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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]

EXHIBIT A TO SUBPART B [RESERVED]

EXHIBIT B–1 TO SUBPART B—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 TO SUBPART B—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 TO SUBPART B—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 TO SUBPART B—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 TO SUBPART B—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 TO SUBPART B—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.
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
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 (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 (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)–(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)–(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)–(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 (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

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 (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 included 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.

(26) Housing Application Packaging Grants.

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

(28) Community Facilities Grants in part 3570, subpart B, 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; 62 FR 16468, Apr. 7, 1997; 62 FR 33510, June 19, 1997; 62 FR 42387, Aug. 7, 1997]

§ 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]

EXHIBIT A TO SUBPART E—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.

Recipient	Case No.	Type of assistance [1]	Date of review
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 TO SUBPART E—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.

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.

[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	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/paperhangers.	8.8–12.8
	Plasterers	17.0–19.0
	Plumbers/pipefitters/steamfitters.	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

GOALS AND TIMETABLES—Continued

[In percent]

Timetable	Trade	Goal
	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 (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 A TO SUBPART F—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 (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 (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 (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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1902.4 Establishing MFH reserve accounts in a supervised bank account.
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1902.6 Establishing supervised bank accounts.
1902.7 Pledging collateral for deposit of funds in supervised bank accounts.
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.
1902.9 Deposits.
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EXHIBIT B TO SUBPART A—UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354—INTEREST-BEARING DEPOSIT AGREEMENT

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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 (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]

EXHIBIT A TO SUBPART A [RESERVED]

EXHIBIT B TO SUBPART A—UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION OR ITS SUCESSOR 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.

EXHIBIT A TO SUBPART A [RESERVED]
EXHIBIT B TO SUBPART A—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 TO SUBPART A—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.

(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; 62 FR 9353, Mar. 3, 1997]

§ 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. 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 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; 62 FR 9353, Mar. 3, 1997]

§ 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 § 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.

ADDITIONAL FSA FARM CREDIT RESPONSIBILITIES

(19) Form FmHA 1924–1, ''Development Plan,'' if necessary.

(20) Form FmHA 1940–22, ''Environmental Checklist for Categorical Exclusions,'' or Class I and Class II assessment, whichever is applicable.

(21) Real estate and chattel appraisal, when applicable.

(22) 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.* 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 §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 § 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; 62 FR 9353, Mar. 3, 1997]

§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) When the applicant, including any members of an entity applicant, caused the Agency a loss by receiving debt forgiveness, they are ineligible for assistance in accordance with applicable program eligibility regulations. If the debt forgiveness is cured by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's creditworthiness. The following circumstances do not automatically 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.

(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; 62 FR 28618, May 27, 1997]

§§1910.6–1910.9 [Reserved]

§1910.10 Preference.

(a) *Veterans*. (1) Veteran's preference is given 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 U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard, and who served during a period of war, as defined in 38 U.S.C. 101(12).

(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; 62 FR 9353, Mar. 3, 1997]

§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]

EXHIBIT A TO SUBPART A [RESERVED]

EXHIBIT B TO SUBPART A—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 (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 TO SUBPART A—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 (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 (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 (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

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

(i) *Time of starting development work.* Development work will be started as soon as feasible after the loan is closed. Except in cases in which advance commitments are made in accordance with 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]

§ 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 (eExhibit 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]

EXHIBIT A TO SUBPART 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 TO SUBPART A—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 (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 (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 (8×10½ 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 TO SUBPART A—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 multi-level 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 TO SUBPART A—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 TO SUBPART A—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)

_____

(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 TO SUBPART A—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 (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 TO SUBPART A—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 TO SUBPART A—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 Set-up.* 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 TO SUBPART A—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	

COMPONENTS OF MULTI-FAMILY BUILDING REHABILITATION—Continued

Components	Maintenance and repair	Moderate rehabilitation	Substantial rehabilitation
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
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 TO SUBPART A—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 (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 A TO SUBPART B—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;

WHAT TO DO IF YOU WANT TO TAKE ACTIONS THAT ARE DIFFERENT THAN WHAT IS LISTED ON YOUR FORM FMHA 1962–1—Continued

Get prior consent	Give notice afterwards
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; 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).	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; 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.

EXHIBIT A TO SUBPART C [RESERVED]

EXHIBIT B TO SUBPART C—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

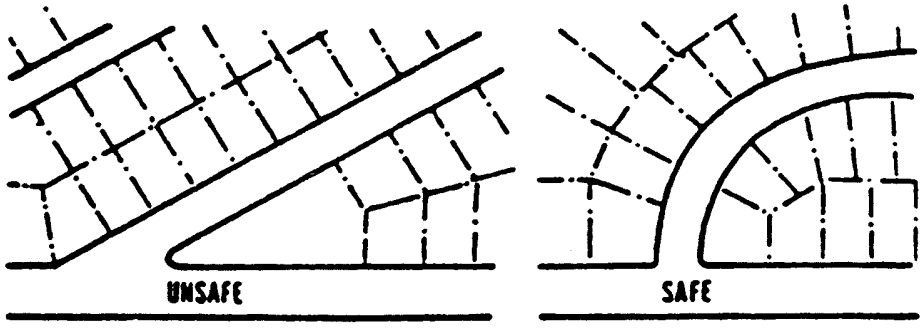
A. *Types*—1. *Collector streets.* Collector streets are feeder streets which carry traffic from local streets to the major system of arterial streets and highways. They include the principal entrance streets of residential developments and streets for circulation within such developments.

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 TO SUBPART 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 (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.

(f)–(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 #575–0082), 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 (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

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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)–(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)–(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)–(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)–(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

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subparts A–B [Reserved]

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

SOURCE: 58 FR 40868, July 30, 1993, unless otherwise noted.

§1930.101 General.

This subpart prescribes the policies, authorizations, and procedures for management and supervision of all of the following Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 Multiple Family Housing (MFH) loan and grant recipients:

(a) Farm Labor Housing (LH).

(b) Rural Rental Housing (RRH) including congregate housing.

(c) Rural Cooperative Housing (RCH).

(d) Rural Housing Site Loans (RHS).

(e) Special provisions and exceptions.

(1) Unless otherwise specified in this subpart and except for exhibit C of this subpart, individual type RRH borrowers who were not required by program regulation to execute a loan agreement are exempted from the requirements of this subpart as long as the borrower is not in default of any program requirement, security instrument, payment, or any other agreement with FmHA or its successor agency under Public Law 103–354. However, these borrowers must provide evidence of tenant income eligibility by properly completing Form FmHA or its successor agency under Public Law 103–354 1944–8, ''Tenant Certification,'' for each tenant as required by the Forms Manual Insert (FMI), except in LH situations where the tenant is not paying rent.

(2) The State Director may require any borrower determined to be in default of any program requirement, security instrument, payment, or other agreement with FmHA or its successor agency under Public Law 103–354, or when otherwise failing to meet the program objectives, to comply with any appropriate section of this subpart to assure that the loan objectives are met.

(3) For RHS borrowers, the following sections of this subpart do not apply: §§1930.108, 1930.122, and 1930.141.

§1930.102 Definitions.

Acceptable tolerance. For the purpose of this subpart, acceptable tolerance means actual financial activity as expressed in numeric terms that is operating within plus or minus 5 percent of projected or forecasted estimates.

Adviser to the board. An individual or organization who will work with and provide guidance to a cooperative board of directors.

Borrowers. Borrowers means owners who may be individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations, and other organizations who have received a loan or grant from FmHA or its successor agency under Public Law 103–354 for LH, RRH, RCH, or RHS purposes.

Consumer cooperative. A corporation which is organized under the cooperative laws of a State or Federally recognized Indian tribe; will own and operate the housing on a cooperative basis solely for the benefit of the members; will operate at cost and, for this purpose, any patronage refunds accruing to members in accordance with subpart E of part 1944 of this chapter will not be considered gains or profits; and will restrict membership in the housing to eligible persons and, to any extent the cooperative and FmHA or its successor agency under Public Law 103–354 permit, to others in special circumstances.

FmHA or its successor agency under Public Law 103–354. FmHA or its successor agency under Public Law 103–354 means the United States of America acting through the Farmers Home Administration or its successor agency under

Public Law 103–354 or FmHA or its successor agency under Public Law 103–354's predecessor agencies.

Governing body. Governing body means those elected or appointed officials of an organization or public agency type borrower responsible for the operations of the project.

Management. Management is the overall direction given by the borrower or the borrower's agent to meet the needs of the tenants or members, maintain the project, and provide sound and economical project operation.

Member. A person who has executed documents pertaining to a cooperative housing type of living arrangement and has made a commitment to upholding the cooperative concept.

Occupancy agreement. A contract setting forth the rights and obligations of the cooperative member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing.

Office of the General Counsel (OGC). OGC means the Regional Attorney, Associate Regional Attorney, or Assistant Regional Attorney in the field office of the Office of the General Counsel of the United States Department of Agriculture (USDA).

Office of Inspector General (OIG). OIG means the Office of Inspector General of the USDA.

Patronage capital refund. Amounts received by the cooperative in excess of operating costs and expenses which have been assigned to members' patronage capital accounts each year of membership in the cooperative.

Project. A project is the total number of rental housing units that are operated under one management plan with one loan agreement/resolution. (The rental units may have been developed originally with separate initial loans and separate loan agreements/resolutions, now consolidated into one operational project under §1965.68 of subpart B of part 1965 of this chapter.)

Servicing Office. The FmHA or its successor agency under Public Law 103–354 office designated by the State Director to service MFH accounts.

Servicing Official. The individual who by job description or other qualification is designated by the State Director with delegated responsibility to service MFH accounts.

