

subject to the conditions stated in the agreement without payment or other consideration at the time of release, regardless of whether or not the mortgage specifically refers to Form FmHA or its successor agency under Public Law 103-354 1924-1 or the agreement to release.

(3) If the FmHA or its successor agency under Public Law 103-354 loan will be secured by a junior lien, all prior lienholders must give written consent to the proposed sale and the use of the net proceeds before the loan is approved.

(h) *Review prior to performing development work.* For the sole benefit of FmHA or its successor agency under Public Law 103-354, prior to beginning development work, the County Supervisor or District Director will review planned development with the borrower. Adequacy of the drawings and specifications as well as the estimates will be checked to make sure the work can be completed within the time limits previously agreed upon and with available funds. Items and quantities of any materials the borrower has agreed to furnish will be checked and dates by which each item of development should be started will be checked in order that the work may be completed on schedule. If any changes in the plans and specifications are proposed, they should be within the general scope of the work as originally planned. Changes must be approved and processed in accordance with §1924.10 of this subpart. The appropriate procedure for performing development should be explained to the borrower. Copies of FmHA or its successor agency under Public Law 103-354 forms that will be used during the period of construction should be given to the borrower. The borrower should be advised as to the purpose of each form and at what period during construction each form will be used.

(i) *Time of starting development work.* Development work will be started as soon as feasible after the loan is closed. Except in cases in which advance commitments are made in accordance with 7 CFR part 3550 or according to §1924.13(e)(1)(vi)(A) or §1924.13(e)(2)(ix)(A) of this subpart, no commitments with respect to per-

forming planned development will be made by the Agency or the applicant before the loan is closed. The applicant will be instructed that before the loan is closed, debts should not be incurred for labor or materials, or expenditures made for such purposes, with the expectation of being reimbursed from funds except as provided in subpart A of part 1943 of this chapter, 7 CFR part 3550, and subpart E of part 1944 of this chapter. However, with the prior approval of the National Office, a State Supplement may be issued authorizing County Supervisors to permit applicants to commence welldrilling operations prior to loan closing, provided:

(1) It is necessary in the area to provide the water supply prior to loan closing,

(2) The applicant agrees in writing to pay with personal funds all costs incurred if a satisfactory water supply is not obtained,

(3) Any contractors and suppliers understand and agree that loan funds may not be available to make the payment,

(4) Such action will not result under applicable State law in the giving of priority to mechanics and materialmen's liens over the later recorded FmHA or its successor agency under Public Law 103-354 mortgage, and

(5) FmHA or its successor agency under Public Law 103-354 does not guarantee that the cost will be paid.

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#### **§ 1924.6 Performing development work.**

All construction work will be performed by one, or a combination, of the following methods: Contract, borrower, mutual self-help, or owner-builder. All development work must be performed by a person, firm or organization qualified to provide the service. The mutual self-help method is performance of work by a group of families by mutual labor under the direction of a construction supervisor, as described in 7 CFR part 3550.

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(a) *Contract method.* This method of development will be used for all major construction except in cases where it is clearly not possible to obtain a contract at a reasonable or competitive cost. Work under this method is performed in accordance with a written contract.

(1) *Forms used.* Form FmHA or its successor agency under Public Law 103-354 1924-6, "Construction Contract," will be used for SFH construction. Other contract documents for more complex construction, acceptable to the loan approval official and containing the requirements of subpart E of part 1901 of this chapter, may be used provided they are customarily used in the area and protect the interest of the borrower and the Government with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work and acceptance of the work. If needed, the Office of the General Counsel (OGC) will be consulted. The United States (including FmHA or its successor agency under Public Law 103-354) will not become a party to a construction contract or incur any liability under it.

(2) *Contract provisions.* Contracts will have a listing of attachments and the provisions of the contract will include:

- (i) The contract sum.
- (ii) The dates for starting and completing the work.
- (iii) The amount of liquidated damages to be charged.
- (iv) The amount, method, and frequency of payment.
- (v) Whether or not surety bonds will be provided.
- (vi) The requirement that changes or additions must have prior written approval of FmHA or its successor agency under Public Law 103-354.

