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SUBCHAPTER H—PROGRAM REGULATIONS

PART 1900—GENERAL

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 7 U.S.C. 6991, *et. seq.*; 42 U.S.C. 1480; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

Subpart A—Delegations of Authority

§ 1900.1 General.

The authorities contained in this subpart apply to all assets, functions, and programs now or hereafter administered or serviced by the Farmers Home Administration or its successor agency under Public Law 103–354, including but not limited to those relating to indebtedness, security, and other assets obtained or contracted through the Secretary of Agriculture, Resettlement Administration, Farm Security Administration, or Emergency Crop and Feed Loan Offices of the Farm Credit Administration, the Soil Conservation Service in connection with water conservation and utilization projects; the Puerto Rico Hurricane Relief Commission and successor agencies in connection with Puerto Rico Hurricane relief loans to individuals; State Rural Rehabilitation Corporations, the United States of America or its officials as trustees of the assets of State Rural Rehabilitation Corporations, Regional Agricultural Credit Corporations, Defense Relocation Corporations, land leasing and purchasing associations, corporations, and agencies, and whether the interest of the

United States in the indebtedness, instrument of debt, security, security instrument, or other assets is that of obligee, owner, holder, insurer, assignee, mortgagee, beneficiary, trustee or other interest.

[44 FR 18162, Mar. 27, 1979]

§ 1900.2 National office staff and state directors.

The following officials of the Farmers Home Administration or its successor agency under Public Law 103–354, in accordance with applicable laws, and the regulations implementing these laws, are severally authorized, for and on behalf of and in the name of the United States of America or the Farmers Home Administration or its successor agency under Public Law 103–354, to do and perform all acts necessary in connection with making and insuring loans, making grants and advances, servicing loans and other indebtedness and obtaining, servicing and enforcing security and other instruments related thereto: The Deputy Administrator Program Operations, the Assistant Administrators for Farmer Programs, Housing, and Community and Business Programs, the Assistant Administrator Accounting and Director Finance Office; each Director and the Insured Loan Officer, Finance Office; the Directors for the Water and Waste Disposal Division, the Community Facilities Division, the Business and Industry Division, the Multi-Family Housing Processing Division, the Multi-Family Housing Servicing and Property Management Division, the Single Family Housing Processing Division, the Single Family Housing Servicing and Property Management Division, the Farm Real Estate and Production Division, the Emergency Division; and each State Director within the area of that State Director's jurisdiction; and in the absence or disability of any such official, the person acting in that official's position; and the delegates of any such official. The authority includes, but is not limited to, the authority to:

(a) Effect the assignment of, or the declaration of trust with respect to, insured security instruments to place them in trust with the United States of America as trustee for the benefit of any holder of the promissory note or bond secured by such security instrument.

(b) Acknowledge receipt of notice of sale or assignment of insured loans and security instruments.

(c) Appoint or request the appointment of substitute trustees in deeds of trust.

(d) Execute proofs of claim in bankruptcy, death, and other cases.

(e) Consent to sale or assignment of, or sell or assign, direct or insured loans and security instruments (except that in the case of Agency asset sales, District Directors and County Supervisors are delegated the authority to assign security instruments), endorsements, reinsurance agreements, or other instruments in connection therewith; and execute agreements to insure and reinsure, and to purchase and repurchase insured loans and security instruments.

(f) Compromise, adjust, cancel or charge off indebtedness (except that County Supervisors are delegated authority to approve all settlements of sections 502 and 504 single family housing debt(s)).

(g) Modify contracts and other instruments and compromise claims owed to the Farmers Home Administration or its successor agency under Public Law 103–354 and covered by the Federal Claims Collection Act of 1966 and the joint regulations issued under it by the Attorney General and the Comptroller General as provided for in applicable program regulations.

(h) Perform all actions pertaining to the sale (or other disposal) of real or chattel property or interests therein and to execute and deliver bills of sale or other instruments to effect such sale (or disposition), which includes but is not limited to offering property for sale; advertising; receiving and accepting offers or bids; and closing sale transactions, including the collection of sale proceeds, and delivery of quitclaim deeds, easements, and right-of-way conveyances after those documents have been executed. The authority to execute any deeds of conveyance of inventory real property, including quitclaim deeds, easements, rights-of-way, or sale of any use rights is reserved to the State Director, and this authority may not be redelegated.

(i) Approve and consent to transfers of security property to other parties with or without assumption of debts; and approve and accept transfers of security property or interests therein to the United States of America, and execute release from liability after determination is made in accordance with applicable program regulations.

(j) Execute and deliver, or approve in writing, suspensions, releases or terminations of assignments, of income, renewals, extensions, partial and full releases and satisfactions of security, and personal or indemnity liability for indebtedness, waivers, subordination agreements, severance agreements, affidavits, acknowlegements, certificates of residence, evidence of consent, and other instruments or documents.

(k) Accelerate and declare entire real estate or chattel indebtedness due and payable, foreclose or request foreclosure of real estate security instruments by exercise of power of sale or otherwise, and bid for and purchase at any foreclosure or other sale or otherwise acquire real property pledged, mortgaged, conveyed, attached, or levied upon to collect indetedness, and accept title to any property so purchased or acquired.

(l) Require and accept further or additional security.

(m) Accelerate and declare entire non-real estate indebtedness due and payable, and foreclose or request foreclosure of chattel security instruments by exercise of power of sale or otherwise.

(n) Bid for and purchase at any foreclosure or other sale, or otherwise acquire personal property pledged, mortgaged, conveyed, attached, or levied upon to collect indebtedness, and accept title to any property so purchased or acquired.

(o) Take possession of, maintain, and operate security or acquired real or personal property or interests therein, sell or otherwise dispose of such personal property, and execute and deliver contracts, caretaker's agreements, leases, and other instruments in connection therewith, as appropriate.

(p) Execute proofs of loss on insurance contracts and endorse without recourse loss payment drafts and checks.

(q) Issue, publish and serve notices and other instruments.

(r) File or record instruments, whether separate instruments, or by making marginal entries, or by use of other methods permissible under State law.

[44 FR 18162, Mar. 27, 1979, as amended at 47 FR 5700, Feb. 8, 1982; 50 FR 23901, June 7, 1985; 52 FR 44375, Nov. 19, 1987; 56 FR 6946, Feb. 21, 1991]

§1900.3 State, district, and county office employees.

The following officials and employees of the Farmers Home Administration or its successor agency under Public Law 103–354, in accordance with applicable laws, and the regulations implementing these laws, for and on behalf of, and in the name of the United States of America or the Farmers Home Administration or its successor agency under Public Law 103–354, are also severally authorized within the area of their respective jurisdictions to perform the acts specified in paragraphs (g) through (r) of §1900.2; and within their loan approval authority to sell or otherwise dispose of real or chattel property or interests therein and to execute and deliver bills of sale or other instruments to effect such sale or disposition: Chief, Farmer Programs/Specialist; Chief, Rural Housing/Specialist; Chief, Community Programs/Specialist; Chief, Business and Industry/Specialist; Chief, Community and Business Programs/Specialist; Chief, Appraisal Staff/Appraiser; Chief, Underwriting Staff/Underwriter; Chief, Underwriting and Appraisal Staff; Chief, Servicing and Inventory Staff/Credit Management Specialist/Realty Specialist; each District Director, Assistant District Director, Loan Specialist General, County (including Parish) Supervisor, Emergency Loan Supervisor, Assistant Emergency Loan Supervisor, or other supervisor or assistant supervisor, and in the absence or disability of any such official or employee, the person acting in the position.

[50 FR 23902, June 7, 1985, as amended at 55 FR 43325, Oct. 29, 1990]

§ 1900.4 Ratification.

All written instruments affecting title to real or personal property, including but not limited to deeds, releases, satisfactions, subordination agreements, severance agreements, consents, waivers, assignments, declarations of trust, and heretofore executed by officials or employees of the agencies or other entities referred to in § 1900.1 to carry out any purpose authorized by law, incident to the administration of programs under the jurisdiction of said agencies or other entities, are hereby approved, confirmed, and ratified.

[44 FR 18162, Mar. 27, 1979]

§ 1900.5 Assignment of cases.

The State Director may, in writing, assign responsibilities and functions to a different office or staff position within the FmHA or its successor agency under Public Law 103–354 State organizational structure other than that referred to in regulations, provided no benefits, rights, or opportunities of the public are changed.

[55 FR 43325, Oct. 29, 1990]

§ 1900.6 Chair, Loan Resolution Task Force.

The Chair, Loan Resolution Task Force is delegated the following authorities, to be exercised until September 30, 1996:

(a) The responsibility for, under applicable Farmers Home Administration or its successor agency under Public Law 103–354 regulations, collecting and settling all delinquent direct Farmer Program loans as defined in the Consolidated Farm and Rural Development Act, as amended, that have received all primary servicing rights and pre-acceleration homestead and preservation loan servicing rights under 7 CFR part 1951, subpart S;

(b) The responsibility for making and directing the making of loan servicing decisions, under applicable Farmers Home Administration or its successor agency under Public Law 103–354 regulations, concerning delinquent direct Farmer Programs loans for which accrued principal and interest equals or exceeds one million dollars, to extend to borrowers their remaining primary servicing rights and pre-acceleration homestead and preservation loan servicing rights under 7 CFR part 1951, subpart S;

(c) Authority for approving the grant of exceptions pursuant to §§ 1951.916, 1955.21, 1956.99 and 1965.35 of this chapter, to the extent necessary to carry out the responsibilities described in paragraphs (a) and (b) of this section.

[59 FR 43441, Aug. 24, 1994]

§ 1900.7 Effect on other regulations.

This subpart does not revoke or modify any other delegation or redelegation, instruction, procedure, or regulation issued by, or under authority of, the Administrator of the Farmers Home Administration or its successor agency under Public Law 103–354.

[44 FR 18162, Mar. 27, 1979. Redesignated at 55 FR 43325, Oct. 29, 1990. Further redesignated at 59 FR 43441, Aug. 24, 1994]

Subpart B—Adverse Decisions and Administrative Appeals

SOURCE: 60 FR 67318, Dec. 29, 1995, unless otherwise noted.

§ 1900.51 Definitions.

Act means the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Public Law No. 103–354 (7 U.S.C. 6991 *et seq.*).

Agency means the Rural Utilities Service (RUS), the Rural Housing Service (RHS), and the Rural Business-Cooperative Development Service (RBS), or their successor agencies.

Refer to 7 CFR 11.1 for other definitions applicable to appeals of adverse decisions covered by this subpart.

§ 1900.52 General.

This subpart specifies procedures for use by USDA personnel and program participants to ensure that full and complete consideration is given to program participants who are affected by an agency adverse decision.

§ 1900.53 Applicability.

(a) Appeals of adverse decisions covered by this subpart will be governed by 7 CFR part 11.

(b) The provisions of this subpart apply to adverse decisions concerning direct loans, loan guarantees, and grants under the following programs: RUS Water and Waste Disposal Facility Loans and Grants Program; RHS Housing and Community Facilities Loan Programs; RBS Loan, Grant, and Guarantee Programs and the Intermediary Relending Program; and determinations of the Rural Housing Trust 1987–1 Master Servicer.

(c) This subpart does not apply to decisions made by parties outside an agency even when those decisions are used as a basis for decisions falling within paragraph (b) of this section, for example: decisions by state governmental construction standards-setting agencies (which may determine whether RHS will finance certain houses); Davis-Bacon wage rates; flood plain determinations; archaeological and historical areas preservation requirements; and designations of areas inhabited by endangered species.

§ 1900.54 Effect on assistance pending appeal.

(a) Assistance will not be discontinued pending the outcome of an appeal of a complete or partial adverse decision.

(b) Notwithstanding the provisions of paragraph (a) of this section, administrative offsets initiated under subpart C of part 1951 will not be stayed pending the outcome of an appeal and any further review of the decision to initiate the offset.

§ 1900.55 Adverse action procedures.

(a) If an applicant, guaranteed lender, a holder, borrower or grantee is adversely affected by a decision covered by this subpart, the decision maker will inform the participant of the adverse decision and whether the adverse decision is appealable. A participant has the right to request the Director of NAD to review the agency's finding of nonappealability in accordance with 7 CFR 11.6(a). In cases where the adverse decision is based on both appealable and nonappealable actions, the adverse action is not appealable.

(b) A participant affected by an adverse decision of an agency is entitled under section 275 of the Act to an opportunity for a separate informal meeting with the agency before commencing an appeal to NAD under 7 CFR part 11.

(c) Participants also have the right under section 275 of the Act to seek mediation involving any adverse decision appealable under this subpart if the mediation program of the State in which the participant's farming operation giving rise to the decision is located has been certified by the Secretary for the program involved in the decision. An agency shall cooperate in such mediation. Any time limitation for appeal will be stayed pending completion of the mediation process (7 CFR 11.5(c)).

§ 1900.56 Non-appealable decisions.

The following are examples of decisions which are not appealable:

(a) Decisions which do not fall within the scope of this subpart as set out in § 1900.53.

(b) Decisions that do not meet the definition of an ''adverse decision'' under 7 CFR part 11.

(c) Decisions involving parties who do not meet the definition of ''participant'' under 7 CFR part 11.

(d) Decisions with subject matters not covered by 7 CFR part 11.

(e) Interest rates as set forth in agency procedures, except for appeals alleging application of an incorrect interest rate.

(f) The State RECD Director's refusal to request an administrative waiver provided for in agency program regulations.

(g) Denials of assistance due to lack of funds or authority to guarantee.

§ 1900.57 [Reserved]

EXHIBITS TO SUBPART B

EXHIBIT A [RESERVED]

EXHIBIT B–1—LETTER FOR NOTIFYING APPLICANTS, LENDER, HOLDERS AND BORROWERS OF ADVERSE DECISIONS WHERE THE DECISION IS APPEALABLE

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration or its successor agency under Public Law 103–354

(Insert Address)

Date

Dear _____:

After careful consideration, we [were unable to take favorable action on your application/request for Farmers Home Administration or its successor agency under Public Law 103–354 services] [are cancelling/reducing the assistance you are presently receiving]. The specific reasons for our decision are:

(Insert here the adverse decision and all of the specific reasons for the adverse action.)

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call or write the County Office (insert phone number) to request a meeting with (this office) (The County Committee) within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative [or legal counsel] with you. You also have the right to appeal this decision to a hearing officer in lieu of, or in addition to, a meeting with [this office] [the County Committee]. See attachment for your appeal rights. (Attach Form FmHA or its successor agency under Public Law 103–354 1900–1.) (For guaranteed loans, except loss claims, the applicant and lender must jointly request a meeting and/or an appeal.)

If you do not wish a meeting, as outlined above, a request for a hearing must be sent to the Area Supervisor, National Appeals Staff (address) _____, postmarked no later than (month) _____, (date) _____.

(insert date 30 days from date of letter.)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

(Decision Maker)
(County Supervisor may sign for County Committee)

(Title)

[55 FR 9874, Mar. 16, 1990]

EXHIBIT B–2—LETTER FOR NOTIFYING APPLICANTS, LENDERS AND HOLDERS AND BORROWERS OF UNFAVORABLE DECISION REACHED AT THE MEETING

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration or its successor agency under Public Law 103–354

(Insert Address)

Date

Dear _____:

We appreciated the opportunity to review the facts relative to [your application/request for FmHA or its successor agency under Public Law 103–354 services] [the assistance you are presently receiving]. We regret that our meeting with you did not result in a satisfactory conclusion.

(Insert here the adverse decision and all the specific reasons for the adverse action).

See attachment for your appeal rights. (Attach Form FmHA or its successor agency under Public Law 103–354 1900–1) (For guaranteed loans, except loss claims, the applicant and lender must jointly request an appeal.)

A request for a hearing must be sent to the Area Supervisor, National Appeals Staff _____, postmarked no later than (month) _____, (date) _____
(insert date 30 days from date of letter.)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor

is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

_____

(Decision Maker)
(County Supervisor may sign for County Committee)

_____

(Title)

[55 FR 9874, Mar. 16, 1990]

EXHIBIT B–3—LETTER FOR NOTIFYING APPLICANTS, LENDER, HOLDERS AND BORROWERS OF ADVERSE DECISIONS WHERE THE DECISION INVOLVES AN APPRAISAL (NOT TO BE USED IN CASES INVOLVING FARMER PROGRAM PRIMARY LOAN SERVICING ACTIONS)

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration or its successor agency under Public Law 103–354

(Insert Address)

_____

Date

Dear_____:

After careful consideration, we [were unable to take favorable action on your application/request for Farmers Home Administration or its successor agency under Public Law 103–354 services] [are cancelling/reducing the assistance you are presently receiving]. The specific reasons for our decision are:

(Insert here the adverse decision and all of the specific reasons for the adverse action.)

If you have any questions concerning the decision or the facts used in making our decision and desire further explanation, you may call or write the County Office (insert phone number) to request a meeting with (this office) (The County Committee) within 15 calendar days of the date of this letter. You should present any new information or evidence along with possible alternatives for our consideration. You may also bring a representative or legal counsel with you.

If you do not wish to have a meeting as outlined above, you may contest the appraisal of the property value. In order to contest the appraisal you must first request review of the appraisal by the FmHA or its successor agency under Public Law 103–354 State Director. Your request for review by the State Director should be made through our office. You will be advised of the results of the State Director's review. If after the State Director's review you still disagree with the appraisal you may request a hearing. When you receive the results of the State Director's review you will be advised on how to ask for a hearing. Your request for review of the appraisal must be postmarked no later than (month)_____, (date)_____ (insert date 15 days from date of letter).

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter

[55 FR 9874, Mar. 16, 1990]

EXHIBIT B–4—LETTER FOR NOTIFYING APPLICANTS, LENDERS AND HOLDERS AND BORROWERS OF UNFAVORABLE DECISION REACHED AFTER STATE DIRECTOR REVIEW OF AN APPRAISAL (NOT TO BE USED IN CASES INVOLVING FARMER PROGRAM PRIMARY LOAN SERVICING ACTIONS)

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration or its successor agency under Public Law 103–354

(Insert Address)

_____

Date

Dear _____:

At your request we have reviewed the appraisal of the property you wish to purchase. We have determined that the value estimate of the property is both supportable and defensible (as required by FmHA or its successor agency under Public Law 103–354 regulations and appraisal industry standards) and therefore acceptable.

You have the right to appeal this decision. You must show why the appraisal is in error. You may submit an independent appraisal, at your expense, from a qualified appraiser who is a designated member of [the American Institute of Real Estate Appraisers, Society of Real Estate Appraisers, American Society of Farm Managers and Rural Appraisers, etc.,] or an equivalent organization requiring appraisal education, testing and experience. The appraisal must conform to Agency Appraisal regulations applicable to the loan program.

See attachment for your appeal rights.

A request for a hearing must be sent to the Area Supervisor, National Appeals Staff (address) _____, postmarked no later than (month) _____, (date) _____,

(insert date 30 days from date of letter)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part

of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

_____

(State Director)

[55 FR 9875, Mar 16, 1990]

EXHIBIT C—LETTER FOR NOTIFYING APPLICANTS, LENDERS, HOLDERS, AND BORROWERS OF ADVERSE DECISIONS WHEN PART OR ALL OF THE DECISION IS NOT APPEALABLE [NOT USED IN CONNECTION WITH DECISIONS RELATED TO NONPROGRAM APPLICANTS, BORROWERS, OR PROPERTY]

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration or its successor agency under Public Law 103–354

(Insert Address)

_____

(Date)

Dear _____ :

After careful consideration we [were unable to take favorable action on your application/request for Farmers Home Administration or its successor agency under Public Law 103–354 services] [are cancelling/reducing the assistance you are presently receiving].

(Insert and number all of the *specific* reasons for the adverse action. Examples of nonappealable reasons are listed in §1900.55(a)).

If you have any questions about this action, we would like the opportunity to explain in detail why your request has not been approved, explain any possible alternative, or provide any other information you would like. You may bring any additional information you may have and you may bring a representative or counsel if you wish. Please call (*telephone number*) for an appointment.

Applicants and borrowers generally have a right to appeal adverse decisions, but FmHA or its successor agency under Public Law 103–354 decisions based on certain reasons are not appealable. We have determined that the reason(s) numbered _____ for the decision in this case make(s) the decision not appealable under FmHA or its successor agency under Public Law 103–354 regulations. You may, however, write the Area Supervisor, National Appeals Staff (insert address) for a review of the accuracy of our finding that the decision is not appealable, postmarked no later than (month) _____, (date) _____ (insert date 30 days from date of letter).

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, handicap, or age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal Agency that administers compliance with the law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Sincerely,

_____

(Decision Maker)

(County Supervisor may sign for County Committee)

_____

(Title)

[55 FR 9875, Mar. 16, 1990, as amended at 58 FR 52646, Oct. 12, 1993]

EDITORIAL NOTE: At 58 FR 52646, Oct. 12, 1993, the Farmers Home Administration attempted to amend Exhibit C of subpart B of part 1900 by removing in the second paragraph the words ''(month) _____,''; however, because ''(month) _____'' does not exist in the second paragraph, this amendment could not be incorporated.

EXHIBIT D—HEARINGS/REVIEW OFFICER DESIGNATIONS

HEARING/REVIEW OFFICER DESIGNATIONS

Decisionmaker or decision	Hearing officer	Review officer
County Supervisor	National Appeals Staff Hearing Officer	State Director and/or Director, National Appeals Staff.
County Committee	National Appeals Staff Hearing Officer	State Director and/or Director, National Appeals Staff.
*District Director, *State Program Chief, *District Specialist.	National Appeals Staff Hearing Officer	**State Director and/or Director, National Appeals Staff.
*State Director, *Regional Director	As appointed by Director, National Appeals Staff.	Director, National Appeals Staff.
Division Director or Assistant Administrator.	As appointed by Director, National Appeals Staff.	Director, National Appeals Staff.

HEARING/REVIEW OFFICER DESIGNATIONS—Continued

Decisionmaker or decision	Hearing officer	Review officer
Assistant Administrator	As appointed by Director, National Appeals Staff.	Director, National Appeals Staff.
Deputy or Associate Administrator	As appointed by Director, National Appeals Staff.	Director, National Appeals Staff.

*Decisionmaker for Rural Development Administration or its successor agency under Public Law 103–354 (RDA or its successor agency under Public Law 103–354) cases for Regional Office Operations.

**Review officer will be the Regional Director and/or the Director, National Appeals Staff for RDA or its successor agency under Public Law 103–354 cases.

NOTES

1. District Director also means Assistant District Director or District Loan Specialist.

2. County Supervisor also means Assistant County Supervisor with loan approval authority.

3. The Director of the National Appeals Staff may designate a staff member to conduct a hearing or review. When the hearing/review is completed, the designee will send the complete case file, hearing notes, tape recordings, and a recommended decision to the Director for a final decision. The Director may, for individual cases, delegate final decision authority to a designee.

4. For decisions not directly covered above, advice should be sought from the Director of the National Appeals Staff.

5. An appellant may elect to have an appeal reviewed by the State Director, or the Director of the National Appeals Staff. The decision of the State Director will be subject to further review by the Director of the National Appeals Staff upon request of the appellant.

[58 FR 4065, Jan. 13, 1993]

Subpart C—Applicability of Federal Law

§ 1900.101 General.

This subpart provides Agency policy concerning:

(a) The applicability of Federal rather than State Law in the conduct of Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) operations, and

(b) The liability of an auctioneer for conversion of personal property mortgaged to FmHA or its successor agency under Public Law 103–354.

[44 FR 10979, Feb. 26, 1979, as amended at 45 FR 8934, Feb. 11, 1980]

§ 1900.102 Applicable law.

Loans made by FmHA or its successor agency under Public Law 103–354 are authorized and executed pursuant to Federal programs adopted by Congress to achieve national purposes of the U.S. Government.

(a) Instruments evidencing or securing a loan payable to or held by the Farmers Home Administration or its successor agency under Public Law 103–354, such as promissory notes, bonds, guaranty agreements, mortgages, deeds of trust, financing statements, security agreements, and other evidences of debt or security shall be construed and enforced in accordance with applicable Federal law.

(b) Instruments evidencing a guarantee, conditional commitment to guarantee, or a grant, such as contracts of guarantee, grant agreements or other evidences of an obligation to guarantee or make a grant, executed by the Farmers Home Administration or its successor agency under Public Law 103–354, shall be construed and enforced in accordance with applicable Federal law.

(c) In order to implement and facilitate these Federal loan programs, the application of local procedures, especially for recordation and notification purposes, may be utilized to the fullest extent feasible and practicable. However, the use of local procedures shall not be deemed or construed to be any waiver by FmHA or its successor agency under Public Law 103–354 of Federal immunity from any local control, penalty, or liability, or to subject FmHA or its successor agency under Public Law 103–354 to any State required acts or actions subsequent to the delivery by FmHA or its successor agency under

Public Law 103–354 officials of the instrument to the appropriate local or State official.

(d) Any person, corporation, or organization that applies for and receives any benefit or assistance from FmHA or its successor agency under Public Law 103–354 that offers any assurance or security upon which FmHA or its successor agency under Public Law 103–354 relies for the granting of such benefit or assistance, shall not be entitled to claim or assert any local immunity, privilege, or exemption to defeat the obligation such party incurred in obtaining or assuring such Federal benefit or assistance.

(e) The liability of an auctioneer for conversion of personal property mortgaged to FmHA or its successor agency under Public Law 103–354 shall be determined and enforced in acceptance with the applicable Federal law. ''Auctioneer'' for the purposes of this subpart includes a commission merchant, market agency, factor or agent. In all cases in which there has been a disposition without authorization by FmHA or its successor agency under Public Law 103–354 of personal property mortgaged to that agency, any auctioneer involved in said disposition shall be liable to the Government for conversion—notwithstanding any State statute or decisional rule to the contrary.

[44 FR 10979, Feb. 26, 1979]

Subpart D—Processing and Servicing FmHA or Its Successor Agency Under Public Law 103–354 Assistance to Employees, Relatives, and Associates

SOURCE: 58 FR 224, Jan. 5, 1993, unless otherwise noted.

§ 1900.151 General.

(a) Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) Instruction 2045–BB (available in any FmHA or its successor agency under Public Law 103–354 office) requires the maintenance of high standards of honesty, integrity, and impartiality by employees. To reduce the potential for employee conflict of interest, any processing, approval, servicing or review activity, including access through automated information systems, is conducted only by authorized FmHA or its successor agency under Public Law 103–354 employees who:

(1) Are not themselves the recipient.

(2) Are not members of the family or known close relatives of the recipient.

(3) Do not have an immediate working relationship with the recipient, the employee related to the recipient, or the employee who would normally conduct the activity.

(4) Do not have a business or close personal association with the recipient.

(b) No provision of this subpart takes precedence over individual program requirements or restrictions, especially those restrictions found in FmHA or its successor agency under Public Law 103–354 Instruction 2045–BB (available in any FmHA or its successor agency under Public Law 103–354 office) relating to eligibility for FmHA or its successor agency under Public Law 103–354 assistance of FmHA or its successor agency under Public Law 103–354 employees, members of families of employees, close relatives, or business or close personal associates of employees.

(c) The determination of a case's need for special handling under the provisions of this subpart is not an adverse action and, therefore, is not subject to appeal.

§ 1900.152 Definitions.

Applicant or borrower. All persons or organizations, individually or collectively, applying for or receiving insured or guaranteed loan or grant assistance from or through FmHA or its successor agency under Public Law 103–354. Referred to as recipient.

Assistance. Loans or grants made, insured or guaranteed, or serviced by FmHA or its successor agency under Public Law 103–354.

Associates. All persons with whom an employee has a business or close personal association or immediate working relationship.

Business association. Business relationship between those with an identity of financial interest; including but not limited to a business partnership,

being an officer, director, trustee, partner or employee of an organization, or other long-term contractual relationship.

Close personal association. Social relationship between unrelated residents of the same household.

Close relatives. The spouse, relatives and step-relatives of an employee or the employee's spouse, including Grandmother, Grandfather, Mother, Father, Aunt, Uncle, Sister, Brother, Daughter, Son, Niece, Nephew, Granddaughter, Grandson, and First Cousin.

Conflict of interest. A situation (or the appearance of one) in which one could reasonably conclude that an FmHA or its successor agency under Public Law 103–354 employee's private interest conflicts with his or her Government duties and responsibilities, even though there may not actually be a conflict.

Employee. All FmHA or its successor agency under Public Law 103–354 personnel, including gratuitous employees and those negotiating for or having arrangements for prospective employment, except as otherwise specifically stated. For the purposes of this instruction only, the term also refers to county or area committee members, elected or appointed, and to closing agents who, although they are not employees, have a special relationship to FmHA or its successor agency under Public Law 103–354 and therefore should be subject to these provisions.

Immediate working relationship. A relationship between a subordinate and a supervisor in a direct line, or between co-workers in the same office. For the purposes of this subpart, the relationships among a County Supervisor and members of the local County Committee are immediate working relationships.

Members of family. Blood and in-law relatives (such as by marriage or adoption) who are residents of the employee's household.

Recipient. One who has applied for or received FmHA or its successor agency under Public Law 103–354 financial assistance in the form of a loan or grant. See definition of applicant or borrower.

§1900.153 Identifying and reporting an employee relationship.

(a) *Responsiblity of applicant.* When an application for assistance is filed, the processing official asks if there is any known relationship or association with an FmHA or its successor agency under Public Law 103–354 employee. The applicant is required to disclose the requested information under subpart A of part 1910 of this chapter and pertinent program regulations.

(b) *Responsibility of FmHA or its successor agency under Public Law 103–354 employee.* An FmHA or its successor agency under Public Law 103–354 employee who knows he or she is related to or associated with an applicant or recipient, regardless of whether the relationship or association is known to others, is required to notify the FmHA or its successor agency under Public Law 103–354 official who is processing or servicing the assistance, in writing. FmHA or its successor agency under Public Law 103–354 Guide Letter 1900–D–1 (available in any FmHA or its successor agency under Public Law 103–354 office) may be used as the notice. If the appropriate official is not known, the State Director should be notified. Regardless of whether the relationship or association is defined in §1900.152 of this subpart, if the employee believes there may be a potential conflict of interest, the FmHA or its successor agency under Public Law 103–354 official who is processing or servicing the assistance may be notified and special handling requested. An employee's request that the case receive special handling is usually honored.

(c) *Responsibility of FmHA or its successor agency under Public Law 103–354 official.* When any relationship or association is identified, the FmHA or its successor agency under Public Law 103–354 official completes and submits FmHA or its successor agency under Public Law 103–354 Guide Letter 1900–D–2 (available in any FmHA or its successor agency under Public Law 103–354 office) to the State Director (or Administrator, under paragraph (e) of this section or §1900.155(a) of this subpart). When completed FmHA or its successor agency under Public Law 103–354 Guide Letter 1900–D–3 (available in any

FmHA or its successor agency under Public Law 103–354 office) is returned by the State Director, the processing official;

(1) [Reserved]

(2) [Reserved]

(3) notifies the recipient in writing of the change in responsibility and any other pertinent information,

(4) [Reserved]

(d) *Relationship or association established after application for FmHA or its successor agency under Public Law 103–354 assistance.* If a relationship or association is established after an application has been filed or assistance has been provided, both recipient and employee are required to notify the FmHA or its successor agency under Public Law 103–354 official who is processing or servicing the assistance. FmHA or its successor agency under Public Law 103–354 Guide Letter 1900–D–1 (available in any FmHA or its successor agency under Public Law 103–354 office) may be used for the notice.

(e) *Relationship or association with a State Office, Finance Office or National Office employee.* If an identified relationship or association is with an employee at a State Office (other than a State Director), Finance Office or National Office, the processing/servicing official completes and submits FmHA or its successor agency under Public Law 103–354 Guide Letter 1900–D–2 (available in any FmHA or its successor agency under Public Law 103–354 office) to the State Director in the normal manner. The State Director reviews the information, determines the need for special handling, designates the processing/servicing official, completes and submits FmHA or its successor agency under Public Law 103–354 Guide Letter 1900–D–3 (available in any FmHA or its successor agency under Public Law 103–354 office) to the Administrator for written concurrence. When the Administrator's concurrence is received, the State Director returns completed FmHA or its successor agency under Public Law 103–354 Guide Letter 1900–D–3 to the original official who completes the action described in paragraph (c) of this section.

(f) *Relationship or association with a State Director.* If an identified relationship or association is with a State Director, the processing/servicing official completes and submits FmHA or its successor agency under Public Law 103–354 Guide Letter 1900–D–2 (available in any FmHA or its successor agency under Public Law 103–354 office) to the Administrator. The Administrator reviews, determines the need for special handling, designates the processing/servicing official, completes and returns FmHA or its successor agency under Public Law 103–354 Guide Letter 1900–D–3 (available in any FmHA or its successor agency under Public Law 103–354 office) to the original official who completes the action described in paragraph (c) of this section.

(g) *Change in relationship or association, status of FmHA or its successor agency under Public Law 103–354 assistance, or employee's duty station.* If the relationship or association has changed, the application denied or the assistance otherwise terminated, or the FmHA or its successor agency under Public Law 103–354 employee's duty station changed, the designated processing/servicing official completes FmHA or its successor agency under Public Law 103–354 Guide Letter 1900–D–2 (available in any FmHA or its successor agency under Public Law 103–354 office) with the new information and submits it. The review process takes place as described in paragraphs (a) through (e) of this section to determine if processing/servicing activity may return to normal or requires another change. If the assistance is denied or otherwise terminated, the designated official notifies the original official.

§ 1900.154 Determining the need for special handling.

The State Director (or Administrator, under § 1900.153(e) or § 1900.155(a) of this subpart):

(a) [Reserved]

(b) determines whether the reported relationship or association is defined in § 1900.152 of this subpart and would violate the provisions of § 1900.151(a) of this subpart,

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) [Reserved]

§ 1900.155 Designating the processing/servicing official.

(a) *Designating an official with equivalent authority.* The State Director (or Administrator, under § 1900.253(e) of this subpart or this paragraph) designates a nonrelated or nonassociated FmHA or its successor agency under Public Law 103–354 official authorized to conduct the activity under program regulations, established delegation of authority and approval authority under subpart A of part 1901 of this chapter, and whose duty station is most convenient to the recipient and to the security property. A type and/or amount of assistance processed or serviced by a County Supervisor or at a County Office should be assigned only to another County Supervisor or County Office. A type and/or amount of assistance processed or serviced by a District Director or at a District Office should be assigned only to another District Director or District Office.

(b) *County Committee.* For processing or servicing decisions to be made by a County Committee, if the recipient is a member, a different County Committee is designated. If the recipient is related to or associated with the member, notwithstanding the provisions of § 1900.151(a)(3) of this subpart, the State Director *may* permit the decision to be made by the local committee, if the related/associated member abstains.

(c) [Reserved]

§ 1900.156 Special handling—processing.

(a) [Reserved]

(b) *Eligibility determination.* The designated processing official reviews the application and develops additional data as necessary. Upon determination of whether the assistance will be provided, the designated processing official notifies the applicant of the decision in writing under program regulations, subpart A of part 1910 of this chapter, and subpart B of part 1900. If the determination is favorable, unless otherwise designated, the complete application is returned to the original processing official for docket preparation. If the determination is unfavorable, the designated processing official as decisionmaker participates in the appeal process to its conclusion.

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) *Closing agent.* Unless there is a clear or apparent conflict of interest, closing will be at a location and by a closing agent chosen by the recipient.

(g) *Supervised bank account.* Unless there is a clear or apparent conflict of interest, any supervised bank account (or construction account) is established at a financial institution chosen by the recipient under supbart A of part 1902 of this chapter. Countersignature authority is delegated only to a nonrelated or nonassociated FmHA or its successor agency under Public Law 103–354 official.

(h) *Construction inspection.* Construction inspections are delegated to a nonrelated or nonassociated employee authorized to conduct inspections, whose duty station is nearest the construction site. The designated processing/servicing official notifies the builder (or architect/engineer) in writing of how and from whom to request inspections.

§§ 1900.157—1900.200 [Reserved]

PART 1901—PROGRAM-RELATED INSTRUCTIONS

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Subpart A—Loan and Grant Approval Authorities

AUTHORITY: 42 U.S.C. 1480, 7 U.S.C. 1989, 5 U.S.C. 301, 7 CFR 2.23 and 2.70.

SOURCE: 45 FR 79748, Dec. 2, 1980, unless othewise noted.

§ 1901.1 Purpose.

This subpart contains the loan and grant approval authorities by program of field officials of the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354).

§ 1901.2 Policy.

The loan and grant approval authorities will be given to the County Supervisor and District Director to the maximum extent possible, consistent with program requirements and available resources. Assistance to FmHA or its successor agency under Public Law 103–354 employees, members of their families, close relatives or business or close personal associates is subject to the provisions of subpart D of part 1900 of this chapter. Appropriate reviews, concurrence, and authorization, as required by FmHA or its successor agency under Public Law 103–354 regulations, must be obtained for all loans and/or grants in excess of the amounts indicated in Exhibits A, B, C, D, E and F.

[51 FR 34928, Sept. 30, 1986, as amended at 58 FR 226, Jan. 5, 1993]

§ 1901.3 Approval documents.

(a) Final approval documents for all insured loans and/or grants will be executed, to the maximum extent possible,

by the County Supervisor or District Director, as appropriate.

(b) State Directors, District Directors, and County Supervisors are authorized to execute loan guarantee documents in accordance with approval authorities.

[45 FR 79748, Dec. 2, 1980, as amended at 56 FR 48095, Sept. 24, 1991]

§1901.4 Authorities and responsibilities.

(a) *Authority of supervising officials.* Supervising officials have their own authority and also the authority given to officials under their supervision.

(b) *Authority of acting officials.* Acting officials have the authority and responsibility of their regular and acting positions unless limited by designation document.

(c) *Redelegation of authority by State Directors.* Unless restricted by memorandum from the Administrator, or FmHA or its successor agency under Public Law 103–354 regulations, State Directors can delegate their approval authorities to State Office employees within the applicable loan program by issuing a State Supplement.

(d) *Redelegations of authority by District Directors.* With the prior written concurrence from the State Director, District Directors can delegate their approval authority to Assistant District Directors by memorandum. Authority will not be redelegated, however, until the Assistant District Director receives adequate training and has sufficient expertise.

(e) *Restriction of approval authority by Administrator.* The Administrator can make written restrictions or revocations of the authority given to any loan approval official.

(f) *Restrictions of approval authority for other than Farmer Programs loans by State Directors.* A State Director can make written restrictions or revocations, for not more than 6 months, of the authority given to an individual.

(g) *Restrictions of approval authority for Farmer Programs loans.* A State Director may delegate, revoke, increase, or decrease loan approval authority of individuals to amounts indicated in Exhibit C and attachment 1 of Exhibit C of this subpart.

(h) *Restrictions on Assistant County Supervisors.* (1) Newly appointed Assistant County Supervisors will not approve loans until they receive adequate training and written authority from the State Director.

(2) County Supervisors and District Directors must certify that training requirements have been completed.

(i) *Restrictions on Emergency Loan Supervisors and Assistant Emergency Loan Supervisors.* Emergency Loan Supervisors and Assistant Emergency Loan Supervisors will not approve loans until they receive adequate training and receive written authority from the State Director.

[45 FR 79748, Dec. 2, 1980, as amended at 56 FR 48095, Sept. 24, 1991]

§1901.5 Other program considerations.

See Exhibits A, B, C, D, E and F for dollar amounts. See appropriate program Instructions for other considerations.

[51 FR 34928, Sept. 30, 1986]

Subparts B–D [Reserved]

Subpart E—Civil Rights Compliance Requirements *C*

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 40 U.S.C. 442; 42 U.S.C. 1480, 2942.

§1901.201 Purpose.

This subpart contains policies and procedures for implementing the regulations of the Department of Agriculture issued pursuant to Title VI of the Civil Rights Act of 1964, title VIII of the Civil Rights Act of 1968, Executive Order 11246 and the Equal Credit Opportunity Act of 1974, as they relate to the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354). Nothing herein shall be interpreted to prohibit preference to American Indians on Indian Reservations.

[41 FR 40112, Sept. 17, 1976]

§ 1901.202 Nondiscrimination in FmHA or its successor agency under Public Law 103–354 programs.

(a) *Nondiscrimination by recipients of FmHA or its successor agency under Public Law 103–354 assistance.* (1) No recipient of FmHA or its successor agency under Public Law 103–354 financial assistance will directly or through contractual or other arrangements subject any person or cause any person to be subjected to discrimination on the ground of race, color, or national origin, with respect to any program or facility. This prohibition applies but is not restricted to unequal treatment in priority, quality, quantity, methods, or charges for service, use, occupancy or benefit, participation in the service or benefit available, or in the use, occupancy or benefit of any structure, facility, or improvement provided with FmHA or its successor agency under Public Law 103–354 financial assistance.

(2) Specifically, and without limiting the general applicability of this subpart, such recipient will not on the grounds of race, color, or national origin:

(i) Deny any person the use, occupancy, or enjoyment of the whole or any part of real or personal property or service, financial aid, or other benefit under any program or facility.

(ii) Provide any person with any service, use, occupancy, or other benefit different from that provided others by the program or facility.

(iii) Subject any person to segregation or separate treatment in any matter related to his or her receipt of any service or other benefit.

(iv) Restrict in any way any person's enjoyment of any right, privilege, or advantage enjoyed by others through the facility or activity.

(v) Treat any person differently from others in determining whether he or she satisfies any requirements or conditions for any admission or membership in the recipient or in any other organization.

(vi) Deny any person an opportunity or restrict opportunity to participate in a program or facility by:

(A) Refusing or failing to provide notice or services provided others for the purpose of encouraging participation in the program or facility; or

(B) Providing any person with such notice or services different from the notice or services provided others.

(vii) Utilize criteria or methods of administration that have the effect of subjecting a person to discrimination with respect to any program or facility or defeating or substantially impairing the achievement of the objectives of a program or facility.

(viii) Select sites or locate facilities with the purpose or effect of:

(A) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which the regulations in this subpart apply; or

(B) Defeating or substantially impairing the achievement of the objectives of the regulations in this subpart.

(ix) Continue any previous or existing discriminatory practices, but will take affirmative action to overcome the effects of such discrimination.

(x) Deny any person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(b) *Nondiscrimination by FmHA or its successor agency under Public Law 103–354 employees.* (1) No. FmHA or its successor agency under Public Law 103–354 employee will exclude from participation in, or deny the benefits of, any program or activity administered by FmHA or its successor agency under Public Law 103–354, or subject to discrimination any person in the United States on the ground of race, color, religion, sex, national origin, or marital status.

(2) No FmHA or its successor agency under Public Law 103–354 employee will:

(i) Be limited in the discharge of his or her responsibilities to working with applicants solely on the basis of race, color, religion, sex, national origin, or marital status.

(ii) Obstruct equal access to buildings, facilities, structures, or lands under the control of FmHA or its successor agency under Public Law 103–354.

(iii) Deny under any program or activity of FmHA or its successor agency under Public Law 103–354 equal opportunity for employment; for participation in meetings, demonstrations,

training activities or programs; for receiving awards; for receipt of information disseminated by publication, news, radio, and other media; for obtaining contracts, grants, loans or other financial assistance, or for selection to assist in the administration of programs or activities of FmHA or its successor agency under Public Law 103–354.

(3) No FmHA or its successor agency under Public Law 103–354 employee will, while conducting official business, participate in or attend any segregated meetings or meetings held in a segregated facility from which persons are excluded because of race, color, religion, sex, national origin, or marital status.

(c) *Intimidating or retaliatory acts.* No recipient or other person will intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege under this subpart, or because a person has made a complaint or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to a complaint. The identity of complainants will be kept confidential except to the extent necessary to carry out the purposes of this subpart.

(d) *Nondiscrimination Agreement.* The County Supervisor will, at the time FmHA or its successor agency under Public Law 103–354 assistance is requested, give all applicants for loans and grants listed in § 1901.204(a) a copy of Form FmHA or its successor agency under Public Law 103–354 400–4, ''Nondiscrimination Agreement,'' and inform the applicant that assistance will be conditioned upon executing this form and complying with the requirements of this subpart.

(e) *Covenants.* Each instrument of conveyance for loans subject to title VI of the Civil Rights Act of 1964, as outlined in § 1901.204, must contain the following covenant: ''The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer.''

(f) *Posters.* The nondiscrimination poster, ''And Justice For All,'' will be displayed at the facilities and/or office of any borrower or grantee if the facilities have been financed by an FmHA or its successor agency under Public Law 103–354 loan or grant and are subject to title VI of the Civil Rights Act of 1964. This poster also will be displayed in all FmHA or its successor agency under Public Law 103–354 State and County Offices.

(g) *Racial and ethnic data.* Recipients should maintain, for review by FmHA or its successor agency under Public Law 103–354 and other appropriate agencies, racial and ethnic data showing the extent to which members of minority groups are beneficiaries of FmHA or its successor agency under Public Law 103–354-assisted programs. The data should identify recipients as White, Negro or Black, American Indian, Spanish Surname, Oriental and Other.

(h) *Discrimination complaints.* (1) Any person or any specific class of persons, if they believe they have been subject to discrimination prohibited by this subpart, may file a written complaint with any FmHA or its successor agency under Public Law 103–354 office, or, if they prefer with the Secretary of Agriculture. Persons who complain of discrimination will be advised of their rights to file complaints. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary of Agriculture.

(2) A complaint filed with the County Supervisor or the State Director will be referred promptly to the Administrator, Attention: Equal Opportunity Officer. Attached to the complaint should be a statement by the County Supervisor or State Director identifying the recipient and type of assistance provided by FmHA or its successor agency under Public Law 103–354, indicating whether a nondiscrimination agreement has been signed, and giving any other available pertinent information about the complaint.

[41 FR 40112, Sept. 17, 1976]

§ 1901.203 Title VIII of the Civil Rights Act of 1968.

FmHA or its successor agency under Public Law 103–354 employees, FmHA or its successor agency under Public Law 103–354 borrowers, contractors, packagers, and others who provide housing for sale or rent, are obligated under the provisions of title VIII of the Civil Rights Act of 1968 to provide fair housing to all persons regardless of race, color, religion, sex, or national origin.

(a) *Coverage.* The prohibitions against discrimination in the sale, rental, or financing of housing contained in title VIII apply to:

(1) All dwellings financed by loans made by the Federal Government and, therefore, to all RH borrowers.

(2) Any person in the business of selling or renting dwellings defined as:

(i) The owner of a dwelling intended for occupancy by five or more families.

(ii) Any person who has participated as principal in the sale or rental of three or more dwellings in the past year.

(iii) Any person who has served as sale or rental agent in two or more transactions in the past year.

(b) *Discrimination acts prohibited.* Title VIII prohibits FmHA or its successor agency under Public Law 103–354 employees, multiple housing borrowers, and those with whom FmHA or its successor agency under Public Law 103–354 does business (contractors, realtors, packagers) from:

(1) Refusing to sell or rent a particular dwelling because of a person's race, color, religion, or national origin. The following actions constitute violations of this provision:

(i) Refusing to package an RH loan application.

(ii) Refusing or failing to show a particular dwelling or home in a particular subdivision.

(iii) Directing persons only to areas populated by those of similar race, color, religion, or national origin when housing is available in other areas.

(iv) Representing unsold dwellings or sites as sold to prospective buyers.

(2) Requiring applicants for services to meet different terms or conditions because of their race, color, religion, or national origin; for example, requiring larger rents or downpayments from minority applicants.

(3) Including in any advertising either directly or through visual representation a preference for applicants of a particular race or ethnic origin.

(i) Words indicative of the race or ethnic background of the dwelling or landlord such as ''White private home,'' or ''all Black subdivision,'' may not be used in advertising housing financed or to be financed by FmHA or its successor agency under Public Law 103–354.

(ii) Selection of advertising media and the areas to be covered by any advertising must be made to reach potential applicants of all races or ethnic origins.

(c) *FmHA or its successor agency under Public Law 103–354 affirmative action.* (1) It is the policy of the Farmers Home Administration or its successor agency under Public Law 103–354 to administer its housing program affirmatively so individuals of similar income levels in the housing market area have housing choices available to them regardless of their race, color, religion, sex, or national origin. Each participant in FmHA or its successor agency under Public Law 103–354 housing program shall pursue affirmative fair housing marketing policies in soliciting buyers and tenants, in determining their eligibility and in concluding sales and rental transactions.

(2) Applicability. The affirmative fair housing marketing requirements shall apply as follows:

(i) Participants in FmHA or its successor agency under Public Law 103–354 housing programs who request approval for subdivision development involving five or more sites, multi-family projects with five or more units including self-help technical assistance grantees assisting five or more families or five or more conditional commitments for single family dwelling units during a 12-month period must submit an affirmative marketing plan.

(ii) An Affirmative Fair Housing Marketing Plan is required to be prepared and submitted to FmHA or its successor agency under Public Law 103–354 by the contractor when:

(A) A real estate broker is offering five or more single-family dwellings located in the same subdivision for sale under an exclusive listing contract with FmHA or its successor agency under Public Law 103–354.

(B) An auctioneer under contract with FmHA or its successor agency under Public Law 103–354 is offering five or more single-family dwellings located in the same subdivision for sale by public auction.

(C) A contractor under a contract with FmHA or its successor agency under Public Law 103–354 is managing a multiple-family housing project of five or more units or five or more single-family dwellings located in the same subdivision.

(3) Affirmative fair housing marketing plans will be submitted on form HUD 935.2(3–76) or the participant must be a signatory to a voluntary affirmative marketing agreement approved by the Department of Housing and Urban Development. The plan, if submitted on form HUD 935.2(3–76) shall describe an affirmative program which will meet the following requirements:

(i) Reaching those prospective buyers or tenants, regardless of sex, of majority and minority groups in the marketing area who traditionally would not be expected to apply for such housing without special outreach efforts because of existing racial or socio-economic patterns.

(ii) Undertaking and/or maintaining a non-discriminatory hiring policy in recruiting from both majority and minority groups including both sexes, for staff engaged in the sale or rental of properties.

(iii) Training and instructing employees engaged in the sale or rental properties in the policy and application of nondiscrimination and fair housing.

(iv) Displaying in all sales and rental offices the ''Fair Housing'' poster.

(v) Posting in a conspicuous position on each property and FmHA or its successor agency under Public Law 103–354 construction site a sign displaying the equal opportunity logo or the following statement:

We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, or national origin.

(vi) Undertaking efforts to publicize the availability of housing opportunities to minority persons through the type of media customarily used by the applicant or participant, including minority publications and other minority outlets available in the housing market area. As part of these efforts all advertising must include either the equal housing opportunity logo or statement. When illustrations or persons are inclused they shall depict persons of both sexes and of majority and minority groups.

(4) The affirmative fair housing marketing plans or evidence that the participant is covered by an approved voluntary affirmative marketing agreement must be submitted as follows:

(i) For subdivisions with the preliminary submission of plans and specifications.

(ii) For multi-family projects, including rural rental housing, labor housing, cooperative housing, technical assistance grants and site development loans with SF 424.1, ''Application for Federal Assistance (For Non-construction)'', or SF 424.2, ''Application for Federal Assistance (For Construction)'', or with the letter of application. Subsequent loans or grants extended to the participant will necessitate a new or updated plan.

(iii) For conditional commitments for five or more individual dwelling units in a 12-month period with the application for the fifth conditional commitment.

(iv) For real estate brokers listing housing properties on an exclusive basis, at any time more than 5 properties are listed for sale by FmHA or its successor agency under Public Law 103–354 in the same subdivision.

(5) Affirmative fair housing marketing plans will cover the following time periods:

(i) For subdivision, from time of application until all lots are sold.

(ii) For multi-family projects from time of application until the loan is paid in full or for so long as the project is being used for the same or a similar

purpose for which the funds were extended.

(iii) For conditional commitments involving individual dwelling units, one year or until all units built through conditional commitments issued within the one year period have been sold.

(iv) For real estate brokers who list acquired rural housing properties under an exclusive listing contract, one year or until all properties covered under the plan have been sold, whichever is later.

(6) Affirmative fair housing marketing plans will be reviewed and approved by the official authorized to approve the assistance requested. The County Supervisor will review and submit with comments to the official authorized to approve the assistance requested, those fair housing marketing plans where the assistance requested exceeds his approval authority. Any participant covered by this section must have an approved affirmative fair housing marketing plan for any assistance approved 90 or more days after the issuance of these regulations.

(7) Approved affirmative fair housing marketing plans will be made available by the participant for public inspection at the participant's place of business and at each sales or rental office. Participants who fulfill the requirements of this section by filing a Form HUD 9352(3–76) will maintain records to reflect their efforts in fulfilling the affirmative fair housing marketing plan. These records will be made available for review by FmHA or its successor agency under Public Law 103–354 personnel. Affirmative fair housing marketing plans will be reviewed by FmHA or its successor agency under Public Law 103–354 personnel in accordance with section 2006–M of this chapter.

(8) Applicants failing to comply with these requirements will be liable to sanctions authorized by regulations, rules or policies governing the program in which they are participating including but not limited to denial of further participation in FmHA or its successor agency under Public Law 103–354 programs and referral to the Department of Justice for suit by the United States for injunctive or other appropriate relief.

(d) *Discrimination complaints.* (1) Complaints against FmHA or its successor agency under Public Law 103–354 employees or borrowers under title VIII of the Civil Rights Act of 1968 received by the County Office will be sent to the State Director. The State Director will forward the complaints to the Administrator, Attention: Equal Opportunity Officer.

(2) Complaints of discrimination against packagers, contractors or others with whom FmHA or its successor agency under Public Law 103–354 deals should be filed with the Department of Housing and Urban Development. However, these complaints may be accepted by FmHA or its successor agency under Public Law 103–354 employees and routed through the State Director to the Administrator, Attention: Equal Opportunity Officer.

(e) *Relations to other regulations.* Nothing in this section in any way interferes with the administration of the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964 or the ''Equal Opportunity in Housing Certification,'' signed by all packagers.

[41 FR 40112, Sept. 17, 1976, as amended at 42 FR 45894, Sept. 13, 1977; 42 FR 58737, Nov. 11, 1977; 50 FR 23903, June 7, 1985; 53 FR 27825, July 25, 1988; 55 FR 13503, Apr. 11, 1990]

§ 1901.204 Compliance reviews.

(a) *Recipients subject to reviews.* Recipients of the following kinds of loans and/or grants who received their loans or advances of funds on or after January 3, 1965, will be reviewed for compliance in accordance with Title VI of the Civil Rights Act of 1964. Guaranteed loans are not covered by Title VI and, therefore, are not subject to compliance reviews.

(1) Farm Ownership loans to install or improve recreational facilities or other nonfarm enterprises.

(2) Operating loans to install or improve recreational facilities or other nonfarm enterprises.

(3) Economic Opportunity loans to individuals for nonagricultural enterprises.

(4) Individual Recreation loans.

(5) Loans for Water and Waste Disposal facilities, including Resource Conservation and Development loans for this purpose.

(6) Community Facility loans.

(7) Watershed loans and advances.

(8) Recreation Association loans including those made from Resource Conservation and Development funds.

(9) Economic Opportunity loans to incorporated cooperative associations (Compliance reviews on unincorporated Economic Opportunity cooperatives subject to title VI will be conducted only as the need arises or as directed by either the State Director or the Administrator).

(10) Grazing Association loans, including Resource Conservation and Development loans for this purpose.

(11) Loans to Timber Development organizations.

(12) Rural Renewal loans and advances.

(13) Rural Rental Housing (formerly Senior Citizen rental) and Rural Cooperative Housing loans.

(14) Labor Housing loans and/or grants.

(15) Rural Housing Site loans.

(16) Business and Industrial Insured loans or grants.

(17) Technical Assistance grants.

(18) Development grants for water and waste disposal.

(19) Technical Assistance and Training grants in accordance with Title XIII of Pub. L. 99–198.

(20) Rural Business Enterprise grants and Television Demonstration grants.

(21) Section 601 Energy Impacted Area Development Assistance grants.

(22) Nonprofit National Corporations grants.

(23) System for Delivery of Certain Rural Development Programs Panel Grants.

(24) Emergency Community Water Assistance grants.

(25) Section 306C WWD Loans and Grants in subpart E of part 4284 of this title.

(26) Housing Application Packaging Grants.

(27) Rural Technology and Cooperative Development Grants in subpart F of part 4284 of this title.

(b) *Duration of obligation for conducting reviews.* Compliance reviews will be conducted on recipients of loans and grants listed in paragraph (a) of this section:

(1) Until the loan is paid in full or otherwise satisfied; or sold through the sale of FmHA or its successor agency under Public Law 103–354's assets; or

(2) Until the last advance of grant funds is made for the grants listed in paragraph (a) of this section.

(c) *Compliance reviews of loans and grants to individuals*—(1) *Compliance Review Officer.* The County Supervisor will conduct compliance reviews of loans made to individuals.

(2) *Type of review.* If the borrower is currently receiving loan supervision, the County Supervisor may complete the compliance review based on his knowledge of the borrower's operations from other visits. Otherwise the County Supervisor must visit the borrower's facilities. Before completing the compliance review, the County Supervisor should be aware of:

(i) The borrower's operating regulations, for example, the grounds for eviction from a Rural Rental Housing Project.

(ii) The borrower's method of advertising the facility to the public, if there is any advertising, including how well these methods reach the minority community.

(iii) Any records of request for use of the borrower's facility.

(3) *Recording results of review.* The County Supervisor's determination that the borrower is or is not in compliance with title VI, together with information such as that outlined in paragraph (b)(2) of this section, will be recorded in the running record. Review of individual Rural Rental Housing borrowers will be recorded on Form FmHA or its successor agency under Public Law 103–354 400–8, ''Compliance Review (Nondiscrimination by Recipients of Financial Assistance Through FmHA or its successor agency under Public Law 103–354.)''

(4) *Reporting results of review.* If the borrower is in compliance, the County Supervisor will report his findings to the State Director. Exhibit A is a sample report. In the case of Rural Rental Housing borrowers, a copy of Form FmHA or its successor agency under Public Law 103–354 400–8 will be filed in the borrower's County Office loan docket, and the original will be sent to the State Director. If the borrower is

not in compliance, the borrower's name, location, type of loan involved, and the reasons for the finding of noncompliance will be sent to the State Director.

(5) *Forwarding report of noncompliance.* The State Director will see that all compliance review reports are complete. If the recipient was found in noncompliance, the State Director will immediately send a copy of the compliance review report to the Administrator, Attention: Equal Opportunity Officer, with recommended action to take to bring the recipient into compliance.

(d) *Review of loans or grants to organizations* (any borrower or grantee other than an individual)—(1) *Designation of compliance review officer.* The State Director, except for Technical Assistance and Training grants (Pub. L. 99–198) and Nonprofit National Corporations grants, will designate the Compliance Review Officer for recipient organization. County Supervisors may be designated only if they have received approved compliance review training. Otherwise, the Compliance Review Officer must be a member of the State staff. For Technical Assistance and Training grants and Nonprofit National Corporations grants, the Assistant Administrator for Community and Business Programs will designate the Compliance Review Officer for recipient organizations.

(2) *Type of review.* Compliance reviews may be completed in connection with regular supervision visits to organizations and must include an inspection of the FmHA or its successor agency under Public Law 103–354-financed facility. Before determining that the recipient is or is not complying with the provisions in Form FmHA or its successor agency under Public Law 103–354 400–4, the Compliance Review Officer will:

(i) Observe the recipient's records, including records on the present membership by race, the handling of applications for use of the facility, the user rates and membership fees or dues, and the facility's operating regulations.

(ii) Determine if the recipient advertises for members or users. If so, observe the effectiveness of the recipient's methods of advertising the availability of the facility to the public, and especially the effectiveness of this advertising in reaching the minority community.

(iii) Interview organization officials, members, and employees. In reviews of recipients of Technical Assistance grants, members of the self-help housing groups should be interviewed to determine the way in which they were recruited.

(iv) Interview informed local community leaders, including minority leaders, if any to determine if the facility is operating without discrimination because of race, color, or national origin.

(3) *Recording results of reviews*—(i) *Association, Watershed, Resource Conservation and Development, and Rural Renewal loans involving recreation facilities.* Reviews will be recorded on Form FmHA or its successor agency under Public Law 103–354 400–7, ''Compliance Reviews for Recreational Loans to Associations (FmHA or its successor agency under Public Law 103–354 Borrowers).'' If the organization is found in compliance with title VI, the original of the form will be sent to the State Director, and a copy will be filed in the borrower's County Office loan docket. If the organization is found in noncompliance, any additional information which led to the finding will be sent with the form.

(ii) *Loans and/or grants for Water and Waste Disposal systems, incorporated Economic Opportunity cooperatives, Grazing associations, Rural Rental Housing, Labor Housing, and Rural Housing Sites.* Reviews will be completed on Form FmHA or its successor agency under Public Law 103–354 400–8. The original of the form will be sent to the State Director and a copy filed in the borrower's County Office loan docket. If the organization is found in noncompliance, any additional information which led to the finding will be sent with the form.

(iii) *Timber Development organizations, Rural Cooperative Housing loans, and Technical Assistance grants.* The information obtained during the compliance review as well as the Compliance Review Officer's determination of the borrower's compliance or noncompliance will be recorded in the running record.

If the organization is found in compliance, a report (see Exhibit A) will be sent to the State Director. If the organization is not in compliance, the organization's name, location, type of loan received, and all information which led to the finding will be sent to the State Director.

(iv) Technical Assistance and Training grants (Pub. L. 99–198) and Nonprofit National Corporations grants. The Compliance Review Officer will record in the running record information obtained during the compliance review and the determination of recipient's compliance or noncompliance. A report will be prepared and sent to the Assistant Administrator, Community and Business Programs, for each recipient.

(4) *Mandatory hook-up ordinance.* Compliance reviews of public entity borrowers or grantees for water and waste disposal facilities who are operating under the provisions of a mandatory hook-up ordinance will consist of a certification by the borrower or grantee that the ordinance is still in effect and is being enforced.

(5) *Forwarding noncompliance report.* The State Director will see that the reports are complete. If the recipient was found in noncompliance, the State Director will immediately send a copy of the report to the Administrator, Attention: Equal Opportunity Officer, with action proposed to bring the recipient into compliance. For Technical Assistance and Training grants and Nonprofit National Corporations grants, the Assistant Administrator, Community and Business Programs, will send a copy of the report to the Equal Opportunity Officer.

(e) *Timing of reviews*—(1) *Reporting year.* The State Director will schedule Civil Rights compliance reviews from November 1 to October 31 of each year. For example, compliance reviews scheduled during 1976 should be conducted after November 1, 1975, but before October 31, 1976.

(2) *Initial reviews*—(i) *Water and Waste Disposal loan and/or grant.* The initial compliance review will be conducted before loan or grant closing or before the construction begins, whichever occurs first.

(ii) Technical Assistance grants, Technical Assistance and Training grants (Pub. L. 99–198) and Nonprofit National Corporations grants. The initial compliance review will be conducted before the grant is closed.

(iii) *Rural Housing Site loan.* The initial compliance review will be conducted at the beginning of the sale of the sites developed with the FmHA or its successor agency under Public Law 103–354 loan.

(iv) *Watershed loans for future water supply.* The initial compliance review will be made when usage of the stored water begins.

(v) *All other loans and/or grants.* The initial compliance review of loans and/or grants listed in paragraph (a) of this section will be conducted within the first reporting year after the loan or grant is closed or after Form FmHA or its successor agency under Public Law 103–354 400–4 is signed.

(3) *Subsequent reviews.* The State Director is responsible for requiring subsequent compliance reviews at intervals not less than 90 days, or more than 3 years, after the previous compliance review.

(i) For Water and Waste disposal organizations with loans that have had at least two compliance reviews after loan closing covering a six-year period, and where no discriminatory practices are indicated, the frequency of subsequent reviews may be reduced to six years.

(ii) If Water and Waste Disposal organizations have merged to form a new organization, two reviews will be conducted at 3-year intervals after the merger and one every 6 years thereafter, provided no discriminatory practices are noted.

(f) *State Office summary reports.* The State Director will keep a list of all compliance reviews conducted during the reporting year so as to schedule each year's reviews. The State Director will submit a copy of this list to the Administrator, Attention: Equal Opportunity Office, no later than July 31 of each year. Recipients found in noncompliance will also be listed on the summary report. Exhibit B is a sample report. For Technical Assistance and

Training grants and Nonprofit National Corporations grants, the Assistant Administrator, Community and Business Programs, will submit a summary report, using Exhibit B of this subpart as a guide, to the Equal Opportunity Officer by July 31 of each year.

[41 FR 40112, Sept. 17, 1976, as amended at 52 FR 41949, Nov. 2, 1987; 53 FR 3860, Feb. 10, 1988; 55 FR 5962, Feb. 21, 1990; 57 FR 11559, Apr. 6, 1992; 58 FR 5565, Jan. 22, 1993; 58 FR 58643, Nov. 3, 1993; 59 FR 41389, Aug. 12, 1994; 61 FR 3781, Feb. 2, 1996]

§ 1901.205 Nondiscrimination in construction financed with FmHA or its successor agency under Public Law 103–354 loan or grant.

Executive Order 11246 provides for equal employment opportunity without regard to race, color, religion, sex, or national origin and the elimination of all facilities segregated on the basis of race, color, religion, or national origin on construction work financed by FmHA or its successor agency under Public Law 103–354 involving a construction contract of more than $10,000.

(a) *Compliance.* This section applies to Federal or federally assisted construction contracts or subcontracts in excess of $10,000 for on-site construction. It also applies to invitations for bids published for such construction. If construction work of over $10,000 is partially financed by another Federal Agency, the County Supervisor will try to reach an agreement as to which agency will administer the nondiscrimination requirements. If unable to reach an agreement, the County Supervisor will refer the case to the State Director.

(b) *Requirements of applicants, contractors, or subcontractors and responsible FmHA or its successor agency under Public Law 103–354 officials*—(1) *Applicant.* The applicant will be required to execute Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement,'' at the time the loan is closed or before construction is started, whichever occurs first. If the applicant is an incorporated association, a resolution of the governing body will authorize execution of the form. Municipalities or other public bodies will have to incorporate references to this form in the loan resolution before it is adopted. If the applicant wants to publish for bids, the applicant must obtain Form FmHA or its successor agency under Public Law 103–354 1924–5, ''Invitation for Bid (Construction Contract)'' which is in compliance with Executive Order 11246, from the local FmHA or its successor agency under Public Law 103–354 County Supervisor.

(2) *Contractor or Subcontractor.* (i) The prospective contractor or subcontractor must submit Form FmHA or its successor agency under Public Law 103–354 400–6, ''Compliance Statement,'' to the County Supervisor before contract bid negotiations, and comply with the requirements of Executive Order 11246, which are included with Form FmHA or its successor agency under Public Law 103–354 1924–6, ''Construction Contract,'' during the performance of the contract. The contract will contain the required ''Standard Federal Equal Employment Opportunity Construction Contract Specifications'' goals and timetables as set forth in Exhibit D.

(ii) The contractor or subcontractor will prepare and submit Form Contract Compliance (CC) 257, ''Monthly Employment Utilization Report'' to the appropriate regional office of the U.S. Department of Labor (USDL) (see Exhibit E, ''List of Regional Offices'') by the fifth of each month through completion of the contract.

(3) *The County Supervisor or the responsible FmHA or its successor agency under Public Law 103–354 official will:* (i) Deliver to the contractor the following forms, as appropriate:

(A) Form FmHA or its successor agency under Public Law 103–354 400–3, ''Notice to Contractors and Applicants,'' with an attached Equal Employment Opportunity Poster. Posters in Spanish will be provided when appropriate,

(B) Form FmHA or its successor agency under Public Law 103–354 400–6, and

(C) Form CC 257.

(ii) Deliver to the applicant Form FmHA or its successor agency under Public Law 103–354 1924–5 when contractors are to be invited to submit bids, and Form FmHA or its successor agency under Public Law 103–354 1924–6 to contract for construction.

(iii) Explain to applicant and contractor the requirements of Executive Order 11246, when needed. However, inquiries concerning compliance must be addressed to the appropriate regional office of USDL (see Exhibit E).

(iv) Submit a report similar in form and content to Exhibit C (''FmHA or its successor agency under Public Law 103–354 Financed Contract'') of this Instruction to the appropriate regional office of USDL (Exhibit E) within 10 calendar days of the date a contract or subcontract in excess of $10,000 is awarded.

(c) *Contractors with 100 or more employees and contract over $10,000.* Contractors with 100 or more employees and contract over $10,000, will file the following with the Joint Reporting Committee, 1800 G Street NW., Washington, DC 20006:

(1) SF–100 ''Employer Information Report EEO–1,'' within 30 days of contract award unless the report has been submitted within the past 12 months, and

(2) An annual report by March 31, so long as the contractor holds any FmHA or its successor agency under Public Law 103–354 financed contract in excess of $10,000.

(d) *Contractor with at least 50 employees and contract of $50,000 or more.* Each contractor or subcontractor with at least 50 employees and contract of $50,000 or more, must develop a written affirmative action compliance program for each project. This must be on file in each contractor's or subcontractor's personnel file within 120 days after the beginning of the contract. Form AD–425 provides guidelines for developing compliance programs.

(e) *Compliance during construction.* The County Supervisor will:

(1) Check to see that:

(i) Required posters are displayed.

(ii) There is no evidence of discrimination in employment.

(2) Record findings on Form FmHA or its successor agency under Public Law 103–354 1924–12, ''Inspection Report.''

(3) If there is any evidence of noncompliance, the County Supervisor will report all the facts to the appropriate office of USDL (see Exhibit E).

(f) *Hometown Plans.* All construction contracts and subcontracts in excess of $10,000, financed by FmHA or its successor agency under Public Law 103–354, in areas which have Hometown Plans regarding affirmative action and equal employment, are subject to the conditions set forth in the applicable plan. Each State Director should seek the advice of the OGC as to compliance with any such plans in the State Director's jurisdiction.

(g) *Discrimination complaints.* (1) Complaints alleging discriminatory acts may be filed directly with the appropriate regional office of USDL (see Exhibit E) or with the County Supervisor or the State Director for subsequent forwarding to the above address, by any employee or applicant for employment with a contractor or subcontractor.

(2) Each complaint must be in writing and signed by the complainant (The FmHA or its successor agency under Public Law 103–354 official receiving the complaint will assist complainant when necessary). The complaint will include:

(i) Name, address, and telephone number of complainant.

(ii) Name and address of the person allegedly discriminating.

(iii) Date and place of the discrimination.

(iv) Description of the discrimination.

(v) Any other information that will assist in investigating and resolving the complaint.

(3) Complaints must be filed not later than 180 days after the alleged act unless the State Director extends the time, for good cause shown by the complainant.

[43 FR 58356, Dec. 14, 1978, as amended at 44 FR 24852, Apr. 27, 1979; 52 FR 8002, Mar. 13, 1987]

EXHIBITS TO SUBPART E

EXHIBIT A—CIVIL RIGHTS COMPLIANCE REVIEWS

To: State Director, FmHA or its successor agency under Public Law 103–354.