State Director. For the purpose of this subpart, State Director also includes the Rural Housing Chief, Multiple Family Housing Coordinator, Rural Housing Specialist, and other qualified State staff when delegated responsibilities under this subpart according to §1930.143 and the provisions of FmHA or its successor agency under Public Law 103–354 Instruction 2006–F, (available in any FmHA or its successor agency under Public Law 103–354 office).

Supervision. Supervision includes the broad scope of FmHA or its successor agency under Public Law 103–354 guidance available to assist borrowers to carry out the objectives of the loan and comply with FmHA or its successor agency under Public Law 103–354 regulations.

§1930.103 Nondiscrimination assurance.

All management and supervision actions described in this subpart will be conducted without regard to race, color, religion, sex, familial status, national origin, age, or handicap. Borrowers, tenants and cooperative members must possess the legal capacity to enter into a legal contract. The provisions of subpart E of part 1901 of this chapter enforcing title VI of the Civil Rights Act of 1964, as amended, along with other similarly worded statutes will be complied with.

§1930.104 Reasonable accommodations.

(a) It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations would afford an individual with a handicap equal opportunity to use or continue to use and enjoy a dwelling unit, including public and common use areas.

(b) It shall be unlawful for any person to refuse to permit, at the expense of an individual with a handicap, reasonable modifications of an existing unit, occupied or to be occupied by an individual with a handicap, if the proposed modifications may be necessary to afford the individual with a handicap full enjoyment of the dwelling unit.

§ 1930.105 Objective of management and supervision.

(a) The primary objective of management and supervision is to provide effective supervision to each borrower to accomplish the objectives of the loan or grant.

(b) To provide effective supervision, FmHA or its successor agency under Public Law 103–354 will assure that the borrower's management plan accomplishes the following:

(1) Provide proper and efficient management policies as prescribed in exhibit B of this subpart.

(2) Comply with loan and grant agreements.

(3) Repay loans on schedule.

(4) Maintain security property.

(5) Protect the interests of FmHA or its successor agency under Public Law 103–354.

(6) Operate facilities according to State and local laws and regulations.

(7) Maintain accounts and records.

(8) Submit reports and audits.

(9) Process rent and occupancy charge changes according to exhibit C of this subpart.

(10) Operate the facilities according to applicable Civil Rights laws, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Executive Order 11246, the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975.

(11) Maintain facilities and premises that are free of illegal controlled substances.

(12) Collect and remit any occupancy surcharges as applicable.

[58 FR 40868, July 30, 1993, as amended at 62 FR 25065, May 7, 1997]

§ 1930.106 Project operations.

Project operations shall be conducted to meet the actual needs and necessary expenses of the property or for any other purpose authorized under Agency regulations. Whoever willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other funds derived from such property for unauthorized purposes is subject to penalty. This includes an owner, agent, or manager, or person who is otherwise in custody, control, or possession of property that is security for a multifamily housing loan. Those violating these provisions are subject to penalties set out under Agency regulations and the law. Under law (42 U.S.C. 1484 and 1485) federal penalties consisting of fines of not more than $250,000 or imprisonment of not more than five years, or both, may be imposed for operating a project in a manner inconsistent with the provisions of this section.

[62 FR 25065, May 7, 1997]

§ 1930.107 [Reserved]

§ 1930.108 Extent of borrower management.

According to exhibit B of this subpart, the borrower and/or the borrower's agent will develop a management plan for each project that describes the scope of property management needed to maintain program objectives. When the management is from other than the borrower, a management agreement will be used to define the responsibilities of the management agent. Initial, modified and/or replacement management agreements will be approved by authorized FmHA or its successor agency under Public Law 103–354 officials. A sample management agreement is provided in exhibit B–3 of this subpart.

§ 1930.109 Extent of FmHA or its successor agency under Public Law 103–354 supervision.

The objective of FmHA or its successor agency under Public Law 103–354 supervision is to guide and advise borrowers and their designated representatives in their quest to meet MFH program objectives, goals, and obligations, not to direct the borrower's activity. Supervision does not relieve borrowers of their own responsibilities and obligations. Supervision starts with the first contact by the applicant and continues as long as any loan balance remains outstanding. In the case of a grant, supervision continues until the requirements of the grant agreement have been fulfilled. Supervision of borrowers is a primary responsibility of the Servicing Official; however, additional supervision and guidance will be given by the State Director and/or

other appropriate members of the State Office staff. Security servicing actions will be handled according to subpart B of part 1965 of this chapter.

§1930.110 Methods of supervision.

Supervisory methods used by FmHA or its successor agency under Public Law 103–354 employees include organizational and development planning; property management planning; affirmative marketing; construction conferences; long-term, annual, and other periodic planning and evaluation; accounts, budgets, and records inspections and guidance; project inspections; attendance at membership and governing body meetings; periodic group meetings with borrowers; analysis of accounting, budgets, and audit reports; guidance by memorandums; and similar activities. Supervision of cooperative borrowers will include coordination with the adviser to the board. Supervision of grant-only recipients will consist of at least the reviews and inspections outlined in §1930.119 of this subpart.

(a) *Applicants.* Prior to loan or grant closing, supervision will largely be conducted during conferences and meetings with prospective borrowers and their various representatives such as applicant's attorney, architect, property manager, etc. Examples of supervision include:

(1) Organizational meetings to discuss needs, services available, owner obligations, and to establish organizational committees.

(2) Preapplication and application conferences.

(3) Preconstruction conferences to reach an understanding regarding responsibilities and the manner in which development will be performed. The applicant at this point should be made fully aware of the responsibilities detailed in §1930.103 of this subpart.

(4) Preloan and/or grant closing conferences to review requirements of the loan resolution or agreement, closing requirements, and management plan and to establish responsibilities for the operation of the project. The applicant at this point should be made fully aware of the responsibilities entailed in §1930.103 of this subpart.

(5) Preoccupancy conferences to review the management plan, marketing plan, and the general readiness of project facilities, recordkeeping systems, renting or occupancy procedures, and personnel assignments to begin project operation. This conference will be conducted according to §1944.235(h) of subpart E of part 1944 of this chapter.

(b) *Borrowers who have yet to demonstrate their ability and borrowers with problems.* When the borrower is establishing its operations, or when borrowers are delinquent, or have other difficulties, supervisory guidance will include:

(1) Implementation and/or review for compliance with the management plan.

(2) Establishment and maintenance of a financial recordkeeping and reporting system.

(3) Compliance with the requirements of the loan agreement or loan resolution.

(4) Review of annual audit and budget requirements.

(5) Any other supervision that may be necessary to assure effective and successful operation of the project.

(6) A requirement that the borrower contract with a management firm with proven background and/or experience in property management. In the case of cooperative housing, this stipulation will apply only when it has been determined that the cooperative is unable to manage itself.

(c) *Borrowers who have demonstrated ability.* Supervision will consist of at least an annual review of budgets and other management reports according to §1930.122, and a triennial supervisory visit according to §1930.119 of this subpart when the borrower is:

(1) Successful in completing a first full fiscal year of operation.

(2) Current with loan payments.

(3) In compliance with other loan or grant requirements.

(4) Maintaining the security in a satisfactory manner.

(5) Otherwise progressing satisfactorily.

§§ 1930.111–1930.112 [Reserved]

§ 1930.113 Borrower responsibilities.

Borrower responsibilities are described in paragraph III of exhibit B of this subpart.

§§ 1930.114–1930.116 [Reserved]

§ 1930.117 Agency responsibilities.

Effective supervision requires FmHA or its successor agency under Public Law 103–354 employees to be familiar with the various types of borrowers and their management plan; to communicate effectively with borrowers and their management agent, when applicable; and to provide guidance in the operation and management of MFH projects.

(a) *Servicing Official.* Servicing Officials are responsible for effective borrower supervision. Servicing Officials will:

(1) Organize their work and the work of their staffs in order that time is used effectively in providing borrower supervision and place emphasis on supervisory visits and review of borrower management reports.

(2) Emphasize to the borrower and/or the borrower's management agent that they, not FmHA or its successor agency under Public Law 103–354, are responsible for managing the project, planning and following budgets within acceptable tolerance, collecting rents or occupancy charges, repaying the loan on schedule, budgeting for adequate project operations and maintenance; and for compliance with any loan or grant agreement or resolution, State laws, and other FmHA or its successor agency under Public Law 103–354 requirements.

(3) Monitor all provisions or conditions of the FmHA or its successor agency under Public Law 103–354 approval documents to ensure that they are fully complied with throughout the life of the project.

(4) Monitor the borrowers' compliance with FmHA or its successor agency under Public Law 103–354 regulations concerning real property tax, insurance, bonding, security, budgeting, and reporting requirements.

(5) Systematically monitor response to OIG report findings at specific intervals and/or during routine supervisory visits, compliance reviews, and physical inspections.

(6) Assure that borrower financing statements are continued and not allowed to lapse.

(7) Have each borrower designate a representative to serve as its contact source for Agency communication on project related matters.

(8) Become familiar with the borrower's bylaws or other rules and regulations when necessary to assure compliance with FmHA or its successor agency under Public Law 103–354 program civil rights and Fair Housing Act requirements.

(9) Provide borrower governing bodies with suggestions for information distribution that may be helpful in keeping the membership in touch with activities to increase and maintain membership interest.

(10) Provide informed advice and guidance to borrowers as needed.

(11) Identify problem borrower accounts and initiate servicing plans including workout agreements with the borrower according to exhibit F of subpart B of part 1965 of this chapter.

(12) Gather, maintain, analyze, and distribute a database of actual MFH operation and maintenance expense for determination of expense reasonableness that reflects variables of project operation and characteristics.

(13) Avoid doing any of the following:

(i) Try to run the borrower's business.

(ii) Take charge of the borrower's meetings.

(iii) Attempt to supervise the borrower only through its attorney, architect, or management agent.

(iv) Presume that projects without adverse complaints do not require monitoring and/or supervision by FmHA or its successor agency under Public Law 103–354.

