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

#### § 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 FmHA 455-4, Form FmHA 455-3, or Form FmHA 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.

(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 interests 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) *Farm equipment.* A purchase money security interest in farm equipment, other than fixtures or motor vehicles required to be licensed, costing \$2,500 or less, will take priority over an earlier perfected security interest if a security agreement is obtained, even though a financing statement is not taken or filed.

(C) *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 secured party, in writing, that he or she has, or expects to acquire, a purchase money security interest in inventory described by item or type.

(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 fixtures 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) 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 FmHA 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

FmHA state that such bills may be paid from the sales proceeds ahead of their liens.

(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 FmHA.

(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 FmHA for sale, such costs incurred by FmHA after delivery of the property to it may be paid from the proceeds of the sale.

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

(i) State and local tax liens on security or EO property which are prior to the liens of FmHA 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 paragraph (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 FmHA subordinations have been approved, their intent will be recognized in the use of sale proceeds even though the creditor in whose favor the FmHA 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 FmHA's other than the landlord's lien, if any, and the borrower must consent in writing to the payment.

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

(5) To pay liens junior to those of FmHA 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 paragraphs (b), (2), (3), or (5) of this section.

(8) To pay on any other FmHA 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 or all of the remainder of such sale proceeds by the borrower for other purposes: *Provided*, The other FmHA 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 FmHA 451-2 will be prepared only for the total amount remitted to FmHA for credit to the borrower's indebtedness.

#### § 1962.45 Reporting sales.

(a) Form FmHA 455-13 will be prepared when:

(1) Property is repossessed by FmHA; or

(2) The borrower sells the property under Form FmHA 455-3 or Form FmHA 462-2 and the FmHA debt is not paid in full; or

(3) The property is sold by prior or junior lienholders or other parties. It will not be prepared when the borrower holds the sale using Form FmHA 455-3 or Form FmHA 462-2 and the borrower's FmHA indebtedness is paid in full.

(b) Form FmHA 455-13 will be completed as soon as all the property is sold. In completing Part I of this form, the names of the purchasers need not be shown if there are numerous purchasers and the clerk's report of sale is filed in the borrower's case file, or liquidation is effected by using Form FmHA 462-2.

#### § 1962.46 Deceased borrowers.

Immediately on learning of the death of any person liable to FmHA, the County Supervisor will prepare Form FmHA 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 Part 1864 of this chapter (FmHA Instruction 456.1). 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.

(a) *Reporting.* The borrower's case files including Form FmHA 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 FmHA 455-17, any additional information which may affect the State Director's decision will be sent as soon as available on a supplemental Form FmHA 455-17 or in a memorandum.):

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

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

(3) FmHA's security has a value in excess of the indebtedness it secures and the deceased obligor owes other debts to FmHA 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.

(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, FmHA 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 FmHA's request, and any security is to be liquidated by FmHA instead of 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:

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

(2) FmHA'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 FmHA official as directed by OGC or it will be referred by OGC to the U.S. Attorney for filing if representation of FmHA 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 an insured 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:

(1) After considering liens and priority rights of FmHA and other parties, costs of administration, and charges against the estate, FmHA cannot reach the assets in the estate except for FmHA's own security and FmHA 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 FmHA 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 FmHA by the estate is settled under Part 1864 of this Chapter (FmHA Instruction 456.1) 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 non-contractual lien claims may or may not be secured claims. Therefore, if any noncontractual claims are allowed as secured claims and the FmHA 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.

(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:

(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 courtesy rights.

(B) The Government's unsecured claims.

(3) A State supplement will be issued as needed taking into consideration the Federal priority statute, 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 FmHA keeps existing security, arrangements must be made to assure that withdrawal of the claim will not affect FmHA's rights 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 probate or administration proceedings have not been started and continuation with a survivor or transfer and assumption by another party will not be approved, chattel security and real estate security will be liquidated promptly in accordance with this subpart and Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1), respectively. If the proceeds from the sale of security are insufficient to pay in full the indebtedness owed to FmHA, and other assets are available in the estate or in the hands of heirs from which to collect, the State Director will request OGC to effect collection.