Civil Rights compliance reviews have been conducted, and each recipient listed below was found in compliance with title VI of the Civil Rights Act of 1964. Information which led to this finding and my determination

that the recipient is in compliance are in the running record of the recipient's file.

Recipient	Case No.	Type of assistance [1]	Date of review
Sam H. Smith	99–05–7031 (rec.).	OL	Jan. 3, 1975.
John A. Jones	99–05–8764 ..	RL	Feb. 17, 1975.
Medina Housing Association.	99–05–9176 grant.	TA	Mar. 5, 1975.

[1] Indicate only the loans or grants received which are subject to compliance reviews.

County Supervisor

EXHIBIT B—SUMMARY REPORT OF CIVIL RIGHTS COMPLIANCE REVIEWS

To: Administrator, FmHA or its successor agency under Public Law 103–354.
Attention: Director, Equal Opportunity Staff.

I. Civil Rights Compliance Reviews have been conducted, and the following recipients were found in compliance with title VI of the Civil Rights Act of 1964.

	Loan type	Loan number	Type of review	
			Pre-award*	post-award**
1.				
2.				
3.				

*A pre-award review is a compliance review conducted prior to loan or grant approval.
**A post-award review is a compliance review conducted after loan closing.

II. The following recipients were found in non-compliance:

Name of borrower	Loan type	Loan number	Type of review		Date report of noncompliance sent to nat. ofc.
			Pre-award	post-award	
1.					
2.					
3.					

State Director.

(7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70)
[47 FR 39127, Sept. 7, 1982]

EXHIBIT C—FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 FINANCED CONTRACT

To: Area Director, Office of Federal Contract Compliance Program, U.S. Department of Labor (DOL) (Insert address for your DOL area, from Exhibit E, FmHA or its successor agency under Public Law 103–354 Instruction 1901–E)

We submit the following information relative to a construction contract in excess of $10,000:

1. Contractor's name: _____
Address: _____
Telephone Number: _____
Employer's Identification Number: _____
2. Contract for: ____ $_____
Starting Date: _____
Completion Date: _____
Contract Number: _____
City: _____
DOL Region: _____

[52 FR 8002, Mar. 13, 1987]

EXHIBIT D—GOALS AND TIMETABLES FOR MINORITIES AND WOMEN

The preamble to regulations establishing a new part 60–4 to 41 CFR chapter 60 published at 43 FR 14888–14894, April 7, 1978, states that OFCCP contemplates proposing standards and goals for minorities within the very near future. Until that notice has been proposed and final action taken, construction contractors and subcontractors will continue to be subject to the goals and timetables for minority utilization on Federal and federally assisted construction existing now under Executive order 11246. Such goals are published in appendix B.

Now, therefore, based on the foregoing and 41 CFR part 60–4, each contracting agency, each applicant, and each contractor shall include the appropriate goal set forth in appendix A and appendix B in all invitations for bids or other solicitations for federally involved construction contracts in excess of $10,000. The goals in appendix A hereby are established on a nationwide basis as the standards for female utilization for all trades.

Appendix B established the goals for minority utilization which shall be applicable for the respective areas set forth in Appendix B.

Appendix A and Appendix B shall be effective with respect to transactions for which the invitations for bids or other solicitations or amendments thereto are sent, on or after May 8, 1978.

Weldon J. Rougeau,
Director, OFCCP.

March 28, 1978.

APPENDIX A

The following goals and timetables for female utilization shall be included in all Federal and federally assisted construction contracts and subcontracts in excess of $10,000. The goals are applicable to the contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or federally assisted construction contract or subcontract.

AREA COVERED

Goals for Women apply nationwide.

GOALS AND TIMETABLES

Timetable	Goals (percent)
From Apr. 1, 1978 until Mar. 31, 1979	3.1
From Apr. 1, 1979 until Mar. 31, 1980	5.1
From Apr. 1, 1980 until Mar. 31, 1981	6.9

APPENDIX B

Until further notice, the following goals and timetables for minority utilization shall be included in all Federal or federally assisted construction contracts and subcontracts in excess of $10,000 to be performed in the respective covered areas. The goals are applicable to the contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or federally assisted construction contract or subcontract.

REGION [1]

BOSTON, MASS. AREA

Area covered—Arlington, Boston, Belmont, Brookline, Burlington, Cambridge, Canton, Chelsea, Dedham, Everett, Malden, Medford, Wakefield, Westwood, Winthrop, Winchester, Woburn, and the Islands of Boston Harbor, Mass.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Asbestos workers	10.8–10.12
	Boilermakers	9.6–12.0
	Bricklayers	8.0–10.0
	Carpenters	11.6–14.5
	Cement masons	25.5–27.5
	Electricians	6.0–7.0
	Elevator constructors	9.5–11.4
	Glaziers	8.8–11.0
	Ironworkers	5.9–6.9
	Lathers	6.9–8.9
	Operating engineers	14.1–15.0
	Painters	9.1–11.1
	Pipefitters	11.0–12.1
	Plasterers	20.5–22.5
	Plumbers	9.8–11.8
	Roofers	8.4–10.5
	Sheetmetal workers	10.1–12.1
	Sprinkler fitters	12.3–15.6
	All other trades	10.3–12.3

STATE OF RHODE ISLAND AREA

Area covered—Statewide.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	5.0

REGION II

BUFFALO, NY AREA

Area covered—Erie County and Buffalo, NY.

[1] Region refers to the 10 regions in which the U.S. Department of Labor has offices. These Regions are headquartered in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco, and Seattle, which are numbered I through X respectively.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	10.6–13.2

CAMDEN, NJ AREA

Area covered—Camden, NJ, area of Camden, Salem, and Gloucester Counties.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Asbestos workers	11.6–14.5
	Boilermakers	10.8–13.5
	Bricklayers	17.8–20.0
	Carpenters	11.2–13.0
	Cement masons	12.0–15.0
	Electricians	14.9–17.8
	Elevator constructors	10.8–13.5
	Glaziers	16.0–20.0
	Lathers	10.8–13.5
	Operating engineers	10.0–12.5
	Painters/decorators/paper-hangers.	8.8–12.8
	Plasterers	17.0–19.0
	Plumbers/pipefitters/steam-fitters.	8.4–10.5
	Roofers	8.4–10.5
	Sheetmetal workers	11.2–14.0
	Sprinkler fitters	10.8–13.5
	Structural metal workers	12.9–15.3
	Wharf 7 dock builders	10.8–13.5

ELMIRA, NY AREA

Area covered—Chemung, Steuben, Schuyler, Tioga, and Yates Counties, NY.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	4.0–5.0

LONG ISLAND, NY AREA

Area covered—Nassau and Suffolk Counties, NY.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	6.0–8.0

WESTCHESTER, NY AREA

Area covered—Westchester County, NY.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	11–13

REGION III

STATE OF DELAWARE AREA

Area covered—State of Delaware.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	11–13

PHILADELPHIA, PA, AREA

Area covered—Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties, PA.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Ironworkers	22–26
	Plumbers and pipefitters	20–24
	Steamfitters	20–24
	Sheetmetal workers	19–23
	Electrical workers	19–23
	Elevator construction workers.	19–23

PITTSBURGH, PA, AREA

Area covered—Allegheny County, PA.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Asbestos workers	24.3–27.8
	Boilermakers	33.8–37.7
	Bricklayers	11.9–13.0
	Carpenters	11.8–12.9
	Cement masons	16.3–18.1
	Electricians	17.0–20.3
	Glaziers	26.9–30.4
	Ironworkers	25.5–29.9
	Lathers	12.7–13.8
	Operating engineers	44.2–48.3
	Painters	16.4–17.9
	Plasterers	34.3–38.0
	Plumbers	7.8–9.2
	Roofers	47.1–50.1
	Sheetmetal workers	26.0–26.9
	Steamfitters	10.1–12.9
	Tile setters	13.6–16.0
	All other	27.6–31.5

WASHINGTON, DC, AREA

Area covered—District of Columbia; the Virginia cities of Alexandria, Fairfax, and

Falls Church; the Virginia counties of Arlington, Fairfax, Loudoun, and Prince William; and the Maryland counties of Montgomery and Prince Georges.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Electricians	28.0–34.0
	Painters and paperhangers	35.0–42.0
	Plumbers, pipefitters and steamfitters.	25.0–30.0
	Iron workers	35.0–43.0
	Sheetmetal workers	25.0–31.0
	Elevator constructors	34.0–40.0
	Asbestos workers	26.0–32.0
	Lathers	34.0–40.0
	Boilermakers	24.0–30.0
	Tile and terrazzo workers	28.0–34.0
	Glaziers	28.0–34.0

REGION IV

ATLANTA, GA, AREA

Area covered—Atlanta, GA, Standard Metropolitan Statistical Area which includes Fulton, DeKalb, Cobb, Clayton, and Gwinnett Counties.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Asbestos workers	8.6–10.3
	Bricklayers	16.3–18.2
	Carpenters	11.0–12.8
	Electricians	10.9–12.2
	Glaziers	10.2–12.2
	Ironworkers	14.0–16.0
	Metal lathers	10.0–12.0
	Painters	10.3–12.0
	Plumbers	9.4–10.9
	Pipefitters	9.4–10.9
	Plasterers	24.4–25.8
	Roofers	18.0–20.0
	Sheetmetal workers	9.5–11.3
	Sprinkler fitters	8.3–9.9
	Operating engineers	24.0–27.7
	Elevator installers	9.6–11.5

BIRMINGHAM, AL, AREA

Area covered—Jefferson, Shelby, and Walker Counties, AL.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	20–24

CHARLOTTE, NC, AREA

Area covered—Mecklenburg and Union Counties, NC.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	24–30

JACKSONVILLE, FL, AREA

Area covered—Drival County, FL.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	20–23

LOUISVILLE, KY, AREA

Area covered—Adair, Barren, Bullitt, Carrol, Edmundson, Grayson, Green, Hardin, Hart, Henry, Jefferson, Larue, Meade, Nelson, Oldham, Shelby, Spencer, Taylor, Trimble, Warren, and Washington Counties, KY; and Clark, Floyd and Harrison Counties, IN.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	12.0–16.0

MIAMI, FL, AREA

Area covered—Dade County, FL.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	20.0–40.0

NASHVILLE, TN, AREA

Area covered—City of Nashville, TN.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	16.0–20.0

REGION V

AKRON, OH, AREA

Area covered—Summit, Portage, and Medina Counties, OH.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	10.0–12.5

CANTON, OH, AREA

Area covered—Carroll, Holmes, Stark, Tuscarawas, and Wayne Counties, OH.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	7.0–8.4

CHICAGO, IL, AREA

Area covered—Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Asbestos workers	8.6–10.3
	Bricklayers	16.3–8.2
	Carpenters	11.0–12.8
	Electricians	10.9–12.2
	Elevator installers	9.6–11.5
	Glaziers	10.2–12.2
	Ironworkers	14.0–16.0
	Metal lathers	10.0–12.0
	Painters	10.3–12.1
	Plumbers	9.4–10.9
	Pipe fitters	9.4–10.9
	Plasterers	24.4–25.8
	Roofers	18.0–20.0
	Sheetmetal workers	9.5–11.3
	Sprinkler fitters	8.3–9.9
	Operating engineers	([1])

[1] 15.7 and above.

CINCINNATI, OH, AREA

Area covered.—Ohio counties of Clermont, Hamilton, and Warren and in the Kentucky counties of Boone, Campbell, and Kenton, and in the Indiana county of Dearborn.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Asbestos workers	9.3–12.2
	Boilermakers	8.0–8.4
	Carpenters	9.0–10.7
	Elevator constructors	10.2–12.7
	Engineers (stationary)	26.9–28.4
	Floor layers	9.0–10.5
	Glaziers	9.1–11.1
	Lathers	9.3–10.6
	Marble, tile and terrazzo workers and helpers.	8.3–9.9
	Millwrights	9.1–10.3
	Painters	11.0–13.5
	Pipefitters	10.0–12.0
	Plasterers	8.7 to 9.6
	Plumbers	10.0–12.7
	Sheetmetal workers	10.1–11.3
	All other	11.0–11.8

CLEVELAND, OH, AREA

Area covered—Ashland, Ashtabula, Crawford, Cuyahoga, Erie, Geauga, Huron, Lake, Lorain, Sandusky, and Seneca Counties, OH.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Art glass workers	25.4–28.6
	Asbestos workers	20.9–23.9
	Boilermakers	16.3–18.9
	Bricklayers	28.8–29.5
	Carpenters	8.0–8.6
	Cement masons	41.1–42.2
	Electricians	15.1–18.1
	Elevator constructors	28.9–32.5
	Glaziers	35.8–40.0
	Ironworkers	11.4–13.2
	Painters	17.7–18.4
	Pipefitters	15.7–17.9
	Plasterers	21.6–23.2
	Plumbers	20.8–23.4
	Roofers	28.9–31.8
	All other	17.0–18.8

DAYTON, OH, AREA

Area covered—Greene, Miami, Montgomery, and Preble Counties, OH.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	10.6–11.8

DETROIT, MI., AREA

Area covered—Wayne, Oakland, and Macomb Counties, MI.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Electricians	17.0–19.0
	Operating engineers	16.9–18.0
	Lathers	18.6–19.6
	Painters	15.0–17.7
	Riggers	16.8–17.7
	Roofers	15.3–16.6
	Tile, terrazzo marble workers.	15.0–17.8
	Tile and marble helpers	16.0–18.5
	Terrazzo helpers	17.8–19.5
	All other	18.6–20.4

EVANSVILLE, IN, AREA

Area covered—Vanderburgh County, IN.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	6.3–7.6

FORT WAYNE, IN, AREA

Area covered—Adams, Allen, DeKalb, Huntington, LaGrange, Noble, Steuben, Wells, and Whitley Counties, IN.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Plumbers	5.2–5.5
	Steamfitters	5.2–5.5
	Carpenters	5.7–5.2
	Bricklayers	9.3–10.4
	Electricians	5.2–5.9
	Sheetmetal workers	4.4–5.2
	Ironworkers	7.3–8.4
	Operating engineers	5.2–6.0
	Painters	11.0–12.0
	All other	7.1–8.0

INDIANAPOLIS, IN, AREA

Area covered—Marion County, IN.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Asbestos workers	32.2–37.7
	Bricklayers	17.4–19.5
	Electricians	6.6–7.8
	Elevator constructors	15.5–18.0
	Glaziers	25.2–28.6
	Ironworkers	11.6–14.0
	Lathers	21.1–22.0
	Operating engineers	7.7–8.8
	Painters	22.4–25.0
	Plasterers	27.5–30.4
	Plumbers	25.5–30.0
	Roofers	15.9–18.1
	Sheetmetal workers	9.3–10.9
	Steamfitters	14.9–17.1
	All other	14.1–16.2

PEORIA, IL, AREA

Area covered—Peoria, Fulton, Tazewell, Woodford, Knox, Stark, Marshall, Hancock, Mason, McLean, McDonough, Henderson, Warren, Livingston, Bureau, Henry, and Putnam Counties, IL.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	5.0–6.0

ROCKFORD, IL, AREA

Area covered—Boone, Winnebago, Stephenson, De Kalb, Ogle, Lee, and Jo Daviess Counties; Cherry Grove, Shannon, Rock Creek, Lima, Wysox, and Elkhorn Townships in Carroll County; Genesee, Jordan, Hopkins, Sterling, Hume, Montmorency, Tampico, and Hahnaman Townships in Whiteside County, IL.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	10.0–12.0

SOUTH BEND, IN, AREA

Area covered—St. Joseph, County, IN.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	8.0–10.0

TOLEDO, OH, AREA

Area covered—Defiance, Fulton, Hancock, Henry, Lusas, Ottawa, Williams, and Wood Counties, OH.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	10.7–12.3

YOUNGSTOWN, OH AREA

Area covered—Columbiana, Mahoning, and Trumbull Counties, OH; and Lawrence and Mercer Counties, PA.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	6.0–7.1

REGION VI

EL PASO, TX, AREA

Area covered—El Paso County, TX.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	55.1–66.2

LAWTON, OK, AREA

Area covered—Commanche County, OK.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	15.8–16.8

LITTLE ROCK, AR, AREA

Area covered—Pulaski County, AR.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	25.6–30.6

NEW ORLEANS, LA.

Area covered—Parishes of Orleans, Jefferson, St. Bernard, St. Tammany, St. Charles, St. John, Lafourche, Plaquemines, Washington, Terrebonne, Tangipahoa,/1/ Livingston,[2] and St. James.[3]

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	20–23

TULSA, OK

Area covered—Tulsa, Creek, Mayes, Rogers, Okfuskee, Washington, Nowata, Craig, Ottawa, Delaware, Okmulgee (northern half), dividing line Highway 16; Osage (eastern half), dividing line Highway 18; Pawnee (eastern half), and Payne (eastern half) Counties, OK.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Bricklayers	24.0–25.0
	Carpenters	17.0–18.0
	Cement masons	21.5–22.5
	Floor covers	12.0–14.0
	Glaziers, glass workers	14.7–17.3
	Operating engineers	22.0–24.0
	Painters	18.0–20.0
	Pipefitters	10.0–12.0
	Plumbers	11.6–13.2
	Roofers	12.0–14.0
	Sheetmetal workers	8.0–10.0
	All other trades	12.0–14.4

REGION VII

KANSAS CITY (KS) AND (MO)

Area covered—Clay, Platte, Jackson, Bates, Carroll, Lafayette, Ray, Johnson, Henry, and Cass Counties, Mo., and Wyandotte, Johnson, and Miami Counties, KS.

[1] Area covered is east of the Illinois Central RR.

[2] Area covered is southeast of the line from a point off the Livingston and Tangipahoa Parish line adjacent from New Orleans and Baton Rouge.

[3] Area covered is southeast of a line drawn from the town of Gramercy to the point of intersection of St. James, Lafourche, and Assumption Parishes.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Asbestos workers	10.3–11.7
	Boilermakers	5.9–6.4
	Bricklayers	19.4–20.7
	Carpenters	5.9–6.9
	Carpet, linoleum and resilient floor decorators.	5.5–6.4
	Cement masons	25.5–26.5
	Elevator constructors	9.2–10.7
	Electricians	8.0–9.4
	Glaziers	9.8 to 10.5
	Lathers	14.5–15.6
	Marble masons, tile layers and terrazzo workers.	7.5–9.0
	Marble and tile helpers	4.8–5.6
	Operating engineers	9.0–10.9
	Painters	14.3–15.0
	Pipefitters	6.9–7.7
	Plasterers	19.0–20.4
	Plumbers	8.3–9.3
	Roofers	14.0–15.0
	Sheetmetal workers	7.0–8.0
	Teamsters	25.0–26.0
	All other trades	11.4–12.5

OMAHA, NE

Area covered—Sharpy and Douglas Counties, NE, Council Bluffs, IA (city limits only).

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	9.0–10.0

ST. LOUIS, MO

Area covered—City of St. Louis, Mo., and St. Louis, MO.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	Asbestos workers	5.2–5.7
	Boilermakers	34.0–37.7
	Bricklayers	12.6–14.2
	Carpenters	8.2–8.9
	Cement and concrete finishers.	13.3–16.6
	Electricians	13.6–16.1
	Elevator constructors	8.7–9.3
	Glaziers	28.7–34.5
	Ironworkers	9.0–10.4
	Lathers and plasterers	24.2–29.7
	Operating engineers	13.2–15.7
	Painters and paperhangers	25.1–29.3
	Plumbers and pipefitters	13.2–15.4
	Roofers and slaters	17.1–19.6
	Sheetmetal workers	22.5–27.0
	Tilesetters and terrazzo workers.	8.8–10.4

TOPEKA, KS

Area covered—Shawnee County, KS.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	8.8–10.5

REGION VIII

COLORADO

Area covered—State of Colorado

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	13–14

REGION IX

ALAMEDA COUNTY, CA, AREA

Area covered—Alameda County, CA.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	28.5–33.0

ARIZONA

Area covered—State of Arizona.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	25.0–30.0

CONTRA COSTA COUNTY, CA

Area covered: Contra Costa County, CA.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	17.0–19.5

FRESNO COUNTY, CA

Area covered.—Fresno, Madera, Kings, and Tulare Counties, CA.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	20.0–27.0

LAS VEGAS, NV

Area covered.—Area of jurisdiction of the Building & Construction Trades Council of Clark, Lincoln, Nye and Esmeralda Counties, NV.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	Asbestos workers	17.7–20.2
	Bricklayers	18.8–21.3
	Carpenters	16.2–17.5
	Glaziers, floorcoverers, painters, tapers and wallcoverers.	16.3–17.7
	Plasterers	24.6–27.2
	Plumbers and pipefitters	15.2–16.2
	Sheet metal workers	16.2–17.7
	Wood, wire and metal laths.	18.1–19.3
	All other trades	18.0–19.5

LOS ANGELES COUNTY, CA

Area covered.—Area of jurisdiction of the Los Angeles Building & Construction Trades Council.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	21.7–25.1

MONTEREY, CA

Area covered.—Monterey County, CA, and within the jurisdiction of the Monterey County Building & Construction Trades Council, AFL–CIO.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	27.0–29.8

NORTH BAY, CA

Area covered.—Solano, Napa, Lake, Marin, Mendocino, and Sonoma Counties.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	10.5–12.6

SACRAMENTO, CA

Area covered.—Sacramento, Yolo, Amador, Placer, El Dorado, Nevada, and Sierra Counties, CA.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	17.5–20.0

SAN DIEGO COUNTY, CA

Area covered.—San Diego County, CA.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	24.0–30.0

SAN FRANCISCO CITY AND COUNTY, CA

Area covered.—City and County of San Francisco, CA.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	Electricians	17.0
	Plumbers, pipefitters and steamfitters.	14.0
	Structural metal workers	20.0
	Sheet metal workers	19.0
	Asbestos workers	40.0

SAN MATEO COUNTY, CA

Area covered.—San Mateo County, CA.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	12.0–14.0

SANTA CLARA COUNTY, CA

Area covered.—Santa Clara County, CA.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	18.0–21.7

SANTA CRUZ COUNTY, CA

Area covered.—Santa Cruz County, CA.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	17.0–20.4

REGION X

ALASKA

Area covered.—State of Alaska.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	Asbestos workers	26.4–28.0
	Carpenters	25.7–28.0
	Electricians	25.7–28.0
	Ironworkers	25.7–28.0
	Operating engineers	26.1–28.0
	Painters	25.8–28.0
	Pile drivers	25.1–28.0
	Plumbers and steamfitters	25.4–28.0
	Roofers	27.6–28.0
	Sheetmetal workers	25.6–28.0
	Teamsters	25.6–28.0
	All other	26.1–28.1

PASCO, WA

Area covered.—The area of jurisdiction of the Southeastern Washington Building & Construction Trades Council as follows: all of Benton, Franklin, and Walla Walla Counties, Grant County to Highway 2 and the southwest corner of Adams County, WA.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	Boilermakers	12.5–15.0
	Bricklayers	11.0–13.5
	Carpenters	9.8–12.3
	Cement finishers	11.5–14.0
	Electricians	10.0–12.5
	Ironworkers	10.0–12.5
	Operating engineers	10.2–12.7
	Painters	10.0–12.5
	Plumbers and fitters	.9–12.4
	Sheetmetal workers	10.8–13.3
	Laborers	9.5–13.3
	All other	10.0–12.5

PORTLAND, OR

Area covered—Multnomah, Clackamas, and Washington Counties, OR.

GOALS AND TIMETABLES
[In percent]

Timetable	Trade	Goal
Until further notice	All	5.5–6.5

SEATTLE, WA

Area covered—King County, WA.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	8.8–11.5

SPOKANE, WA

Area covered—Washington Counties: Spokane, Whitman, Lincoln, Adams, Stevens, Pend Oreille, Columbia, Garfield, Asotin, Ferry, Okanogan, Chelan, Douglas and Grant (north of Highway 2), and in connection with Indian employment, parts of any other counties included in reservations incorporating portions of the above area; Idaho: Boundary, Bonner, Kootenai, Shoshone, Benewah, Latah, Clearwater, Nez Perce, Lewis, and Idaho, and in connection with Indian employment, any other territory included in reservations, part of which are in the above counties.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	([1])

[1] 2.0 and above.

TACOMA, WA

Area covered—Pierce, Thurston, Mason, Lewis, Grays Harbor, and Pacific Counties, WA.

GOALS AND TIMETABLES

[In percent]

Timetable	Trade	Goal
Until further notice	All	12.2–15.0

[43 FR 58357, Dec. 14, 1978]

EXHIBIT E—LIST OF REGIONAL OFFICES, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (OFCCP), U.S. DEPARTMENT OF LABOR (USDL)

Region I (ME, NH, VT, MA, RI, CT)
Associate Regional Administrator, USDL/OFCCP, JFK Building, Room 1612–C, Government Center, Boston, MA 12203, (617) 223–4232.

Region II (NY, NJ, PR, VI)
Associate Regional Administrator, USDL/OFCCP, 1515 Broadway, Room 3306, New York, NY 10036, (212) 662–5563.

Region III (PA, MD, DE, VA, WV, DC)
Associate Regional Administrator, USDL/OFCCP, Gateway Building, Room 15434, 3535 Market Street, Philadelphia, PA 19104, (215) 596–1213.

Region IV (NC, SC, KY, TN, MS, AL, GA, FL)
Associate Regional Administrator, USDL/OFCCP, 1371 Peachtree Street, NE, Room 729, Atlanta, GA 30309, (402) 881–4211).

Region V (OH, IN, MI, IL, WI, MN)
Associate Regional Administrator, USDL/OFCCP, New Federal Building, 16th Floor, 2340 South Dearborn Street, Chicago, IL 60604, (312) 353–8887.

Region VI (LA, AR, OK, TX, NM)
Associate Regional Administrator, USDL/OFCCP), 555 Griffin Square Building, Room 506, Dallas, TX 75202, (214) 767–4771.

Region VII (MO, IA, NE, KS)
Associate Regional Administrator, USDL/OFCCP Regional Administrator, Federal Office Building, Room 2000, 911 Walnut Street, Kansas City, MO 64106, (816) 374–5384.

Region VIII (ND, SD, MT, WY, CO, UT)
Associate Regional Administrator, USDL/OFCCP, 14431 Federal Office Building, 1961 Stout Street, Denver, CO 80202, (303) 837–5011.

Region IX (CA, NV, AZ, HI, GU)
Associate Regional Administrator, USDL/OFCCP, Federal Office Building, Room 10341, 450 Golden Gate, San Francisco, CA 94102, (415) 556–3597.

Region X (WA, OR, ID)
Associate Regional Administrator, USDL/OFCCP, Federal Office Building, 909 First Avenue, Room 4095, Seattle, WA 98174, (206) 442–4508.

[44 FR 24852, Apr. 27, 1979]

Subpart F—Procedures for the Protection of Historical and Archeological Properties

AUTHORITY: 16 U.S.C. 470; 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; sec. 10, Pub. L. 93–357, 88 Stat. 392; delegation of authority by Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO, 29 FR 14764, 33 FR 9850.

SOURCE: 42 FR 62141, Dec. 9, 1977, unless otherwise noted.

§ 1901.251 Purpose.

This subpart prescribes Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) policies, procedures, and guidelines for compliance with section 106 of the National Historic Preservation Act of 1966 (Pub. L. 89–665), the Reservoir Salvage Act of 1960 (Pub. L. 86–523), as amended May

24, 1974, by the Archeologic and Historic Preservation Act (Pub. L. 93–291), and section 1(3) of Executive Order 11593.

§ 1901.252 Policy.

(a) The FmHA or its successor agency under Public Law 103–354 recognizes that significant scientific, prehistorical, historical and archeological (HA) resources are an important part of our National Heritage.

(b) The FmHA or its successor agency under Public Law 103–354 will consult with appropriate Federal, State, and local Agencies; other organizations; the State Historic Preservation Officer (SHPO) and individuals to assess the impact of any proposed FmHA or its successor agency under Public Law 103–354 undertaking on properties having historical or archeological significance in order to avoid or mitigate any adverse effects on the properties.

(c) The procedures in this subpart have been developed in accordance with section 1(3) of Executive Order 111593.

§ 1901.253 Definitions.

(a) *Undertaking* means any new or continuing projects or program activities supported in whole or in part through FmHA or its successor agency under Public Law 103–354 contracts, grants, subsidies, loans, or other forms of funding assistance. This does not include any actual construction by FmHA or its successor agency under Public Law 103–354.

(b) *National Historic Preservation Act. The National Register* means the National Register of Historic Places, which is a register of districts, sites, buildings, structures, and objects, significant in American history, architecture, archeology, and culture maintained by the Secretary of the Interior under the authority of section 2(b) of the Historic Sites Act of 1935 and section 101(a)(1) of the National Preservation Act. The National Register is published in its entirety in the FEDERAL REGISTER each year in February. Addenda are published on the first Tuesday of each month.

(c) *National Register Property* means a district, site, building, structure, or object included in the National Register.

(d) *Property eligible for inclusion in the National Register* means any district, site, building, structure, or object which the Secretary of the Interior determines is likely to meet the National Register criteria.

(e) *State Historic Preservation Officer* (SHPO) means the official within each State, designated by the Governor at the request of the Secretary of the Interior, to administer the National Register and historic preservation grants program and to coordinate preservation planning within the State.

(f) *Criteria of effect* means when any condition of an undertaking causes or may cause any change, beneficial or adverse, in the scientific, historical, architectural, archeological, or cultural character of a National Register property that qualifies the property under the National Register criteria.

(g) *Historical and archeological assessment* means a determination by the FmHA or its successor agency under Public Law 103–354 State Director using the criteria of effect as a guide, as to whether a proposed undertaking may have an effect upon any properties located within the project area which are included or eligible for inclusion in the National Register.

(h) *National Register criteria* means the following criteria established by the Secretary of the Interior for use in evaluating and determining the eligibility of properties for listing in the National Register: The quality of significance in American History, Architecture, Archeology, and the culture is present in districts, sites, buildings, structures, and objects of State and local importance, that possess integrity of location, design, setting, materials, workmanship, feeling, and association; and

(1) That are associated with events that have made a significant contribution to the broad patterns of our history; or

(2) That are associated with the lives of persons significant in our past; or

(3) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity

whose components may lack individual distinction; or

(4) That have yielded, or may be likely to yield, information important in prehistory or history.

(i) *FmHA or its successor agency under Public Law 103–354 official* means the FmHA or its successor agency under Public Law 103–354 County Supervisor, the FmHA or its successor agency under Public Law 103–354 State Director or his designated representative.

(j) *Project area* means those geographical or legally defined areas directly under or to be under the applicants control that are affected by the undertaking such as building sites, easements, rights-of-way, leasehold interests and those areas which are directly and significantly impacted by the undertaking.

(k) *Advisory council* means the Advisory Council on Historic Preservation, Suite 430, 1522 K Street NW., Washington, DC 20005, created by title II of Pub. L. 89–665 and charged with the responsibility of advising the President, Congress, and others on matters relating to historic preservation.

(l) *HA* as used in this regulation is an abbreviation of the term ''scientific, prehistorical, historical, and archeological.''

§ 1901.254 Scope.

FmHA or its successor agency under Public Law 103–354 will evaluate all undertakings for possible HA significance. This subpart covers the following types of undertakings:

(a) *Undertakings requiring a historical and archeological assessment.* Although the following undertakings are presumed to involve nonfederally owned lands, they may have an effect on properties having HA significance and, therefore, will require a historical and archeological assessment:

(1) Loans and grants for the development of business and industry including guaranteed loans.

(2) Loans and grants for multiple family housing projects of 25 or more dwelling units.

(3) Subdivision plans submitted for approval having 25 or more building sites.

(4) Loans and grants in rural areas to construct, enlarge, extend, or otherwise improve:

(i) Community water, sanitary sewage, solid waste disposal, and storm waste water disposal systems.

(ii) Other essential community facilities such as fire and rescue, health, safety, public buildings, schools, transportation, traffic, and law enforcement.

(5) Loans to develop community irrigation, drainage, and other soil and water conservation and use facilities.

(6) Loans to acquire and develop grazing land for livestock of an association of members.

(7) Loans in areas designated by the Soil Conservation Service (SCS), U.S. Department of Agriculture (USDA), to conserve and develop natural resources and to contribute to economic improvement of the area.

(8) Loans to protect and develop land and water resources in small watersheds.

(9) Loans to permit Indian tribes to buy land within their reservations.

(b) *Undertakings presumed not to require a historical and archeological assessment.* The following undertakings are generally presumed to involve nonfederally owned lands and not to have an effect on properties of historical and archeological value and will therefore not usually require a historical and archeological assessment. However, when the State Director or County Supervisor finds or has had communication or obtains information from a recognized historical and archeological authority that a specific undertaking may have an effect on a property included or eligible for inclusion in the National Register, a historical and archeological assessment will be made.

(1) Loans to farmers and ranchers in rural areas for the purchase, development, and operation of farms and ranches.

(2) Loans to individual families in rural areas for the purchase, construction, or improvement of single family residences.

(3) Loans and grants for multiple family housing projects of not more than 24 family dwelling units.

(4) Subdivision plans submitted for approval having 24 or less building sites.

(5) Loans to farmers, ranchers, and other rural residents to develop land, water, and other related resources for increased production of food and other crops, improved pastures, feed crops, water facilities for livestock, and improved habitats for fish and wildlife.

(6) Emergency and disaster loans to farmers, ranchers and other rural residents in declared or designated areas as a result of a major or national disaster.

§ 1901.255 Historical and archeological assessments.

(a) The FmHA or its successor agency under Public Law 103–354 official, normally the FmHA or its successor agency under Public Law 103–354 County Supervisor, who receives a preapplication or application for loan or grant assistance on an undertaking that may have an effect on HA properties will, as part of the process, take the following actions:

(1) Carefully review the State supplements issued by the State Director pursuant to § 1901.262(a) to determine whether there are any properties within the project area that appear in the National Register.

(2) Document the following:

(i) A brief narrative report of the findings and conclusions of an on-site reconnaissance of the project area.

(ii) Any ''in-house'' knowledge of known or suspected HA sites in the project area.

(3) Submit the information outlined in paragraph (a)(2) of this section to the FmHA or its successor agency under Public Law 103–354 State Director as part of the preapplication or application.

(b) Upon receipt of the preapplication/application the FmHA or its successor agency under Public Law 103–354 State Director will, as a concurrent part of the preapplication/application review, prepare a historical and archeological assessment of the undertaking. In making the assessment the State Director will consider information from the following sources:

(1) State and Regional Clearinghouse comments.

(2) Information submitted by the County Supervisor pursuant to paragraph (a)(2) of this section.

(3) Factual comments or recommendations of the SHPO or other responsible Federal, State, or local officials.

(4) Any other reliable information concerning properties in the project area having HA significance.

(c) Upon completion of the preapplication or application review, the State Director will take the following actions:

(1) When his assessment indicates that no properties of HA significance will be effected by the proposed undertaking, he will proceed with processing of the preapplication or application.

(2) When his assessment indicates that there are properties included in the National Register that may be effected by the proposed undertaking, he will in consultation with the SHPO, the applicant and its representatives, and other appropriate historical and archeological authorities plan appropriate measures to avoid or mitigate any adverse effects. He will also notify the Advisory Council and Secretary of the Interior of the proposed undertaking, and of its possible effect on the National Register properties and provide them with a copy of the proposed plan in order to afford them a reasonable opportunity for comment. Comments that are received with 45 calendar days of notification in accordance with the requirements for comment as outlined in section 106 of the National Historic Preservation Act of 1966, will be considered in further development of the undertaking.

(3) When his assessment indicates that there are properties thay may be eligible for inclusion in the National Register, based on his application of the National Register criteria, he will request the Regional Director of the National Park Service, U.S. Department of the Interior, Attention: Interagency Archeological Services, in writing, to cause a survey of the project area to be made to determine the significance of the properties in accordance with section 3(b) of Pub. L. 93–291. The State Director's letter to the Regional Director should request a response within 45 calendar days as to

whether the National Park Service intends to cause a survey to be made, declines to undertake a survey, or that a survey is not warranted based on available data. The addresses of the Regional Offices of the National Park Service are listed in Exhibit A of this Subpart. If no response is received within the 45-day period, the State Director will proceed as outlined in paragraph (c)(7) of this section.

(4) The State Director will cooperate fully with the National Park Service in the conduct of a survey should one be undertaken to assure that:

(i) The professional archeologist/historian conducting the survey provides his written opinion as to the eligibility of any identified properties for inclusion in the National Register.

(ii) When the professional archeologist/historian recommends recovery, protection, or preservation of identified properties, the National Park Service is requested to undertake this project.

(5) When the survey made in paragraph (c)(3) of this section does not identify any historical and archeological properties that may be eligible for inclusion in the National Register, or the National Park Service is not going to undertake activity pursuant to paragraph (c)(4)(ii) of this section, the State Director, after consultation with the SHPO and the National Park Service, will document the findings and proceed with processing of the application.

(6) When the survey identifies properties that may be eligible for inclusion in the National Register, the State Director will request the SHPO to proceed with the nomination of such properties. The State Director will then proceed as outlined in paragraph (c)(2) of this section for any properties accepted for inclusion in the National Register.

(7) When the National Park Service declines to cause a survey to be made or determines that one is not warranted, the State Director will document such facts and proceed with processing of the application.

§§ 1901.256—1901.258 [Reserved]

§ 1901.259 Actions to be taken when archeological properties are discovered during construction.

(a) When properties of significant HA value are discovered during construction, the State Director will immediately consult with the applicant, the SHPO and the Regional Director of the National Park Service to determine whether there is sufficient factual evidence to warrant a decision to stop construction and undertake detailed survey and recovery.

(b) When the consultations in paragraph (a) of this section result in a determination by the National Park Service to request the applicant to stop construction, such stop action should be taken so that the Park Service can initiate measures for immediate recovery within 60 days after notification of a discovery.

(c) When the consultations in paragraph (a) of this section do not result in a determination by the National Park Service to stop construction and to undertake a survey and recovery, construction should be permitted to proceed with caution. In the event that the National Park Service determines that recovery is necessary, the FmHA or its successor agency under Public Law 103–354 applicant/borrower and the Park Service should determine that the consent of all persons, associations, or public entities having legal interests in the property involved has been secured. Also, the applicant should be informed that the Secretary of the Interior is authorized to compensate any person, association, or public entity damaged as a result of delay in construction or as a result of the temporary loss of the use of public or any nonfederally owned land.

(d) No survey or recovery work will be required which in the determination of the State Director would seriously impede FmHA or its successor agency under Public Law 103–354 actions in providing assistance where the State Director determines that immediate action is required to avoid loss or damage of life or property. Nevertheless, appropriate measures will be taken to

the extent practical to preserve, protect, or mitigate any damage to properties having HA significance.

§ 1901.260 Coordination with other agencies.

(a) When other Agencies are directly involved in any undertaking that requires a historical and archeological assessment, the State Director will contact the Agencies concerned to determine if a joint assessment will be prepared and whether a single lead Agency will assume primary responsibility for preparing the assessment.

(b) When a lead Agency is agreed upon other than FmHA or its successor agency under Public Law 103–354, FmHA or its successor agency under Public Law 103–354 will provide that Agency with information about its respective areas of responsibility. Assessments will indicate Agency participation and concurrence.

(c) When FmHA or its successor agency under Public Law 103–354 program activities are planned that primarily supplement those of the SCS, USDA, such as watershed projects, resource conservation and development measures, and irrigation and drainage projects, the SCS will be designated as the lead Agency.

§ 1901.261 [Reserved]

§ 1901.262 State supplement.

(a) The State Director shall be responsible for preparing a list of all properties included in the National Register in his area of jurisdiction and issuing such list as a part of a State supplement. Such a list will be updated as needed to reflect changes in the National Register.

(b) State Directors may also supplement this subpart and its exhibit as appropriate to meet State and local laws and regulations.

EXHIBIT TO SUBPART F

EXHIBIT A—NATIONAL PARK SERVICE, U.S. DEPARTMENT OF THE INTERIOR REGIONAL OFFICES

Contact should be made to: Chief, Interagency Archeological Services Division, Office of Archeological and Historic Preservation, National Park Service.

The three Regional Offices are:

San Francisco Office: Old Post Office Building, Mission and 7th Streets, Post Office Box 5700, San Francisco, Calif. 94104.

States covered: Arizona, Utah, Idaho, and West, including Hawaii and Alaska. Attention: Mr. Garland Gordon. Telephone: 415–556–7711.

Denver Office: 1978 South Garrison Street, Denver, Colo. 80225.

States covered: Wisconsin, Iowa, Missouri, Oklahoma, Texas and West to San Francisco area. Attention: Mr. Jack R. Rudy. Telephone: 303–234–2560.

Atlanta Office: 730 Peachtree Street, Atlanta, Ga. 30308.

States covered: All others East of Denver area. Attention: Mr. Wilford Susted. Telephone: 404–526–2611.

Subparts G–J [Reserved]

Subpart K—Certificates of Beneficial Ownership and Insured Notes

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.

SOURCE: 41 FR 51799, Nov. 24, 1976, unless otherwise noted.

§ 1901.501 Purpose.

This subpart prescribes policies and procedures for Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) certificates of beneficial ownership and insured notes.

§ 1901.502 Policy.

It is the current policy to sell all certificates of beneficial ownership to the Federal Financing Bank for financing activities from the Agricultural Credit Insurance Fund and the Rural Development Insurance Fund. Sales from the Rural Housing Insurance Fund will be made to the Federal Financing Bank to the extent necessary to service certificates of beneficial ownership held by the Federal Financing Bank. Sales in excess of those needed for servicing requirements will be made to the public.

In addition to sales, this subpart provides policy for the servicing of outstanding certificates of beneficial ownership, insurance contracts, and insured notes held by investors.

[51 FR 24301, July 3, 1986]

§ 1901.503 Definitions.

(a) As used in §§ 1901.505, 1901.507, 1901.508 and 1901.509 the following definitions will apply:

(1) *Announcement of sale.* Any notice of terms and conditions respecting a sale of certificates.

(2) *Certificate.* A certificate of beneficial ownership issued by Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) under this subpart.

(3) *Director, Finance Office.* The Director or the Insured Loan Officer of the Finance Office of FmHA or its successor agency under Public Law 103–354.

(4) *FmHA or its successor agency under Public Law 103–354.* The United States acting through the Farmers Home Administration or its successor agency under Public Law 103–354.

(5) *Finance Office.* The office which maintains the FmHA or its successor agency under Public Law 103–354 finance records. It is located at 1520 Market Street, St. Louis, Missouri 63103. (Phone: 314–425–4400)

(6) *Fixed period.* Any time interval (preceding an option period) during which the insured holder is not entitled to require FmHA or its successor agency under Public Law 103–354 to purchase the insured note, as specified in the insurance agreement.

(7) *Insurance agreement.* The entire contract evidencing and setting forth the terms and conditions of FmHA or its successor agency under Public Law 103–354 insurance of the payment for the insured note. The insurance agreement with respect to any particular loan may be evidenced by Form FmHA or its successor agency under Public Law 103–354 440–5, ''Insurance Endorsement (Insured Loan),'' FmHA or its successor agency under Public Law 103–354 440–30, ''Insurance Endorsement (Insured Loans),'' or any other form or forms prescribed by the National Office and executed by an authorized official of FmHA or its successor agency under Public Law 103–354. It may include such provisions as, for example, an agreement of FmHA or its successor agency under Public Law 103–354 to purchase or repurchase the loan, or to make supplementary payments from the insurance fund.

(8) *Insurance fund.* The Agricultural Credit Insurance Fund authorized by section 309 of the Consolidated Farm and Rural Development Act, the Rural Development Insurance Fund authorized by section 309A of the Consolidated Farm and Rural Development Act, or the Rural Housing Insurance Fund authorized by section 517 of title V of the Housing Act of 1949.

(9) *Insured holder.* The current owner of an insured note other than FmHA or its successor agency under Public Law 103–354, according to the records of FmHA or its successor agency under Public Law 103–354 is insurer of the note.

(10) *Insured note.* Any promissory note or bond evidencing an insured loan regardless of whether it is held by FmHA or its successor agency under Public Law 103–354 in the insurance fund, by a private holder, or by FmHA or its successor agency under Public Law 103–354 as trustee.

(11) *Loan.* Loans made and held in the Agricultural Credit Insurance Fund, Rural Development Insurance Fund, or the Rural Housing Insurance Fund.

(12) *National Office.* The Administrator or other authorized officer of the FmHA or its successor agency under Public Law 103–354 in Washington, DC.

(13) *Option period.* Any period during which the insured holder has the optional right to require the FmHA or its successor agency under Public Law 103–354 to purchase the insured note, as specified in the insurance agreement.

(14) *Par value.* The total amount to which the insured holder is entitled under the terms of the insurance agreement.

(15) *Private buyer.* A buyer of an insured note other than FmHA or its successor agency under Public Law 103–354.

(16) *Private holder.* An insured holder other than FmHA or its successor agency under Public Law 103–354.

(17) *Repurchase agreement.* A provision in the insurance agreement obligating

FmHA or its successor agency under Public Law 103–354 to buy the insured note at the option of the holders.

(18) *Sale, or seller, and buyer.* The transfer of ownership (including possession or the right of possession), the transferor, and the transferee respectively.

(19) *State Director.* The State Director of FmHA or its successor agency under Public Law 103–354 for the State in which is located the real estate improved, purchased, or refinanced with the loan evidenced by the insured note.

(b) As used in § 1901.506 the following definitions will apply:

(1) *Reserve bank.* The Federal Reserve Bank of New York (and any other Federal Reserve Bank which agrees to issue securities in book-entry form) as fiscal agent of the United States acting on behalf of FmHA or its successor agency under Public Law 103–354 and, when indicated, acting in its individual capacity.

(2) *FmHA or its successor agency under Public Law 103–354 security.* A certificate representing beneficial ownership of notes, bonds, debentures, or other similar obligations held by FmHA or its successor agency under Public Law 103–354 under the Consolidated Farm and Rural Development Act and title V of the Housing Act of 1949, issued in the form of a definitive FmHA or its successor agency under Public Law 103–354 security or a book-entry FmHA or its successor agency under Public Law 103–354 security.

(3) *Definitive FmHA or its successor agency under Public Law 103–354 security.* An FmHA or its successor agency under Public Law 103–354 security in engraved on printed form.

(4) *Book-entry FmHA or its successor agency under Public Law 103–354 security.* An FmHA or its successor agency under Public Law 103–354 security in the form of an entry made as prescribed in this subpart on the records of a Reserve bank.

(5) *Pledge.* A pledge of, or any other security interest in, FmHA or its successor agency under Public Law 103–354 securities as collateral for loans or advances, or to secure deposits of public moneys or the performance of an obligation.

(6) *Date of call.* The date fixed in the official notice of call published in the FEDERAL REGISTER on which FmHA or its successor agency under Public Law 103–354 will make payment of the security before maturity in accordance with its terms.

(7) *Member bank.* Any national bank, state bank, or bank or trust company which is a member of a Reserve bank.

§ 1901.504 Authorities and responsibilities.

The Administrator will approve all methods of FmHA or its successor agency under Public Law 103–354 financing and major changes in existing methods. The Director, Finance Office, is responsible for servicing of all certificates of beneficial ownership and insured notes issued by the Finance Office, the Federal Reserve Bank of New York for the servicing of insurance contracts, and the Federal Reserve banks for certificates of beneficial ownership for which the Reserve banks are FmHA or its successor agency under Public Law 103–354's fiscal agents.

§ 1901.505 Certificates of beneficial ownership in FmHA or its successor agency under Public Law 103–354 loans.

(a) *Special trust of loans*—(1) *Establishment of special trusts.* From time to time FmHA or its successor agency under Public Law 103–354 will place in special trusts unmature loans evidenced by notes or other instruments. Loans may be placed into or removed from a special trust, but there will always be maintained in such trusts loans on which the unpaid amount is at least equal to the face value of the outstanding unmature certificates evidencing beneficial ownership in such special trust as provided in paragraph (a)(2) of this section.

(2) *Beneficial ownership of special trusts.* To permit interested persons to acquire a beneficial ownership of loans comprising a special trust established under paragraph (a)(1) of this section, FmHA or its successor agency under Public Law 103–354 will sell certificates which will evidence beneficial ownership of an interest in the special trust to the extent of the face value of such

certificates. FmHA or its successor agency under Public Law 103–354 will own an interest in special trusts equal to the amount by which the unpaid principal amount of loans comprising the trusts exceeds the face value of all outstanding certificates evidencing beneficial ownership in such trusts.

(b) *Sale of certificates.* FmHA or its successor agency under Public Law 103–354 will offer certificates for sale from time to time on such terms and conditions it may deem appropriate. Sales made by the Finance Office shall be made by its Director. No sale in excess of $1 million will be made to any one investor without prior approval of the Associate Administrator or his designee. The terms and limitations of sales are subject to change from time to time, and may be obtained from the Finance Office.

(1) *Form of certificates.* The certificates may be interest-bearing or non-interest-bearing. The certificates may be made payable to the bearer or registered holder thereof, and will be negotiable. The certificates will be issued in denominations specified in the invitations for bid or other announcement of sale.

(2) *Issue date and maturity date of certificates.* The certificates will be issued on such dates and mature on such dates as specified in the invitation for bids or other announcement of sale. Such dates will appear on the face of the certificates.

§ 1901.506 Book-entry procedure for FmHA or its successor agency under Public Law 103–354 securities—issuance and redemption of certificate by Reserve bank.

(a) *Authority of Reserve bank.* Each Reserve bank is hereby authorized in accordance with the provisions of this subpart to:

(1) Issue book-entry FmHA or its successor agency under Public Law 103–354 securities by means of entries on its records which shall include the name of the depositor, the amount, the securities title (or series) and maturity date.

(2) Effect conversions between book-entry FmHA or its successor agency under Public Law 103–354 securities and definitive FmHA or its successor agency under Public Law 103–354 securities.

(3) Otherwise service and maintain book-entry FmHA or its successor agency under Public Law 103–354 securities.

(4) Issue a confirmation of transaction in the form of a written advice (serially numbered or otherwise) which specifies the amount and description of any securities (that is, the securities title (or series) and the maturity date) sold or transferred and the date of the transaction.

(b) *Scope and effect of book-entry procedure.* (1) A Reserve bank as fiscal agent of the United States acting on behalf of FmHA or its successor agency under Public Law 103–354 may apply the book-entry procedure provided for in this subpart to any FmHA or its successor agency under Public Law 103–354 securities which have been or are hereafter deposited for any purpose in accounts with it in its individual capacity under terms and conditions which indicate that the Reserve bank will continue to maintain such deposit accounts in its individual capacity, notwithstanding application of the book-entry procedure to such securities. This paragraph shall be applicable but not limited to FmHA or its successor agency under Public Law 103–354 securities deposited:

(i) As collateral pledged to a Reserve bank (in its individual capacity) for advances by it.

(ii) By a member bank for its sole account.

(iii) By a member bank held for the account of its customers.

(iv) In connection with deposits in a member bank of funds of States, Municipalities, or other political subdivisions.

(v) In connection with the performance of an obligation or duty under Federal, State, Municipal, or local law, or judgments or decrees of courts.

(2) The application of the book-entry procedure under paragraph (b)(1) of this section shall not detract from or adversely affect the relationships that would otherwise exist between a Reserve bank in its individual capacity and its depositors concerning any deposit under this paragraph. Whenever the book-entry procedure is applied to such FmHA or its successor agency under Public Law 103–354 securities,

the Reserve bank is authorized to take all action necessary in respect of the book-entry procedure to enable such Reserve bank in its individual capacity to perform its obligation as depositary with respect to such FmHA or its successor agency under Public Law 103–354 securities.

(3) A Reserve bank as fiscal agent of the United States acting on behalf of FmHA or its successor agency under Public Law 103–354 may apply the book-entry procedure to FmHA or its successor agency under Public Law 103–354 securities deposited as collateral pledged to the United States under Treasury Department Circular Nos. 92 and 176, both as revised and amended, and may apply the book-entry procedure, with the approval of the Secretary of the Treasury, to any other FmHA or its successor agency under Public Law 103–354 securities deposited with a Reserve bank as fiscal agent of the United States.

(4) Any person having an interest in FmHA or its successor agency under Public Law 103–354 securities which are deposited with a Reserve bank (in either its individual capacity or as fiscal agent of the United States) for any purpose shall be deemed to have consented to their conversion to book-entry FmHA or its successor agency under Public Law 103–354 securities pursuant to the provisions of this subpart and in the manner and under the procedure prescribed by the Reserve bank.

(5) No deposits shall be accepted under this section on or after the date of maturity or call of FmHA or its successor agency under Public Law 103–354 securities.

(c) *Transfer or pledge.* (1) A transfer or pledge of book-entry FmHA or its successor agency under Public Law 103–354 securities to a Reserve bank (in its individual capacity or as fiscal agent of the United States), or to the United States, or to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with a Reserve bank under this subpart is effected and perfected, notwithstanding any provision of law to the contrary, by a Reserve bank making an appropriate entry in its records of the securities transferred or pledged. The making of such an entry in the records of a Reserve bank shall:

(i) Have the effect of a delivery in bearer form of definitive FmHA or its successor agency under Public Law 103–354 securities.

(ii) Have the effect of a taking of delivery by the transferee or pledgee.

(iii) Constitute the transferee or pledgee a holder.

(iv) If a pledge, effect a perfected security interest therein in favor of the pledgee. A transfer or pledge of book-entry FmHA or its successor agency under Public Law 103–354 securities effected under this paragraph shall have priority over any transfer, pledge, or other interest, theretofore or thereafter effected or perfected under paragraph (c)(2) of this section or any other manner.

(2) A transfer or pledge of transferable FmHA or its successor agency under Public Law 103–354 securities, or any interest therein, which is maintained by a Reserve bank (in its individual capacity or as fiscal agent of the United States) in a book-entry account under this subpart, including securities in book-entry form under § 1901.506(b)(1)(iii) is effected, and a pledge is perfected by any means that would be effective under applicable law to effect a transfer or to effect and perfect a pledge of FmHA or its successor agency under Public Law 103–354 securities, or any interest therein, if the securities were maintained by the Reserve bank in bearer definitive form. For purposes of transfer or pledge hereunder, book-entry FmHA or its successor agency under Public Law 103–354 securities maintained by a Reserve bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve bank maintaining book-entry FmHA or its successor agency under Public Law 103–354 securities, either in its individual capacity or as fiscal agent of the United States, is not a bailee for the purposes of notification of pledges of these securities under this paragraph, or a third person in possession for the purposes of acknowledgment of transfers thereof under this paragraph. Where transferable FmHA or its successor agency under Public Law 103–354 securities are recorded on

the books of a depositary (a bank, banking institution, financial firm, or similar party, which regularly accepts in the course of its business FmHA or its successor agency under Public Law 103–354 securities as a custodial service for customers, and maintains accounts in the names of such customers reflecting ownership of or interest in such securities) for account of the pledgor or transferor thereof and such securities are on deposit with a Reserve bank in a book-entry account hereunder, such depositary shall, for purposes of perfecting a pledge of such securities or effecting delivery of such securities to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given or the third person in possession from which acknowledgment of the holding of the securities for the purchaser may be obtained. A Reserve bank will not accept notice or advice of a transfer or pledge effected or perfected under this paragraph and any such notice or advice shall have no effect. A Reserve bank may continue to deal with its depositor in accordance with the provisions of this subpart, notwithstanding any transfer or pledge effected or perfected under this paragraph.

(3) No filing or recording with a public recording office or officer shall be necessary or effective with respect to any transfer or pledge of book-entry FmHA or its successor agency under Public Law 103–354 securities or any interest therein.

(4) A Reserve bank shall, upon receipt of appropriate instructions, convert book-entry FmHA or its successor agency under Public Law 103–354 securities into definitive FmHA or its successor agency under Public Law 103–354 securities and deliver them in accordance with such instructions. No such conversion shall affect existing interest in such FmHA or its successor agency under Public Law 103–354 securities.

(5) A transfer of book-entry FmHA or its successor agency under Public Law 103–354 securities within a Federal Reserve Bank shall be made in accordance with procedures established by the Reserve bank not inconsistent with this subpart. The transfer of book-entry FmHA or its successor agency under Public Law 103–354 securities by a Reserve bank may be made through a telegraphic transfer procedure.

(6) All requests for transfer or withdrawal must be made prior to the maturity or date of call of the securities.

(d) *Withdrawal of FmHA or its successor agency under Public Law 103–354 securities.* (1) A depositor of book-entry FmHA or its successor agency under Public Law 103–354 securities may withdraw them from a Reserve bank by requesting delivery of like definitive FmHA or its successor agency under Public Law 103–354 securities to itself or on its order to a transferee.

(2) FmHA or its successor agency under Public Law 103–354 securities which are actually to be delivered upon withdrawal may be issued in bearer or registered form.

(e) *Delivery of FmHA or its successor agency under Public Law 103–354 securities.* A Reserve bank which has received FmHA or its successor agency under Public Law 103–354 securities and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty even though the depositor had no right to dispose of or take other action in respect of the securities. A Reserve bank shall be fully discharged of its obligations under this subpart by the delivery of FmHA or its successor agency under Public Law 103–354 securities in definitive form to its depositor or upon the order of such depositor. Customers of a member bank or other depositary (other than a Reserve bank) may obtain FmHA or its successor agency under Public Law 103–354 securities in definitive form only by causing the depositor of the Reserve bank to order the withdrawal thereof from the Reserve bank.

(f) *Registered securities.* (1) No formal assignment shall be required for the conversion to book-entry FmHA or its successor agency under Public Law 103–354 securities of registered FmHA or its successor agency under Public Law 103–354 securities held by a Reserve bank (in either its individual capacity or as fiscal agent of the United States) on the effective date of this subpart for

any purpose specified in § 1901.506(b)(1). Registered FmHA or its successor agency under Public Law 103–354 securities deposited thereafter with a Reserve bank for any purpose specified in § 1901.506(b) shall be assigned for conversion to book-entry FmHA or its successor agency under Public Law 103–354 securities.

(2) The assignment which shall be executed in accordance with the provisions of subpart F of 31 CFR part 306, so far as applicable, shall be to Federal Reserve Bank of ———, as fiscal agent of the United States acting on behalf of the Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture, for conversion to book-entry Farmers Home Administration or its successor agency under Public Law 103–354 securities.

(g) *Servicing book-entry FmHA or its successor agency under Public Law 103–354 securities, payment of interest, payment at maturity or upon call.* Interest becoming due on book-entry FmHA or its successor agency under Public Law 103–354 securities shall be charged to the general account of the Treasurer of the United States on the interest due date and remitted or credited in accordance with the depositor's instructions. Such securities shall be redeemed and charged to the same account on the date of maturity or call, and the redemption proceeds, principal, and interest shall be disposed of in accordance with the depositor's instructions.

(h) *Issuance and redemption.* (1) In those instances where the Reserve bank is acting as fiscal agent of the United States acting on behalf of FmHA or its successor agency under Public Law 103–354, the following subparts of Treasury Department Circular No. 300 (31 CFR part 306), so far as applicable, shall apply to such certificates.

(i) Subpart B, Registration.

(ii) Subpart C, Transfers, Exchanges and Reissues.

(iii) Subpart D, Redemption or Payment.

(iv) Subpart E, Interest.

(v) Subpart G, Assignments of Registered Securities—General.

(vi) Subpart F, Assignments by or in Behalf of Individuals.

(vii) Subpart H, Assignments in Behalf of Estates of Deceased Owners.

(viii) Subpart I, Assignments by or in Behalf of Trustees and Similar Fiduciaries.

(ix) Subpart J, Assignments in Behalf of Private or Public Organizations.

(x) Subpart K, Attorneys in Fact.

(xi) Subpart L, Transfer Through Judicial Proceedings.

(xii) Subpart M, Requests for Suspension of Transactions.

(xiii) Subpart N, Relief for Loss, Theft, Destruction, Mutilation, or Defacement of Securities.

§ 1901.507 Certificates of beneficial ownership issued by the FmHA or its successor agency under Public Law 103–354 Finance Office.

(a) *Orders and payment.* Orders for investment in certificates may be placed with the Finance Office by mail, telephone, or in person. Payment for purchase of certificates may be made by a wire transfer to the Federal Reserve Bank of St. Louis for credit to the Farmers Home Administration or its successor agency under Public Law 103–354, by a certified check or bank draft payable to the Farmers Home Administration or its successor agency under Public Law 103–354. The rate of interest paid on the certificate will be the rate in effect on the date the Finance Office receives the payment.

(b) *Registration.* (1) The registration used must express the actual ownership of a certificate and may not restrict the authority of the owner to dispose of it in any manner. FmHA or its successor agency under Public Law 103–354 reserves the right to treat the registration as conclusive ownership. Request for registration must be clear, accurate, and complete, and include the appropriate taxpayer identifying number or social security number.

(2) The registration of all certificates owned by the same person, organization, or fiduciary should be uniform with respect to the name of the owner and, in case of fiduciary, the description of the fiduciary capacity. Individual owners should be designated by the names by which they are ordinarily

known or under which they do business, preferably including at least one full given name. The name of an individual may be preceded by an applicable title, as, for example ''Mrs.'' ''Mr.'', ''Miss',' ''Ms.''; ''Dr.'', or ''Rev.'', or followed by a designation such as ''M.D.'', ''D.D.'', ''Sr.'', or ''Jr.'', Any other similar suffix should be included when ordinarily used or when necessary to distinguish the owner from another member of his family. The address should include, where appropriate, the name and street, route, or any other location feature, and zip code.

(3) If an erroneously inscribed certificate is received, it should not be altered in any respect. FmHA or its successor agency under Public Law 103–354 should be given full particulars about the error and asked to furnish instructions.

(c) *Transfers and exchanges—closed periods*—(1) *General.* Transfer of registered certificates should be made by assignment in accordance with this section. Registered securities are eligible for denominational exchange. Specific instructions for issuance and delivery of new certificates signed by the owner or the owner's authorized representative must accompany the certificates presented. Certificates presented for transfer must be received by FmHA or its successor agency under Public Law 103–354 not less than 1 full month before the date on which they mature. Any certificates so presented which are received too late to comply with this provision will be accepted for payment only.

(2) *Closing of transfer books.* The transfer books are closed for 1 full month preceding interest payment dates. If the date set for closing falls on Saturday, Sunday, or a legal holiday, the books will be closed as of the close of business on the last business day preceding that date. The books are reopened on the first business day following the date on which interest falls due. Registered certificates which have not matured, or have been submitted for transfer and are received when the books are closed for that certificate, will be processed on or after the date such books are reopened. If certificates are received for transfer when the books are closed for payment of final interest at maturity, the following action will be taken in the absence of different instructions:

(i) Payment of final interest will be made to the registered owner of record on the date the books were closed.

(ii) Payment of principal will be made to the assignee under a proper assignment of the certificate.

(d) *Redemption or payment*—(1) *General.* Certificates are payable in regular course of business at maturity. FmHA or its successor agency under Public Law 103–354 may provide for the exchange of maturing certificates. The registered certificates should be presented and surrendered for redemption at the FmHA or its successor agency under Public Law 103–354 Finance Office. No assignments or evidence in support of them will be required by or on behalf of the registered owner or assignee for redemption for his or its account, or for redemption-exchange if the new certificates are to be registered in exactly the same names and forms as in the registrations or assignments of the certificates surrendered.

(2) *Redemption at maturity.* Registered certificates presented and surrendered for redemption at maturity need not be assigned unless the owner desires that payment be made to some other person. Should the owner so desire assignments should be made to the ''Farmers Home Administration or its successor agency under Public Law 103–354 for redemption for the account of (inserting name and address of person to whom payment is to be made).'' Specific instructions for the issuance and delivery of the redemption check signed by the owner or the owner's authorized representative must accompany the certificates unless included in the assignment. Payment of the principal and interest will be made by a check drawn on the Treasurer of the United States to the order of the person entitled and mailed in accordance with the instructions received. If instructions are not received concerning interest, interest will be paid to the registered owner.

(3) *Interest.* The interest on FmHA or its successor agency under Public Law 103–354 certificates accrues and is payable annually. A full interest period does not include the day on which the last preceding interest became due, but

does include the day on which the next succeeding interest payment is due. Certificates will cease to bear interest on the date of their maturity. The interest on registered certificates is payable by checks drawn on the Treasurer of the United States to the order of the registered owners, except as otherwise provided in this section. FmHA or its successor agency under Public Law 103–354 prepares the interest checks in advance of the interest payment date and ordinarily mails them in time to reach the addressees on that date. Interest on a registered certificate which has not matured and which is presented for any transaction when the books for that certificate are closed will be paid by check drawn to the order of the registered owner of record. On receipt of notice of the death or incompetency of an individual named as registered owner, a change in the name or in the status of a partnership, corporation, or unincorporated association, the removal, resignation, succession, or death of a fiduciary or trustee, delivery of interest checks will be withheld pending receipt and approval of evidence showing who is entitled to receive the interest checks. If the inscriptions on certificates do not clearly identify the owners, delivery of interest checks may be withheld pending reissue of the certificates in the correct registration, except as provided in this section. The final installment of interest will be paid by check drawn to the order of the registered owner of record on presentation and surrender of the certificate for redemption. To assure timely delivery of interest checks, owners should promptly notify FmHA or its successor agency under Public Law 103–354 of any change of address.

(e) *Assignments.* Assignments of certificates should be executed by the owner or the owner's authorized representative in the presence of an officer authorized to certify assignments. Assignments shall be made on the back of the certificate. Registered certificates may be assigned to a specified transferee or to FmHA or its successor agency under Public Law 103–354 for redemption or for exchange for other certificates offered at maturity. Assignments to ''United States, Farmers Home Administration or its successor agency under Public Law 103–354,'' ''Farmers Home Administration or its successor agency under Public Law 103–354 for Transfer,'' or ''Farmers Home Administration or its successor agency under Public Law 103–354 for Exchange'' will not be accepted unless supplemented by specific instructions by or in behalf of the owner. If an alteration or erasure has been made in an assignment, a new assignment from the assignor should be obtained. Otherwise, an affidavit or explanation by the person responsible for the alteration or erasure should be submitted for consideration.

(f) *Death of certificate holder.* The Finance Office should be notified of the death of the registered owner of a certificate. The following documents should be forwarded with the notice if available.

(1) A certified copy of the death certificate.

(2) A certified copy of the court order appointing the Administrator or Executor (include the mailing address of the Administrator or Executor). The Finance Office will notify the person submitting such notice and/or documentation if any other records or documents are needed. Legal opinions and advice will be obtained by the Finance Office as needed from the Regional Attorney. After all legal requirements are met, the certificate should be reissued in the name of the current owner.

(g) *Replacement.* Lost, stolen, destroyed, or mutilated certificates will be replaced by the Finance Office on the registered owner's compliance with the requirements of § 1901.509.

§ 1901.508 Servicing of insured notes outstanding with investors.

The Director, or the insured loan officer of the Finance Office, is authorized in connection with the sale of any insured note to execute required documents on behalf of FmHA or its successor agency under Public Law 103–354 and to take other appropriate action, including, but not limited to, acknowledging notice of sale of an insured note, or requiring an insured holder to sell an insured note to FmHA or its successor agency under Public Law 103–354 in connection with any voluntary conveyance or foreclosure, or transfer

related to liquidation of the borrower's account or any other servicing action so related. Upon recommendation by the State Director that purchase of an insured note is necessary for any servicing action not related to liquidation of the borrower's account, authorization may be given by the National Office to request the Director, Finance Office, to require a holder to sell an insured note to FmHA or its successor agency under Public Law 103–354.

(a) *Assignments*—(1) *Effective date of assignment.* When an insured note is sold by a private holder to a private buyer, notice of such sale executed by the seller must be given to and acknowledged by FmHA or its successor agency under Public Law 103–354 in order for the sale to be binding on FmHA or its successor agency under Public Law 103–354, as to FmHA or its successor agency under Public Law 103–354, the effective date of the sale will be the acknowledgment date specified in the acknowledgement of notice executed by FmHA or its successor agency under Public Law 103–354.

(2) *Assignment to FmHA or its successor agency under Public Law 103–354 at request of FmHA or its successor agency under Public Law 103–354.* At any time FmHA or its successor agency under Public Law 103–354 considers it necessary for proper servicing of the loan, FmHA or its successor agency under Public Law 103–354 may require, in writing, a private holder to sell an insured note to FmHA or its successor agency under Public Law 103–354.

(3) *Assignment to FmHA or its successor agency under Public Law 103–354 at option of holder.* A private holder at any time during the option period may require, in writing, FmHA or its successor agency under Public Law 103–354 to purchase an insured note.

(4) *Price.* If FmHA or its successor agency under Public Law 103–354 is the buyer of an insured note, the price will be the par value as of the effective date of the sale. In other cases, the price will be determined by an agreement between the parties.

(b) *Sale of insured notes by private holders to private buyers.* (1) On receipt of notice from a private holder of intention to assign an insured note, the Director, Finance Office, will send the holder:

(i) Form FmHA or its successor agency under Public Law 103–354 471–7 ''Notice and Acknowledgment of Sale of Insured or Guaranteed Loan.''

(ii) A statement of the unpaid principal. If requested the Director, Finance Office, will furnish a statement of account instead of or in addition to a statement of the unpaid principal.

(iii) Appropriate information on how to complete the assignment.

(2) If the Director, Finance Office, is informed that an insured note has been assigned and FmHA or its successor agency under Public Law 103–354 is requested to recognize the assignment, the Director, Finance Office, will send the assignor Form FmHA or its successor agency under Public Law 103–354 471–7, with directions for its execution.

(3) On receipt of Form FmHA or its successor agency under Public Law 103–354 471–7 properly executed by the assignor, the Director, Finance Office, will complete and execute the acknowledgment section of the form. The Director, Finance Office, will retain the original of the form, have two facsimile copies made and send one to the assignor, and one to the assignee. For any correction or other change to be made in the record of the name or address of a private holder, or of a designated agent of a private holder, a request will be made to FmHA or its successor agency under Public Law 103–354 in writing.

(4) As of the date of the acknowledgment, executed by the Director, Finance Office, on Form FmHA or its successor agency under Public Law 103–354 471–7 the Director, Finance Office, will transfer the insured note from the assignor to the assignee as the insured holder on the records of FmHA or its successor agency under Public Law 103–354. The name and address of the assignee will be recorded by FmHA or its successor agency under Public Law 103–354 exactly as they appear on Form FmHA or its successor agency under Public Law 103–354 471–7.

(5) Payments transmitted by FmHA or its successor agency under Public Law 103–354 on or after the acknowledgment date shown on Form FmHA or its successor agency under Public Law

103–354 471–7 will be transmitted to the assignee. The Director, Finance Office, will give notice to the assignor and the assignee of any payments transmitted by FmHA or its successor agency under Public Law 103–354 to the assignor before the acknowledgment date and after either the date of sale, or the date of the statement of account, whichever is earlier. However, FmHA or its successor agency under Public Law 103–354 will not be liable for any failure to give such notice.