(b) *State Director.* State Directors will:

(1) Coordinate and direct supervisory activities related to borrowers and perform other functions as prescribed by this subpart.

(2) Provide guidance and leadership to assure that the State staff and Servicing staff thoroughly understand and carry out their responsibilities.

(3) Develop and conduct training programs necessary to assure that FmHA or its successor agency under Public Law 103–354 personnel are kept up-to-date regarding the most effective supervisory methods, that the proper time is allotted to supervision, and that borrowers receive adequate supervision and financial counseling.

(4) Establish and maintain a system to monitor followup to findings in OIG reports, supervisory visits, compliance reviews, physical inspections, or other factual sources.

(5) Maintain necessary liaison with the OGC.

(6) Maintain necessary liaison with State and local authorities, agencies, and other organizations. For example, in the case of projects benefiting the elderly, it is essential that liaison be maintained with the aging network such as State and Area Agencies on Aging to assure that available support services are offered to or accessible by the tenants.

(7) Maintain and update State Office records for effective program supervision and evaluation.

(8) Assist the Servicing Official in developing a realistic plan to resolve project operational problems.

(c) *State staff.* State staff members who are designated by the State Director as MFH Servicing Officials responsible for supervision of borrowers covered by this subpart will:

(1) Continuously monitor supervisory and account servicing activities and borrower status to assure that each project is receiving timely and effective supervision.

(2) Train staff to effectively perform the required supervisory and account servicing activities, and to provide informed guidance in sound operation and management policies. The assistance of the aging network such as State and Area Agencies on Aging should be sought in connection with training which pertains to the management of services to the elderly.

(3) Post review closing of loans and grants to determine that they have been properly closed.

(4) Visit a sufficient number of projects to assure that proper supervision and account servicing is being provided.

(5) Assemble, analyze, and distribute a statewide database of actual MFH operation and maintenance costs for determination of cost reasonableness that reflects variable characteristics of project operation.

§1930.118 [Reserved]

§1930.119 Supervisory visits, compliance reviews, and inspections.

(a) *Purpose.* Servicing Officials and other FmHA or its successor agency under Public Law 103–354 authorized persons will visit the MFH project site, including the management office, as necessary to accomplish the objectives of the loan or grant. Following are the major purposes for which visits may be made:

(1) To assist with satisfactory development of the project.

(2) To evaulate the management program of the project pursuant to exhibit B of this subpart, such as:

(i) Adherence to the management plan.

(ii) Compliance with the management agreement when applicable.

(iii) To review compliance with the Affirmative Fair Housing Marketing Plan and/or the Equal Opportunity requirements of title VI of the Civil Rights Acts of 1964, the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(3) To review borrower records and verify required compliance and information, such as:

(i) Tenant or member eligibility.

(ii) Tenant or member income.

(iii) Tenant or member selection criteria.

(iv) Waiting lists.

(v) Rental or occupancy rates are in accordance with an FmHA or its successor agency under Public Law 103–354 approved budget.

(vi) Other necessary items.

(4) To inspect and ascertain proper maintenance and assure protection of the security for the FmHA or its successor agency under Public Law 103–354 loan.

(5) To determine if the project is being operated according to the approved budget.

(6) To determine that borrower and/or borrower's managment agent is fully complying with all provisions and conditions of the approval document regarding site development and use restrictions.

(7) In the case of all LH borrowers, including on-farm LH, to determine that the housing is serving domestic farm laborers, as defined by paragraph II of exhibit B of this subpart, and that the LH housing provided is decent, safe, and sanitary.

(b) *Frequency and standards.* Visits will be made as follows:

(1) Supervisory visits will be made as needed to assure compliance with FmHA or its successor agency under Public Law 103–354 policies and objectives. A Servicing staff person or other FmHA or its successor agency under Public Law 103–354 authorized person will perform a post rent-up or occupancy visit before the end of the first 90 days of operation; and a thorough supervisory visit no later than 12 months following the post occupancy visit, and at least every 36 months thereafter at each project.

(i) More frequent visits to delinquent or problem projects, irrespective of loan type, should be scheduled as needed.

(ii) In the case of borrowers with on-farm LH unit(s) or LH borrowers providing seasonal farm labor housing, such visits should be made during the season of occupancy and preferably during an annual farm visit.

(iii) Planned visits will be included in the monthly work calendar.

(iv) The visit shall be conducted with the borrower and/or the borrower's designated representative.

(v) Exhibits F, F–1, F–2, G, G–1, and G–2 of this subpart should be used to assist in the preparation, completion, and followup of visits.

(vi) For small rental projects consisting of only a few units (usually 1 to 3), the degree of completion of exhibits F, G, G–1 and G–2 may be minimized. Supervisory visits to such projects are required only once every three years and should concentrate on tenant eligibility, income and adjustments to income verification, maintenance, insurance coverage, and status of loan payments.

(2) The Servicing Official or other FmHA or its successor agency under Public Law 103–354 authorized person will conduct an inspection of each project at least once every 36 months with the borrower, site manager, or designated representative present.

(i) This inspection may be made simultaneously with a supervisory visit scheduled in accordance with this section.

(ii) The results of the inspection will be documented on HUD Form 9822, ''Report of Physical Condition and Estimate of Repair Costs,'' or a similar form for the same purpose may be used for this inspection.

(iii) Based on the Servicing person's knowledge, without further research, the estimated repair need and cost columns of the form will be completed during the inspection visit.

(c) *Preparation.* The person planning to make the visit and inspection will review the most recent quarterly or annual reports, the running records, correspondence, and other Servicing Office records to be fully aware of the supervisory needs of the project. This awareness should be developed into an informal visit plan and include, but not be limited to such things as; payment status, subsidy status, due dates of taxes and insurance, adequacy of fidelity coverage, and any known maintenance problems.

(d) *Notice of visit or inspection.* The management agent, or when applicable, the owner should receive a written notice of the scheduled visit or inspection from the Servicing Office 30 days before the event to insure that needed records and staff are available (see Guide Letter 1930–2 for borrower notification.)

(e) *Conducting visit or inspection.* The person making the visit or inspection should spend sufficient time at the project to accomplish the visit plan and any additional needs that are observed or brought out by the tenants, members, or management staff.

(f) *Recording, reporting and followup.* The preparation notes and results of each visit should be recorded on exhibits F, G, G–1 and G–2 of this subpart and filed in the borrower's servicing file. A letter highlighting any needed

followup actions and a copy of the completed supervisory visit checklist will be directed to the management agent and/or the borrower within 30 days after the visit. Followup will continue through resolution of any problems. Any major problems with the project will be reported in writing to the State Director with recommendations for corrective action. Exhibit A to subpart A of part 1955 of this chapter or Form FmHA or its successor agency under Public Law 103–354 1955–2, ''Report on Real Estate Problem Case,'' may be used as appropriate.

(g) *Compliance reviews.* As authorized State or Servicing staff member or other FmHA or its successor agency under Public Law 103–354 authorized person will complete the Civil Rights and Fair Housing review requirements according to subpart E of part 1901 of this chapter. If initial rent-up or occupancy has not occurred by the time of initial review, a subsequent review will be due one year following initial occupancy and then every 36 months thereafter or in accordance with subpart E of part 1901 of this chapter.

§§ 1930.120–1930.121 [Reserved]

§ 1930.122 Borrower accounting methods, management reporting and audits.

It is the objective of FmHA or its successor agency under Public Law 103–354 that borrowers will maintain accounts and records necessary to conduct their operation successfully and from which they may accurately report operational results to FmHA or its successor agency under Public Law 103–354 for review, and otherwise comply with the terms of their loan agreements with the Agency. Borrower accounts and records will be kept or made available in a location within reasonable access for inspection, review, and copying by representatives of FmHA or its successor agency under Public Law 103–354 or other agencies of the U.S. Department of Agriculture authorized by the Department.

(a) *Accounting methods and records*—(1) *Method of accounting and financial statements.* Borrowers may choose a cash or accrual method of accounting, bookkeeping, and budget preparation as described in their project management plan, unless otherwise specified in a work-out plan as part of a servicing action. Balance sheets or statements of financial condition may be prepared reflecting the same accounting method, except that the accrual method of reporting financial condition will be used where the borrower is required to submit an annual audit.

(2) *Approval requirement.* Before loan closing or start of construction, whichever is first, each borrower shall incorporate a description of its method of accounting, bookkeeping, budget preparation, and reporting of financial condition and, when applicable, plans for auditing, in the project management plan that must be approved by FmHA or its successor agency under Public Law 103–354.

(3) *Records.* Form FmHA or its successor agency under Public Law 103–354 1930–5, ''Bookkeeping System-Small Borrower,'' may be used by small organizations as a method of recording and maintaining accounting transactions. Automated systems may be used if they meet the conditions of paragraph XVI of exhibit B of this subpart.

(4) *Record retention.* Each borrower shall retain all financial records, books, and supporting material for 3 years after the issuance of the audit reports and financial statements. Upon request, this material will be made available to FmHA or its successor agency under Public Law 103–354, the OIG, the Comptroller General, or to their representatives.

(b) *Management reports and review processes.* The objective of management reports and review processes is to furnish the management and FmHA or its successor agency under Public Law 103–354 with a means of evaluating prior decisions and to serve as a basis for planning future operations and financial conditions. Timely reports and their review furnish necessary information to make sound management decisions. All reports will relate only to the FmHA or its successor agency under Public Law 103–354 financed project and borrower entity. Separate reports will be prepared and submitted for each project owned by the same borrower. Forms necessary in making the required reports may be requested from FmHA or its successor agency

under Public Law 103–354. The various review processes described in this paragraph are illustrated at § 1930.123(i) of this chapter.

