

PART 1951 - SERVICING AND COLLECTIONS

Subpart E - Servicing of Community and Direct Business Programs
Loans and Grants

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- Exhibit A - Report on Servicing Action
- Exhibit B - Agreement for New Member (With or Without Withdrawing Member)
- Exhibit C - Agreement for Withdrawal of Member (Without New Member)
- Exhibit D - Items to be Included in Transfer and Assumption Dockets (if applicable)
- Exhibit E - Interest Rate Requirements and Effective Dates
- Exhibit F - Instruction to Rural Development Personnel to Implement Public Law 100-233
- Exhibit G - Letter to Borrower Notifying of Choice of Interest Rate
- Exhibit H - Rescheduling Agreement - Public Bodies

PART 1951--SERVICING AND COLLECTIONS

Subpart E - Servicing of Community and Direct Business Programs Loans and Grants

§ 1951.201 Purposes.

This subpart prescribes the Rural Development mission area policies, authorizations, and procedures for servicing the following programs: Community Facility loans and grants, Rural Business Enterprise/Television Demonstration grants; loans for Grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Direct Business loans; Economic Opportunity Cooperative loans; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; System for Delivery of Certain Rural Development Programs panel grants; in part 4284 of this title, Rural and Cooperative Development Grants, Value-Added Producer Grants, and Agriculture Innovation Center Grants. Rural Development State Offices act on behalf of the Rural Business-Cooperative Service and the Farm Service Agency as to loan and grant programs formerly administered by the Farmers Home Administration and the Rural Development Administration. Loans sold without insurance to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans. This subpart does not apply to Water and Waste Programs of the Rural Utilities Service, Watershed loans, and Resource Conservation and Development Loans, which are serviced under part 1782 of this title. (Revised 10-29-07, SPECIAL PN.)

§ 1951.202 Objectives.

The purpose of loan and grant servicing functions is to assist recipients to meet the objectives of loans and grants, repay loans on schedule, comply with agreements, and protect Rural Development's financial interest. Supervision by Rural Development includes, but is not limited to, review of budgets, management reports, audits and financial statements; performing security inspections and providing, arranging for, or recommending technical assistance; evaluating environmental impacts of proposed actions by the borrower; and performing civil rights compliance reviews.

Distribution: WSAL

Account Servicing
Servicing and
Collections

§ 1951.203 Definitions.

- (a) Approval official. An official who has been delegated loan and/or grant approval authorities within applicable programs, subject to the dollar limitations of Exhibits A and B of RD Instruction 1901-A (available in any Rural Development office). (Revised 01-07-05, SPECIAL PN.)
- (b) Assumption of debt. The agreement by one party to legally bind itself to pay the debt incurred by another.
- (c) CONACT. The Consolidated Farm and Rural Development Act, as amended.
- (d) Eligible applicant. An entity that would be legally qualified for financial assistance under the loan or grant program involved in the servicing action.
- (e) Ineligible applicant. An entity or individual that would not be considered eligible for financial assistance under the loan or grant program involved in the servicing action.
- (f) Nonprogram (NP) loan. An NP loan exists when credit is extended to an ineligible applicant and/or transferee in connection with loan assumptions or sale of inventory property; any recipient in cases of unauthorized assistance; or a recipient whose legal organization has changed as set forth in § 1951.220(e) of this subpart resulting in the borrower being ineligible for program benefits.
- (g) Servicing office. The State, District, or County Office responsible for immediate servicing functions for the borrower or grantee.
- (h) Transfer fee. A one-time nonrefundable application fee, charged to ineligible applicants for Rural Development services rendered in the processing of a transfer and assumption.

§ 1951.204 Nondiscrimination.

Each instrument of conveyance required for a transfer, assumption, or other servicing action under this subpart will contain the following covenant:

§ 1951.204 (Con.)

"The property described herein was obtained or improved with Federal financial assistance and is subject to the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, and other similarly worded Federal statutes, and the regulations issued pursuant thereto that prohibit discrimination on the basis of race, color, national origin, handicap, religion, age, or sex in programs or activities receiving Federal financial assistance. Such provisions apply for as long as the property continues to be used for the same or similar purposes for which the Federal assistance was extended, for so long as the purchaser owns it, whichever is later."

§1951.205 Redelegation of authority.

Servicing functions under this subpart which are specifically assigned to the State Director may be redelegated in writing to an appropriate sufficiently trained designee.

§1951.206 Forms.

Forms utilized for actions under this subpart are to be modified appropriately where necessary to adapt the forms for use by corporate recipients rather than individuals.

§ 1951.207 State supplements.

State supplements developed to carry out the provisions of this subpart will be prepared in accordance with Subpart B of Part 2006 of this chapter (available in any Rural Development office) and applicable State laws and regulations. State supplements are to be used only when required by National Instructions or necessary to clarify the impact of State laws or regulations, and not to restate the provisions of National Instructions. Advice and guidance will be obtained as needed from the Office of the General Counsel (OGC).

§§ 1951.208 - 1951.209 [Reserved]

§ 1951.210 Environmental requirements.

Servicing actions as defined in § 1970.6 of this chapter are part of the financial assistance already provided and do not require additional NEPA review. Actions such as lien subordinations, sale or lease of Agency-owned real property, or approval of a substantial change in the scope of a project, as defined in § 1970.8, must comply with the environmental review requirements in accordance with 7 CFR part 1970. (Revised 04-01-16, SPECIAL PN.)

§ 1951.211 Refinancing requirements.

In accordance with the CONACT, Agency requires for most loans covered by this subpart that if at any time it shall appear to the Government that the borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan. Applicable requirements are set forth in Subpart F of Part 1951 of this chapter. A civil rights impact analysis is required. (Revised 04-02-98, SPECIAL PN.)

§ 1951.212 Unauthorized financial assistance.

Subpart O of Part 1951 of this chapter prescribes policies for servicing the loans and grants covered under this subpart when it is determined that a borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, subsidy, or any other direct financial assistance.

§ 1951.213 Debt settlement.

Subpart C of Part 1956 of this chapter prescribes policies and procedures for debt settlement actions for loans covered under this subpart when it is determined that a debt is eligible for settlement except as provided in §§ 1951.216 and 1951.231.

§ 1951.214 Care, management, and disposal of acquired property.
(Revised 04-02-98, SPECIAL PN.)

Property acquired by Government will be handled according to Subparts B and C of Part 1955 of this chapter.

§ 1951.215 Grants.

No monitoring action by the Agency is required after grant closeout. Grant closeout is when all required work is completed, administrative actions relating to the completion of work and expenditure of funds have been accomplished, and the Agency accepts final expenditure information. However, grantees remain responsible in accordance with the terms of the grant for property acquired with grant funds.

(a) Applicability of requirements. Servicing actions relating to Agency grants are governed by the provisions of this subpart, the terms of the Grant Agreement and, if applicable, the provisions of 7 CFR 3015, 3016, and 3017.

(1) Servicing actions will be carried out in accordance with the terms of the "Association Water or Sewer System Grant Agreement," and RUS Bulletin 1780-12, "Water and Waste Grant Agreement." Grant agreements with a revision date on or after January 29, 1979, require that the grantee request disposition instructions from the Agency before disposing of property which is no longer needed for original grant purposes. (Revised 04-02-98, SPECIAL PN.)

(2) When facilities financed in part by grants are transferred or sold, repayment of all or a portion of the grant is not required if the facility will be used for the same purposes and the new owner provides a written agreement to abide by the terms of the grant agreement. (Revised 04-02-98, SPECIAL PN.)

(3) 7 CFR 3015 first became effective on November 10, 1981; 7 CFR 3016 on October 1, 1988; and 7 CFR 3017 on March 18, 1989. Grants made on or after those dates are subject to the provisions of those regulations except to the extent of the express provisions of the Grant Agreement.

§ 1951.215 (Con.)

(b) Authorities. Subject to the requirements of § 1951.215(a), authority to approve servicing actions is as follows:

(1) For water and waste disposal grants, the State Director is authorized to approve any servicing actions needed, except that prior approval of the Administrator is required when property acquired with grant funds is disposed of in accordance with §§ 1951.227, 1951.230, or 1951.232 of this subpart and the buyer or transferee refuses to assume all terms of the grant agreement.

(Revised 01-07-05, SPECIAL PN.)

(2) All other grants will be serviced in accordance with the Grant Agreement and this subpart. Prior approval of the Administrator is required except for actions covered in the preceding paragraph.

§ 1951.216 Nonprogram (NP) loans.

Borrowers with NP loans are not eligible for any program benefits, including appeal rights. However, Agency may use any servicing tool under this subpart necessary to protect the Government's security interest, including reamortization or rescheduling. The refinancing requirements of Subpart F of Part 1951 of this chapter do not apply to NP loans. Debt settlement actions relating to NP loans must be handled under the Federal Claims Collection Act; proposals will be submitted to the National Office for review and approval. Any exception to the servicing requirements of NP loans under this subpart must have prior concurrence of the National Office.

§1951.217 Public bodies.

Servicing actions involving public bodies will be carried out to the extent feasible according to the provisions of this subpart. With prior National Office approval, the State Director is authorized to vary from such provisions if necessary and approved by OGC, provided such variation will not violate other regulatory or statutory provisions. To request approval, the case file, including copies of applicable documents, recommendations, and OGC comments, will be forwarded to the Administrator, Attention: (appropriate program division).

§1951.218 Use of Rural Development loans and grants for other purposes.

(a) If, after making a loan or a grant, the Administrator determines that the circumstances under which the loan or grant was made have sufficiently changed to make the project or activity for which the loan or grant was made available no longer appropriate, the Administrator may allow the loan borrower or grant recipient to use property (real and personal) purchased or improved with the loan or grant funds, or proceeds from the sale of property (real and personal) purchased with such funds, for another project or activity that:

- (1) Will be carried out in the same area as the original project or activity;
- (2) Meets the criteria for a loan or grant described in section 381E(d) of the Consolidated Farm and Rural Development Act, as amended; and
- (3) Satisfies such additional requirements as are established by the Administrator.

(b) For the purpose of this section, Administrator means the Administrator of the Rural Housing Service or Rural Business-Cooperative Service that has the delegated authority to administer the loan or grant program that covers the property or the proceeds from the sale property proposed to be used in another way.

(c) If the new use of the property is under the authority of another Administrator, the other Administrator will be consulted on whether the new use will meet the criteria of the other program. Since the new project or activity must be carried out in the same area as the original project or activity, a new rural area determination will not be necessary.

(d) Borrowers and grantees that wish to take advantage of this option may make their request through the appropriate Rural Development State Office. Permission to use this option will be exercised on a case-by-case-basis on applications submitted through the State Office to the Administrator for consideration. If the proposal is approved, the Administrator will issue a memorandum to the State Director outlining the conditions necessary to complete the transaction.

§1951.219 [Reserved]

§1951.220 General servicing actions.

(a) Payment in full. Payment in full of a loan is handled according to Subpart D of Part 1951 of this chapter. When a loan is paid in full, the servicing official will: (Revised 02-10-92, SPECIAL PN.)

(1) Notify the company providing fidelity bond coverage in writing that the government no longer has an interest in the bond if the government is named co-obligee on the bond.

(2) Release Rural Development's interest in insurance policies according to applicable provisions of Subpart A of Part 1806 (RD Instruction 426.1).

(3) Release Rural Development's interest in any other security as appropriate, consulting with OGC if necessary.

