

Law 103-354 (FmHA or its successor agency under Public Law 103-354) may have subordinated their first lien position to CCC on the original grain placed in reserve and/or may have a first lien on the new crop. FmHA or its successor agency under Public Law 103-354 and CCC desire to devise a mechanism whereby the CCC can relinquish its first lien position on the original grain reserve crop to FmHA or its successor agency under Public Law 103-354 and in turn the FmHA or its successor agency under Public Law 103-354 can relinquish its first lien position to CCC on the replacement grain reserve crop.

Now, therefore, it is agreed as follows:

(1) Upon receipt of a memorandum from an Agricultural Stabilization and Conservation Service (ASCS) County Executive Director or other designated county office official requesting the rotation of a grain reserve crop for a producer borrower(s), the FmHA or its successor agency under Public Law 103-354 County Supervisor and the ASCS county office official will jointly indicate approval or rejection of the request on the bottom of the original and a copy of the memorandum (Approval Memorandum) as follows:

"We hereby agree to and authorize the rotation of the subject producer's grain crops in accordance with the provisions of the Memorandum of Understanding between Farmers Home Administration or its successor agency under Public Law 103-354 and Commodity Credit Corporation dated _____."

FmHA or its successor agency under Public Law 103-354 _____

ASCS _____

In the memorandum, ASCS will include the name(s) of the producer(s) desiring to rotate the grain crops, the approximate number of bushels being rotated, the type of crop, years' crop being rotated and the location of the original grain reserve crop (approximate land and facility description).

(2) Upon execution of the Approval Memorandum by both ASCS and FmHA or its successor agency under Public Law 103-354, the security interest of FmHA or its successor agency under Public Law 103-354 in the new crop grain shall be subordinated to the security interest of CCC in such grain and the security interest of CCC in the original crop grain shall be subordinated to the security interest of FmHA or its successor agency under Public Law 103-354 in such grain. At that point in time it will be the responsibility of each agency and the borrower to account for their respective interests in the grain crops and/or proceeds from the sale of the grain. The crop rotation and subordination of liens will only involve the amount of grain that has been specifically provided for in the memorandum from ASCS.

(3) If there is an intervening third party lien and it is impossible for FmHA or its successor agency under Public Law 103-354 or

CCC to have a first lien on their respective grain crops, the request of the producer to rotate crops will not be granted.

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

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

[44 FR 4437, Jan. 22, 1979]

EXHIBITS D—D-1 TO SUBPART A OF PART 1962 [RESERVED]

EXHIBIT E TO SUBPART A OF PART 1962—
RELEASING SECURITY SALES PROCEEDS AND DETERMINING "ESSENTIAL" FAMILY LIVING AND FARM OPERATING EXPENSES

Family Living Expenses

Expenses for household operating, food, clothing, medical care, house repair, transportation, insurance and household appliances, i.e., stove, refrigerator, etc., are essential family living expenses. We do not expect there will be any disagreements over this. However, when proceeds are less than expenses, there might be disagreements about the amounts FmHA or its successor agency under Public Law 103-354 should release to pay for particular items within these broad categories. For example, FmHA or its successor agency under Public Law 103-354 has to release for transportation expenses, but should FmHA or its successor agency under Public Law 103-354 release so that a borrower can buy a new car? If at planning time or during the crop year it appears that there will be sales proceeds available to pay for the borrower's operating and living expenses, including the expense of a new car, the Form FmHA or its successor agency under Public Law 103-354 1962-1 can be completed to show that FmHA or its successor agency under Public Law 103-354 plans to release for a new car. On the other hand, it would also be proper to complete the Form FmHA or its successor agency under Public Law 103-354 1962-1 to release for a used car or for gas and repairs to the borrower's present car. Since it is necessary for FmHA or its successor agency under Public Law 103-354 to release for essential family living expenses and because transportation is an essential family living expense, some proceeds must be released for transportation. However, nothing requires FmHA or its successor agency under Public Law 103-354 to release for a specific expense; usually, there will be several ways to use proceeds to provide for essential family living expenses. We must provide the borrower with a written decision and an opportunity to appeal whenever there

is a disagreement over the use of proceeds or whenever we reject a request for a release.

Farm Operating Expenses

We would expect farm operating expenses to present more of a problem than family living expenses. There will probably be a few disagreements over whether an expense is an operating expense (as opposed to a capital expense), but it is more likely that there will be disagreements over the amount FmHA or its successor agency under Public Law 103-354 should release for operating expenses and whether a particular farm operating expense is "essential." As is the case with family living expenses, disagreements will most likely arise when proceeds are less than expenses.

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

Section 1962.17 of this subpart states that essential expenses are those which are "basic, crucial or indispensable." Whether an expense is basic, crucial or indispensable depends on the circumstances. For example, feed is a farm operating expense, but it is not always an essential expense. If adequate pasture is available to meet the needs of the borrower's animals, feed is not essential. Feed is essential if animals are confined in lots. Hiring a custom harvester is a farm operating expense, but is not an essential expense if the farmer has the equipment and labor to harvest the crop just as well as a custom harvester. Hired labor is an operating expense which might be essential in a dairy operation but not in a beef cattle operation. Payments to creditors are essential if the creditor is unable to restructure the debt or to carry the debt delinquent. Renting land is not essential if the borrower plans to use it to grow corn which can be purchased for less than the cost of production. Paying outstanding bills is essential if a supplier is refusing to provide additional credit but not if the supplier is willing to carry a balance due. Of course, the long term goal of any farming operation is to pay all of its expenses, but when this is not possible, FmHA or its successor agency under Public Law 103-354 and the borrower must work together to decide which farm operating expenses are essential and demand immediate attention and cannot be neglected. These are the essential expenses.

We absolutely must release to pay for essential family living and farm operating expenses; there are no exceptions to this. When

deciding whether an expense is essential and when deciding how much to release, the choices we make must be rational, reasonable, fair and not extreme. They must be based on sound judgment, supported by facts, and explained to the borrower. Following these rules will help us avoid disagreements with borrowers.

[56 FR 15829, Apr. 18, 1991]

EXHIBIT F TO SUBPART A OF PART 1962
[RESERVED]

PART 1965—REAL PROPERTY

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989, 42 U.S.C. 1480.

Subparts A-E [Reserved]

PART 1980—GENERAL

Subparts A-C [Reserved]

Subpart D—Rural Housing Loans

Sec.

- 1980.301 Introduction.
- 1980.302 Definitions and abbreviations.
- 1980.303-1980.307 [Reserved]
- 1980.308 Full faith and credit and indemnification.
- 1980.309 Lender participation in guaranteed RH loans.
- 1980.310 Loan purposes.
- 1980.311 Loan limitations and special provisions.
- 1980.312 Rural area designation.
- 1980.313 Site and building requirements.
- 1980.314 Loans on leasehold interests.
- 1980.315 Escrow accounts for exterior development.
- 1980.316 Environmental requirements.
- 1980.317 Equal opportunity and non-discrimination requirements in use, occupancy, rental, or sale of housing.
- 1980.318 Flood or mudslide hazard area precautions.
- 1980.319 Other Federal, State, and local requirements.
- 1980.320 Interest rate.
- 1980.321 Terms of loan repayment.
- 1980.322 Loan guarantee limits.
- 1980.323 Guarantee loan fees.
- 1980.324 Charges and fees by Lender.
- 1980.325 Transactions which will not be guaranteed.
- 1980.326-1980.329 [Reserved]
- 1980.330 Applicant equity requirements.
- 1980.331 Collateral.
- 1980.332 [Reserved]
- 1980.333 Promissory notes and security instruments.