(3) *Surety requirements.* (i) Unless an exception is granted in accordance with paragraph (a)(3)(iii) of this section or when interim financing will be used, surety that guarantees both payment and performance in the amount of the contract will be furnished when one or more of the following conditions exist:

(A) The contract exceeds the applicable Rural Development Single Family Housing area loan limit as per 7 CFR

3550.63. (Loan limits are available at the local Rural Development field office.)

(B) The loan approval official determines that a surety bond appears advisable to protect the borrower against default of the contractor.

(C) The applicant requests a surety bond.

(D) The contract provides for partial payments in excess of the amount of 60 percent of the value of the work in place.

(E) The contract provides for partial payments for materials suitably stored on the site.

(ii) If surety bonds are required the construction contract must indicate that the contractor will furnish properly executed surety bonds prior to the start of any work. Exhibits F and G of this subpart as revised by OGC if necessary to comply with local or state statutory requirements will be used as the forms of payment bond and performance bond to be provided. Unless noncorporate surety is provided, the surety bonds may only be obtained from a corporate bonding company listed on the current Department of the Treasury Circular 570 (published annually in the FEDERAL REGISTER), as holding a certificate of authority as an acceptable surety on Federal bonds and as legally doing business in the State where the land is located. Noncorporate sureties are not recommended and the State Director will be responsible for determining the acceptability of the individual or individuals proposed as sureties on the bonds. The State Director must determine that an individual or individuals proposed as sureties must have cash or other liquid assets easily convertible to cash in an amount at least equal to 25 percent more than the contract amount in order to be acceptable. The individual(s) will pledge such liquid assets in an amount equal to the contract amount. Fees charged for noncorporate sureties may not exceed fees charged by corporate sureties on bonds of equal amount and, in no case, may surety be provided by the applicant or any person or organization with an identity of interest in the applicant's operation. The United States (including FmHA or its successor agency under Public Law

103-354) will incur no liability related in any way to a performance or payment bond provided in connection with a construction contract. FmHA or its successor agency under Public Law 103-354 will be named as co-obligee in the performance and payment bonds unless prohibited by state law.

(iii) When an experienced and reliable contractor cannot obtain payment and performance bonds meeting the surety requirements of paragraph (a)(3)(ii) of this section, the State Director may entertain a request from the applicant for an exception to the surety requirements. The applicant's request must specifically state why the proposed contractor is unable to obtain payment and performance bonds meeting the surety requirements, and why it is financially advantageous for the applicant to award the contract to the proposed contractor without the required bonds.

If the applicant's request is reasonable and justified, and if the proposed contractor is reliable and experienced in the construction of projects of similar size, design, scope, and complexity, the State Director may grant an exception to the surety requirements for loans or grants within the State Director's approval authority and accept one or a combination of the following:

(A) An unconditional and irrevocable letter of credit issued by a lending institution which has been reviewed and approved by OGC. In such cases, the construction contract must indicate that the contractor will furnish a properly executed letter of credit from a lending institution acceptable to FmHA or its successor agency under Public Law 103-354 prior to the start of any work. The letter of credit must remain in effect until the date of final acceptance of work by the owner and FmHA or its successor agency under Public Law 103-354. In addition, the letter of credit must stipulate that the lending institution, upon written notification by FmHA or its successor agency under Public Law 103-354 of the contractor's failure to perform under the terms of the contract, will advance funds up to the amount of the contract (including all FmHA or its successor agency under Public Law 103-354 approved contract change orders) to sat-

isfy all prior debts incurred by the contractor in performing the contract and all funds necessary to complete the work. Payments may be made to the contractor in accordance with paragraph (a)(12)(i)(C) of this section as if full surety bonds were being provided.

