

## § 1951.10

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*year's income* will be distributed in accordance with the following priorities:

(i) *First*, to an amount equal to any advances made by FmHA or its successor agency under Public Law 103-354 for the crop year's living and operating expenses. If no advances were made, distribute the payment according to paragraph (a)(1)(ii) of this section. If the amount of the payment was greater than the amount of any advances, the excess should be distributed according to paragraph (a)(1)(ii) of this section.

(ii) *Second*, to FmHA or its successor agency under Public Law 103-354 loans in proportion to the approximate amounts due on each for the year. In determining the amounts due for the year, deduct an amount equal to any advances for the year's living and operating expenses. If the amount of the payment exceeds the amount of any advances *plus* the amount due on each loan for the year, the excess should be distributed according to paragraph (a)(1)(iii) of this section.

(iii) *Third*, to FmHA or its successor agency under Public Law 103-354 loans in proportion to the delinquencies existing on each. If the amount of the payment exceeds the amount of any advances *plus* the amount due on each loan for the year *plus* any delinquencies, the excess should be distributed according to paragraph (a)(1)(iv) of this section.

(iv) *Fourth*, as advance payments on FmHA or its successor agency under Public Law 103-354 loans. In making such distribution consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(2) When the County Supervisor determines it is reasonable to expect that the income which will be available for payment on FmHA or its successor agency under Public Law 103-354 debts will be sufficient to pay the installments scheduled for the year under the first and second priorities, collections may be distributed so as to avoid unnecessary delinquencies, and regular payments derived from rental or lease of real estate security after approval of foreclosure or voluntary conveyance will be distributed to the real estate lien of the highest priority.

(3) Payments will be distributed differently than the priorities provided in this section if accounts are out of balance or a different distribution is needed to protect the government's interest.

(4) Any income received from the sale of softwood timber on marginal land converted to the production of softwood timber must be applied on the ST loan(s).

(b) *Distribution of extra payments.* Extra payments will be distributed first to the FmHA or its successor agency under Public Law 103-354 loan having highest priority of lien on the security from which the payment was derived. When the payment is in excess of the unpaid balance of the FmHA or its successor agency under Public Law 103-354 lien having the highest priority, the balance of such payment will be distributed to the FmHA or its successor agency under Public Law 103-354 loan having the next highest priority.

(c) *Application of payments.* After the decision is reached as to the amount of each payment that is to be distributed to the different loan types, application of the payment will be governed by §§ 1951.10 or 1951.11 of this subpart as appropriate.

[50 FR 45764, Nov. 1, 1985, as amended at 52 FR 26134, July 13, 1987; 53 FR 35717, Sept. 14, 1988]

### § 1951.10 Application of payments on production type loan accounts.

Employees receiving payments on OL, EO, SW codes "24," EM for subtitle B purposes, EE operating-type, and other production-type loan accounts will select, in accordance with the provisions of this section, the account(s) to which such payment will be applied. All payments on OL and EM loans approved on or before December 31, 1971, will be credited first to any administrative costs, then to noncapitalized interest, then to the amount of accrued deferred interest, and then to principal. All payments on all other loans including OL and EM loans approved after December 31, 1971, will be credited first to any administrative costs, then to noncapitalized interest, then to the amount of accrued deferred interest, then to interest accrued to the date of the payment and then to principal, in

accordance with the terms of the note. This section only applies after the County Supervisor determines the amount of proceeds that will be released for other purposes in accordance with the annual plan (Form FmHA or its successor agency under Public Law 103-354 431-2) and Form FmHA or its successor agency under Public Law 103-354 1962-1.

(a) *Rules for selection of accounts.* The following rules will govern the selection of accounts and installments to which payments will be applied. As used in this section, "recoverable costs" are those which the loan agreement documents say the borrower is primarily responsible for paying and which the government can charge to the borrower's account.

(1) Payments from farm income or from assignments of income will be applied first to accounts with small balances, including recoverable costs, to remove such accounts from the records. Any balance will be applied on debts secured by the lien in the following order:

(i) To amounts due or falling due on loans made in connection with the current year's operations, except:

(A) When funds loaned for the purchase of capital goods were used to meet the current year's operating expenses, payments will be applied first to the final unpaid installments to the extent of the loan funds so used. These payments will be treated as extra payments.

(B) When installments on loans previously made fall due before the installment on the loan for the current year's operations or when such loans are delinquent and it is anticipated that sufficient income will be received to meet the installment on the current year's operations when due, collections may be applied first to installments on loans made in previous years.

(ii) To accounts having the oldest delinquencies, or if no delinquencies, to the oldest unpaid account, except that the amount available for payment on OL and EM loan accounts will be prorated between the two accounts on the basis of:

(A) The delinquent amount owed on each, or

(B) The total amount owed on each if there are no delinquencies.

