

PART 1965 - REAL PROPERTY

Subpart B - Security Servicing for Multiple Housing Loans

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PART 1965 - REAL PROPERTY

Subpart B - Security Servicing for Multiple Housing Loans

§1965.51 General.

This subpart prescribes the policies, procedures, and authorizations for servicing and liquidating all Rural Development multiple housing type loans and labor housing grants. These loans include Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Rural Housing Site (RHS), and Farm Labor Housing (LH). The servicing functions described in this subpart are for the purpose of assisting the borrower in meeting the objectives of the loan, repaying loans on schedule, complying with Rural Development agreements and regulations, protecting the interest of Rural Development, and maintaining the security property. Borrowers will be required to pay their debts to the Rural Development and other creditors according to their agreements. Borrowers shall be required to operate their facilities according to Rural Development regulations and applicable State and local laws and regulations. State Directors with the assistance of the Office of General counsel (OGC) should issue necessary State Supplements to assure compliance with State laws. After careful analysis, and borrower in default who does not evidence prospects of attaining successful operations within a reasonable time will have its loan(s) liquidated according to authorizations contained in this subpart and Subpart A of Part 1955 of this chapter.

§1965.52 Definitions.

(a) Borrowers. "Borrowers" means all individuals, partnerships, cooperatives, trust, public agencies, private or public corporations, and other organizations which have received a loan or grant from Rural Development for LH, RRH, RCH, or RHS purposes.

(b) Case file. "Case file" includes the total cumulative records concerning a borrower.

(c) District Director. For the purpose of this subpart, the term also includes the Assistant District Director, and other qualified District Office staff who may be delegated responsibilities under this subpart according to the provisions of Subpart F of Part 2006 (available in any Rural Development office). Area Loan Specialists and Island Directors, and other qualified members of their staff in Alaska and Hawaii, respectively, are included in this definition. In the case of LH loans still being serviced in the County Office, this definition also includes qualified County Office staff.

(d) FmHA. "FmHA" means the United States of America acting through the Farmers Home Administration of the United States Department of Agriculture: it also includes FmHA's predecessor agencies.

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- (e) Governing body. "Governing body" means those elected or appointed officials of an organization or public agency type borrower responsible for compliance with the security instruments and the operations of the project.
- (f) Mortgage. "Mortgage" also includes deeds of trust and similar real estate security instruments and, where appropriate, chattel security instruments.
- (g) Note. "Note" includes any note, bond, assumption agreement or other evidence of indebtedness, including the obligations of LH grant only recipients operating under a grant agreement. All LH grant only recipients will be serviced in strict accordance with their grant agreement, appropriate program regulations, and this subpart.
- (h) OGC. "OGC" means the regional Attorney or the Attorney in charge in the field office of the Office of the General Counsel of the United States Department of Agriculture.
- (i) Servicing. "Servicing" includes the broad scope of activities undertaken by Rural Development to see that the objectives of the loan are carried out; to assure compliance with the respective policies, procedures and authorizations set forth for each respective loan program; or to bring to a successful conclusion each loan or grant made by Rural Development through transfer, sale, reamortization, payment or liquidation.

§§1965.53 - 1965.54 [Reserved]

§1965.55 *Authority of State Director.*

- (a) Each State Director is authorized to perform the following functions upon determining that the action will not be to the financial detriment of Rural Development:
- (1) Require additional security in accordance with §1965.88 of this subpart. (Revised 7-20-90, SPECIAL PN)
 - (2) Require borrowers to carry insurance of the types and amounts determined necessary on the real estate and chattel property mortgaged to the Rural Development. The borrower must carry adequate liability insurance as required by Exhibit B, paragraph XV B 3 of Subpart C of Part 1930 of this chapter. Evidence of insurance is required for Multiple Housing loans according to the provisions of Subpart A of Part 1806 of this chapter (RD Instruction 426.1).
 - (3) Approve the issuance or transfer of stock, change of beneficial interest, change of membership, admittance of new or substitute

partners, or withdrawal of partners from a partnership; provided, the State Director determines that the requirements of §1965.63 of this subpart have been met, and that the change will not jeopardize the successful operation of the project, the soundness of the loan, or the eligibility of the borrower.

(4) Approve transfers with assumption of Rural Development Loan accounts when all development has been completed and the unpaid principal balance and accrued interest does not exceed the State Director's loan approval authority as set forth in Subpart A of Part 1901 of this chapter for the type of loan(s) involved. Transfers will be processed according to §1965.65 of this subpart.

(5) Approve the reamortization of Rural Development indebtedness that is within the State Director's loan approval authority as set forth in Subpart A of Part 1901 of this chapter for the type of loan(s) involved according to the provisions of §1965.70 of this subpart.

(6) Consent to the sale, exchange, or release of security property according to the applicable provisions of §1975.77 of this subpart.

(7) Accept prepayment of RRH, RCH, and LH loans subject to the provisions of Subpart E of this part. (Revised 08-20-93, SPECIAL PN.)

(8) Approve subordination of Rural Development lien position if the total debt against the security after the transaction is within the State Director's approval authority as set forth in Subpart A of Part 1901 of this chapter for the type of loan(s) involved according to the provisions of §1965.79 of this subpart.

(9) Approve requests from borrowers for the creation of additional indebtedness on the security property. Such approvals must take into account their provisions of loan resolutions or other agreements with Rural Development and other existing creditors. If the proposed additional debt would make the total outstanding obligations of the borrower exceed the Rural Development loan approval limit of the State Director as set forth in Subpart A of Part 1901 of this chapter, complete documentation and the State Director's recommendations must be sent to the National Office for prior review and authorization to approve.

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(10) Renew existing security instruments in accordance with Rural Development State Supplements after consulting with OGC.

(11) Approve, with the concurrence of OGC, changes in a borrower's legal organization such as revisions to certificates of limited partnership, partnership agreements, articles of incorporation or charter, bylaws, or trust agreements when the changes proposed will promote better borrower organization and business operation, and will not adversely affect the repayment of the loan, impair the security rights of the Rural Development, or make the borrower ineligible for the existing Rural Development loan or grant assistance.

(12) Approve the borrower's execution, extension, renewal, modification, or cancellation of contracts of types not covered elsewhere in this section when the State Director, with the advice of OGC, determines that the action is in the best interests of both the borrower and the Rural Development; and in the case of RRH, RCH, and LH projects, will not be detrimental to the tenants or members. (Revised 02-21-91, SPECIAL PN.)

(13) Approve the extension or expansion of facilities and services in accordance with the respective loan program regulations when the action will best serve the interest of both the borrower and the Rural Development.

(14) Approve the lease of security property according to §1965.61 (e) of this subpart.

(b) The State Director may reject any servicing request not in accordance with the guidelines of this subpart.

(c) Any borrower directly and adversely affected by action under this subpart will be granted the appropriate appeal rights according to Subpart B of Part 1900 of this chapter.

(d) The State Director may request from the National Office any authority not specifically delegated to the State Director. Written requests consistent with the intent and requirements of each respective loan program must be submitted to the National Office for prior authorization and must include the complete docket and the State Director's specific recommendations.

§§1965.56 - 1965.57 [Reserved]

§1965.58 Responsibilities.

(a) District Directors will:

(1) Keep sufficiently informed of borrower operations to know whether they are operating successfully and complying with their obligations to the Rural Development,

(2) Furnish borrowers with information, notices, reminders, fair housing posters, advice and assistance, and take other actions regarding the loan obligations and compliance therewith as considered necessary to determine whether borrowers are operating successfully,

4A

(Added 08-20-93, SPECIAL PN)

(1-22-85) SPECIAL PN

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

(3) Promptly report to the State Director the failure of any borrower to comply with the terms and conditions of its agreements with Rural Development after noncompliance has been brought to the attention of the borrower and recommended corrective action has not been taken,

(4) Furnish training and technical guidance not readily available through other sources to borrowers to protect the Rural Development's interests. This training and guidance may relate to business operations, project management, personnel training, membership activities, fair housing requirements and policy, or any other phase which vitally affects the borrower's operations,

(5) Maintain the Management Card System according to RD Instruction 1905-A (available in any Rural Development office) to assure prompt compliance by borrowers with Rural Development requirements relating to repayments, budgets and reports, taxes, insurance and bond renewals, reports required by State law or regulations as indicated in State Supplements, security instrument expirations, and other items of loan and security servicing,

(6) Maintain the official borrower case files according to the requirements of RD Instruction 2033-A (available in Rural Development State and District Offices), and MISTR according to RD Instruction 2033, and

(7) Promptly collect Rural Development loan payments and service security for the Rural Development loans.

(b) State Directors will:

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

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

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- (3) Ensure that District Directors carry out their responsibilities for loan servicing and provide the District Office with appropriate technical guidance, training and follow-up supervision to service loans.
- (4) Coordinate as appropriate with OGC.
- (5) Maintain necessary liaison with State and local officials.

§§ 1965.59 - 1965.60 [Reserved]

§ 1965.61 General loan servicing requirements.

- (a) Payments. Payments will be handled according to the applicable provisions of Subparts A and B of Part 1951 of this chapter, and Subparts D and E of Part 1944 of this chapter.
- (b) Borrower reports, audits, and analyses. Borrower reports, audits, and analyses, including the approval or disapproval of annual operating budgets, requests for rent and occupancy charge changes, and occupancy problems will be processed and handled according to Subpart C of Part 1930 of this chapter. (Revised 02-21-91, SPECIAL PN.)
- (c) Maintenance. Project maintenance is of utmost importance. All projects must be adequately maintained by the borrower not only to protect the Rural Development's interest, but also to attract potential clients (tenants for rental projects, members for cooperative projects, purchasers for RHS). Maintenance should be reviewed during each supervisory visit and appropriate recommendations made to the borrower. The District Director will inspect the real estate security as required by Subpart C of Part 1930 of this chapter. (Revised 02-21-91, SPECIAL PN.)
- (d) Actions by third parties affecting Rural Development security. Cases including third party action will be handled according to the provisions of 7 CFR part 3550, except that references to the County Supervisor shall be construed to mean District Director when applied to multiple housing type programs. (Revised 01-23-03, SPECIAL PN.)
- (e) Lease of security property. The leasing of property (except to tenants for specific program purposes) serving as security for multiple housing loans and grants other than as indicated in this section is not authorized. Approval of leases by the State Director is authorized in the following cases:
 - (1) Leases to public housing authorities. RRH or RCH borrowers may be permitted to renew and continue leasing all or part of the housing facilities to a housing authority with the benefits of the HUD Section 23 leasing program. No new leases will be entered into. The lease will be on a form provided by the housing authority and must be on terms that will enable the borrower to continue the objectives of the loan and make payments on schedule.

§ 1965.61 (e) (Con)

(2) Lease of a portion of the security property. When the RRH, RCH, or LH borrower will continue to operate the facilities for the purpose for which the loan or grant was made, the State Director or his/her designee may approve the leasing of related facilities such as kitchens, recreation facilities, and community buildings, subject to the applicable provisions of § 1944.212 of Subpart E of Part 1944 of this chapter for RRH and RCH and § 1944.158 of Subpart D of Part 1944 of this chapter for LH and under the following conditions: (Revised 08-30-93, SPECIAL PN.)

(i) The lease is advantageous to the borrower and the tenants, and will not impair the Rural Development's interest.

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

(iii) The lease should provide at its termination for the restoration of the leased space to its original condition or a condition acceptable to the owner and Rural Development.

(iv) Consent to the lease shall not exceed 3 years at a time unless the State Director determines with the prior written concurrence of the National Office that a longer lease is clearly more advantageous to the borrower, the tenants, and the Rural Development. (Revised 08-30-93, SPECIAL PN.)

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

(vi) When another lienholder's mortgage requires consent of that lienholder to a lease, written consent will be obtained prior to Rural Development approval of the lease.

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

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(3) Mineral leases. Mineral leases will be handled according to 7 CFR part 3550 except that all references to County Supervisor will be construed to mean District Director when applied to the Multiple Housing Programs. (Revised 01-23-03, SPECIAL PN.)

(4) Processing. When a borrower requests consent to lease a portion of the security property or the District Director discovers that the borrower is leasing the security without consent, Form RD 465-1, "Application for Partial Release, Subordination or Consent," will be prepared.

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

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

(iii) The State Director will review the material, obtain the guidance of OGC prior to indicating approval or disapproval on Form RD 465-1, and provide additional servicing instructions to the District Director.

(f) Consent of lienholders. Before Rural Development consents to any transaction which affects its security or lien position, the written consent of any other lienholders must be obtained. The consent will include an agreement on the disposition of any funds resulting from the transaction and will be consistent with the respective loan program requirements.

§ 1965.62 [Reserved]

§ 1965.63 Issuance or transfer of stock, or change in membership, or membership interests in organizations indebted to Rural Development.

Organizations which may be indebted to Rural Development include, but are not limited to: public bodies, broadly-based nonprofit corporations, nonprofit organizations of farmworkers, associations of farmers, RCH consumer cooperatives, profit and limited profit corporations, trusts, profit and limited profit general partnerships, and limited partnerships. This section describes the policy of Rural Development in approving changes of members, ownership interest, and transfer or issuance of stock in these

organizations, to determine the continued eligibility of the borrower entity. It does not apply to the sale or exchange of title to the security property, or the conversion from one form of ownership to another such as changing a general partnership to a limited partnership. Stock, partnership, or membership changes which the State Director is not authorized to approve under the conditions of this section will be submitted to the National Office for handling.

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

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

(2) Ownership changes in excess of 50% but less than 100% within the first five years of loan or assumption closing, will be subject to §1965.65 (a) (4) of this subpart which covers hardship provisions and the restrictions or subsequent changes. However, changes in only the

limited partner interests in a limited partnership will not be subject to the restrictions of §1965.65(a)(4) of this subpart when completed in accordance with the approved partnership agreement.

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

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

(b) Public bodies, broadly-based nonprofit corporations, or nonprofit organizations of farmworkers. Rural Development consent will not be required for broadly-based nonprofit corporations or nonprofit organizations of farmworkers indebted to Rural Development to change or transfer membership. Each organization, however, must maintain the number and type of members required by its Articles of Incorporation and Bylaws. Organizations will only permit membership changes as authorized by the organizational documents previously approved by Rural Development. Should the minimum number of required members in any organization fall below that prescribed by their organizational documents, the following actions will be taken:

(1) The District Director will provide the State Director with a complete written report of the circumstances, including the organization's plan for obtaining additional membership, and the continued operation of the project. The District Director should submit this report only after he or she has personally met with the governing body and found that they will not be able or willing to comply with Rural Development requirements. The report should be precise and include recommendations on further servicing actions.

(2) The State Director will review the report and evaluate any adverse effect the noncompliance will have on the loan. If it appears that the interest of the United States will be adversely affected, the State Director will forward the material together with appropriate comments and recommendations, to the OGC for review and guidance in the continued servicing or liquidation of the account as appropriate. The State Director will provide the District Director with instructions for servicing the account.