(1) *Annual budget and utility allowance*—(i) *Objective.* It is the objective of FmHA or its successor agency under Public Law 103–354 that project budgets and/or utility allowances be prepared, reviewed, and approved in such manner and timing that the approved budget and/or utility allowance, including any authorized changes to same, become effective on the beginning of a fiscal year of project operation.

(ii) *Documents.* (A) The annual project budget will be prepared on Form FmHA or its successor agency under Public Law 103–354 1930–7, ''Multiple Family Housing Project Budget,'' by the borrower or its agent following the instructions on the form. It will reflect budget planning for a 12 month fiscal year. Figures in the ''actual'' column will reflect at least 9 months of actual fiscal year activity and no more than 3 months of estimated activity for the balance of the same fiscal year based on recent actual experience.

(B) When tenants pay their own utilities, the housing allowance for utilities and other public services will be prepared on exhibit A–6 to subpart E of part 1944 of this chapter. Exhibit A–6 will be prepared by the borrower or its agent following instructions attached to the exhibit and will be submitted to FmHA or its successor agency under Public Law 103–354 together with Form FmHA or its successor agency under Public Law 103–354 1930–7 with justification to either retain or change the utility allowance.

(iii) *Supporting data.* Any data, justification, or other documentation required by the instructions for preparation of Form FmHA or its successor agency under Public Law 103–354 1930–7 and exhibit A–6 to subpart E of part 1944 of this chapter, or otherwise required by the Servicing Official on an individual case basis, shall be ttached to the respective document when submitted to the Servicing Office.

(iv) *Due date.* The borrower can submit the necessary documents as soon as 9 months of current fiscal year actuals are available, but in sufficient time to meet the objective stated in (b)(1)(i) of this section. The Servicing Official needs 15 to 30 days to review project budgets and utility allowances when no changes of rents, occupancy charges, or utility allowances are needed. When such changes are needed, the borrower needs to submit documents to allow sufficient time for review and proper notice of change to tenants or members.

(v) *FmHA or its successor agency under Public Law 103–354 review.* Form FmHA or its successor agency under Public Law 103–354 1930–7 and exhibit A–6 to subpart E of part 1944 of this chapter and any attachment will be reviewed by the Servicing Office as part of the rental or occupancy charge/utility allowance change review and/or annual review process.

(2) *Rental or occupancy charge budget and/or utility allowance change*—(i) *Objective.* It is the objective of FmHA or its successor agency under Public Law 103–354 that changes to project rental or occupancy charges and/or utility allowances be incorporated into the annual budget review and planning process in such manner and timing that authorized changes become effective at the beginning of a fiscal year of project operation.

(ii) *Documents.* When a rental or occupancy charge and/or utility allowance change is proposed, the borrower or its agent will prepare and submit Form FmHA or its successor agency under Public Law 103–354 1930–7 and exhibit A–6 to subpart E of part 1944 of this chapter and any supporting attachments following the instructions for either document.

(iii) *Standards and timing.* (A) The policies and procedures governing rental or occupancy charge and/or utility allowance change are contained in exhibit C of this subpart, (available in any FmHA or its successor agency under Public Law 103–354 office or the ''Borrower Handbook'' made up of selected exhibits of this subpart and parts of this chapter).

(B) To meet the projected effective date of change, the necessary documents need to be received by the Servicing Official at least 75 days ahead of the effective date of change to allow FmHA or its successor agency under Public Law 103–354 review to authorize

a 60 day notice to tenants or members of an impending change. The ''actual'' column of Form FmHA or its successor agency under Public Law 103–354 1930–7 shall contain actual data for the fiscal year to date plus the projection of expected data for the remainder of the fiscal year. This projection should cover a period not exceeding 90 days. The same supporting data standards of paragraph (b)(1)(iii) of this section will apply.

(C) Should the borrower need to request a rental or occupancy charge and/or utility allowance change at some time other than described in paragraph (b)(2)(iii)(B) of this section, e.g., mid-fiscal year, Form FmHA or its successor agency under Public Law 103–354 1930–7 shall reflect the project's financial needs for the next 12 months of operation and the ''actual'' column shall reflect the most recent 12 months of actual data. The previous fiscal year's audit report, or Form FmHA or its successor agency under Public Law 103–354 1930–8, ''Multiple Family Housing Borrower Balance Sheet,'' as appropriate, shall be submitted with the change request if it was not previously submitted to the Servicing Office.

(iv) *FmHA or its successor agency under Public Law 103–354 review.* Exhibit C of this subpart shall govern FmHA or its successor agency under Public Law 103–354 review of the borrower's request for rental or occupancy charge and/or utility allowance change.

(3) *Quarterly report*—(i) *Objective.* The objective of FmHA or its successor agency under Public Law 103–354 is for quarterly reports to provide a monitoring means for borrowers and FmHA or its successor agency under Public Law 103–354 to mutually check a borrower's progress in achieving program objectives and when applicable, meeting servicing goals.

(ii) *Document.* Form FmHA or its successor agency under Public Law 103–354 1930–7 will be used by borrowers to prepare the quarterly report.

(iii) *Standards.* Form FmHA or its successor agency under Public Law 103–354 1930–7 will be completed following the instructions on the form for preparation of a quarterly report. The quarterly report shall be required upon commencement of any of the following situations:

(A) Start up of initial occupancy after completion of new construction or substantial rehabilitation.

(B) Reamortization, transfer of an existing project loan or a 100 percent membership change.

(C) Failure to make a scheduled loan payment, failure to maintain required transfers to the reserve account, or failure to maintain reserve accounts at authorized current levels.

(D) Existence of reasons stated in paragraph (b)(3)(iv)(B) of this section when quarterly reports will suffice in place of monthly reports.

(iv) *Frequency and discontinuance*—(A) *Quarterly reports.* Quarterly reports shall be prepared and submitted for each quarter year at least through the first year of operation for any situation described in paragraph (b)(3)(iii) of this section and each quarter year thereafter for new or existing projects until discontinuance is authorized by the Servicing Official. The Official will evaluate the following in reaching a decision to discontinue:

(*1*) An adequate accounting system is functioning properly, is kept current, and the most recent required annual financial reports are complete and have been submitted to the Servicing Office.

(*2*) Project loan payments to FmHA or its successor agency under Public Law 103–354 are on schedule.

(*3*) The project reserve account is ahead or on schedule, allowing for authorized expenditures or authorized reduction in funding as set forth in an approved servicing plan or budget.

(*4*) The annual review has been completed by the Servicing Office and the annual audit, or verification of review when appropriate, has been found acceptable.

(*5*) The Servicing Official has inspected the project, reviewed project operations, and found them acceptable. When this and the preceding determinations are made, a letter of discontinuance of the quarterly report shall be sent to the borrower or its agent with a copy sent to the State Director.

(B) *Monthly reports.* Preparation and submission of the reports described in

this paragraph may be required monthly at the option of the Servicing Official, rather than quarterly, when warranted in unusual situations.

(*1*) This requirement may be invoked when determined essential by the Servicing Official as part of a servicing plan made in accordance with exhibit F of subpart B of part 1965 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(*2*) Reasons for invoking the reporting requirement on a monthly basis may include, but not be limited to, factors such as apparent violations of policy or reporting practices, audit findings, sudden increases of vacancy and/or accounts payable or receivables, or other evidence of weak financial condition.

(v) *Due date.* Quarterly (or monthly) reports shall be due in the FmHA or its successor agency under Public Law 103–354 Servicing Office by the 20th day of the month immediately following the close of the respective reporting period.

(vi) *FmHA or its successor agency under Public Law 103–354 review.* (A) The Servicing Official will review the reports for year-to-date status of project operations. When reports reveal actual data that exceeds acceptable tolerance from a forecasted budget SUBTOTAL item, or vacancies and accounts receivable and/or payable are increasing, the Servicing Official will initiate verbal and/or written dialogue with the borrower for further resolution of problems or to otherwise achieve acceptable progress.

(B) The Servicing Official will complete the FmHA or its successor agency under Public Law 103–354 review and forward the borrower's report and any related documentation to the State Director by the 30th day of the month following close of the reporting period.

(C) If the borrower fails to submit its report by the due date, this fact will be reported to the State Director by the 30th day of the month following the close of the reporting period: otherwise, the Servicing Office will complete its review of a submitted report no later than 10 calendar days following receipt of the borrower's report.

(4) *Annual audit reports and verifications of review*—(i) *Documents and general standards*—(A) *Annual audit report.* An audit report will be in the format as prepared by a Certified Public Accountant (CPA) or Licensed Public Accountant (LPA), provided the LPA was licensed on or before December 31, 1970.

(*1*) All audits are to be performed in accordance with generally accepted government auditing standards, as set forth in ''Government Auditing Standards'', established by the Comptroller General of the United States, and any subsequent revisions (this publication is commonly referred to as the ''Yellow Book'' or ''General Accounting Office Standards''). In addition, the audits are also to be performed in accordance with applicable portions of various Office of Management and Budget (OMB) Circulars, Departmental Regulations, parts 3015 and 3016 of chapter XXX of title 7, and the FmHA or its successor agency under Public Law 103–354 Audit Program as specified in separate sections of this subpart.

(*2*) An audit report is required for any project with 25 or more units unless the State Director or Servicing Official determines that a project with 24 or fewer units requires an audit for reasons of good cause. Such reasons include, but are not limited to, situations where project records are incomplete or inaccurate, or it appears that the borrower has not adequately accounted for project funds, or where the borrower's operation consists of multiple projects where each project is 24 or fewer units (with subsidiary reports prepared for each project).

NOTE: The State Director or Servicing Official may require that the accounts of RHS borrowers be audited if the loan exceeds the 2-year repayment term.

(*3*) The project audit report should cover the borrower entity and the expense for preparation of the audit report may include the auditor's preparation of any Internal Revenue Service (IRS) required borrower entity reports, i.e., Schedule K1 (IRS Form 1065), ''Partner's Share of Income, Credits, Deductions, etc.''.