(c) *Assignment of insured notes to FmHA or its successor agency under Public Law 103–354*—(1) *Assignment at the request of the holder.* For assignment of an insured note to FmHA or its successor agency under Public Law 103–354 during the option period at the request of the holder, the following procedure will apply:

(i) The holder will endorse the insured note as follows: ''Pay to the order of the United States of America. Without recourse.'' The holder will then deliver the endorsed note, together with the insurance agreement, to the Director, Finance Office.

(ii) On receipt of the endorsed note with the accompanying insurance agreement, the Director, Finance Office, will acknowledge receipt of the note and process payment to the assignor of the par value of the note as of the date of the Treasury check.

(2) *Assignment at the request of FmHA or its successor agency under Public Law 103–354.* The procedure for assigning an insured note at the request of FmHA or its successor agency under Public Law 103–354 will be the same as that prescribed in paragraph (c)(1) of this section, except that the Director, Finance Office, will send a written request to the holder requiring that the insured note be assigned to FmHA or its successor agency under Public Law 103–354 and delivered to the Director, Finance Office, with the accompanying insurance agreement. The Director, Finance Office, will explain that the assignment is necessary to enable FmHA or its successor agency under Public Law 103–354 to service the account properly and will give the holder all necessary information as to the manner of making the assignment and the amount to be paid by FmHA or its successor agency under Public Law 103–354.

(d) *Replacement of called or fully paid notes.* Certain insurance endorsements contain a clause or rider providing for a replacement note when the original note is paid in full, or is called by FmHA or its successor agency under Public Law 103–354. This provision applies to loans sold for a fixed period of 10 years or longer for loans sold on or after December 1, 1969, and a fixed period of 15 years or longer for loans sold before December 1, 1969. If a note is paid in full or called by the Government and the lender is entitled to a replacement note, the lender may obtain a certificate of beneficial ownership in lieu of the replacement note. The certificate will carry the rates and terms applicable to the replacement note.

(e) *Death of a noteholder.* The Finance Office should be notified of the death of a holder of an insured note. The following documents should be forwarded with the notice if available:

(1) A certified copy of the death certificate.

(2) A certified copy of the court order appointing the Administrator or Executor (include the mailing address of the Administrator or Executor). The Finance Office will notify the person submitting the notice and/or documentation if any other records or documents are needed, and will provide any additional instructions that are needed. Legal opinions and advice will be obtained by the Finance Office as needed from the Regional Attorney.

§ 1901.509 Loss, theft, destruction, mutilation, or defacement of insured notes, insurance contracts, and certificates of beneficial ownership.

(a) *Block sale insurance contracts.* The Associate Administrator is authorized in connection with block sale insurance contracts to authorize the FmHA or its successor agency under Public Law 103–354's fiscal agent to establish requirements for issuance of a replacement insurance contract when the original issued by the Federal Reserve Bank of New York (FmHA or its successor agency under Public Law 103–354's fiscal agent) is lost, stolen, destroyed, mutilated, or defaced. When a block sale insurance contract is lost,

stolen, or destroyed, a duplicate may be issued to the registered holder upon receipt of an acceptable certificate of loss and an indemnity bond without surety. The certificate of loss should include the legal name and present address of the owner and address when issued, if different from the present address; the capacity of person certifying, if other than owner; the identity of the insurance contract, including series number, contract number, denomination, issue date, and form of inscription of registry, and the full statement of circumstances of loss. All available portions of an insurance contract that is mutilated, defaced, or partially destroyed should be submitted to the Federal Reserve Bank of New York (FmHA or its successor agency under Public Law 103–354's fiscal agent) for determination as to whether a duplicate insurance contract can be issued without a certificate of loss and posting of an indemnity bond. In the event the holder of a block sales insurance contract obtains possession of the underlying notes, the requirements of paragraph (b) of this section apply.

(b) *Notes and certificates of beneficial ownership sold by County Office and Finance Office.* The Director, or the insured loan officer of the Finance Office, is authorized on behalf of the Government, in connection with insured notes or certificates of beneficial ownership sold through the FmHA or its successor agency under Public Law 103–354 Finance Office to require indemnity bonds from a noteholder when a note or certificate is lost, stolen, destroyed, mutilated, or defaced while in the custody of the holder or his designee. When a note or certificate of beneficial ownership is lost, stolen, or destroyed while in the custody of the holder or his designee, the following will apply:

(1) A certificate of loss should be filed with FmHA or its successor agency under Public Law 103–354 Finance Office. The certificate should include:

(i) Legal name and present address of owner when issued, if different from present address.

(ii) Capacity of person certifying, if other than the owner.

(iii) Identity of the note or certificate of beneficial ownership, including the name and FmHA or its successor agency under Public Law 103–354 case number of the maker thereof, issue date, interest rate of obligation, face amount of note or certificate of beneficial ownership, and a full description of any assignment, endorsement, or any other writing.

(iv) A full statement of circumstances of the loss, theft, or destruction of the note.

(2) An indemnity bond in the amount of the unpaid principal and interest will be required except in the following instances:

(i) Substantially the entire note or certificate of beneficial ownership is presented and surrendered by the owner or holder, and the Director, Finance Office, is satisfied as to the identity of the instruments and that any missing portions are not sufficient to form the basis of a valid claim against the United States or the borrower; or

(ii) The owner or holder is the United States, a Federal Reserve Bank, a Federal Government Corporation, a State or territory, or the District of Columbia.

(3) An indemnity bond without surety will be provided in the following cases:

(i) Cases involving registered unassigned obligations held by banks, trust companies, savings and loan associations, or companies holding certificates of authority from Secretary of the Treasury as acceptable sureties on Federal Bonds (companies listed on Treasury Department Circular 570) where the financial responsibilities of such claimants are well known or readily ascertainable.

(ii) Cases involving registered unassigned obligations where the evidence reasonably justifies a conclusion that the obligations were destroyed and the unpaid principal and interest amount does not exceed $1,000.

(4) An indemnity posted with a qualified surety is required in all cases involving registered unassigned obligations other than those cited in paragraphs (b)(2)(i), (b)(2)(ii), (b)(3)(i) and (b)(3)(ii) of this section. A qualified surety is a company holding a certificate of authority from the Secretary of the Treasury as acceptable sureties on Federal Bonds, and listed in Treasury Department Circular 570.

(5) All indemnity bonds for notes must be payable to both the borrower and FmHA or its successor agency under Public Law 103–354. All indemnity bonds for certificates of beneficial ownership must be payable to FmHA or its successor agency under Public Law 103–354. The bond may be posted at the time the note or certificate of beneficial ownership becomes eligible for repurchase by FmHA or its successor agency under Public Law 103–354. If the holder desires to continue to hold the note for the life of the note, an indemnity bond will not be required.

(6) An assignment of the note or certificate of beneficial ownership shall be made to the United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture. An acceptable form of assignment is available from the Director, Finance Office.

(c) *Other cases.* Cases involving bearer obligations and other cases not discussed in this section will be forwarded to the Director, Finance Office, for requirements.

(d) *Replacement of notes.* FmHA or its successor agency under Public Law 103–354 will not attempt to obtain replacement notes from borrowers.

Subparts L–M [Reserved]

Subpart N—Indian Outreach Program

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; sec. 10, Pub. L. 93–357, 88 Stat. 392; delegation of authority by the Sec. of Agri., 7 CFR 2.23, delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegation of authority by Dir., OEO, 29 FR 14764, 33 FR 9850.

SOURCE: 43 FR 3697, Jan. 27, 1978, unless otherwise noted.

§ 1901.651 Purpose.

The purpose of this subpart is to establish procedures and responsibilities for carrying out the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) American Indian Outreach Program.

§ 1901.652 Goals.

The FmHA or its successor agency under Public Law 103–354 American Indian Outreach Program is a concerted effort to:

(a) Make all FmHA or its successor agency under Public Law 103–354 programs more accessible and available to Indians living on and off reservations.

(b) Surface and attempt to correct problems and obstacles that prevent the participation by eligible Indians and Indian tribes in FmHA or its successor agency under Public Law 103–354 programs.

(c) Increase the production level of FmHA or its successor agency under Public Law 103–354 loans and grants going to American Indians both on and off reservations.

(d) Provide pamphlets, publications and information on FmHA or its successor agency under Public Law 103–354 programs to individual Indians, Indian tribes and Tribal leaders, Bureau of Indian Affairs (BIA) personnel, and other interested groups and individuals.

§ 1901.653 Field action.

State Coordinators of Indian activities appointed by State Directors will:

(a) Maintain close liaison with local FmHA or its successor agency under Public Law 103–354 supervisors and officials serving Indian Populations and reservations;

(b) Work closely with local District, State, and National Office representatives to remove obstacles and solve problems that impede the use of FmHA or its successor agency under Public Law 103–354 programs on Indian reservations;

(c) Be familiar with all FmHA or its successor agency under Public Law 103–354 loan and grant programs available to Indians living on and off reservations, including the types of security and eligibility requirements;

(d) Be aware of any unique relationship that may exist between Indians and the Federal and State governments affecting Indian participation in the FmHA or its successor agency under Public Law 103–354 loan and grant programs;

(e) As necessary, attend pertinent meeting of Indian groups, government agencies, and others concerned with

economic and social development of Indians;

(f) If possible, become personally acquainted with Indian leaders and non-Indians leaders in Indian affairs in the State;

(g) Arrange for the training of members of Indian tribes, individuals, and interested groups involved in Indian affairs, in the packaging and distribution of materials for use in FmHA or its successor agency under Public Law 103–354 loan and grant programs.

§ 1901.654 FmHA or its successor agency under Public Law 103–354 publications.

FmHA or its successor agency under Public Law 103–354 publications, such as ''Rural Credit for American Indians,'' a handbook of FmHA or its successor agency under Public Law 103–354 programs, and ''FmHA or its successor agency under Public Law 103–354 Credit for American Indians,'' or other materials to be developed, will be used as supplementary training and informational aids for Indian communities, individuals, governmental agencies, and other groups involved in Indian affairs.

§ 1901.655 Reports.

(a) State Directors will keep the National Office advised of any problems and obstacles in FmHA or its successor agency under Public Law 103–354's procedures relating to Indian laws or customs that cannot be resolved locally and which prevent American Indians from participating in the FmHA or its successor agency under Public Law 103–354 programs on or off the reservations.

(b) Any changes in personnel serving as State Coordinator of Indian activities will be reported to the National Office.

(c) Each State Director will make a semi-annual memorandum report on January 1 and July 1 of each year on activities and accomplishments in his State. The report will specifically reflect what has been done to carry out the items set forth in § 1901.653. The report will be sent to the National Office, Attention, Coordinator of Indian Activities.

PART 1902—SUPERVISED BANK ACCOUNTS

Subpart A—Disbursement of Loan, Grant, and Other Funds

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EXHIBITS TO SUBPART A

EXHIBIT A—[RESERVED]
EXHIBIT B—UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354—INTEREST-BEARING DEPOSIT AGREEMENT

Subpart B—[Reserved]

Subpart C—Selecting a Financial Institution for the Concentration Banking System (CBS)

1902.101—1902.103 [Reserved]
1902.104 Establishing or changing a TLA.
1902.105—1902.149 [Reserved]
1902.150 OMB control number.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart A—Disbursement of Loan, Grant, and Other Funds

SOURCE: 46 FR 36106, July 14, 1981, unless otherwise noted.

§ 1902.1 General.

This subpart prescribes the policies and procedures of the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) for disbursement of funds under the Loan Disbursement System (LDS), in establishing and using supervised bank accounts, and in placing Multi-Family Housing (MFH) reserve accounts in supervised bank accounts. The LDS system provides for disbursement of funds on an as needed basis to substantially reduce interest costs to FmHA or its successor agency under Public Law 103–354 borrowers, U.S. Treasury, and FmHA or its successor agency under Public Law 103–354.

(a) Forms FmHA or its successor agency under Public Law 103–354 1940–1, ''Request for Obligation of Funds,'' and FmHA or its successor agency under Public Law 103–354 1944–51, ''Multiple Family Housing Obligation—Fund Analysis,'' provide for obligation only, obligation and check request for the full amount of the loan or grant except for MFH, and obligation and check request for a partial amount of the loan or grant. The instructions on when and how to use these forms are contained in the Forms Manual Insert (FMI) for the forms. Instructions for using Form FmHA or its successor agency under Public Law 103–354 1944–51 for obligation and check request via computer terminal may also be found in the ''Multiple Family Housing User Procedures.'' FmHA or its successor agency under Public Law 103–354 forms are available in any FmHA or its successor agency under Public Law 103–354 office.

(b) Forms FmHA or its successor agency under Public Law 103–354 440–57, ''Acknowledgement of Obligated Funds/Check Request'' and FmHA or its successor agency under Public Law 103–354 1944–57, ''MFH Acknowledgement of Obligated Funds/Check Request,'' provide for:

(1) The initial loan check;

(2) All subsequent loan checks;

(3) Making corrections on the data in the loan account as reflected on the form;

(4) Notifying the Finance Office of the loan closing date and the loan amortization effective date;

(5) Providing requested information from the Finance Office; and,

(6) For Multiple Family Housing (MFH) loans providing Maximum Debt Limit and Appraised Value. The instructions on when and how to use these forms are contained in the FMI for the forms. However, for MFH loans and grants whenever possible, check obligation requests and loan closings should be done via the field office computer terminal. Instructions may be found in the ''Multiple Family Housing User Procedures.''

(c) See FmHA or its successor agency under Public Law 103–354 Instruction 2018–D (available in any FmHA or its successor agency under Public Law 103–354 office) for procedures to follow if checks are lost or destroyed.

(d) Borrowers as referred to in this subpart include both loan and grant recipients. They are referred to as depositors in the deposit agreements hereinafter described. References herein and in deposit agreements to ''other lenders'' include lenders and grantors other than FmHA or its successor agency under Public Law 103–354.

(e) Banks referred to in this subpart are those in which deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

(f) Savings and Loans referred to in this subpart are those in which deposits are insured by the Federal Savings and Loan Insurance Corporation (FSLIC).

(g) Credit Unions referred to in this subpart are those in which deposits are insured by the National Credit Union Administration (NCUA).

(h) Financial Institutions as referred to in this subpart include banks, savings and loans, and credit unions which are covered by the proper insurance coverage cited in paragraphs (e), (f) and (g) of this section.

(i) Supervised bank accounts referred to in this subpart are bank, savings and loan, or credit union accounts established through deposit agreements entered into between the borrower, the United States of America acting through the FmHA or its successor agency under Public Law 103–354, and the Financial Institution on Form FmHA or its successor agency under

Public Law 103–354 402–1, ''Deposit Agreement''.

(j) Form FmHA or its successor agency under Public Law 103–354 402–1 provides for the deposit of funds in a supervised bank account to assume the performance of the borrower's obligation to FmHA or its successor agency under Public Law 103–354 in connection with a loan and grant.

(k) ''Interest-Bearing Deposit Agreement'' (Exhibit B), provides for the deposit of loan or grant funds that are not required for immediate disbursement in specified interest-bearing deposits, and it is executed in conjunction with Form FmHA or its successor agency under Public Law 103–354 402–1.

[46 FR 36106, July 14, 1981, as amended at 50 FR 8584, Mar. 4, 1985; 53 FR 35670, Sept. 14, 1988; 54 FR 47959, Nov. 20, 1989; 59 FR 3778, Jan. 27, 1994; 59 FR 54788, Nov. 2, 1994]

§1902.2 Policies concerning disbursement of funds.

(a) The Automated Data Processing System (ADPS) will be utilized whenever possible in accordance with the specific program procedures, except where prohibited by State statutes. The capability to request Treasury checks on an as needed basis reduces the need for supervised bank accounts. *Therefore, supervised bank accounts will be used only in certain instances. e.g.:*

(1) When a construction loan is made and the construction is substantially completed, but a small amount is being withheld pending completion of landscaping or some similar item, or a small loan closing. In this case, the amount of funds not disbursed when the predetermined amortization effective date occurs may be placed in a supervised bank account for future disbursement as appropriate.

(2) When a large number of checks will be issued in the construction of a dwelling or other development, as for example under the ''borrower method'' of construction or in Operating (OL) loans and Emergency (EM) loans. In such cases, installment checks will be requested from the Finance Office as necessary and deposited in a supervised bank account and disbursed to suppliers, sub-contractors, etc., as necessary. Those District and County Offices authorized to request checks by the ADPS may request more than one check at a time. If more than one check is required, a Form FmHA or its successor agency under Public Law 103–354 440–57 or Form FmHA or its successor agency under Public Law 103–354 1944–57 will be prepared for each check.

(3) Association loan and grant funds made on a multiple advance basis need not be deposited in a supervised bank account unless required by State statutes or otherwise determined necessary by the Loan Approval Official.

(4) Supervised bank accounts will be used only when needed as defined in paragraph (a)(6) of this section to assure the correct expenditures of all or a part of loan and grant funds, borrower contributions, and borrower income. Such accounts will be limited in amount and duration to the extent feasible through the prudent disbursement of funds and the prompt termination of the interests of FmHA or its successor agency under Public Law 103–354 and other lenders when the accounts are no longer required.

(5) Income from the sale of security or Economic Opportunity (EO) property or the proceeds from insurance on such property will be deposited in a supervised bank account under Form FmHA or its successor agency under Public Law 103–354 402–1 when the District Director or County Supervisor determines it is needed as defined in paragraph (a)(6) of this section to assure that the funds will be available for replacement of the property.

(6) When it is determined by the County Supervisor and requested or agreed to by the borrower that special supervision is needed in the management of the borrower's financial affairs, funds may be deposited in a supervised bank account. This supervisory technique will be used for a temporary period to help the borrower learn to properly manage his/her financial affairs. Such a period will not exceed one year unless extended by the District Director.

(7) In exceptional cases when the unincorporated EO cooperative or grazing association borrower cannot obtain a position fidelity bond, its income may be deposited as provided for in §1902.6 (and §1902.2(f) of this subpart if another lender is involved).

(b) For all construction loans and those loans using multiple advances, only the actual amount to be disbursed at loan closing will be requested through the State Office terminal. Subsequent checks will be ordered as needed through the ADPS system.

(c) Program instructions provide information as to the type of note to be utilized and the method of handling advances and the interest accrued thereon. For individual loan programs, interest will accrue from the loan closing date or date of check whichever is later. For association and organization type loans interest will accrue from the date the check is delivered to the borrower. For all RRH, RCH, LH or RHS loans, interest will accrue from the date of the check.

(d) For all loan accounts, when the total amount has not been advanced at the amortization effective date, as defined in the FMI for Form FmHA or its successor agency under Public Law 103–354 1940–1, (and Form FmHA or its successor agency under Public Law 103–354 1944–51, for multiple family housing), the Finance Office will forward the remaining balance to the District Director or County Supervisor for appropriate action, unless the District Director or County Supervisor notifies the Finance Office of other arrangements.

(e) When a check cannot be negotiated within 20 working days from the date of the check, the District Director or County Supervisor will process the check(s) with Form(s) FmHA or its successor agency under Public Law 103–354 1940–10, ''Cancellation of U.S. Treasury Check and/or Obligation,'' (or Form FmHA or its successor agency under Public Law 103–354 1944–53, ''Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation,'' for multiple family housing loans) in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2018–D (available in any FmHA or its successor agency under Public Law 103–354 office).

(f) The debt instruments executed at the time of loan closing constitute an obligation on the part of the Government to disburse all funds at one time or in multiple advances provided the funds are for purposes authorized by the Government at the time of loan closing. This obligatory commitment takes priority over any intervening liens or advances by other creditors regardless of the provisions of the State laws involved.

[46 FR 36106, July 14, 1981, as amended at 50 FR 8584, Mar. 4, 1985; 53 FR 35670, Sept. 14, 1988; 54 FR 47959, Nov. 20, 1989; 55 FR 21524, May 25, 1990; 59 FR 54788, Nov. 2, 1994]

§ 1902.3 Procedures to follow in fund disbursement.

(a) The District Director or County Supervisor will determine during loan approval the amount(s) of loan check(s)—full or partial—and forward such request to be processed through the ADPS system.

(b) When check(s) are delivered to the District or County Office, the District Director or County Supervisor will make sure that the name of the borrower and the amount(s) of check(s) coincide with the request on file. The District Director or County Supervisor should be sure that the check is properly endorsed to insure payment to the intended recipient. Examples of such restrictive endorsements are:

(1) ''For Deposit only to Account No. (Number of Construction Account) of (*Name of Borrower*) in (*Name of Financial Institution*).''

(2) ''Pay to the order of (3rd party payee)''—(Contractor, Developer, Sub-Contractor, Building Supply House, etc.) for the purpose of ————.

(c) When necessary and only under the circumstances listed in § 1902.2 the District Director or County Supervisor will establish, or cause to be established, a supervised bank account. Funds deposited in a supervised bank account are to be recorded and accounted for on Form FmHA or its successor agency under Public Law 103–354 402.2, ''Statement of Deposits and Withdrawals.''

[46 FR 36106, July 14, 1981, as amended at 53 FR 26588, July 14, 1988; 53 FR 35670, Sept. 14, 1988; 54 FR 39727, Sept. 28, 1989]

§ 1902.4 Establishing MFH reserve accounts in a supervised bank account.

(a) *General requirements.* All MFH borrowers required to maintain reserve accounts must place the reserve accounts

in a supervised bank account(s) which meets the following requirements:

(1) *Countersignature requirements.* The reserve account must require that any funds withdrawn be countersigned by an authorized FmHA or its successor agency under Public Law 103–354 official.

(2) *Restrictions on collateral.* The financial institution holding the reserve account must ensure that the funds are not pledged or taken as security without the Agency's prior consent.

(3) *Interest bearing.* The reserve account funds are encouraged to be maintained in an interest-bearing account. The ''Interest-Bearing Deposit Agreement'' set out in Exhibit B of this subpart is not required to be used for reserve accounts.

(4) *Restricted investments.* Reserve funds must be placed in investments authorized in subpart C of part 1930 of this chapter. The authorized investments are deemed to be of acceptable risk such that the potential for any loss is minimal.

(5) *Financial institutions.* The reserve account must be maintained in authorized financial institutions set out in subpart C of part 1930 of this chapter (e.g., banks, savings and loan institutions, credit unions, brokerage firms, mutual funds, etc.). Generally, any financial institution may be used provided invested or deposited funds are insured to protect against theft and dishonesty. The reserve account funds need not be Federally insured. However, if Federally insured, any amount held above the Federal insurance ceilings established must be backed by a pledge of collateral from the financial institution, or otherwise covered by non-federal insurance against theft and dishonesty.

(6) *Rules where multiple projects are involved.* A reserve account(s) must be maintained for each borrower. When a borrower owns multiple projects, reserve accounts may be established for each project. A single reserve account may also be established by a borrower owning multiple projects, provided the conditions set out in subpart C of part 1930 of this chapter are met.

(7) *Term.* Reserve accounts are expected to be kept for the full term of the loan.

(b) *Deposits and account activity statements.*—(1) *Deposits.* Generally, the FmHA or its successor agency under Public Law 103–354 will not require the review or approval of deposits or the use of Forms FmHA or its successor agency under Public Law 103–354 402–1 or FmHA or its successor agency under Public Law 103–354 402–2.

(2) *Account activity statements.* Generally, the FmHA or its successor agency under Public Law 103–354 will not monitor or reconcile the reserve account activity statements issued periodically by the financial institutions holding the funds. FmHA or its successor agency under Public Law 103–354 will monitor reserve account levels through budget reports, audits, and Agency reserve tracking systems. If disputes arise or the borrower is in violation of Agency regulations, the Agency may require account activity statements. When account activity statements are sought, it will normally be sufficient to obtain the statement which reflects balances as of the last activity statement ending period. Form FmHA or its successor agency under Public Law 103–354 402–2 is not required to be used.

[59 FR 3778, Jan. 27, 1994]

§1902.5 [Reserved]

§1902.6 Establishing supervised bank accounts.

(a) Each borrower will be given an opportunity to choose the financial institution in which the supervised bank account will be established, provided the bank is a member of the FDIC, the savings and loan is a member of the FSLIC, and the credit union is a member of the NCUA.

(b) When accounts are established, it should be determined that:

(1) The financial institution is fully informed concerning the provisions of the applicable deposit agreement,

(2) Agreements are reached with respect to the services to be provided by the financial institution including the frequency and method of transmittal of checking account statements, and

(3) Agreement is reached with the financial institution regarding the place where the counter-signature will be on checks.

(c) When possible, District Directors or County Supervisors will make arrangements with financial institutions to waive service charges in connection with supervised bank accounts. However, there is no objection to the payment by the borrower of a reasonable charge for such service.

(d) For each borrower, if the amounts of any loan and grant funds, plus any borrower contributions and funds from other sources to be deposited in the supervised bank account will exceed $100,000, the financial institution will be required to pledge collateral for the excess over $100,000, before the deposit is made (see § 1902.7).

(e) Only one supervised bank account will be established for any borrower regardless of the amount or source of funds, except for RRH loans where separate accounts will be established for each project.

(f) When a supervised bank account is established, an original and two copies of the applicable Deposit Agreement and the Interest-Bearing Deposit Agreement (Exhibit B), when applicable, will be executed by the borrower, the financial institution, and a District or County Office employee. The original will be retained in the borrower's case file, one executed copy will be delivered to the financial institution and one executed copy to the borrower. An extra copy of the Interest-Bearing Deposit Agreement, when applicable, will be prepared and attached to the certificate, passbook, or other evidence of deposit representing the interest-bearing deposit.

(1) If an agreement on the applicable Deposit Agreement has previously been executed and Form FmHA or its successor agency under Public Law 103–354 402–6, ''Termination of Interest in Supervised Bank Account,'' has not been executed with respect to it, a new agreement is not required when additional funds are to be deposited unless requested by the financial institution.

(2) When the note and security instrument are signed by two joint borrowers or by both husband and wife, a joint survivorship supervised bank account will be established from which either can withdraw funds if State laws permit such accounts. In such cases both parties will sign the Deposit Agreement(s).

[46 FR 36106, July 14, 1981, as amended at 53 FR 231, Jan. 6, 1988]

§ 1902.7 Pledging collateral for deposit of funds in supervised bank accounts.

(a) Funds in excess of $100,000, per financial institution, deposited for borrowers in supervised bank accounts, must be secured by pledging acceptable collateral with the Federal Reserve Bank (FRB) in an amount not less than the excess.

(b) As soon as it is determined that the loan will be approved and the applicant has selected or tentatively selected a financial institution for the supervised bank account, the District Director or County Supervisor will contact the financial institution to determine:

(1) That the financial institution selected is insured by the FDIC (banks), FSLIC (savings and loans), or NCUA (credit unions).

(2) Whether the financial institution is willing to pledge collateral with the FRB under 31 CFR part 202 (Treasury Circular 176) to the extent necessary to secure the amount of funds being deposited in excess of $100,000.

(3) If the financial institution is not a member of the Federal Reserve System, it will be necessary for the financial institution to pledge the securities with a correspondent bank who is a member of the System. The correspondent bank should contact the FRB informing them they are holding securities pledged for the supervised bank account under 31 CFR part 202 (Treasury Circular 176).

(c) If the financial institution is agreeable to pledging collateral, the District Director or County Supervisor should complete FmHA or its successor agency under Public Law 103–354 Form Letter 1901–A–2 ''Designated Financial Institution—Collateral Pledge'' in an original and two copies, the original for the National Office, the first copy for the State Office, and the second copy for the District or County Office. The FmHA or its successor agency under Public Law 103–354 Form Letter

1902–A–2 should be forwarded to the National Office at least 30 days before the date of loan closing.

(d) The National Office will arrange for the financial institution under its designation as a depositary and financial agent of the U.S. Government to pledge the requested collateral.

(e) If, two days before loan closing, the local FmHA or its successor agency under Public Law 103–354 office which requested the collateral has not received notification from National Office that collateral has been pledged, contact should be made with the financial institution to ascertain whether they have pledged collateral with their local FRB under 31 CFR part 202 (Treasury Circular 176). If the financial institution has pledged collateral, the local FmHA or its successor agency under Public Law 103–354 office should contact the National Office, Budget Division, Revolving Fund Analysis Branch who will follow-up with the local FRB concerning the collateral.

(f) When the amount of deposit in the supervised bank account has been reduced to a point where the financial institution desires part or all of the collateral released, it should contact the National Office at the address noted above. The local FmHA or its successor agency under Public Law 103–354 office will be contacted for release authorization. The authorization release will be made through the local FRB, with notification to the financial institution. The local FmHA or its successor agency under Public Law 103–354 office may also request release through the National Office.

[46 FR 36106, July 14, 1981, as amended at 53 FR 231, Jan. 6, 1988; 53 FR 24437, June 29, 1988; 56 FR 50648, Oct. 8, 1991]

§1902.8 Authority to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions.

District Directors or County Supervisors are authorized to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions and redelegate this authority to a person listed in Exhibit B of FmHA or its successor agency under Public Law 103–354 Instruction 1951–B, under their supervision who are considered capable of exercising such authority. State Directors will make written demand upon the bank for withdrawals as outlined in §1902.16.

§1902.9 Deposits.

(a) *Deposit by FmHA or its successor agency under Public Law 103–354 personnel.* (1) Checks made payable solely to the Federal Government, or any agency thereof, and a joint check when the Treasurer of the United States is a joint payee, may not be deposited in a supervised bank account.

(2) FmHA or its successor agency under Public Law 103–354 personnel will accept funds for deposit in a borrower's supervised bank account only in the form of a check or money order endorsed by the borrower ''For Deposit Only,'' or a check drawn to the order of the financial institution in which the funds are to be deposited, or a loan check drawn on the U.S. Treasury.

(i) A joint check that is payable to the borrower and FmHA or its successor agency under Public Law 103–354 will be endorsed by the District Director or County Supervisor as provided in §1951.57(e) of this chapter.

(ii) Ordinarily, when deposits are made from funds which are received as the result of consent or subordination agreements or assignments of income, the check should be drawn to the order of the financial institution in which the supervised bank account is established or jointly to the order of the borrower and the FmHA or its successor agency under Public Law 103–354. All such checks should be delivered or mailed to the District or County Office.

(3) If direct or insured loan funds (other than OL or EM, loan funds) or borrower contributions are to be deposited in a supervised bank account, such funds will be deposited on the date of loan closing *after it has been determined that the loan can be closed.* However, if it is impossible to deposit the funds on the day the loan is closed due to reasons such as distance from the financial institution or banking hours, the funds will be deposited on the first

banking day following the date of loan closing.

(4) Grant funds will be deposited when such funds are delivered.

(5) When funds from any source are deposited by FmHA or its successor agency under Public Law 103–354 personnel in a supervised bank account, a deposit slip will be prepared in an original and two copies and distribution as follows: Original to the financial institution, one copy to the borrower, and one copy for the borrower's case folder. The names of the borrower, the sources of funds, and ''Subject to FmHA or its successor agency under Public Law 103–354 Countersignature,'' and if applicable, the account number will be entered on each deposit slip.

(6) A loan or grant check drawn on the U.S. Treasury may be deposited in a supervised bank account without endorsement by the borrower when it will facilitate delivery of the check and is acceptable to the financial institution. The borrower will be notified immediately of any deposit made and will be furnished a copy of the deposit slip. When a deposit of this nature is made, the following endorsement will be used:

For deposit only in the supervised bank account of *(name of borrower)* in the *(name of financial institution and address when necessary for identification)* pursuant to Deposit Agreement dated ————.

(7) Accounts established through the use of Interest-Bearing Deposit Agreement will be in the name of the depositor and the Government.

(b) *Deposits by borrowers.* Funds in any form may be deposited in the supervised bank account by the borrower if authorized by FmHA or its successor agency under Public Law 103–354 provided the financial institution has agreed that when a deposit in made to the account by other than FmHA or its successor agency under Public Law 103–354 personnel, the financial institution will promptly deliver or mail a copy of the deposit slip to the FmHA or its successor agency under Public Law 103–354 District or County Office.

(1) A loan or grant check drawn on the U.S. Treasury may be deposited in a supervised bank account by a borrower, provided the following endorsement is used and is inserted thereon prior to delivery to the borrower for signature:

For deposit only in my supervised bank account in the (*name of financial institution and address when necessary for identification*) pursuant to Deposit Agreement dated ————.

(2) Funds other than loan or grant funds may be deposited by the borrower in those exceptional instances where an agreement is reached between the District Director or County Supervisor and the borrower, whereby the borrower will make deposits of income from any source directly into the supervised bank account. In such instances the borrower will be instructed to prepare the deposit slip in the manner described in § 1902.9 (a)(5).

§ 1902.10 Withdrawals.

(a) The District Director or County Supervisor will not countersign checks on the supervised bank account for the use of funds unless the funds deposited by the borrower from other sources were cash deposits, or checks which the District Director or County Supervisor knows to be good, or until the deposit checks have cleared.

(b) Withdrawals of funds deposited under the applicable deposit agreement are permitted only by order of the borrower and countersignature of authorized FmHA or its successor agency under Public Law 103–354 personnel, or upon written demand on the financial institution by the State Director.

(c) Upon withdrawal or maturity of interest-bearing accounts established through the use of an Interest-Bearing Deposit Agreement, such funds will be credited to the supervised bank account established through the use of Form FmHA or its successor agency under Public Law 103–354 402–1.

(d) The issuance of checks on the supervised bank account will be kept to the minimum possible without defeating the purpose of such accounts. When major items of capital goods are being purchased, or a limited number of relatively costly items of operating expenses are being paid, or when debts are being refinanced, the checks will be drawn to the vendors or creditors. If minor capital items are being purchased or numerous items of operating and family living expenses are involved

as in connection with a monthly budget, a check may be drawn to the borrower to provide the funds to meet such costs.

(1) A check will be issued payable to the appropriate payee but will never be issued to ''cash.'' The purpose of the expenditure will be clearly shown on Form FmHA or its successor agency under Public Law 103–354 402–2 and indicated on the fact of the check. When checks are drawn in favor of the borrower to cover items too numerous to identify, the expenditure will be identified on the check, as ''miscellaneous.''

(2) Normally, OL and EM loan funds will not be withdrawn from the supervised bank account until the lien search has been made and a determination reached that the required security has been obtained. This applies also to withdrawal of funds in secured individual loan cases. However, in those instances when the applicant is unable to pay for the lien search and filing fees from personal funds, a check for this purpose may be drawn on the supervised bank account to meet these loan making requirements.

(3) Ordinarily, a check will be countersigned before it is delivered to the payee. However, in justifiable circumstances such as when excessive travel on the part of the borrower, District Director of County Supervisor would be involved, or purchase would be prevented, and the borrower can be relied upon to select goods and services in accordance with the plans, a check may be delivered to the payee by the borrower before being countersigned.

(i) When a check is to be delivered to the payee before being countersigned, the District Director or County Supervisor must make it clear to the borrower and to the payee, if possible, that the check will be countersigned only if the quantity and quality of items purchased are in accordance with approved plans.

(ii) Checks delivered to the payee before countersignature will bear the following legend in addition to the legend for countersignature: ''Valid only upon countersignature of Farmers Home Administration or its successor agency under Public Law 103–354.''

(iii) The check must be presented by the payee or a representative to the District or County Office of the FmHA or its successor agency under Public Law 103–354 servicing the account for the required countersignature.

(iv) Such check must be accompanied by a bill of sale, invoice, or receipt signed by the borrower identifying the nature and cost of goods or services purchased or similar information must be indicated on the check.

(4) For real estate loans or grants, whether the check is delivered to the payee before or after countersignature, the number, and date of the check will be inserted on all bills of sale, invoices, receipts, and itemized statements for materials, equipment, and services.

(5) Bills of sale, and so forth, may be returned to the borrower with the canceled check for the payment of the bill.

(6) Checks to be drawn on a supervised bank account will bear the legend:

Countersigned, not as co-maker or endorser.

_____

(Title)

_____

Farmers Home Administration or its successor agency under Public Law 103–354

[46 FR 36106, July 14, 1981, as amended at 54 FR 47959, Nov. 20, 1989]

§ 1902.11 District and county office records.

A record of funds deposited in a supervised bank account will be maintained on Form FmHA or its successor agency under Public Law 103–354 402–2 in accordance with the FMI. The record of funds provided for operating purposes by another creditor or grantor will be on a separate Form FmHA or its successor agency under Public Law 103–354 402–2 so that they can be clearly identified.

[46 FR 36106, July 14, 1981, as amended at 51 FR 12308, Apr. 10, 1986]

§§ 1902.12—1902.13 [Reserved]

§ 1902.14 Reconciliation of accounts.

(a) A checking account statement will be obtained periodically in accordance with established practices in the area. If the checking account statement does not include sufficient information to reconcile the account (the name of the payee or the check number

and the amount of each check, i.e., a negotiable demand draft drawn on a financial institution), the original cancelled check or either a microfilm copy or other reasonable facsimile of the cancelled check must be provided to the District or County Office with the statement. Checking account statements will be reconciled promptly with District or County Office records. The person making the reconciliation will initial the record and indicate the date of the action.

(b) All checking account statements and, if necessary, original cancelled checks or either a microfilm copy or other reasonable fascimile of the cancelled checks will be forwarded immediately to the borrower when bank statements and District or County Office records are in agreement. If a transmittal is used, Form FmHA or its successor agency under Public Law 103–354 140–4, ''Transmittal of Documents,'' is prescribed for that purpose.

(c) If the Financial Institution did not return the original cancelled check(s) to the Agency with the statements, and FmHA or its successor agency under Public Law 103–354 has a need for the original cancelled check(s) the Financial Institution, upon request by the Agency, will furnish to the Agency the requested original cancelled check(s) or a certified microfilmed copy or other reasonable certified facsimile of the cancelled check(s) and will provide this service to the Farmers Home Administration or its successor agency under Public Law 103–354 with no fees being assessed the Agency or the Depositor's account for the service.

[53 FR 35671, Sept. 14, 1988, as amended at 55 FR 21524, May 25, 1990]

§ 1902.15 Closing accounts.

When FmHA or its successor agency under Public Law 103–354 loan or grant funds and those of any other lender or grantor have all been properly expended or withdrawn, Form FmHA or its successor agency under Public Law 103–354 402–6 may be used to give FmHA or its successor agency under Public Law 103–354's consent (and of another lender or grantor, if involved) to close the supervised bank account in the following situations:

(a) When FmHA or its successor agency under Public Law 103–354 loan funds in the supervised bank account of a borrower have been reduced to $100 or less, and a check for the unexpended balance has been issued to the borrower to be used for authorized purposes.

(b) For all loans accounts, except loans listed in § 1902.15(c) of this section, after completion of authorized loan funds expenditures, and after promptly refunding any remaining unexpended loan funds on the borrower's loan account with FmHA or its successor agency under Public Law 103–354 or another lender, as appropriate.

(c) For Community Facility, Water and Waste Disposal, Indian Land Acquisition, Watershed (WS), Organizational Rural Rental Housing (RRH), Resource Conservation and Development (RCD), EO loans to a Cooperative Association, Rural Cooperative Housing (RCH), or Organizational Labor Housing (LH) loan and grant accounts, when the funds have been expended in accordance with the requirements of part 1942 subpart A, the supervised bank account will be closed within 90 days following completion of development, unless an extension of time is authorized in writing by the District Director. If the borrower will not agree to close the account, the District Director or County Supervisor will request the State Director to make demand upon the financial institution in accordance with § 1902.16.

(d) Promptly upon death of a borrower, except when the loan is being continued with a joint debtor, when a borrower is in default and it is determined that no further assistance will be given, or when a borrower is no longer classified as ''active.''

(1) *Deceased borrowers.* (i) Ordinarily, upon notice of the death of a borrower, the District Director or the County Supervisor will request the State Director to make demand upon the bank for the balance on deposit and apply all the balance after payment of any bank charges to the borrower's FmHA or its successor agency under Public Law 103–354 indebtedness. When the State Director approves continuation with a survivor, the supervised bank account of deceased borrower may be continued

with a remaining joint debtor who is liable for the loan and agrees to use the unexpended funds as planned, provided:

(A) The account is a joint survivorship supervised bank account, or

(B) If not a joint survivorship account, the financial institution will agree to permit the addition of the surviving joint debtor's name to the existing signature card and the appropriate Deposit Agreement and continue to disburse checks out of the existing account upon FmHA or its successor agency under Public Law 103–354's countersignature and the joint debtor's signature in place of the deceased borrower, or

(C) The financial institution will permit the State Director to withdraw the balance from the existing supervised bank account with a check jointly payable to the FmHA or its successor agency under Public Law 103–354 and the surviving joint debtor and deposit the money in a new supervised bank account with a surviving joint debtor, and will disburse checks from this new account upon the signature of such survivor and the countersignature of an authorized FmHA or its successor agency under Public Law 103–354 official.

(ii) The State Director, before applying the balance remaining in the supervised bank account to the FmHA or its successor agency under Public Law 103–354 indebtedness, is authorized upon approval by the Office of the General Counsel (OGC) to refund any unobligated balances of funds from other lenders to the FmHA or its successor agency under Public Law 103–354 borrower for specific operating purposes in accordance with subordination agreements or other arrangements between the FmHA or its successor agency under Public Law 103–354, the lender and the borrower.

(iii) The State Director, upon the recommendation of an authorized representative of the estate of the deceased borrower and the approval of the OGC, is authorized to approve the use of deposited funds for the payment of commitments for goods delivered or services performed in accordance with the deceased borrower's plans approved by FmHA or its successor agency under Public Law 103–354.

(2) *Borrowers in default.* Whenever it is impossible or impractical to obtain a signed check from a borrower whose supervised bank account is to be closed, the District Director or County Supervisor will request the State Director to make demand upon the financial institution for the balance on deposit in the borrower's supervised bank account for application as appropriate:

(i) To the borrower's FmHA or its successor agency under Public Law 103–354 indebtedness, or

(ii) As refunds of any unobligated advance provided by other lenders which were deposited in the account, or

(iii) For the return of FmHA or its successor agency under Public Law 103–354 grant funds to the FmHA or its successor agency under Public Law 103–354 Finance Office, or

(iv) For the return of grant funds to other grantors.

(3) *Inactive borrowers.* An inactive borrower is one whose loan has not been paid in full, but is no longer classified as ''active.''

(4) *Paid up borrowers.* A paid-up borrower is one who has a balance remaining in the supervised bank account and has repaid the entire indebtedness to FmHA or its successor agency under Public Law 103–354 and has properly expended all funds advanced by other lenders. In such cases the District Director or County Supervisor will (i) notify the borrower in writing that the interests in the account of FmHA or its successor agency under Public Law 103–354 have been terminated, and (ii) inform the borrower of the balance remaining in the supervised bank account.

[46 FR 36106, July 14, 1981, as amended at 53 FR 231, Jan. 6, 1988; 54 FR 47196, Nov. 13, 1989]

§ 1902.16 Request for withdrawals by State Director.

When the State Director is requested to make written demand upon the financial institution for the balance on deposit in the supervised bank account, or any part thereof, the request will be accompanied by the following information.

(a) Name of borrower as it appears on the applicable Deposit Agreement.

(b) Name and location of financial institution.

(c) Amount to be withdrawn for refund to another lender of any balance that may remain of funds received by the borrower from such lender as a loan or grant, or under a subordination agreement or other arrangement between the FmHA or its successor agency under Public Law 103–354, the other lender, and the borrower.

(d) Amount to be withdrawn, excluding any service charges, for a refund of FmHA or its successor agency under Public Law 103–354's.

(e) Other pertinent information including reasons for the withdrawal.

§§ 1902.17—1902.49 [Reserved]

§ 1902.50 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 0575–0158. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 1½ hours per response, with an average of 0.42 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0158), Washington, DC 20503.

[59 FR 3778, Jan. 27, 1994]

EXHIBITS TO SUBPART A

EXHIBIT A—[RESERVED]

EXHIBIT B—UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354—INTEREST-BEARING DEPOSIT AGREEMENT

BECAUSE certain funds of _____ referred to as the ''Depositor,'' are now on deposit with the _____, referred to as the ''Financial Institution,'' under a Deposit Agreement, dated _____, 19___, providing for supervision by the United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103–354, referred to as the ''Government,'' which Deposit Agreement grants to the Government security and/or other interest in the funds covered by that Deposit Agreement, and

BECAUSE certain of these funds are not now required for immediate disbursement and it is the desire of the Depositor to place these funds in interest-bearing deposits with the Financial Institution:

THEREFORE, the Depositor and the Government authorize and direct the Financial Institution to place _____ Dollars ($_____) of the funds subject to that Deposit Agreement in interest-bearing deposits as follows:

$_____ for a period of _____ months at _____% interest.
$_____ for a period of _____ months at _____% interest.
$_____ for a period of _____ months at _____% interest.

These interest-bearing deposits and the income earned on them at all times shall be considered a part of the account covered by said Deposit Agreement except that the right of the Depositor and the Government to jointly withdraw all or a portion of the funds in the account covered by the Deposit Agreement by an order of the Depositor countersigned by a representative of the Government, and the right of the Government to make written demand for the balance or any portion of the balance, is modified by the above time deposit maturity schedule. The evidence of such time deposits shall be issued in the names of the Depositor and the Farmers Home Administration or its successor agency under Public Law 103–354.

A copy of this Agreement shall be attached to and become a part of each certificate, passbook, or other evidence of deposit that may be issued to represent such interest-bearing deposits.

Executed this _____ day of _____, 19____.

UNITED STATES OF AMERICA

By: _____

County Supervisor
Farmers Home Administration or its successor agency under Public Law 103–354
U.S. Department of Agriculture

_____

(Depositor)

By: _____

Title: _____

Accepted on the above terms and conditions this _____ day of _____, 19____.

_____

(Financial Institution)

(Office or Branch)

By: _____

Title: _____

[53 FR 35671, Sept. 14, 1988; 55 FR 21524, May 25, 1990]

Subpart B—[Reserved]

Subpart C—Selecting a Financial Institution for the Concentration Banking System (CBS)

§§1902.101—1902.103 [Reserved]

§1902.104 Establishing or changing a TLA.

(a) *Establishing a TLA.* (1) After an FI has been selected by the FmHA or its successor agency under Public Law 103–354 field office, the FmHA or its successor agency under Public Law 103–354 office will provide the State Office with the name and address of the FI selected.

(2) The FmHA or its successor agency under Public Law 103–354 field office must have the FI execute a MOU for CBS. Form FmHA or its successor agency under Public Law 103–354 1902–7, will be completed when the MOU is executed. The FmHA or its successor agency under Public Law 103–354 field office will complete item 1 and the FI will complete the rest of the summary. Instructions for completing this form are in the FMI. The FmHA or its successor agency under Public Law 103–354 field office will forward three signed copies of the MOU together with the original and two copies of Form FMHA 1902–7 to the State Office coordinator. The State Office coordinator will check for the following common errors before submitting to the: Cash Management Branch, FmHA or its successor agency under Public Law 103–354 Finance Office, Mail Code FC–354, 1520 Market Street, St. Louis, MO 63103.

(i) Check to see that the local bank has signed all copies of the MOU and has affixed its seal next to the signature.

(ii) Check signature blocks to insure that the local FmHA or its successor agency under Public Law 103–354 office has not signed in any of the blocks provided for the local bank and Treasury. This agreement is between the local bank and Treasury and FmHA or its successor agency under Public Law 103–354 will not be a party to the agreement.

(iii) Do not allow the bank to cross out or change any clauses in the MOU. Treasury will not accept modified agreements.

(iv) Do not allow the bank to retype the agreement as this would require a word-for-word verification of the entire document to determine whether anything had been changed.

(3) The Cash Management Branch will submit the MOU's to Treasury for signature along with the original and one copy of Form FmHA or its successor agency under Public Law 103–354 1902–7. Treasury will sign the copies of the MOU, send one copy to the FI, one to the local FmHA or its successor agency under Public Law 103–354 office, and keep one copy for the files. Treasury will notify the Cash Management Branch if a MOU is rejected.

(4) The local FmHA or its successor agency under Public Law 103–354 office must obtain selected information from the FI for funds transfer purposes on CBS including information necessary to establish a compensation account to receive ACH transfers from the concentrator bank.

[53 FR 26588, July 14, 1988, as amended at 59 FR 54788, Nov. 2, 1994]

§§1902.105—1902.149 [Reserved]

§1902.150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0575–0128.

[53 FR 26588, July 14, 1988]

PART 1904—LOAN AND GRANT PROGRAMS (INDIVIDUAL) [RESERVED]

PART 1910—GENERAL

Subpart A—Receiving and Processing Applications

Sec.

1910.1 General.

1910.2 Equal Credit Opportunity Act (ECOA) and Regulation B.
1910.3 Receiving applications.
1910.4 Processing applications.
1910.5 Evaluating applications.
1910.6–1910.9 [Reserved]
1910.10 Preference.
1910.11 Special requirements.
1910.12–1910.49 [Reserved]
1910.50 OMB control number.

EXHIBITS TO SUBPART A

EXHIBIT A—[RESERVED]
EXHIBIT B—LETTER TO NOTIFY SOCIALLY DISADVANTAGED APPLICANT(S)/BORROWER(S) REGARDING THE AVAILABILITY OF DIRECT FARM OWNERSHIP (FO) LOANS AND THE ACQUISITION/LEASING OF FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 ACQUIRED FARMLAND
EXHIBIT C—LETTER TO NOTIFY APPLICANT(S)/BORROWER(S) OF THEIR RESPONSIBILITIES IN CONNECTION WITH FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 FARMER PROGRAM LOANS [NOTE]

Subpart B—Credit Reports (Individual)

1910.51 Purpose.
1910.52 [Reserved]
1910.53 Policy.
1910.54–1910.100 [Reserved]

Subpart C—Commercial Credit Reports

1910.101 Preface.
1910.102–1910.150 [Reserved]

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

SOURCE: 43 FR 56643, Dec. 4, 1978, unless otherwise noted.

Subpart A—Receiving and Processing Applications

SOURCE: 53 FR 35671, Sept. 14, 1988, unless otherwise noted.

§1910.1 General.

This subpart prescribes the policies and procedures for informing interested parties of the Farm Credit loan programs available through the Farm Service Agency (FSA), and how such requests are processed. Requests for Nonprogram (NP) assistance will be handled in accordance with subpart J of part 1951 of this chapter. References contained herein to the housing programs of the Rural Housing Service (RHS), or its successor agency, are no longer applicable.

(a) The County Supervisor will provide information about FSA and RHS services to all persons making inquiry about FSA and RHS programs. This information may be provided by individual interviews, correspondence, or distribution of pamphlets, leaflets, and appropriate FSA and RHS regulations. When a presently indebted farmer program borrower, whose account is delinquent, inquires about an OL loan, the County Supervisor will inform the borrower of the availability of annual production loans to delinquent borrowers, as outlined in §1941.14 of subpart A of part 1941 of this chapter.

(b) Wherever the term ''applicant'' appears in this subpart, it shall be construed to mean applicant and/or co-applicant, if any.

(c) FmHA forms are available in any Rural Development (RD) or FSA office.

(d) The terms ''interest credit'' and ''interest credit assistance,'' as they relate to Single Family Housing (SFH), are interchangeable with the term ''payment assistance.'' Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

(e) As used in this subpart in relation to Farm Credit Programs loans, *Agency* means the Farm Service Agency, its county and State committees and their personnel, and any successor agency.

[53 FR 35671, Sept. 14, 1988, as amended at 55 FR 21524, May 25, 1990; 55 FR 29560, July 20, 1990; 56 FR 66959, Dec. 27, 1991; 58 FR 44263, Aug. 20, 1993; 58 FR 52646, Oct. 12, 1993; 60 FR 55122, Oct. 27, 1995; 61 FR 35919, July 9, 1996; 61 FR 59777, Nov. 22, 1996]

§1910.2 Equal Credit Opportunity Act (ECOA) and Regulation B.

ECOA as amended, prohibits discrimination in credit based on sex, marital status, race, color, religion, natural origin, age (provided the applicant has the capacity to contract), because all or part of the applicant's income is derived from public assistance of any kind, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act. These shall hereafter be referred to in this subpart as ''ECOA prohibited bases.'' It is the policy of the Farmers Home Administration or its successor agency under Public Law 103–354 that assistance and services shall not be denied to any person or applicant as a result of race, sex, national origin, color, religion, marital status, age, receipt of income from public assistance, or because the applicant has, in good faith, exercised any right under the Consumer Credit Protection Act.

§1910.3 Receiving applications.

Applications for FSA or RHS assistance will ordinarily be filed in the County Office serving the area in which the farm, dwelling, business, or other facility for which financing is being requested is or will be located.

(a) All persons applying for FSA or RHS assistance who are not indebted to FSA or RHS must file a written application. All persons wishing to submit an application will be encouraged to do so. No oral or written statement will be made to applicants or prospective applicants that would discourage them from applying for assistance, based on any ECOA ''prohibited bases.''

The filing of written applications *will be encouraged* even though funds may not be currently available, since complete applications must be considered in the date order received, except when program regulations or Veteran status provides for preference. Applications will normally be handled as follows:

(1) Form FmHA 410–4, ''Application for Rural Housing Assistance (Non-Farm Tract),'' will be used by applicants for RH loans on nonfarm tracts who depend primarily on off-farm income.

(2) Form FmHA 410–1, ''Application for FmHA Services,'' will be used by all other applicants. These include persons applying for RH loans on farms or nonfarm tracts who derive a major portion of their income from farming. For EM loans, it is also necessary for the applicant to complete Form FmHA 1945–22, ''Certification of Disaster Losses.''

(3) SF 424.2, ''Application for Federal Assistance (For Construction),'' with the requirements outlined in the applicable program exhibits will be used by all applicants applying for LH loans.

(4) The Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95–630, requires that:

(i) Except as specified in paragraph (a)(4)(ii) of this section, within 3 days of the receipt of an application for a loan or grant from an individual or a partnership of five or fewer members, the RD office will forward Form FmHA 410–7, ''Notification to Applicant on Use of Financial Information from Financial Institution,'' to those applicants.

(ii) For a labor housing application filed by an individual or a partnership of five or fewer members, the RD office will comply with paragraph (a)(4)(i) of this section only if it is determined that financial information will be requested from any financial institution.

(5) All individual loan applicants will sign Form FmHA or its successor agency under Public Law 103–354 410–9, ''Statement Required by the Privacy Act.'' A signed copy will remain with the application. No application is complete without a signed Form FmHA or its successor agency under Public Law 103–354 410–9 on file.

(6) Information regarding race, national origin, sex, and marital status is needed for monitoring purposes for all applications filed for assistance to finance residential real estate and direct FO loans when the loan is to be secured by a lien on the property. In those cases, FmHA or its successor agency under Public Law 103–354 will request the applicant and/or co-applicant to furnish that information on the application on a voluntary basis. The application form will indicate that this information is provided on a voluntary basis.

(7) Applicants are asked to identify any known relationship or association with an FmHA or its successor agency under Public Law 103–354 employee when completing the application. When there is a relationship or association, the processing official must complete the action required under subpart D of part 1900 of this chapter.

(b) Requests by FmHA or its successor agency under Public Law 103–354 borrowers for additional assistance will be submitted as prescribed by each loan/grant program, and the following:

(1) All applicants must provide their taxpayer's identification number with their applications, except as noted in paragraph (i) of this section.

(2) RH applicants who have a current Form FmHA or its successor agency under Public Law 103–354 1944—3, ''Budget and/or Financial Statement'', or Form FmHA or its successor agency under Public Law 103–354 410–4, and who are presently indebted to FmHA or its successor agency under Public Law 103–354, will be required to complete only the following items of Form FmHA or its successor agency under Public Law 103–354 410–4 (if other information about their current status is not available for adequate processing of their applications, these applicants should fully complete Form FmHA or its successor agency under Public Law 103–354 410–4):

(i) Name.

(ii) Social Security Number.

(iii) Loan purpose.

(iv) Planned income for next 12 months.

(v) Date and signature of the application.

(3) Farmer Program applicants who are presently indebted to FmHA or its successor agency under Public Law 103–

354 will be required to complete Form FmHA or its successor agency under Public Law 103–354 410–1. When application is made within 60 days of the date of Table A, ''Balance sheet,'' on Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan,'' and there are no significant changes that would affect eligibility, reference to Table A of Form FmHA or its successor agency under Public Law 103–354 431–2 can be made in Item 17, ''Financial Statement as of Date of Application,'' of Form FmHA or its successor agency under Public Law 103–354 410–1.

(4) Applicants for EM loans with new losses from disaster, as authorized under EM regulations, must also complete Form FmHA or its successor agency under Public Law 103–354 1945–22 in addition to the other required forms.

(c) County Office employees will be responsible for receiving loan applications and giving a preliminary explanation of services available through FmHA or its successor agency under Public Law 103–354. An explanation of the types of assistance available should be given whenever it is not clear to the applicant what type of loan or grant will meet the applicant's needs. When a presently indebted farmer program borrower, whose account is delinquent, applies for OL assistance, County Office employees will inform the borrower of the availability of annual production loans to delinquent borrowers, as outlined in §1941.14 of subpart A of part 1941 of this chapter. The employee receiving the application will make sure that it is properly completed, dated and signed, and will give whatever assistance is necessary. An applicant may apply for and maintain a loan account using a birth-given first name and a birth-given surname, or the spouse's surname, or a combination of surnames. Married persons may apply as individuals. In the case of a joint application for other than a farmer program loan, the persons requesting the assistance will designate who is listed as ''applicant'' and who is listed as ''co-applicant.'' For farmer program loans, there will be only one applicant. If a husband and wife insist on applying as co-applicants for a farmer program loan and the farming operation is a sole proprietorship, they will be considered a joint operation type entity as set out in FmHA or its successor agency under Public Law 103–354 loan making regulations and they both will have to meet the eligibility requirements applicable to the joint operation. County Office employees must explain to husbands and wives that they both do not need to apply for farmer program loans unless they desire to do so or the application is for an entity operation. If they apply together for a loan, it must be explained that they will be considered as a joint operation. When the use of veteran's preference is involved, the identity of the veteran must be properly documented if the name used in the application differs from that shown on the veteran's evidence of eligibility.

(d) Information will be obtained about household members or others, including cosigners, as required by program regulations needed to determine eligibility for the requested assistance. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the repayment or the security requirements for the loan request. When a co-signer will be required, the applicant will be requested to identify their choice of co-signer. An applicant will also be required to provide information concerning a co-signer, spouse or former spouse, who will not be a co-signer, or who is not a member of the household, when the applicant is relying on the co-signer, alimony, child support, separate maintenance from that spouse or former spouse as a basis for repayment, or receipt of such payments will be considered for eligibility. In such cases, information regarding the co-signer's, spouse's or former spouse's financial resources may be requested. Only information regarding the receipt and dependability of income from alimony, child support, or separate maintenance, provided by a former spouse, may be requested, considered, and verified to determine eligibility and repayment ability.

(e) Signature requirements on the Promissory Note will be as needed to assure repayment of the indebtedness and as set out in the loan making regulations. The spouse of an applicant will

not be required to sign the note unless the spouse's signature on the note is required to create a security interest or the spouse is a co-applicant. Signature requirements on the Mortgage or Deed of Trust will be sufficient to obtain the required lien, and to make the property being offered as security available to satisfy the debt in the event of default. FmHA or its successor agency under Public Law 103–354 State supplements will be issued to outline the requirements in accordance with State real property law. The State Director will obtain the advice of OGC prior to issuance of the State supplement.

(f) If a spouse's signature would be necessary for FmHA or its successor agency under Public Law 103–354 to obtain the necessary security, information regarding an applicant's marital status will be obtained. Only the terms ''married'' and ''separated'' may be used to designate marital status. ''Unmarried'' includes single, divorced, or widowed persons.

(g) FmHA or its successor agency under Public Law 103–354 may not request information concerning birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. Assumptions or aggregate statistics relating to the likelihood or probability that any particular group of persons will bear or rear children will not be used to evaluate creditworthiness, or for any other purpose; nor will the assumption be made that, for that reason, an applicant will receive diminished or interrupted income in the future.

(h) If after discussing credit needs, it appears that the applicant may be able to obtain the necessary credit from some other source, the County Supervisor should provide information on the availability of such credit and provide the needed assistance in contacting that credit source. All applications, including those from applicants assisted in obtaining credit from other credit sources, will be listed and reported in accordance with FmHA or its successor agency under Public Law 103–354 Instructions 1905–A and 2006–J which are available in all FmHA or its successor agency under Public Law 103–354 offices.

(i) For all loans and grants, the applicant *must* furnish the applicant's taxpayer's identification number with the application, except as otherwise indicated in this paragraph. The taxpayer's identification number for individuals who are not business applicants is the Social Security Number (SSN). The taxpayer's identification number will be used as part of the borrower's case number, except as noted in paragraph (i)(3) of this section.

(1) The SSN preceded by the State and county code numbers will constitute the borrower's case number to be used on all FmHA or its successor agency under Public Law 103–354 forms.

(2) In the case of noncitizens who are permanent residents or on indefinite parole and who do not yet have a taxpayer's identification number, their applications will be filed; however, they will not be processed until the SSN is obtained. Disposition of applications not processed because of lack of the number will be as set forth in FmHA or its successor agency under Public Law 103–354 Instruction 2033–A, ''Management of County Office Records,'' (available in any FmHA or its successor agency under Public Law 103–354 office).

(3) The borrower's case number for residents of the Pacific Islands will be taxpayer's identification number issued by the Pacific Islands Government.

(j) For all loans and credit sales secured by a first mortgage and involving the purchase of an existing 1 to 4 family unit, or purchase of a building site and construction of 1 to 4 family residential units, or FO loans involving tracts of 25 acres or less, whether made to an individual, corporation, partnership, joint operation, cooperative, association, or other entity, the booklet entitled ''Settlement Costs'' will be hand-delivered to the applicant when the completed application is received, or mailed to the applicant within three (3) business days after receipt of the application in the County Office.

(1) Form FmHA or its successor agency under Public Law 103–354 440–58, ''Estimate of Settlement Costs,'' will be completed by the County Supervisor and delivered to the applicant with the booklet.

(2) A record of the date and method of delivery of the booklet and Form FmHA or its successor agency under Public Law 103–354 440–58 will be kept in the running record section of the applicant's/borrower's County Office case folder.

(k) For loans, assumptions and credit sales to individuals for household purposes that are subject to the Real Estate Settlement Procedures Act (RESPA), Form FmHA or its successor agency under Public Law 103–354 1940–41, ''Truth in Lending Disclosure Statement,'' will be completed using ''good-faith'' estimates, and will be delivered or placed in the mail to the applicant within 3 business days of receipt of the written application in the County Office.

(l) Fees for the total amount charged for individual credit reports as indicated in Exhibit A of subpart B of part 1910 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office) will be collected from the loan applicants before credit reports are ordered, except in the case of section 504 loan applicants and section 502 Rural Housing Loan applicants whose requested loan will likely not exceed $7,500. It is the policy not to order credit reports for Rural Housing loans of $7,500, or less, but if the County Supervisor determines that a credit report is necessary, it will be ordered at no cost to the loan applicant as provided for in §1910.53(g) of subpart B of part 1910 of this chapter.

[53 FR 35671, Sept. 14, 1988, as amended at 54 FR 11365, Mar. 20, 1989; 55 FR 21524, May 25, 1990; 56 FR 66959, Dec. 27, 1991; 58 FR 226, Jan. 5, 1993; 58 FR 44263, Aug. 20, 1993; 61 FR 35919, July 9, 1996]

§1910.4 Processing applications.

When obtaining information concerning applicants and evaluating their qualifications, FmHA or its successor agency under Public Law 103–354 personnel will be covered by the provisions of ECOA and the established policies for the various types of assistance offered by FmHA or its successor agency under Public Law 103–354. If a farm is situated in more than one State, County or Parish, the loan will be processed in the State, County or Parish where the applicant's principal residence on the farm is located. If the applicant's residence is not located on the farm or if the applicant is a corporation, cooperative, partnership or joint operation, the loan will be processed by the County Office serving the County in which the farm or a major portion of the farm is located, unless otherwise approved by the State Office. Applications of FmHA or its successor agency under Public Law 103–354 employees, members of their families, close relatives, or business or close personal associates are processed according to subpart D of part 1900 of this chapter.

(a) *Completed RH applications.* Completed applications are those as described in §1944.27 (copies available in any REDC office), and all applications for Rural Housing loans will be processed as outlines in that instruction.

(b) *Completed Farm Credit Programs applications and additional FSA responsibilities.* All persons requesting an application will be provided Exhibit A (available in any office). The County Supervisor will provide assistance as necessary to help applicants complete their applications. Complete applications will be processed in the order of date received, except as outlined in Section 1910.10 of this subpart. If the application is complete when it is first received, a County Office official will stamp the filing date on the front of Form FmHA 410–1 and enter the date in the ''Application Received'' and ''Application Completed'' fields in the Application Processing Module of the Management Records Systems (MRS.) On the date all information necessary to process an application is received, a County Office official will send the applicant FmHA Guide Letter 1910–A–3 (available in any office) notifying the applicant that the application is considered complete. The date entered in the ''Application Completed'' field in the Application Processing Module of MRS will establish the 30-day and 60-day timeframes for determining eligibility and loan approval/disapproval, respectively. The County Supervisor will verify the information furnished by the applicant, and record and assemble additional information needed to properly evaluate the applicant's

qualifications and credit needs. Additional information may be obtained and verified by County Office records, personal contacts, and visits to the applicant's operation. A complete Farm Credit Programs application requires fulfillment of both the applicant and FSA responsibilities. Once this information is received and the application is considered complete, FSA has additional responsibilities before loan approval is determined. The various responsibilities are as follows:

APPLICANT'S RESPONSIBILITIES FOR A COMPLETE APPLICATION

(1) Completed Form FmHA 410–1, ''Application for FmHA Services,'' including a signed Form FmHA 410–9, ''Statement Required by the Privacy Act.''

(2) If the applicant is a cooperative, corporation, partnership, or joint operation:

(i) A complete list of members, stockholders, partners or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(ii) A current personal financial statement from each of the members of a cooperative, stockholders of a corporation, partners of a partnership, or joint operators of a joint operation.

(iii) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(iv) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(3) A brief written description as to the farm training and/or experience of the applicant and the individual members of an entity applicant (new applicants only). If a waiver from the training required in Section 1924.74 of subpart B of part 1924 of this chapter is requested, provide verification of any courses taken which covered production and/or financial management concepts, and/or a statement explaining how the applicant's proven performance based on 5-year production records demonstrates production ability.

(4) Supporting and documented verification that the applicant (and all members of an entity applicant) cannot obtain credit elsewhere, including a guaranteed loan.

(5) Financial records for the past five years. Income tax records may be provided by the applicant when other financial records are not available.

(6) Five years of production history immediately preceding the year of application, unless the applicant has been farming less than 5 years.

(7) A brief written description of the proposed operation and the proposed size of the operation (required for new applicants and existing borrowers with significant changes in their operations).

(8) Verification of off-farm employment, if any. This will be used only when the applicant is relying on off-farm income to pay part of the applicant's expenses.

(9) Projected production, income and expenses, and loan repayment plan, which may be submitted on Form FmHA 431–2, ''Farm and Home Plan,'' or other similar plans of operation acceptable to FSA.

(10) Applicable items required in Exhibit M of subpart G of part 1940 of this chapter including SCS Form CPA–026, ''Highly Erodible Land and Wetland Conservation Determination,'' Form AD–1026, ''Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification,'' and Form FmHA 1940–20, as required by subpart G of part 1940 of this chapter.

(11) A legal description of farm, real estate property and/or (if applicable) a copy of any lease, contract, option or agreement entered into by the applicant which may be pertinent to consideration of the application, or when a

written lease is not obtainable, a statement setting forth the terms and conditions of the agreement.

(12) Form FmHA 440–32, ''Request for Statement of Debts and Collateral,'' when applicable.

(13) Forms FmHA 1945–22, ''Certification of Disaster Losses,'' and FmHA 1940–38, ''Request for Lender's Verification of Loan Application,'' (EM loans only).

FSA'S RESPONSIBILITIES FOR A COMPLETE APPLICATION

(14) Send Form FmHA 410–7, ''Notification to Applicant on Use of Financial Information from Financial Institution,'' to the applicant when applicable.

(15) Form FmHA 1945–26, ''Calculation of Actual Losses'' (EM loans only).

(16) Credit reports as provided in subparts B and C of this part.

(17) Form FmHA 1945–29, ''ASCS Verification of Farm Acreages, Production and Benefits,'' (EM loans only).

(18) The Current/Past Debt Inquiry and Borrower Cross-Reference Systems. The Current/Past Debt Inquiry System must be reviewed for each application and copies of the screens must be attached to the applicant's file.

(19) For special beginning farmer or rancher operating (OL) loan assistance, a plan of operation will be developed for each of the first 5 years for which such assistance is requested. A projection of the financial status of the operation showing financial viability within the commitment period will also be developed. The 5-year plan and projection will be developed as described in §1941.15. This information will be presented on reports generated on the automated Farm and Home Plan system, or in other plans or documents consistent and acceptable to the Agency.

ADDITIONAL FSA FARM CREDIT RESPONSIBILITIES

(20) Form FmHA 1924–1, ''Development Plan,'' if necessary.

(21) Form FmHA 1940–22, ''Environmental Checklist for Categorical Exclusions,'' or Class I and Class II assessment, whichever is applicable.

(22) Real estate and chattel appraisal, when applicable.

(23) Completion of the assessment in accordance with §1924.55.

(c) *Notifying applicants that direct loan eligibility is subject to the unavailability of guaranteed financing.* If the assessment, completed in accordance with §1924.55 concludes that guaranteed assistance may be available, with or without interest assistance, a prospectus will be sent to area lenders in accordance with §1951.262 (f) as appropriate. If a lender indicates interest in providing financing with a Farm Credit Programs loan guarantee, refer to §1980.113 (c) for handling as a market placement application. No direct loan to a current borrower will be approved until the process outlined in this paragraph has been concluded.

(d) *Incomplete Farm Credit Programs applications.* (1) When an incomplete application is received, a County Office official will stamp the filing date on the front of Form FmHA 410–1, and enter the date in the ''Application Received'' and ''Incomplete Application'' fields in the Application Processing Module of MRS.

(2) When an application that was received incomplete is completed, the date will be entered in the ''Application Completed'' field in the Application Processing Module of MRS. The County Supervisor will follow the requirements of paragraph (b) of this section.

(3) Applicants who do not submit necessary information for complete applications, as described in paragraph (b) of this section, for EM, FO, OL and SW loans, will be handled as follows:

(i) No later than 10 calendar days after receipt of the application, the County Supervisor will send the applicant a letter similar to FmHA Guide Letter 1910–A–1. The letter will:

(A) List the additional information needed.

(B) State that the application cannot be processed until all required information is received in the FmHA or its successor agency under Public Law 103–354 County Office.

(C) Set a specific due date for the information. This date will be 20 calendar days after the date of the letter.

(ii) When information is needed from other USDA Agencies, the County Supervisor will inform those Agencies and the applicant of the information needed, and note the date of the request in the running record. For operating loan applications, the County Supervisor will request that the Agencies return the information to the County Office within 15 calendar days of the date of receipt of the request.