(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 FmHA. When an individual who is liable for the indebtedness is to continue with the account, Form FmHA 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).

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

(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 FmHA in such proceedings is necessary to protect FmHA's interests.

(ii) Arrangements can be made with the heirs, creditors, executors, admin-

istrators, 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.

(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 FmHA 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, and the County Committee recommends release of liability.

(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 County Supervisor determines that security is necessary to protect the interests of the deceased borrower's family or FmHA.

(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 FmHA the EO property in which the estate has an interest and which is not essential for minimum family living needs, the County Supervisor will take possession of EO property and sell it in accordance with § 1962.42. 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.

If a borrower becomes a debtor in proceedings under any State or Federal Bankruptcy or State insolvency law, the County Supervisor will promptly report the facts and forward the borrower's case file and other pertinent information and documents to the State Director for appropriate handling. The County Supervisor will keep the State Director informed of further developments, but will take no other action unless directed by the State Director or OGC. Under the Federal Bankruptcy law, after payment of fees and costs, unsecured FmHA claims and the amount of any claim in excess of any security with interest to the date of filing the petition in bankruptcy, are entitled to priority of payment over unsecured claims of other creditors. On receipt of the file and related material, the State Director will determine whether the case is a "no asset" or "asset" case or, if uncertain, obtain OGC's advice. A "no asset" case is one in which FmHA has no security for the debt and the debtor has no other assets from which FmHA could make a substantial collection, considering its priority rights. An "asset case" is one in which FmHA has security or the debtor has other assets, or both, from which FmHA could make a substantial collection, considering its priority rights.

(a) *No asset cases.* The file and related material will be returned to the County Office with a memorandum indicating the State Director's determination and advising that a proof of claim will not be filed unless the County Supervisor learns that the debtor has assets not previously known to exist. If assets are found before the time for filing claims has expired (within 6 months from the first date set for the first meeting of creditors), the County Supervisor will resubmit the case to the State Director.

(b) *Asset cases.*—

(1) *Liquidation without filing proof of claim.* (i) If the value of FmHA's security is not more than the amount of its secured debt and the borrower has no other assets from which FmHA can substantially collect considering its priority rights, the security may be liquidated by foreclosure sale in the usual manner without preparing proof of claim if the referee in bankruptcy has no objection to foreclosure by FmHA.

(ii) If FmHA has no security or has security from which full collection cannot be expected, but the borrower has other assets from which FmHA can make a substantial collection considering its priority rights, any secu-



rity may be liquidated by foreclosure sale under the same conditions as set forth in paragraph (b) (1) (i) of this section if the sale is held in time to file a proof of claim for the deficiency.

(2) *Filing proof of claim.* A proof of claim on an insured loan will not be executed or filed and foreclosure proceedings will not be started unless the note is held by FmHA or has been assigned to it.

(i) The State Director will execute Form FmHA 455-18, "Proof of Claim of the United States of America Entitled to Priority of Payment," or other form approved by OGC covering all indebtedness to FmHA, except any judgments obtained by a U.S. Attorney, and send it to OGC with attachments that are required by a State Supplement. OGC will refer the claim and any necessary petition for abandonment of security to the U.S. Attorney or to the Department of Justice, as appropriate, for handling.

(ii) If the County Supervisor or the State 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. OGC will inform the U.S. Attorney so that a proof of claim may be prepared and filed or some other action taken on the judgment.

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

(3) *Security released to FmHA.* Ordinarily, when the value of security is not more than the amount of FmHA liens and any prior liens against it plus any homestead or other exemptions that apply to it as specified in a State supplement or as determined by OGC, an effort will be made to get the security released to FmHA. A petition for abandonment may be referred by OGC to the U.S. Attorney or to the Department of Justice, as appropriate, for filing in any such case, with or without filing a proof of claim, as determined by OGC. When the referee orders security released to FmHA, it will be liquidated unless the State Director approves continuation with the borrower.

(i) *Liquidation.* When security is dated, the proceeds, after payment of costs, will be applied first to the interest accrued to the date of filing the petition in bankruptcy and then to the principal of the debt. Additional proceeds will be applied to the interest accrued from the date the petition in bankruptcy was filed to the date of payment. When the payments are sent to the Finance Office, the County Supervisor will give the date the petition in bankruptcy was filed.