(c) Associations of farmers. Changes in membership will be governed by the organizational documents previously approved by Rural Development and any eligibility requirements set forth in program regulations. (See Subpart D of Part 1944 of this chapter.) In those cases where proposed membership changes are not covered in the documents or are in conflict with the provisions of Subpart D of Part 1944 of this chapter, case files will be submitted for National Office consideration.

(d) RCH consumer cooperatives. Changes in the membership of RCH consumer cooperatives will be processed according to the provisions of Subpart E of Part 1944 of this chapter. (Revised 02-21-91, SPECIAL PN.)

(e) Processing organizational membership changes. Organizations are required by their loan agreement or resolution to obtain prior Rural Development consent to transfer stock, or to transfer or change any interest in the borrower entity. (The admission or substitution of limited partners in a limited partnership does not require prior authorization. See paragraph (e) (3) of this section.) Therefore, when organizations request Rural Development consent to: issue additional stock, transfer stock, change membership or membership interests other than limited partner interests in limited partnership, admit new or substitute general partners of any kind, withdraw general partners of any kind, alter the beneficiary of the trust, or when such a change has taken place without prior Rural Development consent, the District Director shall process and submit Form RD 465-1 to the State Director. The State Director is authorized under §1965.55(a) of this subpart to approve or disapprove these transfers or changes on Form RD 465-1. For approval, the State Director must determine that the following conditions have been met:

(1) The borrower has provided a listing showing the name, address, Employer Identification or Social Security number, and percent of ownership of each member, stockholder, general partner, or beneficiary of a trust that will have an interest in the organization.

(2) All new or substitute general partners, and all new or substitute trustees, members, stockholders in privately held corporations, or beneficiaries that will hold an interest in the organization in excess of 10 percent have submitted a current, dated, and signed financial statement showing assets and liabilities, with information on the status and repayment schedule of each debt. (The admission of limited partner in a limited partnership is addressed in §1965.63(e)(3) of this subpart.) In cases involving publicly held corporation borrowers, borrowers will be required to notify Rural Development of stockholders admitted to the organization in accordance with the approved articles of incorporation and bylaws. However, Rural Development consent is required when there are changes in the overall corporate management or in the organizational documents. (All other changes in stockholders in publicly held corporations are subject to the requirements of this section.) All financial statements submitted must comply with the reporting requirements set forth in Exhibit A-7 to Subpart E of Part 1944 of this chapter. A resume must also be submitted, together with a statement setting forth any identify of interest as described in Exhibit A-7 to Subpart E of Part 1944 of this chapter. The resume should explain the past performance, experience, qualifications, and abilities of the individual or organization, who is obtaining an interest in the borrower organization. A determination must be made before approval that the incoming individual or organization described in this section will not adversely affect the borrower's continued eligibility under the requirements of Subpart E of Part 1944 of this chapter. (Revised 02-21-91, SPECIAL PN.)

(3) The admission of limited partners in a limited partnership on the basis of the limited partnership agreement previously approved by Rural Development does not constitute a change requiring redetermination of eligibility. Borrowers admitting new or substitute limited partners are however required to notify Rural Development at least annually with a listing showing the name, address, Taxpayer Identification number, and percent of ownership of each new or substitute limited partner. The borrower must also provide copies of any amendments to the organizational documents effecting such changes in the organization together with an opinion from the borrower's attorney certifying that the changes in limited partner interests have been completed in accordance with the approved partnership agreement.

(4) The borrower is unable to provide the housing or other facilities from its own resources and is unable to obtain the necessary credit from private or cooperative sources on terms and conditions that would enable the borrower to refinance the Rural Development indebtedness and operate the project for amounts within the payment ability of those eligible to occupy the housing or benefit from the project. When tenants are benefiting from any Rural Development or other Government subsidy program, the continued availability of the subsidy will be considered in making this decision. For profit and limited profit organizations, the assets of the individual general partners, members or stockholders will also be considered.

(5) The type of change must not adversely affect the operations of the project. Liens may not be taken against the Rural Development security. Payments on any debt incurred for the purchase of the stock or interest in the organization will not be considered authorized debt payments and will not be included in project operations as a budgeted expense. In those cases where the withdrawing member or ownership interest proposes to use a security agreement or other document to secure an equity payment, the State Director must determine that:

(i) the payment is not contingent on the planned sale of the project or additional ownership interests;

(ii) an assignment of interests to secure a promissory note, in the case of a limited partnership, is restricted to the limited partners interests only and not the general partner interest;

(iii) in cases other than the limited partner's interest in a limited partnership, that there is no reversionary interest held in the entity; and

(iv) any security agreement or equity note, clearly indicates the necessity of Rural Development approval before any substitutions of interests take place, regardless of any default on the equity note.

(6) In the case of the sale of the interest of a general partner, or the admission or substitution of any general partner, in either a limited partnership or a general partnership, the new or substitute general partner must agree to assume the responsibilities and obligations of the original general partner under the terms of the Rural Development promissory note, mortgage, and the borrower's partnership agreements. The assumption of any personal liability of the transferring general partner by the assuming general partner in a limited partnership may be waived by the State Director with the advice of the OGC if the organizational papers require that liability be limited to the assets of the partnership according to §1944.221 (a) (2) of Subpart E of Part 1944 of this chapter. After consulting OGC, the State Director will require the new or substitute general partner to execute an agreement as follows for the inclusion in position 5 of the official case file:

ASSUMPTION OF ORIGINAL OR WITHDRAWING PARTNER'S OBLIGATIONS

In consideration for being approved by Rural Development for admission as a general partner into _____ (the partnership), the undersigned hereby assumes all responsibilities and obligations of _____ under the terms of the Partnership Agreement dated _____, the terms of (a) (all) note(s) or assumption agreement(s) dated _____ in the respective amount(s) of _____, and the terms of the Rural Development security instrument(s) taken on the partnership property dated _____ and filed for record in the _____ office at _____

Document No. or Book and Page No.

Date Signature of New or Substitute Partner

(7) Any withdrawing stockholder, member, or partner personally liable for the Rural Development indebtedness will not be released of liability unless the new stockholder, member, or partner is made personally liable for the Rural Development debt on an agreement approved by OGC, and the State Director determines that the assets and net worth of the new stockholder, member, or partner are substantially the same as, or greater than, that of the party to be released.

(8) The State Director must determine that approval of the transaction will not adversely affect the RHS program in the area, that the objectives of the loan will not be changed, and that the successful operation of the project will not be jeopardized. In making this determination, the State Director must consider the past performance, experience, qualifications and abilities of any individual or organization obtaining an interest in the borrower organization, other than a limited partner holding a minority interest in a limited partnership. Serious consideration must also be given to an individual having a record or reputation for discriminating against individuals because of their race, color, national origin, handicap or other prohibited basis.

(9) Organizational papers must be amended to reflect the changes and a copy submitted to RHS to be retained in the case files. The amendment should specify that RHS must approve all membership changes (except the admission of limited partners described in §1965.63 (e) (3) of this subpart) or transfers, if they do not already do so. OGC will review any proposed changes of beneficial interests in a trust to determine that all applicable program requirements have been met.

§1965.64 [Reserved]

§1965.65 Transfer of real estate security and assumption of loans.

(a) General. The transfer may be approved only if it is determined that the transfer would ensure the further availability of the housing and related facilities for very low-, low-, and moderate-income families or persons and would be in the best interests of the residents and the Federal Government. Borrowers should be properly informed during loan processing that each applicant must have the ability and intention to own and operate the proposed housing project for the purposes for which the loan is made. They should also be advised to properly organize their ventures at the outset. The Automated Multi-Housing Accounting System (AMAS) should be used for tracking and identifying the status of transferors and transferees as a routine part of the transfer and assumption process. Only Rural Housing site loans can be approved or closed for applicants that plan to sell their projects within a short period of time. (Revised 05-07-97, SPECIAL PN.)

(1) The requirements of this section apply when:

(i) title to the security property is transferred, either when the project is sold or through a change in the borrowing legal entity, such that the new entity is considered a distinct and separate legal entity from the original borrower. (Revised 6-30-87, SPECIAL PN.)

(ii) an unauthorized sale of a project has occurred or will occur through a land contract or similar contract;

(iii) the liability for the RHS indebtedness has been or will be assumed by an organization, entity or individual who is not presently liable for the debt;

(iv) membership interests within a borrower entity have been or will be changed 100 percent within any consecutive 12-month period as indicated by §1965.63 (a) of this subpart.
(Renumbered 6-30-87, SPECIAL PN.)

(2) When the mortgage or deed of trust requires RHS consent to the sale or other transfer of real estate security, the borrower should be advised of its provisions. Before firm agreements are reached between the borrower and the proposed purchaser or transferee, the borrower should notify the District director of the proposed sale or transfer. The District Director shall then explain the requirements of this subpart.

(3) Proposed transfers must not be to the detriment of RHS or the tenant. LH loans will only be transferred under this subpart when they will continue to be used to provide housing for farm laborers as defined in Subpart D of Part 1944 of this chapter. Cooperative loans will only be transferred when they will be used for the purpose of providing low income rental housing. (Revised 02-21-91, SPECIAL PN.)

(4) The transfer of projects as defined in §1944.205 of Subpart E of Part 1944 of this chapter, in which the RHS loan transfer is needed to remove a hardship which adversely impacts the present borrower and was caused by circumstances beyond the borrower's control, such as: (Revised 2-25-88, SPECIAL PN.)

(i) illness or death of the principals;

(ii) Court order requiring the division of security property;

(iii) The individual borrower faces serious financial difficulties due to circumstances beyond the borrower's control, which will force him/her out of operation. These circumstances do not include transferring the property to obtain the equity needed to permit the borrower to apply for additional RHS loans or to raise capital to support the borrower's other financial interests not including the RHS financed project. Borrowers under this type of hardship must

§1965.65 (a)(4)(ii) (Con.)

be able to show that they have acted in good faith, demonstrated their managerial skills and financial abilities; and otherwise complied with all other agreements made with RHS. Hardship transfers due to construction cost overruns will only be considered in the case of individual borrower accounts. (If additional funds are needed to cover cost overruns for any other type of borrower entity, consideration should be given to the admission of new partners, sale of stock, etc., under the provision of §1965.63 of this subpart to continue ownership of the project.)

(5) When the State Director determines that a hardship is present and the official case files have been adequately documented to clearly identify the hardship, a transfer may occur without penalty to the transferor. When a hardship is not present and the loan(s) are less than 5 years old, transfer requests should be processed but the transferor (including principals) will be ineligible for further loans or participation in the transferee or other RRH applicant entities for the remainder of the 5-year period. The start of the 5-year period starts on the date of Rural Development loan closing and/or any subsequent transfer.

(6) Transfers of RRH projects with initial or subsequent loans (except loans for the purpose of repairs to existing units) that are at least 5 years old will be processed according to the provisions of this subpart without penalty to the transferor. The transferor (including the principals) may continue to participate in the RRH program through new and existing projects assuming he/she has performed satisfactorily and meets the eligibility criteria of §1944.211 of Subpart E of Part 1944 of this Chapter.

(7) In all cases, the purchaser is required to provide evidence of its inability to obtain credit elsewhere on rates and terms that will not cause rental rates in excess of what low- and moderate-income tenants could afford, considering the availability of any rent subsidies that may be available to the project. (Revised 5-29-85, SPECIAL PN.)

(8) All transfers are subject to the payment application system conversion requirements in Subpart K of Part 1951 of this chapter. (Renumbered 5-23-88, SPECIAL PN.)

(9) For all transfers, the District Director must review Form RD 1910-11 with the applicant. A copy of the signed and dated form will be given to the applicant and the original placed in the loan docket. (Added 8-11-89, SPECIAL PN.)

(b) State Director authority. The State Director is authorized under §1965.55 (a)(4) of this Subpart to approve initial and subsequent transfers, with an appropriate assumption of the Rural Development unpaid loan balance(s) when the principal amount (including any authorized junior liens) plus accrued interest is within the State Director's loan approval authority, subject to the following general conditions and requirements:

(1) Transfers will be made to either eligible or ineligible applicants. Eligible applicants are those applicants meeting all of the eligibility criteria as defined by the appropriate loan program regulations. Ineligible applicants are those applicants failing to meet the eligibility requirements for the respective loan type. Transfers to eligible applicants will receive preference over transfers to ineligible applicants, provided recovery to Rural Development is not less than it would be if the transfer were to an ineligible applicant.

(i) Transfers to eligible applicants will generally be completed on the basis of the same terms if the loan account is current or can be brought current when the transfer and assumption is closed.

(ii) Transfers to eligible applicants desiring to assume delinquent loans which cannot be brought current at the time of closing, and transfers to ineligible applicants, will be transferred on the basis of new terms.

(2) The approval official must determine that the security is adequate for the Rural Development indebtedness being assumed. If the State Director determines that the total secured Rural Development debt(s) exceeds the present market value of the security, the transferee must assume an amount at least equal to the present market value less any prior liens. In those cases, the transferor will not be released from liability and the remaining debt will also be processed according to the applicable provisions of Subpart B of 1956 of this chapter. When the present market value of the security equals or exceeds the debt the transferee will assume the total Rural Development secured debt(s). Security will be upgraded if necessary to meet Rural Development standards.
(Revised 04-10-91,
SPECIAL PN.)

(3) The transferor shall not receive an equity payment as part of a transfer unless: (Revised 08-20-93, SPECIAL PN.)

(i) All unpaid Rural Development indebtedness against the property is assumed;

(ii) All real estate and personal property taxes owed by the project are current;

(iii) All Rural Development loan payments on the project are current;

(iv) The reserve account is at the authorized level at the time of the transfer;

(v) The State Director receives National Office authorization to proceed, if the preceding requirements cannot be met and it can be demonstrated that no other alternative, including liquidation, would be in the best interests of Rural Development and the tenants; and

(vi) When the transfer is NOT being made in connection with a request for prepayment of the Rural Development loan;

(A) Any equity payment paid to the transferor shall be paid in cash at the time of the transfer; or

(B) If paid on terms;

(1) The rates and terms are documented and the transferee is able to show that the obligation can be met from outside sources of income without jeopardizing the operation of the project. No rental or other project income (except authorized return to owner as specified in the loan agreement or resolution) shall be used to make payments on the obligation;

(2) No present or future liens will be attached to the secured project real estate, personal property, accounts, or revenue from the operation of the project;

(3) The equity payment to the seller will be provided from outside sources or from any authorized return to owner, and not from a planned sale of the project or additional membership interests beyond those identified in the transferee's organizational documents approved by Rural Development;

(4) The seller does not and will not have a reversionary interest in the Rural Development encumbered property;

(5) In the case of a limited partnership, the right of Rural Development to approve or disapprove the substitution of general partners in accordance

with §1965.63 of this subpart has not and will not be superseded by any agreement between the purchaser and seller which implies prior consent by Rural Development for partner changes in the case of default; and the right to assign partnership interests is restricted to only the limited partners' interests and such right does not include the general partners' interests;

(6) An opinion is provided from the transferee's legal counsel certifying that the financial and other arrangements comply with all Rural Development requirements of this section; and

(7) An assignment of project income will be taken by Rural Development in accordance with the requirements of §1944.221 (b) of Subpart E of Part 1944 of this chapter as additional security with the advice and guidance of OGC;

(vii) When the transfer is being made to avert prepayment of the Rural Development loan, an equity loan may be made in accordance with the provisions of Subpart E of this part and Subpart E of Part 1944 of this chapter. If additional equity is to be paid by the purchaser to the seller above the amount of equity recognized by Rural Development in the prepayment valuation of the project, the provisions of paragraph (b) (3) (vi) of this section will apply.