(iii) If the necessary information has not been received from the applicant 20 calendar days after the date of the first written notification of an incomplete application, the County Supervisor will immediately send the applicant a letter similar to FmHA Guide Letter 1910–A–2.

(A) The letter will again list the additional information needed, and state that the application cannot be processed until all the required information is received.

(B) The letter will set a due date of 10 calendar days from the date of the letter. It will further state that unless the applicant supplies the required information or contacts the County Office by that date, the application will be withdrawn without further notice.

(C) This letter will contain the Equal Credit Opportunity Act (ECOA) statement set forth in § 1910.6 (b)(1) of this subpart.

(D) A copy of this letter must be sent to the District Office at the same time it is sent to the applicant.

(iv) If the applicant has not contacted the County Office by the due date set in the second notification letter, the County Supervisor will then withdraw the application.

(v) All applications withdrawn will be handled in accordance with § 2033.7 of FmHA Instruction 2033–A.

(e) *Notifying applicants (including presently indebted borrowers) about Limited Resource loans.* Immediately after an application for OL, FO, SW, or EM assistance is received, the County Supervisor will send a letter similar to Guide Letter 1924–B–1 to the applicant telling the applicant about Limited Resource loans.

(f) *Notifying socially disadvantaged applicants regarding the availability of Direct Farm Ownership (FO) loans and the acquisition/leasing of Agency acquired farmland.* Immediately after an application for FO assistance is received, the County Supervisor will send Exhibit B of this subpart, ''Letter to Notify Socially Disadvantaged Applicants/Borrowers Regarding the Availability of Acquired Farmland,'' to the applicants. Exhibit B will also be presented to all socially disadvantaged individuals at the time they make their initial contact regarding Agency credit services. Socially disadvantaged applicants are defined in Section 1943.4 of subpart A of part 1943 of this chapter.

(g) *Notifying Borrowers about Farm Credit Programs (FCP) Borrower Responsibilities.* When an application for OL, FO, SW or EM assistance is approved, the County Supervisor will provide to the borrower Exhibit C of this subpart, ''Letter to Notify Applicant(s)/Borrower(s) of Their Responsibilities in Connection with FmHA Farmer Programs Loans.''

(h) *Determining eligibility.* The Agency will determine eligibility of all Farm Credit Programs applicants including those who are already indebted for a Farm Credit Programs loan. The Farm Credit Programs application does not need to be complete before it is reviewed; however, all information relative to the eligibility decision must be received. The Rural Housing Service will determine eligibility for all RH loan applicants.

(1) The Agency will certify whether or not the applicant meets the eligibility requirements and whether or not the applicant is a beginning farmer or rancher, as defined in the applicable Farm Credit Programs loan making regulation. An eligible Operating Loan (OL) or Farm Ownership (FO) Loan applicant, who is considered a beginning farmer or rancher, will have access to targeted funds. An eligible FO applicant requesting to purchase suitable farmland, who is considered a beginning farmer or rancher, will be given priority in accordance with § 1955.107 (f). In addition, it is the responsibility of the Agency to determine whether or not the FO applicant is an operator of not larger than a family size farm, as of the time immediately after the contract of sale or lease is entered into, even though the applicant is not in

need of Agency credit assistance on eligible rates and terms to purchase suitable farmland. The loan approval official will determine the applicant's projected repayment ability, the adequacy of collateral equity to secure the requested loan, and the feasibility of the proposed operation.

(2) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for any loan or grant until the judgment is paid in full or otherwise satisfied. Agency loan or grant funds may not be used to satisfy the judgment.

(i) *Timeliness.* Processing requirements for each program area are as follows:

(1) *Farm Credit Programs (FCP) applications.* Each application must be approved or disapproved and the applicant notified in writing of the action taken, not later than 60 days after receipt of a complete application. The District Director will monitor the processing of all applications to ensure that each is processed in a timely manner and receives a final disposition (i.e., approval, rejection, or withdrawal) within the timeframes outlined in this section.

(i) Receipt by the applicant of a signed copy of Form FmHA 1940–1, ''Request for Obligation of Funds,'' will be considered written notice of loan approval.

(ii) If a complete application is not approved or disapproved 45 calendar days after all necessary information is received, the following steps will be taken:

(A) The County Supervisor will make sure that the data in the County Office MRS data base regarding the application are up-to-date, and that the reason it remains pending is noted. A selection of reasons is listed in MRS.

(B) Every week the District Director will generate a report, using the FOCUS Ad-Hoc Reporting System, based on the weekly upload of information from each county office MRS data base. The District Director will note each complete application pending more than 45 calendar days, and immediately take steps to ensure that final disposition on the application is taken no later than 60 calendar days after receipt of the complete application.

(C) The Administrator will utilize MRS data and any other information available to comply with any statutory reporting requirements concerning the status of applications.

(2) *Single Family Housing (SFH) loans.* Written notice of eligibility or ineligibility will be sent to each applicant not later than 30 days after receipt of a complete application. If a determination of eligibility cannot be made within 30 days from the date of receipt of the complete application, the applicant will be notified in writing of the circumstances causing the delay and the approximate time needed to make a decision.

(3) *Labor Housing (LH) preapplications.* Preapplications must be determined eligible and feasible and the applicant notified in writing in accordance with applicable program regulations not later than 45 days after receipt of a complete preapplication. This eligibility determination will be made regardless of funding levels.

(4) *LH applications.* If a determination of eligibility cannot be made within 30 days from the date of receipt of a complete application, the applicant will be notified in writing of the circumstances causing the delay and the approximate time needed to make a decision.

(5) *Adverse decisions.* If an applicant is given an adverse decision, the applicant will be given appeal rights as provided in Subpart B of Part 1900 or 7 CFR part 780, as appropriate. The letter will contain the ECOA statement set forth in Section 1910.6(b)(1) of this subpart.

(j) [Reserved]

(k) *Active applications.* An applicant may voluntarily withdraw an application at any time. Except for incomplete Farm Credit Programs applications, when an applicant has been determined eligible, but further processing is delayed due to an apparent lack of interest, the applicant will be advised by letter that the application will be considered withdrawn unless the County Office receives a written request within 30 days that further consideration is desired. The letter to the

borrower will contain the ECOA statement set forth in § 1910.6(b)(1) of this subpart.

(1) Applications for RH, RHS, and LH loans (posted on Form FmHA 1905–4, ''Application and Processing Card—Individual,'' or inputted in the Application Processing Module of MRS) received during any fiscal year will remain active during the remainder of that fiscal year in which they were received, plus the subsequent fiscal year, unless withdrawn or disapproved, or unless the loan is closed.

(2) Applications received for FO, SW, OL, EM, and persons applying for RH loans on farms or nonfarm tracts who derive a major portion of their income from farming (inputted in the Application Processing Module of MRS), will remain active for 12 months from the date a complete application is received, unless withdrawn or disapproved, or unless the loan is closed.

(3) See paragraph (d) of this section for procedures for incomplete Farm Credit Programs applications.

(4) All applications which are withdrawn or rejected will be handled in accordance with § 2033.7 of the Agency Instruction 2033–A. If notice has been received by the Agency that an adverse action is under investigation or in litigation, that application and all related material will be retained until final disposition of the matter.

(5) When an application has been approved and funds are not available, and the steps outlined in § 1910.6(g) of this subpart have been taken, the following provisions apply:

(i) The County Supervisor will, during the 11th month following loan approval, notify the applicant that the application will expire 12 months from the date of loan approval.

(ii) If the applicant wants the application to remain active, the applicant must provide the County Office with a written request within 30 days, requesting that the application remain active.

(iii) The applications retained at the applicant's request will be extended for only one additional 12-month period.

(iv) If the applicant fails to respond to the County Supervisor's written request, the application will be withdrawn.

[53 FR 35671, Sept. 14, 1988, as amended at 55 FR 21525, May 25, 1990; 55 FR 29560, July 20, 1990; 55 FR 46188, Nov. 2, 1990; 56 FR 66959, Dec. 27, 1991; 57 FR 19523, May 7, 1992; 58 FR 226, Jan. 5, 1993; 58 FR 44746, Aug. 25, 1993; 58 FR 48283, Sept. 15, 1993; 58 FR 68719, Dec. 29, 1993; 58 FR 69195, Dec. 30, 1993; 60 FR 55122, Oct. 27, 1995; 61 FR 35920, July 9, 1996]

§ 1910.5 Evaluating applications.

The following criteria will be considered in addition to the eligibility criteria in applicable program regulations.

(a) *Age of applicant.* When evaluating the application, the age of the applicant will not be used as a consideration of eligibility (provided the applicant has reached the legal age of majority in the State, or has had the minority removed by court action) except when a specific age is being used to the advantage of the applicant (e.g. assistance under the 504 grant program).

(b) *Credit history.* Credit history will be a consideration to the extent that it is used in evaluating all applicants for similar types and amounts of credit. For instance, credit requirements for a female applicant will not differ from those for a male applicant.

(c) *Creditworthiness.* When considering creditworthiness of an applicant, the following will not indicate an unacceptable credit history:

(1) Foreclosures, judgments, delinquent payments of the applicant which occurred more than 36 months before the application, if no recent similar situations have occurred, or Agency delinquencies that have been resolved through loan service programs as defined in § 1951.906 of part 1951 of subpart S of this chapter.

(2) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(3) ''No history'' of credit transactions by the applicant.

(4) Recent foreclosure, judgment or delinquent payment when the applicant can satisfactorily demonstrate that:

(i) The circumstances causing any of the above were of a temporary nature

and were beyond the applicant's control. Example: loss of job; delay or reduction in government benefits, or other loss of income; increased living expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(5) Non-payment of a debt due to circumstances beyond the applicant's or borrower's control. However, non-payment of a debt due to circumstances within an applicant's or borrower's control may be used as an indication of unacceptable credit history, in accordance with paragraph (c)(1) of this section. The mere fact that an applicant or borrower filed bankruptcy will not be used as an indication of unacceptable credit history. The circumstances causing the nonpayment of debt, i.e., whether nonpayment was beyond the applicant's or borrower's control, however, are proper considerations.

(6) Previous FSA or RHS debts settled pursuant to subpart B of part 1956 of this chapter and debts settled pursuant to subpart B of part 1951 of this chapter, except as provided in § 1944.9 of subpart A of part 1944 of this chapter.

(d) *Current/Past FmHA or its successor agency under Public Law 103–354 Loan History*. Current or previous delinquent FmHA or its successor agency under Public Law 103–354 loans, as determined by reviewing the Current/Past Debt Inquiry System or the Borrower Cross-Reference Inquiry System, will be used to help determine the credit history of an applicant.

(e) *Delinquency on a Federal debt*. The Department of Housing and Urban Development Credit Alert Interactive Voice Response System (CAIVRS) will be used to help determine if an applicant is deliquent on any Federal debt.

[53 FR 35671, Sept. 14, 1988, as amended at 55 FR 21525, May 25, 1990; 55 FR 46188, Nov. 2, 1990; 56 FR 10147, Mar. 11, 1991; 60 FR 55122, Oct. 27, 1995; 61 FR 1109, Jan. 16, 1996; 61 FR 2899, Jan. 30, 1996; 61 FR 35921, July 9, 1996]

§§ 1910.6–1910.9 [Reserved]

§ 1910.10 Preference.

(a) *Veterans*. (1) Veteran's preference will be extended to any person applying for an RH, FO, SW, or OL loan who has been honorably discharged, including clemency discharges, or released from the active forces of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, who served on active duty in such forces:

(i) During the period of April 6, 1917, through March 31, 1921;

(ii) During the period of December 7, 1941, through December 31, 1946;

(iii) During the period of June 27, 1950, through January 31, 1955, or

(iv) For a period of more than 180 days, any part of which occurred after January 31, 1955, but on or before May 7, 1975.

(2) Veteran's preference will apply when:

(i) There is a shortage of funds.

(ii) Obligating forms are ready to be submitted to the Finance Office, and

(iii) There is more than one application having the same date.

(3) For Rural Housing applicants, veteran's preference will be extended to the spouses and children of deceased servicemen who died in service during one of the periods listed in paragraph (a)(1) of this section.

(b) *Farm Credit Programs (FCP) loans*. In addition to the veteran's preference, the preference set out in § 1943.10 of subpart A of part 1943 of this chapter applies.

[53 FR 35671, Sept. 14, 1988, as amended at 61 FR 35922, July 9, 1996]

§ 1910.11 Special requirements.

(a) *Servicemen's Readjustment Act of 1944*. Section 512(a)(D) of the Servicemen's Readjustment Act of 1944, as amended, provides that an applicant for a direct housing loan from the Department of Veterans Affairs (VA) must be ''unable to obtain a loan for such purposes from the Secretary of Agriculture under the Consolidated Farm and Rural Development Act, as amended, or the Housing Act of 1949, as amended.'' Department of Veterans Affairs Loan Guaranty Officers may,

therefore, require VA loan applicants to apply to the agency for loan assistance.

(b) *Veterans determined ineligible by the Agency*. If the veteran is unable to obtain a loan, the County Supervisor will, upon request, furnish the applicant with a rejection letter to be presented to the Loan Guaranty Officer. The Loan Guaranty Officer may consult with the County Supervisor regarding the investigation made by the Agency of the veteran's application and the specific reasons for rejection.

[61 FR 35922, July 9, 1996]

§§ 1910.12–1910.49 [Reserved]

§ 1910.50 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 0575–0134. Public reporting burden for this collection of information is estimated to vary from 20 minutes to 2 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of collection of this information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0575–0134), Washington, DC 20503.

[57 FR 19523, May 7, 1992]

EXHIBITS TO SUBPART A

EXHIBIT A—[RESERVED]

EXHIBIT B—LETTER TO NOTIFY SOCIALLY DISADVANTAGED APPLICANTS/BORROWERS REGARDING THE AVAILABILITY OF DIRECT FARM OWNERSHIP (FO) LOANS AND THE ACQUISITION/LEASING OF FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 ACQUIRED FARMLAND

United States Department of Agriculture

Farmers Home Administration or its successor agency under Public Law 103–354

(Insert address)

Date_____

Dear _____:

The Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) has authority under the Consolidated Farm and Rural Development Act to target direct farm ownership (FO) loan funds to applicants/borrowers of socially disadvantaged groups. This program provides credit to applicants/borrowers of socially disadvantaged groups, at regular or reduced interest rates, to purchase or enlarge farms. In addition, the program provides that FmHA or its successor agency under Public Law 103–354 acquired farmland be made available for sale or lease to applicants/borrowers of socially disadvantaged groups. Socially disadvantaged borrowers with existing direct FO loans may have their accounts deferred and/or reamortized at a reduced interest rate.

If you would like additional information regarding the availability of direct FO loans to, and/or the renting or buying of FmHA or its successor agency under Public Law 103–354 acquired farmland by, members of socially disadvantaged groups, you should contact my office.

Sincerely,

County Supervisor.

[57 FR 19523, May 7, 1992]

EXHIBIT C—LETTER TO NOTIFY APPLICANT(S)/BORROWER(S) OF THEIR RESPONSIBILITIES IN CONNECTION WITH FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 FARMER PROGRAM LOANS

NOTE: Exhibit C, referenced in this subpart, is available in any FmHA or its successor agency under Public Law 103–354 office.

Subpart B—Credit Reports (Individual)

SOURCE: 49 FR 40790, Oct. 18, 1984, unless otherwise noted.

§1910.51 Purpose.

This subpart prescribes the policies and procedures of the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) for individual and joint type credit reports. Credit reports will be ordered to determine the eligibility of applicants requesting Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) loans. A nonrefundable fee will be charged the applicant.

[55 FR 46188, Nov. 2, 1990]

§1910.52 [Reserved]

§1910.53 Policy.

The County Supervisor will be responsible for ordering individual credit reports. These will be obtained on initial and rescheduled Farmer Program loans and on all initial Single Family Housing applications, except for those situations outlined in paragraph (c) of this section, to help determine the eligibility of the loan applicant, and when it appears the credit report will not have to be updated before loan closing.

[55 FR 46188, Nov. 2, 1990]

§§1910.54—1910.100 [Reserved]

Subpart C—Commercial Credit Reports

SOURCE: 52 FR 6498, Mar. 4, 1987, unless otherwise noted.

§1910.101 Preface.

FmHA or its successor agency under Public Law 103–354 Instruction 1910–C (available in any Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354 office) describes the procedure to be used by FMHA in obtaining commercial credit reports. A nonrefundable fee, set forth in §1910.106(d) of this Instruction will be collected from the applicant, general contractor or dealer contractor who is the subject of the report.

§§1910.102—1910.150 [Reserved]

PART 1922—APPRAISAL

Subparts A–D [Reserved]

Subpart E—Appraisal of Farms and Leasehold interests

1922.201 General.
1922.202–1922.208 [Reserved]
1922.209 Easements and appraising property subject to easements.
1922.210–1922.250 [Reserved]

AUTHORITY: 7 U.S.C. 1989.

Subparts A–D [Reserved]

Subpart E—Appraisal of Farms and Leasehold Interests

SOURCE: 58 FR 44750, Aug. 25, 1993, unless otherwise noted.

§1922.201 General.

This subpart prescribes the procedures and guidelines for conducting appraisals in connection with making and servicing Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) insured loans on farm tracts. It also includes guidance for market valuations of farm tracts when leasehold interests, Conservation Reserve Program, easements and mineral rights are involved. Farm tracts will be appraised for market value. FmHA or its successor agency under Public Law 103–354

designated appraisers and contract appraisers will comply with the guidelines and standards as set out in Sections I and II of the Uniform Standards of Professional Appraisal Practice (USPAP), when completing farm tract appraisals as prescribed in this subpart. A current copy of Sections I and II of USPAP promulgated by The Appraisal Foundation is located in each FmHA or its successor agency under Public Law 103–354 State Office.

§§ 1922.202–1922.208 [Reserved]

§ 1922.209 Easements and appraising property subject to easements.

(a) *Easements.* Easements represent an interest in real property that conveys use, but not ownership, of a portion of an owner's property. Easements frequently permit a specific portion of a property to be used for access to an adjoining property or as a public right-of-way. Although surface easements are the most common, subterranean and overhead easements are used for public utilities, roadways, bridges, air rights, etc. Basic easement valuation concepts are as follows:

(1) A property that acquires an easement is the beneficiary of additional rights; one that is subject to an easement is burdened. Easement rights can be conveyed in perpetuity or for a limited time period. An easement can be created by a contract between private parties or it can be arranged by states, municipalities, or public utilities through the exercise of eminent domain. In any case, a valuation is needed to estimate the price the easement beneficiary should pay to the burdened party.

(2) An easement that affords ingress and egress to an otherwise landlocked parcel may increase its value. The value of an easement is usually estimated as some part of the amount of value it adds to the property it benefits; the burdened property's loss in value can also be used to indicate the value of an easement. The value of an easement reflects the basic economic concept of contribution.

(3) When an easement is acquired by a public utility company for overhead power lines, valuation becomes more complicated. In all cases, however, an easement is a partial interest in the burdened real estate property.

(4) Preservation easements, such as conservation easements, prohibit physical changes to the property. Usually, the owner must maintain the condition of the property at the time the easement is donated or immediately after a proposed restoration. The economic theory that underlies the valuation of preservation easements is generally the same as that which governs eminent domain appraising, although the acquirer of a preservation easement receives rather than takes rights. Each easement document contains specific controls and restrictions. An appraiser must carefully analyze easement restrictions or proposed restrictions to determine how it affects the property. Damage to the remaining property is the difference in the value of the remainder as a part of the whole, or its value before the easement, and the value of the remaining property after the easement before consideration of compensation. The amount of compensation is determined by subtracting the value of the remaining property after the easement, before compensation, from the value of the remaining property after easement, after compensation.

(5) Frontage easements (roads or underground water pipes, electricity, communication lines) can contribute to the value of the property. Rights considered consist of both subsurface and surface rights. Fair or just compensation consists of compensation for: The taking and use of the subsurface; the cost of replenishing any items destroyed (lawns, bushes, etc.); and any inconvenience or interruption during installation and later maintenance. Detailed market analysis may be completed to determine the value of the easement. Usually, 1 percent of the fair market value is adequate compensation for property taken. It may be higher when subsurface property has considerable disruption factors.

(6) Oil, gas, pipeline and powerline easements crossing property can be determined by two approaches. The appraiser can find comparable sales of land and narrow strips of land that have been sold or purchased in the

market and tabulate the prices received and paid, or use the before and after values as set out in paragraph (b) of this section. Most landowners realize that a taking agency should pay no more than what it has paid others to acquire similar easements needed in the same area or what other landowners have accepted as compensation for the same kind of rights.

(b) *Appraising property subject to easements.*

(1) When there is an established traditional market for properties containing conservation or other easements, value of the property subject to the easement can be determined through the normal appraisal process outlined in §1922.207 of this subpart.

(2) If there is no established traditional market (market value for the easement) for properties containing conservation or other easements, value of the property subject to the easement can be determined as outlined in paragraph (d) of this section. When there is an existing easement on the subject property, the before valuation will be completed assuming there is no easement on the property. The after valuation will be the market value of the property subject to an easement.

(c) *Appraising property with no established market for easements.* In most cases, there is no established traditional market for conservation easements or other easements. These interests must be valued indirectly through the Before and After method of appraisal. The Before and After method is used to determine whether, and the degree to which, an easement changes a property's use and value. The value of property after the imposition of the easement is subtracted from the value of the property before the imposition of the easement to estimate the value of the easement. Each value conclusion is made as of the same date. The following steps will be used to determine the value of easements to the subject property being appraised, i.e., if there is no traditional market for the easement available:

(1) *Before valuation.*

(i) Apply highest and best use principles.

(A) *Determine the property's highest and best use in its current condition unrestricted by the easement (the ''Before'' value).* Generally, in this step the appraiser considers the suitability of the property's current use under existing zoning and market conditions and estimates the reasonable likelihood of a change in use (and the associated direct and indirect costs and delay), absent the easement, to realize a more profitable economic use.

(B) *Evaluate potential for continuation of existing use and alternative uses.* Under this step the appraiser estimates the property's potential for continuation of existing use, if its existing use or realistic alternative uses generate greater value. Alternative uses may include, if appropriate, either existing improvements or as vacant land which may include the following: Subdivision, Redevelopment, Renovation, Flooding, or Timbering.

(C) *Estimate remoteness of eventual zoning changes.* Under this analysis, the appraiser must consider future changes in zoning. The quantification for the supported future probability of a change must be recognized in the market place and supported by quantification—both statistical and anecdotal. Hypothetically, value added to land by possibilities of development is not an appropriate pre-easement consideration, unless factually supported in the report.

(ii) *Apply the three recognized approaches to value.* This will be accomplished as set out in §1922.207 of this subpart. The appraiser will apply, as appropriate, the three approaches to the ''Before'' value to estimate the value of the property without restrictions or not being encumbered by the easement. Comparable properties used should not be encumbered by the easement. All factors must be analyzed in view of the current local market, which if necessary, reflects foreseeable trends reflected in the market place, such as rezonings, demolition permits, subdivision approvals, leases, etc. The three approaches should be used whenever possible to estimate the value of an easement. For each method not used, the appraiser must explain why the omitted method is not applicable.

(2) *After valuation.*

(i) *Determining highest and best use by comparing easement covenants to existing*

zoning regulations and other controls. The appraiser must analyze the easement terms and covenants, individually and collectively, and compare them to existing zoning regulations and other controls to estimate whether, and the extent to which, the use restrictions contained in the easement will affect current and alternate future uses of the property. Examples of preexisting controls include local regulations, such as agricultural or historic district zones; statewide regulations, such as land-gain taxes to deter land speculation; and Federal limitations, such as flood plain controls or the necessity to obtain environmental or historic preservation reviews for federally licensed or assisted projects encumbered or restricted by the easement.

(ii) *Changes in highest and best use.* Easement restrictions may be reflected in the three approaches to value even without a change in highest and best use. Under the Comparable Sales approach to value, a well informed purchaser would consider the immediate and long term costs of complying with the easement and pay less for a restricted property than for otherwise comparable unrestricted properties. Similarly, the Cost and Income approaches may indicate immediate and long term value impairment attributable to the easement. The change in market value attributable to an easement is frequently greater on properties in those agricultural, recreational, residential, or commercial areas that are experiencing a change in highest and best use. Where current use is commensurate with highest and best use, an easement perpetually limiting use of the property to current use may have nominal value.

(iii) *Apply the three approaches to value.* This will be accomplished as set out in §1922.207 of this subpart. The appraiser will apply the Comparable Sales, Cost, and Income approaches as appropriate to estimate the value of the property as encumbered or restricted by the easement. Comparable properties used would be subject to the type of easement appraised. Market abstractions, market analysis as well as feasibility analysis should be made part of this report. The three approaches should be used whenever possible to estimate the value for an easement. For each method not used, the appraiser must explain why the omitted method is not applicable.

(d) *Arriving at the estimated value of the easement.* The Recommended Market Value of the property arrived at from the After valuation is subtracted from the Before valuation to arrive at the estimated value of the easement.

(e) *Arriving at the Recommended Market Value of the property subject to an easement.* The Recommended Market Value of the property will be the Recommended Market Value of the property arrived at from the After valuation approach.

§§ 1922.210–1922.250 [Reserved]

PART 1924—CONSTRUCTION AND REPAIR

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

Subpart A—Planning and Performing Construction and Other Development

SOURCE: 52 FR 8002, Mar. 13, 1987, unless otherwise noted.

§ 1924.1 Purpose.

This subpart prescribes the basic Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) policies, methods, and responsibilities in the planning and performing of construction and other development work for insured Rural Housing (RH), insured Farm Ownership (FO), Soil and Water (SW), Softwood Timber (ST), single unit Labor Housing (LH), and Emergency (EM) loans for individuals. It also provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, multi-unit (LH) loans and

grants, and Rural Housing Site (RHS) loans.

[53 FR 35679, Sept. 14, 1988]

§ 1924.2 [Reserved]

§ 1924.3 Authorities and responsibilities.

The County Supervisor and District Director are authorized to redelegate, in writing, any authority delegated to them in this subpart to the Assistant County Supervisor and Assistant District Director, respectively, when determined to be qualified. FmHA or its successor agency under Public Law 103–354 Construction Inspectors, District Loan Assistants, and County Office Assistants are authorized to perform duties under this subpart as authorized in their job descriptions.

§ 1924.4 Definitions.

(a) *Construction.* Such work as erecting, repairing, remodeling, relocating, adding to or salvaging any building or structure, and the installation or repair of, or addition to, heating and electrical systems, water systems, sewage disposal systems, walks, steps, driveways, and landscaping.

(b) *Contract documents.* The borrower-contractor agreement, the conditions of the contract (general, supplementary, and other), the drawings, specifications, warranty information, all addenda issued before executing the contract, all approved modifications thereto, and any other items stipulated as being included in the contract documents.

(c) *Contractor.* The individual or organization with whom the borrower enters into a contract for construction or land development, or both.

(d) *County Supervisor and District Director.* In Alaska, for the purpose of this subpart, ''County Supervisor'' and ''District Director'' also mean ''Assistant Area Loan Specialist'' and ''Area Loan Specialist,'' respectively. The terms also include other qualified staff who may be delegated responsibilities under this subpart in accordance with the provisions of subpart F of part 2006 (available in any FmHA or its successor agency under Public Law 103–354 office).

(e) *Date of commencement of work.* The date established in a ''Notice to Proceed'' or, in the absence of such notice, the date of the contract or other date as may be established in it or by the parties to it.

(f) *Date of substantial completion.* The date certified by the Project Architect/Engineer or County Supervisor when it is possible, in accordance with any contract documents and applicable State or local codes and ordinances, and the FmHA or its successor agency under Public Law 103–354 approved drawings and specifications, to permit safe and convenient occupancy and/or use of the buildings or other development.

(g) *Development.* Construction and land development.

(h) *Development standards.* Any of the following codes and standards:

(1) A standard adopted by FmHA or its successor agency under Public Law 103–354 for each state in accordance with § 1924.5(d)(1)(i)(E) of this subpart.

(2) *Voluntary national model building codes (model codes).* Comprehensive documents created, referenced or published by nationally recognized associations of building officials that regulate the construction, alteration and repair of building, plumbing, mechanical and electrical systems. These codes are listed in Exhibit E of this subpart.

(3) *Minimum Property Standards (MPS).* The Department of Housing and Urban Development (HUD) Minimum Property Standards for Housing, Handbook 4910.1, 1984 Edition with Changes. (For One and Two Family Dwellings and Multi-Family Housing).

(i) *Identity of interest.* Identity of interest will be construed as existing between the applicant (the party of the first part) and general contractors, architects, engineers, attorneys, subcontractors, material suppliers, or equipment lessors (parties of the second part) under any of the following conditions:

(1) When there is any financial interest of the party of the first part in the party of the second part. The providing of normal professional services by architects, engineers, attorneys or accountants with a client-professional relationship shall not constitute an identity of interest.

(2) When one or more of the officers, directors, stockholders or partners of the party of the first part is also an officer, director, stockholder, or partner of the party of the second part.

(3) When any officer, director, stockholder or partner of the party of the first part has any financial interest whatsoever in the party of the second part.

(4) Between the spouse, significant other, relatives, and step-relatives of the principal owners of the party of the first part and its management, such as Grandmother, Aunt, Daughter, Granddaughter, Grandfather, Uncle, Son, Grandson, Mother, Sister, Niece, Cousin, Father, Brother, Nephew;

(5) When the party of the second part advances any funds to the party of the first part.

(6) When the party of the second part provides and pays on behalf of the party of the first part the cost of any legal services, architectural services or engineering services other than those of a surveyor, general superintendent, or engineer employed by a general contractor in connection with obligations under the construction contract.

(7) When the party of the second part takes stock or any interest in the party of the first part as part of the consideration to be paid them.

(8) When there exist or come into being any side deals, agreements, contracts or undertakings entered into thereby altering, amending, or cancelling any of the required closing documents except as approved by FmHA or its successor agency under Public Law 103–354.

(9) An identity of interest will also exist when another party can significantly influence the management or operating policies of the transacting parties or if it has an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

(j) *Land development.* Includes items such as terracing, clearing, leveling, fencing, drainage and irrigation systems, ponds, forestation, permanent pastures, perennial hay crops, basic soil amendments, pollution abatement and control measures, and other items of land improvement which conserve or permanently enhance productivity. Also, land development for structures includes the applicable items above, and items such as rough and finish grading, retaining walls, water supply and waste disposal facilities, streets, curbs and gutters, sidewalks, entrancewalks, driveways, parking areas, landscaping and other related structures.

(k) *Manufactured housing.* Housing, constructed of one or more factory-built sections, which includes the plumbing, heating and electrical systems contained therein, which is built to comply with the Federal Manufactured Home Construction and Safety Standards (FMHCSS), and which is designed to be used with or without a permanent foundation. Specific requirements for manufactured homes sites, rental projects and subdivisions are in Exhibit J of this subpart.

(l) *Mechanic's and materialmen's liens.* A lien on real property in favor of persons supplying labor and/or materials for the construction for the value of labor and/or materials supplied by them. In some jurisdictions, a mechanic's lien also exists for the value of professional services.

(m) *Modular/panelized housing.* Housing, constructed of one or more factory-built sections, which, when completed, meets or exceeds the requirements of one or more of the recognized development standards for site-built housing, and which is designed to be permanently connected to a site-built foundation.

(n) *Project representative.* The architect's or owner's representative at the construction site who assists in the administration of the construction contract. When required by FmHA or its successor agency under Public Law 103–354, a full-time project representative shall be employed.

(o) *Technical services.* Applicants are responsible for obtaining the services necessary to plan projects including analysis of project design requirements, creation and development of the project design, preparation of drawings, specifications and bidding requirements, and general administration of the construction contract.

(1) Architectural services. The services of a professionally qualified person or organization, duly licensed and qualified in accordance with state law to perform architectural services.

(2) Engineering services. The services of a professionally qualified person or organization, duly licensed and qualified in accordance with State law to perform engineering services.

(p) *Warranty*. A legally enforceable assurance provided by the builder (warrantor) to the owner and the FmHA or its successor agency under Public Law 103–354 indicating that the work done and materials supplied conform to those specified in the contract documents and applicable regulations. For the period of the warranty, the warrantor agrees to repair defective workmanship and repair or replace any defective materials at the expense of the warrantor.

[52 FR 8002, Mar. 13, 1987, as amended at 59 FR 6882, Feb. 14, 1994]

§ 1924.5 Planning development work.

(a) *Extent of development*. For an FO loan, the plans for development will include the items necessary to put the farm in a livable and operable condition consistent with the planned farm and home operations. For other types of loans, the plans will include those items essential to achieve the objectives of the loan or grant as specified in the applicable regulation.

(b) *Funds for development work*. The total cash cost of all planned development will be shown on Form FmHA or its successor agency under Public Law 103–354 1924–1, ''Development Plan,'' except Form FmHA or its successor agency under Public Law 103–354 1924–1 may be omitted when: (1) All development is to be done by the contract method, (2) adequate cost estimates are included in the docket, and (3) the work, including all landscaping, repairs, and site development work, is completely described on the drawings, in the specifications, or in the contract documents. Sufficient funds to pay for the total cash cost of all planned development must be provided at or before loan closing. Funds to be provided may include loan proceeds, any cash to be furnished by the borrower, proceeds from cost sharing programs such as Agricultural Stabilization and Conservation Service (ASCS) and Great Plains programs or proceeds from the sale of property in accordance with paragraph (g) of this section.

(c) *Scheduling of development work*. (1) All construction work included in the development plan for RH loans will be scheduled for completion as quickly as practicable and no later than 9 months from the date of loan closing, except for mutual self-help housing where work may be scheduled for completion within a period of 15 months.

(2) Development for farm program loans will be scheduled for completion as quickly as practicable and no later than 15 months from the date of loan closing unless more time is needed to establish land developnent practices in the area.

(d) *Construction*. (1) All new buildings to be constructed and all alterations and repairs to buildings will be planned to conform with good construction practices. The FmHA or its successor agency under Public Law 103–354 Manual of Acceptable Practices (MAP) Vol. 4930.1 (available in any FmHA or its successor agency under Public Law 103–354 office), provides suggestions and illustrative clarifications of design and construction methods which are generally satisfactory in most areas. All improvements to the property will conform to applicable laws, ordinances, codes, and regulations related to the safety and sanitation of buildings; standards referenced in Appendices C through F of HUD Handbook 4910.1, Minimum Property Standards for Housing; Thermal Performance Construction Standards contained in Exhibit D of this subpart and, when required, to certain other development standards described below.

(i) The development standard applicable to a proposal will be selected by the loan applicant or recipient of an RH Conditional Commitment in accordance with the following. The standard selected must:

(A) Relate to the type(s) of building proposed.

(B) Meet or exceed any applicable local or state laws, ordinances, codes and regulations.

(C) Include all referenced codes and standards.

(D) Exclude inapplicable administrative requirements.

(E) Be the current edition(s) of either paragraph (d)(1)(i)(E)(*1*) or (*2*) of this section:

(*1*) The development standard, consisting of building, plumbing, mechanical and electrical codes, adopted by FmHA or its successor agency under Public Law 103–354 for use in the state (identified in a State Supplement to this section) in which the development is proposed, in accordance with the following:

(*i*) The adopted development standard shall include any building, plumbing, mechanical or electrical code adopted by the State, if determined by the State Director to be based on one of the model codes listed in Exhibit E to this subpart, or, if not available,

(*ii*) The adopted development standard shall include any building, plumbing, mechanical or electrical code adopted by the state, if determined by the Administrator to be acceptable, or, if not available,

(*iii*) The adopted development standard shall include the model building, plumbing, mechanical or electrical code listed in Exhibit E to this subpart that is determined by the State Director to be most prevalent and appropriate for the state.

(*2*) Any of the model building, plumbing, mechanical and electrical codes listed in Exhibit E to this subpart or the standards defined in § 1924.4(h)(3) of this subpart.

(ii) Guide 2, ''FmHA or its successor agency under Public Law 103–354 Design Guide,'' of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), includes guidelines for the evaluation of the design features which are not fully addressed in the development standards.

(iii) In new housing, all design, materials and construction will meet or exceed the applicable development standard as provided in paragraph (d)(1)(i) of this section.

(iv) For multi-family residential rehabilitation, as defined in Exhibit K of this subpart, all substantial rehabilitation work on existing buildings will meet or exceed the applicable development standard. All moderate rehabilitation work should comply with Guide 3, ''Quality and Performance Criteria for Moderate Rehabilitation,'' of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

(v) The design and construction of housing repairs made with FmHA or its successor agency under Public Law 103–354 loan or grant funds will, as near as possible, comply with the applicable development standard.

(vi) Farm LH design and construction will comply with the following:

(A) Family projects, where the length of occupancy will be:

(*1*) Year-round, will meet or exceed the applicable development standard.

(*2*) Less than 12 months, but more than 6 months, will be in substantial conformance with the applicable development standard and constructed to facilitate conversion to year-round occupancy standards.

(*3*) Six months or less, may be less than the applicable development standard but should be constructed in accordance with Exhibit I of this subpart.

(B) Dormitory and other nonfamily type projects, where the length of occupancy will be:

(*1*) More than 6 months, will be in substantial conformance with the applicable development standard and will at least meet or exceed the requirements of the Department of Labor, Bureau of Employment Security (29 CFR 1910.140).

(*2*) Six months or less, will comply with § 1924.5(d)(1)(vi)(A)(3).

(vii) Farm service buildings should be designed and constructed for adaptation to the local area. In designing and locating farm service buildings, consideration will be given to practices recommended by agriculture colleges, the Extension Service (ES), Soil Conservation Service (SCS) and other reliable sources.

(2) Drawings, specifications, and estimates will fully describe the work. Technical data, tests, or engineering evaluations may be required to support the design of the development. The ''Guide for Drawings and Specifications,'' Exhibit C of this subpart, describes the drawings and specifications

that are to be included in the application for building construction, and subpart C of part 1924 of this chapter describes the drawings that should be included for development of building sites. The specific development standard being used, if required under paragraph (d)(1) of this section will be identified on all drawings and specifications.

(3) Materials acceptance shall be the same as described in paragraph X of Exhibit B to this subpart.

(4) Except as provided in paragraphs (d)(4)(i) through (iii) of this section, new building construction and additions shall be designed and constructed in accordance with the earthquake (seismic) requirements of the applicable Agency's development standard (building code). The analysis and design of structural systems and components shall be in accordance with applicable requirements of an acceptable model building code.

(i) Agricultural buildings that are not intended for human habitation are exempt from these earthquake (seismic) requirements.

(ii) Single family conventional light wood frame dwellings of two stories or 35 feet in height maximum shall be designed and constructed in accordance with the 1992 Council of American Building Officials (CABO) One and Two Family Dwelling Code or the latest edition.

(iii) Single family housing of masonry design and townhouses of wood frame construction and additions financed (either directly or through a guarantee) under title V of the Housing Act of 1949 are recommended to be designed and constructed in accordance with the earthquake (seismic) requirements of one of the building codes that provides an equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Program's (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions).

(iv) Acknowledgment of compliance with the applicable seismic safety requirements for new construction will be contained in the certification of final plans and specification on the appropriate Agency Form.

(e) *Land development.* (1) In planning land development, consideration will be given to practices, including energy conservation measures, recommended by agricultural colleges, ES, SCS or other reliable sources. All land and water development will conform to applicable laws, ordinances, zoning and other applicable regulations including those related to soil and water conservation and pollution abatement. The County Supervisor or District Director also will encourage the applicant to use any cost-sharing and planning assistance that may be available through agricultural conservation programs.

(2) Site and subdivision planning and development must meet the requirements of subpart C of part 1924 of this chapter.

(3) Plans and descriptive material will fully describe the work.

(4) The site planning design, development, installation and set-up of manufactured home sites, rental projects and subdivisions shall meet the requirements of Exhibit J of this subpart and subpart C of part 1924 of this chapter.

(i) Plans for land leveling, irrigation, or drainage should include a map of the area to be improved showing the existing conditions with respect to soil, topography, elevations, depth of topsoil, kind of subsoil, and natural drainage, together with the proposed land development.

(ii) When land development consists of, or includes, the conservation and use of water for irrigation or domestic purposes, the information submitted to the County Supervisor will include a statement as to the source of the water supply, right to the use of the water, and the adequacy and quality of the supply.

(f) *Responsibilities for planning development.* Planning construction and land development and obtaining technical services in connection with drawings, specifications and cost estimates are the sole responsibility of the applicant, with such assistance from the County Supervisor or District Director (whichever is the appropriate loan processing and servicing officer for the type of loan involved), as may be necessary to

be sure that the development is properly planned in order to protect FmHA or its successor agency under Public Law 103–354's security.

(1) *Responsibility of the applicant.* (i) The applicant will arrange for obtaining any required technical services from qualified technicians, tradespeople, and recognized plan services, and the applicant will furnish the FmHA or its successor agency under Public Law 103–354 sufficient information to describe fully the planned development and the manner in which it will be accomplished.

(ii) When items of construction or land development require drawings and specifications, they will be sufficiently complete to avoid any misunderstanding as to extent, kind, and quality of work to be performed. The applicant will provide FmHA or its successor agency under Public Law 103–354 with one copy of the drawings and specifications. Approval will be indicated by the applicant and acceptance for the purposes of the loan indicated by the County Supervisor or District Director on all sheets of the drawings and at the end of the specifications, and both instruments will be a part of the loan docket. After the loan is closed, the borrower will retain a conformed copy of the approved drawings and specifications, and provide another conformed copy to the contractor. Items not requiring drawings and specifications may be described in narrative form.

(iii) FmHA or its successor agency under Public Law 103–354 will accept final drawings and specifications and any modifications thereof only after the documents have been certified in writing as being in conformance with the applicable development standard if required under paragraph (d)(1) of this section. Certification is required for all Single Family Housing (SFH) thermal designs (plans, specifications, and calculations).

(A) Certifications may be accepted from individuals or organizations who are trained and experienced in the compliance, interpretation or enforcement of the applicable development standards for drawings and specifications. Plan certifiers may be any of the following:

(*1*) Licensed architects,

(*2*) Professional engineers,

(*3*) Plan reviewers certified by a national model code organization listed in Exhibit E to this subpart,

(*4*) Local building officials authorized to review and approve building plans and specifications, or

(*5*) National codes organizations listed in Exhibit E to this subpart.

(B) The license or authorization of the individual must be current at the time of the certification statement. A building permit (except as noted in paragraph (f)(1)(iii)(C)(*2*) of this section) or professional's stamp is not an acceptable substitute for the certification statement. However, a code compliance review conducted by one of the National recognized code organizations indicating no deficiencies or the noted deficiencies have been corrected is an acceptable substitute for the certification statement.

(C) For Single Family Housing (one to four family dwelling units) FmHA or its successor agency under Public Law 103–354 may also accept drawings and specifications that have been certified by:

(*1*) Registered Professional Building Designers certified by the American Institute of Building Design.

(*2*) A local community, if that community has adopted, by reference, one of the model building codes and has trained official(s) who review(s) plans as well as inspect(s) construction for compliance as a requisite for issuing a building permit. The building permit, issued by the community, may serve as evidence of acceptance. The State Director will determine eligible communities and publish, as a State supplement to this section, a list of those communities that qualify.

(*3*) A plan service that provides drawings and specifications that are certified by individuals or organizations as listed in paragraph (f)(1)(iii)(A) or (f)(1)(iii)(C)(*1*) and (*2*) of this section as meeting the appropriate state adopted development standard.

(*4*) Builders/Contractors who provide 10-year warranty plans for the specific FmHA or its successor agency under Public Law 103–354 finance dwelling unit that meet the requirements of Exhibit L of this subpart.

(5) Builders/Contractors that are approved by the United States Department of Housing and Urban Development (HUD) for self-certification.

(D) The modifications of certified drawings or specifications must be certified by the same individual or organization that certified the original drawings and specifications. If such individual or organization is not available, the entire set of modified drawings and specifications must be recertified.

(E) The certification of modifications for single family housing (SFH) construction may be waived if the builder or original author of the drawings and specifications provides a written statement that the modifications are not regulated by the applicable development standard. The County Supervisor may consult with the State Office Architect/Engineer as to acceptance of the statement and granting a waiver.

(F) All certifications of final drawings, specifications, and calculations shall be on Form FmHA or its successor agency under Public Law 103–354 1924–25, ''Plan Certification.''

(2) *Responsibility of the County Supervisor or District Director.* In accordance with program regulations for loans and grants they are required to process, the County Supervisor or District Director, for the sole benefit of FmHA or its successor agency under Public Law 103–354, will:

(i) Visit each farm or site on which the development is proposed. For an FO loan, the County Supervisor and the applicant will determine the items of development necessary to put the farm in a livable and operable condition at the outset. Prepare Form FmHA or its successor agency under Public Law 103–354 1924–1, when applicable in accordance with the Forms Manual Insert (FMI) for the form, after a complete understanding has been reached between the applicant and the County Supervisor regarding the development to be accomplished, including the dates each item of development will be started and completed.

(ii) Notify the loan or grant applicant in writing immediately if, after reviewing the preliminary proposal and inspecting the site, the proposal is not acceptable. If the proposal is acceptable, an understanding will be reached with the applicant concerning the starting date for each item of development.

(iii) Discuss with the applicant the FmHA or its successor agency under Public Law 103–354 requirements with respect to good construction and land development practices.

(iv) Advise the applicant regarding drawings, specifications, cost estimates, and other related material which the applicant must submit to the FmHA or its successor agency under Public Law 103–354 for review before the loan can be developed. Advise the applicant of the information necessary in the drawings, how the cost estimates should be prepared, the number of sets of drawings, specifications, and cost estimates required, and the necessity for furnishing such information promptly. Advise the applicant that FmHA or its successor agency under Public Law 103–354 will provide appropriate specification forms, Form FmHA or its successor agency under Public Law 103–354 1924–2, ''Description of Materials,'' and Form FmHA or its successor agency under Public Law 103–354 1924–3, ''Service Building Specifications.'' The applicant may, however, use other properly prepared specifications.

(v) Advise the applicant regarding publications, plans, planning aids, engineering data, and other technical advice and assistance available through local, state, and Federal agencies, and private individuals and organizations.

(vi) Review the information furnished by the applicant to determine the completeness of the plans, adequacy of the cost estimates, suitability and soundness of the proposed development.

(vii) When appropriate, offer suggestions as to how drawings and specifications might be altered to improve the facility and better serve the needs of the applicant. The County Supervisor or District Director may assist the applicant in making revisions to the drawings. When appropriate, the contract documents will be forwarded to the State architect/engineer for review. For revisions requiring technical determinations that FmHA or its successor agency under Public Law 103–354 is not

able to make, the applicant will be requested to obtain additional technical assistance.

(viii) Provide the applicant with a written list of changes required in the contract documents. The applicant will submit two complete revised (as requested) sets of contract documents, for approval. On one set, the County Supervisor or District Director will indicate acceptance on each sheet of the drawings, and on the cover of the specifications and all other contract documents. At least the date and the initials of the approval official must be shown. On projects where a consulting architect or engineer has been retained, this acceptance will be indicated only after the State Director has given written authorization. The marked set of documents shall be available at the job site at all times for review by FmHA or its successor agency under Public Law 103–354. The second set will become part of the loan docket.

(ix) Review the proposed method of doing the work and determine whether the work can be performed satisfactorily under the proposed method.

(x) Instruct the applicant not to incur any debts prior to loan closing for materials or labor or make any expenditures for such purposes with the expectation of being reimbursed from loan funds.

(xi) Instruct the applicant not to commence any construction nor cause any supplies or materials to be delivered to the construction site prior to loan closing.

(xii) Under certain conditions prescribed in Exhibit H of this subpart, provide the applicant with a copy of the leaflet, ''Warning—Lead-Based Paint Hazards,'' which is Attachment 1 of Exhibit H (available in any FmHA or its successor agency under Public Law 103–354 office), and the warning sheet, ''Caution Note on Lead-Based Paint Hazard,'' which is Attachment 2 of Exhibit H (available in any FmHA or its successor agency under Public Law 103–354 office).

(g) *Surplus structures and use or sale of timber, sand, or stone.* In planning the development, the applicant and the County Supervisor or District Director should, when practicable, plan to use salvage from old buildings, timber, sand, gravel, or stone from the property. The borrower may sell surplus buildings, timber, sand, gravel, or stone that is not to be used in performing planned development and use net proceeds to pay costs of performing planned development work. In such a case:

(1) An agreement will be recorded in the narrative of Form FmHA or its successor agency under Public Law 103–354 1924–1 which as a minimum will:

(i) Identify the property to be sold, the estimated net proceeds to be received, and the approximate date by which the property will be sold.

(ii) Provide that the borrower will deposit the net proceeds in the supervised bank account and apply any funds remaining after the development is complete as an extra payment on the loan, or in accordance with §1965.13(f) of subpart A of part 1965 of this chapter for farm program loans.

(2) The agreement will be considered by the Government as modifying the mortgage contract to the extent of authorizing and requiring the Government to release the identified property 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.

(4) Releases requested by the borrower or the buyer will be processed in accordance with applicable release procedures in subpart A or subpart C of part 1965 of this chapter, as appropriate.

(h) *Review prior to performing development work.* For the sole benefit of FmHA or its successor agency under Public Law 103–354ing 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 subpart A of part 1944 of this chapter or according to § 1924.13(e)(1)(vi)(A) or § 1924.13(e)(2)(ix)(A) of this subpart, no commitments with respect to performing planned development will be made by the County Supervisor, District Director, 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 loan funds except as provided in subpart A of part 1943 of this chapter and subparts A and 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.

[52 FR 8002, Mar. 13, 1987, as amended at 52 FR 19283, May 22, 1987; 52 FR 48391, Dec. 22, 1987; 52 FR 48799, Dec. 28, 1987; 53 FR 43676, Oct. 28, 1988; 59 FR 43723, Aug. 25, 1994; 61 FR 65156, Dec. 11, 1996]

EFFECTIVE DATE NOTE: At 61 FR 65156, Dec. 11, 1996, in § 1924.5, paragraph (d)(4) was added, effective Jan. 10, 1997.

§ 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. Conditional commitment construction is covered under Subpart A of Part 1944 of this chapter.

(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 $100,000.

(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 satisfy 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 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 nonexempt 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 favorably 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 disbursal 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 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 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 subpart A of part 1944 of this chapter. 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.

[52 FR 8002, Mar. 13, 1987, as amended at 55 FR 41833, Oct. 16, 1990; 60 FR 55122, Oct. 27, 1995; 61 FR 56116, Oct. 31, 1996]

§ 1924.7 [Reserved]

§ 1924.8 Development work for modular/panelized housing units.

(a) Exhibit B of this subpart applies to all loans involving modular/panelized housing units.

(b) Complete drawings and specifications will be required as prescribed in Exhibit C of this subpart. Each set of drawings will contain the design of the foundation system required for the soil and slope conditions of the particular site on which the modular/panelized house is to be placed.

(c) The manufacturer will provide a certification (Exhibit B, Attachment 5 of this subpart), stating that the building has been built substantially in accordance with the drawings and specifications. The builder will also provide a certification that the onsite work complies with drawings, specifications,

and the applicable development standard (Exhibit B, Attachment 5 of this subpart).

(d) Responsibility for field inspections will be in accordance with §1924.9(a) of this subpart. Frequency and timing of inspections will be in accordance with §1924.9(b) of this subpart, except that the Stage 2 inspection should be made during the time and in no case later than two working days after the crews commence work on the site and the house is being erected or placed on the foundation, to determine compliance with the accepted drawings and specifications.

(e) Periodic plant inspections will be performed in accordance with paragraphs II and III of Exhibit B of this subpart. FmHA or its successor agency under Public Law 103–354 employees responsible for inspections in the area in which the manufacturing plant or material supply yard is located will perform such inspections as deemed necessary under paragraph III of Exhibit B of this subpart.

(1) Plant inspections will be made if the type construction method used could restrict adequate inspections on the building site.

(2) Plant inspections will be made as often as necessary; however, after initial inspection and acceptance of the unit, only when it appears advisable to ascertain the performance and continuing stability of accepted materials and construction.

(f) Only one contract will be accepted for the completed house on the site owned or to be bought by the borrower. The manufacturer of the house or the manufacturer's agent may be the prime contractor for delivery and erection of the house on the site or a builder may contract with the borrower for the complete house in place on the site. Such contracts should provide that payments will be made only for work in place on the borrower's site.

(g) Payments for modular/panelized units will be made in accordance with the terms of the contract and in compliance with §1924.6(a)(12) of this subpart.

§1924.9 Inspection of development work.

The following policies will govern the inspection of all development work.

(a) *Responsibility for inspection.* The County Supervisor or District Director, accompanied by the borrower when practicable, will make final inspection of all development work and periodic inspections as appropriate to protect the security interest of the government. In this respect, inspections other than final inspections, may be conducted by other qualified persons as authorized in paragraph (b)(3) of this section, in §1944.17(a)(2)(iii) of FmHA Instruction 2024–A (available in any RECD field office), and as authorized under other agreements executed by, or authorized by, the National Office.

The borrower will be responsible for making inspections necessary to protect the borrower's interest. RHS or its successor agency under Public Law 103–354 inspections are not to assure the borrower that the house is built in accordance with the plans and specifications. The inspections create or imply no duty or obligation to the particular borrower. RHS or its successor agency under Public Law 103–354 inspections are for the dual purpose of determining that RHS or its successor agency under Public Law 103–354 has adequate security for its loan and is achieving the statutory goal of providing adequate housing. If difficult technical problems are encountered, the County Supervisor or District Director should request the assistance of the State Office or a qualified technician from SCS or the State University Cooperative Extension Service.

(b) *Frequency of inspections.* The County Supervisor or District Director will inspect development work as frequently as necessary to assure that construction and land development conforms to the drawings and specifications. The final inspection will be made at the earliest possible date after completion of the planned development. When several major items of development are involved, final inspection will be made upon completion of each item.

(1) For new buildings and additions to existing buildings, inspections will

be made at the following stages of construction and at such other stages of construction as determined by the County Supervisor or District Director except as modified by paragraph (b)(3) of this section.

(i) *Stage 1.* Customarily, the initial inspection in construction cases is made just prior to or during the placement of concrete footings or monolithic footings and floor slabs. At this point, foundation excavations are complete, forms or trenches and steel are ready for concrete placement and the subsurface installation is roughed in. However, when it is not practicable to make the initial inspection prior to or during the placement of concrete, the County Supervisor or District Director will make the initial inspection as soon as possible after the placement of concrete and before any backfill is in place.

(ii) *Stage 2.* The Stage 2 inspection will be made when the building is enclosed, structural members are still exposed, roughing in for heating, plumbing, and electrical work is in place and visible, and wall insulation and vapor barriers are installed. Customarily, this is prior to installation of brick veneer or any interior finish which would include lath, wallboard and finish flooring.

(iii) *Stage 3.* The final inspection will be made when all on-site and off-site development has been completed and the structure is ready for occupancy or its intended use.

(2) For rehabilitation of existing buildings, inspections will be made in accordance with paragraphs (b)(1)(ii) and (iii) of this section, and at such other stages of construction to assure that construction is being performed in a professional manner and in accordance with the FmHA or its successor agency under Public Law 103–354 approved drawings and specifications.

(3) For new construction when the structure will be covered by an insured 10-year warranty plan as described in Exhibit L of this subpart, only the final inspection is required, except in cases when partial payments are required when the provisions of § 1924.6(a)(12)(v) of this subpart will be followed.

(4) Arrangements should be made to have the borrower join the County Supervisor or the District Director in making periodic inspections as often as necessary to provide a mutual understanding with regard to the progress and performance of the work.

(5) The Borrower should make enough periodic visits to the site to be familiar with the progress and performance of the work, in order to protect the borrower's interest. If the borrower observes or otherwise becomes aware of any fault or defect in the work or nonconformance with the contract documents, the borrower should give prompt written notice thereof to the contractor with a copy to the County Supervisor or District Director responsible for servicing the type of loan or grant involved.

(6) The borrower should, when practicable, join the County Supervisor or District Director in making all final inspections.

(7) When irrigation equipment and materials are to be purchased and installed, a performance test under actual operating conditions by the person or firm making the installation should be required before final acceptance is made. The test should be conducted in the presence of the borrower, a qualified technician, and, when practicable, the County Supervisor or District Director. If the FmHA or its successor agency under Public Law 103–354 official is not present at the performance test, he or she should request the technician to furnish a report as to whether or not the installation meets the requirements of the plans and specifications.

(8) For irrigation and drainage construction or any dwelling construction where part or all of the work will be buried or backfilled, interim inspections should be made at such stages of construction that compliance with plans and specifications can be determined.

(c) *Recording inspections and correction of deficiencies.* All periodic and final inspections made by the County Supervisor or District Director will be recorded on Form FmHA or its successor agency under Public Law 103–354 1924–12 in accordance with the FMI. The County Supervisor or District Director will

be responsible for following up on the correction of deficiencies reported on Form FmHA or its successor agency under Public Law 103–354 1924–12. When an architect/engineer is providing services on a project, the District Director should notify the architect/engineer immediately of any fault or defect observed in the work or of any nonconformance with the contract document. If the borrower or the contractor refuses to correct the deficiencies, the District Director will report the facts to the State Director who will determine the action to be taken. No inspection will be recorded as a final inspection until all deficiencies or nonconforming conditions have been corrected.

(d) *Acceptance by responsible public authority*. When local (city) county, state, or other public authority) codes and ordinances require inspections, final acceptance by the local authority having jurisdiction will be required prior to final inspection or acceptance by FmHA or its successor agency under Public Law 103–354.

(e) *Acceptance by project architect*. If architectural services pursuant to § 1924.13(a) of this subpart have been obtained, final acceptance by the project architect pursuant to § 1924.13(a)(5)(v) of this subpart will be required prior to acceptance by FmHA or its successor agency under Public Law 103–354.

[52 FR 8002, Mar. 13, 1987, as amended at 60 FR 55122, Oct. 27, 1995; 61 FR 2899, Jan. 30, 1996]

§ 1924.10 Making changes in the planned development.

The borrower may request changes in the planned development in accordance with this section.

(a) *Authority of the County Supervisor*. The County Supervisor is authorized to approve changes in the planned development involving loans and grants within the County Supervisor's approval authority provided:

(1) The change is for an authorized purpose and within the scope of the original proposal.

(2) Sufficient funds are deposited in the borrower's supervised bank account or with the interim lender, as appropriate, to cover the contemplated changes when the change involves additional funds to be furnished by the borrower.

(3) The change will not adversely affect the soundness of the operation or FmHA or its successor agency under Public Law 103–354's security. If uncertain as to the probable effect the change would have on the soundness of the operation or FmHA or its successor agency under Public Law 103–354 security, the County Supervisor will obtain advice from the District Director on whether to approve the change.

(4) If a surety bond has been provided on the full amount of the construction contract, the aggregate amount of all contract change orders on Form FmHA or its successor agency under Public Law 103–354 1924–7, ''Contract Change Order,'' or other acceptable form will not exceed 20 percent of the original contract amount. Change orders for contracts on which a surety bond has been provided which increases the original contract amount by more than 20 percent may only be approved if additional surety is provided in the full revised amount of the contract. For purposes of this paragraph, letters of credit and deposits are not considered surety.

(5) Change orders for contracts on which letters of credit or deposits have been provided on the full amount of the contract which will increase the original contract amount are approved only if additional letters of credit or deposits are provided in the full revised amount of the contract.

(6) Modifications have been certified in accordance with § 1924.5(f)(1)(iii) or certification has been waived in accordance with § 1924.5(f)(1)(iii)(C) of this subpart.

(b) *Authority of the District Director*. The District Director is authorized to approve changes in the development planned with RRH, RCH, and RHS loans and LH loans and grants within the District Director's approval authority, provided the conditions in § 1924.10(a) have been met. For such loans in excess of the District Director's approval authority, the borrower's request with the District Director's recommendation will be forwarded to the State Director for consideration.

(c) *Recording changes in the planned development.* (1) Changes should be accomplished only after FmHA or its successor agency under Public Law 103–354 written approval. Changes will not be included in payment requests until approved by the borrower; the contractor, if applicable; the architect/engineer, if applicable; and the FmHA or its successor agency under Public Law 103–354 loan approval official. Examples of changes requiring documentation are:

(i) Any changes in labor and materials and their respective costs.

(ii) Changes in facility design.

(iii) Any decrease or increase in unit-price on final measurements that are different from those shown in the bidding schedule.

(iv) Any increase or decrease in the time to complete the project.

(2) All changes shall be recorded in chronological order as follows:

(i) Contract method. Changes shall be numbered in sequence as they occur using Form FmHA or its successor agency under Public Law 103–354 1924–7 with necessary attachments.

(ii) Borrower method. An increase or decrease in the cash cost, extension of time, transfer of funds between items, or an addition or deletion of items of development, will be summarized on the front of Form FmHA or its successor agency under Public Law 103–354 1924–1 by striking through the original figures on items and writing in the changes. Changes made in the ''Development Plan'' in the working drawings, or in the plans and specifications will be dated and initialed by all parties.

(iii) Mutual self-help method. [See paragraph (c)(2)(ii) of this section.]

(iv) Owner-builder method. [See paragraph (c)(2)(i) of this section.]

(3) All changes in facility design and/or materials must be certified in accordance with § 1924.5(f)(1)(iii) of this subpart.

§ 1924.11 District Director's review of incomplete development.

During monthly District Office work organization meetings and during regular visits to the County Office, the District Director will review the progress that is being made in completing development financed with loans within the District Director's and County Supervisor's responsibility.

(a) Once each year the District Director will make a comprehensive review of all development work not completed within the time scheduled. For incomplete development financed with loan or grant funds within the responsibility of the District Director, the District Director will take the necessary actions to assure that the borrower or grantee completes the planned development. For incomplete development financed with loan or grant funds within the responsibility of the County Supervisor, the District Director will give the necessary direction to the County Supervisor to assure completion of the work. In connection with these responsibilities, the District Director will consider:

(1) The current farm and home operations with respect to the need for the development as originally planned.

(2) Revisions to the development plan.

(3) Funds remaining in the supervised bank account.

(4) Need for additional funds.

(5) Personal funds that could be furnished by the borrower.

(6) Estimated completion dates.

(7) The borrower's attitude with respect to completing the development.

(b) After a complete review of the status of development in both the District and County Offices has been made, the District Director will make a written report to the State Director which will include observations and recommendations regarding incomplete development. The report may be included in the District Director's regular report, and will include:

(1) The number of cases in which borrowers have not completed their development within 9, 15 or 24 months when authorized, and also the number of cases in which funds have been exhausted and the work is incomplete.

(2) The number of borrowers who have not completed their development within 3 years from the loan closing, and indicate the action that was taken in each such case.

(c) If the borrower has not completed development work within 3 years after the date of loan closing and the District Director has determined that the

borrower cannot or will not complete the development, the District Director will so indicate on Form FmHA or its successor agency under Public Law 103–354 1924–1 and request the State Director to withdraw, for application on the loan, any unused development funds remaining in the borrower's supervised bank account, if the borrower will not sign a check for a refund to the loan account.

§ 1924.12 Warranty of development work.

(a) Form FmHA or its successor agency under Public Law 103–354 1924–19, ''Builder's Warranty,'' or an insured 10-year home warranty as described in Exhibit L of this subpart, and normal trade warranties on items of equipment will be issued to the borrower at the completion of new building construction, dwelling rehabilitation by the contract method, all cases of newly completed and previously unoccupied dwellings or construction under conditional commitments issued to builders and sellers.

(b) If the warranty is not an insured 10-year warranty, a completed Form FmHA or its successor agency under Public Law 103–354 1924–19, with warranty protection for 1 year, must be provided by the builder upon final acceptance of the work by the owner and FmHA or its successor agency under Public Law 103–354. If an insured 10-year warranty is provided, the requirements of Exhibit L of this subpart apply, and a copy of the warranty insurance policy or a binder must have been received by FmHA or its successor agency under Public Law 103–354 prior to disbursement of the final payment to the builder.

(c) If, for some reason, the warranty insurance policy cannot be issued, the contractor will be required to execute Form FmHA or its successor agency under Public Law 103–354 1924–19 and the case will be forwarded to the State Director for consideration of debarment under the provisions of subpart M of part 1940 (available in any FmHA or its successor agency under Public Law 103–354 office). The County Supervisor will assist the borrower to the extent necessary under the provisions of the warranty and subpart F of part 1924 of this chapter.

(d) The County Supervisor will take the following action prior to the expiration of the first year of the warranty period:

(1) As soon as the warranty has been executed, the follow-up date for sending Form FmHA or its successor agency under Public Law 103–354 1924–21, ''Notice of Expiration of First Year of Warranty,'' which will be used for the 1 year warranty or the first year of the insured 10-year warranty, will be posted to the ''Servicing and Supervision'' section of the Management System card.

(2) Form FmHA or its successor agency under Public Law 103–354 1924–21 is provided for use in notifying the borrower of the expiration date of the first year of the warranty. This letter will be mailed to the borrower early in the second month preceding the expiration date of the first year of the warranty period.

(3) If the County Supervisor or District Director does not hear from the borrower within 30 days, it can reasonably be assumed that no complaint exists or that any complaint has been satisfied unless information to the contrary has been received.

(4) If the borrower notifies FmHA or its successor agency under Public Law 103–354 that any complaint has not been satisfied, an onsite inspection shall be made as early as possible, but not later than 1 month preceding the expiration date of the first year of the warranty. The results of the inspection will be recorded on Form FmHA or its successor agency under Public Law 103–354 1924–12. If the borrower has complaints, the case should be handled in accordance with the provisions of subpart F of part 1924 of this chapter, or as otherwise provided in this subpart.

[52 FR 8002, Mar. 13, 1987, as amended at 54 FR 14334, Apr. 11, 1989]

§ 1924.13 Supplemental requirements for more complex construction.

This section includes additional provisions that apply to planning and conduct of construction work on all multiple family housing projects and other projects that are more extensive in scope and more complex in nature than

individual housing units or farm buildings. This section will apply in addition to all other requirements contained elsewhere in this subpart.

(a) *Architectural services.* Complete architectural services, as defined in § 1924.4(o)(1) of this subpart are recommended on all projects. They are required for projects involving an LH grant and for all loans for RRH, RCH, and LH projects consisting of more than 4 units unless prior consent to making an exception to the requirements for complete architectural services is obtained from the National Office. If the applicant or contractor is an architect or organization with architectural capability, the applicant must, nevertheless, hire an independent qualified architect or architectural firm to inspect the construction work and perform other needed services during the construction and warranty phases. See Guide 4, Attachment 1, ''Attachment to AIA Document—Standard Form of Agreement Between Owner and Architect,'' for further information (available in any FmHA or its successor agency under Public Law 103–354 office).

(1) *Exception.* Any request for National Office consent to an exception being made for complete architectural services should include the proposed drawings and specifications, method of providing specific services, the comments and recommendations of the FmHA or its successor agency under Public Law 103–354 State Architect, and any other pertinent information. The State Director must determine that any services for which an exception is requested can be performed by qualified State or District Office staff members.

(2) *Selecting the architect.* The applicant is responsible for selecting the architect. The District Director with the advice of the State architect/engineer should discuss with the applicant the selection of the architect for the job as early as possible to assist in the site selection and participate in early consultations regarding project scope and design.

(3) *Architectural fees.* Fees for architectural services shall not exceed the fee ordinarily charged by the profession for similar work when FmHA or its successor agency under Public Law 103–354 financing is not involved. The fee should cover only the architectural services rendered by the architect. The reduction or elimination of any services described in paragraph (a)(5) of this section shall be directly reflected in the fee. Fees for special services rendered by the architects, such as the packaging of the loan application or additional nonarchitectural services, will not be authorized to be paid with loan funds.

(4) *Agreement between borrower and architect.* The borrower and the architect will execute a written agreement. The agreement must provide:

(i) The services listed in paragraph (a)(5) of this section.

(ii) The amount of the fee and how it will be determined and paid.

(iii) That the agreement and any amendments to the agreement shall not be in full force and effect until concurred with in writing by the State Director or the State Director's delegate, and it will contain the following provision:

The Farmers Home Administration or its successor agency under Public Law 103–354, as potential lender or insurer of funds to defray the costs of this agreement and without liability for any payments thereunder, hereby concurs in the form, content and the execution of this agreement.

Date _____

FmHA or its successor agency under Public Law 103–354 Approval Official _____

Title _____

(5) *Specific services.* Architectural services will include six consecutive phases as follows:

(i) *Schematic design phase.* The architect will:

(A) Consult with the applicant to obtain available information pertinent to the project requirements.

(B) Consult with FmHA or its successor agency under Public Law 103–354 State architect/engineer about FmHA or its successor agency under Public Law 103–354 requirements and procedures.

(C) Assist in preparing the project design after analyzing engineering and survey data on the site selected by applicant.

(D) Prepare schematic design studies consisting of drawings and other documents illustrating the scale and relationship of project components for the applicant's approval.

(E) Submit estimates of current development costs based on current area, volume, or other unit costs.

(F) When the applicant and FmHA or its successor agency under Public Law 103–354 have accepted the schematic design studies and estimated development costs, the project architect may be authorized to proceed with the next phase.

(ii) *Design development phase.* The architect will:

(A) Prepare the design development exhibits from the accepted schematic design studies for approval by the applicant. These exhibits should consist of drawings and other documents to fix and describe the size and character of the entire project as to structural, mechanical, and electrical systems, materials, and other essentials as appropriate.

(B) Submit a further statement of probable construction cost.

(C) Obtain applicant and FmHA or its successor agency under Public Law 103–354 approval of drawings, specifications, and authorization to proceed with next phase.

(iii) *Construction documents phase.* The architect will:

(A) Prepare the working drawings and specifications from the approved design development drawings and set forth in detail the requirements for the construction of the entire project in accordance with applicable regulations and codes; for example, necessary bidding information, assistance in preparing bidding forms, conditions of the construction contract, and the form of agreement between applicant/owner and contractor.

(B) Submit a final and more comprehensive statement of probable development cost. It should show a breakdown of the estimated total development cost of the project and the various trades in enough detail for an adequate review.

(C) Obtain the acceptance of the applicant and FmHA or its successor agency under Public Law 103–354 for contract documents, including approval of the final drawings and specifications and authorization to proceed.

(D) Discuss with the applicant various items as they develop.

(iv) *Bidding or negotiation phase.* The architect will, as appropriate, for a bidded or negotiated contract:

(A) Assist in review and selection of bidders and submission of contract documents to selected bidders.

(B) Assist in the interpretation of drawings and specifications, and other contract documents.

(C) Receive and tabulate all bids.

(D) Review the bids and the negotiated proposals and assist in the award and preparation of construction contracts.

(v) *Construction phase.* This phase includes the administration of the construction contract. It will commence with the award of the construction contract and end when the borrower makes final payment to the contractor. The architect will:

(A) Attend the preconstruction conference. Advise and consult with the borrower (or the borrower's representative) and issue the borrower's instructions to the contractor.

(B) Prepare change orders.

(C) Keep construction accounts and work as the general administrator of the project during construction.