(ii) *Continuation with borrower.* If the State Director approves continuing the loan and the borrower is keep-

ing the security, the borrower must execute:

(A) Form FmHA 460-10, "New Promise to Pay," promising to pay all indebtedness to FmHA which is secured by the property released to FmHA in accordance with the existing instrument(s) evidencing such indebtedness; and

(B) Any security or other instruments required by OGC. The new promise and other required instruments will be executed promptly after release of the security to FmHA and the borrower's adjudication in bankruptcy unless, under State law, the new promise to be effective must be made after discharge in bankruptcy.

(c) *Other parties liable.* When a joint obligor has been discharged in bankruptcy and continuation has been disapproved, but other parties remain liable for the debt, the County Supervisor will use Form FmHA 450-10 to notify the Finance Office of the names of the parties remaining liable and the address to which to mail the statement of account.

#### \$1962.48 Setoffs.

Generally, FmHA will request set offs only when all security has been liquidated, when ordinary collection efforts, including assignments, have not been effective and, if the borrower has cooperated with FmHA in the servicing of the loan, the setoff would not cause undue hardship on the borrower and the borrower's family. The filing of a setoff request will not decrease other collection efforts. Debts of nominal amounts and debts discharged in bankruptcy, will not be collected by setoff under this Subpart. Cases will not be referred for civil action until after any possible setoff actions are taken. However, there may be situations in which funds become available against which setoffs might be possible after referring the case for court action. Setoffs will not be requested in cases referred to the U.S. Attorney for collection or in cases where a judgment has been obtained, without prior approval of the U.S. Attorney.

(a) *ASCS setoff.* The Secretary's Order on setoffs authorizes the collection of debts owed to FmHA by setoff against amounts approved for payment to the debtor by ASCS committees.

(1) *County Office actions.* (i) FmHA's County Office staff may ask the ASCS County Office staff whether the debtor has shown an intention, with respect to a particular crop year, to participate in one or more of the programs administered by ASCS under which funds might be available for setoff.

(ii) The County Supervisor will forward recommendations for such set

offs to the State Director, including information about efforts to collect by other means and any other pertinent information.

(iii) If, after a recommendation for a setoff has been made the borrower pays the indebtedness to FmHA, moves to a new location or the borrower's circumstances change so as to affect the setoff, such information will be sent to the State Director.

(2) *State Office actions.* The State Director will consider a recommendation for a setoff to determine if the setoff is justified and if it complies with this subpart.

(i) The State Director will prepare requests for setoffs in memorandum form. The original and signed copy of the request will be submitted to the ASCS State Office and a copy forwarded to the County Supervisor for the borrower's case file. The request will contain the following information.

(A) Full name, address, and FmHA case number of the debtor.

(B) County and State under which the amount of the indebtedness should be set up on the debt register.

(C) Principal amount of the indebtedness, the accrued interest, the date through which interest was computed, and the daily interest factor to be applied afterwards.

(D) Address of the FmHA County Office for delivery of check.

(E) Identification of any court judgment.

(F) The following certification:

The undersigned hereby certifies that the above-described indebtedness of \_\_\_\_\_ to the United States (Farmers Home Administration) is subject to setoff under the Secretary's Order.

(Date) \_\_\_\_\_

(Signature of Authorized Representative) —

(Title) \_\_\_\_\_

(ii) The State Director may withdraw a request for setoff by notifying the ASCS State Office at any time before processing a setoff voucher and sending a copy of the request for withdrawal to the County Supervisor. However, setoffs may be withdrawn only if the borrower pays the indebtedness fully or substantially, the debt is settled, or future collections can be made by other methods.

(iii) If the account of the borrower for whom a request for setoff has been submitted is transferred to another FmHA County Office jurisdiction, either within or outside the State, the State Director will notify the ASCS State Office of the address of that FmHA County Office so that any payments may be sent there.

(3) *Check delivery.* Setoffs will be made by checks or sight drafts payable to FmHA and delivered to the County Supervisor. If the claim has been forwarded to OGC, the remittance will be



sent to OGC. OGC instructions as to application will be followed.