(4) No payment will be received by the transferor for regular equity or equity in connection with a prepayment action unless all Rural Development loans against the project are assumed in full or the payment to the transferor is applied in total against non-Rural Development prior liens. The State Director may require that all or a part of any equity payment be applied against other Rural Development loans owed by the borrower on other Rural Development projects owned by the borrower that are not current, if the Rural Development loans against the project being purchased are assumed in full and all prior liens paid in full. (Revised 08-20-93, SPECIAL PN.)

(5) Upon completion of the transfer there must be no liens, judgments, or other claims against the security being transferred other than those by Rural Development and those authorized liens to which Rural Development has previously agreed, unless prior written approval is obtained from the National Office.

(6) When the loan(s) is secured by both chattel and real estate, all chattel security must be transferred, sold, or liquidated by the time of closing the transfer of the real estate.

(7) The transferee must complete and submit Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," for the State Director's approval as required by §1901.203 of Subpart E of Part 1901 of this chapter.

(8) When the spouse of a deceased individual borrower is not currently liable for the indebtedness, a transfer and assumption to the spouse can be accomplished through the use of Forms RD 1965-9, "Multiple Family Housing Assumption Agreement," and RD 1965-10, "Information on Assumption of Multiple Family Housing Loans," on the same rates and terms if the account is current or new rates and terms if the account is not current. If the spouse is determined to be an eligible applicant according to applicable provisions of the respective loan program and this subpart, the approval official may waive the submission by the assuming spouse of any form or material not required by OGC to complete the assumption, if the present forms and materials in the current casefile are otherwise acceptable. (Revised 5-4-88, PN 84.)

(9) The transfer must be completed with the advice and closing instructions of the OGC.

(10) The rents to the tenants can be increased only if the provisions of paragraph XI of Exhibit B to Subpart C of Part 1930 of this chapter are met.

(11) The transferee will be required to submit reports according to §1930.122 of Subpart C of Part 1930 of this chapter. (Revised 08-30-93, SPECIAL PN.)

(12) Forms RD 1944-50, "Multiple Family Housing Borrower/Project Characteristics," and RD 1944-51, "Multiple Family Housing Obligation - Fund Analysis," must be processed in accordance with their respective FMIs for all transferees to update the accounting system. (Added 5-1-85, SPECIAL PN.)

(c) Transfers to eligible applicants. Transfers of security with an assumption of Rural Development debts by transferees who are eligible applicants for the type of loan being assumed may be approved subject to the general conditions contained in paragraph (b) of this section and the following:

(1) All transfers to eligible borrowers will subject the borrower to the appropriate restrictive-use provisions contained in Exhibit A-1 or A-2 of Subpart E of this part.

(Revised 08-20-93, SPECIAL PN.)

(2) All necessary repairs to assure that the housing will be decent, safe and sanitary should be made prior to the transfer whenever possible. When repairs cannot be completed prior to closing, the necessary funds will be escrowed and the repairs will be identified, agreed upon prior to closing and documented as specified in §1924.5 of Subpart A of Part 1924 of this chapter. Also, any improvements required by Rural Development to meet the accessibility requirements of Section 15 b.41 of Subpart F of Part 15b of Subtitle A (see §1944.215 (b)(6) of Subpart E of Part 1944 of this chapter) should be considered part of any substantial rehabilitation work undertaken as part of the transfer. All repairs will be in accordance with the provisions of Subpart A of Part 1924 of this chapter. Funds for such improvements or repairs will be from the sources in the following priority: transferor's equity payment; contributions by the transferee; reserve account being transferred provided the amount remaining in the reserve account will be adequate to meet the repairs and expenses in the immediate or near future; if loan funds are available, from the use of an RRH or LH loan when appropriate. (Revised 2-25-88, SPECIAL PN.)

(3) For rental and RCH (as applicable) projects, the transferor's project operating accounts, reserve account, any tenant security deposits, any balance remaining in the transferor's supervised bank account which are needed to complete project development, and any equipment purchased with project funds will be transferred to the transferee. Any funds remaining in an RA contract not disbursed by the transferor will be assigned to the transferee, unless RA is not needed for current eligible residents or another form of subsidy is to be used. Any RA determined to not be needed will be reassigned in accordance with the provisions of paragraph XV of Exhibit E to Subpart C of Part 1930 of this chapter. Funds in the reserve account should be at the scheduled level and transferred to the transferee at the time of transfer. If an equity loan is to be made by Rural Development, reserve and other accounts must be at the scheduled level at the time of transfer. (Revised 08-20-93, SPECIAL PN.)

(4) Any excess development funds held in a supervised bank account must be refunded to the respective loan account upon receipt of the transfer request. (Renumbered 6-30-87, SPECIAL PN.)

(5) A loan and/or grant may be made to the transferee in connection with a transfer subject to the policies and procedures governing the kind of loan and/or grant being made. Loan and/or grant funds may not be used, however, to pay equity to a transferor unless authorized in accordance with Subpart E of this Part to avert prepayment. (Revised 08-20-93, SPECIAL PN.)

(6) The transferees must prepare operating budgets, as required by the appropriate program regulations governing the kind of loan being transferred, covering the first partial year and the next full year's operation. The budgets must be realistic and reflect sufficient funds to pay operation and maintenance expenses, fund any required reserve, and keep the Rural Development account(s) current. The charges for the use of the facility or services must be within the payment ability of those it is intended to serve. A current utility allowance must also be prepared when required by program regulations. (Renumbered 6-30-87, SPECIAL PN.)

(7) For transfers of RRH and RCH loan accounts, current executed tenant and former member certifications using Form RD 1944-8, "Tenant Certification," or a HUD approved form of "Certification or Recertification of Tenant Eligibility" for any tenants receiving Section 8 subsidy, must be on file with Rural Development or provided for each tenant, as required by Exhibit B to Subpart C of Part 1930 of this chapter, evidencing that the units are or will be occupied by tenants meeting the Rural Development eligibility requirements when the transfer is closed. (Revised 02-21-91, SPECIAL PN.)

(8) For transfers of RRH and LH loan accounts, all leases should also be assigned to the transferee no later than the date of closing. (Renumbered 6-30-87, SPECIAL PN.)

(9) The proper type of loan agreement or loan resolution for the type of transferee involved must be in effect and secured in the mortgage or deed of trust at the time of transfer. If changes are needed in the existing loan agreement or loan resolution to accomplish this, amendments must be made to the

existing loan agreement or resolution secured by the mortgage on the security property with the advice of the transferee's attorney and approval of OGC or by any other method acceptable to OGC. If the RRH transferee wishes to convert to the loan agreement/resolution format of Form 1944-33, "Loan Agreement;" 1944-34, "Loan Agreement," or 1944-35, "Loan Resolution," as appropriate, the transferee may accomplish this by amending the existing loan agreement/resolution with the advice of transferee's attorney and concurred in by OGC. (Renumbered 6-30-87, SPECIAL PN.)

(10) When the transfer is NOT being made in connection with a request for prepayment of the Rural Development loan, a limited profit RRH transferee's initial investment and rate of return in the project will remain the same as that originally provided to the transferor. However, if a loan to a nonprofit or profit type borrower is being transferred to a limited profit type transferee, the initial investment to be shown in the loan resolution or agreement will be "None" unless an exception is made by the State Director. (The State Director's authority to establish initial investment will not be delegated to other State Office staff.) Any initial investment established by the State Director should not exceed the amount shown in the transferor's loan agreement/resolution with a rate of return which will not exceed the rate set forth in §1944.215 (n) of Subpart E of Part 1944 of this chapter when the transfer is approved. An exception will be considered when the following conditions are met and fully documented in the casefile: (Revised 08-20-93, SPECIAL PN.)

(i) The transferee contributes funds for repairs or authorized improvements beyond those which would have been paid from the transferor's equity as indicated in paragraph (c) (2) of this section, or (Revised 6-30-87, SPECIAL PN.)

(ii) The transferee contributed sufficient cash to reduce the loan principal being assumed to no more than 95% (97% for loan agreements dated on or after March 11, 1988) of the original development cost (unless an exception is made in writing by the National Office), or (Revised 3-11-88, SPECIAL PN.)

(iii) The transferee's total contributions for the repairs and debt reduction identified in (i) and (ii) above, exceed 5% (3% for loans approved on or after March 11, 1988) of the purchase price, or (Revised 3-11-88, SPECIAL PN.)

(iv) The transfer is referred to the National Office with the appropriate recommendations and a request to establish an initial investment for the transferee for those cases in which the State Director requests advice and assistance.

(11) When the transfer is being made to avert prepayment of the Rural Development loan, the recognized equity and/or rate of return may be increased in connection with an incentive offer made under the provisions of Subpart E of this part. (Added 08-20-93, SPECIAL PN.)

(12) If the transfer involves an RRH or RCH loan using interest credit with a Form RD 1944-7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement," in effect, the transferee may also receive interest credit by executing a new Form RD 1944-7 effective the date of transfer. RRH and RCH loans will not be converted from a subsidized (interest credit) basis to a nonsubsidized (full profit) basis as part of the transfer process. If the transfer is to be made on a nonprofit or limited profit basis, the transferee may receive interest credit according to Exhibit H to Subpart C of Part 1930 of this chapter. A new Form RD 1944-7 will be executed by the transferee, attached to Form RD 1965-10, "Information on Assumption of Multiple Family Housing Loans," and a copy of Form RD 1944-50 and forwarded to the Finance Office, MFH Unit, when the transfer is closed. The borrower project data on Form RD 1944-50 should have been established when the transfer was approved. (Revised and Renumbered 08-20-93, SPECIAL PN.)

(13) A transferee may participate in the RA program if the transferor's project is an eligible project and the transferee is an eligible borrower according to Exhibit E to Subpart C of Part 1930 of this chapter. If the transferor participates in the RA programs, the transferee may assume the remaining portion of the transferor's RA agreement when the transferee is eligible. When the transferee is assuming the transferor's RA agreement, Form RD 1944-55, "Multiple Family Housing Transfer of Rental Assistance," will be executed and attached to the new or existing Form RD 1944-27. A copy of Form RD 1944-55 and a copy of Rural Development 1944-50 will be attached to Form RD 1965-10 and forwarded to the Finance Office. If the transferee will not be assuming an existing RA agreement, the agreement will be suspended by memorandum to the Finance Office. Subsequently, the State Director must transfer the suspended RA unit(s) to another project(s), using Form RD 1944-55, in accordance with Exhibit E of Subpart C of Part 1930 of this chapter. (Renumbered 08-20-93, SPECIAL PN.)

(14) If a project operates under the HUD Section 8 program, the Housing Assistance Payment (HAP) contract must also be assigned to the transferee with prior approval from HUD. This approval must be obtained so that the assignment of the HAP contract occurs no later than the closing of the transfer.
(Renumbered 08-20-93, SPECIAL PN.)

(15) The transferee must thoroughly understand all loan requirements, including the restrictive-use provisions, tenant eligibility, management, reserve account, audit, and reporting requirements of applicable Rural Development regulations; and the loan agreement or loan resolution and the content of the signed Form RD 400-4, "Assurance Agreement." Before the transfer is closed, the District Director shall carefully review with the transferee Subpart L of Part 1944 of this chapter, Subpart C of Part 1930 of this chapter, the applicable loan program regulations, and the loan agreement or resolution with the transferee. (Revised and Renumbered 08-20-93, SPECIAL PN.)

(16) Release of liability will be considered according to the following: (Renumbered 08-20-93, SPECIAL PN.)

(i) When all Rural Development security is transferred and the total outstanding debt is assumed, the transferor will be released from liability.

(ii) In those cases where the value of the security transferred and debt assumed is less than the full amount of the Rural Development debt, the transferor may be released from liability if the State Director determines that the transferor has no reasonable debt-paying ability considering assets and income at the time of the transfer, and certifies that the transferor has cooperated in good faith, has used due diligence to maintain the security property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of the borrower's ability. The approval official must execute a memorandum containing the following statement for inclusion in the official case file.

"(Transferor's name), in our opinion, does not have reasonable debt-paying ability to pay the balance of the debt not assumed after considering its assets and income at the time of the 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 its ability. Therefore, we recommend that the transferor be released of personal liability upon the transferee's assumption of that portion of the indebtedness equal to the present market value of the security property."

(d) Transfers to ineligible applicants. The transfer of an Rural Development loan account to a transferee who is an ineligible applicant for the type of loan involved will be considered only when the transfer is needed as a method for servicing a problem case in which the objectives of the original loan cannot be realized and an eligible transferee is not available. Transfers will not be considered when they basically serve as a method or provide a means by which members of a borrower-organization can obtain an equity payment, or when they serve basically as a method of providing a source of credit for purchasers. The State Director is authorized to approve transfers to ineligible applicants, subject to the general conditions of paragraph (b) of this section and the following:

- (1) Ineligible applicants can only be approved when a downpayment is made equivalent to a minimum of 10 percent of the remaining loan balance to be assumed. Each ineligible transferee will be encouraged to make as large a downpayment on the Rural Development secured indebtedness as the transferee is financially able.
- (2) The transferee must have the ability to pay the Rural Development debt(s) according to the assumption agreement and must possess the legal capacity to enter into the contractual agreement.
- (3) The balance of the Rural Development indebtedness assumed must be scheduled for repayment in two years or less for RHS accounts, and usually 10 years or less for other types of multiple family loan accounts. If longer terms are needed for LH, RRH, or RCH projects with multiple unit structures, the State Director may authorize longer terms up to 20 years. (Single Family type structures may be sold on terms for 15 years or less.) Amortized monthly or annual installments will be charged with interest to the transferee at the rate currently applicable to above-moderate RH loans, including insurance charges, or at the rate of interest specified in the note(s) being assumed, whichever is greater. Form RD 1965-9 will be executed by the transferee. (Revised 5-1-85, SPECIAL PN.)

(4) The State Director may release the transferee from liability under the same provisions as stated in paragraph (c)(10) of this Section only when all of the real estate security for a loan is transferred, the total outstanding indebtedness or that portion of the debt equal to the present market value of the security is scheduled for payment in five years or less from the date of the assumption agreement.

(5) When an ineligible transferee assumes an Rural Development loan where the present borrower has personal liability and it is scheduled for repayment in more than 5 years from the date of the assumption agreement, the transferor must acknowledge their continued liability for the debt by signing an agreement as follows:

Continued Liability Agreement of Present Debtors

The undersigned hereby acknowledges the continued personal liability for the indebtedness owed to the Rural Development and assured by

_____ under assumption
agreement

(assuming parties)

dated _____.