(D) Interpret the contract documents and have the authority to reject all work and materials which do not comply.

(E) Review and approve shop drawings, samples, and other submissions of the contractor for conformance with the design concept and for compliance with the contract documents.

(F) Conduct periodic inspections of all phases of construction to determine compliance with the contract documents and certify as to the amount is in place and materials suitably stored on site for partial payment estimates. These inspections will be augmented, when necessary, by inspections performed by structural, mechanical, and electrical representatives. Periodic inspections should be made as frequently as is necessary to verify that the work conforms with the intent of the contract documents and that a high quality of workmanship is maintained. The State Director may require a full-time

project representative on projects with a total development cost of $750,000 or more, when in the opinion of the State Director there is a need for such representative, and the State Director states the reasons for such need to the borrower.

(G) Determine, based on the inspections, the dates of substantial completion and final completion; receive on the borrower's behalf all written guarantees and related documents assembled by the contractor; and issue a final certificate for payment.

(vi) *Warranty phase.* The architect will advise and consult with the borrower, as the borrower's representative, about items to be corrected within the warranty period. The architect will accompany the FmHA or its successor agency under Public Law 103–354 representative during the inspection required one month prior to expiration of the warranty period.

(b) *Other professional services.* The State Director, on the recommendation of the State architect/engineer, may request that additional professional services be provided.

(1) Professional services typically include soils engineering, structural engineering, civil engineering, surveying, land planning, or professional cost estimation or certification. Fees for these services may be paid directly by the borrower or by the architect as reimbursable expenses.

(2) When a project representative is utilized, unless otherwise agreed, the representative will be provided by the consulting architect/engineer. Prior to the preconstruction conference, the architect/engineer will submit a resume of qualifications of the project representative to the applicant and to FmHA or its successor agency under Public Law 103–354 for acceptance in writing. If the applicant provided the project representative, the applicant must submit a resume of the representative's qualifications to the project architect/engineer and FmHA or its successor agency under Public Law 103–354 for acceptance in writing, prior to the preconstruction conference. The project representative will attend the preconstruction conference where duties and responsibilities will be fully discussed. The project representative will work under the general supervision of the architect/engineer. The project representative will maintain a daily diary in accordance with the following:

(i) The diary shall be maintained in a hard-bound book.

(ii) The diary shall have all pages numbered and all entries in ink.

(iii) All entries shall be on daily basis, beginning with the date and weather conditions.

(iv) Daily entries shall include daily work performed, number of men and equipment used in the performance of the work, and all significant happenings during the day.

(v) The diary shall be made available to FmHA or its successor agency under Public Law 103–354 personnel and will be reviewed during project inspections.

(vi) The project representative's diary will become the property of the owner after the project is accepted and final payments are made.

(c) *Drawings.* The type and kinds of drawings should be in accordance with Exhibit C of this subpart and subpart D of part 1944 of this chapter.

(1) The drawings must be clear, accurate, with adequate dimensions and of sufficient scale for estimating purposes.

(2) Construction sections and large-scale details sufficient for accurate bidding and for the purpose of correlating all parts of the work should be part of the general drawings. This is particularly important where the size of a project makes necessary the preparation of the general drawings at a scale of 1/8 inch equals 1 foot or less.

(3) Mechanical and electrical work should be shown on separate plans.

(4) Schedules should be provided for doors, windows, finishes, electrical fixtures, finish hardware, and any other specialty items necessary to clarify drawings.

(d) *Specifications.* Trade-type specifications (specifications divided into sections for various trades) should be used. The specifications should be complete, clear, and concise, with adequate description of the various classes of work shown under the proper sections and headings.

(e) *Methods of administering construction.* Projects involving a total development cost of less than $100,000 which do not include an LH grant may, with the approval of the State Director, follow the contract procedure in § 1924.6(a) of this subpart without modification. Construction of all other projects, however, will be administered by the contract method or owner-builder method as set forth in this section.

(1) *Contract method.* This method of development will be used for all complex construction except in cases where owner-builder method is authorized. Development under this method is done in accordance with § 1924.6(a) of this subpart except as modified by this paragraph. All construction work will be completed under one written construction contract. Guide 1, ''Contract Documents,'' of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) is provided to assist FmHA or its successor agency under Public Law 103–354 personnel and applicants in assembling and reviewing contract documents for more complex construction such as that administered under this section.

(i) *Competitive bidding methods.* (A) All construction contracts must be awarded on the basis of competitive bidding unless an exception is granted in accordance with paragraph (e)(1)(vii) of this section thereby permitting contract negotiation. The applicant's architect should prepare the bidding documents. Public notice must be given inviting all interested bidders to submit a bid. Prospective bidders may be contacted asking for their bids; however, public notice is necessary so that all local contractors have the opportunity to submit bids.

(B) A bid bond is required from each bidder in the amount of 5 percent of the bid price as assurance that the bidder will, upon acceptance of the bid, execute the required contract documents within the time specified.

(C) The construction contract will be awarded based on the contract cost, and all conditions listed in the ''Invitation to Bid.''

(D) If advertising does not provide a satisfactory bid in the opinion of the applicant and FmHA or its successor agency under Public Law 103–354, the applicant shall reject all bids and will then be free to negotiate with bidders on anyone else to obtain a satisfactory contract. The following conditions must be met:

(*1*) The State Director determines that the original competitive bid process was handled in a satisfactory manner and that there is no advantage to advertising for competitive bid again.

(*2*) The requirements of paragraph (e)(1)(vii) of this section are met.

(E) If there is no agreement by FmHA or its successor agency under Public Law 103–354 and the applicant as to the construction cost, the State Director will cease any further action on the preapplication and inform the applicant of the right to appeal in accordance with subpart B of part 1900 of this chapter.

(ii) *Contract documents.* Contract documents will conform with recognized professional practices as prescribed in this paragraph. Such contract documents will contain substantially the following:

Item I Invitation for Bids (Form FmHA or its successor agency under Public Law 103–354 1924–5)
Item II Information for Bidders
Item III Bid
Item IV Bid Bond
Item V Agreement (Construction Contract)
Item VI Compliance Statement (Form FmHA or its successor agency under Public Law 103–354 400–6)
Item VII General Conditions
Item VIII Supplemental General Conditions
Item IX Payment Bond (Exhibit F of this subpart)
Item X Performance Bond (Exhibit G of this subpart)
Item XI Notice of Award
Item XII Notice of Proceed
Item XIII Drawings and Specifications
Item XIV Addenda
Item XV Contract Change Order (Form FmHA or its successor agency under Public Law 103–354 1924–7)
Item XVI Labor Standards Provisions [Where applicable]
Item XVII Monthly Employment Utilization Report (Form CC–257)
Item XVIII Partial Payment Estimate (Form FmHA or its successor agency under Public Law 103–354 1924–18)
Item XIX Builder's Warranty (Form FmHA or its successor agency under Public Law 103–354 1924–19)

(A) Substitution of term ''architect'' for ''engineer'' may be necessary on

some of the forms. Other modifications may be necessary in some cases to conform to the nature and extent of the project. All such contract documents and related items will be concurred with by the State Director, with the assistance of OGC prior to the release of invitations to bid.

(B) Items listed as I through IV and item XI of paragraph (e)(1)(ii) of this section may be omitted when an exception to the competitive bidding requirement is granted in accordance with paragraph (e)(1)(vii) of this section, thereby permitting a negotiated contract.

(C) All negotiated contracts shall include a provision to the effect that the borrower, USDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan program for the purpose of making audit, examination, excerpts, and transcriptions.

(D) A provision of liquidated damages *will* be included in all contracts. The liquidated damage amount must be reasonable and represent the best estimate possible of how much interest or other costs will accrue on the loan, and also represent any loss of rent or other income which would result from a delay in the completion of the project beyond the estimated completion date.

(E) All contracts shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act prohibits anyone from inducing any person in connection with the construction to give up any part of the compensation to which the person is otherwise entitled.

(F) All contracts will contain a certification by the applicant indicating that there is not now nor will there be an identity of interest between the applicant and any of the following: Contractor, architect, engineer, attorney, subcontractors, material suppliers, equipment lessors, or any of their members, directors, officers, stockholders, partners, or beneficiaries unless specifically identified to FmHA or its successor agency under Public Law 103–354 in writing prior to the award of the contract. All contracts must also indicate that when any identity of interest exists or comes into being, the contractor agrees to have construction costs as reported to FmHA or its successor agency under Public Law 103–354 on Form 1924–13, ''Estimate and Certificate of Actual Cost,'' audited by a Certified Public Accountant (CPA) or Licensed Public Accountant (LPA) licensed prior to December 31, 1970, who will provide an opinion as to whether the Form FmHA or its successor agency under Public Law 103–354 1924–13 presents fairly the costs of construction in conformity with eligible construction costs as prescribed in FmHA or its successor agency under Public Law 103–354 regulations.

(G) All contracts on any form other than Form FmHA or its successor agency under Public Law 103–354 1924–6, must contain the language of clause (D) of Form FmHA or its successor agency under Public Law 103–354 1924–6, which is available in all FmHA or its successor agency under Public Law 103–354 offices. The language of clause (D) of Form FmHA or its successor agency under Public Law 103–354 1924–6 sets forth the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity required by Executive Order 11246, the Equal Opportunity clause published at 41 CFR 60–1.4 (a) and (b), and the Standard Federal Equal Employment Opportunity Construction Contract Specifications required by Executive Order 11246. For contract forms other than Form FmHA or its successor agency under Public Law 103–354 1924–6, Form AD 767, ''Equal Employment Opportunity Contract Compliance Notices,'' which can be obtained from the Finance Office, should be attached and made a part of the contract.

(H) All contracts will contain a provision that they are not in full force and effect until concurred with by the State Director or the State Director's delegate, in writing. Therefore, before loan closing or before the start of construction, whichever occurs first, the State Director or the State Director's delegate will concur in the contract

form, content, and execution if acceptable, by including the following paragraph at the end of the contract:

The Farmers Home Administration or its successor agency under Public Law 103–354, as potential lender or insurer of funds to defray to costs of this contract, and without liability for any payments thereunder, hereby concurs in the form, content, and execution of this contract.

Date _____

_____

FmHA or its successor agency under Public Law 103–354 Official

_____

Title

(I) The requirements of § 1924.6 (a)(11)(iv) of this subpart apply to all contracts or subcontracts in excess of $10,000.

(iii) *Surety*. When multiple advances of loan or grant funds are utilized, surety that guarantees both payment and performance in the full amount of the contract will be provided in accordance with § 1924.6(a)(3)(ii) of this subpart. Exceptions to the surety requirements shall be governed by the following:

(A) In accordance with the guidance and recommendations of OMB Circulars A–102 and A–110, exceptions to the surety requirements of § 1924.6(a)(3)(ii) of this subpart will not be granted for nonprofit organization or public body applicants.

(B) For loans or grants to applicants other than non-profit organizations or public bodies that are within the State Director's approval authority, the State Director may, upon request of the borrower or grantee, grant exceptions to the surety requirements in accordance with the provisions of § 1924.6(a)(3)(iii) of this subpart. Before granting such an exception, however, the State Director should be provided the following information from the proposed contractor in order to fully evaluate the experience and capabilities of the contractor:

(*1*) A resume indicating the contractor's history, ability and experience.

(*2*) A current, dated and signed financial statement of the contractor's operations indicating the payment status of accounts and any contingent liabilities that may exist. FmHA or its successor agency under Public Law 103–354 personnel will be responsible for analyzing the financial statement as to the sufficiency of the contractor's financial capability to carry out construction. The financial strength must demonstrate the ability of the contractor to pay all bills prior to receiving periodic draws of funds from the lender.

(*3*) A credit report (obtained at no expense to FmHA or its successor agency under Public Law 103–354) attesting to the contractor's credit standing.

(*4*) A listing of trade references that could be contacted to substantiate the contractor's experience and good standing.

(*5*) Statements from owners for whom the contractor has done similar work, indicating the scope of the work and the owner's evaluation of the contractor's performance.

(C) For loans or grants to applicants other than non-profit organization or public bodies that are in excess of the State Director's approval authority, the State Director may request National Office authorization to grant one of the exceptions to the surety requirements as indicated in § 1924.6(a)(3)(iii) of this subpart. The following information must be submitted with the request to the National Office:

(*1*) An explanation of why interim financing is not available.

(*2*) An explanation of why the proposed contractor cannot obtain surety bonds meeting the requirements of § 1924.6(a)(3)(ii) of this subpart.

(*3*) The information listed in paragraph (e)(1)(iii)(B) of this section.

(*4*) The drawings and specifications for the proposed project, together with the comments of the State architect/engineer.

(*5*) The applicant's written request for an exception.

(*6*) An explanation of why the requirements of § 1924.6(a)(3)(iii)(A) or (B) of this subpart cannot be met in those cases where the State Director requests authorization to grant an exception as indicated in § 1924.6(a)(3)(iii)(C) of this subpart. When such a request is made, the documentation required of the contractor under the provision must also be forwarded.

(*7*) The State Director's recommendation.

(D) Adequate steps will be taken to protect the interests of the borrower and the government in accordance with the payment provisions of § 1924.6(a)(12)(i) of this subpart and any alternative as outlined in § 1924.6(a)(3)(iii)(c) of this subpart.

(iv) *Contract cost breakdown.* In any case where the loan approval official feels it appropriate, and prior to the award or approval of any contract in which there is an identity of interest as defined in § 1924.4 (i) of this subpart, the contractor and any subcontractor, material supplier or equipment lessor sharing an identity of interest must provide the applicant and FmHA or its successor agency under Public Law 103–354 with a trade-item cost breakdown of the proposed contract amount for evaluation. The cost of any surety as required by § 1944.222 (h) and (i) of subpart E of part 1944 of this chapter and § 1924.6 (a)(3) of this subpart, or cost certification as required by paragraph (e)(1)(v) of this section, will be included in the proposed contract amount and shown under General Requirements on Form FmHA or its successor agency under Public Law 103–354 1924–13, which is available in all FmHA or its successor agency under Public Law 103–354 offices. FmHA or its successor agency under Public Law 103–354 personnel will be responsible for reviewing the estimates on Form FmHA or its successor agency under Public Law 103–354 1924–13 to determine if the dollar amounts total correctly, to assure that costs are categorized under their appropriate columns, and to confirm that the estimated costs for all line items are reasonable and customary for the State.

(v) *Cost certification.* Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in § 1924.4 (i) of this subpart, the borrower, contractor and any subcontractor, material supplier, or equipment lessor having an identity of interest must each provide certification using Form FmHA or its successor agency under Public Law 103–354 1924–13 as to the actual cost of the work performed in connection with the construction contract. The construction costs, as reported on Form FmHA or its successor agency under Public Law 103–354 1924–13, must also be audited, in accordance with Government Auditing Standards, by a CPA, or LPA licensed on or before December 31, 1970. In addition, certain agreed upon procedures (available in any FmHA or its successor agency under Public Law 103–354 office) will be performed in accordance with Attestation Standards. In some cases, FmHA or its successor agency under Public Law 103–354 will contract directly with a CPA or LPA for the cost certification. In that event, documentation necessary to have the costs of construction certified by an FmHA or its successor agency under Public Law 103–354 contractor that they were the actual costs of the work performed, as reported on Form FmHA or its successor agency under Public Law 103–354 1924–13, will be provided. Funds which were included in the loan for cost certification and which are ultimately not needed because FmHA or its successor agency under Public Law 103–354 contracts for the cost certification will be returned on the loan. FmHA or its successor agency under Public Law 103–354 personnel will utilize Exhibit M of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) and Form FmHA or its successor agency under Public Law 103–354 1924–26, ''Cost Certification Worksheet,'' to assist in the evaluation of the cost certification process.

(A) Prior to the start of construction, the borrower, contractor and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must submit, to the CPA or LPA, the accounting system that the borrower, contractor, subcontractor, material supplier or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable, the borrower must provide a written assertion that it has an accounting system that is suitably designed to provide for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted on Form FmHA or its successor agency under Public Law 103–354 1924–13. Costs pertaining to a specific line item will be set up in the accounting system for that particular account. For instance,

only costs of materials, supplies, equipment, and labor associated with concrete will be shown in the concrete account. The accounting system must also restrict costs to those pertaining to a specific project so that costs from multiple projects will not be co-mingled. The independent CPA or LPA shall report on the borrower's assertion in accordance with the Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA). The borrower's and the CPA or LPA's reports on the accounting system shall be provided to FmHA or its successor agency under Public Law 103–354 by the borrower.

(B) Prior to final payment to anyone required to cost certify, a trade-item breakdown showing the actual cost compared to the estimated cost must be provided to the owner and FmHA or its successor agency under Public Law 103–354. Form FmHA or its successor agency under Public Law 103–354 1924–13 is the form of comparative breakdown that must be used, and contains the certifications required of the applicant and contractor prior to final payment. The amounts for builder's general overhead, builder's profit, and general requirements, respectively, shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(1)(iv) of this section for any contractor, subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the borrower. The amounts for general overhead, builder's profit, and general requirements must be established prior to FmHA or its successor agency under Public Law 103–354 approving the construction contract and will not be changed during the course of construction. This applies to all contractors, subcontractors, material suppliers, or equipment lessors having or sharing an identity of interest with the applicant. Contract change orders will be processed to adjust the contract amount downward prior to the final payment to the contractor, if necessary, to assure that the amounts shown in the certificate of actual costs do not exceed the amounts represented in the contract cost breakdown. Reduction in the builder's profit, and general overhead if needed, will counterbalance any increase reflected in the contract costs. Any funds remaining as a result of hard cost savings will be applied to the account as an extra payment or used for eligible loan purposes approved by FmHA or its successor agency under Public Law 103–354 as long as the improvements are genuinely needed and will enhance marketability of the project. All increases or decreases of 15 percent or more in line item costs will require documentation as to the reason for the increases and/or decreases. The State Director may require documentation for increases and/or decreases of less than 15 percent, if he/she determines it necessary. This information will be required with the cost certification.

(C) The CPA or LPA audit, performed in accordance with Government Auditing Standards, will include such tests of the accounting records and such other auditing procedures of the borrower and the contractor (and any subcontractor, material supplier or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in accordance with the construction contract he/she considers necessary to express an opinion on the construction costs as reported on Form FmHA or its successor agency under Public Law 103–354 1924–13. The CPA or LPA shall also perform the additional agreed upon procedures specified by FmHA or its successor agency under Public Law 103–354 (available in any FmHA or its successor agency under Public Law 103–354 office), performed in accordance with Attestation Standards, for the applicant and the contractor (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in accordance with the construction contract.

(D) Upon completion of construction and prior to final payment, the CPA or LPA will provide an opinion concerning whether the construction costs, as reported on Form FmHA or its successor agency under Public Law 103–354 1924–13, present fairly the costs of construction in conformity with eligible construction costs as prescribed in

FmHA or its successor agency under Public Law 103–354 regulations.

(E) In some cases, cost certification will be obtained by FmHA or its successor agency under Public Law 103–354 through direct contract with the CPA or LPA. The borrower and his/her CPA or LPA will cooperate fully with the contract CPA or LPA by providing all documentation necessary to conduct the certification. FmHA or its successor agency under Public Law 103–354 reserves the right to determine, upon receipt of the certified Form FmHA or its successor agency under Public Law 103–354 1924–13 and the auditor's report, whether they are satisfactory to FmHA or its successor agency under Public Law 103–354. If not satisfactory to FmHA or its successor agency under Public Law 103–354, the borrower will be responsible for providing additional information.

(F) There will exist no business relationship between the CPA or LPA and the borrower except for the performance of the examination of the cost certification, accounting systems work, and tax preparation. Any CPA or LPA who acts as the borrower's accountant (performing manual or automated bookkeeping services or maintains the official accounting records) will not be the same CPA or LPA who cost certifies the project.

(G) Forms FmHA or its successor agency under Public Law 103–354 1944–30, ''Identity of Interest (IOI) Disclosure Certificate'' and FmHA or its successor agency under Public Law 103–354 1944–31, ''Identity of Interest (IOI) Qualification Form,'' provide written notification to the borrower that willful and intentional falsification of cost certification documents will result in debarment of all violators in accordance with the provisions of FmHA or its successor agency under Public Law 103–354 Instruction 1940–M (available in any FmHA or its successor agency under Public Law 103–354 office). These forms require the disclosure of all identities of interest associated with project construction, certify the entity's ability to provide the contracted service, and cite the penalties for failure to disclose or falsify such certification. Each applicant/borrower will be required to complete and sign the forms (available in any FmHA or its successor agency under Public Law 103–354 office).

(H) Subcontracting development work.

(*1*) Contractors will not be allowed to obtain a profit and overhead unless they are performing actual construction. ''Actual construction'' means ''work'' as defined in American Institute of Architects (AIA) documents: ''* * * labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations.'' Under this definition, contractors who choose to subcontract out construction of the project to another contractor will not obtain a builder's fee (general overhead and profit) when:

(*i*) More than 50 percent of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor, and/or

(*ii*) Seventy-five percent or more with three or fewer subcontractors, material suppliers and/or equipment lessors.

(*2*) NOTE: If two or more subcontractors have common ownership, they are considered as one subcontractor.

(*3*) How to apply rule:

(*i*) The 50 percent rule will apply when division of the amount of the largest subcontract by the contract sum of the construction contract results in more than 50 percent.

(*ii*) The 75 percent rule will apply when division of the sum of the amounts of the three largest subcontracts by the contract sum of the construction contract results in 75 percent or more.

(I) Qualified contracting entities. Contractors, subcontractors, material suppliers, and any other individual or organization sharing an identity of interest and providing materials or services for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract. Form FmHA or its successor agency under Public Law 103–354 1944–31 will be prepared and executed by the contracting entities. The form provides notification to the entities of the penalty, under law, for erroneously certifying to the statements contained

therein. Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of FmHA or its successor agency under Public Law 103–354 Instruction 1940–M (available in any FmHA or its successor agency under Public Law 103–354 office).

(vi) *Method of payments.* Partial payments may be requested in accordance with the terms of the construction contract on Form FmHA or its successor agency under Public Law 103–354 1924–18, ''Partial Payment Estimate,'' or other professionally recognized form that contains the architect's certification, approval of the owner, and conditional acceptance of FmHA or its successor agency under Public Law 103–354 as shown in Form FmHA or its successor agency under Public Law 103–354 1924–18.

(A) If interim financing is available at reasonable rates and terms for the construction period, such financing shall be obtained. Exhibit B of subpart E of part 1944 of this chapter shall be used to inform the interim lender that FmHA or its successor agency under Public Law 103–354 will not close its loan until the project is substantially complete, ready for occupancy, evidence is furnished indicating that all bills have been paid or will be paid at loan closing for work completed on the project, all inspections have been completed and all required approvals have been obtained from municipal and governmental authorities having jurisdiction over the project.

Upon presentation of proper partial payment estimates approved by the applicant and accepted by FmHA or its successor agency under Public Law 103–354, the interim lender may advance construction funds in accordance with the payment terms of the contract. It is suggested that partial payments not exceed 90 percent of the value of work in place and materials suitably stored on site.

(B) When interim financing is not available, payments will be made in accordance with § 1924.6(a)(12) of this subpart.

(vii) *Exception to competitive bidding*—(A) *For all applicants.* An applicant may negotiate a construction contract provided the State Director grants an exception and documentation shows that:

(*1*) The contract price is competitive with other projects similar in construction and design being built in the area.

(*2*) The proposed contractor is experienced in construction of projects of similar size, scope, and complexity, and is recognized as a reliable builder.

(*3*) The proposed development work meets all requirements of this subpart.

(*4*) If appropriate for nonprofit organizations and public bodies, the applicant provides a copy of a duly authorized resolution by its governing body requesting FmHA or its successor agency under Public Law 103–354 to permit awarding the construction contract without formal bidding.

(*5*) The applicant is permitted by state law, local law and/or organizational by-laws to negotiate a construction contract.

(*6*) The requirements of paragraphs (e)(1)(ii), (iii), (iv) and (v) of this section are met.

(B) In considering an exception to competitive bidding, the following additional steps will be taken in all cases.

(*1*) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the costs are reasonable, an exception to competitive bidding may be granted. Written documentation of the State Office review results will be placed in the application file.

(*2*) If after the full review by the State Office staff, the State Director determines that the negotiated contract price is not competitive with other similar projects in construction and design being built in the area, the applicant will be requested to competitively bid the construction of the project in accordance with paragraph (e)(1)(i) of this section.

(*3*) If there is no agreement by FmHA or its successor agency under Public Law 103–354 and the applicant as to the construction cost, the State Director will cease any further action on the preapplication and inform the applicant of the right to appeal in accordance with subpart B of part 1900 of this chapter.

(C) Any requests for exceptions to competitive bidding that are not covered in this section may be submitted to the National Office for consideration.

(viii) *Exception to contract method—public body*. With the approval of the National Office, the State Director may grant to a public body an exception to the requirement for using contract method construction under the following circumstances:

(A) The loan or grant is for repair or rehabilitation of existing facilities and it is not practicable to perform all work by the contract method.

(B) The applicant has the managerial ability and qualified employees necessary to complete the work successfully.

(C) That applicant submits a written request to the District Director indicating:

(*1*) The scope of work and construction timetable;

(*2*) What phases of work can be contracted and what cannot;

(*3*) Why is it not practicable to contract all phases;

(*4*) Management ability and employee qualifications for performing the work;

(*5*) Proposed method of fund control and frequency of payments;

(*6*) How changes in scope of work and construction timetable will be approved; and,

(*7*) Proposed method of certifying progress and requesting payments.

(D) The request, recommendations of the District Director, appropriate members of the State Office staff and the State Director and the application file will be sent to the National Office.

(2) *Owner-builder method*. This method of development is used only when requested by profit or limited profit RRH applicants when the applicant or any of its controlling principals (such as stockholders, members, partners other than limited partners, directors, or officers), are general contractors by profession, and will serve as the builder of the project without a written construction contract. The State Director may make an exception to the contract method of construction and authorize proceeding by the owner-builder method of construction in accordance with the provisions of this section if the amount of the loan(s) does not exceed the State Director's approval authority. For projects over the State Director's authority, prior written consent of the National Office is required. In such cases, the drawings, specifications, cost estimates, copy of the State Architect/Engineer's review and detailed information on the applicant's qualifications will be submitted to the National Office along with the State Director's recommendations.

(i) The applicant's request to construct a project by the owner-builder method of construction shall be in the form of a letter giving specific and detailed information concerning the owner-builder's proposal, and the qualifications and past experience of the owner-builder. The following information must be included with the request:

(A) A resume indicating the owner-builder's history, ability, and experience.

(B) Dated and signed financial statements on the owner-builder's operation (including balance sheets and statements of income and expense) from current and prior years indicating the payment status of the owner-builder's accounts and any contingent liabilities that may exist. FmHA or its successor agency under Public Law 103–354 personnel will be responsible for analyzing the financial statement as to the sufficiency of the owner-builder's financial capability to carry out construction. The financial strength must demonstrate the ability of the owner-builder to pay all bills prior to receiving periodic draws of funds from the lender.

(C) A written, dated, and signed statement agreement to provide any funds necessary in excess of the applicant's contribution and the loan amount to complete the project.

(D) A credit report (obtained at no expense to FmHA or its successor agency under Public Law 103–354) attesting to the owner-builder's credit standing.

(E) A listing of trade references that could be contacted to substantiate the owner-builder's experience and good standing.

(F) Statements from other persons for whom the owner-builder has done similar work, indicating the scope of

the work and that person's evaluation of the owner-builder's performance.

(G) A current, dated, and signed trade-item cost breakdown of the estimated total development cost of the project which has been prepared by the applicant/owner-builder. Form FmHA or its successor agency under Public Law 103–354 1924–13 will be used for this purpose. If cost certification services are required by FmHA or its successor agency under Public Law 103–354, the cost of such services may be included in the total development cost of the project. Any subcontractor, material supplier, or equipment lessor sharing an identity of interest with the applicant/owner-builder as defined in § 1924.4(i) of this subpart must also provide a trade-item cost breakdown of the proposed amount.

(H) Prior to the start of construction, the owner-builder and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must submit, to the CPA or LPA, the accounting system that the owner-builder, subcontractor, material supplier or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable, the owner-builder must provide a written assertion that it has an accounting system that is suitably designed to provide for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted on Form FmHA or its successor agency under Public Law 103–354 1924–13. Costs pertaining to a specific line item will be set up in the accounting system for that particular account. For instance, only costs of materials, supplies, equipment, and labor associated with concrete will be shown in the concrete account. The accounting system must also restrict costs to those pertaining to a specific project so that costs from multiple projects will not be co-mingled. The independent CPA or LPA shall report on the owner-builder's assertion in accordance with the Standards for Attestation Engagements of the AICPA. The owner-builder's and the CPA or LPA's reports on the accounting system shall be provided to FmHA or its successor agency under Public Law 103–354 by the owner-builder.

(I) A written, dated, and signed statement agreeing to permit U.S. Department of Agriculture, the Comptroller General of the United States, or any of their duly authorized representatives, to have access to any books, documents, papers, and records which are directly pertinent to the specific Federal program for the purpose of making audit, examination, excerpts and transcriptions.

(ii) In order to grant an exception to the contract method of construction and proceed with the owner-builder method of construction, the State Director must determine that the following conditions exist:

(A) The applicant or at least one of its principals is a fully qualified and licensed (if necessary under applicable local law) builder by profession, has adequate experience in constructing the type of units proposed as well as projects of similar size, scope, and complexity and will be able to complete the work in accordance with the FmHA or its successor agency under Public Law 103–354 approved drawings and specifications.

(B) Based upon the information presented in the applicant's financial statements, the applicant is presently able and is likely to continue to be able to provide any funds necessary in excess of the applicant's contribution and the loan amount to complete the project.

(C) The total development cost of the project does not exceed that which is typical for similar type projects in the area. The total development cost recognized by FmHA or its successor agency under Public Law 103–354 for each individual case will be determined by the MFH Coordinator with the advice of the State Architect.

(D) The owner-builder has provided sufficient information on all contracts or subcontracts in excess of $10,000 to permit compliance with § 1924.6(a)(11)(iv) of this subpart.

(iii) In addition to the requirements for the State Director to authorize the owner-builder method of construction as indicated in § 1924.13(e)(2)(i) and (ii)

of this subpart, the following additional steps will be taken by the State Director.

(A) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the construction cost is reasonable, an exception to competitive bidding may be granted. Written documentation of the State Office review results will be placed in the application file.

(B) If, after the full review by the State Office staff, the State Director determines that the construction cost is not competitive with other similar projects in construction and design being built in the area, the applicant will be requested to competitively bid the construction of the project in accordance with paragraph (e)(1)(i) of this section.

(C) If there is no agreement by FmHA or its successor agency under Public Law 103–354 and the applicant as to construction cost and the applicant is not agreeable to any of the aforementioned alternatives, the State Director will cease any further action on the preapplication and inform the applicant of the right to appeal, in accordance with subpart B of part 1900 of this chapter.

(iv) The development cost of the project may include a typical allowance for general overhead, general requirements and a builder's profit. These amounts may be determined by local investigation and also from HUD data for the area. The applicant/owner-builder and any subcontractors, material suppliers and equipment lessors having or sharing an identity of interest with the applicant/owner-builder may not be permitted a builder's profit, general overhead, and general requirements which exceed the amounts represented on their cost breakdown.

(v) Under no circumstances will loan funds be used to pay the owner/builder or its stockholders, members, directors or officers, directly or indirectly, any profits from the construction of the project except a typical builder's fee for performing the services that would normally be performed by a general contractor under the contract method of construction. Discounts and rebates given the owner-builder in advance must be deducted before the invoices are paid. If discounts or rebates are given after the invoices are paid, the funds must be returned to the supervised bank account or applied on the interim construction loan, as appropriate. Under no circumstances will the dollar amount be placed in the reserve account.

(vi) The plan and specifications must be specific and complete so that there is a clear understanding as to how the facility will be constructed and the materials that will be used.

(vii) When architectural services are required by § 1924.13(a) during the construction and warranty phases they must be provided by an architect who has no identity of interest with the applicant/owner-builder. The services to be rendered during the construction and warranty phases include, but are not limited to inspections, changes in the scope of project or work to be done, administration of construction accounts, rejection of work and materials not conforming to the FmHA or its successor agency under Public Law 103–354 approved drawings and specifications, and other appropriate service listed in § 1924.13(a)(5)(v) and (vi) of this subpart.

(viii) The applicant/owner-builder and any subcontractor, material supplier, or equipment lessor sharing an identity of interest as defined in § 1924.4(i) of this subpart must each provide certification as to the actual cost of the work performed in connection with the construction of the project on Form FmHA or its successor agency under Public Law 103–354 1924–13 prior to final payment. The construction costs, as reported on Form FmHA or its successor agency under Public Law 103–354 1924–13, must be audited by a CPA, or LPA licensed on or before December 31, 1970, in accordance with Government Auditing Standards, and certain agreed upon procedures (available in any FmHA or its successor agency under Public Law 103–354 office) performed in accordance with Attestation Standards. In some cases, FmHA or its successor agency under Public Law 103–354 will contract directly with a CPA or LPA for the cost certification. In that event, documentation

necessary to have the costs of construction certified by an FmHA or its successor agency under Public Law 103–354 contractor that they were the actual costs of the work performed, as reported on Form FmHA or its successor agency under Public Law 103–354 1924–13, will be provided. Funds which were included in the loan for cost certification and which are ultimately not needed because FmHA or its successor agency under Public Law 103–354 contracts for the cost certification will be returned on the loan.

(A) The CPA or LPA's audit, performed in accordance with Government Auditing Standards, will include such tests of the accounting records and such other auditing procedures of the applicant/owner-builder (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in connection with the construction of the project he/she considers necessary to express an opinion on the construction costs as reported on Form FmHA or its successor agency under Public Law 103–354 1924–13. Upon completion of construction and prior to final payment, the CPA or LPA will provide an opinion as to whether the construction costs as reported on Form FmHA or its successor agency under Public Law 103–354 1924–13 present fairly the costs of construction in conformity with eligible construction costs as prescribed in FmHA or its successor agency under Public Law 103–354 regulations. FmHA or its successor agency under Public Law 103–354 reserves the right to determine, upon receipt of the certified Form FmHA or its successor agency under Public Law 103–354 1924–13 and the auditor's report, whether they are satisfactory to FmHA or its successor agency under Public Law 103–354. At a minimum, the CPA or LPA shall also perform any additional agreed upon procedures (available in any FmHA or its successor agency under Public Law 103–354 office) specified by FmHA or its successor agency under Public Law 103–354, performed in accordance with Attestation Standards, of the owner-builder (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in connection with the construction. There will exist no business relationship between the CPA or LPA and the borrower except for the performance of the examination of the cost certification, accounting systems work, and tax preparation. Any CPA or LPA who acts as the borrower's accountant (performing manual or automated bookkeeping services or maintains the official accounting records) will not be the same CPA or LPA who cost certifies the project.

(B) Prior to final payment to anyone required to cost certify, FmHA or its successor agency under Public Law 103–354 must be provided with a certification and a trade-item breakdown showing the actual cost compared to the estimated cost furnished in accordance with paragraph (e)(2)(i)(G) of this section. Form FmHA or its successor agency under Public Law 103–354 1924–13 is the form of comparative breakdown that must be used, and contains the certification required of the applicant/owner-builder prior to final payment. The amounts for builder's general overhead, general requirements, and builder's profit shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(2)(i)(G) of this section for the owner-builder or any subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the applicant/owner-builder. Final payment to the owner-builder will be adjusted, if necessary, to assure that the amounts shown on the certificate of actual cost do not exceed the amounts represented on the cost breakdown. Any funds remaining as a result of hard cost savings will be applied to the account as an extra payment or used for eligible loan purposes approved by FmHA or its successor agency under Public Law 103–354 as long as the improvements are genuinely needed and will enhance marketability of the project. All increases or decreases of 15 percent or more in line item costs will require documentation as to the reason for the increases or decreases. The State Director may require documentation for increases or decreases of less than 15

percent, if he/she determines it necessary. This information will be required with the cost certification.

(C) Subcontracting development work.

(*1*) Owner-builders will not be allowed to obtain a profit and overhead unless they are performing actual construction. ''Actual construction'' means ''work'' as defined in AIA documents: ''* * * labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations.'' Under this definition, owner-builders who choose to subcontract out construction of the project to another contractor will not obtain a builder's fee (general overhead and profit) when:

(*i*) More than 50 percent of the total cost of the building construction is subcontracted to one subcontractor, material supplier, or equipment lessor, and/or

(*ii*) Seventy-five percent or more with three or fewer subcontractors, material suppliers, and/or equipment lessors.

(*2*) NOTE: If two or more subcontractors have common ownership, they are considered as one subcontractor.

(*3*) How to apply rule:

(*i*) The 50 percent rule will apply when division of the amount of the largest subcontract by the total amount of the building cost results in more than 50 percent.

(*ii*) The 75 percent rule will apply when division of the sum of the amounts of the three largest subcontracts by the total building cost results in 75 percent or more.

(D) Qualified contracting entities. Contractors, subcontractors, material suppliers, and any other individual or organization sharing an identity of interest and providing materials or services for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract. Form FmHA or its successor agency under Public Law 103–354 1944–31 will be prepared and executed by the contracting entities. The form provides notification to the entities of the penalty, under law, for erroneously certifying to the statements contained therein. Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of FmHA or its successor agency under Public Law 103–354 Instruction 1940–M (available in any FmHA or its successor agency under Public Law 103–354 office).

(ix) Requests for payment for work performed by the owner-builder method, shall be permitted to the FmHA or its successor agency under Public Law 103–354 District Director for review and approval prior to each advance of funds in order to insure that funds are used for authorized purposes. Requests for payment shall be made on Form FmHA or its successor agency under Public Law 103–354 1924–18 or other professionally recognized form containing the following certification to FmHA or its successor agency under Public Law 103–354:

The undersigned certifies that the work has been carefully inspected and to the best of their knowledge and belief, the quantities shown in this estimate are correct and the work has been performed in accordance with the contract documents.

(Name of Architect)

By: _____

(Title (Date)

Approved by Owner's Representative: By: —

(Title)

Accepted by FmHA or its successor agency under Public Law 103–354 Representative: By: _____

(Title)

The review and acceptance of partial payment estimates by FmHA or its successor agency under Public Law 103–354 does not attest to the correctness of the quantities shown or that the work has been performed in accordance with the plans and specifications.

(A) If interim financing is available at reasonable rates and terms for the construction period, such financing shall be obtained. Exhibit B of subpart E of part 1944 of this chapter shall be used to inform the interim lender that FmHA or its successor agency under Public Law 103–354 will not close its loan until the project is complete, ready for occupancy, evidence is furnished indicating that all bills have been paid for work completed on the

project, all inspections have been completed and all required approvals have been obtained from any governmental authorities having jurisdiction over the project. Upon presentation of proper partial payment estimates containing an estimate of the value of work in place which has been prepared and executed by the owner-builder, certified by the applicant's architect, and accepted by FmHA or its successor agency under Public Law 103–354, the interim lender may advance construction funds in accordance with the provisions of this section. It is suggested that the partial payment not exceed 90 percent of the value of work in place and material suitably stored on site.

(B) If interim financing is not available, partial payments not to exceed 90 percent of the value of work in place and materials suitably stored on site may be made to the owner-builder for that portion of the estimated cost of development guaranteed by a letter of credit or deposits meeting the requirements of § 1924.6(a)(3)(iii)(A), (B) or (C) of this subpart. Partial payments may not exceed 60 percent of the value of work in place in all other cases. The determination of the value of work in place will be based upon an application for payment containing an estimate of the value of work in place which has been prepared and executed by the owner-builder, certified by the borrower's architect, and accepted by FmHA or its successor agency under Public Law 103–354. Prior to receiving the first partial payment, the owner-builder must submit a schedule of prices or values of the various trades or phases of the work aggregating the total development cost of the project as required in § 1924.13(e)(2)(i)(G) and (H) of this subpart. Each application for payment must be based upon this schedule, and show the total amount owed and paid to date for materials and labor procured in connection with the project. With each application for payment, the owner-builder must also submit evidence showing how the requested partial payment is to be applied, evidence showing that previous partial payments were properly applied, and a signed statement from the applicant's attorney, title insurance company, or local official in charge of recording documents certifying that the public records have been searched and that there are no liens of record. When the District Director has reason to believe that partial payments may not be applied properly, checks will be made payable to persons who furnish materials and labor for eligible purposes in connection with the project.

(x) Under no circumstances shall funds be released for final payment or to pay any items of the builder's profit until the project is 100 percent complete, ready for occupancy, and the owner-builder has completed and properly executed Form FmHA or its successor agency under Public Law 103–354 1924–13 or complied with the cost certification procedures of § 1924.13(e)(2)(viii) of this subpart.

[52 FR 8002, Mar. 13, 1987; 52 FR 26139, July 13, 1987, as amended at 53 FR 2155, Jan. 26, 1988; 59 FR 6882, Feb. 14, 1994; 61 FR 56116, Oct. 31, 1996]

§§ 1924.14—1924.48 [Reserved]

§ 1924.49 State supplements.

State Supplements or policies will not be issued or adopted to either supplement or set requirements different from those of this subpart, unless specifically authorized in this subpart, without prior written approval of the National Office.

§ 1924.50 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0042. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 4 hours per response, with an average of 37 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250; and to the Office of Management and Budget,

Paperwork Reduction Project (OMB# 0575–0042), Washington, DC 20503.

[59 FR 6885, Feb. 14, 1994]

EXHIBITS TO SUBPART A

EXHIBIT A—ESTIMATED BREAKDOWN OF DWELLING COSTS FOR ESTIMATING PARTIAL PAYMENTS

[In percent]

	With slab on grade	With crawl space	With basement
1. Excavation	3	5	6
2. Footings, foundations columns	8	8	11
3. Floor slab or framing	6	4	4
4. Subflooring	0	1	1
5. Wall framing, sheathing	7	7	6
6. Roof and ceiling framing, sheathing	6	6	5
7. Roofing	5	5	4
8. Siding, exterior trim, porches	7	7	6
9. Windows and exterior doors	9	9	8
10. Plumbing—roughed in	3	2	3
11. Sewage disposal	1	1	1
12. Heating—roughed in	1	1	1
13. Electrical—roughed in	2	2	2
14. Insulation	2	2	2
15. Dry wall or plaster	8	8	7
16. Basement or porch floor, steps	1	1	6
17. Heating—finished	3	3	3
18. Flooring	6	6	5
19. Interior carpentry, trim, doors	6	6	5
20. Cabinets and counter tops	1	1	1
21. Interior painting	4	4	3
22. Exterior painting	1	1	1
23. Plumbing—complete fixtures	4	4	3
24. Electrical—complete fixtures	1	1	1
25. Finish hardware	1	1	1
26. Gutters and downspouts	1	1	1
27. Grading, paving, landscaping	3	3	3
Total	100	100	100

EXHIBIT B—REQUIREMENTS FOR MODULAR PANELIZED HOUSING UNITS

For the benefit of FmHA or its successor agency under Public Law 103–354 this Exhibit prescribes evaluation, acceptance, inspection and certification procedures formodular/panelized housing units proposed for use in Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) Rural Housing programs. It applies to proposed development packages provided either under a contract between an FmHA or its successor agency under Public Law 103–354 borrower and a single contractor or under a conditional commitment. This Exhibit also describes the use of background information available through the Department of Housing and Urban Development (HUD) for analysis of manufactured products. This Exhibit also applies to the evaluation of manufactured farm service buildings in paragraph XI, below. For the purpose of this Exhibit, County Supervisor and County Office also mean District Director and District Office, respectively.

I. Applicable Standards and Manuals.

A. The HUD Handbook 4950.1, Technical Suitability of Products Program Technical and Processing Procedures, must be followed by housing manufacturers to obtain acceptance of their products. Acceptance documents issued by HUD include: Structural Engineering Bulletins (SEB) on a national basis, Area Letters of Acceptance (ALA) which when accepted by all Area HUD Offices in a HUD region will, in essence, become Regional Letters of Acceptance (RLA), Truss Connector Bulletins (TCB): and, Mechanical Engineering Bulletins (MEB). These documents as well as the Use of Material Bulletins (UM) and Materials Release Bulletins (MR) are addendums to the HUD Minimum Property Standards (MPS), Under handbook guidelines, HUD also examines state agency regulations concerning design, construction and labeling of modular/panelized housing units and designates those states having procedures acceptable for use under HUD programs. Modular/panelized housing produced in these states is called *Category III* and is considered technically suitable for use without further structural analysis.

B. All State FmHA or its successor agency under Public Law 103–354 Offices should maintain a close working relationship with each HUD office in their jurisdiction to assure coordination. Any deviations in structure, materials or design from HUD acceptance documents must comply with one of the other applicable development standards.

II. Modular Housing Units that Require Factory Inspections.

Only those types which cannot be completely inspected on site are required to obtain acceptance from HUD. Those that receive acceptance will be periodically factory inspected by HUD or HUD's designated agency, usually about every 6 months.

III. Panelized Housing Units that Do Not Require Factory Inspections.

A. Housing completely assembled on the building site does not require HUD acceptance. This includes housing that is manufactured but is assembled on the site such as: Precut pieces, log wall houses, trussed roof rafters or floor trusses; open panel walls, and other types that can be completely inspected on site.

B. Housing that is assembled in local materials dealers' yards for moving to local sites and to be purchased by an FmHA or its successor agency under Public Law 103–354 applicant, will be inspected during construction in the yard by the local FmHA or its successor agency under Public Law 103–354 County representative.These units must be constructed according to the applicable development standard and not transported out of the local FmHA or its successor agency under Public Law 103–354 County Office jurisdiction. The inspection must be recorded on Form FmHA or its successor agency under Public Law 103–354 1924–12, ''Inspection Report.''

IV. Manufacturer's Actions Required for Submissions to FmHA or its successor agency under Public Law 103–354 are listed in Attachment 1 to this Exhibit B.

V. State FmHA or its successor agency under Public Law 103–354 Office Actions when Manufacturing Facilities are in its Jurisdiction. The State Office, upon receipt of manufacturer's submission, must:

A. Determine that the unit structural system has been accepted by HUD as appropriate under HUD Handbook 4950.1 requirements.

B. Review the thermal characteristics and approach of the calculations to determine actions to be taken in compliance with paragraph IV C of Exhibit D of this subpart.

C. Review the proposal for compliance with § 1924.5(d)(1) of this subpart.

D. Determine that the prerequisites for consideration of acceptance by FmHA or its successor agency under Public Law 103–354 are met. The prerequisites include all of the following:

1. A current acceptance document from HUD (SEB, RLA, ALA), except for Category III housing (modular/panelized housing that does not have to have a Structural Engineering Bulletin as designated by HUD). In Category III states, the state government requirements for manufactured housing must be followed.

2. A current HUD Factory Inspection Report, Form No. 2051m, or in the case of Category III housing, a copy of the inspection report from the state government or accepted third party performing the factory inspection. Each report must be made by HUD or a HUD authorized agency, and must be no older than 6 months.

3. A letter from the manufacturer requesting a review for acceptance. Enclosed with the letter shall be all the information listed in Attachment 1 to this Exhibit B.

E. Issue acceptance letters to the manufacturer stating the conditions of acceptance in the format of Attachment 2 to this Exhibit B. The letter shall have an attachment listing all models accepted in the format of Attachment 3 to this Exhibit B. A copy of the acceptance letter and list of models shall be sent to each County Office in the state and, when requested by the manufacturer, to each other FmHA or its successor agency under Public Law 103–354 State Office in which the product is to be marketed.

F. After initial review of a submission, maintain a master file of accepted manufacturers and models and review the file twice yearly to determine the currency of the factory inspection reports and HUD or state government acceptance documents.

G. Notify manufacturers of overdue factory inspection reports, for acceptance of documents review and updating, using the format of Attachment 4 to this Exhibit B. Accompanying the notification will be a temporary acceptance sheet (Attachment 3 to this Exhibit B) indicating to the manufacturer that the company models have temporary acceptance for 60 days. If the manufacturer provides evidence that a review is being processed by HUD, a maximum of an additional 90 days may be granted. Otherwise, the acceptance shall terminate on the last extension date and it will be necessary for the manufacturer to resubmit as if for initial acceptance.

H. Distribute a list of added models, deleted models, or notice of deletion of any manufacturer's product to the County Offices and other State FmHA or its successor agency under Public Law 103–354 Offices as necessary.

I. Issue an initial supply of Manufacturer's and Builder's Certification forms (Attachment 5 to this Exhibit B) to each existing and newly accepted manufacturer. Manufacturers are to duplicate this form as necessary in their market areas.

J. Resolve any problems with the manufacturer, as reported by the County Office. Action may include coordination, FmHA or its successor agency under Public Law 103–354 plant inspections or cancellation of acceptance letters when problems persist.

VI. County Office Actions:

A. When an application is received involving any of the manufacturer's products on the accepted list, the County Office FmHA or its successor agency under Public Law 103–354 authorized personnel will:

1. Review the drawings and description of materials described in paragraphs A and B of Attachment 1 to this Exhibit B. The floor plans and elevations must be identifiable with the model listed in the accepted list issued by the State Office.

2. Require the builder/dealer or manufacturer to provide any drawings necessary to adapt the house to the site conditions where the house will be located.

3. Require site plan drawing such as those illustrated in Attachments 1 and 2 to Exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

4. Inspect and identify the model delivered against the manufacturer's certification and the accepted drawings and description of materials before the unit has been set on the foundation.

5. Require the builder/dealer to certify that the work for which the builder/dealer is responsible has been erected in compliance with the applicable development standard. This certification will be completed on a copy of Attachment 5 to this Exhibit B, and filed in County Office case file.

6. Observe any noncompliance with the applicable development standard or with paragraphs IV and V of this Exhibit B. In this respect:

a. Minor noncompliance will be resolved by the manufacturer through the builder/dealer. In cases where there is no builder/dealer, the County Office may resolve such issues with the manufacturer directly.

b. Noncompliance that cannot be resolved at the County Office level will be reported to the State Office.

7. Inspect manufactured housing according to § 1924.8(d) of this subpart.

8. Be aware that the accepted list may include many models from which loan applicants may choose. No changes from accepted model designs are permitted. The model selected by an applicant should be appropriate to the needs of that particular family in accordance with subpart A of part 1944 of this chapter.

VII. Noncompliance Issues.

A. When minor issues are noted, the County Office will attempt to resolve them as described above. If they cannot be resolved locally, they will be referred to the State Office. When any issues cannot be resolved at State Office level, the National Office Program Support Staff (PSS) will be contacted for guidance.

B. The National Office PSS coordinating with HUD, will take the appropriate actions to resolve the issues reported.

C. Manufacturers and builder/dealers must be aware that if the FmHA or its successor agency under Public Law 103–354 inspector finds any of the following conditions, the inspector may refuse to accept the construction until corrections have been made:

1. Evidence of noncompliance with any option of the method described in the HUD—SEB, RLA, or ALA.

2. Faulty shop fabrication, including surface defects.

3. Damage to shop fabricated items or materials due to transportation, improper storage, handling or assembly operation.

4. Unsatisfactory field or site workmanship.

VIII. Actions by Other State Offices. When a State Office receives a copy of the accepted list from the State Office in which a manufacturing plant is located, it will:

A. Maintain a file, by manufacturer, of each accepted list of models.

B. Provide copies of the accepted list of models to each County Office in the State.

C. Request a copy of the drawings, description of materials, and thermal calculations to determine compliance with the thermal requirements for the county in which the house is to be located according to Exhibit D of this subpart.

D. Check to see that County Offices within the state will act as prescribed in paragraph VI of this Exhibit B.

E. When two or more State Offices have different interpretations of the acceptability of a particular model, there must be an agreement between the states so that they will have the same requirements. If the states cannot agree, the National Office PSS will be consulted for guidance.

IX. Subsequent Review.

FmHA or its successor agency under Public Law 103–354 will make periodic reviews of houses, both site-built and houses manufactured offsite, to determine acceptability of the finished product. If, in the judgment of the FmHA or its successor agency under Public Law 103–354, the product has failed to perform satisfactorily, acceptance may be withdrawn. The State Director will notify the manufacturer and/or the builder/dealer of the reasons for the withdrawal no later than the time of withdrawal. Negotiations for corrections will be carried out by the County Office with the assistance of the State Office or National Office, as necessary.

X. Materials and Products Acceptance—Material Release Bulletins, Use of Materials Bulletins, Manufacturer's Instructions.

A. The Materials Release (MR) and Use of Materials Bulletins (UM) provide for the national acceptance of specific nonstandard materials and products not covered in the current HUD MPS.

B. When contractors or builders intend to use products or materials not listed as approved in the MPS, the FmHA or its successor agency under Public Law 103–354 personnel reviewing or concerned with the approval of construction in which the product is to be used, will require the contractor or builder to furnish a Materials Release Bulletin or Use of Materials Bulletin on the materials or products. If the product has been accepted, the supplier should be able to obtain the bulletin for the contractor or builder from the manufacturer. These bulletins describe the products or materials limitations to use, method of installing or applying, approved type of fasteners, if used, etc. and will provide the contractor with instructions as to proper installation or application.

C. When FmHA or its successor agency under Public Law 103–354 personnel are unfamiliar with any materials or products which have been accepted in the MPS, they will request the contractor or builder to furnish

the manufacturer's instructions to assure that the materials or products are properly installed or applied. Any questions on any product that cannot be resolved in the County Office should be referred to the State Office. When the question cannot be resolved at the State Office level, the National Office PSS should be consulted for guidance.

XI. Manufactured Farm Service Buildings.

A. When a loan application is received that involves a manufactured building or special equipment that cannot be completely inspected on the site, the local State Land Grant University recommendations should be requested.

B. When the County Office questions the advisability of making a loan on a manufactured building, the State Office should also be consulted.

C. The State Office should review and make recommendations to the County Office. If doubt still exists, the National Office PSS should be consulted for guidance.

ATTACHMENT 1—REQUIRED INFORMATION FOR ACCEPTANCE OF MODULAR/PANELIZED HOUSING UNITS

The manufacturer or sponsor of modular/panelized housing units wishing to participate in the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) Rural Housing programs shall submit to the FmHA or its successor agency under Public Law 103–354 State Director having jurisdiction over the state in which the proposed housing is to be manufactured, two complete sets of the information listed below for evaluation. Submissions not including all the information requested will be returned.

A. *Statements:*

1. Name and location of organization, including titles and names of its principal officers.

2. A brief description of plant facilities.

3. Extent of intended market distribution, including a list of any other states in which units will be marketed.

4. The method of quality control during site installation.

5. A copy of the applicable current HUD Structural Engineering Bulletin (SEB), Regional Letter of Acceptance (RLA), or Area Letter of Acceptance (ALA).

6. A current factory inspection report made within 6 months by HUD or HUD authorized agency.

7. Name and address of any third party inspection agency.

8. Location of nearest assembled product for inspection.

9. Field manuals for site installation and/or set-up procedures.

10. Specifications or descriptions of materials using either Form FmHA or its successor agency under Public Law 103–354 1924–2, (HUD–FHA Form 2005), ''Description of Materials,'' including sizes, species and grade of all building and finishing materials. All blanks should be filled and additional sheets may be attached as well as equipment manufacturer's brochures. Use an asterisk (*) to denote all items of onsite construction that will be provided by the builder-dealer. The builder-dealer must complete a form for the builder-dealer's portion of the work. Use N/A in any blank which is not applicable.

11. Names and addresses of other public and private agencies which have rendered or been asked to render a technical suitability or acceptance determination with respect to the products or structural methods employed.

12. Written certification that construction drawings and specifications conform with the applicable development standard.

13. Any other pertinent information.

14. An index of all documents submitted.

B. *Working Drawings.* For emphasis as to the details required for modular/panelized housing proposals, the following items are listed in addition to and in more detail than the requirements in Exhibit C of this subpart. In some cases, the drawing presentation sheets may be required to be reduced to 200 mm by 266 mm (8 x 10½ inches) sheet size:

1. Foundation and/or Basement Plan. This plan shall include anchorage details, exterior and interior dimensions, typical footings, wall thickness, pilaster sizes and locations, column or pier sizes and locations and girders required to support the structures. Show location of all equipment (furnace, water heater, laundry tubs, sump, etc.) floor drains, electrical outlets, electrical entrance panels, and all doors and windows or crawl space vents with all sizes indicated.

2. Floor Plans of all levels. Show square footage of each habitable room with square footage of each area of natural light and ventilation. In addition, a design sketch scaled properly to illustrate a typical furniture arrangement for all habitable levels is required to indicate intended occupancy functions of the design. A window and door schedule should also be provided indicating glazed size, sash size, and thermal conductance of each type.

3. All exterior elevations including opening and sizes; wall finish materials, flashing, finish grades intended, depth of footings when known, finish floor, ceiling heights, roof slope, location of downspouts, gutters, vents for both structural spaces and for equipment. Indicate construction joint locations and details of connections between sections, modules or components.

4. Building cross sections showing size and spaces of all framing members from lowest member (bottom of footing) to highest point of roof (ridge) plus;

(a) Type of material and method of application of all covering materials, such as subflooring, combination subflooring and underlayment, sheathing, interior and exterior finishes;

(b) Complete details including computations of trussed rafter systems with the architect/engineer's stamp of those responsible for the design.

(c) Details of insulation and vapor barrier installation and attic ventilation. If the thermal characteristics to be provided are determined according to optional method for overall structure performance allowed in Exhibit D of this subpart, the submission and complete engineering calculations with all details of construction shall be sent to Administrator, Attn. PSS, FmHA or its successor agency under Public Law 103–354 Washington, DC 20250, for analysis as prescribed in paragraph IV C of Exhibit D of this subpart.

(d) Special details as necessary to show any special features of construction, including method of fabricating, erection, joining, and finishing of all elements; and

(e) Details and sections of stairways including all critical dimensions, such as, riser, run and headroom.

5. Interior elevations of kitchen cabinets and bathroom elevations with schedule of all shelf, counter-top and drawer footage. Indicate whether kitchen cabinets are to be custom made for each model or made for any model by a cabinet manufacturing company.

6. Plumbing schematics, including pipe materials, sizes and plumbing code compliance.

7. Heating plan, including heat loss of each room, is needed for heating systems, sizings and capacities, forced air, electric baseboard, or electric space heaters and, if applicable, heat gain. For forced air systems, include supply and return duct layout and location of appropriate diffusers.

8. Electrical plan, including circuit chart or diagram.

9. Any other pertinent facts or drawings that will better explain why and how certain unusual materials or structural methods are employed.

ATTACHMENT 2

John Dough Manufacturing Company,
3444 Residence Avenue,
Elkton, Indiana 00051.

Dear Sirs: Athough the documents submitted to this office have only received a cursory review, they appear to be in substantial compliance to qualify your firm for the type of acceptance indicated on the attached list.

The acceptance being issued is subject to this letter of conditions, compliance with HUD Handbook 4950.1 Technical Suitability of Products Program Technical and Processing Procedures, compliance with Farmer Home Administration (FmHA or its successor agency under Public Law 103–354) Thermal Performance Construction Standards, and compliance with the conditions set forth in the HUD acceptance document, if applicable, whose number appears on the acceptance.

The manufacturer and the authorized builder-dealer bear the responsibility of complying with the above, the exhibits submitted and the applicable development standards.

The manufacturer and/or builder-dealer also shall:

1. Provide positive identification of the modular unit by model, date of manufacture and factory in which the unit was manufactured.

2. Furnish with each home to be financed by FmHA or its successor agency under Public Law 103–354 in———(State)———, a written certificate (Attachment 5 to this Exhibit B) endorsed by the builder-dealer certifying that all requirements have been satisfied.

3. Furnish the local FmHA or its successor agency under Public Law 103–354 County Supervisor with a complete set of drawings including site plans, description of materials, structural engineering bulletins when applicable in the state, and documentation relating to the manufacture, transportation, erection, and installation for each model of modular/panelized housing to be financed in the county. Electrical, plumbing and heating plans must be furnished for each model in addition to the basic drawings. Floor plans and elevation drawings may vary from those listed in Attachment 1 of Exhibit B to FmHA or its successor agency under Public Law 103–354 Instruction 1924–A to reflect each of the manufacturer's models provided they are in compliance with the applicable development standard and the FmHA or its successor agency under Public Law 103–354 Thermal Performance Construction Standards and provided they have been accepted and listed in this state's approval of manufactured structures. No field alterations to the accepted models will be allowed.

4. Furnish, when required by the County Supervisor, foundation drawings (including special foundation design considerations when the unit is to be erected in seismic zones 1, 2 or 3) adapting the modular home to any unusual site conditions needing information additional to that furnished by the standard drawings.

5. Furnish the County Office with a copy of inspection reports of the manufacturing facilities immediately after the inspection reports have been completed.

6. Allow FmHA or its successor agency under Public Law 103–354 personnel to inspect the manufacturing facilities at any time and furnish all FmHA or its successor agency under Public Law 103–354 State Offices, where acceptance has been obtained, with a copy of any FmHA or its successor

agency under Public Law 103–354 inspection reports immediately after the inspection reports have been completed.

7. In the event there are major changes to the submitted drawings, obtain approval under the HUD Technical Suitability of Products Program and submit verification of this approval to the County Office for listing on the state's accepted list. Any modular home shipped with major changes incorporated, without such changes on file at the County Office may be rejected.

(Add state and local requirements appropriate to this letter of conditions.)

This acceptance may be subject to corrective action when deficiencies are noted in the product, field inspections, manufacturing facilities, or when there is noncompliance with the provisions of the HUD Technical Suitability of Products Program.

The inclusion of these models on the accepted list is based only on the material and structural aspects of the manufactured units. Final determination of acceptability rests with FmHA or its successor agency under Public Law 103–354 personnel. Other factors relating to the property in its entirety such as appraisal, location, sustained market acceptance, architectural planning and appeal, thermal qualities, mechanical and electrical equipment, etc., must be considered in the final determination.

Your cooperation in this acceptance program is appreciated.

Sincerely,

State Director

ATTACHMENT 3

Date ——— File No. ———

ACCEPTANCE OF MODULAR/PANELIZED HOUSING UNITS

(Based on HUD Handbook 4950.1)

Manufacturer:

——— Acceptance Document ———
——— Type of Acceptance:
——— —— Regular
——— —— Temporary, Expires ———
Plant Locations: ———
Date of Latest Plans
Reviewed ———
Date of Latest Factory
Inspection ———
Acceptance Document Review
Date ———

FmHA or its successor agency under Public Law 103–354 Instruction 1924–A, Exhibit D

THERMAL PERFORMANCE CONSTRUCTION STANDARDS

State Office Review

(Exh. D, IV, C, 1, a or b)
National Office Review

(Exh. D, IV, C, 2)

Maximum Winter Degree Days for
State ——— Walls R ———
Glazing/Gross Wall Area Ratio ———%
Ceilings R ———
Glazing ——— Pane(s)
Floor R ———
Glazing ——— Pane(s)
Insulated Door ———
Wood and Storm ———
Insulated Door ———
Wood and Storm ———

Models Accepted:

ATTACHMENT 4

John Dough Manufacturing Company,
3444 Residence Avenue,
Elktown, Indiana 00051.

Dear Sirs: As set forth in acceptance letters issued by this office, acceptance of modular/panelized homes in this state is based on HUD's Technical Suitability of Products Program and the conditions stated in the acceptance letter. Your file has been reviewed and the following has been noted.

——— An inspection report of your manufacturing facilities is overdue. Inspections are required twice yearly. The last inspection report on file at this office is dated ———.

——— Your Structural Engineering Bulletin No. —— dated —— has not been reviewed by HUD. Reviews are generally required every three years. Temporary acceptance will be considered when you provide evidence that the review documents have been submitted to HUD.

——— The drawings being used for the construction of your homes are not listed in your Structural Engineering Bulletins. Drawings used in the field should be those upon which the Structural Engineering Bulletin was issued.

——— There have been —— revisions to the development standards since ———, the date of the last drawings we have on file for your homes. It is recommended that you review the revisions to ascertain whether your drawings need to be updated.

Please submit a written response and appropriate documents for the above items within ——— days, or your product will be removed from the accepted list until your firm can again qualify. If you have any problems furnishing the above within the time stated, please contact this office.

We look forward to receiving the materials indicated so that your firm's listing may be continued.

Sincerely,

State Director

ATTACHMENT 5

CERTIFICATION BY MANUFACTURER

Delivery location of structure
for component ———————————

———————————————————

This is to certify that
Model: ————,
Serial # ————,
manufactured ———
(date) ———, 19 ——— in
—— (location) ———
and being sold to ———
(name of ————
builder-dealer or borrower) has been manufactured in accordance with drawings and specifications on file in the FmHA or its successor agency under Public Law 103–354 State Office and that the construction complies with applicable development standards, except as modified by HUD Acceptance Document (SEB, RLA, ALA,)
NO. ————,
dated ————,
and in compliance with the FmHA or its successor agency under Public Law 103–354 Thermal Performance Construction Standards.

———————————————————

Date

———————————————————

Signature of Authorized Official

———————————————————

Title

CERTIFICATION BY BUILDER-DEALER

——— (Name of
builder-dealer) ———
certifies that the foundation and other on-site work has been constructed in accordance with the drawings and specifications and the above structure or component has been erected, installed or applied in compliance with the applicable development standards.

It is understood that the manufacturer's certification does not relieve the builder/dealer of responsibility under the terms of the builder's warranty required by the National Housing Act.

———————————————————

Date

———————————————————

Signature of Authorized Official

———————————————————

Title

EXHIBIT C—GUIDE FOR DRAWINGS AND SPECIFICATIONS

This Exhibit applies to all new buildings to be constructed, including all single family housing and related facilities and, as applicable, farm housing and farm service buildings.

I. General

The documents recommended in this Exhibit correspond with the list of Exhibits in Chapter 3 of the Department of Housing and Urban Development (HUD) ''Architectural Handbook for Building Single-Family Dwellings'' No. 4145.2. This Exhibit may be used as a public handout and shall be used as a guide for drawings and specifications to be submitted in support of any type of application involving construction of major new buildings or extensive rehabilitation, alterations or additions to existing buildings. Descriptions of work for minor alterations or repairs need pertain only to work to be done and may be in narrative form when acceptable to the County Supervisor. Complete and accurate drawings and specifications are necessary:

A. To determine the acceptability of the proposed development,

B. To determine compliance with the applicable standards and codes,

C. To prepare a cost estimate, and

D. To provide a basis for inspections and the builder's warranty.

II. Drawings for a Specific Structure

Drawings for individual single dwellings shall provide at least the following:

A. *Plot Plan*. Refer to Example Plot Plan No. 1, Attachment 1 to this Exhibit C (available in any FmHA or its successor agency under Public Law 103–354 office). Ratio: 1:240 (1″=20′) (at scale, 1″=20′ or 1/16″=1′0″ minimum):

1. Lot and block number.
2. Dimensions of plot and north point.

3. Dimensions of front, rear and side yards.

4. Location and dimensions of garage, carport and other accessory buildings.

5. Location and sizes of walks, driveways and approaches.

6. Location and sizes of steps, terraces, porches, fences and retaining walls.

7. Location and dimensions of easements and established setback requirements, if any.

8. Elevations at the following points: (a) first floor of dwelling and floor of garage, carport and other accessory building; (b) finish curb or crown of street at points of extension of lot lines; (c) finish grade elevation at each principal corner of structure; (d) finish grade at bottom of drainage swales at extension of each side of structure as feasible.

9. The following additional elevations, as applicable, if the topography of the site or the design of the structure is such that special grading, drainage or foundations may be necessary. Examples are irregular or steeply sloping sites, filled areas on sites, or multilevel structure designs; (a) finish and existing grade elevations at each corner of the plot; (b) existing and finish grade at each principal corner of dwelling; (c) finish grade at both sides of abrupt changes of grade such as retaining walls, slopes, etc.; (d) other elevations that may be necessary to show grading and drainage.

10. Indication of type and approximate location of drainage swales.

11. When an individual water supply and/or sewage system is proposed, drawings, specifications and other items prescribed in Paragraph V of this Exhibit.

B. *Floor Plans.*

1. Scale, 1:50 (¼″=1′0″).

2. Floor plan of each floor and basement, if any. Show typical furniture locations to suggest intended use of each habitable space.

3. Plan of all attached terraces and porches, and of garage or carport.

4. If dwelling is of crawl-space type, a separate foundation plan. Slab-type foundation may be shown on sections.

5. Direction, size and spacing of all floor and ceiling framing members, girders, columns or piers.

6. Location of all partitions and indication of door sizes, and direction of door swing.

7. Location and size of all permanently installed construction and equipment such as kitchen cabinets, closets, storage shelving, plumbing fixtures, water heaters, etc. Details of kitchen cabinets may be on separate drawing.

8. Location and symbols of all electrical equipment, including switches, outlets, fixtures, etc.

9. Heating system on separate drawing, or when it may be shown clearly it may be part of the floor or basement plan showing: (a) layout of system; (b) location and size of ducts, piping, registers, radiators, etc.; (c) location of heating unit and room thermostat; (d) total calculated heat loss of dwelling including heat loss through all vertical surfaces, ceiling and floor. When a duct or piped distribution system is used, calculated heat loss of each heated space is required.

10. Cooling system, on separate drawings or, as part of heating plan, floor or basement plan showing: (a) layout of system; (b) location and size of ducts, registers, compressors, coils, etc.; (c) heat gain calculations, including estimated heat gain for each space conditioned; (d) model number and Btu capacity of equipment or units in accordance with applicable Air Conditioning and Refrigeration Institute (ARI) or American Society of Refrigerating Engineers (ASRE) Standard; (e) Btu capacity and total kilowatt (KW) input at stated local design conditions; (f) if room or zone conditioners are used, provide location, size and installation details.

C. *Exterior Elevations.*

1. Scale, 1:50 (¼″=1′0″). Elevations, other than main elevation, which contain no special details may be drawn at 1:100 (⅛″= 1′0″).

2. Front, rear and both side elevations, and elevations of any interior courts.

3. Windows and doors—indicate size unless separately scheduled or shown on floor plan.

4. Wall finish materials where more than one type is used.

5. Depth of wall footings, foundations, or piers, if stepped or at more than one level.

6. Finish floor lines.

7. Finish grade lines at buildings.

D. *Details and Sections.*

1. Section through exterior wall showing all details of construction from footings to highest point of road. Where more than one type of wall material is used, show each type. Scale 1:25 (⅜″=1′0″) minimum.

2. Section through any portion of dwelling where rooms are situated at various levels or where finished attic is proposed, Scale, 1:50 (¼″=1′0″) minimum.

3. Section through stair wells, landings, and stairs, including headroom clearances and surrounding framing. Scale, 1:50 (¼″=1′0″) minimum.

4. Details of roof trusses, if proposed, including connections and stress or test data with seal of architect or engineer responsible. Scale of connections, 1:25 (⅜″=1′0″) minimum.