(*4*) The CPA or LPA auditor who prepares the audit report may not be an individual or organization that is associated with the borrower in any manner, other than the performance of the

audit review and preparation of the project audit report and required IRS reports, that creates an identity of interest or possible conflict of interest (as described in paragraph V B of exhibit B of this subpart). For example, the CPA or LPA auditor may not be an employee of the borrower or an employee of any officer of the organization, nor be an employee of any member, stockholder, partner, principal, or have any ownership or other interest in the borrower organization.

(*5*) The State Director or Servicing Official may authorize the initial audit report to cover a period up to 18 months for new projects whose first operating year does not exceed 6 months.

(*6*) The State Director may also make an exception to the CPA or LPA audit requirement for not more than one successive year in a specific case providing: The borrower submits a written request; the FmHA or its successor agency under Public Law 103–354 approved budget for the project includes a typical and reasonable fee for the audit but the negotiated cost of an audit would increase the monthly per unit rental rate by more than $4.00; and the required reports, including a CPA or LPA prepared audit, were properly submitted for the prior year's project operations.

(B) *Verification of review*. Form FmHA or its successor agency under Public Law 103–354 1930–8 will be prepared by a competent person qualified by education and/or experience who has no identity of interest or possible conflict of interest with the borrower or its principals. However, in the case of a nonprofit institution, the verification of review may be made by a committee of the membership but may not include any officer, director or employee of the borrower.

(*1*) Form FmHA or its successor agency under Public Law 103–354 1930–8 will be used for the verification of review of project accounts and the review verifier will also review the actual data on Form FmHA or its successor agency under Public Law 103–354 1930–7 for projects with 24 or fewer units unless the requirements of paragraph (b)(4)(i)(A)(*1*) of this section are invoked by the State Director or Servicing Official.

(*2*) The State Director or Servicing Official may authorize the initial verification of review to cover a period of up to 18 months for a new project whose first operating year was less than 6 months.

(C) *Project operating budget actuals.* An annual report of actuals for the full operating year will be submitted by the borrower, or its agent, using Form FmHA or its successor agency under Public Law 103–354 1930–7. The report will reflect the actual income and expenses for the project for the borrower's 12 month operating year. The report will be submitted with the annual audit report or Form FmHA or its successor agency under Public Law 103–354 1930–8, as appropriate.

(D) *Form FmHA or its successor agency under Public Law 103–354 1930–10, ''Annual Multiple Family Housing Project Review.''* When the annual audit report or verification of review is received by the Servicing Office, parts II C and D of Form FmHA or its successor agency under Public Law 103–354 1930–10 may be prefilled to the extent possible to record previous year status as reported in the audit report or verification of review. The Form FmHA or its successor agency under Public Law 103–354 1930–10 will be completed later as described in § 1930.123 (e)(2) and (i) of this subpart.

(E) *Fraud, abuse, and illegal acts.* If the review verifier becomes aware of any indication of fraud, abuse or illegal acts in FmHA or its successor agency under Public Law 103–354 financed projects, prompt written notice shall be given to the appropriate USDA OIG Regional Inspector General and the Servicing Official.

(ii) *Specific standards*—(A) *State and local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart, subpart I of 7 CFR part 3015, and OMB Circular A–128, with copies of the audit being forwarded by the borrower to the Servicing Official and the appropriate Federal cognizant agency, if applicable. For guidance in meeting these requirements, the auditor may refer to the American Institute of Certified Public Accountants Audit and Accounting Guide for ''Audits of State and Local Governmental Units.'' The term ''Federal financial assistance''

used herein shall mean Federal loan and/or grant funds received by the borrower, but not rental subsidies.

(*1*) *Cognizant agency.* (*i*) ''Cognizant agency'' means the Federal agency assigned by OMB Circular A–128. Within USDA, the USDA OIG shall fulfill cognizant agency responsibilities.

(*ii*) Cognizant agency assignments. Smaller borrowers not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA or its successor agency under Public Law 103–354 provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be contacted.

(*2*) *Audit standards.* It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits.

(*i*) State and local governments and Indian tribes that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128.

(*ii*) State and local governments and Indian tribes that receive between $25,000 and $100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128 or in accordance with the FmHA or its successor agency under Public Law 103–354 Audit Program. This is an option of the State and local government or Indian tribe. If the election is made to have an audit performed in accordance with the FmHA or its successor agency under Public Law 103–354 Audit Program, the audit shall be in accordance with paragraph (b)(4)(ii)(C) of this section.

(*iii*) State and local governments and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from compliance with OMB Circular A–128 and the FmHA or its successor agency under Public Law 103–354 Audit Program. These State and local governments and Indian tribes shall be governed by audit standards prescribed by State and local law or regulation.

(*iv*) Public hospitals and public colleges and universities may be excluded from OMB Circular A–128 audit standards. If such entities are excluded, audits shall be made in accordance with paragraph (b)(4)(ii)(B) of this section.

(*v*) Indications of fraud, abuse, and illegal acts shall be processed in accordance with paragraph (b)(4)(i)(E) of this section.

(B) *Nonprofit institutions.* These organizations are to be audited in accordance with this subpart, subpart I of 7 CFR part 3015, and OMB Circular A–133, with copies of the audit being forwarded by the borrower to the Servicing Officer and the appropriate Federal cognizant agency, if applicable. The term Federal financial assistance used herein shall mean Federal loan and/or grant funds received by the borrower, but not rental subsidies.

(*1*) *Cognizant agency.* See paragraph (b)(4)(ii)(A)(*1*) of this section.

(*2*) *Audit standards.* (*i*) Nonprofit institutions that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with the provisions of OMB Circular A–133. However, nonprofit institutions receiving $100,000 or more but receiving awards under only one program have the option of having an audit of their institution prepared in accordance with the provisions of the Circular or having an audit made of the one program in accordance with paragraph (b)(4)(ii)(C) of this section. For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution will be required to conduct audits for those programs in accordance with paragraph (b)(4)(ii)(C) of this section.

(*ii*) Nonprofit institutions that receive at least $25,000 but less than $100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–133 or in accordance with the FmHA or its successor agency under Public Law 103–354 Audit Program. If the election is made to have an audit performed in accordance with the FmHA or its successor agency under Public Law 103–354 Audit Program, the audit shall be performed in accordance with paragraph (b)(4)(ii)(C) of this section.

(*iii*) Nonprofit institutions receiving less than $25,000 a year in Federal financial assistance are exempt from Federal audit standards, but records must be available for review by appropriate officials of FmHA or its successor agency under Public Law 103–354.

(*3*) Indications of fraud, abuse and illegal acts shall be processed in accordance with paragraph (b)(4)(i)(E) of this section.

(C) *FmHA or its successor agency under Public Law 103–354 Audit Program.* For-profit organizations and other entities referred to this paragraph by paragraphs (b)(4)(ii)(A) and/or (B) of this section, audits will be performed under the guidance of the audit guide entitled ''U.S. Department of Agriculture, Farmers Home Administration or its successor agency under Public Law 103–354-Audit Program'' (available in any FmHA or its successor agency under Public Law 103–354 office).

(iii) *Due date.* (A) Annual audit reports and verifications of review, as appropriate, and Form FmHA or its successor agency under Public Law 103–354 1930–7 with 12 months of project operation actuals are due in the Servicing Office no later than 90 days following the close of the project fiscal year.

(B) If the audit or verification of review cannot be submitted by the due date, and the owner presents a request for extension supported by evidence that delay is at the request of the auditor, and the request has a reasonable explanation of why an extension of the due date is needed, the Servicing Officer may authorize up to a 30-day extension of the due date.

(C) If an explanation is not forthcoming from the auditor, or the explanation received is without good reason, or the Servicing Official otherwise suspects fiscal difficulty, the Servicing Official may request the borrower to submit to the Servicing Office for review, the project bank statements for the general operating, reserve, and investment accounts covering the most recent 60 day period.

(D) If the borrower fails to submit the requested bank statements by the date stipulated by the Servicing Official, the Servicing Official will immediately refer the matter to the OIG.

(iv) *FmHA or its successor agency under Public Law 103–354 review.* An audit report or verification of review will be reviewed by the Servicing Official within 60 days following receipt of the audit report or verification of review. From this annual audit review process, the Servicing Official will initiate action on findings and concerns needing immediate attention. Those findings and concerns not needing immediate action will be considered in the next budget planning and annual review process at the end of the fiscal year for implementation in the following fiscal year of project operation.

(5) *Miscellaneous management reports.* These reports include, but are not limited to, the following items that provide additional or unique information that augment or otherwise support other management reports described in this section:

(i) *Documents and formats*—(A) *Minutes of annual meetings.* Written record of annual meeting of organizational borrowers who, by their organizational charter, are required to maintain such written records.

(B) *Energy audit.* Prepared according to the guidance of exhibit D of this subpart. Energy audits, including implementation plans for energy conservation, are prepared and submitted on 5-year cycles.

(C) *Miscellaneous items.* These include other written or electronically stored data or information such as financial or income/expense data, justification statements, or other technical or informative material that stands alone or supports other managements reports described in this section, whether volunteered by the borrower or requested by the Servicing Official.

(ii) *Due date.* Annual minutes and miscellaneous items are due along with the report they are attached to as supporting documentation. New energy audits are due with the next submission of Form FmHA or its successor agency under Public Law 103–354 1930–7 following expiration of the old energy audit.

(iii) *FmHA or its successor agency under Public Law 103–354 review.* FmHA or its successor agency under Public Law 103–354 review of miscellaneous management reports will coincide with

review of the management report that each is attached to as documentation.

[58 FR 40868, July 30, 1993, as amended at 63 FR 2135, Jan. 14, 1998]

§ 1930.123 Annual review.