(B) If a letter of credit satisfying the conditions of paragraph (a)(3)(iii)(A) of this section cannot be obtained, the State Director may accept a deposit in the amount of the contract, into an interest or non-interest bearing supervised bank account. In such cases, the construction contract must indicate that the contractor will furnish the required deposit prior to the start of any work and that the funds shall remain on deposit until final acceptance of work by the owner and FmHA or its successor agency under Public Law 103-354. Payments may be made to the contractor in accordance with paragraph (a)(12)(i)(C) of this section as if full surety bonds were being provided.

(C) When the provisions of paragraph (a)(3)(iii) (A) or (B) of this section can be met except that a surety bond, a letter of credit, and/or deposits are not obtainable in full amount of the contract, the State Director may accept an amount less than the full amount of the contract provided all of the following conditions are met:

(1) The contractor provides a surety bond, a letter of credit, or deposits in the greatest amount possible, and provides documentation indicating the reasons why amounts exceeding the proposed amount cannot be provided.

(2) The applicant agrees to the amount of the surety bond, letter of credit, or deposits proposed, and the State Director determines that the applicant has the financial capability to withstand any financial loss due to default of the contractor.

(3) In the opinion of the State Director, the proposed amount and the method of payment will provide adequate protection for the borrower and the Government against default of the contractor.

(4) The contract provides for partial payments not to exceed 90 percent of the value of the work in place for that portion of the total contract which is guaranteed by an acceptable surety bond, letter of credit, or deposits, and

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partial payments not to exceed 60 percent of the value of the work in place for that portion of the total contract which is not guaranteed by surety, letter of credit, or deposits.

Example:

Contractor has a surety bond which guarantees payment and performance in an amount of \$150,000 which represents 75 percent of the total contract amount of \$200,000. The contractor's first request for payment appears thus:

- Value of work in place is \$10,000.
- Payment for work guaranteed by surety is 75 percent times \$10,000 times 90 percent is \$6,750.
- Payment for work not guaranteed by surety is 25 percent times \$10,000 times 60 percent is \$1,500.
- Authorized payment is \$8,250.

(Each partial payment shall reflect values for work guaranteed by surety, letter of credit, or deposits, and work not so guaranteed).

(iv) In cases where the contractor does not obtain payment and performance bonds in accordance with the surety requirements of paragraph (a)(3)(ii) of this section, or where an exception to the surety requirements is granted by the State Director, the following steps will be taken to protect the borrower and the government against latent obligations or defects in connection with the construction:

(A) The contractor will furnish a properly executed corporate latent defects bond or a maintenance bond in the amount of 10 percent of the construction contract; or

(B) An unconditional and irrevocable letter of credit in the amount of 10 percent of the construction contract issued by a lending institution which has been reviewed and approved by OGC; or

(C) A cash deposit into an interest or non-interest bearing supervised bank account in the amount of 10 percent of the construction contract;

(D) The period of protection against latent obligations and/or defects shall be one year from the date of final acceptance of work by the owner and FmHA or its successor agency under Public Law 103-354;

(E) Final payment shall not be rendered to the contractor until the provisions of paragraph (a)(3)(iv) (A), (B) or (C) of this section have been met;

(F) The contract will contain a clause indicating that the contractor agrees to provide surety or guarantee acceptable to the owner and FmHA or its successor agency under Public Law 103-354 against latent obligations and/or defects in connection with the construction.

(4) *Equal opportunity.* Section 1901.205 of subpart E of part 1901 of this chapter applies to all loans or grants involving construction contracts and subcontracts in excess of \$10,000.

(5) *Labor standards provisions.* The provisions of the Davis-Bacon and related acts, which are published by the Department of Labor (29 CFR parts 1, 3 and 5), will apply when the contract involves either LH grant assistance, or 9 or more units in a project being assisted under the HUD section 8 housing assistance payment program for new construction.

(6) *Historical and archaeological preservation.* The provisions of subpart F of part 1901 of this chapter concerning the protection of historical and archaeological properties will apply to all construction financed, in whole or in part, by FmHA or its successor agency under Public Law 103-354 loans and grants. These provisions have special applicability to development in areas designated by NRCS as Resource Conservation and Development (RC&D) areas. (See part 1942, subpart I of this chapter.)