5. Elevation and section through fireplace. Scale, 1:25 (⅜″=1′0″) minimum.

6. Elevations and section through kitchen cabinets, indicating shelving. Scale, 1:50 (¼″=1′0″) minimum.

7. Sections and details of all critical construction points, fastening systems, anchorage methods, special structural items or special millwork. Scale as necesaary to provide information, 1:25 (⅜″=1′0″) minimum.

III. Master Drawings for Group Structures

Drawings for a group of structures (such as for several conditional commitments) may be submitted in lieu of drawings for each individual property when a number of applications are simultaneously submitted involving repetition of the same type structure.

A. *Master plot plan* shall include the following:

1. Scale which will provide the following information in a clear and legible manner.
2. North point.
3. Location and width of streets and rights-of-way.
4. Location and dimensions of all easements.
5. Dimensions of each lot.
6. Location of each dwelling on lot with basic dimensions.
7. Dimensions of front, rear and side yards.
8. Location and dimensions of garage, carports and other accessory buildings.
9. Identification of each lot by number and indication of basic plan and elevation type.
10. Location of walks, driveways and other permanent improvements.

B. *Typical plot plan* for each basic type dwelling may be submitted in lieu of fully detailing each lot on master plot plan, when topography and lot arrangements present no individual planning or construction problems.

1. Information not shown on the typical plot plan shall be included on the master plot plan.
2. Typical plot plans shall not be used for corner lots, lots with irregular boundaries, lots involving pronounced topographic variations or other lots where individual detailing is necessary.
3. Location of dwelling on typical lot and full dimensions.
4. Location and dimensions of all typical improvements, such as garage, carport, accessory buildings, walks, drives, steps, porches, terraces, trees, shrubs, retaining walls, fences, etc.

C. *Grading* may be shown on separate grading plan or on the master plot plan. Scale shall be sufficiently large to provide the following information in clear and legible manner:

1. Contours of existing grade at intervals of not more than 1.524 m (5 feet). Intervals less the 1.524 m (5 feet) may be required when indicated by the character of the topography.
2. Location of house and accessory buildings on each lot.
3. Identification of each lot by number.
4. Elevations in accordance with individual plot plan including bench mark and datum or, in lieu of finish grade elevations, contours of proposed finish grading may be submitted. Contour intervals selected shall be appropriate to the topography of the site.
5. Lot grading shall be shown by indicating protective slopes and approximate location of drainage swales.
6. Location of drainage outfall, if any drainage is not to a street.

D. *Floor plans, elevations, sections and details* shall be submitted for each basic plan. Alternate elevations to basic plan may be shown at scale, 1:100 (⅛″=1′0″).

IV. Specifications

Form FmHA or its successor agency under Public Law 103–354 1924–2, ''Description of Materials,'' or other acceptable and comparable descriptions of all materials forms shall be submitted with the drawings. The forms shall be completed in accordance with the instructions on Form FmHA or its successor agency under Public Law 103–354 1924–2 to describe the materials to be used in the construction.

A. Form FmHA or its successor agency under Public Law 103–354 1924–2 may be reproduced if size, format and printed text are identical to the current official form. When it is reproduced, the following deletions must be made:

1. All lines indicating FmHA or its successor agency under Public Law 103–354 form numbers or other Government agency initials and/or numbers, and
2. The United States Government Printing Office (GPO) imprint and reference number.

B. The material identification shall be in sufficient detail to fully describe the material, size, grade and when applicable, manufacturer's model or identification numbers. When necessary, additional sheets must be attached as well as manufacturer's specification sheets for equipment and/or special materials, such as aluminum siding or carpeting.

V. Individual Water Supply and Sewage Disposal Systems

When an individual water and/or sewage disposal system is proposed, the following additional information must be submitted:

A. *Approval and recommendations of other authorities.*

1. A written opinion by the health authority having jurisdiction that the site is suitable and acceptable for the proposed systems(s) and,
2. If available, a soils report from the local USDA-Soil Conservation Service and any recommendations they may have.
3. Approval of appropriate environmental control authority.
4. A signature of the health authority on the plot plan indicating approval of the design of the proposed system.

B. *Plot Plan.* Refer to Example Plot Plan No. 2, Attachment 2 to this Exhibit C (available in any FmHA or its successor agency under Public Law 103–354 office).

1. Location and size of septic tank, distribution box, absorption field or bed, seepage pits and other essential parts of the sewage disposal system and distance to all individual wells, open streams or drainageways.

2. Location of well, service line and other essential parts of the water supply system and distance to other wells and/or sewage disposal systems.

3. Exact location of individual systems (water or sewage) on adjacent properties and description of system, if available.

C. Construction details of all component parts of individual water supply and sewage disposal systems shall clearly indicate material, equipment and construction. Extra sheets and drawings should be added as necessary to fully explain the proposed installation.

EXHIBIT D—THERMAL PERFORMANCE CONSTRUCTION STANDARDS

I. Purpose

This Exhibit prescribes thermal performance construction standards to be used in all housing loan and grant programs. These requirements shall supersede the thermal performance requirements in any of the development standards in §1924.4(h) of this subpart.

II. Policy

All loan or grant applications involving new construction (except for new Single Family Housing (SFH)) and all applications for conditional commitments (except for new SFH) shall have drawings and specifications prepared to comply with paragraphs IV A or C and IV D of this Exhibit. All new SFH construction shall have drawing and specifications prepared to comply with paragraph IV F of this Exhibit. All existing dwellings to be acquired with FmHA or its successor agency under Public Law 103–354 loan funds shall be considered in accordance with paragraph IV B or C of this Exhibit.

III. Definitions

A. *British thermal unit* (Btu) means the quantity of heat required to raise the temperature of one pound (.4535 Kg.) of water by one degree Fahrenheit (F). For example, one Btu is the amount of heat needed to raise the temperature of one pound of water from 59 degrees F to 60 degrees F.

B. *Glazing* is the material set into a sash or door when used as a natural light source and/or for occupant's views of the outdoors.

C. *''R'' value*, thermal resistence, is a unit of measure of the ability to resist heat flow. The higher the R value, the higher the insulating ability.

D. *''U'' value* is the overall coefficient of heat transmission and is the combined thermal value of all the materials in a building section. U is the reciprocal of R. Thus U=1/R or R=1/U or 1/C where C is the thermal conductance and is the unit of measure of the rate of heat flow for the actual thickness of a material one square foot in area at a temperature of one degree Fahrenheit. The lower the U value, the higher the insulating ability.

E. *Winter degree-day* is a unit based on temperature difference and time. For any one day, when the mean temperature is less than 65 degrees F (18.3 degrees Celsius), there are as many degree-days as the number of degrees difference between the mean temperature for the day and 65 degrees F. The daily mean temperature is computed as half the total of the daily maximum and daily minimum temperatures.

F. *CABO Model Energy Code, 1992 Edition (MEC–92)*—This code sets forth the minimum energy/thermal requirements for the design of new buildings and structures or portions thereof and additions to existing buildings. The MEC is maintained by the Council of American Building Officials (CABO).

IV. Minimum Requirements

A. All multifamily dwellings to be constructed with FmHA or its successor agency under Public Law 103–354 loan and/or grant funds and all repair, remodeling, or renovation work performed on single family and multifamily dwellings with FmHA or its successor agency under Public Law 103–354 loan and/or grant funds shall be in conformance with the following, except as provided in paragraphs IV C 3 and IV D of this Exhibit:

NEW CONSTRUCTION—MAXIMUM U VALUES FOR CEILING, WALL AND FLOOR SECTION OF VARIOUS CONSTRUCTION

Winter degree days [1]	Ceilings [2]	Walls	Floors [3]	Glazing [4]	Doors [5]
1000 or less	0.05	0.08	0.08	1.13	
1001 to 2500	.04	.07	.07	.69	
2501 to 4500	.03	.05	.05	.69	Storm door if hollow core door or if over 25% glass.
4501 to 6000	.03	.05	.05	.47	Storm Door.
6001 or more	.026	.05	.05	.47	Storm Door.

Note.—U values are not adjusted for framing. Values calculated for components may be rounded. For example, a total R Value of 18.88 converts to a U value of .0529 rounded to .05.

[1] Winter degree-days may be obtained from the ASHRAE Handbook; the ''NAHB Insulation Manual for Homes/Apartments''; local utilities; and the National Climatic Center, Federal Building, Asheville, NC. Manuals are available from NAHB RF, Rockville, MD 20850, or NMWIA, 382 Springfield Avenue, Summit, NJ 07901. Other sources of degree day data may be used if available from a recognized authority.

[2] Insulation must be continuous (i.e. no gaps) above all ceiling joists. In pitched roof construction, compression of insulation at the outside building walls is permitted to allow a 1″ ventilation space under the roof sheathing. For any loose fill insulation, a baffle must be provided. Raised trusses are not required.

[3] For floors of heated spaces over unheated basements, unheated garages or unheated crawl spaces, the U value of floor section shall not exceed the value shown. A basement, crawl space, or garage shall be considered unheated unless it is provided with a positive heat supply to maintain a minimum temperature of 50 degrees F. Positive heat supply is defined by ASHRAE as ''heat supplied to a space by design or by heat losses occurring from energy-consuming systems or components associated with that space.''

AWhere the walls of an unheated basement or crawl space are insulated in lieu of floor insulation, the total heat loss attributed to the floor from the heated area shall not exceed the heat loss calculated for floors with required insulation.

AInsulation may be omitted from floors over heated basement areas or heated crawl spaces if foundation walls are insulated. The U value of foundation wall sections shall not exceed the value shown. This requirement shall include all foundation wall area, including header joist (band joist), to a point 50 percent of the distance from a finish grade to the basement floor level. Equivalent Uo configurations are acceptable.

MAXIMUM U VALUES OF THE FOUNDATION WALL SECTIONS OF HEATED BASEMENT NOT CONTAINING HABITABLE LIVING AREA OR HEATED CRAWL SPACE

Winter degree-days (65 F base)	Maximum U value	Glazing*
2500 or less	No requirement	1.13
2501 to 4500	0.17	1.13
4501 or more	0.10	.69

*Glazing in heated basement shall be limited to 5 percent of floor area unless alternative Uo combination is documented.

[4] Sliding glass doors are considered as glazing. The glazing value is for glass only. Glazing shall be limited to 15 percent of the gross area of all exterior walls enclosing heated space, except when demonstrated that the winter daily solar heat gain exceeds the heat loss and the glass area is properly screened from summer solar heat gain.

[5] 1¾ inch metal-faced door systems with rigid insulation core and durable weatherstripping providing a ''U'' value equivalent to a wood door with storm door and an infiltration rate no greater than .50 cfm per foot of crack length tested according to ASTM E–283 at 1.567 psf of air pressure, may be substituted for a conventional door and storm door. All doors shall be weatherstripped. Any glazed areas must be double-glazed.

MINIMUM R VALUES OF PERIMETER INSULATION FOR SLABS-ON-GRADE

Winter degree-days (65 F base)	Minimum R values*	
	Heated slab	Unheated slab
500 or less	2.8	.....
1000	3.5	.....
2000	4.0	2.5
3000	4.8	2.8
4000	5.5	3.5
5000	6.3	4.2
6000	7.0	4.8
7000	7.8	5.5
8000	8.5	6.2
9000	9.2	6.8
10000 or greater	10.0	7.5

*For increments between degree days shown, R values may be interpolated.

B. All existing dwellings to be purchased with RH loan and grant funds shall be insulated in accordance with the following:

EXISTING CONSTRUCTION—MAXIMUM U VALUES FOR CEILING, WALL AND FLOOR SECTION OF VARIOUS CONSTRUCTION

Winter degree days [1]	Ceilings	Walls [2]	Floors [3, 4]	Glazing	Doors [5]
1000 or less	0.05	.....	0.08	1.13	
1001 to 2500	.04	.....	.07	.69	
2501 to 4500	.03	.....	.05	.69	Storm door if hollow core door or if over 25% glass.
4501 to 6000	.03	.....	.05	.69	Storm Door.
6001 to 7000	.026	.....	.05	.69	Storm Door.
7001 or more	.026	.....	.05	.69	Storm Door.

Note.—U values are not adjusted for framing. Values calculated for components may be rounded. For example, a wall section with a total R Value of 18.88 converts to a U value of .0529 rounded to .05.

[1] Winter degree days may be obtained from the ASHRAE Handbook; the ''NAHB Insulation Manual for Homes/Apartments;'' local utilities; and the National Climatic Center, Federal Building, Asheville, NC. Manuals are available from NAHB RF, Rockville, MD 20850, or NMWIA, 382 Springfield Avenue, Summit, NJ 07901. Other sources of degree day data may be used if available from a recognized authority.

[2] Walls shall be insulated as near to new construction standards as economically feasible. Any exterior wall framing exposed during repair or rehabilitation work shall have vapor barrier installed and be fully insulated.

[3] For floors of heated spaces over unheated basements, unheated garages or unheated crawl spaces the U value of floor section shall not exceed the value shown.

A basement, crawl space or garage shall be considered unheated unless it is provided with a positive heat supply to maintain a minimum temperature of 50 degrees F. Positive heat supply is defined by ASHRAE as ''heat supplied to a space by design or by heat losses occurring from energy-consuming systems or components associated with that space.''

Where the walls of an unheated basement or crawl space are insulated in lieu of floor insulation, the total heat loss attributed to the floor from the heated area shall not exceed the heat loss calculated for floors with required insulation.

Insulation may be omitted from floors over heated basement areas or heated crawl spaces if foundation walls are insulated. The U value of foundation wall sections shall not exceed the value shown. This requirement shall include all foundation wall area, including header joist (band joist), to a point 50 percent of the distance from a finish grade to the basement floor level. Equivalent Uo configurations are acceptable.

MAXIMUM U VALUES OF THE FOUNDATION WALL SECTIONS OF HEATED BASEMENT NOT CONTAINING HABITABLE LIVING AREA OR HEATED CRAWL SPACE

Winter degree days (65 F base)	Maximum U value	Glazing*
2500 or less	No requirement	1.13
2501 to 4500	0.17	1.13
4501 or more	0.10	.69

* Glazing in heated basement shall be limited to 5 percent of floor area unless alternative Uo combination is documented.

[4] Slab edge insulation should be provided wherever practical in areas of 2500 or more winter degree-days. Rigid insulation placed on the exterior face of the slab shall be protected by a durable and weather resistant material.

[5] Storm doors are not required for double doors, sliding doors or others where installation would be economically infeasible. 1¾ inch metal-faced door systems with rigid insulation core and durable weatherstripping providing a ''U'' value equivalent to a wood door with storm door and an infiltration rate no greater than .50 cfm per foot of crack length, tested according to ASTM E–283 at 1.567 psf of air pressure may be substituted for a conventional door and storm door. All doors shall be weatherstripped.

C. *Optional Standards*

Housing design not in compliance with the requirements of paragraph IV A or B of this exhibit may be approved in accordance with the provisions of this paragraph. Requests for acceptance proposed under paragraph C 1 of this exhibit, must be approved by the State Director. Requests for acceptance of site-built housing proposed under paragraph C 2 of this exhibit must be approved by the Administrator. Requests for acceptance of manufactured housing proposed under paragraph C 2 of this exhibit may be approved by the State Director. All submissions of proposed options to the State Director or Administrator shall contain complete descriptions of materials, engineering data, test data (when U values claimed are lower than the ASHRAE Handbook of Fundamentals), and calculations to document the validity of the proposal. All data and calculations will be based upon the current edition of the ASHRAE Handbook of Fundamentals or other universally accepted data sources.

1. *Overall ''U'' values for enveloped components.* The following requirements shall be used in determining acceptable options to the requirements of paragraphs IV A and IV B of this Exhibit.

a. Uo (gross wall)—Total exterior wall area (opaque wall and window and door) shall have a combined thermal transmittance value (Uo value) not to exceed the values shown in Attachment 1 to this Exhibit D (available in any FmHA or its successor agency under Public Law 103–354 office). Equation 1 in Attachment 1 shall be used to determine acceptable combinations to meet the requirements.

b. Uo (gross ceiling)—Total ceiling area (opaque ceiling and skylights) shall have a combined thermal transmittance value (Uo value) not to exceed the values shown in Attachment 2 to this Exhibit D (available in any FmHA or its successor agency under Public Law 103–354 office). Equation 2 in Attachment 2 shall be used to determine acceptable combinations to meet the requirements.

2. *Overall structure performance.* The following requirements shall be used in determining acceptable options to the requirements of paragraphs IV A and B of this Exhibit.

a. The methodology must be cost effective to the energy user, and must not adversely affect the structural capacity, durability or safety aspects of the structure.

b. All data and calculations must show valid performance comparisons between the proposed option and a structure comparable in size, configuration, orientation and occupant usage designed in accordance with paragraphs IV A or B. Structures may be considered for FmHA or its successor agency under Public Law 103–354 loan consideration which can be shown by accepted engineering practice to have energy consumption equal to or less than those which would be attained in a representative structure utilizing the requirements of paragraphs IV A or B.

3. *Special consideration for seasonally occupied farm labor housing.* The following sets forth the minimum acceptable options to the requirements of paragraphs IV A or B of this

Exhibit for seasonally occupied housing serving as security for farm labor housing loans and grants.

a. When the period of occupancy does not encounter 500 or more heating degree-days (HDD) as determined by an average of the previous 10 years based upon local climatological data published by the National Oceanic and Atmospheric Administration, Environmental Data Service, the standards of paragraphs IV A or B will not apply.

b. When the period of use exceeds 500 HDD, the 10-year average value for the period of occupancy shall be used to determine the degree to which the thermal insulation requirements of paragraphs IV A or B shall apply.

c. If mechanical cooling is provided and the period of occupancy encounters more than 700 cooling degree-days (CDD), as determined by an average of the previous 8 years based upon local climatological data published by the same source cited in paragraph IV C3a above, the thermal insulation requirements for 1,000 and less degree-days as stated in paragraph IV A or B shall apply.

D. *Energy efficient construction practices.* This section prescribes those items of design and quality control which are necessary to guarantee the energy efficiency of homes built according to the standards of this Exhibit. Also included are recommendations for extra energy efficiency in dwellings. This section does not apply to new SFH construction.

1. *Infiltration.* a. Requirements: All construction shall be performed in such a manner as to provide a building envelope free of excessive infiltration.

(i) Caulking and sealants. Exterior joints around windows and door frames, between wall cavities and window or door frames, between wall and foundation, between wall and roof, between wall panels, at penetrations of utility services through walls, floors and roofs, and all other openings in the exterior envelope shall be caulked, gasketed, weatherstripped, or otherwise sealed. Caulking shall be silicone rubber base or butyl rubber base, conforming to Federal Specifications TT–S–1543 and TT–S–1657 respectively, or materials demonstrating equivalent performance in resilience and durability.

(ii) Windows shall comply with ANSI 134.1, NWMA 15–2; the air infiltration rate shall not exceed 0.5 ft 3/min per ft. of sash crack.

(iii) Sliding glass doors shall comply with ANSI 134.2, NWM 15–3; the air infiltration rate shall not exceed .5 ft 3/min per square ft. of door area.

(iv) All insulation placed in open cavity walls shall be installed so that all space behind electrical switches and receptacles, plumbing, ductwork and other obstructions in the cavity are insulated as completely as possible. Insulation shall be omitted on the side facing the conditioned area; however, the vapor barrier in walls must not be cut or destroyed.

b. Recommendations: (i) Wrap outside corners of wall sheathing with 15 lb. asphalt impregnated building felt before siding application.

(ii) Utilize vestibules for entry doors, especially those facing into the direction of winter wind.

(iii) Install plumbing, mechanical and electrical components in interior partitions as much as possible. All water piping should be insulated from freezing temperatures.

2. *Heating and/or Cooling Equipment.* a. Requirements: All mechanical equipment for heating and/or cooling habitable space shall be designed to provide economy of operations.

(i) All space heating equipment (including fireplaces) requiring combustion air shall be sealed combustion types, or be located in a nonconditioned area (such as unheated basements) or adequate combustion air must be provided from outside the conditioned space.

(ii) All ductwork shall be designed and installed to minimize leakage. All metal to metal connections shall be mechanically joined and taped.

b. Recommendations: (i) Whenever possible, locate ductwork inside of conditioned areas in dropped ceilings, interior partitions or other similar areas.

(ii) Locate outside cooling units in areas not subject to direct sunlight or heat buildup.

3. *Vapor Barrier.* a. Requirements: Adequate vapor barriers must be provided adjacent to the interior finish material of the wall or other closed envelope components which do not have ventilation space on the non-conditioned side of the insulation.

(i) A vapor barrier at the inside of the wall or other closed envelope component must have a permeability (perm) rating less than that of any other material in the component and in no case have a perm rating greater than one. All vapor barriers must be sealed around all openings in the interior surface. Vapor barriers are not required in ceilings and floors. Continuous vapor barriers on ceilings, walls, and floors require adequate moisture vapor control in the conditioned space.

(ii) All vapor producing or exhaust equipment shall be ducted to the outside and equipped with dampers. This equipment includes rangehoods, bathroom exhaust fans and clothes dryers. If a dwelling design proposes the use of windows to satisfy the kitchen and/or bathroom ventilation requirements of the development standards, the incorporation of dehumidification equipment should be considered in accordance with paragraph IV D 3 b. Exhaust of any equipment shall not terminate in an attic or crawl space.

b. Recommendation: Forced air heating/cooling systems should include humidification/dehumidification systems where conditions indicate.

E. [Reserved]

F. *New SFH construction*. New SFH construction shall meet the requirements of CABO Model Energy Code, 1992 Edition (MEC–92).

V. *General Design Recommendations:*

A. Orient homes with greatest glass area facing south with adequate overhangs to control solar gain during non-heating periods. Examples of proper roof overhangs are given in Attachment 3 to this Exhibit D (available in any FmHA or its successor agency under Public Law 103–354 office).

B. Arrange plantings with evergreen wind buffers on north side and deciduous trees on south.

C. Whenever possible, orient entry door away from winter winds.

D. Design house with simple shape to minimize exterior wall area.

E. Minimize glass areas within constraints of required light and ventilation, applicable safety codes and other appropriate consideration.

F. Minimize the amount of paved surface adjacent to the structure where heat gain is not desirable.

VI. *State Supplements:* State supplements or policies will not be issued or adopted to either supplement or set requirements different from those of this Exhibit without the prior written approval of the National Office.

[52 FR 8002, Mar. 13, 1987, as amended at 54 FR 6874, Feb. 15, 1989; 59 FR 43723, Aug. 25, 1994]

EXHIBIT E—VOLUNTARY NATIONAL MODEL BUILDING CODES

The following documents address the health and safety aspects of buildings and related structures and are voluntary national model building codes as defined in §1924.4(h)(2) of this subpart. Copies of these documents may be obtained as indicated below:

Building code	Plumbing code	Mechanical code	Electrical code
BOCA Basic/National Building Code [1].	BOCA Basic/National Plumbing Code [1].	BOCA Basic/National Mechanical Code [1].	National Electrical Code [5]
Standard Building Code [2]	Standard Plumbing Code [2]	Standard Mechanical Code [2]	
Uniform Building Code [3]	Uniform Plumbing Code [3]	Uniform Mechanical Code [3] ..	
CABO One and Two Family Dwelling Code [4].	.....	.....	

[1] Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60477.
[2] Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213–1206.
[3] International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.
[4] Council of American Building Officials, 5203 Leesburg Pike, Falls Church, Virginia 22041.
[5] National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

EXHIBIT F—PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS: that

_____

(Name of Contractor)

_____

(Address of Contractor)

a _____,

(Corporation, Partnership or Individual)

hereinafter called PRINCIPAL and

_____

(Name of Surety)

hereinafter called SURETY, are held and firm

bound unto _____

_____

(Name of Owner)

_____

(Address of Owner)

hereinafter called OWNER and the United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103–354 hereinafter referred to as GOVERNMENT, and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total aggregate penal sum of ———, ——— Dollars ($———) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the PRINCIPAL entered into a certain contract with the OWNER, dated the ——— day of ———19——, a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery; equipment and tools, consumed or used in connection with the construction of such WORK, and for all labor cost incurred in such WORK including that by a SUBCONTRACTOR, and to any mechanic or materialman lienholder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUBCONTRACTORS, and persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

PROVIDED, FURTHER, that the said SURETY for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the PRINCIPAL (or with the GOVERNMENT in the event the GOVERNMENT is performing the obligations of the OWNER), shall have given written notice to any two of the following: The PRINCIPAL, the OWNER, or the SURETY above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by register mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OWNER, or SURETY, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) After the expiration of one (1) year following the date of which PRINCIPAL ceased work on said CONTRACT, it being understood, however, that if any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term ''Amendment'', wherever used in this BOND and whether referring to this BOND, the contract or the loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER or GOVERNMENT and the CONTRACTOR shall abridge the right of any benficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in [number] counterparts, each one of which shall be deemed an original, this the —— day of ————.

ATTEST:

Principal

(Principal) Secretary

(SEAL)

By ————(s)

(Address)

Witness as to Principal

(Address)

Surety

ATTEST:

Witness as to Surety

(Address)

By

Attorney-in-Fact

(Address)

NOTE.—Date of BOND must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners should execute BOND.

Important: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

EXHIBIT G—PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS: that _____

_____

(Name of Contractor)

_____

(Address of Contractor)

a _____

(Corportion, Partnership, or Individual) hereinafter called PRINCIPAL, and

_____

(Name of Surety)

_____

(Address of Surety)

hereinafter called SURETY, are held and firmly bound unto

_____

_____

(Name of Owner)

_____

(Address of Owner)

hereinafter called OWNER, and the United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103–354 hereinafter referred to as the GOVERNMENT in the total aggregate penal sum of

_____

Dollars ($_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the PRINCIPAL entered into a certain contract with the OWNER, dated the ____ day of ____ 19 ____, a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

NOW, THEREFORE, if the PRINCIPAL shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, or GOVERNMENT, with or without notice to the SURETY and during the guaranty period and if the PRINCIPAL shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER and GOVERNMENT from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER and GOVERNMENT all outlay and expense which the OWNER and GOVERNMENT may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the liability of the PRINCIPAL AND SURETY hereunder to the GOVERNMENT shall be subject to the same limitations and defenses as may be available to them against a claim hereunder by the OWNER, provided, however, that the GOVERNMENT may, at its option, perform any obligations of the OWNER required by the contract.

PROVIDED, FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the CONTRACT as so amended. The term ''Amendment'', wherever used in this BOND, and whether referring to this BOND, the Contract or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER or GOVERNMENT and the PRINCIPAL shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The OWNER and GOVERNMENT are the only beneficiaries hereunder.

IN WITNESS WHEREOF, this instrument is executed in [Number] counterparts, each one of which shall be deemed an original, this the ____ day of ____.

ATTEST:

_____

Principal

_____

(Principal) Secretary

(SEAL)

_____

Witness as to Principal

_____

(Address)

By _____(s)

_____

(Address)

_____

Surety
ATTEST:

Witness as to Surety

(Address)

By
Attorney-in Fact

(Address)

EXHIBIT H—PROHIBITION OF LEAD-BASED PAINTS

I. Purpose

This Exhibit prescribes the methods to be used to comply with the requirements of the Lead-Based Paint Poisoning Prevention Act, Public Law 91–695, as amended, (42 U.S.C. 4801 et seq.) and the amendment to section 501 (3) of Public Law 91–695 (42 U.S.C. 4841 (3)) as amended by the National Consumer Health Information and Health Promotion Act of 1976, Public Law 94–317.

II. Policy

The Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) shall not permit the use of lead-based paint on applicable surfaces of any housing or buildings purchased, repaired, or rehabilitated for human habitation with financial assistance provided by this agency. Paints used on applicable surfaces shall not contain more than 0.06 percent lead by weight calculated as lead metal in the total nonvolatile content of liquid paints or in the dried film of paint already applied.

III. Definitions

A. Housing and buildings mean any house, apartment, or structure intended for human habitation. This includes any institutional structure where persons reside, such as an orphanage, boarding school, dormitory, day care center or extended care facility, college housing, domestic or migratory labor housing, hospitals, group practice facilities, community facilities, and business or industrial facilities.

B. Applicable surfaces means all interior surfaces, whether accessible or not, and those exterior surfaces which are readily accessible to children under 7 years of age, such as stairs, decks, porches, railings, windows, and doors.

C. Lead-based paint means any paint containing more than .5 of 1 percentum lead by weight, or with respect to paint manufactured after June 22, 1977, lead-based paint containing more than six one-hundredths of 1 percentum lead by weight.

IV. Requirements

A. All new housing and buildings shall comply with paragraph II of this Exhibit H.

B. For all existing housing and buildings built *after* 1950, on which a loan is closed after July 19, 1978, FmHA or its successor agency under Public Law 103–354 requires that the applicant, borrower or tenant be notified of the potential hazard of lead-based paints, of the symptoms and treatment of lead poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards. This will be accomplished by providing each applicant, borrower and/or tenant with a copy of Attachment 1 to this Exhibit H, ''Lead-based Paint Hazards, Symptoms, Treatment and Techniques for Eliminating Hazards,'' available in any FmHA or its successor agency under Public Law 103–354 County Office. Copies of Attachment 1 may be obtained by the County Supervisor from the Finance Office, 1520 Market Street, St. Louis, MO 63103.

C. For all existing housing or buildings built *before* 1950 on which a loan is closed after July 19, 1978, FmHA or its successor agency under Public Law 103–354 requires that the applicant, borrower and/or tenant be notified as in paragraph IV B and a copy of Attachment 2 to this Exhibit H, ''Caution Note on Lead-Based Paint Hazard,'' available in any FmHA or its successor agency under Public Law 103–354 County Office, shall be delivered to the hands of the applicant, borrowers and/or tenant.

D. For all property transfers and inventory property sales, Attachments 1 and 2 to this Exhibit H (available in any FmHA or its successor agency under Public Law 103–354 office) shall be handed to the purchaser by the FmHA or its successor agency under Public Law 103–354 representative.

E. All inventory housing or buildings built before 1950 to be repaired, renovated, or rehabilitated shall have tests for lead content, and where found to be hazardous, shall have any interior lead-based paint removed entirely. Loose or cracked surfaces shall be cleaned down to the base surface before repainting with a paint containing not more than six one-hundredths of 1 percentum lead by weight in the total nonvolatile content of the paint or the equivalent measure of lead in the dried film of paint already applied or both. Contracting officers shall include the following provision prohibiting the use of lead-based paint in all contracts and subcontracts for construction or rehabilitation of housing or buildings:

Lead-Based Paint Prohibition

No lead-based paint containing more than .5 of 1 percentum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, or with respect to paint manufactured after June 22, 1977, no lead-based paint containing more than .06 of 1 percentum lead by weight (calculated as lead metal) in the total nonvolatile content of the paint, or the equivalent measure of lead in the dried film of paint already applied, or both, shall be used in the construction or rehabilitation of residential structures under this contract or any subsequent subcontractors.

Authority: This amendment is made under provisions of 5 U.S.C. 301, 40 U.S.C. 486 (c).

Done at ———, ———— this —— day of ————, 19—.

———————— ————————————

FmHA or its successor agency under Public Law 103–354 Representative

V. Summary

Section 401 of the Lead-Based Paint Poisoning Prevention Act as amended by the National Consumer Health Information and Health Promotion Act of 1976, Pub. L. 94–317, provides a requirement that each federal agency issue regulations and to take such other steps necessary to prohibit the use of lead-based paint on all applicable surfaces in Federal and Federally-assisted construction or rehabilitation of residential structures. The Lead-Based Paint Poisoning Prevention Act, Pub. L. 91–695, January 13, 1971, provides for grants to units of general local government in any state for the purpose of detecting and treating incidents of lead-based paint poisoning. Title II of this Act also provides for grants to the same units to identify those areas of risk including testing to detect the presence of lead-based paint on surfaces of residential housing.

EXHIBIT I—GUIDELINES FOR SEASONAL FARM LABOR HOUSING

Section 100

General—This Exhibit sets forth the guidelines and minimum standards for planning and construction of new Labor Housing (LH) that will be occupied on a seasonal basis. Rehabilitation LH projects will be in substantial conformance with these guidelines and standards. A ''seasonal basis'' is defined as 6 months or less per year. Seasonal housing for the farmworker need not be convertible to year-round occupancy; however, the living units shall be designed for the intended type of tenant, the time of occupancy, the location, the specific site, and the planned method of operation. It is important that the design of the LH site and buildings will help to create a pleasing lifestyle which will promote human dignity and pride among its tenants.

Section 200

Codes and Regulations—Compliance is required with National, state and local codes or regulations affecting design, construction, mechanical, electrical, fire prevention, sanitation, and site improvement.

Section 300

Planning

300–1 Complete architectural/engineering services in accordance with this subpart will be required if an LH grant is involved or the LH loan will involve more than four individual family units, or any number of group living units, or dormitory units accommodating 20 or more persons.

300–2 Buildings and site design shall provide for a safe, secure, economical, healthful, and attractive living facility and environment suited to the needs of the domestic farm laborer and his/her family.

300–3 At least 5 percent of the individual family units in a project, or one unit, whichever is greater, and all common use facilities will be accessible to or adaptable for physically handicapped persons. This requirement may be modified if a recipient/borrower shows, through a market survey acceptable to FmHA or its successor agency under Public Law 103–354, that a different percentage of accessible or adapatable units is more appropriate for a particular project and its service area.

Site Design

301–1 General—The site design shall be arranged to utilize and preserve the favorable features and characteristics of the property and to avoid or minimize the potential harmful effect of unfavorable features. Particular attention is directed to §1944.164(l), (m) and (n) of subpart D of part 1944 of this chapter with reference to compliance with subpart G of part 1940 of this chapter. Some of the features which must be considered are the topography, drainage, access, building orientation to sun and breezes; and advantageous features, such as vegetation, trees, good views, etc. or disadvantageous features, such as offensive odors, noxious plants, noise, dust, health hazards, etc.

301–2 Drainage—Surface and subsurface drainage systems shall be provided in accordance with the applicable development standard and subpart C of part 1924 of this chapter.

301–3 Water and Sewage Disposal—Water supply and sewage disposal installations shall comply with subpart C of part 1924 of this chapter, the applicable development standard and all governing state and local

department of health requirements. Where environmentally and economically feasible, the LH facility shall connect to pubic water and waste disposal systems.

301–4 Electrical—Adequate electrical service shall be provided for exterior and interior lighting and for the operation of equipment.

301–5 Vehicular Access and Parking.

301–5.1 Safe and convenient all-weather roads shall be provided to connect the site and its improvements to the off-site public road.

301–5.2 All-weather drives and parking shall be provided for tenants, and for trucks and buses as needed within the site. Driveways, parking areas and walkway locations shall be in substantial conformance with the applicable development standard.

301–6 Walks:

301–6.1 Walks shall be provided for safe convenient access to all dwellings and for safe pedestrian circulation throughout the development between locations and facilities where major need for pedstrian access can be anticipated, such as laundry, parking to dwelling units, common dining rooms, etc.

301–6.2 Walkways shall be hard surface, such a concrete, asphalt, or stablized gravel, and shall be adequately drained.

301–7 Building Location:

301–7.1 Side and rear yards and distances between buildings shall conform to the applicable development standard.

301–8. Garbage and Refuse:

301–8.1 Garbage and refuse containers for individual units are required and shall be stored on durable functional racks or shall be located in a central screened area with easily cleaned surfaces. Single containers for multiple units shall be screened and in locations designed to accommodate collection vehicle functions.

301–9 Fencing:

301–9.1 Fencing used in the site design for project privacy or building security shall be harmonious in appearance with other fences and surrounding facilities which fall within the same view.

301–10 Outdoor living:

301–10.1 All public areas where pedestrian use can be anticipated after sunset shall be adequately lighted for security purposes, such as walkways to common use facilities—laundry, dining halls, building entrances, parking areas, etc.

301–11 Planting and Landscaping:

301–11.1 Planting and lawns or ground covers shall be provided as required to protect the site from erosion, control dust, for active and passive recreation areas, and provide a pleasant environment.

Building Design

302–1.1 Living Units Design:

302–1.1 *Individual Family Unit*—One family or extended family to a unit which shall contain adequate space for living, dining, kitchen, bath and bedrooms. Multifamily type units are required whenever possible for economy of site and building construction.

a. The minimum total net living unit size shall be 400 square feet. This size assumes occupancy of four persons. Units planned for additional occupants shall include an additional 60 square feet of living area per person.

b. A living/dining area shall be provided to accommodate a table and chairs with adequate dining and circulation space for the intended number of occupants. The living/dining area should be combined with the kitchen area.

c. The kitchen shall contain a sink, cooking range and refrigerator. A minimum free countertop area of six square feet is required. A minimum of 40 square feet of shelf area is required.

d. Each bathroom shall contain adequate space and circulation for a bathtub and/or shower, water closet and lavatory. Access to the bathroom shall not be through another bedroom in dwelling units containing more than one bedroom.

e. Bedroom areas separate from living areas are required. The design of the unit shall provide a minimum of 50 square feet of sleeping area per intended occupant including storage. Housing for families with children shall have a separate bedroom or sleeping area for the adult couples. A two foot by two foot shelf with a two foot long clothes hanging rod is required for each occupant.

302–1.2 *Group Living Unit*—A living unit designed for the occupancy of more than one family or for separate occupancy of male and/or female groups. Common bath spaces shall be contained in the same building. Group living units for families shall have separate bedrooms for each adult couple.

a. The design of the unit shall provide for a minimum of 620 square feet of total net living area for eight persons and an additional 60 square feet for each additional occupant. Additional area shall be planned for a second bathroom when anticipated occupancy will exceed eight persons, or if it will be occupied by persons of both sexes.

b. The kitchen shall contain an adequate sink, cooking range, refrigerator, and space the size of which is commensurate with the needs of the group living unit. A minimum of free countertop area of eight square feet is required. A minimum of 50 square feet of shelf area is required.

c. Refer to paragraph 302–1.1 b for living/dining requirements.

d. Each bathroom shall contain adequate space and circulation for comfortable access to, and use of, fixtures which will include a bathtub and/or shower, water closet and lavatory. In no case shall minimum fixtures be less than that required per paragraph 302–1.3 c below.

e. Refer to paragraph 301–1.1 e for bedroom requirements.

302.1.3 *Dormitory Living Unit*—A building which provides common sleeping quarters for persons of the same sex and may or may not contain kitchen and/or dining facilities in the same building as the sleeping quarters.

a. The design of areas for sleeping purposes, using single beds, shall provide for not less than 72 square feet per occupant including storage.

b. The design of areas for sleeping purposes, using double bunk beds, shall provide for not less than 40 square feet per occupant. Triple bunk beds will not be allowed.

c. The design of each dormitory building must include a water closet and a bathtub or shower for each 12 occupants, and a lavatory for each 8 persons. Urinals may be substituted for men's water closets on the basis of one urinal for one water closet, up to maximum of one-third of the required water closets.

d. Adequate kitchen and dining facilities must be provided which may be in the dormitory building or detached at a distance of not more than 200 feet from the sleeping quarters. In either case, the space must contain adequate cooking ranges, refrigerators, sinks, countertop, food storage shelves, tables and chairs, and circulation space. These facilities will comply with the requirements of the ''Food Service Sanitation Ordinance and Code,'' part V of the ''Food Service Sanitation Manual,'' U.S. Public Health Service Publication 934 (1965).

302–2 Other Facilities:

302–2.1 *General*—Other facilities, authorized by subpart D of part 1944 of this chapter, needed by farm workers may be provided in several ways: part of a living unit, located in the project, or, with the exception of laundry facilities, available nearby.

302–2.2 *Laundry Facilities*—Laundry facilities shall be required on-site. Drying yards shall be provided if dryer units are not provided. The design of washing facilities shall plan for a minimum rate of one washer for each 20 occupants. One drying unit may be provided for every two washers, if automatic dryers are customarily provided for rental housing in the community. Laundry facilities shall have adequate space for loading the units, circulation, and clothes folding.

302–2.3 *Office and Maintenance*—An office and maintenance space shall be provided or available, commensurate with the number of living units served, and shall meet the criteria of the FmHA or its successor agency under Public Law 103–354 Manual of Acceptable Practices. If necessary, the maintenance space shall have sufficient area to accommodate furniture storage.

302–2.4 *Child Care Center*—Where feasible, a child care center may be included to provide supervised activity and safety for children while the parents work. Supervisors and workers for such centers are sometimes enlisted on a volunteer basis and the cost borne by nonprofit associations or community organizations. Grants are sometimes available through Federal or state programs. Consequently, the design of the child care center should meet the requirements of those sources providing organizational personnel and/or financing.

302–2.5 *Manager's Dwelling*—If a manager's dwelling unit is to be provided as a part of the FmHA or its successor agency under Public Law 103–354 loan or grant, it will meet these guidelines. However, if it is necessary to provide a year-round caretaker/manager dwelling unit with FmHA or its successor agency under Public Law 103–354 loan or grant funds, it will meet the applicable development standard.

302–2.6 *Recreation*—Outdoor recreation space is required and shall be commensurate with the needs of the occupants. Active and passive recreation areas will be provided which may consist of outdoor sitting areas, playfields, tot lots and play equipment.

General Requirements

303–1 Materials and Construction—All materials and their installation in a LH facility shall meet the applicable development standard. Any exceptions to these requirements for materials and their installation must be obtained with the approval of the FmHA or its successor agency under Public Law 103–354 National Office. Material should be selected that is durable and easily cleaned and maintained.

303–2 Fire Protection—Fire protection and egress shall be provided to comply with the applicable development standard.

303–3 Light, Ventilation, Screening—Natural light and ventilation requirements as specified in the applicable development standard shall be followed. Screening of all exterior openings is required.

303–4 Ceiling Heights—Ceiling heights of habitable rooms shall be a minimum of seven feet six inches clear, and seven feet in halls or baths in dwelling units. Public rooms shall have a minimum of eight feet clear ceiling height. Sloping ceilings shall have at least seven feet six inches for ½ the room with no portion less than five feet in height.

303–5 Heating and Cooling—Heating and cooling and/or air circulation equipment shall be installed as needed for the comfort of the tenants, considering the climate and time of year the facility will be in operation. Maximum feasible use of passive solar heating and cooling techniques shall be required. All equipment installed will be in accordance with the applicable development standard to protect the health and safety of occupants.

303–6 Plumbing—Plumbing materials and their installation shall meet the applicable

development standard. Hot water will be required to all living units, baths, kitchens and laundry facilities.

303–7 Insulation, Thermal Standards, Winterization—Insulation will be required where either heating or cooling is provided as per paragraph 303–5 above or when climatic conditions dictate a need for insulation. Insulation Standards will comply with Exhibit D, paragraph IV C 3, of this subpart, or the state insulation standards, whichever are the more stringent.

303–8 Electrical—Electrical design, equipment and installation shall comply with the requirements of the latest edition of the National Electrical Code, and the applicable development standard for materials and their installation. Individual family units may be separately metered; other types of dwelling units may be separately metered as required.

303–9 Security and Winterization—Adequate management and physical measures will be provided as necessary to protect the facility during off-season periods, including adequate heating and insulation as required.

[52 FR 8002, Mar. 13, 1987, as amended at 52 FR 19283, May 22, 1987; 58 FR 38922, July 21, 1993]

EXHIBIT J—MANUFACTURED HOME SITES, RENTAL PROJECTS AND SUBDIVISIONS: DEVELOPMENT, INSTALLATION AND SET-UP

Part A—Introduction
Part B—Construction and Land Development
Part C—Drawings, Specifications, Contract Documents and Other Documentation
Part D—Inspection of Development Work

Part A—Introduction

I. *Purpose and Scope.* This Exhibit describes and identifies acceptable site development, installation and set-up practices and concepts for manufactured homes. It is intended for FmHA or its successor agency under Public Law 103–354 field personnel, builders, developers, sponsors, and others participating in FmHA or its successor agency under Public Law 103–354 housing programs.

This Exhibit applies to all manufactured homes (except those referenced in Exhibit B of this subpart) on scattered sites or in rental projects and subdivisions and covers the requirements for design and construction of manufactured home communities. FmHA or its successor agency under Public Law 103–354 may approve alternatives or substitutes if it finds the proposed design satisfactory for the proposed use, and if the materials, installation, device, arrangement, or method of work is at least equivalent to that prescribed in this Exhibit considering quality, strength, effectiveness, durability, safety and protection of life and health.

FmHA or its successor agency under Public Law 103–354 will require satisfactory evidence to be submitted to substantiate claims made regarding the use of any proposed alternative.

II. *Background.* FmHA or its successor agency under Public Law 103–354 has authority to make (1) section 502 Rural Housing (RH) loans with respect to manufactured homes and lots, and (2) section 515 Rural Rental Housing (RRH) loans with respect to manufactured home rental projects.

The manufactured home must be constructed in conformance with the Federal Manufactured Home Construction and Safety Standard (FMHCSS) and be permanently attached to a site-built permanent foundation which meets or exceeds the Minimum Property Standards (MPS) for One- and Two-Family Dwellings or Model Building Codes acceptable to FmHA or its successor agency under Public Law 103–354. The manufactured home must be permanently attached to that foundation by anchoring devices adequate to resist all loads identified in the MPS. This includes resistance to ground movements, seismic shaking, potential shearing, overturning and uplift loads caused by wind. Note that anchoring straps or cables affixed to ground anchors other than footings will *not* meet these requirements.

Subpart G of part 1940 of this chapter applies on scattered sites, in subdivisions and rental projects to the development, installation and set-up of *manufactured homes.* To determine the level of environmental analysis required for a particular application, each manufactured home or lot involved shall be considered as equivalent to one housing unit or lot as these terms are used in §§1940.310–1940.312 as well as in any other sections of subpart G of part 1940 of this chapter. The implementation of FmHA or its successor agency under Public Law 103–354 environmental policies and the consideration of important land use impacts are of particular relevance in the review of proposed manufactured home sites and in achieving the two purposes highlighted below. Because the development, installation and set-up of manufactured home communities, including scattered sites, rental projects, and subdivisions, differ in some requirements from conventional site and subdivision development, two of the purposes of this Exhibit are to:

A. Encourage economical and orderly development of such communities and nearby areas, and

B. Promote the safety and health of residents of such communities.

Therefore, this Exhibit identifies those required standards and regulations and suggested guidelines for eliminating and preventing health and safety hazards and promoting the economical and orderly development and utilization of land for planning and

development of manufactured home communities. The Exhibit also provides the requirements for meeting the following:

A. *Resistance to Wind.* Foundations and anchorages shall be designed to resist wind forces specified in American National Standards Institute (ANSI) A–58.1–1982 for the geographic area in which the manufactured home will be sited;

B. *Proper Installation.* The manufacturer's installation instructions provided with each manufactured home shall contain instructions for at least one site-built foundation with interior and/or perimeter supports. FmHA or its successor agency under Public Law 103–354 field office personnel shall review to determine its adequacy as security for an FmHA or its successor agency under Public Law 103–354 loan only, the foundation design concept for compliance with this Exhibit, the FmHA or its successor agency under Public Law 103–354/MPS and any Model Building Code acceptable to FmHA or its successor agency under Public Law 103–354 in that particular geographic area; and

C. *Proper Foundation Design.* Manufactured homes shall be installed on a foundation system which is designed and constructed to sustain, within allowable stress and settlement limitations, all applicable loads. Any foundation and anchorage system or method of construction to be used should be analyzed in accordance with well-established principles of mechanics and structural engineering.

III. *Definitions.* For the purpose of this Exhibit the following definitions apply:

Accessory Building or Structure.

A subordinate building or structure which is an addition to or supplements the facilities provided by a manufactured home.

Anchoring Systems. An approved system for securing the manufactured home to the ground or foundation system that will, when properly designed and installed, resist overturning and lateral movement of the home from wind forces.

Contiguous. Sharing a boundary, adjoining or adjacent. A lot or subdivision is considered to be contiguous to other lots or subdivisions if it is adjoining, touching or adjacent.

Federal manufactured Home Construction and Safety Standards (FMHCSS). A 1976 federal standard, commonly known as the HUD Standard, for the construction, design and performance of a manufactured home which meets the needs of the public including the need for quality, durability and safety. Units conforming to the FMHCSS are certified by an affixed label that reads as follows:

AS EVIDENCED BY THIS LABEL NO. _____ THE MANUFACTURER CERTIFIES TO THE BEST OF THE MANUFACTURER'S KNOWLEDGE AND BELIEF THAT THIS MANUFACTURED HOME HAS BEEN INSPECTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND IS CONSTRUCTED IN CONFORMANCE WITH THE FEDERAL MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE. SEE DATA PLATE.

Manufactured Home. A structure which is built to the Federal Manufactured Home Construction and Safety Standards and FmHA or its successor agency under Public Law 103–354's thermal requirements. It is transportable in one or more sections, which in the traveling mode is ten body feet or more in width, and when erected on site is four hundred or more square feet, and which is built on a permanent foundation when connected to the required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure.

Manufactured Home Community. A parcel or contiguous parcels of land which contains two or more manufactured home sites available to the general public for occupancy. Sites and units may be for rent, or sites may be sold for residential occupancy (as in a subdivision).

Manufactured Home Rental Project. A parcel or multiple parcels of land which have been so designated and improved to contain manufactured homes with sites available for rent.

Manufactured Home Site. A designated parcel of land in a manufactured home rental project, subdivision or scattered site designed for the accommodation of a unit and its accessory structures for the exclusive use of the occupants.

Manufactured Home Subdivisions. Five or more contiguous (developed or undeveloped) lots, or building sites that meet the requirements of subpart C of part 1924 of this chapter.

Permanent Perimeter Enclosure. A permanent perimeter structural system completely enclosing the space between the floor joist of the manufactured home and the ground. If separate from the foundation system, the permanent perimeter enclosure shall be secured to the perimeter of the manufactured home, properly ventilated and accessible and constructed of materials that conform to the FmHA or its successor agency under Public Law 103–354 adopted MPS requirements for foundations.

Pier Support System. Consists of footings, piers, caps, leveling spacers, or approved prefabricated load bearing devices.

Related Facilities. Any nonresidential structure or building used for rental housing related purposes.

Site-Built Permanent Foundation System. A foundation system (consisting of a combination of footings, piers, caps and shims and anchoring devices or required structural connections) which is designed and constructed to support the unit and sustain, within allowable stress and settlement limitations, all applicable loads specified in ANSI A58.1–1982. All loads shall be transferred from the manufactured home to the earth at a depth below the established frost line without exceeding the safe bearing capacity of the supporting soil.

Set-Up. The work performed and operations involved in the placement of a manufactured home on a foundation system, to include installation of accessories or appurtenances and anchoring devices, and when local regulations permit, connection of utilities, but excluding preparation of the site.

IV. *Compliance with Local Regulations.* These requirements do not replace site development standards established by local law, ordinances, or regulations. Whenever such local standards contain more stringent provisions than any of the site development, installation and set-up minimums of FmHA or its successor agency under Public Law 103–354, the more stringent standards shall govern.

V. *Applicable Standards, Regulations and Manuals.*— A. Manufactured housing to be financed by FmHA or its successor agency under Public Law 103–354 must comply with the following standards:

1. Federal Manufactured Home Construction and Safety Standards, 24 CFR part 3280, mandated by Congress under title VI of the Federal Housing and Community Development Act of 1974, except for §3280.506, ''Heat Loss,'' of subpart F, ''Thermal Protection,'' to part 3280.

2. Foundation requirements of the Minimum Property Standards as adopted by FmHA or its successor agency under Public Law 103–354 or a Model Building Code acceptable to FmHA or its successor agency under Public Law 103–354.

3. [Reserved]

4. Uniform Federal Accessibility Standard (UFAS).

5. ANSI A58.1–1982, Minimum Design Loads for Buildings and Other Structures.

B. Manufactured housing to be financed by FmHA or its successor agency under Public Law 103–354 shall comply with all applicable FmHA or its successor agency under Public Law 103–354 regulations, including but not limited to the following:

1. Subpart C of part 1924 of this chapter, ''Planning and Performing Development Work.''

2. Subpart A of part 1924, Exhibit D, ''Thermal Performance Construction Standards.''

3. Subpart G of part 1940, ''Environmental Program.''

4. Subpart A of part 1944, ''Section 502 Rural Housing Loan Policies, Procedures, and Authorizations.''

5. Subpart E of part 1944, ''Rural Rental Housing Loan Policies, Procedures, and Authorizations.''

The requirements of the above references have not been repeated in this Exhibit. Those requirements contained above are either mandatory or minimums and every effort should be made by the applicant, builder-developer or dealer-contractor to utilize higher standards, when appropriate.

Part B—Construction and Land Development

I. *General Acceptability Criteria.* The following criteria apply to development on scattered sites, in subdivisions and in rental project communities.

A. A manufactured home development including a site, rental project or subdivision shall be located on property designated for that use, where designations exist, by the local jurisdiction.

B. Conditions of soil, ground water level, drainage, flooding and topography shall not create hazards to the property and health or safety of the residents.

C. The finished grade elevation beneath the manufactured home or the first flood elevation of the habitable space, whichever is lower, shall be above the 100-year return frequency flood elevation. This requirement applies wherever manufactured homes may be installed, not just in locations designated by the National Flood Insurance Program as areas of special flood hazards. The use of fill to accomplish this is a last resort. However, as stated in §1940.304 of subpart G of part 1940 of this chapter, it is FmHA or its successor agency under Public Law 103–354's policy not to approve or fund any proposal in a 100-year floodplain area unless there is no practicable alternative to such a floodplain location.

D. Essential service such as employment centers, shopping, schools, recreation areas, police and fire protection, and garbage and trash removal shall be convenient to the development and any site, community, or subdivision must meet the environmental and location requirements contained in subpart G of part 1940 of this chapter.

E. Manufactured home sites, rental projects and subdivisions shall not be subject to any adverse influences of adjacent land uses. An adverse influence is considered as one that is out of the acceptable level or range of a recognizable standard or where no standard exists is considered a nuisance irrespective of a site being zoned for manufactured home use. Health, safety and aesthetic consequences of location shall be carefully assessed by inspection of the site prior to selection of development. Undesirable land

uses sush as deteriorated residential or commercial areas and noxious industrial properties shall be avoided to ensure compatibility. Other undesirable elements such as heavily traveled highways, airport runways, railroad, or fire hazards and other areas subject to recognizably intolerable noise levels shall be avoided.

F. The requirements for streets shall be those found in subpart C of part 1924 of this chapter.

G. The site design and development shall be in accordance with sound engineering and architectural practices and shall provide for all utilities in a manner which allows adequate, economic, safe, energy efficient and dependable systems with sufficient easements for their required installation and maintenance.

H. Utilities for each manufactured home site, rental housing project or subdivision shall be designed and installed in accordance with subpart C of part 1924 of this chapter; and the State health authority having jurisdiction, and all local laws and regulations requiring approval prior to construction.

I. Exhibit C, section V of this subpart shall be complied with by the applicant, dealer-contractor or builder-developer for manufactured home projects with individual water supply and sewage disposal systems. This Exhibit shall be used by the FmHA or its successor agency under Public Law 103–354 County Supervisors, District Directors, and State Directors in reviewing submissions.

J. During the planning, design, and construction of the foundation system and/or perimeter enclosure, provisions shall be made for the installation and connection of on-site water, gas, electrical and sewer systems, which are necessary for the normal operation of the manufactured home. Water and sewer system hookups shall be adequately protected from freezing.

II. *Development on Scattered Sites and in Subdivisions.*—A. *General.* Scattered sites and subdivision developments will be planned and constructed in accordance with specific requirements of this subpart, subpart C of part 1924, and subpart G of part 1940 of this chapter, and the applicable FmHA or its successor agency under Public Law 103–354/MPS or Model Building Codes acceptable to FmHA or its successor agency under Public Law 103–354. Manufactured homes for development in a manufactured home community shall:

1. Be erected with or without a basement on a site-built permanent foundation that meets or exceeds applicable requirements of the FmHA or its successor agency under Public Law 103–354/MPS for One- and Two-Family Dwellings or Model Building Codes acceptable to FmHA or its successor agency under Public Law 103–354;

2. Be permanently attached to that foundation by anchoring devices adequate to resist all loads identified in the FmHA or its successor agency under Public Law 103–354 adopted MPS (this includes resistance to ground movements, seismic shaking, potential shearing, overturning and uplift loads caused by wind, etc.);

3. Have had the towing hitch or running gear, which includes tongues, axles, brakes, wheels, lights and other parts of the chassis that operate only during transportation removed;

4. Have any crawl space beneath the manufactured home properly ventilated and enclosed by a continuous permanent perimeter enclosure. If it is not the supporting foundation, designed to resist all forces to which it may be subject without transmitting to the building superstructure movements or any effects caused by frost heave, soil settlement (consolidation), or shrinking or swelling of expansive soils; and be constructed of materials that conform to FmHA or its successor agency under Public Law 103–354 adopted MPS requirements for foundations;

5. Have the manufactured home insulated to meet the energy conserving requirements contained in Exhibit D of this subpart;

6. Have a manufactured home site, site improvements, and all other features of the mortgaged property not addressed by the Federal Manufactured Home Construction and Safety Standards, meet or exceed applicable requirements of this subpart and subpart C of part 1924 of this chapter, the FmHA or its successor agency under Public Law 103–354 adopted MPS except paragraph 31–2.2 or a Model Building Code acceptable to FmHA or its successor agency under Public Law 103–354;

7. Have had the manufactured unit itself braced and stiffened where necessary before it leaves the factory to eliminate racking and potential damage during transportation; and

8. Be eligible for financing in accordance with the requirements of either section 502, or section 515 of FmHA or its successor agency under Public Law 103–354's Housing Program, for which purpose the beginning of construction will be the commencement of on-site work even though the manufactured home itself may have been produced and temporarily stored prior to the date of application for financing.

B. *Site Planning and Development.* The site planning and development of manufactured home scattered sites and subdivisions shall also comply with the following:

1. *Arrangement of Structures and Facilities.* The site, including the manufactured home, accessory structures, and all site improvements shall be harmoniously and efficiently organized in relation to topography, the shape of the plot, and the shape, size and position of the unit. Particular attention shall be paid to use, appearance and livability.

2. *Adaptation to Site Assets.* The manufactured home shall be fitted to the terrain with a minimum disturbance of the land. Existing trees, rock formations, and other natural site features shall be preserved to the extent practical. Favorable views or outlooks shall be emphasized by the plan.

3. *Site Plan.* The site plan shall provide for a desirable residential environment which is an asset to the community in which it is located.

4. *Lot Size.* The size of manufactured home lots (scattered sites and subdivision) shall be determined by §1944.11(e) of subpart A of part 1944 and subpart C of part 1924 of this chapter.

C. *Foundation Systems, Anchoring and Setup.*

1. The foundation system shall be constructed in accordance with this subpart and one of the following: (a) The foundation system included in the manufacturer's installation instructions meeting FmHA or its successor agency under Public Law 103–354/MPS requirements, (b) the FmHA or its successor agency under Public Law 103–354/MPS 4900.1, which specifies performance requirements for foundations in section 600 ''General'' and paragraph 601–16 ''Foundations,'' or (c) an FmHA or its successor agency under Public Law 103–354 recognized model building code.

2. The manufactured home permanent foundation system shall constitute a permanent load bearing support system for the manufactured home. The manufacturer or applicant shall be permitted to design or specify the installation of a foundation system which meets FmHA or its successor agency under Public Law 103–354/MPS design requirements for foundations and the general requirements above.

3. The applicant's responsibility for proper design and installation of the permanent foundation system, anchoring and set-up shall be in accordance with §1924.5(f)(1), of this subpart.

4. The builder/developer of the manufactured home property, for proposed construction, shall submit with the application for financing by the applicant or for a conditional commitment design calculations, details and drawings for the installation, anchorage and construction of permanent foundation and perimeter enclosure to be used.

III. *Rental Housing Project Development.*—A. *General.* Manufactured housing rental developments shall be planned and constructed in accordance with requirements of subpart C of part 1924; this subpart; subpart G of part 1940, the FmHA or its successor agency under Public Law 103–354/MPS; and the requirements of subpart E of part 1944 of this chapter.

B. *Site Planning and Development.* Site planning and development shall adapt to individual site conditions and the type of market to be served, reflect advances in site planning and development techniques, and be adaptable to the trends in design of the manufactured home. Site planning and development shall utilize existing terrain, trees, shrubs and rocks formations to the extent practicable. A regimental style site plan design should be avoided.

C. *Foundation Systems, Anchoring and Setup.* Foundation systems, anchoring and set/ups for manufactured home rental projects (site and home) developed under FmHA or its successor agency under Public Law 103–354 section 515 Rural Rental Housing program shall comply with the requirements of paragraphs II A and II C above.

IV. *Accessory Structures and Related Facilities.*—A. *General.* Accessory structures and related facilities are dependent upon the manufactured home and its environment.

1. Accessory structures and related facilities shall be planned, designed and constructed in accordance with the applicable provisions of this subpart; the FmHA or its successor agency under Public Law 103–354/MPS; and local criteria of the authority having jurisdiction.

2. Accessory structures and related facilities shall be designed in a manner that will eliminate and prevent health and safety hazards and enhance the appearance of the manufactured home and its environment.

3. Accessory structures and related facilities shall not obstruct required openings for light and ventilation of the manufactured home and shall not hamper installation and utility connections of the unit.

B. *Accessory Structures.* 1. Accessory structures shall not include spaces for pantries, bath, toilet, laundries, closets or utility rooms.

2. Accessory structures shall be carefully designed and constructed for the convenience and comfort of the manufactured home occupant. These features significantly affect the visual appearance of the community and influence livability.

C. *Related Facilities (Rental Housing Projects).* 1. This includes those facilities as defined in §§1944.205(i) and 1944.212(f) of subpart E of part 1944 of this chapter.

1. This includes those facilities as defined in §1944.212(e) of subpart E of part 1944 of this chapter.

2. Related facilities built on-site must meet the FmHA or its successor agency under Public Law 103–354/MPS and subpart A of part 1924 of this chapter or other building codes approved by FmHA or its successor agency under Public Law 103–354.

3. Workmanship shall be of a quality equal to good standard practice. Material shall be of such kind and quality as to assure reasonable durability and economy of maintenance, all commensurate with the class of building under consideration.

4. All members and parts of the construction shall be properly designed to carry all

loads imposed without detrimental effect on finish or covering materials.

5. The structure shall be adequately braced against lateral stresses and each member shall be correctly fitted and connected.

6. Adequate precautions shall be taken to protect against fire and accidents.

7. All related facilities which require accessibility to the handicapped must comply with the Uniform Federal Accessibility Standard (UFAS).

V. *Fire Protection and Safety*. A. The design of the site plan for each manufactured community and scattered site shall meet the fire protection and safety requirements of the local authority responsible for providing the necessary fire protection services.

B. All fire detection and alarm systems, and water supply requirements for fire protection for manufactured communities shall be in accordance with the local authority responsible for providing the necessary fire protection services.

C. Any portion of a manufactured home shall not be closer than the local separation requirements of the development standard for side to side, end to end, and end to side siting. If the exposed composite wall and roof of two or more manufactured homes are proposed to be joined they shall be without openings and constructed of materials which will provide a minmum one-hour fire rating each, or the manufactured homes are separated by a one-hour fire rated barrier designed and approved for such installation and permitted by the authority having jurisdiction.

D. Manufactured homes shall not be positioned vertically (stacked) with one over the other in whole or in part without the specific approval of the authority having jurisdiction.

Part C—Drawings, Specifications, Contract Documents and Other Documentation

I. *General.* Adequate site development and foundation installation drawings and specfications shall be provided by the applicant or dealer-contractor to FmHA or its successor agency under Public Law 103–354 to fully describe the construction and other development work. These documents shall be provided according to the requirements of §1924.5(f)(1) of this subpart. Contract documents will be prepared in accordance with §1924.6 and, in the case of multiple family housing construction and development, §1924.13 of this subpart.

A. The documents recommended shall be used as a guide for drawings and specifications to be submitted in support of all types of loan and/or grant applications involving manufactured homes. Adequate and accurate drawings and specifications are necessary to:

1. Determine the acceptability of the physical environment and improvements,

2. Determine compliance with the applicable standards and codes,

3. Review cost estimates, and

4. Provide a basis for financing, inspections, and the warranty.

B. Detailed floor plans, drawings and specifications are not required for any manufactured home to be installed on a scattered site, in a subdivision or rental housing project. However, a schematic floor plan should be submitted by the applicant when applying for FmHA or its successor agency under Public Law 103–354 financing. The unit must have an affixed label as specified in paragraph XIV (c)(3) of Exhibit F of subpart A of part 1944 indicating that the unit is constructed to the FmHA or its successor agency under Public Law 103–354 thermal requirements for the appropriate winter degree days. This will indicate that the manufacturer certifies that the unit has been properly inspected and it meets the FmHA or its successor agency under Public Law 103–354 Thermal Performance Construction Standard.

C. For proposed construction, the builder or dealer-contractor shall submit with the loan or grant application design calculations, details and drawings for the installation, anchorage and construction of the permanent foundations and perimeter enclosure to be used. Drawings and specifications for foundation systems will be reviewed and examined by either the FmHA or its successor agency under Public Law 103–354 County Supervisor, District Director, or State Architect/Engineer for foundation support locations, loads and connection requirements specified by the manufacturer as a basis for evaluating foundation compliance with the FmHA or its successor agency under Public Law 103–354/MPS or Model Building Code, and for determining design suitability for soil conditions. Drawings and specifications will also be examined by FmHA or its successor agency under Public Law 103–354 to determine compliance with all other on-site features not covered by the FMHCSS.

D. Foundation design sections and details of all critical construction points systems, anchorage methods, and structural items shall be scaled as necessary to provide all appropriate information 1:30 (3/8''=1'-0'') minimum.

II. *Scattered Sites.* Drawings for single family manufactured housing shall be submitted by the applicant in addition to the requirements of paragraph I above and the requirements of paragraphs II A and D–7 of Exhibit C of this subpart.

III. *Subdivisions.* Subpart C of part 1924 of this chapter will be used in preparing and providing supporting documents.

IV. *Rental Housing Projects.* Subpart C of part 1924 of this chapter will be used in preparing and providing supporting documents.

V. *Specifications.* A. Form FmHA or its successor agency under Public Law 103–354 424–2, ''Description of Materials,'' or other acceptable and comparable descriptions of all materials used for site development, foundation installation and the permanent perimeter enclosure shall be submitted with the drawings by the applicant.

B. The material identification information shall be in sufficient detail to fully describe the material, size and grade. Where necessary, additional sheets shall be attached as well as manufacturer's specification sheets for equipment and/or special materials.

Part D—Inspection of Development Work

I. *General.* The following policies will govern the inspection of all manufactured housing development work. This includes scattered sites, subdivisions, rental housing projects and all accessory structures and related facilities unless otherwise indicated.

II. *Inspections.* A. The responsibility for frequency and propose of inspections shall be in accordance with §1924.9(b)(1), (2) and (3) of this subpart. The inspection requirements of §1924.13 apply to the planning and conduct of construction work on all 515 housing developments that are more extensive in scope and more complex in nature than those involving an individual manufactured housing unit. The Stage 2 inspection customary for site-built housing when the building is enclosed is not required for manufactured homes.

The Stage 2 inspection for manufactured homes will be made within two working days after erection or placement on the foundation to determine compliance with accepted installation drawings and specifications for installation and set-up and to verify that the correct unit is on the site.

Stages 2 and 3 inspections for manufactured homes may be combined when authorized by the State Director.

B. The borrower will join the County Supervisor or the District Director in making periodic inspections as often as possible and always for the final inspection.

C. The borrower should be encouraged to make enough periodic visits to the site to be familiar with the progress and performance of the work in order to protect the borrower's interest. If the borrower observes or otherwise becomes aware of any fault or defect in the work or nonconformance with the contract documents, the borrower should give prompt written notice thereof to the dealer-contractor and a copy of the notice to the appropriate County Supervisor or District Director.

D. During inspection, it will generally be infeasible to determine whether a manufactured unit erected on a site was properly braced and stiffened during transportation. Inspectors should examine these units to determine that there is no obvious damage or loosening of fastenings that may have occurred during transportation. The dealer-contractor must warrant these units against such damage, which should protect FmHA or its successor agency under Public Law 103–354's interest.

III. *Warranty Plan Coverage.* The warranty requirements for all development work shall be in accordance with §1924.9(d) of this subpart and Exhibit F of subpart A of part 1944 of this chapter.

[51 FR 41603, Nov. 18, 1986, as amended at 52 FR 19283, May 22, 1987; 53 FR 2156, Jan. 26, 1988]

EXHIBIT K—CLASSIFICATIONS FOR MULTI-FAMILY RESIDENTIAL REHABILITATION WORK

I. General

This Exhibit distinguishes between what FmHA or its successor agency under Public Law 103–354 considers maintenance and repair work, moderate rehabilitation and substantial rehabilitation. In all cases, the building or project to be rehabilitated shall be structurally sound. The applicant shall have a structural analysis of the existing building made to determine the adequacy of all structural systems for the proposed rehabilitation.

II. Definitions

Maintenance and Repair—Work involved in the selective replacement and general maintenance and repair of certain materials, appliances or components of an existing residential building.

Moderate Rehabilitation—All work directly involved in the rearrangement of interior space, the replacement of finish materials or components of the electrical, plumbing, heating or conveyance systems of an existing multi-family residential building. Work and improvements are considered to be more than routine maintenance and repair.

Substantial Rehabilitation—All work directly involved in the rearrangement of interior space that involves alteration of load bearing partitions and columns; the replacement of the electrical, plumbing, heating or conveyance systems; and the addition to and/or major conversion of existing multi-family residential buildings or other building structures.

Moderate rehabilitation and repair shall not be limited to building changes for cosmetic or convenience purposes. In all cases moderate rehabilitation shall involve a minimum of three (3) components of building rehabilitation listed as moderate. Unless combined with other improvements in a project that are considered to be moderate or substantial rehabilitation the items identified as maintenance and repair are considered to be cosmetic and convenience changes.

When a rehabilitation project consists of both moderate and substantial rehabilitation components, those substantial rehabilitation components shall be in accordance with FmHA or its successor agency under Public Law 103–354's development standards and local codes and regulation requirements. Where the majority of project components of building rehabilitation are considered substantial the project shall be considered in the substantial rehabilitation category.

Those site components of rehabilitation such as landscaping, grading, drainage, fencing, parking areas, recreation areas, water and waste disposal systems, etc., whether considered either maintenance and repair, moderate rehabilitation or substantial rehabilitation shall be in accordance with FmHA or its successor agency under Public Law 103–354's development standards for site development work; all local codes and regulation requirements; and sound engineering and architectural practices.

Any alteration of a structure listed or eligible for listing on the National Register of Historic Places may be considered either moderate or substantial rehabilitation; however, it shall conform first to the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and then to FmHA or its successor agency under Public Law 103–354's requirements. In cases where the Secretary of the Interior's standards cannot be met, rehabilitation will conform to the agreed upon approaches, treatments and techniques resulting from the consultation process between FmHA or its successor agency under Public Law 103–354, the borrower, the State Historic Preservation Officer and the Advisory Council of Historic Preservation.