(2) Non-farm income and payments derived from the sale of real estate security, will be applied to the earliest account secured by the earliest lien covering such security. The amount to be applied to principal will be applied to the final unpaid installment(s).

(3) On partial refunds of loan advances, the amount to be applied to the principal will be applied to the final unpaid installment on the note which evidences such advance; however, a refund of an advance for current farm and home expenses repayable within the year may be applied to the principal on the first unpaid installment on such note as a regular payment.

(4) Total refunds of loan advances will be applied to the notes which evidence such advances.

(5) In applying payments from sources other than those in paragraphs (a)(2), (3), and (4) of this section the borrower has the right to select the loan account or accounts on which such payments will be applied. In the absence of the borrower's selection, such payments generally will be applied in the following order:

(i) To accounts with small balances, including recoverable costs.

(ii) To accounts with the oldest unsecured note(s).

(iii) To accounts with the oldest delinquencies.

(iv) To accounts with the oldest secured note or notes.

(6) Employees receiving collections are authorized to make exceptions to paragraphs (a)(1), (2), and (6) of this section when it is necessary to apply a part of a payment to delinquent accounts to prevent the Federal Statute of Limitations from being asserted as a defense in suits on FmHA or its successor agency under Public Law 103-354 claims.

(b) *Payments in full.* Errors of a significant amount in computation or collection will be called to the attention of the collection official by the Finance Office. The borrower's note will not be returned until the balance on the loan account is paid in full. Claims by or on behalf of the borrowers that the amounts owed have been computed

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incorrectly will be referred to the Finance Office.

[50 FR 45764, Nov. 1, 1985, as amended at 53 FR 35717, Sept. 14, 1988; 54 FR 46844, Nov. 8, 1989; 57 FR 18680, Apr. 30, 1992]

### § 1951.11 Application of payments on real estate accounts.

(a) *Regular payments.* If a borrower owes more than one type of real estate loan, or has received initial and subsequent real estate loans on which separate accounts are maintained, payments on such accounts should be applied so as to maintain the note accounts approximately in balance at the end of the year with respect to installments due on the notes, other charges, and delinquencies.

(b) *Refunds and extra payments.* (1) Refunds will be applied to the note representing the loan from which the advance was made.

(2) Extra payments will be applied to the note secured by the earliest mortgage on the property from which the extra payment was obtained.

(3) Funds remaining from an RH grant or a combination loan and grant, after completion of development, will be refunded. If the borrower received a combination loan and grant, the remaining funds up to the amount of the grant are considered to be grant funds.

(c) *County Office actions.* (1) The collecting official will complete Form FmHA or its successor agency under Public Law 103–354 451–1, “Acknowledgment of Cash Payment,” in accordance with the FMI when cash or money orders are received as a payment.

(2) The collection official will complete Form FmHA or its successor agency under Public Law 103–354 451–2, “Schedule of Remittances,” in accordance with the FMI.

(d) *Finance Office handling.* (1) Regular payment will be handled as follows.

(i) Payments will be applied first to satisfy any administrative costs such as a charge for an uncollectible check. (The amounts of any such charges are available from any FmHA or its successor agency under Public Law 103–354 office.)

(ii) Amounts paid on direct loan accounts will be credited to the borrower’s account as of the date of Form

FmHA or its successor agency under Public Law 103–354 451–2 or for direct payments the date payment is received in the Finance Office, and will be applied first to a portion of any interest which accrues during the deferral period, second to interest accrued to the date received and third to principal, in accordance with the terms of the note.

(iii) Amounts paid on insured loan accounts will be credited to the borrower’s account as of the date of Form FmHA or its successor agency under Public Law 103–354 451–2 or for direct payments the date payment is received in the Finance Office, and will be applied in the following order:

(A) Advances from the insurance funds as shown on the latest *Form FmHA or its successor agency under Public Law 103–354 389–404*, “Analysis of Accounts Maturing.” (If the collection is intended for final payment of the loan, or to pay the insurance account in connection with an assumption agreement, the collection will be applied first to the interest accrued on the advance to the date of the payment.)

(B) Principal advanced from the insurance fund.

(C) Unamortized costs.

(D) Amount due for amortized costs for taxes and insurance.

(E) Unpaid loan insurance charges, including the current year’s charge, when applicable.

(F) First to a portion of any interest which accrues during the deferral period, second to accrued interest to the date of the payment on the note account and then to the principal balance of the note account in accordance with the terms of the note.

(2) Extra payments and refunds will be credited to the borrower’s note account as of the date of Form FmHA or its successor agency under Public Law 103–354 451–2 and will be applied first to a portion of any interest which accrues during the deferral period, second to interest accrued to the date of the receipt and third to principal in accordance with the terms of the note. The amount to be applied to principal will be applied to the final unpaid installment(s). Extra payments and refunds will not affect the schedule status of a