(b) Loan summary statements. Upon request of a borrower, Rural Development will issue a loan summary statement showing account activity for each loan made or insured under the CONACT. Field offices will post a notice on the bulletin board informing borrowers of the availability of loan summary statements. See Exhibit A of Subpart A of this part for a sample of the required notice.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards to field offices a copy of Form RD 1951-9, "Annual Statement of Loan Account," to be retained in borrower files as a permanent record of account activity for the year.

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§1951.220 (b) (Con.)

(2) Quarterly Forms RD 1951-9 are retained in the Finance Office on microfiche. These statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. Servicing offices may request copies of these quarterly or annual statements by sending Form RD 1951-57, "Request for Loan Summary Statement," to the Finance Office.

(3) The servicing office will provide a copy of the applicable loan summary statement to the borrower on request. A copy of Form RD 1951-9 and, for loans with unamortized installments, a printout of future installments owed obtained using the borrower status screen option in the Automated Discrepancy Processing System (ADPS), will constitute the loan summary statement to be provided to the borrower.

(c) Insurance. Rural Development borrowers shall maintain insurance coverage as follows:

(1) Community and Insured Business Programs borrowers shall continuously maintain adequate insurance coverage as required by the loan agreement and §1942.17(j) (3) of Subpart A of Part 1942 of this chapter. Insurance coverage must be monitored in accordance with the above-referenced section to determine that adequate policies and bonds are in force.

(2) For all other types of loans covered by this subpart, property insurance will be serviced according to Subpart A of Part 1806 of this chapter (RD Instruction 426.1) in real estate mortgage cases, and according to the loan agreement in other cases.

(d) Property taxes. Real property taxes are serviced according to Subpart A of Part 1925 of this chapter. If State statutes permit a personal property tax lien to have priority over Rural Development's lien, such taxes are serviced according to §§1925.3 and 1925.4 of Subpart A of Part 1925 of this chapter. (Revised 08-13-92, SPECIAL PN.)

(e) Changes in borrower's legal organization.

(1) The State Director may approve, with OGC's concurrence, changes in a recipient's legal organization, including revisions of articles of incorporation or charter and bylaws, when:

(i) The change does not provide for a sole member type of organization;

(ii) The borrower retains control over its assets and the operation, management, and maintenance of the facility, and continues to carry out its responsibilities as set forth in §1942.17(b) (4) of Subpart A of Part 1942 of this chapter; and (Revised 05-19-92, SPECIAL PN.)

§ 1951.220(e) (1) (Con.)

(iii) The borrower retains significant local ties with the rural community.

(2) The State Director may approve, with prior concurrence of the Administrator, changes in a recipient's legal organization which result in a sole member type of organization, or any other change which results in a recipient's loss of control over its assets and/or the operation, management and maintenance of the facility, provided all of the following have been or will be met:

(i) The change is in the best interest of the Government;

(ii) The State Director determines and documents that other servicing options under this subpart, such as sale or transfer and assumption, have been explored and are not feasible;

(iii) The loan is classified as a nonprogram loan;

(iv) The borrower is notified that it is no longer eligible for any program benefits, but will remain responsible under the loan agreement; and

(v) Prior concurrence of the Administrator is obtained. Requests will be forwarded to the Administrator: Attention (appropriate program division), and will include the case file; Exhibit A of this subpart (available in any RD office), appropriately completed; the proposed changes; OGC comments; and any other necessary supporting information.

(f) Membership liability. As a loan approval requirement, some borrowers may have special agreements with members for the purchase of shares of stock or for payment of a pro rata share of the loan in the event of default, or they may have authority in their corporate instruments to make special assessments in that event. Such agreements may be referred to as individual liability agreements and may be assigned to and held by Rural Development as additional security. In other cases the borrower's note may be endorsed by individuals. The liability instruments will be serviced in a manner indicated by their contents and the advice of OGC to adequately protect Rural Development interest. Servicing actions necessary due to such provisions will be tracked in Multi-Family Housing Information System (MFIS).

(Revised 02-24-05, SPECIAL PN.)

(g) Other security. Other security such as collateral assignments, water stock certificates, notices of lienholder interest (Bureau of Land Management grazing permits) and waivers of grazing privileges (Forest Service grazing permits) will be serviced to protect the interest of Rural Development, and in compliance with any special servicing actions developed by the State Director with OGC assistance. Evidence of the security will be filed in the servicing office case file. Necessary servicing actions will be noted in MFIS. (Revised 02-24-05, SPECIAL PN.)

(h) Correcting errors in security instruments. Land, buildings, or chattels included in a mortgage through mutual mistake may be released from the mortgage by the State Director when substantiated by the factual situation. The release is contingent on the State Director determining, with OGC advice, that the property was included due to mutual error.

(i) Present market value determination. For purposes of this subpart, the value of security is determined by the approval official as follows:

(1) Security representing a relatively small portion of the total value of the security property. The approval official will determine that the real estate and chattels are disposed of at a reasonable price. A current appraisal report may be required.

(2) Security representing a relatively large portion of the total value of the security property. The approval official will require a current appraisal report, and the sale prices of the real estate and chattels disposed of will at least equal the present market value as determined by this appraisal.

(3) Appraisal report. If required, a current appraisal report will be completed in accordance with § 1942.3 of Subpart A of Part 1942 of this chapter. The appraisal will be completed by a qualified Rural Development employee or an independent appraiser as determined appropriate by the approval official.

§ 1951.221 Collections, payments and refunds. Collections are processed in accordance with Subpart B of Part 1951 of this chapter. Payments and refunds are handled in accordance with the following:

(a) Community and Insured Business Programs.

(1) Field offices can obtain data on principal installments due for Community and Insured Business Programs loans with unamortized installments using the borrower status screen option in the ADPS.

§ 1951.221(a) (Con.)

(2) Regular payments for Community and Insured Business Programs borrowers are all payments other than extra payments and refunds. Such payments are usually derived from facility revenues, and do not include proceeds from the sale of security. They also include payments derived from sources which do not decrease the value of Rural Development security.

(i) Distribution of such payments is made as follows:

(A) First, to the Rural Development loan(s) in proportion to the delinquency existing on each. Any excess will be distributed in accordance with paragraphs (a)(2)(i)(B) and (C) of this section.

§ 1951.221(a)(2)(i) (Con.)

(B) Second, to the Rural Development loan or loans in proportion to the approximate amounts due on each. Any excess will be distributed according to paragraph (a)(2)(i)(C) of this section.

(C) Third, as advance payments on Rural Development loans. In making such distributions, consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(ii) Unless otherwise established by the debt instrument, regular payments will be applied as follows:

(A) For amortized loans, first to interest accrued (as of the date of receipt of the payment), and then to principal.

(B) For principal-plus-interest loans, first to the interest due through the date of the next scheduled installment of principal and interest and then to principal due, with any balance applied to the next scheduled principal installment.

(3) Extra payments are derived from sale of basic chattel or real estate security; refund of unused loan funds; cash proceeds of property insurance as provided in § 1806.5(b) of Subpart A of Part 1806 (paragraph V. B. of RD Instruction 426.1); and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be distributed and applied as follows:

(i) First to the account secured by the lowest priority of lien on the property from which the extra payment was obtained. Any balance will be applied to other Rural Development loans in ascending order of priority.

(ii) For amortized loans, first to interest accrued to the date payment is received, and then to principal. For debt instruments with installments of principal plus interest, such payments will be applied to the final unpaid principal installment.

(b) Soil and Water Conservation Loans. (Revised 04-07-04, PN 373.)

(1) Regular payments for such loans are defined in § 1951.8(a) of Subpart A of Part 1951 of this chapter, and are distributed according to § 1951.9(a) of that subpart unless otherwise established by the note or bond.

(2) Extra payments are defined in § 1951.8(b) of Subpart A of Part 1951 of this chapter, and are distributed according to § 1951.9(b) of that subpart.

§ 1951.222 Subordination of security.

When a borrower requests Rural Development to subordinate a security instrument so that another creditor or lender can refinance, extend, reamortize, or increase the amount of a prior lien; be on parity with; or place a lien ahead of the Rural Development lien, it will submit a written request to the servicing office as provided below. For purposes of this subpart, subordination is defined to include cases where a parity security position is being considered.

(a) General. The following requirements must normally be met:

(1) The request must be for subordination of a specific amount of the Rural Development indebtedness, and the amount must be within the approval official's authority as set forth in Exhibits A and B of RD Instruction 1901-A (available in any Rural Development office). (Revised 01-07-05, SPECIAL PN.)

(2) It must be determined that the borrower cannot refinance its Rural Development debt in accordance with Subpart F of Part 1951 of this chapter.

(3) The transaction will further the purposes for which the Rural Development loan was made, not adversely affect the borrower's debt-paying ability, and result in the Rural Development debt being adequately secured.

(4) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as the requirements of all other debts.

(5) Any proposed development work will be planned and performed according to § 1942.18 of Subpart A of Part 1942 of this chapter or in a manner directed by the creditor which reasonably attains the objectives of that section.

(6) All contracts, pay estimates, and change orders will be reviewed and concurred in by the State Director.

(7) In cases involving land purchase, the Rural Development will obtain a mortgage on the purchased land.

(8) When the transaction involves more than \$10,000 or the approval official considers it necessary, a present market value appraisal report will be obtained. However, a new report need not be obtained if there is an appraisal report not over one year old which permits a proper determination of the present market value of the total property after the transaction.

(9) The proposed action must not change the nature of the borrower's activities so as to make it ineligible for Rural Development loan assistance.

(10) Necessary consent and subordination of all other outstanding security interests must be obtained.

(b) Authorities. Proposals not meeting one or more of the above requirements will be submitted to the Administrator, Attention (appropriate program division) for prior concurrence. All other proposals may be approved by the official with loan approval authority under Subpart A of Part 1901 of this chapter.

(c) Processing. The case file is to include:

(1) The borrower's written request on Form RD 465-1, "Application for Partial Release, Subordination, or Consent," if appropriate, or in other acceptable format. The request must contain the purpose of the subordination; exact amount of money or property involved; description of security property involved; type of security instrument; name, address, line of business and other general information pertaining to the party in favor of which the request is made; and other pertinent information to evaluate the need for the request;

(2) Current balance sheet;

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§ 1951.222(c) (Con.)

- (3) If development work is involved, an operating budget on Form RD 442-7, "Operating Budget," or similar form which projects income and expenses through the first full year of operation following completion of planned improvements; or if no development work is involved, an income statement and budget on Form RD 442-2, "Statement of Budget, Income, and Equity," schedules 1 and 2, or similar form;
- (4) Copy of proposed security instrument;
- (5) Appraisal report, when applicable;
- (6) OGC opinion on the request;
- (7) Exhibit A of this subpart (available in any Rural Development office), appropriately completed;
- (8) Appropriate environmental review; and
- (9) Any other necessary supporting information.

(d) Closing. All requests for subordination will be closed according to instructions from OGC except those which affect only chattel liens other than pledges of revenue. Rural Development consent on Form RD 465-1 will be signed concurrently with Form RD 460-2, "Subordination by the Government," when applicable.

§ 1951.223 Reamortization.

- (a) State Director authorization. The State Director is authorized to approve reamortization of loans under the following conditions:
- (1) The account is delinquent and cannot be brought current within one year while maintaining a reasonable reserve;
 - (2) The borrower has demonstrated for at least one year by actual performance or has presented a budget which clearly indicates that it is able to meet the proposed payment schedule;
 - (3) The amount being reamortized is within the State Director's loan approval authorization; and
 - (4) There is no extension of the final maturity date.