Date

(The original of the signed agreement will be attached to the original assumption agreement, a copy filed in the transferee's District Director case folder, and a copy provided the transferor.)

(6) Transfers to ineligible applicants of loans made on or after December 21, 1979, will not be authorized without the prior consent and authorization of the National Office. Authorization must be requested in writing and include all the information required in paragraph (e) of this Section.

(7) Transfers to ineligible applicants of projects subject to restrictive-use provisions will continue to retain the applicable restrictive-use provisions and cause the project to

be operated in conformance with RD Instructions. If it is determined by Rural Development that the housing is no longer needed to house eligible tenants in accordance with the provisions of Subpart E of this part, the restrictive-use provisions may be released. (Added 08-20-93, SPECIAL PN.)

(8) Those loans which are transferred to ineligible applicants will be classified as Nonprogram Property (NP) and serviced according to this Subpart to the extent possible. Those cases which cannot be serviced according to this Subpart will be forwarded to the National Office for advice and guidance. (Revised and Renumbered 08-20-93, SPECIAL PN.)

(e) Submission to National Office. In those cases where the proposed transfer cannot be made in compliance with paragraphs (a) and (b) or (c) of this Section, the State Director may submit the entire proposal, complete with all the case files, the State Director's specific recommendations and justifications to the National Office for review, consideration, and any special instructions for handling the account(s). The State Director must have determined prior to submission, however, that it is in the best interest of the Rural Development to permit the transfer before submitting the proposal for consideration. All transfers where the total indebtedness (principal and interest) exceed the State Director's approval authority must be submitted to the National Office for prior review and authorization to approve the transfer request.

(f) Processing transfers.

(1) Form RD 465-5, "Transfer of Real Estate Security," must be completed to reflect the agreement between the transferor and transferee. The form will be prepared to show all agreements involved such as the proration of taxes and insurance, title, legal and filing fees, equity and method of payment, charges to the loan account other than principal and interest, future dated payments presently credited to the account, assignment of project accounts and leases and other appropriate items. Additional information may also be attached to this form when necessary to fully describe the proposed transaction. The transfer will become effective the date Form RD 1965-9 is executed. (Revised 5-1-85, SPECIAL PN.)

(2) Form RD 1965-9 will be executed according to the FMI. The unpaid principal balance and accrued interest to be shown on Forms RD 1965-9 and 1965-10 will be determined by accessing the project account record via field terminal. When this is not

possible, the unpaid principal balance, accrued interest, and any other charges will be computed from Form RD 1951-53, "Multiple Family Housing - Transaction Record," for Form RD 451-11, "Statement of Account." The transferee will be advised of the total amount paid as of the closing date which has not been credited to the account, the payment required to place the account on schedule as of the previous installment due date and, any payment required to bring any monthly or annual payment current, and the amount needed to bring the reserve account current less any authorized withdrawals. If the loan account or the reserve account cannot be brought current, or less than the total debt is assumed, the transfer will be closed on new terms and the interest rate charged by Rural Development will be the current rate being charged for those loans at the time of loan closing, or the interest rate at the time of approval (the date Form RD 1944-51 is approved), whichever is less. (Revised 07-05-91, SPECIAL PN.)

(3) When the property transferred will continue to be used for the same or a similar purpose for which Federal financial assistance was extended, the transferee must sign Form RD 400-4, "Assurance Agreement."

(4) An appraisal will be required for each transfer, except those completed on a same terms basis for which the State Director is satisfied that the security is adequate. (An appraisal will always be required for transfers on new terms.) An Rural Development designated MFH appraiser will be responsible for preparing an appraisal report within 30 days of the District Director's receipt of the completed application when the total indebtedness will not be assumed, or the State Director may accept an independent appraisal provided by the transferor or transferee under the conditions later specified in this paragraph when the total debt is being assumed and the Rural Development designated MFH appraiser is unable to complete an appraisal within 30 days of the District Office's receipt of the completed application. If the last appraisal is less than 1 year old and the transfer is within the State Director's authority, the Rural Development designated appraiser may supplement the present appraisal report, in lieu of preparing a new appraisal by attaching information on the present market value. A new appraisal will be prepared according to the requirements of RD Instruction 1922-B (available in any Rural Development office) when the current appraisal is over 1 year old, or when the State Director determines a new appraisal report is needed. An independent appraisal may NOT be

accepted from the transferor or transferee for the initial appraisal required of Rural Development under provisions of Subpart E of this part. The conditions under which the State Director may accept an independent appraisal from the transferor or transferee in lieu of an Rural Development prepared appraisal are: (Revised 08-20-93, SPECIAL PN.)

(i) The expense of the appraisal will be paid by the transferee or transferor without obligation to Rural Development.

(ii) The appraisal will be prepared by an accredited Senior Real Property Appraiser (SRPA), Senior Real Estate Analyst (SREA), or Member, Appraisal Institute (MAI) real estate appraiser. The State Appraiser/Trainer may accept an appraisal report from other than an accredited SRPA, SREA, or MAI appraiser if he or she determines that:

(A) there are no accredited appraisers within a reasonable distance from the project location, and

(B) the individual preparing the appraisal has satisfactorily completed a minimum of 80 hours of accredited appraisal course.

(iii) The appraisal report form will be Form RD 1922-7, "Appraisal Report for Multi-Unit Housing," or the Federal Home Loan Mortgage Corporation form, FHLMC Form 17A, and it will include adequate documentation to support the appraised value and the qualifications of the appraiser.

(iv) The total Rural Development debt will be assumed by the transferee.

(v) A review of the appraisal will be made the State Appraiser/Trainer according to RD Instruction 1922-B using Form RD 1922-13, "Reviewer's Appraisal Analysis."

(vi) The appraised value of the property is sufficient to secure the existing Rural Development debt, planned subsequent Rural Development loan(s), and any authorized junior liens.

(5) Form RD 1965-9 will be executed according to the FMI when the full debt will be assumed at the same rate and terms. The loan account(s) must be current at the time of the transfer and the reserve account on schedule, less any authorized withdrawals, if the transfer is to be at the same rate and terms. (Revised 5-1-85, SPECIAL PN.)

RD Instruction 1965-B
§1965.65 (f) (Con.)

(6) Form RD 1965-9 will be executed according to the FMI when an account cannot be brought current at the time of transfer or less than the full debt is assumed. The loan repayment period may be extended to the maximum term authorized by the appropriate loan program, considering the value and economic life of the security. Transfers on new terms are also subject to the following conditions: (Revised 5-1-85, SPECIAL PN.)

(i) The interest rate charged for all loans, except LH loans, will be the current rate being charged for those loans at the time of loan closing or the interest rate at the time of approval (the date Form RD 1944-51 is approved), whichever is less. The interest rate on LH loans will be the rate specified in the note, except that loans transferred to public bodies, nonprofit organizations of farmworkers, and broadly-based nonprofit corporations for LH purposes may be at a one percent interest rate regardless of the rate specified in the note if the State Director determines that the reduction is necessary in order to maintain rental rates at a level affordable to the tenants. If the State Director determines that the transfer at one percent is necessary for other types of LH transferees, the case should be submitted to the National Office, with the State Director's recommendation and justification for consideration. (Revised 07-05-91, SPECIAL PN.)

(ii) Loans for RRH and RCH projects which are amortized on an annual payment basis and transferred through the use of Form RD 1965-9 shall be converted to a monthly payment amortization and are subject to PASS. (Revised 5-1-85, SPECIAL PN.)

(iii) LH loans may continue to be transferred on a DIAS basis or may be converted to PASS when the approval official determines such a conversion will not be detrimental to the successful operation of the project. (Revised 5-1-85, SPECIAL PN.)

(7) The following paragraph is to be inserted in the Form RD 1965-9 whenever the full amount of equity has not been paid in cash or through an equity loan made by Rural Development to avert prepayment:

"The assuming party covenants and agrees that irrespective of any other agreement to the contrary, (a) no present or future lien(s) have or will be attached to the partnership property encumbered by Rural Development or the income therefrom, (b) the equity payable to the seller will be provided from outside sources or from any authorized return on investment and not from a planned sale of the project, (c) the right of Rural Development to approve or disapprove the substitution of partners in a general or limited partnership transferee organization [this phrase may be stricken when the transferee is an individual] has not and will not be superseded by any agreement between the purchaser and seller that implies prior consent by Rural Development on partner changes in the case of default, (d) the seller does not and will not have a reversionary interest in the Rural Development encumbered property, and (e) the requirements of §1965.65 of RD Instruction 1965-B (7 CFR Part 1965) have been met." (Revised 08-20-93, SPECIAL PN.)

(8) All RRH, RCH, and LH loans, including those approved prior to December 21, 1979, which are transferred to eligible applicants will become subject to the restrictive-use provisions of Section 502 (c) of Title V, Housing Act of 1949, as amended. The restrictive-use language set forth in the appropriate Exhibit A-1 or A-2 in accordance with §§1965.214 (g) and 1965.216 (c)(3) of Subpart E of this part must be added, with the advice of OGC, to the assumption agreement, security instruments, and loan agreement/resolution. The restrictive-use period will begin on the date the transfer and assumption is closed. (Revised 08-20-93, SPECIAL PN.)

(9) When the transfer docket forms are completed, the approval official must determine that: (Renumbered 6-30-87, SPECIAL PN.)

(i) The proposed transfer conforms to the applicable procedural requirements and that determinations of hardship status, eligibility, etc., are clearly documented in the casefile.

(ii) Each form is prepared correctly according to the FMI or other appropriate regulations, and

(iii) Items such as names, addresses, and the amount of the indebtedness to be assumed are the same on all forms in which those items appear.

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(Added 08-20-93, SPECIAL PN)

(1-22-85) SPECIAL PN

RD Instruction 1965-B
 §1965.65 (f) (Con.)

(10) The District Director will record in the Running Case Record or in memo form, the pertinent information concerning the negotiations made between an eligible transferee, Rural Development personnel, the applicant's creditors, and other lenders concerning the availability of other credit. The investigation on the availability of other credit for eligible transferees will be documented in the case file as required for the kind of loan being assumed. Any letters from lenders or other evidence which may have been obtained indicating that the applicant is unable to obtain credit elsewhere on rates and terms that would not cause rental rates to be in excess of what low and moderate income tenants could afford will be included in the docket. (Renumbered 6-30-87, SPECIAL PN.)

(11) A compliance review should be conducted as required by Subpart E of Part 1901 of this chapter, if a current one has not recently been completed. (Renumbered 6-30-87, SPECIAL PN.)

(12) The District Director will forward the transferor's application docket and the official case file, with any comments and recommendations to the State Office. The following table will be used as a guide in distributing the necessary forms for a transfer docket: (Revised 4-11-90, SPECIAL PN.)

Form Number	Name of Form or Document	Total No. of Copies	Signed by Borrower	Number for Docket	Number for Loan Copy for Borrower
SF 424.2	Application for Federal Assistance (For Construction)	3	1	2-0&1C	1-0
* <u>HUD Form</u> 2530/RD 1944-37	Previous Participation Certification *Information to be submitted with Preapplication for Loan as required by program regulations specifically related to applicant eligibility	2	1	2-0&1C	1-C
		2	0	1-0	1-C

Form Number	Name of Form or Document	Total No. of Copies	Signed by Borrower	Number for Loan Docket	Copy for Borrower
	*Letter of Application with applicable attachments as required in Subpart C of Part 1822 of this chapter (RD Instruction D or E of Part 1944 of this chapter.)	2	1	1-0	
	**Evidence of Legal Authority (Copies of citation of specific provisions of State Constitution, statutory authority, etc.)	2	1	1-0	1-C
	**Proof of Organization (certified copy of Charter Articles of Incorporation, or Certificate of Limited Partnership, etc.)	2	1	1-0	1-C
	**Certified copies of bylaws, partnership agreement, or regulations	2	1	1-0	1-C
	**List of names, addresses, and social security or Tax Identification Numbers of officers, directors, and members, and ownership interest held by	2	1	1-0	1-C
	A current financial statement from the transferee, and others, as required by appropriate program regulations	2	1	1-0	1-C
	*Credit Report(s)				
RD 465-5	Transfer of Real Estate Security 2/	3	1-0	1-0	1-C
*RD 1930-7	Statement of Budget, Income and Expense (Excluding Depreciation) (Operating Budget-first year) (Operating Budget-typical year)	2	2-0&1-C	1-0	1-C
*Exhibit A-6 1944-E	Housing Allowances for Utilities to Instruction and Other Public Services	3	2-0&1-C	1-0	1-C

RD Instruction 1965-B
 §1965.65 (f) (12) (Con.)

Form Number	Name of Form or Document	Total No. of Copies	Signed by Borrower	Number for Loan Docket	Copy for Borrower
HUD 935.2	Affirmative Fair Housing Marketing Plan, or evidence of being signatory to a HUD approved voluntary agreement	2	2-0&1-C	1-0	1-C
*RD 400-1	Equal Opportunity Agreement	2	2-0&1-C	1-0	1-C
*RD 400-4	Assurance Agreement	2	2-01-C	1-0	1-C
RD 1944-50	Multiple Family Housing Borrower/ Project Characteristics	3		1	
RD 1944-51	Multiple Family Housing Obligation/ Fund Analysis 3/	3	2-0&1-C	1-0	1-C
RD 451-26	Transaction Record (most recent)	1		1	
*RD 451-10	Request for Statement of Account	2		1	
*RD 451-11	Statement of Account	1		1	
*RD 451-25	Status of Account	1		1	
*RD 1922-7	Appraisal Report for Multi- Unit Housing (see paragraph (f) (4) of this section)	1		1-0	
*RD 1922-13	Reviewer's Appraisal Analysis				
*RD 1922-8	Uniform Residential Appraisal Report (Revised 3-31-89, SPECIAL PN)	1		1-0	
*RD 426-1	Valuation of Buildings	1		1-0	
*RD 424-1	Development Plan	2	1-0	2-0&C	1-C
*RD 1965-9	Multiple Family Housing Assumption Agreement	4	1-0	1-0	1-C
*RD 1965-10	Information on Assumption of Multiple Family Housing Loans	2		1-0	
*RD 1965-18	Multiple Family Housing Release from Personal Liability 1/	2		1-C	1-C
*RD 440-9	Supplementary Payment Agreement 1/	3	1-0	2-0&C	1-C

Form Number	Name of Form or Document	Total No. of Copies	Signed by Borrower	Number for Docket	Number for Copy for Borrower
*RD 1944-7	Multiple Family Housing Interest Credit and Rental Assistance Agreement (RRH and RCH loans)	3	1-0	1-0	1-C
*RD 1944-27	Rental Assistance Agreement	2	1-0	1-0	1-C
	*Loan Agreement	2	1-0	1-0	1-C

0 - Original; C - Copy

* - When applicable

** - When applicant is an organization.

1/ - The original Form will not be executed until date of closing the transfer.

2/ - When requested, prepare an additional copy for delivery to transferor.

3/ - Applicant must sign and date this form unless a similar certification is obtained on the application form. For ineligible transferees, delete the first sentence referring to other credit in item 34 of the form. The applicant must initial each deletion.