(a) *Objective.* The objective of the annual review is for the FmHA or its successor agency under Public Law 103–354 Servicing Official to determine the degree and adequacy of the borrower's achievement of operational compliance with the applicable FmHA or its successor agency under Public Law 103–354 loan and/or grant agreements and to provide followup consultation or supervision to the borrower in meeting program objectives.

(b) *Annual review process.* During the annual review process, the Servicing Official will consider the overall project financial and operational activity. Project strengths and weaknesses will be identified, based on review of various documents, and resultant conclusions will be incorporated into the annual budget planning process that should happen concurrently with the annual review process.

(c) *Documents used in the review.* (1) Form FmHA or its successor agency under Public Law 103–354 1930–7.

(2) Exhibit A–6 of subpart E of part 1944 of this chapter.

(3) Prior fiscal year annual audit report as prepared by a CPA or LPA, or when applicable, Form FmHA or its successor agency under Public Law 103–354 1930–8 prepared by a review verifier accompanied by Form FmHA or its successor agency under Public Law 103–354 1930–7 with actual income and expense data.

(4) Exhibit A–1 of this subpart prepared in conjunction with the prior year annual audit report.

(5) Applicable attachments required as part of any of the above documents (or other information as volunteered by the borrower or specifically requested by the FmHA or its successor agency under Public Law 103–354 Servicing Officer for the review at hand).

(6) Minutes of annual meeting for association type borrowers.

(7) Current energy audit with energy conservation implementation plan (from FmHA or its successor agency under Public Law 103–354 borrower casefile except when new energy audit is due with Form FmHA or its successor agency under Public Law 103–354 1930–7).

(8) Latest supervisory visit and physical inspection of property reports (from FmHA or its successor agency under Public Law 103–354 borrower casefile).

(d) *Preparation for the annual review.* Some documents needed are available in the borrower's casefile and the balance needed will be submitted with the annual budget review request. Therefore, annual review should occur within 30 days of receipt of all necessary documents. This should result in annual reviews being completed in the last 2 months of a fiscal year or the first 2 months of the next fiscal year. When determined necessary, the Servicing Officer should:

(1) Notify the borrower of the required management reports and their due dates, and provide the borrower with necessary guides and forms for use in preparing the reports.

(2) With a new nonprofit borrower organization, determine that the borrower is properly planning for its annual meeting for the correct date according to its organizational documents. The Servicing Official should plan to attend the annual meeting unless the borrower has progressed as described in § 1930.110(c) of this subpart.

(e) *Timing, conducting, and completing the review.* (1) The annual review process will be scheduled and performed concurrently with the budget planning process, normally in the last quarter of a project fiscal year (see illustration in paragraph (i) of this section). This process will occur separately from the annual audit review process (which will occur following close of a project fiscal year).

(2) The Servicing Official will use the applicable resource documents listed above when performing the review. The Servicing Official will conduct the annual review following the review and recording guidance of Form FmHA or its successor agency under Public Law 103–354 1930–10. The Form FmHA or its successor agency under Public Law 103–354 1930–10 will be completed during the prescribed last quarter review period.

(3) The Servicing Official may invite the borrower or its agent to participate in any part of the annual review.

(f) *Distribution of reviewed documents.* (1) A copy of the results of the annual review on Form FmHA or its successor agency under Public Law 103–354 1930–10 along with recommendations or compliance requirements will be sent to the borrower and/or its agent and to the State Director as soon as the review is completed.

(2) The individual items required to perform the annual review will be distributed according to appropriate FMI's as listed on exhibit B–7 of this subpart.

(g) *State Director's review of annual reviews.* Upon receipt of the items identified in this section, the State Director will:

(1) Review all submissions of Form FmHA or its successor agency under Public Law 103–354 1930–10 that are used by the Servicing Official to record summary results of an annual project review.

(2) Conduct a more detailed review of only those annual reviews that warrant further review. The State Director should provide summarized comment to Servicing Officials after completion of statewide review, otherwise the State Director will comment on any specific borrower and/or project annual review selected for further review.

(3) Will review Form 1930–7 and exhibit A–6 of subpart E of part 1944 for approval when the authority to approve budgets as part of the annual review is not delegated to the FmHA or its successor agency under Public Law 103–354 Servicing Official.

(4) Be prepared for a sample review of annual reviews by the National Office upon request during a combined assessment review or other specific need.

(h) *On-farm LH annual review.* For individual farm borrowers with on-farm LH unit(s), the objective of this section will be satisfied by completing the recordkeeping and reporting requirements of their farm and home planning with FmHA or its successor agency under Public Law 103–354 as outlined in subpart D of part 1944 of this chapter.

(i) *Illustration of MFH budget planning, annual review, and annual audit review cycles.*

Items on hand during fiscal year	Last quarter of fiscal year	First quarter of next fiscal year	Second quarter	
Management Reports/ items in borrower *casefile.* —Previous fiscal year annual audit or Form FmHA or its successor agency under Public Law 103–354 1930–8.	*Budget Planning Process*—Form FmHA or its successor agency under Public Law 103–354 1930–7 & util. allowance Review change or no change of rents or occupancy charges and/or utility allowance.	Annual audit preparation by auditor *or* Form FmHA or its successor agency under Public Law 103–354 1930–8 by verifier.	FmHA or its successor agency under Public Law 103–354 review of annual audit or Form FmHA or its successor agency under Public Law 103–354 1930–8. 60-day review period ...	File annual audit or Form FmHA or its successor agency under Public Law 103–354 1930–8 for next budget planning & annual review process.
—Exhibit A–1				
—Latest supervisory visit/inspection.	FmHA or its successor agency under Public Law 103–354 starts annual review process.	Form FmHA or its successor agency under Public Law 103–354 1930–7 showing 12 months of project operating actuals submitted by borrower.	FmHA or its successor agency under Public Law 103–354 completes annual review process.	
—Energy audit & implementation plan.	—Form FmHA or its successor agency under Public Law 103–354 1930–7	.....	.....	
—Compliance review ... —Management Plan .... —Management Agreement.	—Review project financial and management reports.	.....	FmHA or its successor agency under Public Law 103–354 may pre-fill parts II C and D of Form FmHA or its successor agency under Public Law 103–354 1930–10.	

Items on hand during fiscal year	Last quarter of fiscal year	First quarter of next fiscal year	Second quarter	
—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.	FmHA or its successor agency under Public Law 103–354 completes Form FmHA or its successor agency under Public Law 103–354 1930–10.	.....	Take immediate action on significant items found in the Audit Review.	
Other—as applicable.				

[58 FR 40868, July 30, 1993, as amended at 59 FR 6885, Feb. 14, 1994]

§ 1930.124 [Reserved]

§ 1930.125 Changing project designation.

Generally, RRH projects designated for families, elderly and persons with handicaps, including congregate housing, will be used for the original purpose throughout the life of the FmHA or its successor agency under Public Law 103–354 loan. However, if it becomes necessary to change the designation of a project due to housing market changes which inhibit the borrower's ability to maintain occupancy levels sufficient to sustain the project, the State Director may change the designation. Project design must meet the housing requirements of the target group when changing the designation. The State Director shall consider such requests on a case-by-case basis when all of the following information has been provided:

(a) The complete borrower case files have been submitted together with the Servicing Official's specific recommendations and analysis of the present and long term situation.

(b) A market needs survey which substantiates the rationale for the change has been provided by the borrower. (The market survey must clearly indicate the present long term marketability of the project is significantly changed from the original market, and include the appropriate demographic information which reflects the population trends in the area.)

(c) A summary of all servicing actions taken by FmHA or its successor agency under Public Law 103–354 to aid the borrower in maintaining the present designation.

(d) A summary of all actions taken by the borrower to effectively market the units to potential eligible tenants.

(e) A summary of the impact the change will have on any existing tenants, rent subsidy needs, and the community as a whole.

(f) A summary of any needed or required physical modifications and analysis of cost feasibility to complete the modifications.

§§ 1930.126–1930.127 [Reserved]

§ 1930.128 LH grants.

In addition to the supervision provided in connection with LH loans, recipients of LH grants will receive supervision to assure that the terms of the grant agreement and other objectives of the LH grant are carried out. This supervision will be continued to assure that the grant purposes will be accomplished. Comments on the following points will be included in appropriate reports, to assure that:

(a) The rents are reasonable.

(b) The project is operated as a community service for the benefit of the tenants.

(c) Domestic farm laborers are given absolute priority in occupancy. (This requirement also applies to borrowers who have LH loans only.)

(d) No public or private nonprofit organization borrower may require that an occupant work for a particular farm or for a particular owner or interest as a condition of occupancy of the housing.

§1930.129 RHS loans.

RHS loans will be serviced according to program regulations and the conditions specified in the borrower's loan resolution. The following additional supervisory action by the Servicing Official will also apply to assure that the terms of the loan resolution and loan objectives are carried out:

(a) Review of the site development account records for compliance with authorized loan expenditures.

(b) Work with the borrower on the adjustment of sales price, not to exceed market value, of the developed lots as they are being sold to assure adequate income to repay the loan, pay taxes, accrued interest, and any other authorized debt or expenditures.

(c) Determine that lots are sold only to eligible buyers.

(d) Work closely with the borrower to plan for the sale of all lots prior to the due date of the note.

(e) Should the RHS borrower default in its loan obligations, the account will be serviced according to §1965.85 of subpart B of part 1965 of this chapter. The Servicing Official's report to the State Director should contain the following information:

(1) The status of the account, number of lots unsold, and reasons for the problem.

(2) Prospects of selling lots to eligible buyers and a target date as to when this can be accomplished, if feasible.

(3) General comments and recommendations for future servicing of this account. Where necessary, liquidation may be recommended.

(f) State Directors will take the following actions in connection with problem RHS accounts:

(1) Provide additional guidance and assistance as necessary.