§ 1951.223(a) (Con.)

(b) Requests requiring National Office approval. Reamortizations not meeting the above conditions require prior National Office approval. Requests will be forwarded to the National Office with the case file, including:

- (1) Current budget and cash flow prepared on Form RD 442-2, schedules 1 and 2, or similar form;
- (2) Current balance sheet and income statement;
- (3) Exhibit A of this subpart, appropriately completed;
- (4) Form RD 1951-33, "Reamortization Request," completed in accordance with § 1951.223(c)(3) of this subpart, when applicable; and (Revised 03-19-08, SPECIAL PN.)
- (5) Any other necessary supporting information.

(c) Processing. When legally permissible and administratively acceptable, the total outstanding principal and interest balances will be reamortized rather than only the delinquent amount. Accrued interest will be at the rate currently reflected in Finance Office records.

(1) Reamortizations will be perfected in accordance with OGC closing instructions.

(2) When debt instruments are being modified or new debt instruments executed, bond counsel or local counsel, as appropriate, must provide an opinion indicating any effect on Rural Development security position. The Rural Development approval official must determine that the government's interest will remain adequately protected if the security position will be affected.

(3) Notes. Except as provided in § 1951.223(c)(4), loans evidenced by notes will be reamortized through a new evidence of debt unless OGC recommends that the terms of the existing document be modified. Form RD 1951-33 may be used to effect such modifications, if legally adequate, or other forms may be used if acceptable to Rural Development. The original of a new note or any endorsement required by OGC is to be attached to the existing note, filed in the servicing office, and retained until the account is paid in full or otherwise satisfied. A copy will be forwarded to the Finance Office. (Revised 03-19-08, SPECIAL PN.)

(4) Bonds and notes with other than real or chattel security pledged to Rural Development. Loans evidenced by bonds, or by notes with other than real or chattel security pledged to Rural Development, may be reamortized using procedures acceptable to the State Director and legally permissible under State statutes in the opinion of the borrower's counsel and the OGC.

(i) The procedure may consist of a new debt instrument or agreement for the total Rural Development indebtedness, including the delinquency, or a new instrument or agreement whereby the borrower agrees to repay the delinquency plus interest. If a new instrument or agreement for only the delinquent amount is used, a new loan number will be assigned to the delinquent amount, and the borrower will be required to pay the amounts due under both the original and the new instruments.

(ii) When a delinquent or problem loan cannot be reamortized by issuing a new debt instrument due to State statutes, or the cost of preparation and closing is prohibitive, the rescheduling agreement provided as Exhibit H of this subpart (available in any Rural Development office), may be used.

(iii) Section 1942.19 of Subpart A of Part 1942 of this chapter applies to any new bonds issued unless precluded by State statutes or an exception is approved by the National Office.

(iv) If State statutes do not require the release of existing bonds, they will be retained with the new bond instrument or agreement in the Rural Development office authorized to store such documents. If State statutes require release of existing bonds, the exchange will be accomplished by the District Director, and the new bond and/or agreement will be retained in the appropriate office.

(5) New debt instruments or agreements.

(i) A copy will be sent to the Finance Office after execution, except that if serial bonds are used, the original bond(s) will be submitted to the Finance Office.

(ii) Any agreement used will contain:

(A) The amount delinquent, which must equal the total delinquency on the account and net advances (the unpaid principal on any advance and the accrued interest on any advance through the date of reamortization, less interest payments credited on the advance account);

(B) The effective date of the reamortization;

(C) The number of years over which the delinquency will be amortized;

(D) The repayment schedule; and

(E) The interest rate.

(iii) A payment will be due on the next scheduled due date. Deferment of interest and/or principal payments is not authorized.

(iv) A separate new instrument will be required for each loan being reamortized.

(v) If amortized payments are not used, the schedule of principal installments developed will be such that combined payments of principal and interest closely approximate an amortized payment.

(d) Reamortization with interest rate adjustment - Water and Waste borrowers only. A borrower that is seriously delinquent in loan payments may be eligible for loan reamortization with interest rate adjustment. The purpose of loan reamortization with interest rate adjustment is to provide relief for a borrower that is unable to service the outstanding loan in accordance with its existing terms and to enhance recovery on the loan. A borrower must meet the conditions of this subpart to be considered eligible for this provision.
(Added 08-05-98, PN 294.)

(1) Eligibility determination. The State Director, Rural Development, may submit to the Administrator for approval an adjustment in the rate of interest charged on outstanding loans only for those borrowers who meet the following requirements:

- (i) The borrower has exhausted all other servicing provisions contained in this subpart;
- (ii) The borrower is experiencing severe financial problems;
- (iii) Any management deficiencies must have been corrected or the borrower must submit a plan acceptable to the State office to correct any deficiencies before an interest rate adjustment may be considered;
- (iv) Borrower user rates must be comparable to similar systems. In addition, the operating expenses reported by the borrower must appear reasonable in relation to similar system expenses;
- (v) The borrower has cooperated with Rural Development in exploring alternative servicing options and has acted in good faith with regard to eliminating the delinquency and complying with its loan agreements and agency regulations; and
- (vi) The borrower's account must be delinquent at least one annual debt payment for 180 days.

(2) Conditions of approval. All borrowers approved for an adjustment in the rate of interest by the Administrator shall agree to the following conditions:

- (i) The borrower shall agree not to maintain cash or cash reserves beyond what is reasonable at the time of interest rate adjustment to meet debt service, operating, and reserve requirements.

(ii) A review of the borrower's management and business operations may be required at the discretion of the State Director. This review shall be performed by an independent expert who has been recommended by the State Director and approved by the National office. The borrower must agree to implement all recommendations made by the State Director as a result of the review.

(iii) If requested, a copy of the latest audited financial statements or management report must be submitted to the Administrator.

(3) Reamortization. At the discretion of the Administrator, the interest rate charged on outstanding loans of eligible borrowers may be adjusted to no less than the poverty interest rate and the term of the loans may be extended up to a new 40 year term or the remaining useful life of the facility, whichever is less.

§1951.224 Third party agreements.

The State Director may authorize all or part of a facility to be operated, maintained or managed by a third party under a contract, management agreement, written lease, or other third party agreement as follows:

(a) Leases.

(1) Lease of all or part of a facility (except when liquidation action is pending). The State Director may consent to the leasing of all or a portion of security property when:

(i) Leasing is the only feasible way to provide the service and is the customary practice as required under §1942.17(b) (4) of Subpart A of Part 1942 of this chapter; (Revised 05-19-92, SPECIAL PN.)

(ii) The borrower retains ultimate responsibility for operating, maintaining, and managing the facility and for its continued availability and use at reasonable rates and terms as required under §1942.17(b) (4) of Subpart A of Part 1942 of this chapter. The lease agreement must clearly reflect sufficient control by the borrower over the operation, maintenance, and management of the facility to assure that the borrower maintains this responsibility; (Revised 05-19-92, SPECIAL PN.)

(iii) The lease agreement contains provisions prohibiting any amendments to the lease or any subleasing arrangements without prior written approval from Rural Development;

(iv) The lease document contains nondiscrimination requirements as set forth in §1951.204 of this subpart;

(v) The lease contains a provision which recognizes that Rural Development is a lienholder on the subject facility and, as such, the lease is subordinate to the rights and claims of Rural Development as lienholder; and

(vi) The lease does not constitute a lease/purchase arrangement, unless permitted under §1951.232 of this subpart.

(2) Lease of all or part of a facility (pending liquidation action). The State Director may consent to the leasing of all or a portion of security property when:

(i) The lease will not adversely affect the repayment of the loan or the Government's rights under the security or other instruments;

- (ii) The State Director has determined that liquidation will likely be necessary and the lease is necessary until liquidation can be accomplished;
- (iii) Leasing is not an alternative to, or means of delaying, liquidation action;
- (iv) The lease and use of any proceeds from the lease will further the objective of the loan;
- (v) Rental income is assigned to Rural Development in an amount sufficient to make regular payments on the loan and operate and maintain the facility unless such payments are otherwise adequately secured;
- (vi) The lease is advantageous to the borrower and is not disadvantageous to the Government;
- (vii) If foreclosure action has been approved and the case has been submitted to OGC, consent to lease and use of proceeds will be granted only with OGC's concurrence; and
- (viii) The lease does not exceed a one-year period. The property may not be under lease more than two consecutive years without authorization from the National Office. Long-term leases may be approved, with prior authorization from the National Office, if necessary to ensure the continuation of services for which the loan was made and if other servicing options contained in this subpart have been determined inappropriate for servicing the loan.

(b) Mineral leases. Unless liquidation is pending, the State Director is authorized to approve mineral leases when:

- (1) The lessee agrees, or is liable without any agreement, to pay adequate compensation for any damage to the real estate surface and improvements. Damage compensation will be assigned to Rural Development or the prior lienholder by the use of Form RD 443-16, "Assignment of Income from Real Estate Security," or other appropriate instrument;
- (2) Royalty payments are adequate and are assigned to Rural Development on Form RD 443-16 in an amount determined by the State Director to be adequate to protect the government's interest;
- (3) All or a portion of delay rentals and bonus payments may be assigned on Form RD 443-16 if needed for protection of the Government's interest;

- (4) The lease, subordination, or consent form is acceptable to OGC;
- (5) The lease will not interfere with the purpose for which the loan or grant was made; and
- (6) When Rural Development consent is required, the borrower submits a completed Form RD 465-1. The form will include the terms of the proposed agreement and specify the use of all proceeds, including any to be released to the borrower.

(c) Management agreements. Management agreements should contain the minimum suggested contents contained in Guide 24 of Part 1942, Subpart A of this chapter (available in any Rural Development office).

(d) Affiliation agreements. An affiliation agreement between the borrower and a third party may be approved by the State Director, with OGC concurrence, if it provides for shared services between the parties and does not result in changes to the borrower's legal organizational structure which would result in its loss of control over its assets and/or over the operation, management, and maintenance of the facility to the extent that it cannot carry out its responsibilities as set forth in §1942.17(b) (4) of Subpart A of Part 1942 of this chapter. However, affiliation agreements which result in a loss of borrower control may be approved with prior concurrence of the Administrator if the loan is reclassified as a nonprogram loan and the borrower is notified that it is no longer eligible for any program benefit. Requests forwarded to the Administrator will contain the case file, the proposed affiliation agreement, and necessary supporting information. (Revised 05-19-92, SPECIAL PN.)

(e) Processing. The consent of other lienholders will be obtained when required. When National Office approval is required, or if the State Director wishes to have a transaction reviewed prior to approval, the case file will be forwarded to the National Office and will include:

- (1) A copy of the proposed agreement;
- (2) Exhibit A of this subpart (available in any Rural Development office), appropriately completed.
- (3) Any other necessary supporting information.

§1951.225 Liquidation of security.

When the District Director believes that continued servicing will not accomplish the objectives of the loan, he or she will complete Exhibit A of this subpart (available in any Rural Development office), and submit it with the District Office file to the State Office. If the State Director determines the account should be liquidated, he or she will encourage the borrower to dispose of the Rural Development security voluntarily through a sale or transfer and assumption, and establish a specified period, not to exceed 180 days, to accomplish the action. If a transfer or voluntary sale is not carried out, the loan will be liquidated according to Subpart A of Part 1955 of this chapter.

§1951.226 Sale or exchange of security property.

A cash sale of all or a portion of a borrower's assets or an exchange of security property may be approved subject to the conditions set forth below.