(7) *Air and water acts.* Under Executive Order 11738, all loans or grants involving construction contracts for more than \$100,000 must meet all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Water Pollution Control Act (33 U.S.C., section 1813). The contract should contain provisions obligating the contractor as a condition for the award of the contract as follows:

(i) To notify the owner of the receipt of any communication from Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

(ii) To certify that any facility to be utilized in the performance of any non-exempt contractor subcontract is not listed on the EPA list of Violating Facilities as of the date of contract award.

(iii) To include or cause to be included the above criteria and requirements of paragraphs (a)(7) (i) and (ii) of this section in every nonexempt subcontract, and that the contractor will take such action as the Government may direct as a means of enforcing such provisions.

(8) *Architectural barriers.* In accordance with the Architectural Barriers Act of 1968 (Pub. L. 90-480), as implemented by the General Services Administration regulations (41 CFR 101-19.6) and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112) as implemented by 7 CFR, parts 15 and 15b, all facilities financed with FmHA or its successor agency under Public Law 103-354 loans and grants and which are accessible to the public or in which people with disabilities may be employed or reside must be developed in compliance with this Act. Copies of the Act and Federal accessibility design standards may be obtained from the Executive Director, Architectural and Transportation Barriers Compliance Board, Washington, DC 20201.

(9) *National Environmental Policy Act.* The provisions of subpart G of part 1940 of this chapter concerning environmental requirements will apply to all loans and grants including those being assisted under the HUD section 8 housing assistance payment program for new construction.

(10) *Obtaining bids and selecting a contractor.* (i) The applicant may select a contractor and negotiate a contract or contact several contractors and request each to submit a bid. For complex construction projects, refer also to § 1924.13(e) of this subpart.

(ii) When a price has already been negotiated by an applicant and a contractor, the County Supervisor, District Director or other appropriate FmHA or its successor agency under Public Law 103-354 official will review the proposed contract. If the contractor is qualified to perform the development and provide a warranty of the work and the price compares favor-

ably with the cost of similar construction in the area, further negotiation is unnecessary. If the FmHA or its successor agency under Public Law 103-354 official determines the price is too high or otherwise unreasonable, the applicant will be requested to negotiate further with the contractor. If a reasonable price cannot be negotiated or if the contractor is not qualified, the applicant will be requested to obtain competitive bids.

(iii) When an applicant has a proposed development plan and no contractor in mind, competitive bidding will be encouraged. The applicant should obtain bids from as many qualified contractors, dealers or tradespeople as feasible depending on the method and type of construction.

(iv) If the award of the contract is by competitive bidding, Form FmHA or its successor agency under Public Law 103-354 1924-5, "Invitation for Bid (Construction Contract)," or another similar invitation bid form containing the requirements of subpart E of part 1901 of this chapter, may be used. All contractors from whom bids are requested should be informed of all conditions of the contract including the time and place of opening bids. Conditions shall not be established which would give preference to a specific bidder or type of bidder. When applicable, copies of Forms FmHA or its successor agency under Public Law 103-354 1924-6 and FmHA or its successor agency under Public Law 103-354 400-6, "Compliance Statement," also should be provided to the prospective bidders.

(11) *Awarding the contract.* The borrower, with the assistance of the County Supervisor or District Director, will consider the amount of the bids or proposals, and all conditions which were listed in the "Invitation for Bid." On the basis of these considerations, the borrower will select and notify the lowest responsible bidder.

(i) Before work commences, the County Supervisor, District Director or other FmHA or its successor agency under Public Law 103-354 employee having knowledge of contracts and construction practices will hold a preconstruction conference with the borrower(s), contractor and architect/engineer (if applicable). The purpose of

the conference is to reach a mutual understanding of each party's responsibilities under the terms and conditions of the contract documents and the loan agreement during the construction and warranty periods. Form FmHA or its successor agency under Public Law 103-354 1924-16, "Record of Preconstruction Conference," may be used as a guide for an agenda.

(ii) A summary of the items covered will be entered in the running case record.