Other transfer docket items may include a mortgagee title policy, title evidence or report of lien search, foreclosure notice agreement, original or certified copy of deed to any property, purchase contract or other instrument of ownership, assignment of HUD Section 8 Housing Assistance Payments contract, and information on prior or junior mortgage(s). When less than the total amount of the indebtedness is assumed, the transferor's financial statement will be included. When an initial or subsequent loan is involved, include any additional forms required by the appropriate loan making instruction. (Subsequent loans will not be made to pay equity unless authorized in accordance with Subpart E of this part to avert prepayment.) (Revised 08-20-93, SPECIAL PN.)

(13) The following additional information is required for an equity loan to a nonprofit organization in conjunction with the transfer: (Added 08-20-93, SPECIAL PN.)

(i) Identity of Interest statement between transferor and transferee,

- (ii) Statement of experience of organization and all principals,
 - (iii) Management Plan and Agreement in accordance with Exhibit B of Subpart C of Part 1930 of this chapter,
 - (iv) Proposed Application for Occupancy, Lease, and Occupancy Rules and Regulations in accordance with Exhibit B of Subpart C of Part 1930 of this chapter,
 - (v) Option or purchase agreement,
 - (vi) Proposed budget showing anticipated rents with updated figures on required reserve contributions,
 - (vii) Data on current tenants' incomes, rents and RA, and incomes of those on the waiting list to show amount of RA which will be needed for current tenants and other eligible occupants based on the proposed budget,
 - (viii) If rehabilitation will be undertaken at the time of the loan, plans and specifications and method of construction must be outlined,
 - (ix) A breakdown of packaging and administration costs to be paid with any advance to nonprofit organizations or public agencies purchasing a project to avert prepayment, if an advance has not previously been applied for,
 - (x) If needed, a request for initial operating funds and a detailed breakdown of expenses anticipated to be paid from the funds, and
 - (xi) District Office comments and recommendations and the State Office evaluation.
- (14) If the transfer is within the State Director's loan approval authority, the docket will be forwarded to OGC for review and necessary closing instructions. If the transfer is not within the State Director's loan approval authority, or all planned development is not complete; the complete transfer docket, borrower case file, OGC comments, and complete comments and recommendations of both the District and State Director will be forwarded to the National Office for review and approval authorization. (Renumbered 08-20-93, SPECIAL PN.)

(15) During the period that a transfer is pending in the District Office, payments received by the Finance Office will continue to be applied to the transferor's account. Those payments include any downpayments made in connection with the transfer for reducing the amount of the debt to be assumed. Any payment on the account not included in the latest transaction record will be deducted from the total amount of principal and interest calculated from the latest information available before the assumption agreement is completed and signed.

(Renumbered 08-20-93, SPECIAL PN.)

(i) Identification. Payments received on the date of transfer will be remitted as Regular payments on Form RD 1951-55, "Collection Log." The payments will be credited to the transferor's borrower and project number when the payment should be credited prior to the transfer. The payments will be credited to the transferee's borrower and project number when the payment should be credited after the transfer.

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

(g) Closing transfer cases.

(1) Title clearance and legal services, including OGC closing instructions, will be obtained according to Subpart B of Part 1927 of this chapter and this subpart. (Revised 03-31-92, SPECIAL PN.)

(2) The parties to the transfer are responsible for obtaining legal services necessary to accomplish the transfer. A profit or limited profit organization transferee may use any designated attorney or title insurance company to close the transfer according to the applicable closing instructions. The attorney or the title insurance company and their principals or employees must not be members, officers, directors, trustees, stockholders or partners of the transferee or transferor entity. Nonprofit organization transferees may use a designated attorney who is a member of their organization if the cost is reasonable, typical for the area, and is earned.

(3) The transferee will obtain fire and extended coverage insurance, and flood insurance when required, according to the appropriate program requirements for the outstanding loan(s) involved, unless the State Director requires additional insurance

as a condition of approval after evaluating the potential for loss due to special hazards associated with the project. When insurance is required, it may be obtained either by transfer of the existing coverage by the transferor or by acquisition of a new policy by the transferee. When the full amount of the Rural Development debt is being assumed and an amount has been advanced for insurance premiums or any other purposes, the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

(4) The proper type of loan agreement or resolution for type of transferee involved must be in effect at the time of the transfer. If changes are needed in the existing loan agreement or resolution cited in the mortgage, the changes should be made by amending the existing loan agreement or resolution after obtaining the advice of OGC.

(5) The restrictive language contained in §1944.176 (d) (1) of Subpart D of Part 1944 of this chapter and §1944.236 (b) (1) of Subpart E of Part 1944 of this chapter must be inserted in the deed of conveyance or other instruments as required by OGC for RRH, RCH, and LH loans. (Revised 01-19-93, SPECIAL PN.)

(6) At a time no later than the transfer closing, the transferee will be provided copies of the security instruments (promissory note, mortgage or deed of trust, rental assistance agreement, loan agreement or resolution, etc.) which were executed by the transferor or previous borrower to originally secure the loan being assumed.

(7) A servicing visit should be scheduled within 90 days of closing to verify the transferee's compliance with program requirements. (Revised 5-1-85, SPECIAL PN.)

(h) Transfer not completed. If for any reason a transfer will not be completed after approval, the District Director will immediately notify the State Director.

§§1965.66 - 1965.67 [Reserved]

§1965.68 Consolidation. (Revised 07-05-91, SPECIAL PN.)

General. Loans and/or loan agreements/resolutions may be consolidated to reduce the administrative burden (recordkeeping, budgeting, etc.), to improve the cost effectiveness and efficiencies of project operations, and/or to effectively utilize the physical facilities

common to projects. State Directors may approve the consolidations with the advice of OGC and when the following conditions are met:

(a) Consolidation of loans.

(1) The loans are being transferred under §1965.65 (f)(6) of this Subpart on new terms to the transferee, OR

(2) An initial and subsequent loan(s) under one project number were closed on the same date at the same rates and terms, i.e., same interest rate and final due date.

(3) The promissory notes and the loan agreements/resolutions will be consolidated.

(4) The conditions for consolidation of loan agreements/resolutions must be met.

(5) The total indebtedness (principal plus accrued interest, overage and late fees) of all loans being consolidated does not exceed the State Director's approval authority.

(6) If consolidation of loans is not possible on the Amortization Effective Date (AED) for the loans, consolidation should occur as soon as possible after the AED is established.

(b) Processing consolidation of loans.

(1) Form RD 1944-52, "Multiple Family Housing Promissory Note," will be prepared for the notes or assumption agreements being consolidated according to the FMI. If the District Office does not have possession of the original note or assumption agreement, the District Director will call the Finance Office to request the return of the original form so it is in the District Office before a new Form RD 1944-52 is processed, or as soon as possible thereafter. Promissory notes should be prepared on a monthly payment basis, as appropriate.

(2) A new Form RD 1944-7, "Interest Credit and Rental Assistance Agreement," will be prepared and signed by the borrower for the new consolidated promissory note and distributed according to the FMI. The Interest Credit Plan originally established for the project will apply to the consolidated note. If the Interest Credit Plan is changed with the new Form RD 1944-7, the District Office will enter the new plan for the project through their field office terminal.

(3) Form RD 1965-17, "Multiple Family Housing Note Consolidation," will be completed to show all of the notes which have been consolidated in the new Form RD 1944-52. A copy of the completed Form RD 1965-17 will be sent to the Finance Office for processing. The AMAS M5A screen for the project should be reviewed by the District Office and updated, as appropriate, when submitting Form RD 1965-17 for processing.

(4) The original and District Office copies of all notes or assumption agreements that are consolidated, will be stamped "consolidated", by the District Office. The original instruments being consolidated will be stapled to the "consolidated" note and filed in the safe in the District Office. When the consolidated note has been paid in full or otherwise satisfied, it and all other instruments will be handled according to the provisions of §1951.15 of Subpart A of Part 1951.

(5) A consolidated loan agreement or resolution using Forms RD 1944-33A, "Consolidated Loan Agreement RRH Insured Loan to an Individual Operating on a Profit Basis or RRH Loan to an Individual Operating on a Limited Profit Basis," RD 1944-34A, "Consolidated RRH Loan Agreement To a Partnership Operating on a Profit Basis, To a Limited Partnership Operating on a Profit Basis, To a Partnership Operating on a Limited Profit Basis, To a Limited Partnership Operating on a Limited Profit Basis," or RD 1944-35A, "Consolidated Loan Resolution RRH Loan to a Broadly Based Nonprofit Corporation, RRH Loan to a Profit Type Corporation, RRH Loan to Profit Type Corporation Operating on a Limited Profit Basis," as appropriate, will be prepared for RRH loans to reflect current reporting requirements and the authorized initial investment attributable to the owner after the consolidation has occurred. A revised consolidated loan agreement or resolution will be prepared for LH loans containing the requirements of Exhibit C, D, or E of Subpart D of Part 1944 of this chapter, as appropriate.

(6) Consolidation of notes will only be accomplished with the guidance and assistance of OGC. Under no circumstances will promissory notes be consolidated if the security position of Rural Development will be adversely affected.

(7) New security instruments which describe the consolidated note will be filed to perfect the Rural Development lien position. If the new lien position taken is junior only to the previous lien position securing the loans being consolidated, the previous security instruments may be released with the guidance and assistance of OGC.

(c) Consolidation of loan agreements/resolutions (project consolidation).

(1) The security for the loans must be on the total project; "project" being defined per Subpart C of Part 1930 of this chapter.

(2) The State Director may approve the consolidation of loan agreements/resolutions irrespective of the total indebtedness represented by all loan agreements/resolutions being consolidated.

(3) The loan agreements being consolidated are for loans made for the same purpose (for example, loans specifically made for senior citizen projects cannot be consolidated with loans for family projects, unless the consolidated project is redesignated "mixed" and the units previously designated "senior citizen" are restricted to tenants meeting the requirements for "senior citizen" as specified in Exhibit B of Subpart C of Part 1930 of this chapter), to the same borrower entity and have the same plan of operation (nonprofit, limited profit or full profit), and are operating under the same type of Interest Credit, if applicable.

(4) The requirements of Subpart C of Part 1930 of this chapter concerning reporting, accounting and project management will be fulfilled as a single project.

(5) All project accounts being consolidated must be current after the consolidation processes, unless authorized by the National Office.

(6) RA agreements will not be consolidated; each RA agreement will be tracked under a separate RA number through AMAS. The RA can be assigned to eligible tenants in the new "project" per assignment priorities. The waiting list(s) for the projects being consolidated will be combined.

(7) For consolidation of loan agreements/resolutions of loans in which no loan to build or acquire new units was made on or after December 15, 1989, the restrictive-use provisions of Section 502(c) of Title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in Exhibit A-1 of Subpart E of this part for RRH, RCH or LH loans will be added, with the advice of OGC, to the loan agreement/resolution and security instruments as a condition of

RHS approval of the action. The restrictive-use period will begin on the date the consolidation is effective.

(Revised 08-20-93, SPECIAL PN)

(8) For consolidation of loan agreements/resolutions of loans for which a loan to build or acquire new units was made on or after December 15, 1989, the consolidated loan may never be prepaid.

(Added 08-20-93, SPECIAL PN.)

(d) Processing loan agreement/resolution consolidations.

(1) Form RD 1965-17A, "Multiple Family Housing Consolidation of Projects/Loan Agreements/Resolutions," will be completed to show all of the notes for the projects being consolidated. The AMAS M5A screen for all projects should be reviewed and updated before submitting Form RD 1965-17A.

(2) A consolidated loan agreement or resolution using Forms RD 1944-33A, RD 1944-34A, or RD 1944-35A, as appropriate, will be prepared for RRH loans to reflect current reporting requirements and the authorized initial investment attributable to the owner after the consolidation has occurred. A revised consolidated loan agreement or resolution will be prepared for LH loans containing the requirements of Exhibit C, D, or E of Subpart D of Part 1944 of this chapter, as appropriate.

(3) Consolidation of projects will only be accomplished with the guidance and assistance of OGC. Under no circumstances will projects be consolidated if the security position of RHS will be adversely affected.

(4) All of the general requirements of paragraph (c) of this section must be met.

(5) Neither the terms nor the due date of the loan(s) involved are altered, and other security instruments remain unchanged, and are not released.

(6) All of the loan agreements or loan resolutions being consolidated may be secured by one deed of trust or mortgage describing all of the loans for the projects if required by OGC.

§1965.69 [Reserved]

§1965.70 Reamortization.

(a) General. State Directors may approve the reamortization of RRH, RCH, and LH loan accounts within their approval authority for the type of loan involved. RHS loans will not be amortized and will be serviced according to program requirements. If an RHS loan becomes seriously delinquent and efforts to sell the lots are not successful, the account will be liquidated according to Subpart A of Part 1955 of this chapter. The reamortization of an account will make the borrower subject to the restrictive-use provisions contained in Exhibit A-1 of Subpart E of this part. (Revised 08-20-93, SPECIAL PN.)

(b) Conditions for reamortization. The conditions under which a reamortization will be considered are:

(1) The borrower has made extra payments and/or refunds totaling 10 percent or more of the original loan amounts being reamortized (from sources other than the sale of units within the LH, RRH, or RCH project), and the State Director determines that the borrower and the tenants cannot reasonably be expected to meet their obligations unless the account is reamortized to reduce substantially the RHS installments and rental rates; or

(2) The borrower has a substantial delinquency which was caused by circumstances beyond the ultimate control of the borrower that cannot be cured within one year, and the borrower has acted in good faith and has complied with all applicable Rural Development procedures and policies governing the particular program under which the loan is made; or

(3) The borrower has received an equity loan as an incentive to avert prepayment, or a subsequent loan has been made to a nonprofit corporation or public agency to purchase a project to avert prepayment; or (Added 08-20-93, SPECIAL PN.)

(4) And, all of the following conditions exist and are adequately documented in the official case file and on Form RD 1951-33, "Reamortization Request," as appropriate.
(Renumbered 08-20-93, SPECIAL PN.)

(i) The reamortization will not operate to the financial detriment of the Rural Development or impair the security rights of the Rural Development.

(ii) The budget or plan of operations for the borrower provides reasonable assurance that the newly scheduled payments will be made according to the terms of the proposed reamortization, and that the charges for the use of the facility or service are within the payment ability of those it is intended to serve and are comparable to other similar units in the area; and, the rent increase procedures set forth in Exhibit C of Subpart C of Part 1930 of this chapter will be followed if any increase in rental rates is required.

(iii) The Board of Directors and memberships will retain, or have definite plans for obtaining, membership and community support; and, will provide competent management for the continued operation of the borrower entity and the facility financed with the loan.

(iv) The State Director believes that reamortization will enable the borrower to operate successfully and carry out the purpose of the loan.

(v) The Rural Development lien position remains unchanged.

(vi) The approval official must be satisfied that the security (including the potential income for debt service) will be adequate to protect the Rural Development's interests over the term of the reamortization. An appraisal as required by Subpart B of Part 1922 of this Chapter must be made and must reflect that the security is adequate for the principal and interest being reamortized when the reamortization will extend the term of the repayment period more than 5 years.