(a) Authorities.

(1) The District Director is authorized to approve actions under this section involving only chattels.

(2) The State Director is authorized to approve real estate transactions except as noted in the following paragraph.

(3) Approval of the Administrator must be obtained when a substantial loss to the Government will result from a sale; one or more members of the borrower's organization proposes to purchase the property; it is proposed to sell the property for less than the appraised value; or the buyer refuses to assume all the terms of the Grant Agreement. It is not Rural Development policy to sell security property to one or more members of the borrower's organization at a price which will result in a loss to the Government.

(b) General. Approval may be given when the approval official determines and documents that:

(1) The consideration is adequate;

(2) The release will not prevent carrying out the purpose of the loan;

(3) The remaining property is adequate security for the loan or the transaction will not adversely affect Rural Development's security position;

(4) If the property to be sold or exchanged is to be used for the same or similar purposes for which the loan or grant was made, the purchaser will:

§ 1951.226(b) (4) (Con.)

(i) Execute Form RD 400-4, "Assurance Agreement." The covenants involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan or grant was made. The instrument of conveyance will contain the covenant referenced in § 1951.204 of this subpart; and

(ii) Provide to Rural Development a written agreement assuming all rights and obligations of the original grantee if grant funds were provided. See § 1951.215 of this subpart for additional guidance on grant agreements. (Revised 01-07-05, SPECIAL PN.)

(5) The proceeds remaining after paying any reasonable and necessary selling expenses are used for one or more of the following purposes:

(i) To pay on Rural Development debts according to §1951.221 of this subpart; on debts secured by a prior lien; and on debts secured by a subsequent lien if it is to Rural Development's advantage.

§1951.226 (b) (5) (Con.)

(ii) To purchase or acquire through exchange property more suited to the borrower's needs, if the Rural Development debt will be as well secured after the transaction as before.

(iii) To develop or enlarge the facility if necessary to improve the borrower's debt-paying ability; place the operation on a sounder basis; or otherwise further the loan objectives and purposes.

(6) Disposition of property acquired in whole or part with Rural Development grant funds will be handled in accordance with the grant agreement.

(c) Processing.

(1) The case file will contain the following:

(i) Except for actions approved by the District Director, Exhibit A of this subpart (available in any Rural Development office), appropriately completed;

(ii) The appraisal report, if appropriate;

(iii) Name of purchaser, anticipated sales price, and proposed terms and conditions;

(iv) Form RD 1965-8, "Release from Personal Liability," including the County Committee memorandum and the State Director's recommendations;

(v) An executed Form RD 400-4, if applicable;

(vi) An executed Form RD 465-1, if applicable;

(vii) Form RD 460-4, "Satisfaction," if a debt has been paid in full or satisfied by debt settlement action. For cases involving real estate, a similar form may be used if approved by OGC; and

(viii) Written approval of the Administrator when required under §1951.226(a)(3) of this subpart;

(2) Releasing security.

(i) The District Director is authorized to satisfy or terminate chattel security instruments when §1951.226(b) of this subpart and §1962.17 and §1962.27 of Subpart A of Part 1962 of this chapter have been complied with. Partial release may be made by using Form RD 460-1, "Partial Release," or Form RD 462-12, "Statements of Continuation, Partial Release, Assignment, Etc."

(ii) Subject to §1951.226(b) of this subpart, the State Director is authorized to release part or all of an interest in real estate security by approving Form RD 465-1. Partial release of real estate security may be made by use of Form RD 460-1 or other form approved by OGC.

(3) Rural Development liens will not be released until the sale proceeds are received for application on the Government's claim. In states where it is necessary to obtain the insured note from the lender to present to the recorder before releasing a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The District Director will advise the borrower when it requests a partial release that it must pay these costs. If the borrower is unable to pay the costs from its own funds, the amounts shown on the statement of actual costs furnished by the insured lender may be deducted from the sale proceeds.

(d) Release from liability.

(1) When an Rural Development debt is paid in full from the proceeds of a sale, the borrower will be released from liability by use of Form RD 1965-8.

(2) When sale proceeds are not sufficient to pay the Rural Development debt in full, any balance remaining will be handled in accordance with procedures for debt settlement actions set forth in Subpart C of Part 1956 of this chapter.

(i) In determining whether a borrower should be released from liability, the State Director will consider the borrower's debt-paying ability based on its assets and income at the time of the sale.

(ii) Release from liability will be accomplished by using Form RD 1965-8 and obtaining from the County Committee a memorandum recommending the release which contains the following statement:

" _____ in our opinion does not have reasonable debt-paying ability to pay the balance of the debt after considering its assets and income at the time of the sale. The borrower has 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 borrower be released from liability upon the completion of the sale."

§1951.227 Protective advances.

The State Director is authorized to approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to or insured by Rural Development if the debt instrument provides that Rural Development may voucher the account to protect its lien or security. The State Director must determine that authorizing a protective advance is in the best interest of the government. For insurance, factors such as the amount of advance, occupancy of the structure, vulnerability to damage and present value of the structure and contents will be considered.

(a) Protective advances are considered due and payable when advanced. Advances bear interest at the rate specified in the most recent debt instrument authorizing such an advance.

(b) Protective advances are not to be used as a substitute for a loan.

(c) Vouchers are prepared in accordance with applicable procedures set forth in RD Instruction 2024-A (available in any Rural Development office). (Revised 08-13-92, SPECIAL PN.)

§§1951.228 - §1951.229 [Reserved]

§1951.230 Transfer of security and assumption of loans.

(a) General. It is Rural Development policy to approve transfers and assumptions to transferees which will continue the original purpose of the loan in accordance with the following and specific requirements relating to eligible and ineligible borrowers set forth below:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan.

(2) The transfer will not be disadvantageous to the Government or adversely affect either Rural Development's security position or the Rural Development program in the area.

(3) Transfers to eligible applicants will receive preference over transfers to ineligible applicants if recovery to Rural Development is not less than it would be if the transfer were to an ineligible applicant.

(4) If the Rural Development debt(s) exceed the present market value of the security as determined by the State Director, the transferee will assume an amount at least equal to the present market value.

(5) If the transfer and assumption is to one or more members of the borrower's organization, there must not be a loss to the government.

(6) Rural Development concurs in plans for disposition of funds in the transferor's debt service, reserve, operation and maintenance, and any other project account, including supervised bank accounts.

(7) When the property to be transferred is to be used for the same or similar purposes for which the loan was made, the transferee will execute Form RD 400-4 to continue nondiscrimination covenants and provide to Rural Development a written certification assuming all terms of the Grant Agreement executed by the transferor. All instruments of conveyance will contain the covenant referenced in §1951.204 of this subpart.

(8) This subpart does not preclude the transferor from receiving equity payments when the full amount of the Rural Development debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the Rural Development debt will be paid.

(9) Transferees must have the ability to pay the Rural Development debt as provided in the assumption agreement and the legal capacity to enter into the contract. The applicant will submit a current balance sheet using Form RD 442-3, "Balance Sheet," and budget and cash flow information using Form RD 442-2, or similar forms. For ineligible applicants, such information may be supplemented by a credit report from an independent source or verified by an independent certified public accountant.

(10) For purposes of this subpart, transfers to eligible applicants will include mergers and consolidations. Mergers occur when two or more corporations combine in such a manner that only one remains in existence. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with all of the original corporations ceasing to exist. In both mergers and consolidations, the surviving or emerging corporation takes the assets and assumes the liabilities of the corporation(s) which ceased to exist. Such transactions must be distinguished from transfers and assumptions, in which a transferor will not necessarily go out of existence and the transferee will not always take all assets or assume all liabilities of the transferor.

(11) A current appraisal report to establish the present market value of the security will be completed in accordance with §1951.220(i) of this subpart when the full debt is not being assumed.

§ 1951.230 (a) (Con.)

(12) There must be no lien, judgement, or similar claims of other parties against the Rural Development security being transferred unless the transferee is willing to accept such claims and the Rural Development approval official determines that they will not prevent the transferee from repaying the Rural Development debt, meeting all operating and maintenance costs, and maintaining required reserves. The written consent of any other lienholder will be obtained where required.

(b) Authorities. The State Director is authorized to approve transfers and assumptions of Rural Development loans in accordance with the provisions of paragraphs (c) and (d) of this section, except for the following, which require prior approval of the Administrator:

- (1) Proposals which will involve a loss to the Government;
- (2) Proposals involving a transfer to one or more members of the present borrower's organization;
- (3) Proposals involving rates and terms which are more liberal than those set forth in § 1951.230(c) of this subpart;
- (4) Proposals involving a cash payment to the present borrower which exceeds the actual sales expenses;
- (5) The transferee refuses to assume all terms of the Grant Agreement for a project financed in part with Rural Development grant funds; and (Revised 10-31-01, PN 337)
- (6) Proposed transfers to ineligible applicants when there is no significant downpayment and/or the repayment period is to exceed 25 years. (Revised 10-31-01, PN 337)

(c) Eligible applicants. Except as noted in § 1951.230(b) of this subpart, the State Director is authorized to approve transfers of security property to and assumptions of Rural Development debts by transferees who would be eligible for financial assistance under the loan program involved for the type of loan being transferred. The State Director must determine and document that eligibility requirements have been satisfied.

(1) If a loan is evidenced and secured by a note and lien on real or chattel property, Form RD 1951-15, "Community Programs Assumption Agreement," will be executed by the transferee. When the terms of the loan are changed, the new repayment period may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility. Interest will accrue at the rate currently reflected in Finance Office records.

(2) If the loan is evidenced and secured by a bond, procedures will be followed which are acceptable to the State Director and legally permissible under State law in the opinion of the borrower's counsel and OGC. The interest rate will be the rate currently reflected in Finance Office records. Any new repayment period provided may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility.

(3) Loans being transferred and assumed may be combined when the security is the same, new terms are being provided, a new debt instrument will be issued, and the loans have the same interest rate and are for the same purpose. If applicable, § 1942.19(h) (11) will govern the preparation of any new debt instruments required.

(4) A loan may be made in connection with a transfer if the transferee meets all eligibility and other requirements for the kind of loan being made. Such a loan will be considered as a separate loan, and must be evidenced by a separate debt instrument. However, it is permissible to have one authorizing loan resolution or ordinance if permitted by State statutes.

(5) Any development funds remaining in a supervised bank account which are not to be refunded to Rural Development will be transferred to a supervised bank account for the transferee simultaneously with the closing of the transfer for use in completing planned development.

(d) Ineligible applicants. Except as noted in § 1951.230(b) of this subpart, the State Director is authorized to approve transfer and assumptions to transferees who would not be eligible for financial assistance under the loan program involved for the type of loan being transferred. However, the State Director is authorized to approve all transfers of incorporated Economic Opportunity Cooperative loans to ineligible applicants without regard to the requirements set forth in § 1951.230 (b). Such transfers are considered only when an eligible transferee is not available or when the recovery to Rural Development

§ 1951.230 (d) (Con.)

from a transfer to an available eligible transferee would be less. Transfers are not to be considered as a means by which members of the transferor's governing body can obtain an equity or as a method of providing a source of easy credit for purchasers.

(1) Ineligible applicants must pay a one-time nonrefundable transfer fee when they submit an application or proposal.

(i) The National Office will issue a directive annually advising the field of the amount of the fee. Any cost for appraisals performed by non-Rural Development personnel will be handled in accordance with RD Instruction 2024-A (available in any Rural Development office), and will be added to the basic fee. (Revised 08-13-92, SPECIAL PN.)