III. Components of Multi-Family Building Rehabilitation

The components of multi-family building rehabilitation necessary and generally considered by FmHA or its successor agency under Public Law 103–354 to be either maintenance and repair, moderate rehabilitation or substantial rehabilitation include but are not limited to those listed in the following chart.

Components of Multi-Family Building Rehabilitation

Components	Maintenance and repair	Moderate rehabilitation	Substantial rehabilitation
Air conditioning	o		
Appliance replacement or repair	o		
Cabinet replacement or repair	o		
Carpeting	o		
Caulking	o		
Ceiling framing	o		
Clothes closets or shelving improvements	o		
Door repair	o		
Drywall repair	o		
Gutters and downspouts	o		
Hardware replacement or repair	o		
Kitchen cabinet improvement	o		
Lighting fixture replacement or repair	o		
Mail boxes	o		
Painting	o		
Paneling	o		
Partition repair	o		
Roof repair	o		
Signage	o		
Stair repair	o		
Tile work	o		
Wallpapering	o		
Window shades and curtains	o		
Door replacement		o	
Drywall replacement		o	
Elevator components replacement		o	
Exterior entrance redesign, relocation		o	
Finish flooring materials		o	
Flashing		o	
Furnace replacement		o	
Gas pipes		o	
Insulation		o	
Lath and plaster replacement		o	
New shingles or roof replacement		o	
Partition (nonbearing) replacement, or relocation		o	
Plumbing fixture replacement		o	
Pointing		o	
Porch and steps alterator or replacement		o	
Stair replacement, or relocation		o	
Storm windows and weatherstripping		o	
Subfloor material replacement		o	
Trim—exterior and interior		o	
Window replacement		o	
New or alteration to the:			
Mechanical system			o
Soil pipes			o
Vent pipes			o
Waste pipes			o
Alteration or replacement of structural components:			
Beams			
Chimneys and vents			o
Columns and post			o
Electrical service—replacement or new			o

COMPONENTS OF MULTI-FAMILY BUILDING REHABILITATION—Continued

Components	Maintenance and repair	Moderate rehabilitation	Substantial rehabilitation
Elevator replacement			o
Exterior walls			o
Floor construction			o
Footing			o
Foundation wall			o
Foundation waterproofing			o
Interior walls			o

Moderate repair and rehabilitation shall not be limited to building changes for cosmetic purposes. In all cases moderate rehabilitation shall involve a minimum of three (3) components of building rehabilitation listed as moderate. Unless combined with other improvements in a project that are considered to be moderate or substantial rehabilitation the items identified as maintenance and repair are considered to be cosmetic and convenience changes.

EXHIBIT L—INSURED 10-YEAR HOME WARRANTY PLAN REQUIREMENTS

I. Purpose

In recent years, numerous third-party home warranty plans have been developed offering new homeowners varying degrees of protection against builder default and/or major structural defects in their homes. This exhibit establishes the criteria and procedures by which a warranty plan is found acceptable for new construction of single family homes financed by Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354). An acceptable warranty plan will:

A. Assure that FmHA or its successor agency under Public Law 103–354 borrowers receive adequate warranty coverage,

B. In certain circumstances, eliminate the requirement for FmHA or its successor agency under Public Law 103–354 personnel to make the first two construction inspections, and

C. Permit a loan up to the market value of the security (less the unpaid principal balance and past due interest of any other liens against the security), even though FmHA or its successor agency under Public Law 103–354 personnel may not have performed period inspections during construction.

II. Types of Warranty Companies

A. An insured warranty company is underwritten by an insurance carrier, licensed to operate as an insurer by the states where the warranty company plans to operate, and has an acceptable rating from a nationally recognized rating company such as A.M. Best Company.

B. A risk retention group is an insurer which is licensed in one state and is authorized, under the Products Liability Risk Retention Act of 1981, to issue its policies in all states. This authority is not challenged by FmHA or its successor agency under Public Law 103–354; however, there remains some question as to the legal propriety of a 10-year insured warranty insurer to be a risk-retention group. If at some future time any state insurance commission or regulatory agency challenges the legal authority of such group, FmHA or its successor agency under Public Law 103–354 will reconsider its acceptance of the group.

C. Individual state warranty plans, such as that offered by the State of New Jersey, are backed by the full faith and credit of the state government.

III. Plan Requirements

To be considered acceptable, a warranty plan must include the following features:

A. The entire cost (fee, premium, etc.) of the coverage is prepaid and coverage automatically transfers to subsequent owners without additional cost.

B. The coverage is not cancellable by the warrantor (builder), warranty company or insurer.

C. The coverage age includes at least the following:

(1) For one year from the effective date, any defects caused by faulty workmanship of defective materials.

(2) During the second year after the effective date, the warranty continues to cover the wiring, piping and duct work of the electrical, plumbing, heating and cooling systems, plus the items in (3).

(3) During the third through the tenth years, the warranty continues to cover major structural defects. A major structural defect is actual damage to the load-bearing portion of the home including damage due to subsidence, expansion or lateral movement of the soil (excluding movement caused by flood or earthquake) which affects its load-bearing function and which vitally effects or is imminently likely to affect use of the home for residential purposes.

D. A system is provided for complaint (claims) handling which includes a conciliation and, if necessary to resolve matters in dispute, arbitration arranged by the American Arbitration Association or similar organization.

E. A construction inspection plan is required if FmHA or its successor agency under Public Law 103–354 is to eliminate the first two FmHA or its successor agency under Public Law 103–354 inspections or permit a full market value loan when FmHA or

its successor agency under Public Law 103–354 inspections are not conducted.

IV. Information for Review

A. Companies submitting warranty plans for a determination of acceptability must support requests with the following information.

(1) Evidence that the insured warranty company has met the applicable state licensing and/or regulatory requirements in the state in which the company plans to operate.

(2) Evidence that the insurance carrier underwriting the warranty plan is licensed to operate as an insurer in the states in which the company plans to operate and has an acceptable rating from a nationally recognized company such as A.M. Best Company.

(3) State warrenty plan agencies will provide evidence that the plan is backed by the full faith and credit of the state.

(4) A full description of the warranty plan including information on the fees, builder and home registration procedures, required construction standards, construction inspection procedures, coverage provided and claims procedures.

(5) A sample copy of the warranty information and/or policy which is provided to the homeowner.

(6) Suggested means by which FmHA or its successor agency under Public Law 103–354 field offices can readily assure that the builder is a member in good standing prior to loan approval and that a warrant will be issued upon the completion of construction prior to the final release of funds.

B. Submission and Acceptance:

(1) Insured warranty companies, except those operating as risk retention groups, and state warranty plan agencies will submit their requests and supporting information to the FmHA or its successor agency under Public Law 103–354 State Director in the state in which they plan to operate. State Directors will determine the acceptability of insured warranty plans and state warranty plans in their jurisdictions, notify the company or agency of the decision in writing and notify field offices by issuance of a State Supplement including the names and addresses of acceptable warranty companies and any other pertinent information.

(2) Warranty companies claiming authority as risk retention groups will submit their requests and supporting information including certification that it has complied with all requirements of the Products Liability Risk Retention Act of 1981 (Pub. L. 97–45) and information indicating the state in which it is licensed, information to the FmHA or its successor agency under Public Law 103–354 National Office, Single Family Housing Processing Division. The National Office will determine the acceptability of the warranty of a risk retention group, notify the company of the decision in writing and notify field offices by issuance of an attachment to this Exhibit.

V. Warranty Performance

A. County Supervisors will report inadequate warranty performance through their District Director to the State Director. State Directors will review the situation, assist in resolving any problems and, if necessary, initiate action under subpart F of part 1942 of this chapter. State Directors will inform, by memorandum, the Director, Single Family Housing Processing Division, National Office, of any problems with warranty performance and if any debarment action is initiated.

B. State Directors will annually monitor each warranty company and/or its insurer to assure continued compliance with state licensing and/or regulatory requirements.

Attachment 1—Acceptable Warranty Companies

The warranty companies listed below claim authority to act as a risk retention group under the Products Liability Risk Retention Act of 1981 and as such, to operate in all States to provide 10-year home warranties. This authority remains subject to future challenges by any State insurance commissioner or regulatory agency; however, until such challenge is made, FmHA or its successor agency under Public Law 103–354 accepts their warranty.

Name and address	Area of operation
Home Owners Warranty Corporation/HOW Insurance Company, 11 North Glebe Road, Arlington, Virginia 22201, (703) 516–4100.	All States.
Home Buyers Warranty, 89 Liberty Street, Asheville, North Carolina 22801, Telephone: (704) 254–4478.	All States.
Residential Warranty Corporation, P.O. Box 641, Harrisburg, Pennsylvania 17108–0641, Telephone: 1–800–247–1812.	All States.
Manufactured Housing Warranty Corporation, P.O. Box 641, Harrisburg, Pennsylvania 17108–0641, Telephone: 1–800–247–1812.	All States.

[52 FR 8002, Mar. 13, 1987, as amended at 56 FR 29167, June 26, 1991]

Subpart B—Management Advice to Individual Borrowers and Applicants

SOURCE: 53 FR 35679, Sept. 14, 1988, unless otherwise noted.

§ 1924.51 General.

This subpart contains policies for providing management advice to all

Farm Credit Programs direct loan applicants and borrowers. Forms and Farm Assessment and Supervision Reference handbooks are available in any Agency county office.

[61 FR 35922, July 9, 1996]

§§ 1924.52—1924.53 [Reserved]

§ 1924.54 Definitions.

As used in this subpart, the following definitions apply:

Agency. This term refers to the Farm Service Agency, its county and State committees and their personnel, and any successor agency.

Commercial classified. The Agency's highest quality Farm Credit programs accounts. The financial condition of the borrowers is strong enough to enable them to absorb the normal adversities of agricultural production and marketing. There is ample security for all loans, there is sufficient cash flow to meet the expenses of the agricultural enterprise and the financial needs of the family, and to service debts. The account is of such quality that commercial lenders would likely view the loans as a profitable investment.

Farm Assessment and Supervision Reference. This reference provides guidance to field staff on conducting assessments, year-end analyses, and general borrower supervision.

Farm business plan. The automated or manual Farm and Home Plan system which contains a projection that accurately reflects the borrower's plan of operation for the production or marketing cycle. The annual plan may cover a period of more or less than 12 months. A normal year's plan, as defined in this section, will be used when the annual plan does not reflect typical income, expenses, and debt payments. The Agency will accept farm business plans other than the Farm and Home Plan if they provide sufficient information to enable Agency officials to render a sound credit decision in accordance with Agency regulations.

Farm Credit Programs loan. Includes Farm Ownership (FO), Soil and Water (SW), Operating (OL), Emergency (EM), Economic Emergency (EE), Recreation (RL), Special Livestock (SL), Economic Opportunity (EO) and Softwood Timber (ST) loans. Also included are Rural Housing loans for farm service buildings (RHF), and Rural Housing (RH) loans where the borrower is also indebted for an Agency direct farm loan that is not a collection only or judgment account. Non-Program loans, which are defined in § 1951.451(a), are excluded.

Financially viable operation. A financially viable operation projects that it can generate sufficient income to meet annual operating expenses and debt payments as they become due, meet basic family living expenses to the extent they are not met by dependable non-farm income, provide for the replacement of capital items, and provide for long-term financial progress to enable the operator to obtain commercial credit.

Individual. The term ''individual'' is used throughout this subpart to refer to the person receiving Agency supervision and management advice. If an applicant or borrower applies as an individual applicant, the term ''individual'' means the operator. In the case of an eligible corporation, cooperative, partnership, or joint operation, the term ''individual'' means the entity members with the primary responsibility for making management decisions and carrying out the day-to-day physical tasks.

Normal year plan. A projected farm business plan most representative, or typical, of an operation's normal income, expenses (including family living expenses), and capital debt payments.

Prospectus. Consists of a transmittal letter similar to FmHA Guide Letter 1951–F–3 with a current balance sheet and projected year's budget attached. The applicant or borrower name and address need not be withheld from the lender. The prospectus is used to determine lender interest in financing or refinancing specific direct loan applicants and borrowers. The prospectus will provide information regarding the availability of Agency loan guarantee and interest assistance.

Standard classified. These loan accounts are fully acceptable by Agency standards. Loan risk and potential loan servicing costs are higher than would be acceptable to other lenders, but all loans are adequately secured. Repayment ability is adequate, and there is a

high probability that all loans will be repaid as scheduled and in full.

[61 FR 35922, July 9, 1996]

§ 1924.55 Assessment of the agricultural operation.

Assessments will be completed for direct Farm Credit Programs loan applicants. An assessment is a comprehensive evaluation of the components of an operation, the identification and prioritization of training and supervisory needs, and the resulting plan of supervision to assist the borrower in achieving financial viability. The assessment is the central foundation upon which to build strategies for planning, credit and management counseling, loan controls, analysis, borrower training, and all other needed supervision. An assessment will include thorough inspections of the operation and face-to-face meetings and discussions with all key individuals. At least semi-annual reviews of progress will be performed in accordance with paragraph (e) of this section.

(a) *Agency evaluation*. The Agency will assess each of the areas described in paragraph (b) of this section in close cooperation with the applicant or borrower. As part of that assessment, the Agency will determine whether the proposed budget is feasible on a direct or guaranteed loan basis, the type and nature of any material financial or production management weaknesses in the operation, and the specific strategy needed, including timeframes, to effect improvements and control risks. Material weaknesses are those that have a significant impact on the net income of the operation and need to be corrected to enable the borrower to progress financially and eventually graduate from FSA farm credit programs. Examples of material weaknesses include, but are not limited to: lack of a farm recordkeeping system, obsolete or inadequate facilities, and use of outdated production practices. In the case of Youth loans, it is recognized that most of the component areas will be ''Not Applicable'' since there is no full-scale farming operation to consider.

(b) *The assessment is an evaluation, conducted with an applicant or borrower, of the following components*:

(1) Type of operation.

(2) Goals.

(3) Real estate, including facilities.

(i) Location and size.

(ii) Proposed and existing improvements.

(iii) Presence of environmental hazards.

(iv) Conservation practices and measures.

(v) Adequacy and continued availability of real estate.

(vi) External factors, such as urban encroachment and zoning changes.

(4) Chattel property used in the operation.

(5) Farm business organization and key personnel.

(6) Historical financial data.

(7) Projected budget.

(8) Planned changes.

(9) Ability to obtain guaranteed credit.

(c) *Supervision and training.* Appropriate supervisory oversight and training recommendations will be developed based on the Agency's evaluation of the strengths and weaknesses of the operation in accordance with paragraphs (a) and (b) of this section and § 1924.59.

(d) *Performing the year-end analysis.* A year-end analysis is required for borrowers (except for Youth loans and loans flagged as having bankruptcy, foreclosure, or other action pending) the first year after an initial or subsequent loan, chattel subordination, or restructuring is received, borrowers who are financially distressed or delinquent, borrowers who have loans deferred, and borrowers who are receiving limited resource interest rates. All other borrowers (including flagged accounts) will receive a year-end analysis at the discretion and judgment of the Agency. However, at least every two years, the borrower will provide upon Agency request, a year-end balance sheet, actual financial performance, and a projected farm budget so that the borrower can be classified for graduation purposes in accordance with subpart F of part 1951. The year-end analysis should coincide with the borrower's farm budget planning period. The borrower will work with the Agency to:

(1) Complete the year-end analysis, whenever possible, within the 60-day

period after completion of the borrower's business year or farm budget planning period.

(2) Complete and review the ''actual'' columns on the farm business plan and Form FmHA 1962–1, ''Agreement for the Use of Proceeds/Release of Chattel Security,'' if applicable.

(3) Develop a farm business plan for the next production cycle in accordance with § 1924.56.

(4) Reach agreement on key management issues. Any such agreements will be documented for the borrower case file and signed by the borrower.

(e) *For all borrowers, the assessment described under this section will be reviewed on at least a semi-annual basis to monitor progress.* The borrower will consult with the Agency official in person, or if that is not possible, by telephone, or in writing. A meeting must be scheduled as soon as practicable to determine corrective options if: the borrower is, or expects to be, delinquent; the borrower is experiencing difficulties; or other significant changes have occurred. The year-end analysis under this section may be treated as one of the required assessment reviews.

[61 FR 35922, July 9, 1996]

§ 1924.56 Farm business planning.

The automated Farm and Home Plan system is the primary tool used by the Agency to evaluate loan feasibility and prospects for achieving financial viability. Other manual or automated business planning systems may be used with the consent of the Agency.

(a) [Reserved]

(b) *Documentation and revision of plans.* Individuals must submit a farm business plan to the Agency, upon request, for loan approval and servicing purposes. An individual may request the assistance of the Agency official, as needed, in completing the plan. Farm business plans will be based only on accurate, verifiable information. If the Agency official and the individual cannot reach agreement, on the farm business plan, then the Agency will make loan approval and servicing determinations based on the Agency's separate, revised farm business plan. The individual will have the right to appeal any resulting adverse decision.

(1) Historical information will be used as a guide to evaluate the feasibility of projected farm business plans. Individuals must provide the Agency with their previous 5-year production history, if available. Positive and negative trends, mutually agreed upon changes and improvements, and current input prices, will be taken into consideration when arriving at reasonable projections.

(i) For individuals with less than a 5-year history, actual production records from an operation to be taken over by the individual will be considered, whenever available.

(ii) In the absence of the information listed in paragraph (b)(1)(i) of this section, other reliable data sources that may be used include: FSA Farm Programs (formerly Agriculture Stabilization and Conservation Service) actual yield records and county or State averages.

(iii) This paragraph applies when an accurate projection cannot be made because the individual's production history in any or all of the previous 5 years has been substantially affected by a disaster that has been declared by the President or designated by the Secretary of Agriculture. This paragraph also applies to those individuals who would have had a qualifying physical or production loss, as defined in § 1945.154(a), from such a disaster, but who were not located in a designated or declared disaster area.

(A) If the individual's disaster years yields are less than the county average yields, county average yields will be used for those years. If county average yields are not available, State average yields will be used.

(B) In calculating a baseline average yield, the individual may exclude the production year with the lowest actual or county average yield, providing the individual's yields were affected by disasters during at least 2 of the 5 years.

(2) Unit prices for agricultural commodities as published in the State supplement will generally be used. However, regional or county unit prices may be used when there are transportation costs or other significant factors that cause a difference in commodity prices within the State. Individuals who can provide reliable evidence that

they will receive a premium price for a commodity will be allowed to use the higher price for farm planning. The determination of disaster years will be based on the 5-year history of disaster declarations or designations for all counties contained in the State supplement.

(3) When the Agency official and individual revise the farm business plan, the plan will be signed and initialed by both parties. Form FmHA 1962–1 (available in any Agency office) will be revised whenever significant changes occur during the year that will affect repayment ability. It is the individual's responsibility to notify the Agency of any necessary changes. If the changes would result in a major change in the operation, a completely new farm business plan must be developed. The individual and Agency official will initial and date revisions to the Form FmHA 1962–1.

(4) If the borrower and Agency cannot reach an agreement on revisions to the farm plan and an adverse decision results, the borrower may appeal. During an appeal, the Agency will make releases of normal income security for essential family living and farm operating expenses in accordance with § 1962.17. If the borrower refuses to execute Form FmHA 1962–1 as finally determined by the Agency after an appeal, the account will be serviced under § 1962.18. If the borrower does not appeal, the planned releases documented on Form FmHA 1962–1 are binding.

[61 FR 35923, July 9, 1996]

§ 1924.57 [Reserved]

§ 1924.58 Recordkeeping.

(a) All borrowers must have a recordkeeping system, which must be documented as part of the assessment under § 1924.55.

(b) The selected recordkeeping system must provide information similar to that contained in Forms FmHA 431–2, FmHA 432–1, ''Farm Family Record Book,'' and FmHA 432–2, ''Five Year Inventory Record.'' The recordkeeping system must enable borrowers to make informed management decisions and allow the Agency to render loan making and servicing decisions in accordance with Agency program regulations.

(c) Borrowers must maintain accurate records and submit financial information to the Agency when required. Failure to do so will result in the borrower's ineligibility for future Agency financing and loan servicing and may result in acceleration and collection action.

[61 FR 35924, July 9, 1996]

§ 1924.59 Supervision.

The Agency's supervision is based on the information and evaluation resulting from the assessment of the operation. The borrower is required to:

(a) Cooperate with the Agency and comply with all supervisory agreements, farm plans, and all other loan-related requirements.

(b) Promptly notify the Agency of any significant change in the business or family expenses or the development of problem situations.

(c) Maintain and protect the collateral for Agency loans and promptly report to the Agency any losses or other significant changes in the collateral.

(d) Complete any training required by § 1924.74.

[61 FR 35924, July 9, 1996]

§ 1924.60 Nonfarm enterprises.

A nonfarm enterprise is any business enterprise which supplements farm income by providing goods or services for which there is a need and a reasonably reliable market. The same general policies covered in this subpart for giving management assistance to an applicant or borrower on farm loans will be followed in dealing with an applicant or borrower on nonfarm enterprise loans. The appropriate plans and record book will be used for the nonfarm enterprise. The borrower responsibilities in § 1924.59 (a) also apply to nonfarm enterprises.

[61 FR 35924, July 9, 1996]

§§ 1924.61–1924.73 [Reserved]

§ 1924.74 Borrower Training program.

(a) *Introduction.* (1) Supervised credit includes helping borrowers to develop the skills necessary for successful, efficient production and financial management of a farm business. An effective, formal training program provides a

solid foundation on which borrowers can build the skills which will enable them to become efficient, financially sound producers who can obtain commercial financing. The goal of this training is for borrowers to develop and improve the financial and production management skills necessary to successfully operate a farm, build equity in the farm business, and become financially successful to graduate from Agency programs to commercial sources of credit.

(2) The authorities contained in this section require certain Farm Credit Programs borrowers to obtain training in production and financial management concepts. Unless waived, this training will be an eligibility requirement for all Farm Credit Programs direct and guaranteed loans. The training requirement will also apply to all direct borrowers who receive Primary Loan Servicing actions approved under subpart S of part 1951 of this chapter, with the exception of net recovery buyout offers. Borrowers who do not request new loans or servicing actions will be notified during farm visits and annual analyses of approved courses in their area. Also, a current list of approved courses will be posted in the County Office.

(3) The training will be carried out by public and/or private sector providers of farm management and credit counseling services (including, but not limited to, community colleges, the Extension Service, State Departments of Agriculture, farm management firms, lenders, and similar qualified organizations).

(4) State Directors will enter into agreements with one or more qualified providers in each State to conduct the training.

(b) *Processing*—(1) *Agency review*. The determination of an applicant/borrower's need for enhanced training in production and financial management concepts will be made by the Agency. To make this determination, the Agency will review the case file (in the case of borrowers) and the complete application package for the assistance requested. A decision that the applicant/borrower needs such training cannot be used as a basis for rejecting the request for assistance. In the case of a cooperative, corporation, partnership, or joint operation, any individual member, stockholder, partner, or joint operator holding a majority interest in the entity or who is operating the farm must agree to complete the training on behalf of the entity. However, if one entity member is solely responsible for financial or production management, then only that entity member will be required to complete the training in that area for the entity or qualify for a partial waiver. If the financial and production functions of the farming operation are shared, the knowledge and skills of the individual(s) with the responsibility of production and/or financial management of the operation will be considered in the aggregate for granting a waiver or requiring that training be completed. If a waiver is not granted, these individuals will be required to complete the training in accordance with their responsibilities for production and/or financial management. This training must be completed within 2 years after ''Agreement to Complete Training,'' is signed if a waiver is not granted. When production training is required, a borrower must complete course work covering production management in crop or livestock enterprises which constitute twenty percent of the projected cash farm income for the coming production cycle, as determined by the Agency. Borrowers who are adding a new enterprise must agree to complete any required production training in that enterprise unless a waiver is granted by the Agency. Borrowers must also complete financial management training unless a waiver has been granted by the Agency.

(i) *Loan applicants.* After the Agency has determined that the applicant meets all eligibility criteria for the type of assistance requested, the Agency will consider the applicant's need for enhanced training in production and financial management concepts. If the Agency determines the applicant is ineligible for assistance, the training requirement will not be considered.

(ii) *Requests for Primary Loan Servicing.* Prior to Agency offer of any Primary Loan Servicing action, the Agency must determine whether the borrower must complete a training program or qualifies for a waiver. This determination should be made after a feasible plan has been developed using consolidation, rescheduling, reamortization, deferral, softwood timber, and/or writedown, but prior to Agency actual offer to restructure the borrower's accounts. This training requirement does not apply to those borrowers offered net recovery buyout or preservation loan servicing. If the borrower must complete a training program, fees will be included in the plan as an operating expense.

(2) *Waivers.* Applicants for loans and Primary Loan Servicing programs may request a waiver from the training requirement by submitting Form FmHA 1924–27, ''Request for Waiver of Borrower Training Requirements,'' with the application for assistance. The waiver request must include the required documentation and records as specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section. A waiver is not required for those applicants who have previously received a waiver, or who have previously satisfied the training requirements. The applicant/borrower must meet all training requirements for both production and financial management if no waiver is granted. If the borrower receives a waiver for production training, the requirements for financial management training must still be met. Conversely, if the borrower receives a waiver for financial management training, the requirements for production training must still be met. In the case of entity applicants, only those entity members who hold a majority interest in the operation or who operate the farm must meet the waiver conditions for the entity to qualify for a waiver. However, if one entity member is solely responsible for financial or production management, then only that entity member will be required to complete the training in that area for the entity or qualify for a partial waiver. If the financial and production functions of the farming operation are shared, the knowledge and skills of the individual(s) with the responsibility of production and/or financial management of the operation will be considered in the aggregate for granting a waiver or requiring that training be completed. If a waiver is not granted, these individuals will be required to complete the training in accordance with their responsibilities for production and/or financial management. The Agency may waive the financial and/or production training requirements under the following conditions:

(i) The applicant has successfully completed an equivalent training program. To meet this requirement, the applicant must submit evidence of completion of a production and/or financial management course similar to a course approved under this section. The submission must include a description of the content and subjects covered in the course(s) completed by the applicant or entity members. The submission must also include evidence of completion, such as a grade report, certificate of completion, or written certification by the course instructor. The program must have covered subject areas in paragraph (d)(3)(iii) of this section. The Agency will review the documentation submitted by the applicant(s) for assistance to determine whether the training completed satisfies the training requirements of this section; or

(ii) The applicant has the experience and/or training which demonstrates the abilities necessary for successful, efficient production as determined by the Agency based on documentation provided by the applicant with the request for the waiver. This documentation must include, at a minimum, the applicant's production records for the past 5 years and a statement explaining how the records demonstrate production ability.

(3) *Notifying applicants/borrowers of the the Agency's decision regarding training.* The applicant/borrower will be informed of the the Agency's decision as follows:

(i) Loan applicants receiving a waiver from the training will be notified in the letter of eligibility, required under § 1910.6 of subpart A of part 1910 of this chapter. Applicants for Primary Loan Servicing actions who are receiving a

waiver will be notified through exhibit B or exhibit F to subpart S of part 1951 of this chapter, as appropriate.

(ii) Loan applicants required to complete the training will be notified in the letter of eligibility. Applicants for Primary Loan Servicing actions who are required to complete the training will be notified through exhibit B or exhibit F to subpart S of part 1951 of this chapter, as appropriate. The notification will include the name(s) of the approved vendor(s) in the applicant/borrower's area and the specific courses required. The notification to the applicant/borrower will also include a description of the scoring system to be used to determine if the applicant/borrower has successfully met the training requirements. In both loan making and servicing cases, the decision to require certain training is not appealable. However, the decision is reviewable.

(4) *Notification of applicants determined ineligible for assistance.* In the letter informing them of the Agency's decision, applicants determined ineligible for assistance due to lack of management training and experience will be notified, for their information, of training programs approved under this section. If the ineligible applicant chooses to enroll in a training program, eligibility for future assistance will not be automatic upon completion of the course. Applicants who complete an approved course and later apply for a new loan must still demonstrate that they possess sufficient training and experience to assure reasonable prospects of success and meet other eligibility requirements for the assistance requested.

(5) *Contacting vendor and payment.* Upon receiving the notification of the training requirement, the borrower is responsible for selecting and contacting a vendor(s), and making all arrangements to begin the training. Agency is not a party to fee or other agreements between the borrower and the vendor. Training fees must be included in the plan of operation as a farm operating expense. Payment of training fees is an authorized use of operating loan funds.

(6) *Training agreement.* Prior to closing the loan or Primary Loan Servicing action, the applicant/borrower must sign Form FmHA 1924–23. This agreement will be placed in position 2 of the borrower case file.

(7) *Automated tracking system.* Field offices will process certain data to the automated Finance Office records in order to properly track borrower training-related information. Reference the automated system user manuals for more specific information on this automated tracking system.

(8) *County Office monitoring.* Required training will be included in Table C of Form FmHA 431–2. Agency personnel will monitor borrower progress during farm visits and analyses in accordance with this subpart. The County Supervisor will also contact the borrower to follow up on unsatisfactory training progress reports. All contacts with the borrower will be noted in the running case record, together with the topics discussed and agreements reached.

(c) *Vendor's evaluation of borrower progress*—(1) All required training must be completed within 2 years after the borrower signs Form FmHA 1924–23. The County Supervisor may grant a 1-year written extension to the agreement in cases where the borrower demonstrates he/she was unable to complete the training due to circumstances beyond his/her control, such as poor health or discontinuance of the necessary approved courses. Refusal to grant a 1-year extension is not an appealable decision.

(2) The vendor will provide Agency with periodic progress reports. The frequency of these reports will be determined by the State Director. These reports are not intended to reflect a grade or score, but to indicate whether the borrower is attending sessions and honestly endeavoring to complete the training program. Upon completion of the training, the vendor will provide the County Office with an evaluation of the borrower's knowledge of the course material. This evaluation shall specifically address the borrower's improvement toward meeting the goals outlined in this section. The instructor will also assign the borrower a score according to the following criteria:

Score

1. The borrower attended classroom sessions as agreed, satisfactorily completed all assignments, and demonstrated an understanding of the course material.
2. The borrower attended classroom sessions as agreed and attempted to complete all assignments; however, the borrower does not demonstrate an understanding of the course material.
3. The borrower did not attend classroom sessions as agreed and/or did not attempt to complete assignments. In general, the borrower did not make a good faith effort to complete the training.

(i) Borrowers receiving a score of 1 will have met the requirements of the agreement. The accounts of these borrowers will be serviced in accordance with existing regulations.

(ii) Borrowers receiving a score of 2 will have met the requirements of the agreement. However, since these borrowers do not adequately demonstrate an understanding of the course material, the County Supervisor will develop a plan outlining the additional supervision the borrower will require to accomplish the objectives of Agency assistance, such as recommending further training, more frequent farm visits, or retaining professional services of an accountant, farm management consultant, or similar expert based upon the borrower's abilities.

(iii) Borrowers receiving a score of 3 will not have met the requirements of the agreement for training. Failure to complete the training as agreed will cause the borrower to be ineligible for future Agency benefits including future direct and guaranteed loans, Primary Loan Servicing, Interest Assistance renewals, and restructuring of guaranteed loans.

(d) *Selection and approval of organizations and courses*—(1) *Identification of potential vendors.* Prior to the initial approval of vendors and prior to renewal of approved vendor's training agreements, the State Director or designee shall solicit applications from all interested organizations, keeping in mind its cultural diversity responsibilities. The State Director shall contact the Chief Executive Officer of the State and appropriate officials from the State Department of Agriculture, the State Extension Service, community colleges, and other private or nonprofit organizations which may be interested in conducting this training.

(2) *Application.* The vendor must submit the following items prior to consideration for approval:

(i) A sample of the course materials and a description of the method(s) of training to be used.

(ii) Specific training objectives for each section of the course. These objectives should relate to the general objectives outlined in paragraph (d)(3)(i) of this section.

(iii) A detailed course agenda specifying the topics to be covered, the time to be devoted to each topic, and the number of sessions to be attended.

(iv) A list of instructors and their qualifications, and the criteria by which additional instructors will be selected.

(v) The proposed locations where training will take place. These sites should be within a reasonable commuting distance for borrowers to be served by the vendor.

(vi) Cost per participant and/or cost per organization, *i.e.*, cost for husband/wife joint operation; father/son partnership; or multiple members of a corporation.

(vii) Minimum and/or maximum class size.

(viii) A description of the organization's experience in developing and administering training to farmers.

(ix) A description of the monitoring and/or quality control methods the organization intends to use.

(x) A description of the policy on allowing Agency employees to attend the course for monitoring purposes, *i.e.*, the number of employees authorized to attend; the cost (if any); and the number of classes each employee can attend.

(xi) A description of how the needs of borrowers with physical and/or mental handicaps or learning disabilities will be met.

(xii) A plan of how the needs of borrowers for whom English is not their primary language will be met.

(3) *State Office review and recommendation.* Upon receipt of the application packages from the potential vendors, the State Director will review the material to assure the vendor's proposal meets the following minimum criteria

for accomplishment of educational objectives, instructor qualifications, curriculum content, and vendor qualification:

(i) *Educational objectives.* Upon completion of the course, the borrower shall be able to:

(A) Describe the specific goals of the business, describe what changes are required to attain the business goals, and outline how these changes will occur using present and projected enterprise budgets.

(B) Maintain and utilize a financial management information system which includes financial and production records, a household budget, a statement of financial condition, and an accrual adjusted income statement. The borrower shall also be able to use this system when making financial and production decisions.

(C) Understand and utilize an income statement. Specifically, the borrower must understand the structure and major components of an income statement and its role in analyzing the performance of a business, be familiar with the cash and accrual methods of determining net farm income, and understand the relationship between a balance sheet and an income statement.

(D) Understand and utilize a balance sheet. Specifically, the borrower must understand the major components of a balance sheet and its role in analyzing the business, be familiar with the categories of assets and liabilities and be able to provide examples of entries under each, and be familiar with the cost and market methods of valuing assets and liabilities and the advantages of each method.

(E) Understand and utilize a cash flow budget. Specifically, the applicant must be able to explain and justify estimates for production and expenses, and analyze the cash flow to identify potential problems.

(F) Using production records and other production information, be able to identify problems, evaluate alternatives, and make needed corrections to current production practices to achieve greater efficiency and profitability.

(ii) *Instructor qualifications.* Instructor qualifications will be reviewed to assure sufficient knowledge of the material and sufficient experience in adult education. The instructors must have a bachelor's degree or comparable experience in the subject area they will teach and a minimum of three years experience in conducting training courses or teaching. Also, the instructors must successfully complete any instructor training which may be associated with the Agency approved course.

(iii) *Curriculum.* The curriculum shall be reviewed to assure that the following subject matter is sufficiently addressed. A single vendor is not required to provide all the courses necessary to cover the entire curriculum; however, to the extent practicable, all topics must be available for all Agency districts. The State Director shall identify the specific crop or livestock enterprises for which training must be available in a given area or district, and any additional subject matter to be covered for each.

(A) *Business Planning.* The course(s) shall cover the general areas of goal setting, risk management, and planning. Goal setting will include identification of personal and family goals, business goals, and short- and long-term goals. Risk management concepts will include the sources, magnitude and frequency of risk, risk tolerance, risk-taking ability of the business, and strategies for managing risk such as use of credit, marketing, production practices, and insurance. Finally, the course(s) will guide the borrower through the formulation of a long-term business plan for the farm and presentation of this plan to a lender.

(B) *Financial Management Systems.* The course(s) shall cover all aspects of farm accounting, specifically: Instruction in financial record keeping, preparation of a household budget, development and analysis of accrual adjusted income statements, balance sheets, and cash flow budgets. The course(s) shall focus on integrating these elements into a financial management system which enables the borrower to make business decisions based on his/her analysis of financial information.

(C) *Crop Production.* The course(s) shall focus on improving the profitability of the borrower's crop enterprises. Specifically, the course shall address keeping and analyzing production records, identifying problems in current production practices, identifying sources of production information and assistance, and using production information to analyze alternatives and identify the most profitable solution.

(D) *Livestock Production.* The course(s) shall focus on improving the profitability of the borrower's livestock enterprises. Specifically, the course shall address keeping and analyzing production records, identifying problems in current production practices, identifying sources of production information and assistance, and using production information to analyze alternatives and identify the most profitable solution.

(iv) *Vendor.* The proposed vendor of the training must have demonstrated a minimum of three years experience in conducting training courses or teaching the proposed subject matter.

(4) *Approval.* After review of the applications, the State Director shall determine which vendors should be recommended for final approval. Complete application packages from the selected vendors should be submitted to the National Office for concurrence prior to final approval. Applications from accredited colleges (including community colleges) or universities, however, do not require National Office concurrence prior to final approval. If all of the instructors have not been selected at the time of request for approval of the vendor, the vendor may be approved with the condition that instructors will meet the criteria set out in paragraph (d)(3)(ii) of this section. After approval, the State Director and the vendor(s) will sign Form FmHA 1924–24, ''Agreement to Conduct Production and Financial Management Training for Farmers Home Administration or its successor agency under Public Law 103–354 Borrowers.'' This agreement will be valid for three years, unless revoked in writing and giving 30 days notice by the State Director or the vendor. The State Director may revoke the agreement if the vendor does not comply with the responsibilities listed in the agreement. Such revocation is nonappealable. The State Director will issue a State supplement to this subpart listing the approved vendor(s), the contact person for the vendor, the terms of the vendor agreements, and the subject matter in which each vendor is approved to conduct training.

(5) *Renewals.* Renewal of agreements to conduct training will not be automatic. The vendor must request renewal in writing, provide updates to any changes in curricula, and provide information which indicates the training provided by the vendor is effective. Such information may include course evaluations, test scores, or statistics on the improvement of borrowers who have completed the course. The State Director must obtain National Office concurrence on any decisions to deny renewal of a vendor's agreement. A decision to deny renewal of a vendor's agreement is nonappealable.

(e) *Vendor monitoring.* An operational file will be maintained in the State Office for each approved vendor. This file will include the application, National Office concurrence (if required), the signed Form FmHA 1924–24, documentation of Agency monitoring of the vendor, and any further documentation to determine the success of the vendor's program. To assure the training organization is correctly and effectively implementing the training as proposed, the State Director or designee will be responsible for monitoring the vendor. This monitoring shall, as a minimum, consist of:

(1) Attendance at selected training sessions for each vendor to verify that the agreed-upon subject matter is being covered in sufficient detail and to assess the effectiveness of the training provided by the instructors.

(2) Review of course and instructor evaluations. Course and instructor evaluations will be completed by the borrowers on Form FmHA 1924–22, ''Borrower Training Course Evaluation.'' This form will be provided to the borrowers by the instructor as they complete the course. The evaluations will be forwarded to the State Director

for review. The results will be summarized and made part of the operational file on each vendor.

(3) Monitoring of borrowers' improvement upon completion of a course. The State Director will analyze statistics regarding borrower performance, such as the graduation and delinquency of borrowers who have completed the required training course.

[58 FR 69195, Dec. 30, 1993, as amended at 61 FR 35924, July 9, 1996]

§§ 1924.75—1924.99 [Reserved]

§ 1924.100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0560–0154.

[61 FR 35924, July 9, 1996]

EXHIBIT TO SUBPART B

EXHIBIT A—LETTER TO BORROWER REGARDING RELEASES OF FARM INCOME TO PAY FAMILY LIVING AND FARM OPERATING EXPENSES

UNITED STATES DEPARTMENT OF AGRICULTURE

Farmers Home Administration or its successor agency under Public Law 103–354

(Insert Address)

(Date)
Borrower's Name)
(Address)

Dear _____:

Public Law 100–233 requires the Agency to notify you that you are entitled to have Agency release proceeds from the sale of crops, livestock, and livestock products planned to be marketed in the regular course of business including ASCS and CCC payments, so that you can pay essential family living and farm operating expenses. The releases will continue until such time as your account should become in default and Agency has to accelerate your account.

To provide these releases to you, Agency regulations require that you fill out Form FmHA 1962–1 to explain what items of Agency security you intend to sell during this crop year. Please see Attachment 1 of this letter for an explanation of this form. We request that you contact this office within 10 days of when you receive this letter so that we can complete this form and you can receive releases on a timely basis.

Sincerely,

_____

County Supervisor

ATTACHMENT 1 TO EXHIBIT A

Periodically, you will be asked to complete Form FmHA 1962–1, ''Agreement for the Use of Proceeds/Release of Chattel Security,'' which will document the agreement between you and the Agency as to how proceeds from the sale of chattel property which serves as security for your Agency loans will be released. You will also need to list those buyers to whom you plan to sell your farm products. This plan will give you and the Agency a clear idea of what income you expect from your operation and how those proceeds will be used. The plan will set forth the amount of money required for paying essential family living, farm operating expenses, and debt service payments. You and the Agency must agree on how much money will be released from your crop proceeds. Such releases must be in accordance with Agency regulations.

If the County Supervisor is unable to agree with and approve your plan for the use of the sales proceeds, you will receive a letter explaining why the County Supervisor is unable to approve your plan and how you may appeal the County Supervisor's decision. While an appeal is pending, Agency will release sales proceeds to be used to pay essential family living and farm operation expenses.

Once a plan has been agreed on, it is important that you abide by the plan. The plan can always be revised or changed, as circumstances require, provided you and Agency can agree to the revisions.

Planned sales can be listed by month, by quarter or by whatever period suits your operation the best. The form does not have to be completed to show each individual animal, bushel, bale, etc. The form is a plan: it contains only projections. We expect your projections to be realistic and based on your past experience, but we know that you cannot predict exactly how many bushels per acre you will harvest, exactly how many animals you will wean, etc. We also realize that you cannot predict prices to the penny. Sometimes you will have a buyer for your products who is not listed on the form. All we expect of you is to be as accurate as you can. Later, if the plan needs to be changed, you and the County Supervisor can work together to revise it. Many revisions can be agreed on over the telephone and a trip to the County Office is not always needed. You are not required to check with Agency before making a sale just because the price you expected to receive is different from what you had planned to receive. However, a difference in price might require your plan to be revised, so Agency wants to be told about the difference as soon as possible after the sale is

made. you are expected to obtain Agency approval before making a major change in your operation or before you use sale proceeds in a way different than you agreed to.

If at all possible, you should let Agency know if you are going to sell to a buyer who is not listed on the form. The attached chart gives certain examples when you must get prior consent from the Agency and when you may advise Agency after the sales of your farm products.

WHAT TO DO IF YOU WANT TO TAKE ACTIONS THAT ARE DIFFERENT THAN WHAT IS LISTED ON YOUR FORM FMHA 1962–1

Get prior consent	Give notice afterwards
You Must Get Agency PRIOR CONSENT if You Want to:	You Can Take Action and Then Give Agency Notice AFTERWARDS if You Want to:
1) Sell, exchange, consume, or otherwise dispose of property that is not listed on your Form FmHA 1962–1;	4) Dispose of your property at a time that is different than what you listed in the "MONTH" section of your Form FmHA 1962–1;
2) Dispose of chattel security in a way not listed in the "HOW" section of your Form FmHA 1962–1 (for example, feed corn to livestock instead of selling it;	5) Sell (or exchange) your property to a person or business that is not listed in the "POTENTIAL PURCHASERS" section of your Form FmHA 1962–1;
3) Use proceeds in a way not listed in the "USE OF PROCEEDS" section of your Form FmHA 1962–1 (for example, use proceeds to buy equipment instead of to pay debt).	6) Sell, exchange, consume, or otherwise dispose of a quantity of property that is different than what you listed in the "QUANTITY" section of your Form FmHA 1962–1;
	7) Accept a price for your property that is different than what you listed in the "AMOUNT OF PROCEEDS" section of your Form FmHA 1962–1.

[53 FR 35679, Sept. 14, 1988, as amended at 56 FR 15821, Apr. 18, 1991; 61 FR 35924, July 9, 1996]

Subpart C—Planning and Performing Site Development Work

SOURCE: 60 FR 24543, May 9, 1995, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes appear at 61 FR 2899, Jan. 30, 1996.

§ 1924.101 Purpose.

This subpart establishes the basic Rural Housing Service (RHS) policies for planning and performing site development work. It also provides the procedures and guidelines for preparing site development plans consistent with Federal laws, regulations, and Executive Orders.

§ 1924.102 General policy.

(a) *Rural development.* This subpart provides for the development of building sites and related facilities in rural areas. It is designed to:

(1) Recognize community needs and desires in local planning, control, and development.

(2) Recognize standards for building-site design which encourage and lead to the development of economically stable communities, and the creation of attractive, healthy, and permanent living environments.

(3) Encourage improvements planned for the site to be the most cost-effective of the practicable alternatives. Encourage utilities and services utilized to be reliable, efficient, and available at reasonable costs.

(4) Provide for a planning process that will consider impacts on the environment and existing development in order to formulate actions that protect, enhance, and restore environmental quality.

(5) No site will be approved unless it meets the requirements of this part and all state and local permits and approvals in connection with the proposed development have been obtained.

(b) *Subdivisions.* RHS does not review or approve subdivisions. Each site approved by RHS must meet the requirements of § 1924.115, on a site by site basis.

(c) *Development related costs.* (1) *Applicant.* The applicant is responsible for all costs incurred before loan or grant closing associated with planning, technical services, and actual construction. These costs may be included in the loan or grant as authorized by RHS regulations.

(2) *Developer.* The developer is responsible for payment of all costs associated with development.

§ 1924.103 Scope.

This subpart provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, Farm Labor Housing (LH) loans and grants, and Rural Housing Site (RHS) loans. It also provides a

site development standard, as indicated in exhibit B of FmHA Instruction 1924–C (available in any RHS field office), which supplements this subpart to provide the minimum for the acceptability of development. All of this subpart applies to Single Family Housing unless otherwise noted. All of this subpart also applies to Multiple Family Housing except §§ 1924.115 and 1924.120, and any paragraph specifically designated for Single Family Housing only. In addition, RHS will consult with appropriate Federal, state, and local agencies, other organizations, and individuals to implement the provisions of this subpart.

§ 1924.104 Definitions.

As used in this subpart:

Applicant. Any person, partnership, limited partnership, trust, consumer cooperative, corporation, public body, or association that has filed a preapplication, or in the case of RHS programs that do not require a preapplication, an official application, with RHS in anticipation of receiving or utilizing RHS financial assistance.

Community. A community includes cities, towns, boroughs, villages, and unincorporated places which have the characteristics of incorporated areas with support services such as shopping, post office, schools, central sewer and water facilities, police and fire protection, hospitals, medical and pharmaceutical facilities, etc., and are easily identifiable as established concentrations of inhabited dwellings and private and public buildings.

Developer. Any person, partnership, public body, or corporation who is involved with the development of a site which will be financed by RHS.

Development. The act of building structures and installing site improvements on an individual dwelling site, a subdivision, or a multiple family tract.

Multiple Family Housing. RHS RRH loans, RCH loans, LH loans and grants, and RHS loans.

Single Family Housing. RHS Rural Housing loans for individuals for construction of, repair of, or purchase of a dwelling to be occupied by one household.

Site. A parcel of land proposed as a dwelling site, with or without development.

Site approval official. The RHS making the determination that a site meets the requirements in this subpart to be acceptable for site loans. (See § 1924.120.)

Street surfaces. Streets may be hard or all-weather surfaced.

(1) *Hard surface*—a street with a portland cement concrete, asphaltic concrete, or bituminous wearing surface or other hard surfaces which are acceptable and suitable to the local public body for use with local climate, soil, gradient, and volume and character of traffic.

(2) *All-weather*—a street that can be used year-round with a minimum of maintenance, such as the use of a grader and minor application of surface material, and is acceptable and suitable to the local public body for use with local climate, soil, gradient, and volume and character of traffic.

Subdivision. Five or more contiguous (developed or undeveloped) lots or building sites. Subdivisions may be new or existing.

§ 1924.105 Planning/performing development.

(a) *General.* Planning is an evaluation of specific development for a specific site. Planning must take into consideration topography, soils, climate, adjacent land use, environmental impacts, energy efficiency, local economy, aesthetic and cultural values, public and private services, housing and social conditions, and a degree of flexibility to accommodate changing demands. All planning and performing development work is the responsibility of the applicant or developer. All development will be arranged and completed according to applicable local, state, or Federal regulations including applicable health and safety standards, environmental requirements, and requirements of this subpart. When a public authority requires inspections prior to final acceptance, written assurance by the responsible public authority of compliance with local, city, county, state or other public codes, regulations, and ordinances is required prior to final acceptance by RHS.

(1) [Reserved]

(2) *Technical Services.* [Reserved]

(i) [Reserved]

(ii) An applicant or developer for a Multiple Family Housing project or a Single Family Housing site which requires technical services under §1924.13(a), must contract for the technical services of an architect, engineer, land surveyor, landscape architect, or site planner, as appropriate, to provide complete planning, drawings, and specifications. Such services may be provided by the applicant's or developer's ''in house'' staff subject to RHS concurrence. Technical services must be performed by professionals who are qualified and authorized to provide such services in the state in which the project would be developed. All technical services must be provided in accordance with the requirements of professional registration or licensing boards. At completion of all construction or completion of a phase or phases of the total project, the persons providing technical services under this section must notify the RHS field office in writing that all work has been completed in substantial conformance with the approved plans and specifications.

(iii) For developments not specifically required to have technical services under paragraph (a)(2)(ii) of this section, such services may be required by the state director when construction of streets or installation of utilities is involved.

(3) *Drawings, specifications, contract documents, and other documentations.* Adequate drawings and specifications must be provided by the applicant or developer to RHS in sufficient detail to fully and accurately describe the proposed development. Contract documents must be prepared in accordance with §1924.6 or, in the case of more complex construction, §1924.13.

(b) *Single Family Housing.* Proposals for development of individual dwelling sites must meet the following requirements:

(1) *Site development design requirements.* Exhibit B (available in any RHS field office) will be used as a minimum by applicants or developers in preparing proposals and supporting documents for Single Family Housing loans, in addition to specific requirements made in this subpart.

(2) [Reserved]

(c) *Multiple Family Housing.* Exhibit C (available in any RHS office) should be used as a guide by the applicant or developer in preparing a proposal and supporting documents for multiple family housing projects.

§1924.106 Location.

(a) *General.* It is RHS's policy to promote compact community development and not to approve sites located in floodplains, on wetlands, or on important farmlands, unless there is no practical alternative. Furthermore, RHS will not finance development on locations that adversely affect properties which are listed or are eligible for listing on the National Register of Historic Places, located within the Coastal Barrier Resource System, or on a barrier island. (Environmental requirements are found in 7 CFR part 1940, subpart G.) In order to be eligible for RHS participation:

(1) The site must be located in an eligible area as defined in the program regulations under which the development is being funded or approved.

(2) The site must comply with the applicable environmental laws, regulations, Executive Orders, and subpart G of part 1940.

(b) *Single Family Housing.* In addition to the general requirements in paragraph (a) of this section, sites must provide a desirable, safe, functional, convenient, and attractive living environment for the residents.

(c) *Multiple Family Housing.* Multiple family housing projects shall be located in accordance with the requirements in paragraph (r) of §1944.215. Locating sites in less than desirable locations of the community because they are in close proximity to undesirable influences such as high activity railroad tracks; adjacent to or behind industrial sites; bordering sites or structures which are not decent, safe, or sanitary; or bordering sites which have potential environmental concerns such as processing plants, etc., is not acceptable. Screening such sites does not make them acceptable. Sites which are not an integral part of a residential

community and do not have a reasonable access, either by location or terrain, to essential community facilities such as water, sewerage, schools, shopping, employment opportunities, medical facilities, etc., are not acceptable.

§ 1924.107 Utilities.

All development under this subpart must have adequate, economic, safe, energy efficient, dependable utilities with sufficient easements for installation and maintenance.

(a) *Water and wastewater disposal systems.* (1) *Single Family Housing.* If sites are served by central water or sewer systems, the systems must meet the requirements of paragraphs (a)(2)(i) and (ii) of this section. If sites have individual water or sewer systems, they must meet the requirements of the state department of health or other comparable reviewing and regulatory authority and the minimum requirements of exhibit B (available in any RHS field office), paragraphs V and VI. Sites in subdivisions of more than 25 dwelling units on individual systems, or sites that do not meet the requirements of exhibit B, paragraphs V and VI, must have state director concurrence.

(2) *Multiple Family Housing.* Proposals processed under this paragraph shall be served by centrally owned and operated water and wastewater disposal systems unless this is determined by RHS to be economically or environmentally not feasible. All central systems, whether they are public, community, or private, shall meet the design requirements of the state department of health or other comparable reviewing and regulatory authority. The regulatory authority will verify in writing that the water and wastewater systems are in compliance with the current provisions of the Safe Drinking Water Act and the Clean Water Act, respectively.

(i) Sites which are not presently served by a central system, but are scheduled for tie-in to the central system within 2 years, should have all lines installed during the initial construction. Such sites must have an approved interim water supply or wastewater disposal system installed capable of satisfactory service until the scheduled tie-in occurs.

(ii) In addition to written assurance of compliance with state and local requirements, there must be assurance of continuous service at reasonable rates for central water and wastewater disposal systems. Public ownership is preferred whenever possible. In cases where interim facilities are installed pending extension or construction of permanent public services, the developer must assume responsibility for the operation and maintenance of the interim facility or establish an entity for its operation and maintenance which is acceptable to the local governing body. If a system is not or will not be publicly owned and operated, it must comply with one of the following:

(A) Be an organization that meets the ownership and operating requirements for a water or wastewater disposal system that RHS could finance under 7 CFR part 1942, subpart A or be dedicated to and accepted by such an organization.

(B) Be an organization or individual that meets other acceptable methods of ownership and operation as outlined in HUD Handbook 4075.12, ''Ownership and Organization of Central Water and Sewerage Systems.'' RHS should be assured that the organization has the right, in its sole discretion, to enforce the obligation of the operator of the water and sewerage systems to provide satisfactory continuous service at reasonable rates.

(C) Be adequately controlled as to rates and services by a public body (unit of Government or public services commission).

(iii) Multiple family developments of more than 25 units with individual system must have national office concurrence.

(A) [Reserved]

(B) Supporting information for the proposed individual water systems, covering the following points:

(*1*) In areas where difficulty is anticipated in developing an acceptable water supply, the availability of a water supply will be determined before closing the loan.

(*2*) Documentation must be provided that the quality of the supply meets

the chemical, physical, and bacteriological standards of the regulatory authority having jurisdiction. The maximum contaminant levels of U.S. EPA shall apply. Individual water systems must be tested for quantity and bacteriological quality. Where problems are anticipated with chemical quality, chemical tests may be required. Chemical tests would be limited to analysis for the defects common to the area such as iron and manganese, hardness, nitrates, pH, turbidity, color, or other undesirable elements. Polluted or contaminated water supplies are unacceptable. In all cases, assurance of a potable water supply before loan closing is required.

(C) Supporting information for individual wastewater disposal systems with subsurface discharge provided by a soil scientist, geologist, soils engineer, or other person recognized by the local regulatory authority. This data must include the following:

(*1*) Assurance of nonpollution of ground water. The local regulatory authority having jurisdiction must be consulted to ensure that installation of individual wastewater systems will not pollute ground water sources or create other health hazards or otherwise violate State water quality standards.

(*2*) Records of percolation tests. Guidance for performing these tests is included in the EPA design manual, ''Onsite Wastewater Treatment and Disposal Systems'' and the minimum RHS requirements are in exhibit B, paragraph VI. (These may be waived by the state director when the state has established other acceptable means for allowing onsite disposal.)

(*3*) Determination of soil types and description. The assistance of the SCS or other qualified persons should be obtained for soil type determination and a copy of its recommendations included in the documentation.

(*4*) Description of ground water elevations, showing seasonal variations.

(*5*) Confirmation of space allowances. An accurate drawing to indicate that there is adequate space available to satisfactorily locate the individual water and wastewater disposal systems; likewise, documented assurance of compliance with all local requirements. Structures served by wastewater disposal systems with subsurface discharge require larger sites than those structures served by another type system.

(*6*) Description of exploratory pit observations, if available.

(D) Supporting information for individual wastewater disposal systems with surface discharge covering the following points:

(*1*) Effluent standards issued by the appropriate regulatory agency that controls the discharge of the proposed individual systems. Assurance from this regulatory agency that the effluent standards will not be exceeded by the individual systems being proposed must be included.

(*2*) Program of maintenance, parts, and service available to the system-owner for upkeep of the system.

(*3*) A plan for local inspection of the system by a responsible agency with the authority to ensure compliance with health and safety standards.

(b) *Electric service.* The power supplier will be consulted by the applicant to assure that there is adequate service available to meet the needs of the proposed site. Underground service is preferred.

(c) *Gas service.* Gas distribution facilities, if provided, will be installed according to local requirements where adequate and dependable gas service is available.

(d) *Other utilities.* Other utilities, if available, will be installed according to local requirements.

§ 1924.108 Grading and drainage.

(a) *General.* Soil and geologic conditions must be suitable for the type of construction proposed. In questionable or unsurveyed areas, the applicant or developer will provide an engineering report with supporting data sufficient to identify all pertinent subsurface conditions which could adversely affect the structure and show proposed solutions. Grading will promote drainage of surface water away from buildings and foundations, minimize earth settlement and erosion, and assure that drainage from adjacent properties onto the development or from the development to adjacent properties does not

create a health hazard or other undesirable conditions. Grading and drainage will comply with exhibit B, paragraphs III and IV, of this subpart.

(b) *Cuts and fills.* Development requiring extensive earthwork, cuts and fills of 4 feet or more shall be designed by a professional engineer. Where topography requires fills or extensive earthwork that must support structures and building foundations, these must be controlled fills designed, supervised, and tested by a qualified soils engineer.

(c) *Slope protection.* All slopes must be protected from erosion by planting or other means. Slopes may require temporary cover if exposed for long periods during construction.

(d) *Storm water systems.* The design of storm water systems must consider convenience and property protection both at the individual site level and the drainage basin level. Storm water systems should be compatible with the natural features of the site. In areas with inadequate drainage systems, permanent or temporary storm water storage shall be an integral part of the overall development plan. Design of these facilities shall consider safety, appearance, and economical maintenance operations.

§§ 1924.109–1924.114 [Reserved]

§ 1924.115 Single Family Housing site evaluation.

(a) *Site review.* The site approval official will evaluate each site (developed or undeveloped) to determine acceptance for the program. Information on the site will be provided by the appraiser or site approval official on a form provided by RHS and available in any RHS field office.

(b) *Site access.* Each site must be contiguous to and have direct access from:

(1) A hard surfaced or all weather road which is developed in full compliance with public body requirements, is dedicated for public use, and is being maintained by a public body or a home owners association that has demonstrated its ability or can clearly demonstrate its ability to maintain the street; or

(2) An all weather extended driveway which can serve no more than two sites connecting to a hard surface or all weather street or road that meets the requirements of paragraph (b)(1); or

(3) A hard surfaced street in a condominium or townhouse complex which:

(i) Is owned in common by the members or a member association and is maintained by a member association that has demonstrated its ability or can clearly demonstrate its ability to maintain the street; and

(ii) Connects to a publicly owned and dedicated street or road.

(c) *Exceptions to street requirements.* A site not meeting the conditions in paragraph (b) of this section will be acceptable if:

(1) The applicant is a builder for a conditional commitment (a loan will not be approved until the site meets the conditions in paragraph (b) of this section), or the builder posts an irrevocable performance and payment bond (or similar acceptable assurance) that assures the site approval official that the site will be developed to meet the conditions in paragraph (b) of this section; or

(2) The site is recommended by the site approval official and approved by the state director. A request for state director approval must justify that it is in the best interest of both the government and the applicant to approve the site.

(d) *Site layout.* (1) Sites shall be surveyed and platted. Permanent markers shall be placed at all corners.

(2) Sites shall meet all requirements of state and local entities and RHS.

(e) *Covenants, conditions and restrictions.* Sites in subdivisions shall be protected by covenants, conditions, and restrictions (CC&Rs) to preserve the character, value, and amenities of the residential community and to avoid or mitigate potential environmental impacts unless, an exception is granted by RHS after considering the suitability of local ordinances, zoning, and other land use controls.

(1) CC&Rs shall be recorded in the public land records and specifically referenced in each deed.

(2) The intent of the CC&Rs is to assure the developers that the purchasers will use the land in conformance with

the planned objectives for the community. In addition, the CC&Rs should assure the purchasers that the land covered by the CC&Rs will be used as planned and that other purchasers will use and maintain the land as planned to prevent changes in the character of the neighborhood that would adversely impact values or create a nuisance.

§§ 1924.116–1924.118 [Reserved]

§ 1924.119 Site Loans.

Subdivisions approved under subpart G of part 1822 (FmHA Instruction 444.8) or exhibit F of subpart I of part 1944 (available in any RHS field office), will meet the general requirements of this subpart to insure lots in the subdivision will meet the requirements of § 1924.115.

§§ 1924.120–1924.121 [Reserved]

§ 1924.122 Exception authority.

The Administrator of RHS may in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority upon the written request of the state director or the appropriate program assistant administrator. Requests for exceptions must be supported with documentation to explain the adverse effect on the Government, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§ 1924.123–1924.149 [Reserved]

§ 1924.150 OMB Control Number.

The reporting requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0164. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 10 minutes per response, with an average of .13 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0164), Washington, DC 20503.

EXHIBITS TO SUBPART C

EXHIBIT A [RESERVED]

EXHIBIT B—SITE DEVELOPMENT DESIGN REQUIREMENTS

This Exhibit prescribes site development requirements to be used in developing residential sites in all housing programs. These requirements cover only those areas which involve health and safety concerns. They are not intended to cover all aspects of site development. Applicants and developers are expected to follow local practice, as a minimum, in all areas of site development not addressed in this Exhibit. When State, local, or other requirements are applicable in addition to FmHA or its successor agency under Public Law 103–354's requirements, the most stringent requirement shall apply.

Proper integration of the natural features of a site with the manmade improvements is one of the most critical aspects of residential development. Poor site planning in large scale subdivisions, rental projects and individual sites, has resulted in a loss of valuable private and public natural resources and caused economic burdens and conditions unsuitable for healthy and pleasant living. Proper site design can preserve desirable natural features of the site, minimize expenses for streets and utilities, and provide a safe and pleasant living environment.

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I. Streets

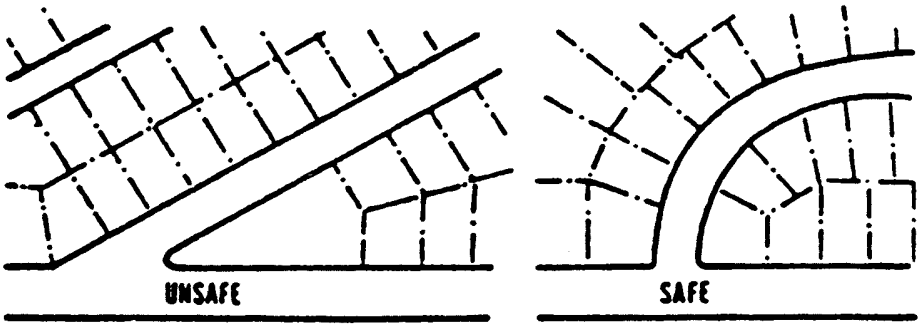
A. *Types*—1. *Collector streets.* Collector streets are feeder streets which carry traffic from local streets to the major system of arterial streets and highways. They include the principal entrance streets of residential developments and streets for circulation within such developments.

2. *Local streets.* Local streets are minor streets used primarily for access to abutting properties. These include drives serving multi-family housing units.

B. *Design Features*—1. *Emergency Access.* Access for fire equipment and other emergency vehicles shall be within 100 feet of main building entrances.

2. *Cul-de-sacs.* Cul-de-sac streets shall have a turn-around with an outside roadway diameter of at least 80 feet, and a right-of-way diameter of at least 100 feet.

3. *Intersection Angle.* Streets shall be laid out to intersect as nearly as possible at right angles and no street shall intersect any other street at an angle less than 75 degrees. Curb radii shall be a minimum of 20 feet for street intersections.



4. *Intersection Sight Distance.* Adequate distances must be maintained at intersections. Vehicles must be visible when within 75 feet of the centerlines of uncontrolled intersecting streets.

C. *Street Geometry*—1. *Definitions.* The definitions in Sections I.C.1.a and I.C.1.b. apply to the requirements in Section I.C.2.

a. *Terrain Classifications.*

(1) Ordinary—Slope less than 8%.

(2) Rolling—Slope range of 8% to 15%.

(3) Hilly—Slope greater than 15%.

b. *Development Density* (Number of Lots). (Land Area minus Undeveloped Areas greater than Average Lot Size)

(1) Low—Less than 2 lots per acre.

(2) Medium—2 to 6.0 lots per acre.

(3) High-More than six lots per acre.

2. *Design Requirements.* Collector streets and local streets shall comply with the requirements in Tables 1 and 2 unless an exception is granted by the State Director. These requirements may need modification in localities having winter icing conditions.

TABLE 1—PAVEMENT WIDTHS (FEET)

Street type	On-street parallel parking	Development density		
		Low	Medium	High
Collector	Prohibited	26	32	36
Collector	No Restrictions	36	36	40
Local	Prohibited	18	18	20
Local	Partial, One Side [1]	18	20	26
Local	Partial, One Side [1]	22	26	32
Local	Total, One Side [2]	22	26	26
Local	Total, Both Sides [2]	26	32	36

(1) At least one parking space per dwelling is provided off-street.
(2) No parking spaces are provided off-street.

TABLE 2—STREET DESIGN (FEET)

	Terrain		
	Ordinary	Rolling	Hilly
(1) Collector street:			
(a) Minimum centerline radius of curvature	300	225	150
(b) Minimum sight distance	250	200	150
(c) Minimum right-of-way width	60	60	60
(2) Local Street:			
(a) Minimum centerline radius of curvature	200	150	100
(b) Minimum sight distance	200	150	100
(c) Minimum right-of-way width [1]	50	50	50

(1) For cul-de-sac streets, the minimum right-of-way width is 40 feet.

D. *Construction.* Street configuration and wearing surfaces must provide safe and economical access to all building sites. The design and construction of the street shall be appropriate for all anticipated traffic, climatic and soil conditions. Streets shall meet or exceed all local, county, and State requirements.

II. Walks and Steps

A. *Walks.* Where walks are provided, they shall be located to assure a minimum vertical clearance of 7 feet from all permanent or temporary obstructions. Walks shall have a slip resistant surface.

B. *Exterior Steps Not Contiguous to Dwelling or Building*—1. *Flight.* a. Single steps or flights of steps exceeding a vertical height of 12 feet shall not be accepted.

b. Steps shall be set back from an intersecting walk or drive a minimum of 1 foot at a retaining wall and 2 feet at slopes.

2. *Risers and Treads.* a. Risers shall be a maximum of 6 inches, a minimum of 3 inches and uniform throughout the flight.

b. Treads shall be a minimum of 12 inches and uniform throughout the flight.

c. Treads shall have a slip resistant surface.

d. Treads shall be pitched appropriately to ensure drainage.

3. *Landings.* a. Minimum length shall equal 3 feet or walk width whichever is greater.

b. A change in direction in a flight of stairs shall be accomplished only at a landing or by a winder which has a tread width at a point 18 inches from the converging end, equal to the full straight stair tread width.

4. *Handrails.* Stairways having a flight rise exceeding 30 inches shall have a 36 inch high handrail located on one side for stairs 5 feet or less in width and on both sides of stairways over 5 feet wide.

III. Grading

A. *Compaction*—All fill for street or home construction shall have compaction of not less than 95 percent maximum density, as determined by proctor or other accepted testing methods. Maximum thickness of compaction layers shall be 6 inches except where compaction equipment of demonstrated capability is used under the direction of a qualified soils engineer. Earth fill used to support a building foundation shall be a controlled fill which is designed, supervised, and tested by a qualified soils engineer in accordance with good practice.

B. *Gradients.* Grading design shall be arranged to assure safe and convenient all-weather pedestrian and vehicular access to residential buildings and to all other necessary site facilities. Site grading shall be designed to establish building floor elevations and ground surface grades which allow drainage of surface water away from buildings and adjacent sites. Grading design shall conform with Tables 3 and 4.

TABLE 3—ACCESS AND PARKING GRADIENTS [1]

[In percent]

	Minimum		Maximum	
	Center line	Crown or cross slope	Center line	Crown or cross slope
Streets	0.5	1.0	14.0	5.0
Street Intersections	0.5	1.0	[2]5.0	5.0
Driveways ([3])	.05	1.0	14.0	5.0
Sidewalks ([4]):				
Concrete		0.5		
Bituminous		1.0		
Building Entrances & Short Walks	1.0		12.0	5.0
Main Walks	0.5		10.0	5.0
Adjoining Steps			2.0	
Landings		1.0		
Stepped Ramp Treads	1.0		2.0	5.0
Parking		0.5	5.0	5.0

[1] Approximate Equivalents .5%=1/16″ft., 1.0=⅛″ft., 2.0%=¼″ft., 5.0%=⅝″ft., 10.0%=1¼″ft., 12.0%=1½″ft., 21%=2⅝″ft.
[2] Grades approaching intersections shall not exceed 5 percent for a distance of not less than 100 feet from the centerline of the intersection.
[3] Vertical transitions shall percent contact of car undercarriage of bumper with driveway surface.
[4] Five percent maximum for major use by elderly tenants.

TABLE 4—SLOPE GRADIENTS [1]

[In percent]

	Minimum	Maximum
Slope Away From Foundations:		
Pervious Surfaces	[2]5.0	[3]21.0
Impervious Surfaces	[2]1.0	21.0
Pervious Surfaces:		
Ground Frost Area	2.0	
Non-Ground Frost Areas	[4]1.0	
Impervious Surfaces	0.5	
Slopes to be maintained by Machine		[3]33.0

[1] See Table 3, footnote (1).
[2] Minimum length of 10 feet or as limited by property lines.
[3] Minimum length of 4 feet.
[4] The minimum is 2.0% if the annual precipitation is more than 50 inches.

IV. Drainage

A. *General*—1. *Collection and Disposal.* Surface and subsurface drainage systems shall be provided, as appropriate, for collection and disposal of storm drainage and subsurface water. These systems shall provide for the safety and convenience of occupants. They shall protect dwellings, other improvements and useable lot areas from water damage, flooding, and erosion.

2. *Concentrated Flow.* Where storm drainage flow is concentrated, permanently maintained facilities shall be provided to prevent significant erosion and other damage or flooding on site or on adjacent properties.

B. *Drainage Design and Flood Hazard Exposure*—1. *Storm Frequency.* Drainage facilities shall be designed for a 10 year storm frequency of 24-hour duration. Full potential development of all contributing areas shall be used as a basis for this determination.

2. *Street Drainage.* Streets shall be useable during runoff equivalent to a 10-year return

frequency. Where drainage outfall is inadequate to prevent runoff equivalent to a 10-year return frequency from ponding over 6 inches deep, streets shall be made passable for local commonly used emergency vehicles during runoff equivalent to a 25-year return frequency except where an alternative access street not subject to such ponding is available.

3. *Foundation Drainage.* Appropriate crawl space and foundation drainage shall be provided for the removal of subsurface moisture.