(vii) The borrower has corrected any management deficiencies which may have contributed to the borrower's previous inability to generate sufficient income to bring or keep the account current. Such actions may include revision of the management plan or employment of professional management services.

(viii) All MFH loans being reamortized must be closed on Predetermined Amortization Schedule System (PASS), except LH loans specified in §1951.501 (a) (2) (i) of Subpart K of Part 1951 of this chapter. All initial and subsequent loans must convert to PASS in connection with the reamortization.

(ix) When recoverable cost items are involved, they are first capitalized by adding them to the principal loan balance outstanding on the oldest loan and then the entire indebtedness (principal plus outstanding interest, overage and late fees) is reamortized.

(x) Audit receivables may not be reamortized.

(c) Submission to National Office. When the unpaid indebtedness of the borrower's account(s) to be reamortized exceeds the State Director's approval authority and the State Director determines that the conditions of paragraph (b) of this section can be met, the request for reamortization, official case file and all other pertinent information, along with complete comments and recommendations by both the State and District Directors, will be sent to the National Office. The State Director shall submit all subsequent reamortization requests for the same project to the National Office for prior authorization.

(d) Processing reamortizations. To reamortize the account, the following actions will be taken:

(1) Form RD 1965-16, "Multiple Family Housing Reamortization Agreement," will be completed according to the FMI. The effective date and the due date for all payments will be the first of the month, except for LH loans whose due date will be established in accordance with the FMI. (Revised 5-1-85, SPECIAL PN.)

(2) If the note or assumption agreement being reamortized is not held in the District Office, the District Director will obtain the promissory note and any assumption agreement from the Finance Office before processing the reamortization.

(3) On the back of the original of the note or assumption agreement (new terms), below all signatures and endorsements, the District Director will insert the following: "A reamortization agreement dated _____ 19__, in the principal sum of \$_____, has been given to modify the payment schedule of the note."

(4) The end of the reamortization period will be the final due date of the note being reamortized, unless the term is extended with the advice and guidance of OGC (and it is permissible according to State and local statutes), and the Rural Development lien position is not altered. (Any extension of the final due date will not exceed the lesser of the remaining useful life of the security property or the maximum term authorized by the respective loan program authorizations).

(5) The interest rate for the account will be unchanged except when the final due date has been extended. The interest rate charged will be the rate at the time the reamortization request (Form RD 1951-33) is approved, or the current interest rate at closing, whichever is less. (Revised 07-05-91, SPECIAL PN.)

(6) The reamortization will be processed with the guidance of OGC.

(7) If the borrower is to receive interest credit benefits following the reamortization of the account, the current interest credit agreement will be cancelled and a new Form RD 1944-7 will be prepared. (Revised 1-2-86, PN 991.)

RD Instruction 1965-B
§1965.70 (d) (Con.)

(8) The prepayment restrictive-use provisions of Section 502(c) of Title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in Exhibit A-1 of Subpart E of this part for RRH, RCH or LH loans will be added with the advice of OGC, to the loan agreement/resolution and security instruments, as a condition of Rural Development approval of the action. The restrictive-use period will begin on the date the reamortization agreement is effective. (Revised 08-20-93, SPECIAL PN.)

(9) Reamortizations will always be closed the first day of the month. Unpaid interest to the date of closing may be capitalized. (Added 07-05-91, SPECIAL PN.)

§1965.71 [Reserved]

1965.72 Deceased borrower.

Deceased borrower cases will be handled according to the policy outlined in §1962.46 of Subpart A of Part 1962 of this chapter except that all references to the County Supervisor are now construed to mean the District Director. The advice of OGC will be obtained as necessary.

§1965.73 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled according to the policy outlined in §1962.47 of Subpart A of Part 1962 of this chapter except that all references to the County Supervisor now mean District Director. The handling of bankruptcy cases varies from state to state. Therefore, the State Director may issue State Supplements providing more specific guidance to expedite the handling of those cases. The advice of OGC will be obtained as necessary. (Revised 1-2-86, PN 991.)

§1965.74 Divorce actions.

When individual borrowers with loans are involved in a divorce action, the District Director will review the case after the final divorce decree has been granted to determine if any action is needed for the future servicing of the account. The District Office file will be submitted to the State Director for advice if the District Director is uncertain of the servicing actions needed to protect the Rural Development's interest or if continuation of the loan with the remaining borrower is not authorized. No subsequent loan will be made to pay any equity as a result of a divorce action.

§1965.75 Abandonment.

When the District Director believes that the borrower has abandoned a project, an immediate check with the appropriate sources (for example: tenants, management agents, assessor's office, etc.) will be made to determine if the borrower has moved and, if so, whether a forwarding address can be determined so that further servicing actions can be taken.

(a) A property is considered abandoned when any or all of the following conditions exist:

(1) The borrower cannot be located after the District Director has made diligent efforts to contact the borrower. This condition also applied to those instances where the general partner(s) of a limited partnership cannot be located and the limited partners are unknown or cannot be located.

(2) The project remains unoccupied for an extended period of time and the borrower makes no effort to maintain the security property, secure eligible occupants, and/or comply with the objectives of the loan within a reasonable period of time as specified by the District Director in a certified letter sent to the borrower requesting compliance.

(b) If the property is not being maintained and the District Director determines that the borrower has abandoned the project, the District Director will attempt to contact any prior lienholders with a request that they take control of the property and make any emergency repairs necessary. If no prior lienholder is involved or the prior lienholder cannot immediately be contacted or refuses to make the emergency repairs, the District Director will immediately notify the State Director and request permission to take possession of the property pending liquidation,

make emergency repairs to prevent further deterioration of the security, and to enter into a lease with the individual tenants, or a management or caretaker's agreement, on behalf of the borrower.

(c) A caretaker or management agent will normally be obtained when the borrower has abandoned the security property or has failed to maintain its operation and the State Director determines, with the advice of OGC, that the Rural Development should take possession of the property to best protect the interest of the Government subject to the following:

(1) Selection of a caretaker or management agent. Persons or firms chosen as caretakers or management agents should have experience in operating and managing similar properties or have business background or experience which qualifies them to perform the needed services. They must be located near the property to provide day-to-day supervision or appoint a qualified local person to meet this requirement. Caretakers will normally be selected for unoccupied projects or those not suitable for occupancy. Management agents will only be selected for projects which are occupied or suitable for occupancy. Selection procedures will be in accordance with §1955.63(a) of Subpart B of Part 1955 of this chapter, and will be appropriately documented. (No other actions specified in Subpart B of Part 1955 may be implemented until such time as liquidation action has been approved in writing by the appropriate Rural Development official.)

(2) Fees. The amount of the management agent or caretaker fee should be no more than the typical rate for similar services in the area. The amount may be based on a percentage of the income from the property or a flat fee amount. The fees will be considered a recoverable cost and charged to the borrower's account. The fees will be paid on a monthly basis in accordance with RD Instruction with 2024-A (available in any Rural Development office). (Revised 08-13-92, SPECIAL PN.)

(3) Rental rates for abandoned projects. Rental rates will normally remain the same for eligible occupants as when the project was under the control of the borrower. Rental rates may be revised with the approval of the State Director under the following conditions:

(i) The lease agreement between the borrower and tenant permits changing the rates.

(ii) A change of rates is needed to provide income sufficient to pay operational and maintenance expenses, including the caretaker's fee, and to repay the loan on schedule.

(iii) Any increase will not result in rental rates above the payment ability of eligible occupants, unless the State Director has given the authority to rent units to ineligible occupants.

(d) All these actions shall be fully documented in the official case file. Liquidation will immediately be instituted according to Subpart A of Part 1955 of this chapter.

(e) When the project is occupied but rent is not paid or collected, the eligibility of the occupants cannot be determined, and the borrower has failed to comply with the objectives of the loan within a reasonable period of time as specified by the District Director in a certified letter sent to the borrower requesting compliance, the State Director should refer the case to the Regional Attorney for guidance, including the possibility of having a receiver appointed.

§1965.76 [Reserved]

§1965.77 Consent to sale or other disposition of security property.

(a) General policies. The State Director may approve requests for and consent to:

- (1) Use of proceeds from the sale of a portion of or an interest in the security,
- (2) Exchange of all or a part of the undeveloped security for other real estate, or
- (3) Granting or conveyance of rights-of-way subject to the conditions and requirements of this section.

(b) Processing requests. These requests will be made on Form RD 465-1. The District Director will forward a properly completed and executed Form RD 465-1, the proposed deed, easement, or other form of title conveyance, and the case file to the State Director with a memorandum containing additional information, as needed, to justify the approval or disapproval of the proposed transaction.

(c) Conditions of approval. The State Director may grant consent provided:

- (1) The orderly payment of the Rural Development indebtedness will not be impaired. Except that in condemnation case, after the final judgment or award has been granted and is not appealed, the necessary adjustments in project operation will be approved to comply with the court order.
- (2) The transaction will not interfere with the successful operation of the multiple housing project or prevent the borrower from carrying out the purpose for which the loan was made. This requirement will not apply in the case of a condemnation action in which a final judgment or award has been made and is not appealed.
- (3) The sale of individual units or developed portions of an RRH, RCH or LH project shall require the prior concurrence and authorization of the National Office.

(4) If property to be sold or exchanged is to be used for the same or similar purpose for which the Rural Development loan or grant was made, the purchaser shall execute Form RD 400-4. The agreement will remain in effect as long as the property continues to be used for the same or similar purpose for which the Rural Development loan or grant was made.

(5) The consideration is at least equal to the market value of the security property disposed of or the rights being granted. However, right-of-way easements may be granted or conveyed without consideration or with only the minimal consideration being offered if the approval official determines: the value of the security property will not be reduced; its suitability for the intended purpose will not be impaired; and the easement is granted for the borrower to develop additional lots or units which will be integrated into the project or to a public body for enhancement of streets or utilities benefiting the project.

(i) An Rural Development official authorized to appraise multi-unit housing properties shall either make a new appraisal as required by RD Instruction 1922-B (available in any Rural Development office) if the current appraisal is more than one year old, or supplement the present appraisal report by inserting in or attaching to the "Remarks" section, information as to the market value of the security disposed; or

(ii) The approval official may also accept a value determination for such easements which has been provided by other competent sources at no cost to the Government which is mutually acceptable to the borrower and Rural Development;

(iii) However, if the proceeds are to be used for development or enlargement, a new appraisal reflecting the market value of the security property as improved or enlarged will be made in all cases.

(iv) The State Director may request an appraisal for any transaction under this section involving security property whenever necessary.

(6) The remaining property is adequate security for the unpaid balance of the Rural Development loan, or the transaction will not adversely affect Rural Development's security position or interfere with the successful operation of the security property.

(7) The proceeds from the disposition of the security are used for one or more of the following purposes:

- (i) To pay the customary incidental closing costs such as title and recording fees appropriate to the transaction, including additional real estate tax the borrower is required to pay for the year for which arrangements to pay cannot otherwise be made.
 - (ii) To pay debts owed to any prior lienholders.
 - (iii) To make extra payments on the Rural Development loan.
 - (iv) To pay costs necessary to determine the reasonableness of an offer or asking price, such as fees for appraisal of minerals, land, or timber where the necessary appraisal cannot be obtained without costs.
 - (v) To pay real estate brokers' commission if a borrower can reasonably expect to obtain proceeds in an amount at least equal to the commission in excess of what could otherwise be obtained had the sale been made without the assistance of the real estate broker.
 - (vi) To develop or enlarge the borrower's facility for purposes for which a loan of the same type involved could be made, if the development or enlargement is necessary to improve the borrower's debt-paying ability, place the operation on a more sound basis, or otherwise further the objectives of the Rural Development loan. Any proposed development will be planned and performed according to Subpart A of Part 1924 of this chapter and funds to be used for development or enlargement will be handled according to Subpart A of Part 1902 of this chapter.
 - (vii) To purchase or acquire property to be used for purposes for which a loan of the same type involved is authorized, if the Rural Development debt will be as well secured after the transaction as before. Rural Development will obtain a lien on the acquired property, and will obtain title evidence according to Subpart B of Part 1927 of this chapter. (Revised 03-31-92, SPECIAL PN.)
 - (viii) To pay any additional income tax which the borrower must pay for the year because of the capital gain or royalty tax attributable to the transactions. Funds for back taxes must be estimated and held in a supervised bank account until actual payment of the tax.
- (8) Rural Development liens are not released until receipt of the appropriate sales proceeds for application on the Government's claim.
- (d) Releasing security. Security for Rural Development loans addressed in this subpart will be released according to applicable program regulations and as follows:

(1) Borrowers will be held strictly accountable to the Rural Development for all proceeds derived from the sale of mortgaged property which the Rural Development is entitled to receive under its lien.

(2) Consent to disposition of part of, or an interest in, security property as authorized in this subpart may be given by approving a completed Form RD 465-1 or other forms approved by OGC or prescribed in State Supplements. Upon request for consent, the District Director will forward Form RD 465-1, the borrower's case folder, and any other pertinent information to the State Director.

(i) Chattel security may be released from a chattel mortgage by use of Form RD 460-1, "Partial Release," or other approved form, and from a security interest under the Uniform Commercial Code by use of Form RD 462-12, "Statements of Continuation, Partial Release, Assignment, Etc." Satisfaction or termination of chattel security instruments will be accomplished following the guidance of Subpart A of Part 1962 of this chapter.

(ii) Real estate security may be released by use of Form RD 460-1 or other form approved by OGC. Satisfaction or termination of real estate security instruments when the Rural Development debt has been paid in full or satisfied by debt settlement action will be accomplished with the use of Form RD 460-4, "Satisfaction."

(iii) Any consent which would result in the Rural Development loan account being paid in full will be subject to the prepayment provisions of §1965.90 of this subpart and Subpart E of this part as applicable to RRH, RCH, and LH loans. (Revised 08-20-93, SPECIAL PN.)

§1965.78 [Reserved]

§1965.79 Subordination.

(a) General policies. The State Director is authorized to approve requests for subordination of LH, RRH or RCH loans according to this section, if the total debt against the security after the transaction does not exceed the State Director's loan approval authority for the type of loan involved. Subordination by the State Director will only be considered for individual LH borrowers on farm tracts, multiple housing loans on nonfarm tracts to obtain construction financing, and in those cases where Rural Development loan funds are unavailable or the funds can be provided from the private sector at competitive or less costly

rates than those offered by Rural Development. All other subordination requests, and those exceeding the State Director's approval authority limit must be submitted to the National Office for prior authorization to approve. Each request for subordination will be made on Form RD 465-1. The District Director will forward a properly completed and executed copy of the form to the State Director with a memorandum containing any needed information to justify approval or disapproval of the request. (Revised 5-29-85, PN 966.)