(ii) Transfer fees will be deposited in accordance with current instructions governing the handling of collections. The fees will be identified as transfer fees on Form RD 451-2, "Schedule of Remittances," and will be included on the Daily Activity Report. The amount will be credited to the Rural Development Insurance Fund.

(iii) If the State Director determines waiver of the transfer fee is in the best interest of the government, he or she will request prior approval by submitting the

§ 1951.230(d)(1)(iii) (Con.)

transfer case file established in accordance with processing requirements set forth below to the National Office, Attention (appropriate program division).

(2) Any funds remaining in a supervised bank account will be refunded to Rural Development and applied to the debt as a condition of transfer.

(3) The interest rate will be the greater of the rate specified for the note in current Finance Office records or the market rate for Community Programs as of the transfer closing date.

(4) The transferred loan will be identified as an NP loan and serviced in accordance with § 1951.216 of this subpart.

(5) Form RD 465-5, "Transfer of Real Estate Security," will be used, and will be modified as appropriate before execution.

(6) Consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(e) Release from liability. Except when nonprogram loans or Economic Opportunity Cooperative loans are involved, transferors may be released from liability in accordance with the following:

(1) If the full amount of the debt is assumed, the State Director may approve the release from liability by use of Form RD 1965-8.

(2) If less than the full amount of the debt is assumed, any balance remaining will be handled in accordance with procedures for debt settlement actions set forth in Subpart C of Part 1956 of this chapter.

(i) In determining whether a borrower should be released from liability, the State Director will consider the borrower's debt-paying ability based on its assets and income at the time of the sale.

(ii) Release from liability will be accomplished by using Form RD 1965-8 and obtaining from the County Committee a memorandum recommending the release which contains the statement set forth in § 1951.226(d)(2)(ii) of this subpart.

(f) Processing. Transfers and assumptions will be processed in accordance with the following:

(1) A transfer case file organized in accordance with RD Instruction 2033-A (available in any Rural Development office) will be established, and will contain all documents and correspondence relating to the transfer. The forms utilized for transfers and assumptions are listed in Exhibit D (available in any Rural

Development office). All forms listed must be completed and included in the case file unless inappropriate for the particular situation.

(2) A letter of conditions establishing requirements to be met in connection with the transfer and assumption will be issued, and the transferee will be required to execute Form RD 1942-46, "Letter of Intent to Meet Conditions," prior to the closing of the transfer. (Revised 01-07-05, SPECIAL PN.)

(3) Both the transferee and transferor are responsible for obtaining the legal services necessary to accomplish the transfer.

(4) Transfers will be closed in accordance with instructions provided by OGC.

(5) When the transferee is a public body and Form RD 1951-15 is not suitable, the transferee's attorney will prepare the documents necessary to effect the transfer and assumption and submit them for approval by Rural Development and OGC.

(6) Accrued interest to be entered in either Table I of Form RD 1951-15 or other appropriate assumption agreement is to be obtained using the status screen option in ADPS. (Revised 01-07-05, SPECIAL PN.)

(7) The following forms, if utilized, will be sent immediately to the Finance Office:

(i) Form RD 1951-15 or other appropriate assumption agreement;

(ii) A conformed copy of Form RD 1965-8.

(8) If an Rural Development grant was made in conjunction with the loan being transferred, the transferee must agree in writing to assume all rights and obligations of the original grantee. See § 1951.215 for additional guidance on grant agreements.

(9) The transferee will obtain insurance according to requirements for the loan(s) being transferred unless the approval official requires additional insurance. When the entire 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.

(10) Rates and terms.

(i) If the transfer will be closed at the same rates and terms, the transferee will be informed of the amount needed to be on schedule by the next installment due date.

§1951.230 (f) (10) (Con.)

(ii) If the transfer will be closed at new rates and terms, the transferee will be informed of the amount of principal and interest owed based on information obtained using the ADPS status screen option.

(11) The effective date of a transfer is the actual date the transfer is closed, which is the same date Form RD 1951-15 or other appropriate assumption agreement is signed.

(12) Title to all assets will be conveyed from the transferor to the transferee unless other arrangements are agreed upon by all parties concerned, including Rural Development. All instruments of conveyance will contain the covenant referenced in §1951.204 of this subpart.

(13) If an insured loan being held by an investor is involved, the Finance Office will have to repurchase the note prior to processing the assumption agreement.

(14) When National Office approval is required, the transfer case file will be submitted to the Administrator, Attention: (appropriate program division), with Exhibit A of this subpart (available in any Rural Development office), appropriately completed, and a cover memorandum which denotes any unusual circumstances.

(15) The District Director must review Form RD 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant, and the form must be signed by the applicant and included in the file.

§1951.231 Special provisions applicable to Economic Opportunity (EO) Cooperative loans.

(a) Withdrawal of member and transfer to and assumption by new members of Unincorporated Cooperatives.

(1) Withdrawal of a member who is no longer utilizing the services of an association and transfer of withdrawing member interest in the association to a new member who will assume the entire unpaid balance of the indebtedness of the withdrawing member may be permitted, if the remaining members agree to accept the new member and the transfer will not adversely affect collection of the loan. The servicing office will submit to the State Office the borrower case file and the following:

(i) Form RD 1951-15 executed by the proposed new member;

(ii) Statement of the current amount of the indebtedness involved;

(iii) A description and statement of the value of the security property;

RD Instruction 1951-E
§1951.231 (a) (1) (Con.)

(iv) A memorandum to justify the transaction;

(v) Form RD 440-2, "County Committee Certification or Recommendation;"

(vi) Exhibit B of this subpart, "Agreement for New Member (With or Without Withdrawing Member)," (available in any Rural Development office), executed by the remaining members of the association, the proposed new member, and the withdrawing member; and

(vii) Form RD 450-12, "Bill of Sale (Transfer by Withdrawing Member)," executed by the withdrawing member.

(2) If the State Director determines after review of the above information that the proposed new member is eligible and the transfer is justified, the State Director may approve the transfer and assumption by executing Form RD 1951-15.

(3) Upon completion of the above actions, the State Director may release the outgoing member from personal liability using Form RD 1965-8.

(4) If Finance Office records must be changed due to changes in borrower name, address and/or case number, necessary documents, including Form RD 1951-15 and, if applicable, Form RD 1965-8, will be forwarded to the Finance Office immediately with a memorandum indicating that the purpose of the submission is only to establish liability for a new member and release an old member from liability.

(b) Withdrawal of members from Unincorporated Cooperatives when new member not available. Withdrawal of a member who no longer utilizes the services of an association may be permitted even though a new member is not available, provided:

(1) The State Director determines that the remaining members have sufficient need for the property, and that the withdrawal of the member will not adversely affect collection of the loan; and

(2) The remaining members obtain from the outgoing member an agreement conveying his or her interest in the cooperative property to them. They may also wish to agree to protect the outgoing member against liability on the debt owed to Rural Development as well as any other debts. Exhibit C of this subpart, "Agreement for Withdrawal of Member (Without New Member)," (available in any Rural Development office), may be used by the cooperative. Rural Development will not be a party to the agreement.

(c) Addition of new members (no withdrawing member or transfer involved) for both Incorporated and Unincorporated Cooperatives.

(1) A new member may be admitted to the association even though there is no withdrawing member, if:

(i) The members of the association agree to accept the proposed new member, and

(ii) The State Director determines that the association owns adequate facilities to provide service to the new member.

(2) The servicing office will submit to the State Office the case file and items (i) through (vi) of §1951.231(a)(1).

(3) If the State Director determines after the review of the above information that the proposed new member is eligible and the transaction is justified, the State Director may approve the transaction by executing Form RD 1951-15.

(4) Form RD 1951-15 will be forwarded immediately to the Finance Office with a memorandum indicating that the form is intended only to establish liability for a new member.

(d) Deceased members of Unincorporated Cooperatives. Form RD 442-24, "Operating Agreement," (now obsolete) was executed by recipients of these loans. Paragraph 10 of that form provides that in case of the death of any member, the heirs or personal representative of the deceased member shall take the deceased member's place in the association. This provision also covers sale of the decedent's interest in the association if the sale is necessary to pay debts of the estate.

(1) If the heirs or personal representative do not wish to continue membership in the association, the remaining members may be permitted to continue to operate the property if Rural Development's financial interest will not be jeopardized. The remaining members should obtain from the deceased member's estate an agreement conveying the estate's interest in the cooperative property to them. The remaining members may wish to agree to protect the estate against liability on the debt to Rural Development as well as any other debts of the cooperative.

(2) The requirement of §1962.46(h) of Subpart A of Part 1962 will also be followed.

(e) Action which affects individual members of Unincorporated EO Cooperative security. The borrower will be expected to protect its own interest in condemnation, trespass, quiet title, and other cases affecting the security. The servicing office will immediately furnish the complete facts concerning any action taken against individual members of Unincorporated Cooperatives to the State Director together with the case file.

RD Instruction 1951-E
§1951.231 (Con.)

(f) Debt Settlement. Debt settlement actions for Economic Opportunity Cooperative loans must be handled under the Federal Claims Collection Act; proposals will be submitted to the National Office for review and approval.

§1951.232 Water and waste disposal systems which have become part of an urban area.

A water and/or waste disposal system serving an area which was formerly a rural area as defined in §1942.17(b) (2) (iii) and (iv) of Subpart A of Part 1942 of this chapter, but which has become in its entirety part of an urban area, will be serviced in accordance with this section. (Revised 05-19-92, SPECIAL PN.)

(a) Curtailment or limitation of service. Service may not be curtailed or limited by the inclusion of a system within an urban area.

(b) Sale or transfer and assumption.

(1) The urban community or another entity may purchase the facility involved and immediately pay the Rural Development debt in full; or

(2) The urban community or another entity may accept a transfer of the Rural Development debt on an ineligible applicant basis.

(3) When a grant is involved, the entity will agree in writing to assume all rights and obligations of the original grantee. See §1951.215 for additional guidance on grant agreements.

(c) Lease-purchase arrangement. If §1951.232(b) (1) and (2) of this section are not practicable, the urban community may, with prior approval of the National Office, operate and maintain the system under a lease-purchase arrangement which provides that:

(1) The urban community will:

(i) Assume responsibility for operation and maintenance of the facility, subject to nondiscrimination and all other requirements which are applicable to the borrower, which are to be specified in the agreement between the parties; and

(ii) Pay the association annually an amount sufficient to enable it to meet all its obligations, including reserve account requirements.

(2) The Rural Development borrower will:

(i) Meet its debt service and reserve account requirements to Rural Development;

(ii) Retain its corporate existence until Rural Development has been paid in full; and

§ 1951.232(c) (2) (Con.)

(iii) If agreed upon by both parties, convey title to the facility to the urban community when the Rural Development debt has been paid in full.

(d) Processing.

(1) Sale of a borrower's assets will be handled in accordance with §1951.226 of this subpart.

(2) Transfer and assumption of a borrower's assets and indebtedness will be handled in accordance with § 1951.230 of this subpart.

(3) Lease-option-to-purchase arrangements are not permitted.

(4) When a lease-purchase arrangement is proposed, the State Director will obtain a proposed agreement drafted by either the borrower or the urban community. The following will be forwarded to the Administrator, Attention: Water and Waste Disposal Division, for review and approval authorization:

(i) A copy of the proposed agreement;

(ii) Exhibit A of this subpart (available in any Rural Development office), appropriately completed;

(iii) OGC comments;

(iv) The case file, including all documentation appropriate for the type of servicing action involved.