(iii) The contract will then be prepared, signed and copies distributed in accordance with the FMI for Form FmHA or its successor agency under Public Law 103-354 1924-6.

(iv) After a borrower/contractor's contract or subcontract in excess of \$10,000 is received in the FmHA or its successor agency under Public Law 103-354 County or District Office, the responsible FmHA or its successor agency under Public Law 103-354 official will send within 10 calendar days of the date of the contract or subcontract, a report similar in form and content to exhibit C of subpart E of part 1901 of this chapter to the Area Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, at the applicable address listed in exhibit E, subpart E of part 1901 of this chapter. The report must contain, at least, the following information: contractor's name, address and telephone number; employer's identification number; amount, starting date and planned completion date of the contract; contract number; and city and DOL region of the contract site. The information for this report should be obtained from the contractor when the contract is awarded.

(12) *Payments for work done by the contract method.* (i) Payments will be made in accordance with one of the following methods unless prohibited by state statute, in which case the State Director shall issue a State Supplement to this section:

(A) The "One-Lump-Sum" payment method will be used when the payment will be made in one lump-sum for the whole contract.

(B) The "Partial payments not to exceed 60 percent of the value of the work in place" payment method will be used

when the contractor does not provide surety bond, a letter of credit, or deposits.

(C) The "Partial payments in the amount of 90 percent of the value of the work in place and of the value of the materials suitably stored at the site" payment method will be used when the contractor provides a surety bond equal to the total contract amount.

(D) The "Partial payments which reflect the portions of the contract amount which is guaranteed" method will be used when the contractor provides surety bonds, a letter of credit, or deposits less than the total amount of the contract in accordance with the provisions of paragraph (a)(3)(iii)(C) of this section.

(ii) When Form FmHA or its successor agency under Public Law 103-354 1924-6 is used, the appropriate payment clause will be checked and the other payment clauses not used will be effectively crossed out.

(iii) When a contract form other than Form FmHA or its successor agency under Public Law 103-354 1924-6 is used, the payment clause must conform with paragraph (a)(12)(i) of this section and the appropriate clause as set forth in Form FmHA or its successor agency under Public Law 103-354 1924-6.

(iv) The borrower and FmHA or its successor agency under Public Law 103-354 must take precautionary measures to see that all payments made to the contractor are properly applied against bills for materials and labor procured under the contract. Prior to making any partial payment on any contract where a surety bond is not used, the contractor will be required to furnish the borrower and the FmHA or its successor agency under Public Law 103-354 with a statement showing the total amount owed to date for materials and labor procured under the contract. The contractor also may be required to submit evidence showing that previous partial payments were applied properly. When the borrower and the County Supervisor or District Director have reason to believe that partial payments may not be applied properly, checks may be made jointly to the contractor and persons who furnished materials

and labor in connection with the contract.

(v) When partial payments are requested by the contractor and approved by the owner, the amount of the partial payment will be determined by one of the following methods:

(A) Based upon the percentage completed as shown on a recently completed and properly executed Form FmHA or its successor agency under Public Law 103-354 1924-12, "Inspection Report."

(B) When the structure will be covered by an insured 10-year warranty, the insurer's construction inspector must provide FmHA or its successor agency under Public Law 103-354 with any available copies of inspection reports showing percentage of completion immediately after the inspections are completed. To make partial payments when copies of inspection reports are not available, the responsible FmHA or its successor agency under Public Law 103-354 official will make the inspections or will be guided by the provisions of §1924.6(a)(12)(v)(C) of this subpart. If further assurance is deemed necessary to justify partial payments, the FmHA or its successor agency under Public Law 103-354 official may make onsite inspections or require additional information.

(C) Based upon an application for payment containing an estimate of the value of work in place which has been prepared by the contractor and accepted by the borrower and FmHA or its successor agency under Public Law 103-354. When the contract provides for partial payments for materials satisfactorily stored at the site, the application for payment may include these items. Prior to receiving the first partial payment, the contractor should be required to submit a list of major subcontractors and suppliers and a schedule of prices or values of the various phases of the work aggregating the total sum of the contract such as excavation, foundations, framing, roofing, siding, mill work, painting, plumbing, heating, electric wiring, etc., made out in such form as agreed upon by the borrower, FmHA or its successor agency under Public Law 103-354, and the contractor. In applying for payments, the contractor should submit a statement

based upon this schedule. See exhibit A of this subpart for guidance in reviewing the contractor's schedule of prices and estimating the value of the work in place.