(4) *Deletion from debt registers.* (i) The names of FmHA borrowers for whom requests for setoffs have been submitted and who have quit farming, or cannot be located in the counties for which the debts were reported, will be deleted by the ASCS County Office from their debt registers without a request from FmHA. Notices of such deletions will be furnished to the FmHA State Office originating the setoff request.

(ii) On receipt of notice, the State Director will inform the appropriate FmHA County Office of the deletions.

(iii) If the borrowers whose names have been deleted resume farming operations or can be located, the County Supervisor may submit to the State Director a recommendation for a new request for setoff.

(b) *Federal employee setoff.* Salary and lump sum payments due borrowers on separation or retirement from Federal Government employment may be set off against debts owed to FmHA. Any sum a borrower has in the Civil Service Commission retirement fund also may be set off.

(1) *County Office actions.* If efforts to collect the debt from current income from Federal employment fail, the County Supervisor will submit the case to the State Director with information necessary to report the case to the National Office.

(2) *State Office actions.* If the facts justify a setoff against the borrower's salary and lump sum payments or Civil Service retirement the State Director will submit the case to the National Office, including:

(i) Full name, address, and FmHA case number of the borrower and, if the borrower is a member of the military establishment or Coast Guard, title and serial number.

(ii) Date of birth of borrower.

(iii) Name and address of the employing agency, military establishment, or Coast Guard.

(iv) Approximate income of borrower and spouse.

(v) Financial circumstances of the borrower documented on Form FmHA 456-1, "Application for Settlement of Indebtedness."

(vi) Number of dependents.

(vii) Information about FmHA efforts to collect.

(viii) Statement of account.

(ix) Identification of any court judgment.

(x) A recommendation if the borrower is retired, based on financial circumstances, as to whether all or part of the monthly annuity check should be set off.

§ 1962.49 Civil and criminal cases.

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

(a) *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 FmHA's 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 FmHA 455-22, "Information for Litigation." This is because delay in submitting cases in emergency situations may affect the financial interests of FmHA and making collection efforts may affect the recommended criminal action.

(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) FmHA 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 FmHA'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 FmHA, or 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 FmHA normally would look for

payment such as real estate, livestock, equipment, and income.

(3) If criminal action will not be recommended before civil action is recommended, the following actions will be taken or determinations made:

(i) It must be determined on the basis of reasonably current credit data that there is a reasonable prospect of collection now or in the near future of all the debt or a substantial amount of the debt from assets and income that are not exempt under State or Federal law.

(ii) The debtor must be contacted personally and requested to pay the debt in full, unless one or more such contacts have been made recently without success, or such contact is not feasible considering the distance of the debtor from the County Office or other relevant factors.

(iii) Form FmHA 455-21 will be used to accelerate the borrower's indebtedness, and will state the consequences of failure to make payment as demanded. The borrower will be given at least 15 days, but not more than 30 days, to make payment. However, this form will not be sent to the borrower unless the County Supervisor believes that it would be appropriate to refer the case to the U.S. Attorney if the borrower does not comply with the demand.

(iv) It must be determined that collection cannot be made by ASCS setoff in accordance with the provisions of § 1962.48 (a) of this Subpart, or by setoff or other agreement if the debtor is employed by another Federal agency or has a judgment against the United States.

(v) The current address of the debtor will be determined or efforts will be made to locate the debtor in accordance with § 1864.5 (b) of Part 1864 of this chapter. (FmHA Instruction 456.1 paragraph V B).

(vi) If the debtor advises that the claim cannot be paid in full, and if the County Supervisor believes that this may be the situation and that there has been no fraud or misrepresentation in the case, the County Supervisor will suggest that the debtor submit promptly an application for compromise or adjustment on Form FmHA 456-1, so that it may be considered and the debt disposed of by such debt settlement, if possible.