§§ 1951.233 - 1951.239 [Reserved]

§ 1951.240 State Director's additional authorizations and guidance.

(a) Promote financing purposes and improve or maintain collectibility. The State Director is authorized to perform the following functions when the action is determined likely to promote the loan or grant purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security; will strengthen the security; or will facilitate, improve, or maintain the orderly collection of the loan:

(1) Approve requests for permission to modify bylaws, articles of incorporation, or other rules and regulations of recipients, including changes in rate or fee schedules. Changes affecting the recipient's legal organizational structure must be approved by OGC.

(2) Consent to requests by the recipient to incur additional indebtedness, subject to applicable Rural Development Instructions and covenants in the loan or grant agreement.

(3) Renew existing security instruments.

(4) Approve the extension or expansion of facilities and services.

(5) Require additional security when:

(i) Existing security is inadequate and the loan or security instruments obligate the borrower to give additional security; or

(ii) The loan is in default and additional security is acceptable in lieu of other servicing actions.

(6) Release properties being sold by the borrower from mortgages securing Rural Renewal loans if the amount of the notes and mortgages given by the purchaser to the borrower equal the present market value and are assigned and pledged to Rural Development, and any money payable to the borrower is applied as an extra payment on the Rural Renewal loan.

(7) Approve requests for rights-of-way and easements and any subordination necessary in connection with such requests.

(b) Referrals to National Office. All proposed servicing actions which the State Director is not authorized by this subpart to approve will be referred to the National Office.

(c) Defeasance of Rural Development indebtedness. Defeasance is the use of invested proceeds from a new bond issue to repay outstanding bonds in accordance with the repayment schedule of the outstanding bonds. The new issue supersedes the contractual agreements the borrower agreed to in the prior issue. Defeasance, or amending outstanding loan instruments and agreements to permit defeasance, of Rural Development debt instruments is not authorized, since defeasance limits, or eliminates entirely, the borrower's ability to comply with statutory refinancing requirements implemented by Subpart F of Part 1951 of this chapter.

§ 1951.241 Special provision for interest rate change.

(a) General. Effective October 1, 1981, and thereafter, upon request of the borrower, the interest rate charged by Rural Development to water and waste disposal and community facility borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing. Pub.L. 99-88 provides that any Rural Development grant funds associated with such loans shall be set in the amount based on the interest rate in effect at the time of loan approval. Loans closed October 1, 1981, through October 25, 1985, were closed at the interest rate in effect at the time of loan approval and that interest rate is reflected in the borrower's debt instrument. For community facility and water and waste disposal loans closed on or after October 1, 1981, and for which the interest rate in effect at the time of loan closing is lower than the interest rate in effect at the time of loan approval, the borrower may request to be charged the lower interest rate. The loan

§ 1951.241(a) (Con.)

closing interest rate will be determined by Rural Development based upon requirements in effect at the date of loan closing. Exhibit E of this subpart (available in any Rural Development office) contains a summary of interest rate requirements for specific time periods. Exhibit C of Subpart O of this part (available in any Rural Development office) will be used to determine the interest rate and effective dates by category of poverty, intermediate, and market rates. Exhibit F of this subpart (available in any Rural Development office) contains the instructions on how to process a change of interest rate. Loans meeting the criteria of this section that have been paid in full are eligible for the borrower to request the lower interest rate. For loan(s) that involved multiple advances of Rural Development funds using temporary debt instruments, wherein the borrower requests the interest rate in effect at loan closing, the interest rate charged shall be the rate in effect on the date when the first temporary debt instrument was issued.

(b) Notification to borrower and borrower selection of interest rate.

(1) Rural Development servicing officials will notify each borrower meeting the provisions of this section of the availability of a choice of interest rate. The notification will be made in writing at the earliest possible date, utilizing Exhibit G of this subpart (available in any Rural Development office), and sent by certified mail, return receipt requested. Borrowers will be advised at the time of notification that if a change of interest rate is requested, the change will be accomplished administratively by Rural Development. The effect of the change on the loan account will also be fully explained to the borrower.

(2) Borrowers must notify Rural Development within 90 calendar days of the date of Rural Development notification indicating their election to retain the rate in effect at loan approval or to change the rate to the rate in effect at the time of loan closing. If the borrower does not respond within the 90-day period, Rural Development will not consider a future request for a lower interest rate under the provisions of this subpart.

(3) The borrower is responsible for assuring that the official executing the letter requesting the change of interest rate is duly authorized and any action(s) necessary for this authorization have been taken as required. Any costs associated with a change of interest rate will be the responsibility of the borrower.

(c) Processing loan interest rate change. The State Director is authorized to approve loan interest rate changes which meet the requirements of this section. Loan interest rate changes will be accomplished as follows:

(1) All loan payments already applied to the account(s) will be reversed and reapplied by Rural Development utilizing the changed interest rate. The balance remaining after the completion of the

reversal and reapplication procedures will be applied first to any delinquency on the account and then to principal.

(2) For paid-in-full accounts which meet the criteria of § 1951.241(a) of this subpart, the balance of loan payments after completion of the reversal and reapplication procedures will be returned to the borrower unless the borrower is delinquent on another Rural Development loan of the same type. In those cases the amount will be applied to the delinquent amount owed, with any balance refunded to the borrower.

(3) The Finance Office will administratively change the interest rate on a borrower's account in accordance with notification from the servicing official. The installment schedule set forth in each borrower's debt instrument will not change. The original principal schedule for principal-plus-interest accounts where principal only is stipulated will continue to be used for payment calculation by the Finance Office. Amortized accounts will adhere to the original payment schedule and amount. The last scheduled principal installment will be reduced by the amount of the balance previously generated by the reversal and reapplication of payments.

(4) When Rural Development has processed a change of interest rate for an amortized loan and a reduction in installment amounts is needed to provide for a sound operation, the borrower may request reamortization in accordance with § 1951.224 of this subpart. (Revised 01-07-05, SPECIAL PN.)

(5) The borrower will be notified in writing of the new interest rate as changed.

§ 1951.242 Servicing delinquent Community Facility loans. (Added 01-07-05, SPECIAL PN.)

When borrowers fail to make payment in accordance with the terms of their debt instrument, the servicing office will contact the borrower and document the reason for the delinquency.

(a) Definition of a delinquent Community Facility loan. For the purpose of this section, a loan is delinquent when a borrower fails to make all or part of a payment by the due date.

(b) Workout agreement. The delinquent loan borrower and the Agency; at its discretion, may enter into a written workout agreement. When a workout agreement is negotiated, the servicing official will use Form RD 1951-10, "Workout Agreement" to commit the agreement to writing.

§ 1951.242 (Con.)

(c) Requirement for submission of monthly financial information. For loans that are delinquent, the borrower must provide, monthly comparative financial statements in a format that is acceptable to the Agency by the 15th day of the following month. The Agency may waive this requirement if it would cause a hardship for the borrower or the borrower is actively marketing the security property.

(d) Servicing requirements. The following actions must be taken if the borrower is unable to pay the delinquent amount within 90 days of its due date:

(1) The servicing official may negotiate a Workout Agreement with the borrower using Form RD 1951-10.

(2) For loans that are less than 90 days delinquent, the servicing official will request the borrower to provide monthly financial statements on Agency-approved forms or in a form that is acceptable to the Agency. Financial statements will include the following:

- (i) End of month balance sheet;
- (ii) Budget for the current operating year;
- (iii) Cash flow statement for the previous month;
- (iv) Cash flow statement for the year to date; and
- (v) Cash flow reconciliation.

(3) For loans that are more than 90 days delinquent, the following actions will be taken:

(i) The servicing official will obtain and evaluate the monthly financial statements required by paragraph (d) (2) of this section to determine if the borrower has the ability to correct the default. The borrower will continue providing the monthly financial statements until the delinquency is resolved. The servicing official may waive this requirement if it would cause a hardship for the borrower or the borrower is actively marketing the security property.

RD Instruction 1951-E
§ 1951.242(d) (3) (Con.)

(ii) When the servicing official determines that the borrower has the ability to correct the default, the servicing official will meet with the borrower to negotiate a Workout Agreement using Form RD 1951-10.

(iii) If the borrower does not pay the delinquency or refuses to negotiate a Workout Agreement, the servicing official will advise the borrower, in writing, that the Agency will transfer the delinquent debt for treasury offset when it becomes 180 days delinquent unless the delinquent amount is paid before that date or a Workout Agreement is negotiated.

(e) Referral for treasury offset. Loans that are delinquent more than 180 days will be referred for treasury offset in accordance with the Debt Collection Improvement Act of 1996 when all efforts to bring the account current have failed. Loans that are being serviced under a current Workout Agreement will not be referred for treasury offset while the Workout Agreement is in effect.

(f) Revision or cancellation of workout agreement. If a borrower fails to complete the agreed actions of the workout agreement by the agreed completion date, the servicing official will determine if it is in the best interest of the Government to revise or cancel the workout agreement.

§§ 1951.243 - 1951.249 [Reserved]

§ 1951.250 OMB control number.

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 0575-0066. Public reporting burden for this collection of information is estimated to vary from fifteen minutes to three 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. (Revised 01-07-05, SPECIAL PN.)

Attachments: Exhibits A, B, C, D, E, F, G, and H.

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REPORT ON SERVICING ACTION

Name of Borrower:	State	County	Case No.
Address:	Type of Assistance		
	Loan /_/_	Insured /_/_	Direct /_/_
	Grant / /		
	Date Facility		
	Placed in Operation		

Section I (Complete for all financial assistance)

1. Rural Development Financial Assistance History

Loan Amounts (initial first)	Date Closed	Int. Rate	No. Yrs	Principal Balance	Interest Accrued	Ahead (Behind) Principal	Schedule Interest
\$ _____	_____	___	__	\$ _____	\$ _____	\$ _____	\$ _____
\$ _____	_____	___	__	\$ _____	\$ _____	\$ _____	\$ _____
\$ _____	_____	___	__	\$ _____	\$ _____	\$ _____	\$ _____
\$ _____	_____	___	__	\$ _____	\$ _____	\$ _____	\$ _____

Grant Amounts (initial first)	Date Closed	
\$ _____	_____	Principal & interest balances as of _____
\$ _____	_____	Annual /_/_ Monthly /_/_ Payment \$ _____
\$ _____	_____	Membership or Connection fee \$ _____
\$ _____	_____	Monthly dues or user rate \$ _____

2. Debts Owed - Non Rural Development

To Whom Owed	Amount	Annual /_/_ Monthly /_/_ Payment	Amt. Ahead (Delinquent)	Purpose of Loan	How Secured
_____	\$ _____	\$ _____	\$ _____	_____	_____
_____	\$ _____	\$ _____	\$ _____	_____	_____
_____	\$ _____	\$ _____	\$ _____	_____	_____
_____	\$ _____	\$ _____	\$ _____	_____	_____

Were Outside Debts Authorized by Rural Development?