(2) If a satisfactory proposal for selling the lots can be developed, the account will be serviced according to program regulations and the provisions of this subpart and subpart B of part 1965 of this chapter.

(3) Where no satisfactory proposal for selling the remaining lots can be developed, the account will be handled according to §1965.85(e) of subpart B of part 1965 of this chapter for liquidation.

§§1930.130–1930.133 [Reserved]

§1930.134 FmHA or its successor agency under Public Law 103–354 office records.

FmHA or its successor agency under Public Law 103–354 officials will maintain records in accordance with FmHA or its successor agency under Public Law 103–354 Instructions 2033–A and G (available in any FmHA or its successor agency under Public Law 103–354 office).

§§1930.135–1930.136 [Reserved]

§1930.137 State Supplements, guides, forms, and other issuances.

It is FmHA or its successor agency under Public Law 103–354's practice to follow the provisions of the Administrative Procedures Act by inviting public comment before adopting public policy, unless otherwise directed by statute. However, the State Director may, in accordance with FmHA or its successor agency under Public Law 103–354 Instruction 2006–B (available in any FmHA or its successor agency under Public Law 103–354 office), and with prior approval of the National Office and the assistance of the OGC, develop State Supplements, guides, or issuances to the extent necessary to enable borrowers to comply with the policies, procedures, and exhibits of this subpart and the applicable provisions of State laws. Under no circumstances will State forms be developed as replacements for the forms referred to in this subpart.

§1930.138 Supervisory actions for distressed projects.

MFH projects experiencing high vacancy rates which would lead to project failure can apply for a special servicing market rate rent change in accordance with paragraph IX of exhibit C of this subpart.

§§1930.139–1930.140 [Reserved]

§1930.141 Materials to be provided borrower/applicant.

To enable borrowers and applicants to meet the intent of this subpart, they will be supplied with one reproducible copy of the following FmHA or its successor agency under Public Law 103–354

exhibits and forms and materials as they are issued and/or updated:

(a) Exhibits B and B–1 thru 14 of this subpart, when applicable.

(b) Exhibits C, C–1, and C–2 of this subpart.

(c) Exhibits D and D–1 of this subpart.

(d) Exhibit E of this subpart.

(e) Exhibits H and H–1 of this subpart.

(f) Exhibit I of this subpart.

(g) Exhibit J of this subpart, when applicable.

(h) Subpart L of part 1944 of this chapter.

(i) Booklet entitled ''Audit Program.''

(j) For farm LH borrowers and/or applicants, exhibit B of subpart D of part 1944 of this chapter in addition to the preceding items of this section.

(k) The following forms:

(1) Form FmHA or its successor agency under Public Law 103–354 1930–7 and attached exhibit A–6 of subpart E of part 1944, if applicable.

(2) Form FmHA or its successor agency under Public Law 103–354 1930–8.

(3) Form FmHA or its successor agency under Public Law 103–354 1944–7, ''Multiple Family Housing Interest Credit and Rental Assistance Agreement.''

(4) Form FmHA or its successor agency under Public Law 103–354 1944–29, ''Project Worksheet for Interest Credit and Rental Assistance.''

(5) Form FmHA or its successor agency under Public Law 103–354 1944–8.

(6) Form FmHA or its successor agency under Public Law 103–354 1910–5, ''Request for Verification of Employment.''

§ 1930.142 Complaints regarding discrimination in use and occupancy of MFH.

Any tenant or prospective tenant seeking occupancy or use of RRH, RCH, LH, or related facilities who believes he or she has been discriminated against because of race, color, religion, sex, national origin, age, familial status, or handicap may file a complaint in person with, or by mail to the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD), Washington, DC 20410, or any HUD office, or to the Administrator, FmHA or its successor agency under Public Law 103–354, USDA, Washington, DC 20250. If the complaint is made to an FmHA or its successor agency under Public Law 103–354 County, Servicing, or State Office, it must be directed to the Director of Equal Opportunity Staff (EOS), National Office by the FmHA or its successor agency under Public Law 103–354 employee in charge of that office. When a complaint is sent to FmHA or its successor agency under Public Law 103–354–EOS by a FmHA or its successor agency under Public Law 103–354 Servicing Office, the State Director will be made aware of the complaint.

(a) Personnel in FmHA or its successor agency under Public Law 103–354 field offices will provide assistance to the aggrieved party when filling out required forms and filing a complaint.

(b) Each complaint must contain the following information:

(1) The name and address of the respondent (complainant).

(2) The name and address of the aggrieved person.

(3) A description and the address of the dwelling which is involved, if appropriate.

(4) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

(c) Participants in FmHA or its successor agency under Public Law 103–354's housing program failing to comply with the requirements of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988, and the respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanction authorized by law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made. All complaints will be handled in accordance with prescribed procedure. Victims of alleged discriminatory housing practices may seek reparations through HUD or by private lawsuit.

§ 1930.143 Delegation of responsibility and authority.

(a) The Administrator may on an individual state basis, authorize the

State Director to contract out selective fact gathering, nondecision making servicing actions in this subpart.

(b) The State Director may delegate in writing any authority delegated to the State Director in this subpart unless otherwise restricted, to those State staff members who, in the opinion of the State Director, have been adequately trained and who demonstrate their knowledge in understanding and administering the MFH policies and procedures of FmHA or its successor agency under Public Law 103–354. The State Director may further delegate such authority in like manner to Servicing Offices by either of two options:

(1) To individual Servicing Office staff members, including the Servicing Official.

(2) To the position of Servicing Official, the incumbent of which may further delegate specified authority to identified Servicing Office staff members. A copy of such delegation will be filed with the State Director.

(c) Individual delegation of responsibility and authority may be limited or expanded in scope, or revoked, as deemed appropriate by the State Director, or the Servicing Official when applicable, and will be prepared according to FmHA or its successor agency under Public Law 103–354 Instruction 2006–F (available in any FmHA or its successor agency under Public Law 103–354 office).

§ 1930.144 Exception authority.

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the accomplishment of the purposes of the MFH program or result in undue hardship by applying the requirement. The Administrator may exercise the authority at the request of the State Director or the Assistant Administrator for Housing. The request must be supported by data that demonstrates the adverse impact, citing the particular requirement involved and recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated.

§ 1930.145 Appeals.

Only the borrower, or the borrower's representative (as defined in subpart B of part 1900 of this chapter), can appeal an FmHA or its successor agency under Public Law 103–354 decision. The borrower's management agent may not request an appeal unless he/she has been designated as the borrower's representative. This means he/she must be authorized in writing by the borrower to act for the borrower in the administrative appeal, as required by subpart B of part 1900 of this chapter (this may be addressed in the management agreement). The borrower's request for review of an alleged adverse decision must be made to FmHA or its successor agency under Public Law 103–354 in written form. Appeals and reviews will be handled in accordance with directions set forth in subpart B of part 1900 of this chapter.

§§ 1930.146–1930.149 [Reserved]

§ 1930.150 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 0575–0033. Public reporting and recordkeeping burden for this collection of information is estimated to vary from 5 minutes to 10.25 hours per response, with an average of 0.43 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, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0033), Washington, DC 20503.

EXHIBIT A TO SUBPART C—STEPS FOR FARMERS HOME ADMINISTRATION (FMHA) OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 PERSONNEL IN CONDUCTING ANNUAL REVIEW OF MULTIPLE HOUSING OPERATIONS

I. *Examine the Condition of the Borrower/Management Reports to Determine that:*

A. Required accounts are being properly maintained in accordance with the loan resolution or agreement.

B. Decisions of officials are being entered in the minutes book, if applicable.

C. Any membership or stock transfers have been approved by FmHA or its successor agency under Public Law 103–354 and recorded as required.

D. Financial records are maintained by qualified persons.

E. The financial records are being reviewed by a qualified auditor where an audit is required or by a competent individual or committee when a verification of review of accounts is required.

II. *Study the Financial Progress:* Compare current financial condition and owner's equity with previous years to discover any trends, for example:

A. Has cash carryover increased or decreased?

B. Are the debts greater or less?

C. Is the owner's equity greater or less?

D. Are accounts receivable greater or less?

E. Are collection provisions being enforced?

F. Are reserve and other required funds or accounts properly maintained?

III. *Study the State of Income and Expenditures for the Past Year:* Compare it with the budget for the past year and the same statement for previous years.

A. Were rents or occupancy charges, subsidies, and other monies collected sufficient to produce the required revenues for planned expenditures?

B. Were actual expenditures significantly different from those budgeted?

C. Were the expenditures sufficient to adequately maintain the project?

D. Were expenditures reasonable and typical for similar projects?

E. Were any essential items of maintenance deferred during the past year?

F. Were payments made on authorized debts in the proper amounts and on the dates agreed to?

G. If the borrower is operating on a limited profit basis, did net cash return exceed the amount permitted in the loan agreement or loan resolution?

H. Did the borrower charge late fees to project accounts other than the Return on Investment Account?

I. Were an excessive number of overage charges paid by the project?

IV. *Study the Budget for the next Year:* Compare it with the statement of income and expenditures for the past year, taking into consideration any known increase or decrease in operating expenses for the planned year and the prevailing costs of doing similar business in the market area.

A. Are proposed expenditures adequate for normal maintenance and operation of the project?

B. Are proposed fees to be paid to firms closely associated with the borrower and their management agents typical, reasonable, and earned for the services to be provided?

C. Does the budget make provision for financing maintenance or energy conservation measures/practices deferred from the previous year?

D. Does it provide for the required financial reserves?

E. Is planned revenue adequate to cover planned expenditures?

F. Will the budget and planned operating practices correct any deficiencies in the past year's operations?

V. *Study the Audit Report:* Compare it with the audit from the previous year, noting any significant changes affecting the borrower's operations. Exhibit A–1 of this subpart may be used as a guide.