(4) 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 FmHA holds a first lien usually will be liquidated before demand is made or civil action taken 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 all FmHA County Offices) will be sent to the converter at the same time that Form FmHA 455-21 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 all FmHA County Offices) that FmHA 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, FmHA 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 FmHA will take no adverse action (see Guide Letter 1962-A-3, a copy of which is available in all FmHA County Offices). 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) If court action is recommended against a converter, the applicable provisions of subparagraphs (a) (2) and (3) of this section will be followed with respect to such converter the same as with respect to the borrower. In addition, unless personal contacts with the converter or other efforts to collect demonstrate that further demand would be futile, and a satisfactory compromise offer has not been received, a followup letter (see Guide Letter 1962-A-4, a copy of which is available in all FmHA County Offices) 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 followup letter will be sent to the converter by OGC after the case has been referred to that office.

(v) The loan programs administered by FmHA are authorized by law of Congress to carry out national purposes and policies throughout the entire United States and its territories and possessions. Therefore, the liability of an auctioneer for conversion of personal property mortgaged to FmHA shall be determined and enforced in accordance with the applicable Federal law. "Auctioneer" for the purposes of this Subpart includes a commission merchant, market agency, factor, or agent. When there has been a disposition without authorization by FmHA of personal property mortgaged to that agency, any auctioneer involved in that disposition shall be liable to the Government for conversion—notwithstanding any State statute or decisional rule to the contrary.

(b) *Criminal action.* When factual information has been obtained indicating that criminal violations may have been committed and the violations are of such a nature that criminal action will be recommended, the facts will be immediately reported to OGC without taking collection actions necessary to report the information required by Part II of form FmHA 455-22. In all other cases in which it appears that criminal violations may have been committed, but in which criminal action will not be recommended, the factual situation will be reported to OGC as soon as collection action has been completed in accordance with paragraphs (a) (3) and (4) of this section. Minor deviations referred to in § 1962.4 (f) (7) need not be reported.

(c) *Handling civil and criminal cases.* All cases in which court actions to effect collection or to enforce the rights of FmHA are recommended, and actions relating to apparent violations of Federal criminal statutes, will be forwarded to OGC for submission to the appropriate U.S. Attorney.

(1) *County Office actions.* Forms FmHA 455-1, "Request for Legal Action," and FmHA 455-22 will be prepared. Form FmHA 455-2, "Evidence of Conversion," will be prepared for each conversion. The original and two copies of Forms FmHA 455-1, FmHA 455-22, and, when applicable, Form FmHA 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 Forms FmHA 455-1 and FmHA 455-21. Appropriate recommendations will be made on Forms FmHA 455-1 and FmHA 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.

(2) *State Office actions.* (i) Upon receipt of Form FmHA 455-1 and, when applicable, Form FmHA 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 the State Director is not sure whether additional information is needed, the State Director will ask OGC's advice. If all the necessary information is not available, the State Director will return the case and request the County Supervisor to obtain the information to complete Forms FmHA 455-1 and 455-2. The State Director may assign any qualified FmHA employee to help a County Supervisor obtain the information necessary to complete the reports. After diligent efforts, if FmHA employees are unable to obtain the additional information, the State Director will decide if the case will be referred to the Office of Investigation (OI). A case will be referred to the OI for investigation when:

(A) The State Director determines the additional information is needed before the case is referred to the OGC with a recommendation for civil or criminal actions, and

(B) The debtor owes more than \$600 principal, and

(C) The Federal Statute of Limitations has not run and is not about to complete running (Cases should be submitted to the OGC for legal action at least 90 days before the statute completes running.), and

(D) The value of the FmHA security is substantially greater than the estimated cost of investigation and litigation, or

(E) The OGC recommends an OI investigation to pursue criminal action.

(ii) After all of the pertinent information available has been obtained, the State Director will refer the case to OGC 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 FmHA 455-1 the basis for the determination not to refer the case and instructions for followup servicing action. Cases which have been investigated by the OI will be referred to OGC. Demands on third-party purchasers will be made in accordance with paragraph (a)(4) of this section. In cases referred to OGC, the State Director will make comments and recommendations regarding the civil and criminal aspects of the case on Form FmHA 455-1. With respect to the criminal aspects of the case, the State Director, in making a recommendation, will consider the nature and gravity of the offense, the restitution



made or undertaken, and all other extenuating circumstances.