3. Present Market Value: (required for subordination, sales, transfers, exchanges, assumptions & mergers)

Land	\$ _____	Value determined by: _____
Building	\$ _____	Appraisal report /_/_
Equipment	\$ _____	(enclose copy)
Other	\$ _____	Estimate /_/_
Total	\$ _____	Other /_/_

4. Memberships Users (Recreation, Water & Waste)

- (a) Number required at closing _____
- (b) Actual at closing _____
- (c) Members-Users, last 5 years _____
 year () () () () ()
- (d) Explain lower than required membership at loan closing and decreases in recent years. _____

- (e) Amount of delinquency in dues or charges \$ _____
 as of _____. Number of members-users delinquent _____
- (f) Past steps taken to increase members-users. _____

- (g) Can members be assessed? _____ If yes, when? _____

5. Occupancy, Patient Days, Clinic Visits (Health Care)
 (as appropriate)

- (a) at loan closing _____
- (b) past 5 years _____
 () () () () ()
- (c) reasons for decreases in recent years. _____

Section II

Complete The Following, As Appropriate, For All Servicing
 Actions Except Subordination & Lease Of Security

- 1. Type of action requested: _____
 /_/_ Reamortization /_/_ Liquidation /_/_ Sale or Exchange
 /_/_ Transfer & Assumption /_/_ Merger

2. Description of the facility.

3. Describe the problem.

4. Condition of Facilities

- (a) building _____
- (b) equipment _____
- (c) land _____
- (d) Water Systems (well-lines, treatment plant-storage, etc.) _____
- (e) Sewer System (lines, manholes, lagoons, treatment facilities) _____

5. Is Board of Directors carrying out responsibilities? (Explain No's) _____

6. Is management adequate? (Explain No's) _____

7. Explain the condition and adequacy of records, financial data and reports. _____

8. Explain the general attitude of community leaders, civic clubs, Mayor, industry, etc. toward the facility.

9. Is there any general consensus among those interviewed on the need for any specific changes in the policies or practices of the project? For example, do they think the charges are too high or too low, certain phases should be eliminated, or certain services added? (Explain)

10. Comments on other like facilities in the area. _____

11. Is the Board willing to close out enterprise which is losing money or causing unsavory reputation? _____
Explain: _____

12. Action requested to solve the problem.

13. If liquidation is initiated, what are the alternative uses of the project? _____

14. Reamortization Only
(a) Total amount to be reamortized \$ _____
(b) New monthly /_/ annual /_/ payment \$ _____
(c) Rate & terms _____

15. Sales, Transfers, Liquidations, Mergers, etc.
Complete as appropriate:
(a) Sale or transfer price \$ _____
(b) Estimate selling expense \$ _____
(c) Anticipated loss to government \$ _____
(d) Proposed transaction date _____
(e) Terms & conditions:

16. Comments and Recommendations: All three must be completed

(a) District Director

Date District Director

(b) Program Chief

Date Chief, Community Programs

(c) State Director

Date State Director

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AGREEMENT FOR NEW MEMBER
(With or Without Withdrawing Member)

THIS AGREEMENT, entered into this _____ day of _____,
19____.

WITNESSETH THAT,

WHEREAS, _____
(Names of Members except any Withdrawing Member)

_____ ,
herein called "present members", who comprise all the members *[except the
withdrawing member indicated below] of _____

(Name of
_____, an unincorporated cooperative association,
Association)

herein called "Association", are indebted jointly and severally to the United
States of America, acting through Rural Development, United States Department
of Agriculture, herein called the "Government", for a loan under section 303
of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2852), as
evidenced by a promissory note dated _____ 19 ____, in the face
amount of \$ _____; and

WHEREAS, the members of the Association executed an Operating Agreement
dated _____, 19____, herein called "Operating Agreement",
describing the organizational structure of the Association, the rights and
obligations of the members and the manner in which the affairs of the
Association are to be conducted; and

WHEREAS, with the proceeds of said loan the Association purchased

(Kind of Property Purchased)
to be used jointly by the members; and

WHEREAS, the members are jointly and severally liable as partners for
all debts of the Association, and each member has an equal undivided interest
in all property and assets of the Association; and

*[WHEREAS, _____, herein called "with-
(Name of Withdrawing Member)
drawing member", is no longer utilizing the services of the Association and
desires to withdraw his/her membership therein; and]

WHEREAS, _____, herein called "new member".
(Name of New Member)
desires to become a member of the Association and the present members have
agreed to accept him/her as a member;

NOW THEREFORE, in consideration of the mutual agreements contained herein, the parties hereto covenant and agree as follows:

1. The present members agree to and hereby accept the new member as a member of the Association from the date hereof, with all the rights, duties, and obligations appertaining to such membership as provided in the Operating Agreement.

2. The business of the Association shall be carried on in the same manner and subject to the same agreements and provisions as provided in the Operating Agreement, as fully and effectually as if the same were contained in this Agreement.

3. The new member hereby agrees to, and agrees to be bound by, all agreements and provisions of the Operating Agreement, the same as if he/she had executed the same as of the date thereof, and hereby assumes and agrees to be jointly and severally liable for all present and future debts and obligations of the Association, and he/she agrees specifically to assume liability on a promissory note in the face amount of \$_____, dated _____, 19____, made by the Association to the Government, and to execute such instrument(s) as the Government may require in connection with such assumption.

4. The new member further agrees to and assumes all obligations and agreements contained in any instruments executed by the Association as security for or supplementary to said promissory note, including but not limited to the Assignment of Income dated _____, 19____, and the Security Agreement *(Chattel Mortgage dated _____, 19____, executed by the Association in favor of the Government, the same as if he/she had signed the same as of the date thereof.

5. This agreement is subject to the approval of the Government, acting through the County Supervisor of Rural Development.

*[6. The withdrawing member hereby agrees and acknowledges that he/she will no longer have any property right or other interest in the Association or the property of the Association, and that he/she will simultaneously herewith execute and deliver a bill of sale transferring and assigning to the new member his/her interest in the property of the Association.]

*[7. The present members hereby jointly and severally agree to pay and save harmless the withdrawing member as to all past, present and future debts and obligations of the Association, including but not limited to that certain indebtedness to the Government evidenced by the aforesaid promissory note.]

Approved:

(Present Member)

(Present Member)

County Supervisor
Rural Development
United State Department of Agriculture

(Present Member)

(New Member)

* [_____]
(Withdrawing Member)

*(Omit material in brackets when no withdrawing member is involved)
**(Use "Chattel Mortgage" in lieu of "Security Agreement" in any state
where he UCC has not been adopted.)

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AGREEMENT FOR WITHDRAWAL OF MEMBER
(Without New Member)

THIS AGREEMENT, entered into by and between _____
(Name of _____
_____, party of the first part, and _____
Withdrawing Member) (Names of _____
_____,
Remaining Members)
parties of the second part,

WITNESSETH THAT, in consideration of the mutual agreements contained herein, the parties hereto agree as follows:

1. Party of the first part hereby grants, bargains and sells to parties of the second part all his/her right, title and interest in _____, herein called the (Name of Association) "Association", and in the partnership property and assets of the Association.

2. Parties of the second part hereby jointly and severally agree to pay and save harmless the withdrawing member as to all past, present and future debts and obligations of the Association, including but not limited to that certain indebtedness to Rural Development, United States Department of Agriculture, evidenced by a promissory note dated _____, 19 ____, in the face amount of \$ _____.

Executed this _____ day of _____, 19____.

(Party of the First Part)

(Parties of the Second Part)

oOo

ITEMS TO BE INCLUDED IN TRANSFER AND
 ASSUMPTION DOCKETS (IF APPLICABLE)

<u>Item/Form Name</u>	<u>RD Form Number (if applicable)</u>
Account Status Information	Automated Discrepancy Processing System (ADPS) or appropriate form
Applicant Certification - Federal Collection Policies for Consumer or Commercial Debts	1910-11
Appraisal information appropriate for facility type:	
Appraisal Report - Farm Tract	1922-1
Uniform Residential Appraisal Report	1922-8
Valuation of Buildings	426-1
Appraisal Report - Water and Waste Disposal Systems	442-10
Assurance Agreement	400-4
Community Programs Assumption Agreement or other assumption agreement approved by Office of General Counsel (OGC)	1951-15
Consent of other lienholders	N/A
County Committee Certification or Recommendation	440-2
Environmental Review documentation	RD Instruction 1940-G

<u>Item/Form Name</u>	<u>RD Form Number (if applicable)</u>
Financial Information (use of RD forms optional):	
Statement of Budget, Income and Equity	442-2
Balance Sheet	442-3
Credit Report (ineligibles only)	N/A
Insurance and fidelity bond - evidence transferee has or will obtain required coverage	N/A
Letter of Conditions	N/A
Letter of Intent to Meet Conditions	1942-46
National Office approval memorandum	N/A
OGC closing instructions	N/A
Proposal by transferee	N/A
Release from Personal Liability	1965-8
Report on Servicing Action	Exhibit A (1951-E)
Supplementary Payment Agreement	440-9
Transfer of Real Estate Security	465-5
Transfer Fee Payment documentation	N/A
Transferee's written agreement to abide by covenants in the grant agreement if an Rural Development grant was involved	N/A

Interest Rate Requirements and Effective Dates

1. Poverty Line Guidelines.

a. Effective October 1, 1981, through April 14, 1982, poverty line was \$8,450 per year for all States except Alaska and Hawaii. The applicable poverty line was \$10,570 for Alaska and \$9,720 for Hawaii.

b. Effective April 15, 1982, through March 17, 1983, poverty line was \$9,300 per year for all States except Alaska and Hawaii. The applicable poverty line was \$11,630 for Alaska and \$10,700 for Hawaii.

c. Effective March 17, 1983, through March 6, 1984, poverty line was \$9,900 per year for all States except Alaska and Hawaii. The applicable poverty line was \$12,380 for Alaska and \$11,390 for Hawaii.

d. Effective March 7, 1984, through April 2, 1985, poverty line was \$10,200 per year for all States except Alaska and Hawaii. The applicable poverty line was \$12,750 for Alaska and \$11,730 for Hawaii.

e. Effective April 3, 1985, through March 11, 1986, poverty line was \$10,650 per year for all States except Alaska and Hawaii. The applicable poverty line was \$13,310 for Alaska and \$12,250 for Hawaii.

f. Effective March 12, 1986, through March 18, 1987, poverty line was \$11,000 per year for all States except Alaska and Hawaii. The applicable poverty line was \$13,750 for Alaska and \$12,650 for Hawaii.

g. Effective March 18, 1987, through March 10, 1988, poverty line was \$11,200 per year for all States except Alaska and Hawaii. The applicable poverty line was \$14,000 for Alaska and \$12,880 for Hawaii.

h. Effective March 11, 1987, until further notice by Rural Development Administrative Notice (AN), poverty line is \$11,650 per year for all States except Alaska and Hawaii. The applicable poverty line is \$14,560 for Alaska and \$13,400 for Hawaii.

2. Median Income of Service Area.

Income determination for the service area utilized median family income until October 3, 1984. For loan closed on or after October 3, 1984, the median household income of the service area should be considered in making the interest rate determination.

3. Poverty Line Rate.

a. For purposes of determining the interest rate at loan closing under §1951.221 of RD Instruction 1951-E, loans closed on or after October 1, 1981, through December 22, 1985, should consider the appropriate poverty line and median income of the service area as set forth in paragraphs (1) and (2) above. Depending on the date of loan closing and taking into

account the poverty line and median income requirements in effect at that time, the poverty line rate category could be met if (i) the primary purpose of the loan is to upgrade existing facilities, or construct new facilities required to meet applicable health and sanitary standards; and, (ii) the median household (family) income of the service area is below the poverty line for a family of four, as prescribed by the Office of Management and Budget (OMB), as adjusted under section 624 of the Economic Opportunity Act of 1964 (42 U.S.C. 2971d).

b. For loans closed on or after December 23, 1985, and before March 25, 1986, the poverty line rate category is met if (i) the primary purpose of the loan is to upgrade existing facilities, or construct new facilities required to meet applicable health and sanitary standards; and, (ii) the median household income of the service area is below the poverty line as set forth in paragraph (1) above for a family of four, as defined in section 673 (2) of Community Service Block grant Act (42 U.S.C. 9902 (2)), or below 80 percent of the Statewide nonmetropolitan median household income.