(b) Conditions of approval. Subordination of the Rural Development lien will only be authorized when it will enable the present borrower to permit another creditor to refinance, extend, reamortize, or increase the amount of a prior lien, or place a lien ahead of the Rural Development lien. When the prior lien is being increased by an amount which exceeds normal transaction costs or a new prior lien is being placed against the security, an Rural Development official authorized to make appraisals for the type of project involved will supplement the present appraisal report by inserting in the "Remarks" section information as to the market value of the security after the transaction if the appraisal is less than one year old. If the appraisal is more than one year old, a new appraisal as required by RD Instruction 1922-B (available in any Rural Development office) must be completed. The State Director may also request an appraisal at any time deemed appropriate. In all cases, the following conditions must be met:

- (1) The Rural Development multiple housing account must be current and the borrower must be capable of providing adequate management.
- (2) The transaction must further the objectives for which the Rural Development loan or loans were made and Rural Development's debt must be adequately secured or will not be adversely affected.
- (3) The proposed use of the funds will improve the borrower's ability to repay the Rural Development loan(s) or is necessary to place the borrower's operation on a sound basis.
- (4) The borrower is unable to refinance the Rural Development loan on terms which can reasonably be expected to be met yet still meet the original intent of the program.
- (5) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as all other debts.
- (6) The amount of the indebtedness against the security property, including the amount of the subordination, will not exceed its present market value.

(7) When an increase in the amount of the prior lien or a new prior lien is involved, subordination will be granted only when the funds will be used for the same purposes for which the loan of the same type is authorized; except, all LH loans on a farm tract may be subordinated for essential farm improvements and any other purpose for which an Rural Development Farm Ownership loan can be made as des-

cribed in §1943.16 of Subpart A of Part 1943 of this chapter. LH loans will not be subordinated to provide operating capital or purchase chattels. If the LH loan is secured only by the LH units and the project site, the LH loan will only be subordinated for purposes for which an LH loan may be made.

(8) Any proposed development will be planned and performed according to Subpart A of Part 1924 of this chapter or in a manner directed by the other creditor which reasonably attains the objectives of Subpart A of Part 1924 of this chapter and is concurred with by the State Director.

(9) Funds to be used for development or enlargement of farm operations will be handled as prescribed for loan funds in Subpart A of Part 1902 of this chapter except that, if the creditor will not permit the use of a supervised bank account, arrangements should be made to assure that funds will be spent for planned purposes and should be approved by the District Director before being released.

(10) In case of land purchase, Rural Development will obtain the best lien obtainable on the land purchased.

(11) Subordinations need not cover the entire site. If a subordination is requested to permit an interim lender to advance construction funds, only the portion of the site scheduled for construction will be subordinated. If the entire farm tract has been taken as security for a LH loan, subordination of the lien on all property except the minimum adequate site, including necessary ingress and egress, on which the LH units are situated, may be authorized for any purpose consistent with the LH program regulations and paragraph (b)(7) of this subpart. For RHS loans, the prorated portion of the lien for the individual lots may be subordinated to permit construction of dwelling units utilizing conditional commitments as authorized in the RHS program regulations.

(12) All subordination requests will be forwarded to OGC for review. The guidance of OGC should be obtained in the preparation of the documents necessary to effect the subordination.

(13) The subordination is for a specific amount.

(14) The proposed action will not change the nature of the borrower's activities so as to make it ineligible for appropriate loan program assistance.

(15) The subordination must not adversely impact the agency's ability to service the loan according to program regulations, and has been determined to be within the bounds of good judgment considering the intent, funding limitations, and respective program authorities.

RD Instruction 1965-B
§1965.79 (b) (Con.)

(16) An agreement to provide notice of foreclosure must be obtained from any new prior lienholder as required in Subpart B of Part 1927 of this chapter. As appropriate, any junior lienholders consent to the transaction and use of proceeds will be obtained prior to approval of the transaction. (Revised 03-31-92, SPECIAL PN.)

§1965.80 [Reserved]

§1965.81 Severance agreements.

(a) General policies. Severance agreements or other instruments of similar effect under which a borrower may acquire through other credit, items such as laundry equipment, air conditioning units, and basic household furnishings that will not become part of real estate security, may be approved by the State Director, provided:

(1) The transaction will not adversely affect the Rural Development's security position and any additional obligations incurred will be within the borrower's repayment ability.

(2) The items covered by the severance agreement are needed in the successful operation of the security property.

(3) The financing arrangements are otherwise sound and proper.

(b) Handling requests. Requests will be made on Form RD 465-1. The District Director will forward to the State Director a properly completed and executed Form RD 465-1, any proposed severance agreement, the case file, and specific recommendations regarding the request.

(c) Consent and approval. The State Director will indicate approval or disapproval on Form RD 465-1. The OGC will be requested to prepare or approve the form of severance agreement and issue any special instructions when necessary.

§1965.82 [Reserved]

§1965.83 Consent to junior liens.

(a) General policies. Borrowers will be strongly discouraged from giving junior liens to other creditors on the Rural Development security property. Each request for consent to junior liens will be made on Form RD 465-1.

(b) Conditions of approval. The State Director may approve a junior lien if the request for the lien is authorized prior to the lien being placed against the property under the following conditions:

(1) The junior lien will enable the borrower to obtain additional credit to make needed improvements or repairs on the security

property for purposes for which a loan of the same type involved could be made and funds in the reserve account have been depleted. Except, zero interest loans available from other Federal, State or local agencies, authorities, or commissions; and those from utility companies regulated by such governmental bodies, may be secured by a junior lien when the State Director determines it is in the best interest of the Rural Development, borrower and tenants irrespective of the balance in the reserve account.

- (2) The junior lien will improve the borrower's total financial condition or debt-paying ability as it relates to the multiple family housing project.
- (3) The terms of the junior lien will not jeopardize the borrower's ability to repay the Rural Development indebtedness and, in the case of RRH, RCH, and LH loans, will not result in increased rental rates for the project unless authorized according to Exhibit C to Subpart C of Part 1930 of this chapter.
- (4) The junior creditor agrees in writing that foreclosure action under their lien will not be initiated before holding a discussion with the District Director and after giving a reasonable period of notice to Rural Development, and any operating plans of the junior lien holder are consistent with Rural Development requirements.
- (5) Security for the junior lien must not include project income or revenue.
- (6) No junior liens will be authorized in connection with a transfer of ownership.
- (7) The total debt (including the outstanding Rural Development loan balance) is within the State Director's approval authority.
- (8) All other requests for consent to junior liens must be submitted to the National Office with complete comments and recommendations from both the District Director and State Director, and all of the borrower's case files. Such requests will be reviewed on a case-by-case basis and appropriate authorization given or withheld depending on the individual merits of the proposal and its compatibility with the respective loan program requirement.
- (9) When a junior lien is placed on any property without the prior consent of Rural Development, the account will be serviced for liquidation with the guidance of OGC according to the security instruments. However, the State Director may request permission to post approve the junior lien by submitting a formal request to the National Office provided he/she determines that all other conditions set forth in this section are met.

§1965.84 [Reserved]

§1965.85 Default and liquidation.

(a) General. Liquidation will be recommended only after all efforts by Rural Development officials have failed to effect a satisfactory solution whereby the borrower will comply with its obligations under the note, mortgage, loan agreements or resolution, and all related security agreements and other instruments. Liquidation, whether by voluntary conveyance or foreclosure, will be handled in strict accordance with the provisions of Subpart A of Part 1955 of this chapter. Form RD 1965-11, "Accelerated Repayment Agreement," will not be used in lieu of foreclosure for RRH, LH, or RCH loans unless specific prior written authorization is received from the National Office. (Revised 4-9-86, PN 6.)

(b) Servicing delinquent accounts. Delinquent multiple housing accounts will be serviced according to the respective program requirements and the following:

(1) The District Director will service delinquent accounts with guidance and assistance as necessary from the State Director. Every delinquent borrower will be serviced according to a routine established for the particular loan type by the State Director. The following sequential steps should be taken for each delinquent account:

(i) Each quarterly delinquency Report Code 616 and 621 or other official Rural Development Report will be reviewed for accuracy by the State Director. The following delinquency classification system for multi-housing accounts may be used. The District Director will classify each account on the Report Code 621, as follows:

D1--Delinquent; a servicing plan or action has not been formulated

D2--Audit trail has been completed to verify amount delinquent

D3--Agreement has been made with borrower to become current within a set period

D4--Transfer or substitution of membership interests is in process to correct the delinquency

D5--Reamortization is in process

D6--Account has been accelerated

D7--Borrower is in bankruptcy

D8--Voluntary conveyance is planned

D9--A subsequent loan is planned to correct delinquency

D10--Other (litigation, abandonment before action taken etc.)

C1--Current (D/O records show the account current)

C2--Audit trail completed that shows D/O or F/O error (double maturities, misapplication, etc.) and action taken has been taken to correct the error.

C3--Account paid current since latest Report Code 616 or 621

C4--Other

C5--Requesting an exception to the late fee charged to the account according to Subpart K of Part 1951 of this Chapter when appropriate. (Added 5-1-85, SPECIAL PN.)

X1--Property in inventory (from foreclosure, voluntary conveyance or bankruptcy)

X2--Credit Sale finalized

X3--Charge-off of account in process

X4--Transfer of reamortization closed; waiting for F/O to process

X5--Other

(ii) If the report is in error, the District Director will immediately contact the Finance Office and provide any information necessary to correct the report and/or remove the account from the delinquent status. These communications with the Finance Office should be directed to the Multiple-Family Housing unit. Before contacting the Finance Office, the District Director must complete a field audit of the account to be submitted with the inquiry.

(iii) If the report is accurate and a delinquency indeed exists, the District Director will immediately contact the borrower to determine the

reason for the delinquency and will attempt to collect either in a lump sum or in additional monthly payments over a short period of time, usually not to exceed one year. This should include foregoing any cash return until the account is current.

(iv) Within 30 days of receipt of the quarterly delinquency report, the District Director will submit to the State Director a detailed report with specific comments and recommendations for servicing each delinquent account. This report will classify the accounts and indicate which accounts are actually delinquent. Emphasis will be placed on performing delinquency servicing actions to reduce true delinquencies. The State Director will assist the District Director in developing a realistic servicing plan for each delinquent account. The State Director will prepare a statewide delinquency reduction plan annually and update it quarterly based on the delinquency reports and information provided by the District Directors. Appropriate consideration should be given to reamortizing, transferring, conveying or foreclosing accounts recognizing the willingness of the borrower to cooperate and comply with Rural Development requirements and to meet the purposes for which the loan was made. Consideration should also be given to:

- (A) Adequate budgeting of project income and expenses.
- (B) Improving management and outreach.
- (C) Implementing interest credit and/or rental assistance if the borrower and project qualify.
- (D) Participating in the HUD Section 8 program for existing housing through the local Public Housing Agency (PHA).
- (E) Effecting a justified rent increase according to applicable program requirements.
- (F) Obtaining an assignment of project income.

(2) District Directors should be firm in dealing with the borrower or the borrower's representative.

§1965.85 (b) (2) (Con.)

However, the management agent is not the party ultimately responsible for the loan, and it is therefore imperative that the borrower fully understand the consequences for the default. Courtesy, cooperation and sound judgment must be involved. If the delinquent account cannot be brought current within a reasonable period, steps should be taken according to Subpart A of Part 1955 of this chapter to protect the Government's interest. District Directors should refer to Exhibit B of this Subpart (available in any Rural Development office) for guidance on resolving servicing difficulties and developing problem resolution or workout plans. (Revised 08-20-93, SPECIAL PN.)

(c) Failure to maintain reserves. A borrower's failure to maintain adequate reserves should be treated in a manner similar to delinquent accounts. The District Director should carefully monitor the required transfers to the reserve account. Borrowers who fail to make the required transfers or use reserve funds without prior Rural Development authorizations should be carefully counseled. Demand should be made upon borrowers misusing the reserve account to promptly correct any deficiency. As appropriate, the District Director may request assistance from the State Director. As necessary to protect the Government's interest, assistance from OGC should be requested through the State Office.

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(d) Nonmonetary defaults. Attempts to resolve nonmonetary defaults should be handled whenever possible at the District Office level with appropriate guidance and assistance from the State Office. The State Director should counsel with OGC, to determine the appropriate servicing actions in those cases where nonmonetary defaults cannot be resolved at the District Office level. These actions may include liquidation of the account.

(e) Liquidation. Liquidation of all multiple-family type loans will be handled according to the applicable portions of Subpart A of Part 1955 of this chapter. In cases of forced liquidation where the acceleration notice has been delivered and the borrower has willfully failed to make the required loan payments, eligible tenants are not occupying the units and/or the borrower is not collecting the approved rents or transmitting the required payments to Rural Development, any outstanding interest credit agreement will be canceled after the appeal period prescribed in Subpart B of Part 1900 of this chapter has expired. However, the rental assistance agreement will not be canceled until the foreclosure action has been completed and the redemption period has expired according to paragraph XV B 4 of Exhibit E of Subpart C of Part 1930 of this chapter. In no cases will RA be renewed during the redemption period. In all liquidation cases, the State Director will be responsible for the final decision to liquidate the account based upon an opinion from the OGC and the following information supplied by the District Director: (Revised 02-21-91, SPECIAL PN.)

- (1) The specific recommendations of the District Director on the method of carrying out the liquidation.
- (2) The case file and any other pertinent information developed in support of the accusations,
- (3) A summary of Rural Development efforts to work out an acceptable solution short of liquidation,
- (4) A current appraisal of the security property as required by RD Instruction 1922.B (available in any Rural Development office) will be completed by an Rural Development official authorized to make that particular type of appraisal and an estimate of the net amount that may be realized from the sale of the assets,
- (5) The most recent balance sheet or financial statement from the borrower.
- (6) A current statement of account from the Finance Office, and
- (7) A problem case report using Form RD 465-7, "Report on Real Estate Problem Case," or Exhibit A to Subpart A of Part 1955 of this chapter as appropriate.

§1965.86 [Reserved]

§1965.87 Miscellaneous security.

(a) Membership liability agreements. As a loan approval requirement, some borrowers may have special agreements with members of the organization for the purchase of shares of stock or for the payment of a pro rata share of the loan in the event of default, or they may have instruments which are commonly referred to as individual liability agreements which are usually assigned to and held by the Rural Development as additional security for the loan. In other cases the borrower's note may be endorsed by individuals. These security and liability instruments will be serviced in a manner indicated by the agreements to adequately protect the interest of the Rural Development. The State Director will develop servicing actions with the assistance of OGC.

(b) Other security. Other security such as collateral assignments, assignments of rents, Housing Assistance Payments Contracts, and notices of lienholder interest will be serviced according to acceptable practices in the respective states. The State Director should develop any special servicing actions with the assistance of OGC to protect the interest of Rural Development. Evidence of the security will be filed in the loan docket in the District Office. A notation will be made on the Management System Card showing that the security has been retained. When other security is taken, a plan for servicing it should be developed by the approval official and included as an approval condition at the outset.