C. *Primary Storm Sewer*—1. *Pipe Size.* Pipe size for the primary storm sewer (any storm sewer or inlet lateral located in a street or other public right-of-way) shall have an inside diameter based on design analysis but not less than 15 inches. Where anticipated runoff from the five-year return frequency rainfall will not fill a 15 inch pipe, a primary storm sewer system usually is unnecessary.

2. *Minimum Gradient.* Minimum gradient shall be selected to provide for self-scouring of the conduit under low-flow conditions and for removal of sediments foreseeable from the drainage area.

3. *Easements.* Easements for storm sewers shall be a minimum of 10 feet in width.

D. *Drainage Swals and Gutters*—1. *Design.* Paved gutters shall have a minimum grade of 0.5 percent. Paved gutters and unpaved drainage swales shall have adequate depth and width to accommodate the maximum foreseeable runoff without overflow. Swales and gutters shall be seeded, sodded, sprigged or paved as appropriate to minimize potential erosion. Side slopes shall be no steeper than 2:1.

2. *Easements.* Surface channels shall have an easement which is at least the width of the channel plus 10 feet.

E. *Downspouts*—1. *Outfall.* Where downspouts are provided, they shall either be connected to an available storm sewer, provided with suitable splash blocks, or empty at acceptable locations onto paved areas so that water drains away from buildings. Downspouts shall not connect to sanitary sewers.

2. *Piped Drainage.* Piped roof drainage from buildings shall be connected to available storm sewers or empty at locations where no erosion or other damage will be caused.

F. *Storm Inlets and Catch Basins*—1. *Openings.* Where inlets are accessible to small children, openings shall have one dimension limited to 6 inch access. Inlet openings in paved areas shall be designed to avoid entrapment or impedence of bicycles, baby carriages, etc.

2. *Access.* Access for cleaning shall be provided to all inlet boxes and catch basins.

G. *Drywells*—Drywells for the disposal of water from foundation drains, crawl spaces, and other small quantity sources shall be permissible where the bottom of drywells project into strata of undistributed porous soil at a level where the bottom of the drywell will be above the ground water table at its highest seasonal elevation.

V. Water Supply Systems

A. *Individual Water Systems*—1. *General.* a. In this subpart, an individual water system is a system which serves fewer customers or connections than the lower threshold for community systems stated in the Safe Drinking Water Act.

b. The system for an individual household should be capable of delivering a sustained flow of 5 gpm. A system supplying water to multiple household shall be designed by a Professional Engineer and have sufficient capacity to serve estimated demand. A test of at least 4 hours duration shall be conducted to determine the yield and maximum drawdown for all wells developed as part of an individual water system. This test may be waived by the State Office based on the hydrologic and geologic conditions in the area.

c. Water that requires continual or repetitive treatment to be safe bacterially is not acceptable.

d. After installation, the system should be disinfected in accordance with the recommendations of the health authority. In the absence of a health authority, system cleaning and disinfection should conform with the current EPA Manual of Individual Water Supply Systems.

e. Any method for individual water supply contained herein which is not permitted by the local health authority having jurisdiction shall not be used.

2. *Well Location*—a. A well located within the foundation walls of a dwelling is not acceptable except in arctic and sub-arctic regions.

b. Water which comes from soil formation which may be polluted or contaminated or is fissured or creviced or which is less than 20 feet below the natural ground surface (subject to the requirements of the local health authority) is not acceptable.

c. Individual water supply systems are not acceptable for individual lots in areas where chemical soil poisoning is practiced if the overburden of soil between the ground surface and the water bearing strata is coarse-grained sand, gravel, or porous rock, or is creviced in a manner which will permit the recharge water to carry the toxicants into the zone of saturation.

d. Table 5 shall be used in establishing the minimum acceptable distances between wells and sources of pollution located on either the same or adjoining lots. These distances may be increased by either the health authority having jurisdiction or the FmHA or its successor agency under Public Law 103–354 State Director.

TABLE 5—DISTANCE FROM SOURCE OF POLLUTION

Source of pollution	Minimum horizontal distance (feet)
Property Line	10
Septic Tank	50
Absorption field	[1]100
Seepage pit	[1]100
Absorption Bed	[1]100
Sewer Lines w/Permanent Watertight Joints	10
Other Sewer Lines	50
Chemically Poisoned Soil	[1]100
Dry Well	50
Other	([2])—

NOTES:

[1] The horizontal distance between the sewage absorption system and the well, or the chemically poisoned soil and the well, may be reduced to 50 feet only where the ground surface is effectively separated from the water bearing formation by an extensive, continuous impervious strata of clay, hardpan, or rock. The well shall be constructed so as to prevent the entrance of surface water and contaminants.

[2] Other sources of pollution could be fuel oil or gasoline storage tanks, farm yards or chemical storage tanks, etc. The well should be separated from these sources of pollution a distance recommended by the local health authority.

3. *Well Construction*—a. The well shall be constructed to allow the pump to be easily placed and to function properly.

b. All drilled wells shall be provided with a sound, durable and watertight casing capable of sustaining the loads imposed. The casing shall extend from a point several feet below the water level at drawdown or from an impervious strata above the water level, to 12 inches above either the ground surface or the pump room floor. The casing shall be sealed at the upper opening.

c. Bored wells shall be lined with concrete, vitrified clay, or equivalent materials.

d. The space between the casing or liner and the wall of the well hole shall be sealed with cement grout.

e. The well casing shall not be used to convey water except under positive pressure. A separate drop pipe shall be used for suction line.

f. When sand or silt is encountered in the water-bearing formation, the well shall either be gravel packed, or a removable strainer or screen shall be installed.

g. The surface of the ground above and around the well shall be graded to drain surface water away from the well.

h. Openings in the casing, cap, or concrete cover for the entrance of pipes, pump or manholes, shall be made watertight.

i. If a breather is provided, it shall extend above the highest level to which surface water may rise. The breather shall be watertight, and the open end shall be screened and positioned to prevent entry of dust, insects and foregin objects.

4. *Pumps and Equipment*—a. Pumps shall be capable of delivering the volume of water required herein under normal operating pressures within the living unit. Well pump capacity shall not exceed the output of the well.

b. Pumps and equipment shall be mounted to be free of objectionable noises, vibrations, flooding, pollution, and freezing.

c. Suction lines shall terminate below maximum drawdown of the water level in the well.

d. Horizontal segments of suction line shall be placed below the frost line in a sealed casing pipe or in at least 4 inches of concrete. The distance from suction line to sources of pollution shall be not less than shown in Table 5.

5. *Storage Tanks*—a. A system for an individual household shall include a pressure tank having a minimum capacity of 42–gallons. However, prepressured tanks and other pressurizing devices are acceptable provided that delivery between pump cycles equals or exceeds that of a 42 gallon tank. Storage capacity on a system for multiple households must be sufficient to meet estimated peak demands.

b. Tanks shall be equipped with a clean-out plug at the lowest point, and if pressurized, a suitable pressure relief valve.

c. When additional storage is necessary because the well yield will not meet the system peak demands, all nonpressurized intermediate tanks shall be designed and installed in a manner that will prevent the pollution or degradation of the water supply.

B. *Community Water Systems*—1. *Definition*. In this subpart, a community water system is a system which meets the definition in the Safe Drinking Water Act.

2. *Design*. A community water system shall be designed by a qualified, professional engineer licensed in the state in which the water system will be located. Community water systems shall comply with all Federal and State laws.

VI. Wastewater Disposal Systems

Each dwelling shall be provided with a water-carried system adequate to dispose of domestic wastes in a manner which will not create a nuisance, contaminate any existing or prospective water source or water supply, or in any way endanger the public health.

A. *Individual Wastewater Disposal Systems*—1. *General*. a. In this subpart, an individual wastewater disposal system is a sewage disposal system which serves only 1 dwelling unit.

b. When service from an acceptable public or community system is not available or feasible, and ground water and soil conditions are acceptable, an individual system may be used.

c. Each individual wastewater disposal system shall consist of a house sewer, a

pretreatment unit (e.g., septic tank, individual package treatment plant), and acceptable absorption system (subsurface absorption field, seepage pit(s), or subsurface absorption bed). The system shall be designed to receive all sanitary sewage (bathrooms, kitchen and laundry) from the dwelling, but not footing or roof drainage. It shall be designed so that gases generated anywhere in the system can easily flow back to the building sewer stack.

2. *Percolation Tests*—a. Percolation tests are required unless a waiver is granted by the National Office. Waivers may be granted on a statewide or local basis in cases where an onsite evaluation of soils would be performed by a qualified soil technician, soil scientist, or engineer. Requests for waivers must describe the qualifications of the person evaluating the soils and discuss the criteria to be used in designing the absorption system.

b. In uniform soils one percolation test shall be made within each area proposed for an absorption system. If significant soil variations are encountered or expected, additional tests shall be made for each variation.

c. Percolation tests shall be conducted in accordance with good practice. Guidance for performing these tests is included in the EPA design manual, ''Onsite Wastewater Treatment and Disposal Systems.''

3. *Subsurface Absorption System*—a. Where percolation rates, soil characteristics and site conditions are acceptable, an absorption system may be installed in an area which is well drained, has an acceptable slope, and is acceptable for excavation.

b. Soils with percolation rates less than 1 minute per inch may be used if the soil is replaced with a layer of loamy or fine sand at least 2 feet thick. (Refer to the EPA Design Manual, ''Onsite Wastewater Treatment and Disposal System''.)

c. Soils with percolation rates greater than 60 minutes per inch are not acceptable for subsurface wastewater disposal systems.

B. *Community Wastewater Disposal Systems*—1. *Definition*. In this subpart, a community wastewater disposal system is any wastewater disposal system which serves more than 1 dwelling unit.

2. *Design*. A community wastewater disposal system shall be designed by a qualified, professional engineer licensed in the state in which the system will be located.

[52 FR 19284, May 22, 1987]

EXHIBIT C—CHECKLIST OF VISUAL EXHIBITS AND DOCUMENTATION FOR RRH, RCH, AND LH PROPOSALS

U.S. Department of Agriculture

Farmers Home Administration or its successor agency under Public Law 103–354

This Exhibit lists visual exhibits and documentation necessary for FmHA or its successor agency under Public Law 103–354 to properly evaluate proposed development. Intermediate consultation by the applicant, builder-developer and others hereafter referred to as the sponsor with the FmHA or its successor agency under Public Law 103–354 District or State Offices should be as frequent as necessary to reduce chances of misunderstandings and limit the amount of nonproductive time and expense for all parties concerned.

I. *Preapplication Submission Documents:* The sponsor will submit the following information to the District Director to determine feasibility of the project and general conformance with FmHA or its successor agency under Public Law 103–354 policy:

A. *Form 1940–20, ''Request for Environmental Information.''* Portions of the form must be completed when the submission contains more than 4 dwelling units and the entire form must be completed when the submission contains more than 25 dwelling units. The form and guidance concerning assembly of the information is available at any FmHA or its successor agency under Public Law 103–354 office.

B. *Location Map*. A general site location map of the area indicating the adjacent land zoning and uses, the present and future access roads to the site as well as the proximity to shopping, schools, churches, and major transportation facilities with note of traffic volumes. If a satisfactory map of the locality is not available, a clear and preferably scaled rough sketch map that provides the required information will be sufficient.

C. *Property Survey Map*. A current survey map of the project site showing the boundaries as well as all existing known features specifically including utilities, easements, access roads, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees. If a current survey does not exist, the most accurate document which is available will be submitted.

D. *Soils Map and Report*. A complete soils map and report, including ''site specific'' interpretations and recommendations, from the local or county representative of the

U.S. Department of Agriculture, Soil Conservation Service (SCS) Office will be included with the location and feasibility submission. A determination of whether or not any lands described in USDA Regulation 9500–3 are impacted by the proposed development should also be included. The local SCS office may provide recommendations for the development of suitable drainage and landscaping plans later in the planning process.

E. *Market survey.* A market survey will be submitted in accordance with the requirements of the respective loan program as indicated in part 1944, subparts D and E of this chapter.

F. *Request for Exceptions.* Any need for State or National Office exception(s) should be identified at this stage in the processing. Appropriate exception(s) should be requested and obtained before proceeding to the preliminary submission.

G. *Other.* The applicant will need to submit any additional information that may be needed as indicated in subpart D or Exhibit A–7 of subpart E of part 1944 of this chapter. This may include but is not limited to:

1. Schematic design drawings showing the proposed plot plan, typical unit plans, and elevations. If available, the proposed preliminary drawings and specifications may be submitted. This would be of assistance if it is determined that the loan must receive National Office authorization.

2. Type of construction.

3. The total number of living units and the number of each type of living unit proposed.

4. Type of utilities such as water, sewer, gas, and electricity and whether each is public, community, or individually owned.

II. *Application Submission Documents:* After it is determined by FmHA or its successor agency under Public Law 103–354 that the project is feasible and the location conforms with the intent of the funding program, the sponsor will submit the following information to the District Director in addition to those materials submitted previously.

A. *Property Survey.* A survey (where 1 inch represents no more than 100 feet) of the property lot showing the exact boundaries and corners of the property accompanied by a written description of said boundaries. Also, locations of predominant features such as utilities, easements, access points, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees affecting the proposed development must be included. This document shall bear the seal of a professional licensed to provide surveying services in the State in which the project will be located. This survey could be a part of item D below.

B. *Topographic Map.* An accurate topographic map showing existing and proposed contours with a scale compatible with the size of the project. The site shall be shown at a reasonable scale with 5-foot contour intervals. Where the site is unusually level or steep, the contour intervals may be varied accordingly.

C. *Preliminary Site Plan.* A line drawing, to scale, showing proposed street locations with profiles and widths, lot layouts, major drainageways, and other development planned. Preliminary sections and details shall be provided for the street construction, curbs and gutters, drainageways, and other physical improvements.

D. *Preliminary Dwelling Drawings and Specifications.* Drawings of the dwelling units, preliminary floor plans and specifications, elevations and sample site plans showing the placement of the individual buildings should be submitted.

E. *Statement of Planning and Zoning Compliance.* Local, county and State approvals as applicable. If change of zoning or variance is required, the status of the variance or change of zoning shall be documented.

F. *Technical Service Contracts.* Executed contracts for the professional services of an architect, engineer, land surveyor, landscape architect, site planner and/or soil engineer will be submitted as appropriate for the planning of the proposed development.

G. *Utility Approvals.* Statements of approval and feasibility for utility systems as follows:

1. Verification of adequate capacity and approval to tie-in with local existing water, wastewater disposal, electric, telephone, and other utility systems, as appropriate.

2. Tentative approval of local or State health authority for individual water and/or wastewater disposal systems when it is clear that central systems are unfeasible at this time. Use §1924.108(a)(5) of this subpart when preparing information required.

H. *Facility Acceptance.* Evidence that the appropriate public body is willing to accept and maintain streets, common areas, lighting, fire hydrants, sidewalks, drainageways, and utilities, as appropriate, when dedicated to said body.

I. *Preliminary Specifications.* Outline specifications describing all the proposed materials to be used and how they are to be applied. These are only the materials used in the land development and construction of the streets, drainage, and utility work.

J. *Incremental Slopes Plan.* If areas of common slope are not identified elsewhere in adequate detail, this information should be provided in a separate plan.

K. *Preliminary Grading Plan.* This plan will indicate degree of work required to provide positive drainage of all building sites and control measures to be taken to eliminate soil erosion. Dwelling locations may be shown if they can be predetermined.

L. *Other.* The applicant will need to submit any additional information that may be needed as indicated in the respective loan program regulations as indicated in part

1944, subparts D and E and part 1822, subpart F of this chapter (FmHA or its successor agency under Public Law 103–354 Instruction 444.7). This may include but not be limited to:

1. A detailed trade-item cost breakdown of the project for such items as land and right-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and both on- and off-site improvements. The cost breakdown also should show separately the items not included in the loan, such as furnishings and equipment. This trade-item cost breakdown should be updated just prior to loan approval.

2. Information on the method of construction, on the proposed contractor if a construction contract is to be negotiated and on the architectural, engineering, and legal services to be provided.

3. For all projects containing over four units the applicant will submit an Affirmative Fair Housing Marketing Plan for approval by FmHA or its successor agency under Public Law 103–354 in accordance with § 1901.203 of subpart E to part 1901 of this chapter. The Affirmative Fair Housing Marketing Plan must be prepared in a complete, meaningful, responsive and detailed manner.

4. A description and justification of any related facilities (including but not limited to workshops, community buildings, recreation center, central cooking and dining facilities, or other similar facilities to meet essential needs) to be financed wholly or in part with loan funds.

III. *Technical Documents Necessary for the Obligation of Funds.* All decisions regarding the conceptual design of the proposed project should be made prior to this submission. This effort is mainly to demonstrate that those agreed upon concepts have been transformed into construction documents and the necessary approvals have been granted. All items requiring revision or more detailed information as determined by the review of the preliminary submission will be resolved before the sponsor prepares the final submission. All documents shall be executed in a professional manner and shall carry the appropriate designation attesting to the professional qualifications of the architect, engineer, land surveyor or site planner. All documents will be accurately drawn at an appropriate scale.

[52 FR 19284, May 22, 1987, as amended at 56 FR 2202, Jan. 22, 1991]

Subparts D–E—[Reserved]

Subpart F—Complaints and Compensation for Construction Defects

SOURCE: 56 FR 40241, Aug. 14, 1991, unless otherwise noted.

§ 1924.251 Purpose.

This subpart contains policies and procedures for receiving and resolving complaints concerning the construction of dwellings and construction, installation and set-up of manufactured homes (herein called ''units''), financed by the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354), and for compensating borrowers for structural defects under section 509(c) of the Housing Act of 1949, as amended. Provisions of this subpart do not apply to dwellings financed with guaranteed section 502 loans.

§ 1924.252 Policy.

FmHA or its successor agency under Public Law 103–354 is responsible for receiving and resolving all complaints concerning the construction of dwellings and the construction, installation and set-up of units financed by FmHA or its successor agency under Public Law 103–354. FmHA or its successor agency under Public Law 103–354 must determine whether defects are structural or non-structural. If the defect is structural and is covered by the builder's/dealer-contractor's (the ''contractor'') warranty, the contractor is expected to correct the defect. If the contractor cannot or will not correct the defect, the costs of correcting the defect may be paid by the Government, or the borrower may be compensated for correcting the defect, under the provisions of this subpart. If the defect is non-structural but is covered under the provisions of the contractor's warranty or independent home warranty, the contractor is still expected to correct the defect. FmHA or its successor

agency under Public Law 103–354 will assist the borrower in obtaining assistance through the independent home warranty company's and/or manufacturer's complaint resolution process. However, if the contractor cannot or will not correct a non-structural defect covered under the provisions of the contractor's warranty, the Government will not pay the costs for correcting the defect, nor will the borrower be compensated for doing so.

§ 1924.253 Definitions.

As used in this subpart, the following definitions apply:

(a) *Newly constructed dwelling.* One which:

(1) Is financed with a section 502 insured loan;

(2) Was constructed substantially or wholly under the contract method, or under a conditional commitment, or, as to only work performed by a contractor or covered by a manufacturer's warranty, under the mutual self-help program;

(3) Was not more than one year old and not previously occupied as a residence at the time financial assistance was granted unless FmHA or its successor agency under Public Law 103–354 has extended the conditional commitment issued on a newly constructed dwelling in accordance with subpart A of part 1944 of this chapter; and

(4) Had the required construction inspections performed by FmHA or its successor agency under Public Law 103–354, the Department of Housing and Urban Development (HUD), or the Veterans Administration (VA).

(b) *Newly constructed manufactured home (unit).* One which:

(1) Is financed with a section 502 insured loan;

(2) Was not more than one year old and not previously occupied as a residence at the time financial assistance was granted; and

(3) Is built to the Federal Manufactured Home Construction and Safety Standards (FMHCSS) and is certified by an affixed label as shown in Exhibit F of subpart A of part 1944 of this chapter.

(c) *Non-structural defect.* A construction defect which does not affect the overall useful life, habitability, or structural integrity of the dwelling or unit. Some non-structural defects may be covered under the contractor's warranty. Examples of non-structural defects include, but are not limited to:

(1) Cracks attributed to normal curing or settlement.

(2) Cosmetic defects in cabinets, woodwork, floorcovering, wallcovering, ornamental trim, etc.

(3) Improper or incomplete seeding or sodding of yard, or failure of trees, shrubs, grass and other landscaping items to thrive.

(4) Improper grading of yard, unless the grade is causing damage which may lead to a structural defect.

(d) *Structural defect.* A defect in the dwelling or unit, installation or set-up of a unit, or a related facility or a deficiency in the site or site development which directly and significantly reduces the useful life, habitability, or integrity of the dwelling or unit. The defect may be due to faulty material, poor workmanship, or latent causes that existed when the dwelling or unit was constructed. The term includes, but is not limited to:

(1) Structural failures which directly and significantly affect the basic integrity of the dwelling or unit such as in the foundation, footings, basement walls, slabs, floors, framing, walls, ceiling, or roof.

(2) Major deficiencies in the utility components of the dwelling or unit or site such as faulty wiring, or failure of sewage disposal or water supply systems located on the property securing the loan caused by faulty materials or improper installation.

(3) Serious defects in or improper installation of heating systems or central air conditioning.

(4) Defects in or improper installation of safety and security devices, such as windows, external doors, locks, smoke detectors, railings, etc., as well as failure to provide or properly install devices to aid occupancy of dwellings by handicapped individuals, where required.

(5) Defects in or improper installation of protective materials, such as insulation, siding, roofing material, exterior paint, etc.

§§1924.254—1924.257 [Reserved]

§1924.258 Notification of borrowers.

FmHA or its successor agency under Public Law 103–354 will notify by letter all borrowers who receive Section 502 RH financial assistance for a newly constructed dwelling or unit of the provisions of this subpart. Subsequent owners of eligible dwellings will also be notified in accordance with this section. Borrowers will be notified within 30 days after the loan is closed, or within 30 days after final inspection, whichever is later. This notification will contain information concerning time frames for filing claims under this subpart. FmHA or its successor agency under Public Law 103–354 will also notify and advise borrowers of the construction defects procedure at any time construction defects are apparent within the statutory time frame and favorable results cannot be obtained from the contractor. This notification will be documented in the borrower's case file.

§1924.259 Handling dwelling construction complaints.

This section describes the procedure for handling construction defect complaints.

(a) Each borrower who complains about construction defects will be requested to make a written complaint using a format specified by FmHA or its successor agency under Public Law 103–354 (available in any FmHA or its successor agency under Public Law 103–354 office). All known defects will be listed. An oral complaint may be accepted if making a written complaint will impose a hardship on the borrower. If an oral complaint is made, FmHA or its successor agency under Public Law 103–354 will notify the contractor on behalf of the borrower.

(b) The borrower will be informed that if, after 30 calendar days, the defects have not been corrected or other satisfactory arrangements made by the contractor, the borrower should notify FmHA or its successor agency under Public Law 103–354 using a format specified by FmHA or its successor agency under Public Law 103–354 (available in any FmHA or its successor agency under Public Law 103–354 office).

(c) FmHA or its successor agency under Public Law 103–354 will advise the contractor in writing of the borrower's complaint, the time and date of planned inspection by FmHA or its successor agency under Public Law 103–354 personnel, and request that the contractor accompany the inspector and borrower on a joint inspection of the property in an attempt to resolve the complaint.

(d) If, prior to the planned inspection, the contractor informs FmHA or its successor agency under Public Law 103–354 that the alleged defect(s) has been or will be corrected within 30 calendar days, FmHA or its successor agency under Public Law 103–354 will notify the borrower.

(e) If the case is not resolved as outlined in paragraph (d) of this section, FmHA or its successor agency under Public Law 103–354 will:

(1) [Reserved]

(2) Notify the borrower, contractor and manufacturer, if applicable, in writing of FmHA or its successor agency under Public Law 103–354's findings and who has been determined responsible for correcting the defect(s).

(i) If the defects are determined to be covered under the contractor's warranty, FmHA or its successor agency under Public Law 103–354 will advise the contractor that the repairs must be completed within 30 calendar days or other time period agreed to by the borrower, the contractor, and FmHA or its successor agency under Public Law 103–354.

(ii) FmHA or its successor agency under Public Law 103–354 will further advise the contractor and/or manufacturer that if the defect(s) are not corrected, the Government will consider compensating the borrower for the costs of correcting the defect(s). In such a case, the contractor and/or manufacturer may be liable for costs paid by the Government and may be subject to suspension and/or debarment pursuant to subpart M of part 1940 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office). Even if the manufacturer is determined to be solely responsible for the defect, the contractor will still be held liable for correction of the defect.

(3) Should a contractor refuse to correct a defect after being officially requested in writing to do so, FmHA or its successor agency under Public Law 103–354 will promptly institute formal suspension and debarment proceedings against the contractor (as a company and as individual(s)) in accordance with subpart M of part 1940 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office). The contractor's failure to reply to official correspondence or inability to correct a defect constitutes noncompliance.

(4) If the contractor is willing to correct legitimate defects but the borrower refuses to permit this, FmHA or its successor agency under Public Law 103–354 will document the facts in the borrower's case file. If the borrower chooses to file a claim for compensation for these defects, the circumstances of the borrower's refusal will be reviewed and may be sufficient grounds for disapproval of the claim.

(g) [Reserved]

(h) [Reserved]

§ 1924.260 Handling manufactured housing (unit) construction complaints.

When a borrower who has purchased a manufactured home (or ''unit'') complains about construction defects, the borrower will be instructed to first contact the dealer-contractor from whom the unit was purchased. FmHA or its successor agency under Public Law 103–354 will assist the borrower in obtaining assistance through the dealer-contractor's and/or HUD's complaint resolution process. If the dealer-contractor cannot resolve the complaint, the borrower should contact the appropriate State Administrative Agency (SAA) or HUD. If the complaint resolution process does not result in the correction of the defect, the borrower's complaint will be handled in accordance with § 1924.259 of this subpart.

§ 1924.261 Handling complaints involving dwellings covered by an independent or insured home warranty plan.

Borrowers with complaints about dwellings covered by an independent or insured home warranty plan will be instructed to first contact the warranty company and follow the complaint resolution process for that company, with the assistance of FmHA or its successor agency under Public Law 103–354, if needed. If the complaint is not resolved in this manner, it will be handled under § 1924.259 of this subpart.

§ 1924.262 Handling complaints involving dwellings constructed by the self-help method.

When a borrower whose dwelling was constructed by the self-help method complains about construction defects, FmHA or its successor agency under Public Law 103–354 will determine whether the defect is the result of work performed by a contractor or work performed by the borrower under the guidance of the self-help group. Defects which are determined to be the responsibility of a contractor will be handled in accordance with § 1924.259 of this subpart. Defects determined to be the result of work performed by the borrower are not eligible for compensation under this subpart.

§§ 1924.263—1924.264 [Reserved]

§ 1924.265 Eligibility for compensation for construction defects.

(a) To be eligible for assistance under this subpart, the following criteria must be met:

(1) The approval official, in consultation with the State Architect/Engineer and/or Construction Inspector, must determine that:

(i) The construction is defective in workmanship, material or equipment, or

(ii) The dwelling or unit has not been built in substantial compliance with the approved drawings and specifications, or

(iii) The dwelling or unit does not comply with the FmHA or its successor agency under Public Law 103–354 construction standards in effect at the time the loan was approved or the conditional commitment was issued, or

(iv) The property does not meet code requirements.

(2) The claim must be for one or more of the following:

(i) To pay for repairs;

(ii) To compensate the owner for repairs;

(iii) To pay emergency living or other expenses resulting from the defect; or

(iv) To acquire title to property.

(3) The dwelling or unit must be newly constructed as defined in §1924.253 of this subpart and financed with an insured Section 502 RH loan.

(4) The claim seeking compensation from FmHA or its successor agency under Public Law 103–354 must be filed with FmHA or its successor agency under Public Law 103–354 within 18 months after the date financial assistance is granted. Defects for which claims are filed beyond the 18-month period must have been documented by FmHA or its successor agency under Public Law 103–354 in the borrower's case file or on the form designated by FmHA or its successor agency under Public Law 103–354 (available in any FmHA or its successor agency under Public Law 103–354 office), prior to expiration of the 18-month period. For loans made to construct a new dwelling or erect a new manufactured housing unit, financial assistance is granted on the date of final construction inspection and acceptance by the borrower and FmHA or its successor agency under Public Law 103–354. Claims must be submitted by completing the designated form (available in any FmHA or its successor agency under Public Law 103–354 office).

(5) Any obligation of the contractor to correct the defect(s) under a contractor's warranty must have expired, or the contractor is responsible for making corrections under the contractor's warranty but is unable or unwilling to do so.

(b) Subsequent owners of eligible dwellings or units who are also Section 502 borrowers may be eligible to receive compensation for construction defects. These owners will be notified in accordance with §1924.258 of this subpart. However, the claim for compensation must be filed in accordance with paragraph (a)(4) of this section within the 18-month period established for the original rural housing (RH) borrower.

§1924.266 Purposes for which claims may be approved.

(a) *Eligible purposes.* A claim may be approved to:

(1) Pay, or reimburse the borrower for costs already paid, to repair major structural defects which are completed in accordance with plans and specifications approved by FmHA or its successor agency under Public Law 103–354. Repairs must be made by a reputable licensed contractor and a warranty covering the repairs will be issued by the contractor when the repairs are completed, as prescribed in Subpart A of this part. Payment will be based on actual cost of the development and the borrower must provide evidence to reasonably establish the development cost. Workmanship and materials used in repairs must be consistent with the level of quality specified in the original dwelling or unit specifications and/or comparable to the items being replaced. Payment may be made:

(i) to cover damages which are a direct result of the defect to permanent enhancements made, such as landscaping, completion of unfinished living spaces, etc., of the dwelling or unit, installation or set-up of the unit, or related facilities, and

(ii) for costs approved by FmHA or its successor agency under Public Law 103–354 for professional reports by engineers, architects or others needed to determine cause of or means to repair the defect.

(2) Reimburse the borrower for funds expended for emergency repairs. Emergency repairs are those repairs necessary to preserve the integrity of the structure, to prevent damage or further damage to personal property or fixtures in the dwelling or unit and related facilities, or to prevent or eliminate immediate health hazards. Receipts or other evidence of borrower's expenditures must be provided.

(3) Acquire title to the property by the Government and, when appropriate, compensate the claimant for any loss of borrower contribution at the time the loan was closed. Conveyance of properties under this section will be handled in accordance with subpart A of part 1955 of this chapter.

(i) Before FmHA or its successor agency under Public Law 103–354 accepts a conveyance, the borrower must attempt to sell the dwelling or unit in accordance with subpart C of part 1965 of this chapter, if the dwelling or unit is considered decent, safe and sanitary as prescribed in subpart C of part 1955 of this chapter. If the property is sold, FmHA or its successor agency under Public Law 103–354 will:

(A) Pay the borrower's relocation expenses, including temporary living expenses as prescribed in paragraph (a)(4) of this section, until another suitable property can be located;

(B) Pay related sales expenses, as prescribed in subpart C of part 1965 of this chapter, if the property is sold for less than the debt against it;

(C) Release the borrower from personal liability for the remaining FmHA or its successor agency under Public Law 103–354 debt; and

(D) Process an application for a new RH loan if the borrower so desires and is still eligible for FmHA or its successor agency under Public Law 103–354 assistance.

(ii) If the dwelling or unit is not considered decent, safe and sanitary as prescribed in subpart C of part 1955 of this chapter, FmHA or its successor agency under Public Law 103–354 should accept a voluntary conveyance of the property under the provisions of subpart A of part 1955 of this chapter. Compensation for properties taken into inventory under this paragraph may not exceed the difference between the present market value of the security as established by the appraisal when the loan was made and the amount of the FmHA or its successor agency under Public Law 103–354 loan and any prior liens.

(iii) A borrower contribution which may be compensated for under this paragraph may be such things as:

(A) A borrower's land or cash contribution,

(B) Development work done by the borrower under the self-help program or borrower method of construction, the cost of which was not included in the loan funds,

(C) Attorney fees, abstract costs or title insurance costs actually paid by the claimant in connection with closing the loan.

(4) Pay or reimburse the borrower for temporary living expenses, miscellaneous expenses, storage of household goods and moving expenses incurred as a result of the defect.

(i) Payment under this paragraph may be made under either of the following circumstances:

(A) The property is acquired by the Government in accordance with subpart A of part 1955 of this chapter and FmHA or its successor agency under Public Law 103–354 determines that the dwelling is not habitable and the severity of the defect(s) prevents the property from being repaired and made suitable as a permanent residence for the borrower.

(B) The property is not acquired by the Government but FmHA or its successor agency under Public Law 103–354 determines that the dwelling is not habitable or must be vacated in order to repair the defects.

(ii) Claims for compensation under paragraph (a)(4) of this section are limited as follows:

(A) Compensation may be granted for temporary living expenses for not more than 45 calendar days per claim unless a longer period is authorized by FmHA or its successor agency under Public Law 103–354. Compensation will be paid for actual cost to the claimant not to exceed the Government per diem rate for the area where the borrower's dwelling or unit is located. Reimbursement may be claimed for expenses such as food, lodging, laundering, etc., which would not have been incurred had the claimant remained in the house.

(B) Compensation may be granted for actual miscellaneous expenses not to exceed $500 to cover such items as utility connect and disconnect fees.

(C) Compensation may be granted for moving and storage expenses not to exceed $5,000 unless authorized by FmHA or its successor agency under Public Law 103–354 and not to exceed the actual cost of moving the claimant household with personal belongings a distance of not more than 50 miles

from the original residence. Compensation for storage expenses may not exceed that amount paid to store household furnishings for 45 days.

(D) A strict accounting of the use of such funds must be maintained by the borrower and will be verified by FmHA or its successor agency under Public Law 103–354.

(5) Compensate the claimant for reasonable interest paid on loans obtained for the sole purpose of correcting structural defects or other approved purposes under this section.

(b) *Ineligible purposes.* Compensation will not be granted for:

(1) Completion of a dwelling or unit or installation of materials/items required under the construction contract and/or specifications.

(2) Defective items which were not completed under the contract method or under the conditional commitment and supported by a builder's warranty. Work performed under the borrower method or self-help program without a warranty by a responsible party is not eligible for compensation.

(3) Damage caused by defective design, workmanship, or material in making enhancements to or remodeling the dwelling or unit or related facilities which were not financed or approved by FmHA or its successor agency under Public Law 103–354.

(4) The loss of past, present or future wages or salary directly or indirectly resulting from the defect.

(5) Treatment for physical or psychological damages including medical and dental claims.

(6) Death benefits or funeral expenses.

(7) Damages encountered as a result of war, civil disorder, flood, tornado, lightning, earthquake or acts of nature which the structure was not designed to withstand.

(8) Damages resulting from the homeowner's negligence or failure to properly maintain the property.

(9) Damage to personal property.

§§ 1924.267—1924.270 [Reserved]

§ 1924.271 Processing applications.

An application for compensation for construction defects shall be submitted by the claimant to FmHA or its successor agency under Public Law 103–354 on the designated form (available in any FmHA or its successor agency under Public Law 103–354 office). The application shall be completed in its entirety. All structural defects and claims for which compensation is sought will be listed. Borrowers will be told not to incur any expenses for repairs or temporary living expenses, except for emergency situations, until funds have been allocated and the request has been approved under §1924.273 of this subpart.

§ 1924.272 [Reserved]

§ 1924.273 Approval or disapproval.

(a) Claimants will be notified in writing of the decision on the claim within 60 days of the date the designated form (available in any FmHA or its successor agency under Public Law 103–354 office) is signed by the borrower. If the claim or any part of the claim is denied at any level, the claimant will be informed in writing of the reason(s) for the denial and advised of appeal rights in accordance with subpart B of part 1900 of this chapter.

(b) [Reserved]

§ 1924.274 Final inspection.

Except for emergency repairs, all repair work must be performed in accordance with subpart A of this part. In all cases, FmHA or its successor agency under Public Law 103–354 will make a final inspection of the repair work performed before final payment is made for the work.

§ 1924.275 [Reserved]

§ 1924.276 Action against contractor.

If FmHA or its successor agency under Public Law 103–354 pays for correction of construction defects which are the responsibility of the contractor, debarment proceedings will be initiated against the contractor in accordance with subpart M of part 1940 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office), even if the contractor has gone out of business, declared bankruptcy, cannot be located, etc. The debarment will be pursued in both the contractor's company name and

the principal parties as individuals, and any successor entities, if known. If the manufacturer of the defective product is determined to be solely responsible, no action will be taken against the contractor. In such a case, debarment will be initiated against the manufacturer. An assignment of the borrower's claim against the contractor or other party will be obtained if it appears to the approval officials, with any necessary advice from the Office of the General Counsel, that recovery is reasonably possible.

§§ 1924.277—1924.299 [Reserved]

§ 1924.300 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0082. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 2 hours per response, with an average of .28 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0082), Washington, DC 20503.

PART 1925—TAXES

Subpart A—Real Estate Tax Servicing

Sec.
1925.1 General.
1925.2 Definition of tax.
1925.3 Servicing taxes.
1925.4 Servicing delinquent taxes.
1925.5—1925.50 [Reserved]

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

SOURCE: 57 FR 36590, Aug. 14, 1992, unless otherwise noted.

Subpart A—Real Estate Tax Servicing

§ 1925.1 General.

This Instruction applies to borrowers with a Farm Ownership (FO), Operating Loan (OL), Soil and Water (SW), Recreation Loan (RL), Emergency (EM), Economic Opportunity (EO), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Labor Housing (LH), Softwood Timber (ST), and Non-Program (NP) loans secured by real estate. It also applies to section 502 and section 504 Rural Housing borrowers (Single Family Housing (SFH)) who also have a Farmer Program loan. It does not apply to borrowers who have a SFH loan only; those will be serviced under § 1965.105 of subpart C of part 1965 of this chapter. Borrowers are responsible for paying taxes on the real estate security to the proper taxing authorities before taxes become delinquent. This obligation is set forth in the security instrument securing the loan.

§ 1925.2 Definition of tax.

For the purpose of this instruction, the word ''tax'' means all taxes, assessments, levies, irrigation and water charges or other similar obligations which are or will, on nonpayment, become a lien upon the real estate prior to the mortgage securing the Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) loan.

§ 1925.3 Servicing taxes.

(a) The County Supervisor will be responsible for ascertaining that all mortgaged real estate is listed properly for tax purposes.

(b) The County Supervisor will be responsible for taking all actions in connection with taxes as may be necessary to protect the Government's security interests. Any unusual situations that may arise with respect to tax servicing should be referred to the State Office for consideration.

(c) The County Supervisor will encourage each borrower to pay taxes promptly in order to avoid any penalties. Normally, this can be accomplished through routine servicing of

loans by emphasizing the advantages of setting aside sufficient income to meet tax obligations when they become due. Taxes will be adequately budgeted for those borrowers with whom Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan,'' is developed. Each borrower will be encouraged to notify the County Supervisor when he has paid his taxes. After the delinquent date, it will be necessary for the County Supervisor to determine the borrowers whose taxes are delinquent. Forms FmHA or its successor agency under Public Law 103–354 1905–1, ''Management System Card-Individual,'' FmHA or its successor agency under Public Law 103–354 1905–5, ''Management System Card- Individual (Rural Housing Only),'' and FmHA or its successor agency under Public Law 103–354 1905–10, ''Management System Card-Association,'' will be used in posting servicing action on delinquent taxes.

§ 1925.4 Servicing delinquent taxes.

(a) The County Supervisor will contact each borrower with a delinquent tax and make every practical effort to have him pay the tax with his own funds. He will use the Management System Card for follow-up of delinquent taxes. If the delinquent tax is not paid and the borrower comes to the office with proceeds for application on the FmHA or its successor agency under Public Law 103–354 account secured by the real estate, the County Office personnel will endeavor to get the borrower to use the proceeds to pay the delinquent tax. If the amount of the delinquent tax is less than the amount of the proposed payment, the difference will be applied on the FmHA or its successor agency under Public Law 103–354 account in accordance with the policy outlined in FmHA or its successor agency under Public Law 103–354 Instructions 1951–A and 1951–G.

(b) Prior (usually about 90 days) to the time it is legally possible for action to be taken that will cause the borrower to lose title or right of possessions of the security property or the use of essential water, the County Supervisor will contact the borrower and definitely determine if he will pay the delinquent tax immediately. If the borrower is unable or unwilling to pay the delinquent tax with his own funds after every appropriate effort has been made to have him do so, the County Supervisor will refer to FmHA or its successor agency under Public Law 103–354 Instruction 2024–A and utilize the Type 60 Purchase Order System to pay the amount of the delinquent taxes plus the amount of any accrued penalty to bring taxes current.

(1) In an exceptional case where reasons for delinquent taxes have been removed and planned income during the next year covers payment of current obligations plus delinquent taxes not vouchered, only the delinquent taxes will be paid that could cause the borrower to lose title or right of possession of security property.

(2) If the Government is holding a mortgage other than a first mortgage on the property, do not initiate payment request until the County Supervisor has determined that (i) the prior lien holder will not pay the delinquent tax, (ii) the Government's security will be jeopardized if the delinquent tax is not paid, and (iii) the value of the security is sufficient to justify the advance.

§§ 1925.5—1925.50 [Reserved]

PART 1927—TITLE CLEARANCE AND LOAN CLOSING

Subpart A [Reserved]

Subpart B—Real Estate Title Clearance and Loan Closing

Sec.

1927.51 General.
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1927.100 OMB control number.

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

SOURCE: 61 FR 11711, Mar. 22, 1996, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Real Estate Title Clearance and Loan Closing

1927.51 General.

(a) *Types of loans covered by this subpart.* This subpart sets forth the authorities, policies, and procedures for real estate title clearance and closing of loans, assumptions, voluntary conveyances and credit sales in connection with the following types of Rural Housing Service (RHS) and Farm Service Agency (FSA) loans: Farm Ownership (FO), Nonfarm Enterprise (FO–NFE), Emergency (EM), Operating (OL), Rural Housing (RH), Farm Labor Housing (LH), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Soil and Water (SW), Indian Land acquisition loans involving nontrust property, and NonProgram (NP) loans. This subpart does not apply to guaranteed loans.

(b) *Programs not covered by this subpart.* Title clearance and closing for all other types of agency loans and assumptions will be handled as provided in the applicable program instructions or as provided in special authorizations from the National Office.

(c) [Reserved]

(d) Copies of all agency forms referenced in this regulation and the agency's internal administrative procedures for title clearance and loan closing are available upon request from the agency's State Office. Forms and title clearance and loan closing requirements which are specific for any individual state must be obtained from the agency State Office for that state.

1927.52 Definitions.

Agency. The Rural Housing Service (RHS) and Farm Service Agency (FSA) or their successor agencies.

Approval official. The agency employee who has been delegated the authority to approve, close, and service the particular kind of loan, will approve an attorney or title company as closing agent for the loans. If a loan must be approved at a higher level, the initiating office may approve the closing agent.

Approved attorney. A duly licensed attorney, approved by the agency, who provides title opinions directly to the agency and the borrower or upon whose certification of title an approved title insurance company issues a policy of title insurance. Approved attorneys also close loans, assumptions, credit sales, and voluntary conveyances and disburse funds in connection with agency loans. Approved attorney is further defined in § 1927.54(c).

Approved title insurance company. A title insurance company, approved by the agency, (including its local representatives, employees, agents, and attorneys) that issues a policy of title insurance. Depending on the local practice, an approved title insurance company may also close loans, assumptions, credit sales, and voluntary conveyances and disburse funds in connection with agency loans. If the approved title insurance company does not close the loan itself, the loan closing functions may be performed by approved attorneys or closing agents authorized by the approved title insurance company.

Borrower. The party indebted to the agency after the loan, assumption, or credit sale is closed.

Certificate of title. A certified statement as to land ownership, based upon examination of record title.

Closed loan. A loan is considered to be closed when the mortgage is filed for record and the appropriate lien has been obtained.

Closing agent. The approved attorney or title company selected by the applicant and approved by the agency to provide closing services for the proposed loan. Unless a title insurance company also provides loan closing services, the term ''title company'' does not include ''title insurance company.''

Closing protection letter. An agreement issued by an approved title insurance company which is an American Land Title Association (ALTA) form closing protection letter or which is otherwise acceptable to the agency and which protects the agency against damage, loss, fraud, theft, or injury as a result of negligence by the issuing agent, approved attorney, or title company when title clearance is done by means

of a policy of title insurance. Depending on the area, closing protection letters may also be known as ''Insured Closing Letters,'' ''Indemnification Agreements,'' ''Insured Closing Service Agreements,'' or ''Statements of Settlement Service Responsibilities.''

Cosigner. A party who joins in the execution of a promissory note or assumption agreement to guarantee repayment of the debt.

Credit sale. A sale in which the agency provides credit to the purchasers of agency inventory property. Title clearance and closing of a credit sale are the same as for an initial loan except the property is conveyed by quitclaim deed.

Deed of trust. See trust deed.

Exceptions. Exceptions include, but are not limited to, recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; taxes and assessments; rights-of-way; leases; mineral, oil, gas, and geothermal rights (with or without the right of surface entry); timber and water rights; judgments; pending court proceedings in Federal and State courts (including bankruptcy); probate proceedings; and agreements which limit or affect the title to the property.

Fee simple. An estate in land of which the owner has unqualified ownership and power of disposition.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture (and any successor agency). FSA is the successor agency for farm program loans of the former Farmers Home Administration.

General warranty deed. A deed containing express covenants by the grantor or seller as to good title and right to possession.

Indemnification agreement. An agreement that protects the agency against damage, loss, fraud, theft, or injury as a result of useful conduct or negligence on behalf of the issuing agent, approved attorney, or title company. This agreement may also be entitled closing protection letter, insured closing letter, insured closing service agreement, statement of settlement service responsibilities, or letters which provide similar protection.

Issuing agent. An individual or entity who is authorized to issue title insurance for an approved title insurance company.

Land purchase contract (contract for deed). An agreement between the buyer and seller of land in which the buyer has the right to possession and use of the land over a period of time (usually in excess of 1 year) and makes periodic payments of a portion of the purchase price to the seller. The seller retains legal title to the property until the final payment is made, at which time the buyer will receive a deed to the land vesting fee title in the buyer.

Mortgage. Real estate security instrument which pledges land as security for the performance of an obligation such as repayment of a loan. For the purpose of this regulation the term ''mortgage'' includes deed of trust and deed to secure debt. A real estate mortgage or deed of trust form for the state in which the land to be taken as security is available in any agency office, and will be used to secure a mortgage to the agency.

National Office. The National Headquarters Office of FSA or RHS depending on the loan program involved.

OGC. The Office of the General Counsel, United States Department of Agriculture.

Program regulations. The agency regulations for the particular loan program involved (e.g., subpart A of part 1944 of this chapter for single family housing (SFH) loans).

Quitclaim deed. A transfer of the seller's interest in the title, without warranties or covenants. This type of deed is used by the agency to convey title to purchasers of inventory property.

RHS. The Rural Housing Service, an agency of the United States Department of Agriculture, or its successor agency. RHS is the successor agency to the Rural Housing and Community Development Service (RHCDS) which was, in turn, the successor agency to the Farmers Home Administration.

Seller. Individual or other entity which convey ownership in real property to an applicant for an agency loan or to the agency itself.

Special warranty deed. A deed containing a covenant whereby the grantor agrees to protect the grantee against any claims arising during the grantor's period of ownership.

State Office. For FSA this term refers to the FSA State Office. For RHS this term refers to the Rural Economic and Community Development State Director.

Title clearance. Examination of a title and its exceptions to assure the agency that the loan is legally secured and has the required priority.

Title company. A company that may abstract title, act as an issuing agent of title insurance for a title insurance company, act as a loan closing agent, and perform other duties associated with real estate title clearance and loan closing.

Title defects. Any exception or legal claim of ownership (through deed, lien, judgment, or other recorded document), on behalf of a third party, which would prevent the seller from conveying a marketable title to the entire property.

Trust deed. A three party security instrument conveying title to land as security for the performance of an obligation, such as the repayment of a loan. For the purpose of this regulation a trust deed is covered by the term ''mortgage.'' A trust deed is the same as a deed of trust.

Voluntary conveyance. A method of liquidation by which title to agency security is transferred by a borrower to the agency by deed in lieu of foreclosure.

Warranty deed. A deed in which the grantor warrants that he or she has the right to convey the property, the title is free from encumbrances, and the grantor shall take further action necessary to perfect or defend the title.

§ 1927.53 Costs of title clearance and closing of transactions.

The borrower or the seller, or both, in compliance with the terms of the sales contract or option will be responsible for payment of all costs of title clearance and closing of the transaction and will arrange for payment before the transaction is closed. These costs will include any costs of abstracts of title, land surveys, attorney's fees, owner's and lender's policies of title insurance, obtaining curative material, notary fees, documentary stamps, recording costs, tax monitoring service, and other expenses necessary to complete the transaction.

§ 1927.54 Requirements for closing agents.

(a) *Form of title certification.* State Offices are directed to require title insurance for all loan closings unless the agency determines that the use of title insurance is not available or is economically not feasible for the type of loan involved or the area of the state where the loan will be closed. If title insurance is used, State Offices are authorized to require a closing protection letter issued by an approved title insurance company to cover the closing agent, if available. A closing protection letter need not be furnished when the closing is conducted by the title insurance company.

(b) *Approval of closing agent.* An attorney or title company may act as a closing agent and close agency real estate loans, provide necessary title clearance, and perform such other duties as required in this subpart. A closing agent will be responsible for closing agency loans and disbursing both agency loan funds and funds provided by the borrower in connection with the agency loan so as to obtain title and security position as required by the agency. The closing agent must be covered by a fidelity bond which will protect the agency unless a closing protection letter is provided to the agency. The borrower will select the approved closing agent. If title clearance is by an attorney's opinion, the agency will approve the attorney who will perform the closing in accordance with paragraph (c) of this section. The attorney will be approved after submitting a certification acceptable to the agency. If title certification is by means of a policy of title insurance, the title company which will issue the policy must have been approved in accordance with paragraph (d) of this section. A closing agent's delay in providing services without justification in connection with agency loans may be a basis for not approving the closing agent in future cases.

(c) *Approval of attorneys.* Any attorney selected by an applicant, who will be providing title clearance where the certificate of title will be an attorney's

opinion, must submit an agency form certifying to professional liability insurance coverage. If the attorney is also the closing agent, fidelity coverage for the attorney and any employee having access to the funds must be provided. The agency will determine the appropriate level of such insurance. Required insurance will, as a minimum, cover the amount of the loan to be closed. The agency will approve the form stipulating the bond coverage. The agency will approve any attorney who is duly licensed to practice law in the state where the real estate security is located and who complies with the bonding and insurance requirements in this section. If the certification of title will be by means of title insurance, any attorney or closing agent designated as an approved attorney or closing agent by the approved title insurance company which will issue the policy of title insurance will be acceptable, and when covered by a closing protection letter, will not be required to obtain professional liability insurance or a fidelity bond. Each approved title insurance company may provide a master list of their approved attorneys that are covered by its closing protection letters to the State Office and, in such cases the attorneys are approved for closings for that title insurance company. Delay in providing closing services without justification may be a basis for not approving the attorney in future cases.

(d) *Approval of title companies.* A title company acting as a closing agent, or as an issuing agent for a title insurance company, must be covered by a title insurance company closing protection letter or submit an agency form certifying to fidelity coverage to cover all employees having access to the loan funds. The agency will determine the appropriate level of such coverage and will approve the form stipulating the bond coverage. Delay in providing closing services without justification may be a basis for not approving the company in future cases. Each approved title insurance company may provide a master list of their approved title companies that are covered by its closing protection letter to the State Office and, in such cases the title companies on the list are approved for closings for that title insurance company.

(e) *Approval of title insurance companies.* The agency will approve any title insurance company which issues policies of title insurance in the State where the security property is located if:

(1) The form of the owner's and lender's policies of title insurance (including required endorsements) to be used in closing agency loans are acceptable to the agency, and will contain only standard types of exceptions and exclusions approved in advance by the agency;

(2) The title insurance company is licensed to do business in the state (if a license is required); and

(3) The title insurance company is regulated by a State Insurance Commission, or similar regulator, or if not, the title insurance company submits copies of audited financial statements, or other approved financial statements satisfactory to the agency, which show that the company has the financial ability to cover losses arising out of its activities as a title insurance company and under any closing protection letters issued by the title insurance company.

(4) Delay in providing services without justification may be a basis for not approving the company.

(f) [Reserved]

(g) *Conflict of interest.* A closing agent who has, or whose spouse, children, or business associates have, a financial interest in the real estate which will secure the agency debt shall not be involved in the title clearance or loan closing process. Financial interest includes having either an equity, creditor, or debtor interest in any corporation, trust, or partnership with a financial interest in the real estate which will secure the agency debt.

(h) *Debarment or suspension.* No attorney, title company, title insurance company, or closing agent, currently debarred or suspended from participating in Federal programs, may participate in any aspect of the agency loan closing and title clearance process.

(i) *Special provisions.* Closing agents are responsible for having current knowledge of the requirements of State law in connection with loan closing

and title clearance and should advise the agency of any changes in State law which necessitate changes in the agency's State mortgage forms and State Supplements.

(j) [Reserved]

§ 1927.55 Title clearance services.

(a) *Responsibilities of closing agents.* Services to be provided to the agency and the borrower by a closing agent in connection with the transaction vary depending on whether a title insurance policy or title opinion is being furnished. The closing agent is expected to perform these services without unnecessary delay.

(b) [Reserved]

(c) *Ordering title services.* Application for title examination or insurance will be made by the borrower to a title company or attorney. The lender's policy will be for at least the amount of the loan. The United States of America will be named as the insured lender.

(d) *Use of title opinion.* If a title opinion will be issued, a title examination will include searches of all relevant land title and other records, so as to express an opinion as to the title of the property and the steps necessary to obtain the appropriate title and security position to issue a title opinion as required by this subpart. The closing agent or approved attorney will determine:

(1) The legal description and all owners of the real property;

(2) Whether there are any exceptions affecting the property and advise the approval official and borrower of the nature and effect of outstanding interests or exceptions, prior sales of part of the property, judgments, or interests to assist in determining which exceptions must be corrected in order for the borrowers to obtain good and marketable title of record in accordance with prevailing title examination standards, and for the agency to obtain a valid lien of the required priority;

(3) Whether there are outstanding Federal, State, or local tax claims (including taxes which under State law may become a lien superior to a previously attaching mortgage lien) or homeowner's association assessment liens;

(4) Whether outstanding judgments of record, bankruptcy, insolvency, divorce, or probate proceedings involving any part of the property, whether already owned by the borrower, or to be acquired by assumption or with loan funds, or involving the borrower or the seller exist;

(5) If a water right is to be included in the security for the loan, and if so, the full legal description of the water right;

(6) In addition to paragraph(d)(2) of this section, if wetlands easements or other conservation easements have been placed on the property;

(7) What measures are required for preparing, obtaining, or approving curative material, conveyances, and security instruments, and

(8) That sufficient copies of these interests and exceptions are provided as requested by the approval official.

(e) *Use of title insurance.* When title insurance is to be obtained, the approval official will be furnished with a title insurance binder disclosing any defects in, exceptions to, and encumbrances against, the title, the conditions to be met to make the title insurable and in the condition required by the agency, and the curative or other actions to be taken before closing of the transaction. The binder must include a commitment to issue a lender policy in an amount at least equal the amount of the loan, except in instances where there may be an outstanding owner's policy in favor of the borrower. Not withstanding the provisions of this section, the instance of an assumption without a subsequent loan, the existing policy may be continued if the coverage meets or exceeds the assumption balance and the title company agrees in writing to extend coverage in full force and effect.

(f) [Reserved]

§ 1927.56 Scheduling loan closing.

The agency, in coordination with the closing agent, will arrange a loan closing and send loan closing instructions, on an agency form to the closing agent when the agency determines that the exceptions shown on the preliminary title opinion or title insurance binder will not adversely affect the suitability, security value, or successful

operation of the property and all other agency conditions to closing have been satisfied.

§ 1927.57 Preparation of closing documents.

(a) *Preparation of deeds.* The closing agent, unless prohibited by law, will prepare, complete, or approve documents, including deeds, necessary for title clearance and closing of the transaction and provide the agency with the policy of title insurance or title opinion providing the lien priority required by the agency and subject only to exceptions approved by the agency. Agency forms will be used when required by this part.

(1) [Reserved]

(2) [Reserved]

(b) *Preparation of mortgages.* The closing agent will insure that all mortgages are properly prepared, completed, executed, and filed for record. Where applicable, the mortgages should recite that it is a purchase money mortgage. The following requirements will be observed in preparing agency morgages:

(1)–(8) [Reserved]

(9) *Alteration of mortgage form.* An agency mortgage form may be altered pursuant to a State Supplement having prior approval of the National Office, or in a special case, to comply with the terms of loan approval prescribed in accordance with program instructions. No other alterations in the printed mortgage forms will be made without prior approval of the National Office. Any changes made by deletion, substitution, or addition (excluding filling in blanks) will be initialed in the margin by all persons signing the mortgage.

(10) [Reserved]

(11) *Mortgages on leasehold estates.* When the agency security interest is a leasehold estate, unless State law or State Supplement otherwise provides, the real estate mortgage or deed of trust form, available in any agency office, will be modified as follows:

(i) In the space provided on the mortgage for the description of the real property security, the leasehold estate and the land covered by the lease must be described. The following language must be used unless modified by a State Supplement:

All of borrower's right, title, and interest in and to a leasehold estate for an original term of ____ years, commencing on _____, 19 ____, created and established by and between _____ as lessor and owner and ____ as lessee, including any extensions and renewals thereof, a copy of which lease was recorded or filed in book ____, page ____, as instrument number ____, in the Office of the (e.g., County Clerk), for the aforesaid county and State and covering the following real property: _____.

(ii) Immediately preceding the covenant starting with the words ''should default,'' the following covenant will be added:

( ) Borrower covenants and agrees to pay when due all rents and any and all other charges required by said lease, to comply with all other requirements of said lease, and not to surrender or relinquish, without the Government's prior written consent, any of borrower's right, title, or interest in or to said leasehold estate or under said lease while this mortgage remains of record.

(12) *Mortgages on land purchase contract.* When the agency security interest is on a borrower's interest in a land purchase contract, OGC will provide language used to modify agency forms.

(13) [Reserved]

(c) [Reserved]

(d) *Preparation of protective instruments.* The closing agent will properly prepare, complete, and approve releases and curative documents necessary for title clearance and closing, in recordable form and record them if required.

(1) *Prior lienholder's agreement.* If any liens (other than agency liens or tax liens to local governmental authorities) or security agreements (hereafter called ''liens''), with priority over the agency mortgage will remain against the real property securing the loan, the lienholders must execute, in recordable form, agreements containing all of the following provisions unless prior approval for different provisions has been obtained from the National Office:

(i) The prior lienholder shall agree not to declare the lien in default or accelerate the indebtedness secured by the prior lien for a specific period of time after notice to the agency. The agreement must:

(A) Provide that the specified period of time will not commence until the lienholder gives written notice of the

borrower's default and the prior lienholder's intention to accelerate the indebtedness to the agency office servicing the loan,

(B) Include the address of the agency servicing office,

(C) Give the agency the option to cure any monetary default by paying the amount of the borrower's delinquent payments to the prior lienholder, or pay the obligation in full and have the lien assigned to the agency, and

(D) Provide that the prior lienholder will not declare the lien in default for any nonmonetary reason if the agency commences liquidation proceedings against the property and thereafter acquires the property.

(ii) When the prior lien secures future advances, including the lienholder's costs for borrower liquidation or bankruptcy, which under State law have priority over the mortgage being taken (or an agency mortgage already held), the prior lienholder shall agree not to make advances for purposes other than taxes, insurance or payments on other prior liens without written consent of the agency.

(iii) The prior lienholder shall consent to the agency making (or transferring) the loan and taking (or retaining) the related mortgage if the prior lien instrument prohibits a loan or mortgage (or transfer) without the prior lienholder's consent.

(iv) The prior lienholder shall consent to the agency transferring the property subject to the prior lien after the agency has obtained title to the property either by foreclosure or voluntary conveyance if the prior lien instrument prohibits such transfer without the prior lienholder's consent.

(2) [Reserved]

(3) [Reserved]

(4) *Agreement by holder of seller's interest under land purchase contract.* If the buyer's interest in the security property is that of a buyer under a land purchase contract, it will be necessary for the seller to execute, in recordable form, an agreement containing all of the following provisions:

(i) The seller shall agree not to sell or voluntarily transfer the seller's interest under the land purchase contract without the prior written consent of the State Office.

(ii) The seller shall agree not to encumber or cause any liens to be levied against the property.

(iii) The seller shall agree not to commence or take any action to accelerate, forfeit, or foreclose the buyer's interest in the security property until a specified period of time after notifying the State Office of intent to do so. This period of time will be 90 days unless a State Supplement provides otherwise. The agreement shall give the agency the option to cure any monetary default by paying the amount of the buyer's delinquent payments to the seller, or paying the seller in full and having the contract assigned to the agency.

(iv) The seller shall consent to the agency making the loan and taking a security interest in the borrower's interest under the land purchase contract as security for the agency loan.

(v) The seller shall agree not to take any actions to foreclose or forfeit the interest of the buyer under the land purchase contract because the agency has acquired the buyer's interest under the land purchase contract by foreclosure or voluntary conveyance, or because the agency has subsequently sold or assigned the buyer's interest to a third party who will assume the buyer's obligations under the land purchase contract.

(vi) When the agency acquires a buyer's interest under a land purchase contract by foreclosure or deed in lieu of foreclosure, the agency will not be deemed to have assumed any of the buyer's obligations under the contract, provided that the failure of the agency to perform any such obligations while it holds the buyer's interest is a ground to commence an action to terminate the land purchase contract.

(5) [Reserved]

(6) [Reserved]

(e) [Reserved]

1927.58 Closing the transaction.

The closing agent will cooperate with the approval official, borrower, seller, and other necessary parties to arrange the time and place of closing. The transaction may be closed when the

agency determines that the agency requirements for the loan have been satisfied and the closing agent or approved attorney can issue or cause to be issued a policy of title insurance or final title opinion as of the date of closing showing title vested as required by the agency, the lien of the agency's mortgage in the priority required by the agency, and title to the mortgaged property subject only to those exceptions approved in writing by the agency. The loan will be considered closed when the mortgage is filed for record and the required lien is obtained.

(a) *Disbursement of loan funds.* When the closing agent indicates that the conditions necessary to close the loan have been met, loan funds will be forwarded to the closing agent. Loan funds will not be disbursed prior to filing of the mortgage for record; however, when necessary, loan funds may be placed in escrow before the mortgage is filed for record and disbursed after it is filed. No development funds will be kept in escrow by the closing agent after loan closing, unless approved by the agency. Loan funds for the payment of a lien may be disbursed only upon the recording of a discharge, satisfaction, or release of prior lien interests (or assignment where necessary to protect the interests of the agency).

(b) *Title examination and liens or claims against borrowers.* If there are exceptions or recorded items which have arisen since the preliminary title opinion, the transaction will not be closed until these entries have been cleared of record or approved by the agency. The closing agent will advise the approval official of the nature of such intervening instruments and the effect they may have on obtaining a valid mortgage of the priority required or the title insurance policy to be issued.

(c) *Taxes and assessments.* The closing agent will determine if all taxes and assessments against the property which are due and payable are paid at or before the time of loan closing. If the seller and the borrower have agreed to prorate any taxes or assessments which are not yet due and payable for the year in which the closing of the transaction takes place, the seller's proportionate share of the taxes and assessments will be deducted from the proceeds to be paid to seller at closing and will be added to the amount required to be paid by borrower at closing. Appropriate prorations as agreed upon between the borrower and seller may also be made for taxes paid by the seller which are applicable to a period after the closing date, and for common area maintenance fees, prepaid rentals, insurance (unless the borrower is to obtain a new policy of insurance), and growing crops.

(d) *Affidavit regarding work of improvement.*

(1) *Execution by borrower.* If required by State Supplement, the closing agent will require that an affidavit regarding work of improvement, provided by the agency, be completed and executed when a loan is being made to a borrower who already owns the real estate to be mortgaged. This affidavit will be executed by the borrower at closing.

(2) *Execution by seller.* If required by State Supplement, the closing agent will require that an affidavit regarding work of improvement, provided by the agency, be completed and executed (including acknowledgment) by the seller when the agency is making a loan to a borrower to enable the borrower to acquire the property (including transfers). This affidavit will be executed by the seller at closing.

(3) *Legal insufficiency of affidavit form.* If the agency affidavit regarding work of improvement is not legally sufficient in a particular State, a State form approved by OGC will be used. A similar form that may be required by a title insurance company may be substituted for the agency form.

(4) *Recording.* The affidavit will not be recorded unless the closing agent deems it necessary and State law permits.

(5) *Delay in closing.* The loan will not be closed if, at the loan closing, the seller (in a sale transaction) or the borrower (in a nonpurchase money loan situation) indicates that construction, repair, or remodeling has been commenced or completed on the property, or related materials or services have been delivered to or performed on the property within the time limit specified in the affidavit, unless a State Supplement provides otherwise. The closing agent will notify the approval

official, who will determine if the work of improvement could result in a lien prior to the agency lien. The State Office will, with the advice and concurrence of OGC, provide in a State Supplement the period of time to be used in completing the affidavit.

(e) [Reserved]

(f) [Reserved]

(g) *Return of loan documents to approval official after loan closing.* Within 1 day after loan closing, the closing agent will return completed and executed copies of the loan closing instructions, the executed original promissory note, and all other documents required for loan closing (except the mortgage), to the approval official. If the recorded mortgage is customarily returned to the borrower or closing agent after recording, then it must be forwarded to the approval official immediately.

(h) *Final title opinion or title insurance policy.* As soon as possible after the transaction has been closed.

(1) *Final title opinion.* The attorney will issue a final title opinion to the agency and the borrower on a form provided by the agency. Issuance of the final title opinion should not be held up pending the return of recorded instruments. If it is not possible for the final title opinion to show the book and page of recording of the agency security instrument, the words ''and is recorded'' in the final title opinion form provided by the agency office, may be deleted and the blank space completed to show the filing office and the filing instrument number, if available. Attached to the final title opinion will be required documents then available, including any which the approval official has furnished to the attorney which were not previously returned. The attorney will ensure that all recorded instruments are forwarded or delivered to the proper parties after recording. The certification of title will be forwarded for a voluntary conveyance.

(2) *Title insurance policy.* The closing agent will send or deliver the title insurance policy, with the United States listed as mortgage holder, to the approval official. The policy will be subject only to standard exceptions and those outstanding encumbrances, and exceptions, approved by the approval official. If an owner's policy of title insurance is requested, the closing agent will send or deliver it to the borrower. The closing agent will ensure that all recorded instruments are delivered or sent to the proper parties after recording.

(3) [Reserved]

(i) *Other services of the closing agent.*

(1) The closing agent will assist the approval official in preparing, completing, obtaining execution and acknowledgment, and recording the required documents when necessary. The closing agent will keep the approval official advised as to the progress of title clearance and preparation of material for closing the transaction.

(2) The closing agent will provide services for deeds in lieu of foreclosure as set forth in § 1927.62 of this subpart, and § 1955.10 of subpart A of part 1955 of this chapter.

§ 1927.59 Subsequent loans and transfers with assumptions.

Title services and closing for subsequent loans to an existing borrower will be done in accordance with previous instructions in this subpart, except that:

(a) *Loans closed using title insurance or title opinions.*

(1) Title insurance or title opinions will be obtained unless:

(i) The cost of title services is excessive in relationship to the size of the loan,

(ii) The agency currently has a first mortgage security interest,

(iii) The applicant has sufficient income to service the additional loan,

(iv) The borrower is current on the existing agency loan, and

(v) The best mortgage obtainable adequately protects the agency security interests.

(2) Title insurance or a final title opinion will not be obtained for a subsequent Section 504 loan where the previous Section 504 loan was unsecured or secured for less than $7,500 and the outstanding debt amount plus the new loan is less than $7,500.

(3) Loans closed using a new lender title insurance policy:

(i) Will cover the entire real property which is to secure the loan, including

the real property already owned and any additional real property being acquired by the borrower with the loan proceeds.

(ii) Will cover the entire amount of any subsequent loan plus the amount of any existing loan being refinanced (if the existing loan is not being refinanced, the new lender policy will insure only the amount of the subsequent loan).

(b) *Title services required in connection with assumptions.* These regulations are contained in part 1965, subparts A, B, and C, of this chapter as appropriate for the loan type.

§§ 1927.60–1927.99 [Reserved]

§ 1927.100 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0147. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 1.5 hours per response, with an average of .38 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0147), Washington, DC 20503. You are not required to respond to the collection of information unless it displays a currently valid OMB control number.

PART 1930—GENERAL

Subparts A–B—[Reserved]

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

Sec.
1930.101 General.
1930.102 Definitions.
1930.103 Nondiscrimination assurance.
1930.104 Reasonable accommodations.
1930.105 Objective of management and supervision.
1930.106–1930.107 [Reserved]
1930.108 Extent of borrower management.
1930.109 Extent of FmHA or its successor agency under Public Law 103–354 supervision.
1930.110 Methods of supervision.
1930.111–1930.112 [Reserved]
1930.113 Borrower responsibilities.
1930.114–1930.116 [Reserved]
1930.117 Agency responsibilities
1930.118 [Reserved]
1930.119 Supervisory visits, compliance review, and inspections.
1930.120–1930.121 [Reserved]
1930.122 Borrower accounting methods, management reporting and audits.
1930.123 Annual review.
1930.124 [Reserved]
1930.125 Changing project designation.
1930.126–1930.127 [Reserved]
1930.128 LH grants.
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1930.130–1930.133 [Reserved]
1930.134 FmHA or its successor agency under Public Law 103–354 office records.
1930.135–1930.136 [Reserved]
1930.137 State Supplements, guides, forms and other issuances.
1930.138 Supervisory actions for distressed projects.
1930.139–1930.140 [Reserved]
1930.141 Materials to be provided borrower/applicant.
1930.142 Complaints regarding discrimination in use and occupancy of MFH.
1930.143 Delegation of responsibility and authority.
1930.144 Exception authority.
1930.145 Appeals.
1930.146–1930.149 [Reserved]
1930.150 OMB control number.

EXHIBITS TO SUBPART C

EXHIBIT A—STEPS FOR FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 (FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354) PERSONNEL IN CONDUCTING ANNUAL REVIEW OF MULTIPLE HOUSING OPERATIONS
EXHIBIT A-1—AUDIT REPORT REVIEW GUIDE
EXHIBIT B—MULTIPLE HOUSING MANAGEMENT HANDBOOK
EXHIBIT B-1—MANAGEMENT PLAN REQUIREMENTS FOR FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 FINANCED MULTIPLE FAMILY HOUSING (MFH) PROJECTS
EXHIBIT B-2—REQUIREMENTS FOR MANAGEMENT AGREEMENTS