4. Intermediate Rate.

a. Loans closed on or after July 9, 1982, through October 2, 1984, should be considered under the following criteria: "The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line and the market rate. It will apply to loans that do not meet the requirements of the poverty line rate and for which the median family income of the service area is not more than 85 percent of the nonmetropolitan median family income of the State."

b. Loans closed on or after October 3, 1984, through April 1, 1985, should be considered under the following criteria: "The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate. It will apply to loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is not more than 85 percent of the nonmetropolitan median household income of the State."

c. Loans closed on or after April 2, 1985, through December 22, 1985, should be considered under the following criteria: "The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate. It will apply to the loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is below the poverty line as set forth in paragraph (1) above or not more than 85 percent of the nonmetropolitan median household income as set forth in paragraph (1) above of the State."

d. Loans closed on or after December 23, 1985, through March 24, 1986, the intermediate rate category requirement is: "The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate, not to exceed seven percent per annum. It will apply to loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is below the poverty line as set forth in paragraph (1) above or not more than 100 percent of the nonmetropolitan median household income of the State."

5. Market Rate.

The market rate will apply to all loans that do not qualify for a different rate under the provisions set forth under paragraphs (3) and (4) above.

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Instruction to Rural Development Personnel to
Implement Public Law 100-233

The Rural Development servicing official must determine the borrowers to be notified of the option to change a loan interest rate. All Community Facility and Water and Waste Disposal borrowers with loans closed on or after October 1, 1981, that have not previously been given a choice of interest rate and whose loans were closed at a date when the interest rate was lower than the loan approval rate will be notified that they may request to be charged the lower interest rate. To determine the borrowers eligible for this choice of a lower interest rate, the Rural Development servicing official should utilize Form RD 1940-1, "Request for Obligation of Funds," note, bond, or recorded debt instrument as appropriate; Form RD 2033-33, "Management System Card - Community Programs;" RCFTS; and any other appropriate documentation.

The Rural Development servicing official must also determine the loan closing interest rate based upon the interest rate requirements in effect at the date of loan closing. RD Instruction 1951-0, Exhibit C, contains interest rates and effective dates by category of poverty, intermediate, and market rates. RD Instruction 1951-E, Exhibit E, contains applicable information affecting interest rate requirements, i.e., change of median family income to median household income, and poverty line guidelines. Based upon interest rate requirements in effect at the time of loan approval and any changes in interest rate requirements in effect at loan closing, a loan in the market interest rate category at loan approval may fall in a poverty line rate category at the time of loan closing. Or the reverse may apply.

Borrowers who have paid-in-full accounts are eligible to request a lower interest rate. One of the following paragraphs should be inserted in Exhibit G of this subpart as appropriate:

"Your loan was paid in full on (enter date). If you request change of interest rate, Rural Development will reverse and reapply loan payments made to the loan account utilizing the changed interest rate. The balance of loan payments, after completion of this procedure, will be refunded to you."

"Your loan was paid in full on (enter date). If you request a change of interest rate, Rural Development will reverse and reapply all loan payments made to the loan account utilizing the changed interest rate. You are delinquent on a (Community Facility or Water and Waste Disposal, as appropriate) loan of the same type in the amount of \$(Enter amount of delinquency). The case number, loan number, and fund code of the delinquent loan are:

Therefore, the balance of loan payments, after completion of the reversal and reapplication procedure, will be applied to the delinquent account. Any funds remaining, after the amount needed to bring the delinquent account current, will be returned to you as a refund."

For loans that involved multiple advances of Rural Development funds using temporary debt instruments, wherein the borrower requests the interest rate in effect at loan closing, the loan closing date used for the purpose of interest rate determination shall be the rate in effect on the date when the first temporary debt instrument was issued. (A borrower who closed a loan with the first temporary debt instrument issued before October 1, 1981, is not eligible for the choice of interest rate).

The Rural Development servicing official will use Exhibit G of this subpart to document the borrower's choice to change or retain an interest rate and to notify the Finance Office to administratively change a borrower's interest rate in the loan account.

Exhibit G of this subpart must be sent to the borrower by certified mail, return receipt requested. The receipt should be maintained in the borrower's case file. If the borrower does not respond within the 90-day period, the borrower will no longer have the option to request a lower interest rate.

Exhibit G of this subpart will be used as the official document for recording the borrower's election to change or to retain the original interest rate. If a borrower requests a lower interest rate, the Finance Office will utilize the executed Exhibit G of this subpart as appropriate, as the official notification to change the loan account interest rate. The original executed Exhibit G of this subpart should be retained with the original debt

instrument. If the debt instrument is retained in the Finance Office, the servicing official should send the original executed Exhibit G of this subpart to the Finance Office and keep a copy in the borrower case file. If the debt instrument is retained in the servicing office, a copy of the executed Exhibit G of this subpart should be sent to the Finance Office and the original Exhibit G of this subpart attached to the debt instrument.

If the borrower requests a change of interest rate to the lower rate, the change will be accomplished administratively by Rural Development. The Finance Office will adjust the loan account to reflect the new lower interest and reverse and reapply previous payments utilizing the new interest rate, pay any delinquency on the loan account, and apply the balance of loan payments after completion of the reversal and reapplication procedure to principal. For principal plus interest bonds, the balance of the loan payments will be applied to the principal installments in reverse chronological order. Future loan payments after the reversal and reapplication process will be in accordance with the original debt instrument. Amortized accounts will retain the original installment amount. A larger amount of the installment will be applied toward principal, resulting in the loan being paid off sooner. Accounts will principal-plus-interest bonds where principal only is stipulated, will be billed by the Finance Office at the reduced interest rate, resulting in lower installments due.

If a borrower with an amortized account is delinquent or is having cash-flow problems and needs a reduced instalment to provide a sound operation, the account can be considered for reamortization under the provisions of RD Instruction 1951-E, section 1951.207(f). However, the account must be administratively changed to reflect the lower interest rate before the reamortization of the account under RD Instruction 1951-E, section 1951.207(f).

UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Development
(Insert Address)

(Borrower's Name)
(Address)

(Date)

Dear _____:

Public Law 100-233 contained a provision that gives you the option to select the lower interest rate in effect at either the time your \$(enter original loan amount) (Community Facility or Water and Waste Disposal) loan(s) was(were) approved or closed. Prior to Public Law 100-233, the interest rate in effect at loan approval was the interest rate charged by Rural Development. The interest rate at loan approval for your loan(s) was _____. The interest rate in effect at your loan closing(s) was _____. Any change in interest rate(s) will be processed administratively by Rural Development.

The following information is descriptive of the affected loan(s).

Borrower's Name:
Case Number: (Enter State and County Codes and Borrower's ID)
Fund Code:
Loan Number:
Original Principal Amount:
Present Interest Rate:
Installment Amount:
Revised Interest Rate:

(Enter paragraph concerning refund on paid-in-full account or refunds to be applied to other delinquent accounts of loans of the same type, if appropriate)

Please check the appropriate block below and sign, date, and return to (address of District Office) within 90 calendar days from the date of this letter.

_____ Yes. I hereby request that the interest rate on our loan(s) be lowered to the above-listed loan closing interest rate. I understand that all loan payments already made to the loan account(s) will be reversed and reapplied by Rural Development and the balance of payments after completion of this procedure will be applied to principal. (For principal-plus-interest accounts, the balance will be applied to outstanding principal installments in reverse chronological order.) I also understand that the installment schedule in the debt installment will not change.

_____ No. We do not want our interest rate changed. We understand that we will have no future choice of interest rate for this(these) loan(s) under the provisions of Public Law 100-233.

RD Instruction 1951-E
Exhibit G
Page 2

Authorized Borrower Signature

(Date)

If you have any questions concerning this matter, please let us know.

Sincerely,

(District Director)

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UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

RESCHEDULING AGREEMENT
(Public Bodies)

Effective Date: ___-___-___

State: _____ County: _____

Case No.: ___-___-_____ Fund Code: _____ Loan No.: ___

Amount Rescheduled: \$___, ___, ___.___ Interest Rate: ___.

The undersigned, a public body entity (herein called "Borrower"), being indebted for a loan made by Rural Development, United States Department of Agriculture, (herein called "Government"), as evidenced by a bond or other debt instrument (herein called the "bond") dated

_____, 19___, with an outstanding balance in the principal sum of \$ _____ plus accrued interest as of _____, 19___, in the sum of \$ _____, and being in default under that bond, hereby agrees with the Government as follows:

1. AMOUNT. The amount of the debt rescheduled is \$ _____, consisting of \$ _____ principal plus \$ _____ accrued interest. This amount represents:

- ___ the delinquent amount only
- ___ the amount of the outstanding debt plus the delinquent amount.

2. REPAYMENT SCHEDULE: The first installment of the rescheduled amount, including interest at the bond rate shown above, in the amount of \$ _____ will be due and payable on _____, 19___; thereafter, _____ regular installments, each in the amount of \$ _____, will be due and payable on _____ of each _____ until the rescheduled amount or, if the entire debt is being rescheduled, the entire indebtedness due under the bond, has been fully repaid. The final

installment, if not sooner paid, shall be due and payable as stated in the bond. Regular payments due in accordance with the bond ___are ___are not required in addition to the payments specified above.

3. The Government, as consideration for this agreement, will not enforce the remedies available to it by reason of any payment default occurring prior to the effective date of the agreement.

4. This agreement establishes a revised payment schedule to bring the delinquent loan account involved current, and nothing herein shall be construed as affecting any of the terms or conditions of the bond other than the payment schedule or suggest the satisfaction of the outstanding bond.

5. Upon default by the borrower on any terms or conditions of this agreement or other agreement, or violation of other rights of the Government as a lender, the Government at its option may declare the entire indebtedness immediately due and payable and exercise any and all rights and remedies available to it.

By resolution duly adopted on the _____ day of _____, 19__, the Borrower has authorized its _____ to execute this agreement and its _____ to affix its corporate seal.

ATTEST:

Name of Borrower

BY _____

BY _____

(Title)

(Title)

INSTRUCTIONS

A separate exhibit will be used for each loan. When legally permissible and administratively acceptable, the entire amount of the outstanding indebtedness should be rescheduled rather than only delinquent amounts.

1. When entering the borrower's case number, use leading zeroes where necessary. For example, 11 - 12 - 123456 must be entered as:

111011200001123456

2. Enter the total amount of principal and interest being rescheduled. If the entire outstanding indebtedness is being rescheduled, the amount must reflect balances for the original debt as well as delinquent amounts.
3. Use the rate of interest reflected in current Finance Office records.
4. When only the delinquent amount is being rescheduled for serial bonds or principal-plus-interest bonds, include the following amounts:
 - Unpaid interest on scheduled installments as of the last installment due date.
 - Interest accrued from date(s) due to the effective date of the rescheduling on past due principal installments.
 - Past due principal installments.
5. At the end of item 1, enter an "X" in the appropriate blank based on whether the full amount of the debt or only the delinquent amount is being rescheduled.
6. At the end of item 2, enter an "X" in the appropriate blank and strike through the inappropriate response based on whether the full amount of the debt or only the delinquent amount is being rescheduled.

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