§1965.88 Obtaining additional security for inadequately secured loans.
(Renumbered 7-20-90, SPECIAL PN)

(a) General policies. As a general policy, additional security for multiple housing loans should not be needed or taken to protect the interest of Rural Development. However, the State Director may authorize taking additional security in the form of real estate or other security as described in §1965.87(b) of this Subpart when the additional security is needed to enhance the chances that the Rural Development will not suffer a loss and any of the following conditions exist:

- (1) The account is behind schedule.
- (2) The property has not been properly managed or maintained.
- (3) There is serious doubt that the borrower can carry out the objectives of the loan.

(b) Conditions of approval. In cases where the District Director determines that the conditions as stated in paragraph (a) of this section exist, the borrower's case file will be forwarded to the State Director with a memorandum providing the following information:

- (1) The facts which justify the taking of additional security.
 - (2) A conservative estimate of the market value of any real estate to be mortgaged; however, it will not be necessary to make a formal appraisal of the property to be mortgaged unless determined necessary by the State Director.
 - (3) A brief description of any existing liens on the additional security including the repayment terms and the unpaid balance.
 - (4) The name of the title holder and how title to the property is held. Title evidence need not be required.
 - (5) A plan for servicing the additional security to be taken.
 - (6) A description of the other servicing alternatives available to assure that the objectives of the loan will be met and to protect the Government from loss.
- (c) Processing. The guidance and assistance of OGC will be obtained whenever additional security is taken. The highest quality security available will be taken whenever additional security is considered.

§1965.89 Equity take-out for loans made after December 15, 1989.

For initial loans made or insured pursuant to contracts entered into on or after December 15, 1989, equity loans may be guaranteed by Rural Development after a 20-year period, from the date of the loan, has elapsed. The following steps will be followed when a borrower wishes to receive this equity: (Revised 01-27-92, SPECIAL PN.)

- (a) Borrower submits a plan requesting an equity loan which ensures that the cost of amortizing the loan doesn't result in the displacement of very low-income tenants or substantially alter the income mix of the tenants in the project.
- (b) Rural Development will determine whether the housing will continue to remain decent, safe, and sanitary and that the local housing market is such that the housing will continue to meet the needs of eligible tenants for the remaining life of the initial loan.
- (c) In accordance with the prepayment conditions outlined in Subpart E of this part, Rural Development will offer to guarantee an equity loan to the borrower which may be repaid from an occupancy surcharge account in accordance with Subpart K of Part 1951 of this chapter. In addition,

it must be determined that such an equity loan would not impose any undue hardship on tenants or an unreasonable cost to the Federal Government. The guaranteed loan will not exceed the lesser of:
(Revised 08-20-93, SPECIAL PN.)

(1) The amount determined and calculated in accordance with the equity loan instructions contained in Subpart E of this part, or

(2) Thirty percent of the appraised value of the project at the time of the initial loan as shown on the appraisal for that loan.

(d) If the borrower indicates preliminary acceptance of the equity loan, an application will be completed in accordance with Subpart E of Part 1944 of this chapter and two appraisals will be conducted in the manner outlined in Subpart E of this part for loans to nonprofit organizations. (Revised 08-20-93, SPECIAL PN.)

(e) When the actual amount of the guaranteed equity loan is determined, the borrower will indicate acceptance of the loan. (Added 7-20-90, SPECIAL PN.)

§1965.90 Payment in full. (Revised 08-20-93, SPECIAL PN.)

(a) Prepayment of MFH loans. Subpart E of this part must be complied with for all MFH loans that are planned to be prepaid prior to the scheduled final due date of the loan.

(b) Borrower responsibility. Borrowers must advise the District Office servicing the account of any plan to pay the account in full 6 months prior to the date of the planned payment in full.

(c) Rural Development responsibility. The Rural Development District Office must ensure payments in full and releases of security are processed in accordance with Subpart D of Part 1951 of this chapter and other appropriate program requirements and regulations. Rural Development's interest in property insurance will be released in accordance with §1806.4 (a)(3) of Subpart A of Part 1806 of this chapter (paragraph IV A 3 of RD Instruction 426.1). In all cases, references to County Supervisors will be construed to mean District Directors when applied to MFH borrowers.

§1965.91 Servicing loans in formerly eligible areas.

All servicing actions contained in this subpart are authorized without regard to whether the area is no longer defined as an eligible area.

§1965.92 Information to be provided to IRS on RRH transfers, voluntary conveyances, foreclosures, and 100% membership changes.

State Offices are to provide information to the National Office for submission to IRS at their request on RRH transfers, voluntary conveyances and foreclosures that were finalized (the deed recorded) subsequent to January 22, 1985. In addition, information is to be provided on changes of membership interests that are covered under §1965.63 of this subpart which result in a 100 percent change in the entity membership, such as, beneficial interests, partnership interests and stock transfers. Exhibit A to this subpart, (available in any Rural Development office) must be completed for each project affected with the particular attention given to supplying the Employer Identification and/or the Social Security numbers of the parties involved. Field Offices should not contact the borrowers or transferees for information that is not otherwise available from the casefiles, except in the case of missing Taxpayer Identification numbers. Exhibit A (available in any Rural Development office) will be prepared when the servicing action is completed and sent to the National Office within 30 days of the servicing action. (Revised 08-20-93, SPECIAL PN.)

§1965.93 [Reserved]

§1965.94 State Supplements.

State Supplements will be prepared with the advice of OGC as necessary to comply with State laws and to provide guidance to the District Director in the servicing actions required. All State Supplements, unless specifically authorized by particular subsections of this subpart must be submitted for prior National Office approval before implementation. Requests for approval must include complete justification, citations of State law, and appropriate legal opinions from the respective Regional Attorney.

§1965.95 [Reserved]

§1965.96 Nondiscrimination.

Each instrument of conveyance for any transfer or foreclosure sale of real property subject to Title VI of the Civil Rights Act of 1964 will contain the following covenant: "The property described herein was

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obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 and the regulations as issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended or for so long as the purchaser owns it, whichever is later."

§1965.97 Exception authority.

The Administrator of the Farmers Home Administration may, in individual cases, make an exception to any requirement of this Subpart not inconsistent with the authorizing statute if the Administrator finds that application of the requirement would adversely affect the interest of the Government or the immediate health or safety of the tenants or the community. The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data which demonstrates the adverse impact, identifies the particular requirement involved, shows proper alternative courses of action, and identifies how the adverse impact will be eliminated.

§§1965.98 - 1965.99 [Reserved]

§1965.100 OMB control number. (Revised 06-19-91, PN 167.)

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0100. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 4.25 hours per response, with an average of 1.67 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575-0100), Washington, D.C. 20503.

Attachments: Exhibits A and B.

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Loan balance(s) at disposition	Date Title Change Recorded
\$ _____	_____
\$ _____	

V. Transferee Information:

Transferee Name: _____

Address: _____

Taxpayer Identification No. _____

Type of transferee entity: Individual _____ Corporation _____ Other _____

Limited Partnership _____ General Partnership _____ Trust _____

Principal Name: _____

Address: _____

Taxpayer Identification No. _____

Principal Name: _____

Address: _____

Taxpayer Identification No. _____

VI. Membership Changes: (complete for 100 percent changes in membership only)

Identify the interest that has been changed or substituted: _____

Principal Name: _____

Address: _____

Taxpayer Identification No. _____

Principal Name: _____

Address: _____

Taxpayer Identification No. _____

VII. Transfer Information:

Sales Price	\$_____	Cash paid at sale	\$_____
Assumption Amount	\$_____	To be paid on terms	\$_____
Equity	\$_____	No. of years on note	_____

VIII. Appraisal Information:

Rural Development Appraised Value \$_____ Date of Appraisal

Instructions:

- I. Indicate the type of action by checking the appropriate box.
- II. Insert the project name, location, and the Rural Development case number.
- III. Insert the names, addresses, and the Taxpayer Identification numbers (Employer Identification or Social Security numbers) of the borrower entity and the principals (i.e., general partner(s), co-owners, major stockholders, etc.). Attach a list of additional principals, if necessary. Indicate the type of borrower entity by checking the appropriate lien.
- IV. Insert the loan number(s) and the date(s) received. In cases where the project was previously transferred, insert the assumption amount(s) and the dates approved. The loan amount(s) at disposition and the date the title change was recorded must be indicated. The title change date may not be the same as the transfer closing date or the date the deed of conveyance was accepted. In the case of a membership change, delete "Date Title Change Recorded" and add the effective date of the change.
- V. For transfers only, insert the names, addresses, and the Taxpayer Identification numbers (Employer Identification or Social Security numbers) of the transferee entity and the principals (i.e., general partners, co-owners, major stockholders, etc.). Attach a list of additional principals, if necessary. Indicate the type of transferee entity by checking the appropriate item.
- VI. Identify the interest that has been changed or substituted within the borrower entity and the percent of the change. Insert the names, addresses, and the Taxpayer Identification numbers (Employer Identification or Social Security numbers) for those who have been substituted into the entity through a stock transfer, substitution of partners, assignment of beneficial interest in a trust, etc.
- VII. Indicate the sales price, the loan assumption amount, and the equity payment to the transferor. When there is an entity payment, indicate whether it was in cash at closing, on terms secured by a note, or a combination of both.
- VIII. Insert the market value of the project as indicated on the most recent Rural Development appraisal. Indicate the date of the appraisal. This information should be included for transfers, foreclosures, and voluntary conveyances.

Administrative--Servicing Problem Resolution or Workout Plans.

In resolving servicing difficulties and developing problem resolution or workout plans, Agency officials should:

I. Identify causes for problems. Identify problem projects and the underlying cause(s) of the problem(s) (i.e., management, marketing, lack of a market, etc.).

II. Hold resolution discussions. Meet with the borrower or borrower's representative, agree on the cause of the problem, and agree on a timeframe for resolution. Potential resources for resolving the problem should be discussed and priorities set to identify how resources will be used. A servicing or workout plan should be developed according to §1965.85 (b)(1) of this Instruction when appropriate.

III. Consider resolution options. Consider and decide on specific options to resolve problems. A list of possible problems and potential solutions are as follows:

A. Poor management and/or noncompliance with program requirements may be resolved by:

1. Compliance resolution plan. Agreeing on a plan to achieve program compliance (i.e., updating maintenance plans, obtaining financial information, audits, etc.). A commitment of owner financial resources may be required when appropriate.
2. Borrower training. Training of resident managers may be charged as a project expense if directly related to improving project operations.
3. Acquiring or changing resident managers or management agents.
4. Improve normal, preventative and long-term maintenance and repair programs to make the project more marketable.
5. Improve budget and recordkeeping, and use monthly reports (see §1930.122 of RD Instruction 1930-C). Major expenditures should be reviewed for appropriateness.
6. Improve outreach and marketing. Project marketing plans, including the Affirmative Fair Housing Marketing Plan, should be reviewed and updated as appropriate.

B. Where management is acceptable, marketability and cash flow problems may be resolved through:

1. Upgrading project desirability by:
 - a. Performing necessary and preventive maintenance.
 - b. Improving curb appeal at the project.
 - c. Improving security for tenants (i.e., installing deadbolts, more lighting, etc.).
 - d. Improving communication between management, residents, and the community.
2. Reducing expenditures by:
 - a. Reviewing the appropriateness of operating and expense levels in relation to services rendered. However, it is not intended that management fees must always be adjusted as a condition for consideration of the servicing options set out herein. Operation and expense levels may be reduced by:
 - (A) Containing operation and maintenance costs which will not disrupt project operations.
 - (B) Renegotiating contracts with suppliers of material and services.
 - (C) Temporarily deferring non-critical maintenance, provided tenant safety and project marketability are preserved.
 - b. Postponing a return on investment (see RD Instruction 1930-C, Exhibit B, paragraph XII B 2.)
 - c. Eliminating or reducing a return on investment.
 - d. Temporarily reducing or deferring reserve contribution levels.
 - e. Scheduling Rural Development loan payments in accordance with the borrower's repayment ability during an interim workout plan. The provisions of the plan must be documented. Form RD 440-9, "Supplementary Payment Agreement," may be used

as part of the documentary material. The issuance of Form RD 1944-9A, "Multiple Family Housing Statement of Payment Due," will normally be suppressed during the period in which an interim workout plan, calling for less than the normal full scheduled installment, is effective. To suppress issuance of Form RD 1944-9A, process through use of the appropriate screen on the Automated Multi-Housing Accounting System (AMAS). Upon expiration of the interim workout plan, a review will be conducted to determine any further servicing actions which may be appropriate (i.e., reamortizing, rescheduling, executing a new servicing plan and/or Supplementary Payment Agreement which may call for higher than normal payments, preparing a problem case report, etc.). As long as a borrower is meeting the provisions of an approved interim workout plan calling for less than full installments, late fees will be waived in accordance with the provisions of RD Instruction 1951-K.

3. Increasing revenues by:

a. Injecting non-project revenues (see RD Instruction 1930-C, Exhibit B, paragraph XII C.)

b. Requesting Rental Assistance or other tenant subsidies (see RD Instruction 1930-C, Exhibit B, paragraph IV.)

c. Permitting temporary incentives to improve occupancy.

(A) Temporary incentives may be used for improving occupancy when the following conditions exist:

1 A project is encountering unacceptable vacancy levels.

2 The incentives are short term, modest, and consistent with program objectives.

3 Recipients are given a clear understanding of the extent and limits of the incentive.

4 The use of incentives is fully accounted for on project budgets and annual reports.

(B) The following are types of incentives that may be provided:

1 Security deposit reductions or waivers by owners, and extended security deposit payment periods.

2 Reduced rent. This can be in the form of rebates, coupons, or a temporary agreement.

3 Free rent. However, caution should be used in providing the first month rent free due to the possibility of abuse.

4 Reduce or free utilities.

5 Referral fee payments.

6 Rent-up gift to the tenant.

(C) Source of funds occupancy incentives:

1 Non-project sources.

2 Forgone return to owner.

3 Project funds. Project funds (including funds obtained from interest free loans) may only be used when approved by Rural Development in advance as part of a servicing or workout plan developed in accordance with §1965.85 (b)(1) of this Instruction. When project funds are used to provide temporary incentives, they must be shown to be cost-effective (i.e., the revenues derived will outweigh the costs of providing the incentives.)

d. Permitting a release, in the form of a rental assistance (RA) check, a portion of the monthly RA intended for debt service, to be used for project operation and maintenance.

C. Where management is acceptable, but there is a lack of project demand or a problem of obtaining/retaining eligible tenants, the problems may be resolved by:

1. Granting occupancy waivers in accordance with RD Instruction 1930-C, Exhibit B, paragraph VI.

2. Changing the project designation (see §1930.125 of RD Instruction 1930-C.)

3. Implementing Special Servicing Market Rate Rents. (see Exhibit C of RD Instruction 1930-C.)

IV. Restore long-term stability. Restore long-term stability by reamortizing or rescheduling project loans for problems that cannot be readily resolved using the servicing techniques listed above. Normally, reamortization actions are used at the end of successful interim workout plans when it appears problems can likely be resolved.

V. Consider major changes. When the situation requires major changes in the current loan or project operations, consider:

- A. Membership changes, especially changes of managing owners.
- B. Transfer and assumption.
- C. Liquidation.

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