(vi) *Final payment.* (A) When the structure will be covered by an insured 10-year warranty, the insurer must provide an insured 10-year warranty policy (or a binder if the policy is not available) before final payment is made to the builder.

(B) Final payment of the amount due on the contract or disbursement of the FmHA or its successor agency under Public Law 103-354 loan funds where an interim loan was used will be made only upon completion of the entire contract, final inspection by FmHA or its successor agency under Public Law 103-354, acceptance of the work by FmHA or its successor agency under Public Law 103-354 and the borrower, issuance of any and all final permits and approvals for the use and occupancy of the structure by any applicable state and local governmental authorities, and compliance by the contractor with all terms and conditions of the contract. In the event the work of construction is delayed or interrupted by reason of fire, flood unusually stormy weather, war, riot, strike, an order, requisition or regulation of any governmental body (excluding delays related to possible defects in the contractor's performance and excluding delays caused by the necessity of securing building permits or any required inspection procedures connected therewith) or other contingencies reasonably unforeseeable and beyond the reasonable control of the contractor, then with the written consent of FmHA or its successor agency under Public Law 103-354, the date of completion of the work may be extended by the owner by the period of such delay, provided that the contractor shall give the owner and FmHA or its successor agency under Public Law 103-354 written notice within 72 hours of the occurrence of the event causing the delay or interruption.

(C) Prior to making final payment on the contract when a surety bond is not used or disbursing the FmHA or its successor agency under Public Law 103-354 loan funds when an interim loan

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was used, FmHA or its successor agency under Public Law 103-354 will be provided with a Form FmHA or its successor agency under Public Law 103-354 1924-9, "Certificate of Contractor's Release," and Form FmHA or its successor agency under Public Law 103-354 1924-10, "Release by Claimants," executed by all persons who furnished materials or labor in connection with the contract. The borrower should furnish the contractor with a copy of the "Release by Claimants" form at the beginning of the work in order that the contractor may obtain these releases as the work progresses.

(1) If such releases cannot be obtained, the funds may be disbursed provided all the following can be met:

(i) Release statements to the extent possible are obtained;

(ii) The interests of FmHA or its successor agency under Public Law 103-354 can be adequately protected and its security position is not impaired; and

(iii) Adequate provisions are made for handling the unpaid account by withholding or escrowing sufficient funds to pay any such claims or obtaining a release bond.

(2) The State Director may issue a State Supplement which will:

(i) Not require the use of Form FmHA or its successor agency under Public Law 103-354 1924-10, if, under existing state statutes, the furnishing of labor and materials gives no right to a lien against the property, or

(ii) Provide an alternative method to protect against mechanic's and materialmen's liens. In this case, the use of Form FmHA or its successor agency under Public Law 103-354 1924-10 is optional.

(b) *Borrower method.* The borrower method means performance of work by or under the direction of the borrower, using one or more of the ways specified in this paragraph. Development work may be performed by the borrower method only when it is not practicable to do the work by the contract method; the borrower possesses or arranges through an approved self-help plan for the necessary skill and managerial ability to complete the work satisfactorily; such work not interfere seriously with the borrower's farming operation or work schedule, and the

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County Office caseload will permit a County Supervisor to properly advise the borrower and inspect the work.

(1) *Ways of performing the work.* The borrower will:

(i) Purchase the material and equipment and do the work.

(ii) Utilize lump-sum agreements for (A) minor items or minor portions of items of development, the total cost of which does not exceed \$5,000 per agreement, such as labor, material, or labor and material for small service buildings, repair jobs, or land development; or (B) material and equipment which involve a single trade and will be installed by the seller, such as the purchase and installation of heating facilities, electric wiring, wells, painting, liming, or sodding. All agreements will be in writing, however, the County Supervisor may make an exception to this requirement when the agreement involves a relatively small amount.