(A) When cases are referred to OGC, the County Office case file, Form FmHA 455-1, and, when appropriate, Form FmHA 455-2 will be transmitted. In addition, when the institution of court proceedings by FmHA is recommended, the notes, financing statements, security agreements, other security instruments, loan agreements, and other legal instruments and copies thereof as required by OGC, and Form FmHA 451-11, "Statement of Account," or Form FmHA 451-25, "Status of Account," and Form FmHA 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.

(B) Notes, statements of account, files, or other documents and copies thereof needed in referring cases to OGC for 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 documents may jeopardize FmHA'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 case is referred to OGC, the State Director will notify the County Supervisor and the Finance Office of the referral and will return the County Office case file when it is no longer needed. 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. The County Supervisor will immediately notify OGC directly by memorandum, with a copy sent to the State Director, of any such collections received. The County Supervisor also will notify the State Director and OGC of any developments which may affect any case which has been referred to OGC.

(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 disposed of. When a case is referred to the U.S. Attorney, the Finance Office will discontinue mailing Forms FmHA 450-1, "Statement of Account," to such borrowers. OGC will also notify the State Director when a judgment (including third-party) is obtained.

(1) When the County Supervisor receives notice from OGC that a judgment (including third-party) has been obtained, the County Supervisor will notify the Finance Office to establish a judgment account by submitting Form FmHA 455-20, "Notice of Judgment."

(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 FmHA 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 FmHA security interest or and 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, FmHA 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 orders. Form FmHA 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 FmHA, 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 judgment debtor to do so.

(ii) Any payments received from such debtor by FmHA will be handled by issuing Form FmHA 451-1 and converting and transmitting such payments as provided in Part 1862 of this Chapter (FmHA Instruction 451.2). 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 judgment can be collected. If such debtors have either assets or income from which collection can be made and they decline 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 § 1864.12 of Part 1864 of this chapter (FmHA Instruction 456.1, paragraph XII).

(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]

## ATTACHMENTS: EXHIBITS A AND B

## EXHIBIT A

MEMORANDUM OF UNDERSTANDING BETWEEN  
COMMODITY CREDIT CORPORATION AND FARMERS  
HOME ADMINISTRATION

IT IS HEREBY AGREED by and between the Farmers Home Administration (hereinafter referred to as "FHA") and the Commodity Credit Corporation (hereinafter referred to as "CCC") that the following procedure will be observed in those cases where producers sell to CCC or pledge to CCC as loan collateral under the Price Support Program, agricultural commodities such as, but not limited to, cotton, tobacco, peanuts, rice, soybeans, grains, on which FHA holds a prior lien and the proceeds from such sales or loans are not remitted to FHA for application against the loan(s) secured by such lien:

1. When an FHA County Supervisor learns that an FHA borrower has obtained a loan from CCC on a commodity or sold a commodity to CCC under such circumstances, he shall immediately notify his State Director. The State Director, immediately upon receipt of the notice, shall furnish CCC (see Appendix 1) with the name and address of such borrower, the county of his location at the time the commodity was placed under loan or sold, and the amount of the FHA loan secured by the lien.

2. When CCC receives such a notice from FHA, CCC shall take steps to prevent the making of any further loans on or purchases of the commodity of the borrower. If the CCC loan is still outstanding and CCC calls the loan, CCC shall notify the FHA State Director of the demand.

3. If the CCC loan is repaid, whether prior to or after the receipt by CCC of the notice from FHA, the FHA State Director shall be notified immediately, at which time CCC will have discharged its responsibility under this agreement.

4. FHA shall, in each case in which the CCC loan is not repaid or the commodity has been sold to CCC, endeavor to collect from the borrower the amount due on the FHA loan. Such collection efforts shall include the making of demand on the borrower and the following of FHA's normal administrative policies with respect to the collection of debts, but shall not include the making of demand for payment upon the area peanut producer cooperative marketing associations through which CCC makes price support available to producers. If collection efforts are not successful, the FHA County Supervisor shall make a complete report on the matter to his State Director. If the State Director determines that the amount due on the FHA lien is not collectable by administrative action, he shall refer the matter to the appropriate local office of the General Counsel, with a full statement of the facts, for a determination of the validity of the FHA lien. If it is determined by the General Counsel's Office that FHA holds a valid prior lien on the commodity, the State Director shall furnish CCC with a copy of such determination, together with all other pertinent information, and shall request payment to FHA of the lesser of (1) the amount due on its loan, or (2) the value of the commodity at the time the CCC loan or purchase was made (based on the market value of the commodity on the local market nearest to the place where the commodity

was stored). The information to be furnished CCC shall include (a) the principal balance-plus interest due FHA on the date of the request, (b) the amount due on the FHA loan at the time the CCC loan or purchase was made, and (c) the amount of the CCC loan or purchase proceeds, if any, applied by the producer against the FHA loan. FHA shall continue to make collection efforts and shall notify CCC of any amount collected from the producer or any other party.

5. Upon receipt of evidence, including a copy of the determination of the Office of the General Counsel, from the State Director of FHA that the proceeds from the CCC loan or purchase have not been received by FHA from the borrower, and that collection cannot be made by FHA, CCC will if the CCC loan has not been repaid or if CCC has purchased the commodity, pay FHA the amount specified in paragraph 4 above or deliver the commodity (or warehouse receipts representing the commodity) to FHA: *Provided*, That if CCC has any information indicating that collection may be made by FHA from the borrower or any other party, it may notify FHA and delay payment pending additional collection efforts by FHA.

6. It is the desire of both FHA and CCC that claims to be processed under this agreement receive prompt attention by both parties and be disposed of as soon as possible. Instructions for the implementation of these procedures at the field office level will be developed and issued by the Washington offices of FHA and CCC.

7. Any question with regard to the handling of any claim hereunder shall be reported by the applicable ASCS office to ASCS in Washington and by the FHA State Director to the National Office of FHA.

This Memorandum of Understanding supersedes the agreement entered into between FmHA and CCC on November 5, 1951. Entered into as of this 29th day of May, 1973.

FARMERS HOME  
ADMINISTRATION,  
FRANK B. ELLIOTT,  
Acting Administrator,  
COMMODITY CREDIT  
CORPORATION,  
KENNETH E. FRICK,  
Executive Vice President.

curity interests of FHA and CCC in and without undue inconvenience to producers and FHA and CCC in securing lien waivers on such commodities.

Now, therefore, it is agreed as follows:

(1) Upon request of an official of an ASCS State Office, the FHA State Director in such State shall furnish designated ASCS County Offices with the names of producers in the trade area from whom FHA holds currently effective liens on commodities with respect to which CCC conducts price support programs. FHA will try to furnish a complete and current list of the names of such producers; however, FHA'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 an ASCS County 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 FHA and the producer if (a) his name is on the list furnished by FHA, or (b) he names FHA as lienholder. The draft will indicate the commodity covered by the loan or purchase.

(3) On issuance of the draft, the security interest of FHA 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 right to that of FHA and that, on purchase of a commodity by CCC or its acquisition by CCC in satisfaction of a loan, the security interest of FHA 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.

H. D. GODFREY,  
Executive Vice President, CCC,  
JULY 20, 1967.

HOWARD BERTSCH,  
Administrator, FmHA,  
JULY 14, 1967.

## APPENDIX I

FURNISHING NOTICE OR INFORMATION TO  
COMMODITY CREDIT CORPORATION

Commodity:	Direct to	
Cotton.....	Prairie Village, Kansas,	
	ASCS Commodity Office	
Tobacco.....	Applicable tobacco associ-	
	ation	
Peanuts.....	Applicable peanut associ-	
	ation	
All other commodities.	Applicable State ASCS	
	office	

MEMORANDUM OF UNDERSTANDING AND  
BLANKET—COMMODITY LIEN WAIVER

The Farmers Home Administration (FHA) 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). FHA and CCC desire that price support be made available to farmers without unnecessarily impairing or undermining the respective se-

(7 U.S.C. 1989; 42 U.S.C. 2942; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO, 29 FR 14764, 33 FR 9850).

NOTE.—This document has been reviewed in accordance with FmHA Instruction 1901-G "Environmental Impact Statements". It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190 an Environmental Impact Statement is not required.

Dated: December 9, 1978.

GORDON CAVANAUGH,  
Administrator,  
Farmers Home Administration

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