(2) *Acceptance and storage of material on site.* The County Supervisor will advise the borrower that the acceptance of material as delivered to the site and the proper storage of material will be the borrower's responsibility.

(3) *Payment for work done by the borrower method—(i) Payments for labor.* Before the County Supervisor countersigns checks for labor, the borrower must submit a completed Form FmHA or its successor agency under Public Law 103-354 1924-11, "Statement of Labor Performed," for each hired worker performing labor during the pay period. Ordinarily, checks for labor will be made payable to the workers involved. However, under justifiable circumstances, when the borrower has paid for labor with personal funds and has obtained signatures of the workers on Form FmHA or its successor agency under Public Law 103-354 1924-11 as having received payment, the County Supervisor may countersign a check made payable to the borrower for reimbursement of these expenditures. Under no circumstances will the County Supervisor permit loan funds or funds withdrawn from the supervised bank account to be used to pay the borrower for the borrower's own labor or labor performed by any member of the borrower's household.



(ii) *Payment for equipment, materials or lump-sum agreements.* (A) Before countersigning checks for equipment or materials, the County Supervisor must normally have an invoice from the seller covering the equipment or materials to be purchased. When an invoice is not available at the time the check is issued, an itemized statement of the equipment or materials to be purchased may be substituted until a paid invoice from the seller is submitted, at which time the prepurchase statement may be destroyed.

(B) When an invoice is available at the time the check is drawn, the check will include a reference to the invoice number, the invoice date if unnumbered and, if necessary, the purpose of the expenditure.

(C) The check number and date of payment will be indicated on the appropriate Form FmHA or its successor agency under Public Law 103-354 1924-11, invoice, itemized statement of equipment or materials and/or lump-sum agreement.

(D) Ordinarily, checks for equipment or materials will be made payable to the seller. Under justifiable circumstances, when the borrower has paid for equipment or materials with personal funds and furnished a paid invoice, the County Supervisor may countersign a check made payable to the borrower for reimbursement of these expenses.

(E) When an invoice includes equipment or materials for more than one item of development, the appropriate part of the cost to be charged against each item of development will be indicated on the invoice by the borrower, with the assistance of the County Supervisor.

(F) Payment made under lump-sum agreements will be made only when all items of equipment and materials have been furnished, labor has been performed as agreed upon, and the work has been accepted by the borrower and FmHA or its successor agency under Public Law 103-354.

(G) Each paid Form FmHA or its successor agency under Public Law 103-354 1924-11, invoice, itemized statement for equipment or material and/or lump-sum agreement will be given to the borrower in accordance with the FMI.

(c) *Mutual self-help method.* The mutual self-help method is performance of work by a group of families by mutual labor under the direction of a construction supervisor, as described in 7 CFR part 3550. The ways of doing the work, buying materials, and contracting for special services are like those used for the borrower method. Materials can be bought jointly by the group of families, but payments will be made individually by each family. In the case of RH loans to families being assisted by Self-Help Technical Assistance (TA) grants in accordance with subpart I of part 1944 of this chapter, the County Supervisor may countersign checks for materials and necessary contract work made payable directly to the TA grantee, provided the District Director determines that:

(1) The grantee acts in the same capacity as a construction manager in the group purchase of material and services.

(2) The grantee has an adequate bookkeeping system approved by the District Director to assure that funds in each RH account are properly distributed and maintained.

(3) The grantee receives no compensation in the way of profit or overhead for this service and all discounts and rebates received in connection with the purchase of materials or services are passed on to the participating families.

(4) The grantee has a record-keeping system which shows that the costs of the materials and services were prorated to each borrower's account in relation to the actual material and service used by each borrower.

(d) *Owner-builder method.* This method of construction applies only to RRH loans made under subpart E of part 1944 of this chapter. Regulations governing this method are found at §1924.13(e)(2) of this subpart.

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