VI. *Review the Energy Audit:* Review the most recent energy audit and the borrower's plan for implementation.

VII. *Determine Whether or Not the Borrower Has:*

A. Maintained required financial records and accounts, made required reports, submitted required financial audits or verifications of review and taken appropriate action to correct previously noted deficiencies of such records, reports, audits or verifications.

B. Renewed fidelity coverage and insurance policies.

C. For borrowers with governing bodies.

1. Held regular board, committee, and membership meetings.

2. Conducted the affairs along sound business lines.

D. Made a change in any organizational documents without FmHA or its successor agency under Public Law 103–354 consent.

E. Made a change in the plans for management and operations of the project without FmHA or its successor agency under Public Law 103–354 consent.

F. Made a change in the membership or interest in ownership without FmHA or its successor agency under Public Law 103–354 consent.

VIII. *Summary:* Summarize major observations and decisions reached as the result of the review and record on Form FmHA or its successor agency under Public Law 103–354

1930–10, ''Annual Multiple Family Housing Project Review.''

EXHIBIT A–1 TO SUBPART C—AUDIT REPORT REVIEW GUIDE

I *Purpose.* To present a general guide for use of Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 staffs in the review of independent accountants' audit reports in order to obtain maximum benefit from these audits. The procedures are designed to provide uniformity in the audit review, improve loan program servicing, and help to promote better independent audits.

II *General.* FmHA or its successor agency under Public Law 103–354 guidelines for independent auditors are detailed in the booklet, ''U.S. Department of Agriculture, Farmers Home Administration or its successor agency under Public Law 103–354—Audit Program'' (hereinafter called Audit Program and available in any FmHA or its successor agency under Public Law 103–354 office). This Audit Program, along with other instructions, is designed to protect the security of Government loans. The review of the financial and financially related information in the audits must be performed from a technical standpoint in a prompt manner so that the facts and conclusions are readily available for analysis; only then can results be used effectively for management purposes and help to insure improved audit practices.

III *Scope.* The review should include:

A A determination of the adequacy of the audit in relation to FmHA or its successor agency under Public Law 103–354 regulations and the Audit Program.

B Interpretation of information included in the audit.

C Preparing a letter to the borrower on any missing or adverse audit data.

D Informing appropriate FmHA or its successor agency under Public Law 103–354 offices of review results and recommendations.

IV *Review Procedures to Be Followed.*

A *General.* The individual professional judgment of the reviewer should be used at all times. Considerations and decisions requiring the exercise of judgment should be used in the following:

1 Circumstances peculiar to the borrower.

2 Degree of importance attached to each item questioned.

3 Number of exceptions.

4 Whether the exceptions relate to the auditor's work or the borrower's records and operations.

5 If specific action is to be requested of the borrower.

6 Whether or not the report, as a whole, is acceptable.

B *Review and Procedure.*

1 *Specific.*

a Determine if the audit was performed by a Certified Public Accountant (CPA) or a Licensed Public Accountant (LPA) who was licensed on or before December 31, 1970.

b Determine if the audit was conducted in accordance with Government Auditing Standards (1988 Revision), often referred to as generally accepted government auditing standards (GAGAS).

c Does the audit cover the most recent 12 months since the previous audit?

d Was the audit received within 90 days after the borrower's year end, or was an extension of up to an additional 30 days authorized by the Servicing Official, and if so, was it met?

2 *Evaluation checklist for audit reports.* The ''Evaluation Checklist for Audit Reports'' which is attachment 1 of this exhibit is designed to systematically record and reveal the audit findings. Information tallied on this form is a good indication of whether or not additional contact(s) need to be made with the borrower.

3 *Previous audits and correspondence.* Reference to the prior audit and any correspondence concerning it can be most helpful in the current review. Determine whether corrections requested in the previous year have been made, and whether the borrower has complied with previous suggestions for improvement in the audit report.

C *Preparing the audit review letter.* After completion of the ''Evaluation Checklist for Audit Reports'' (attachment 1 of this exhibit) and applying personal judgment, a decision must be made on whether or not to prepare an audit review letter similar to that shown as attachment 2 of this exhibit.

1 If the audit fully complies with the Audit Program and instructions, a letter is not necessary.

2 If the audit substantially meets the requirements and is lacking in only a few points, ask the borrower to have the auditor furnish this additional information.

3 Audits which are unacceptable should be returned to the borrower for full compliance, indicating the reasons and a timetable for resubmitting.

ATTACHMENT 1—EVALUATION CHECKLIST FOR AUDIT REPORTS

_____
State

_____
County

_____
Name of Borrower

_____
Address

_____
Case No.

_____
Name of Auditor

Project No.

Date of Audit Report

Period Covered

Yes/no	
	1. Auditor's Opinion. (section G–1*).
_____	(a) Unqualified.
_____	(b) Qualified.
_____	(c) No Opinion.
	2. Financial Statement. (section J–1*).
_____	(a) Balance Sheet.
_____	(b) Results of Operations.
_____	(c) Statement of Cashflow (Changes in Financial Position).
_____	(d) Statement of Changes in Retained Earnings.
_____	(e) Notes to the Financial Statements.
	3. Statement on Auditing Standards. (section J–2*).
_____	Audit Report contains a statement that the audit was made in accordance with Generally Accepted Government Auditing Standards (GAGAS).
	4. Report on Compliance. (section J–3*).
_____	The auditor should prepare a written report on the tests of compliance with applicable laws, regulations, loan covenants and agreement and grant agreements. List significant compliance findings: _____ _____ _____
_____	5. Report on Internal Controls. (Section J–4*). The auditor's report should assess the borrower's control risk including discussion on the scope of the auditor's assessment, significant internal controls assessed, and any material weaknesses of internal control noted. List significant internal control findings: _____ _____ _____ _____
_____	6. Reporting Instances of Indication of Illegal Acts. (Section J–5*). List any noted: _____ _____
_____	7. Uncorrected Prior Audit Findings. (Section J–6*). List: _____ _____
_____	8. Was report received within 90 days after the end of the borrower's operating year or within a 30 day extension?
_____	9. Was audit performed and signed by a CPA or LPA? If by an LPA, verify that the LPA was licensed on or before December 31, 1970.

*References to ''Sections'' indicate the appropriate section in the FmHA or its successor agency under Public Law 103–354 Audit Program booklet.

ATTACHMENT 2—EXAMPLE AUDIT REVIEW LETTER

_____

_____

Dear Borrower (or Borrower Representative):

We have reviewed your audit report for the period _____ to _____, prepared by _____ on _____. This review was made in accordance with current Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 regulations and the Audit Program entitled ''U.S. Department of Agriculture, Farmers Home Administration or its successor agency under Public Law 103–354-Audit Program.'' Based on this review, your audit:

1. ( ) Is acceptable. However, the auditor's recommendations concerning _____ should be implemented prior to next year's audit.

2. ( ) Is acceptable but did not include comparative-type financial statements as indicated in Section J–1 of the Audit Program. Please inform the auditor to prepare such statements next year.

3. ( ) Is acceptable but was not submitted within 90 days or an authorized delay of _____ days after the end of the borrower's fiscal year. Please insure that next year's audit is forwarded before _____.

4. ( ) Substantially meets all the requirements. However, the following items were omitted as detailed in the Audit Program, Section J, ''Reporting Standards.'' Please have your auditor comment on the item(s) circled and forward a copy to us. The circled numbers correspond to the 6 items listed in Section J of the August Program.

J–1 J–2 J–3 J–4 J–5 J–6

5. ( ) Is returned as unacceptable for the following reason(s). Please have the auditor prepare your audit in accordance with the Audit Program.

a. [ ] It was prepared without audit.

b. [ ] The following financial statements were omitted: (Audit Program, Section J–1)

[ ] Balance Sheet.

[ ] Results of Operations.

[ ] Statement of Cash Flow.

[ ] Statement of Changes in Retained Earnings, or

[ ] Reconciliation of Owner's or Partner's Equity.

[ ] The auditor's opinion of Compliance. (Audit Program, Section J–3).

[ ] The auditor's opinion of internal control. (Audit Program, Section J–4).

_____

Servicing Official

This letter will be prepared in the Servicing Office. A copy of the audit and the approval memorandum will be sent to the State Office.

EXHIBIT B TO SUBPART C—MULTIPLE HOUSING MANAGEMENT HANDBOOK

I *Purpose:* This exhibit prescribes the Farmers Home Administration (FmHA) or

its successor agency under Public Law 103–354 regulations, policies, and procedures for management of Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), and Labor Housing (LH) projects to be used by multiple housing borrowers (owners) and applicants and their management agents and site managers. Several exhibits are included to provide guidance. These regulations are intended to assist borrowers in the successful operation of FmHA or its successor agency under Public Law 103–354-financed rental and cooperative projects.

II *Definitions:*

Adjusted annual income. This is the annual income of the household members, who live or propose to live in the unit for the next 12 months. (Households with a member permanently confined to a hospital or nursing home may choose to either include annual income attributable to such person, less deductions for which the person would qualify, or exclude the annual income attributable to such person and not take any deductions for which the person would qualify.), excluding:

1 $480 for each member of the family residing in the household (other than the tenant, cotenant, member, or comember or spouse of either, or foster children) who is under 18 years of age; or who is 18 years of age or older and is disabled, handicapped or a full-time student. The student must carry a subject load considered full-time by the educational institution attended. This deduction does not apply to an unborn child in the household.

2 $400 for any elderly family.

3 In the case of an elderly family, the total of actual medical and/or handicap assistance expenses paid in excess of 3 percent of annual family income may be deducted. If an elderly family has both medical and handicap assistance expense, the 3 percent of annual income must first be deducted from handicap assistance and any remainder then deducted from medical expenses.

a Total medical expense includes medical expenses not covered by insurance that the tenant or member anticipates incurring over the 12 months following the effective date of the certification, using past experience as a guide.

b Examples of medical expenses are dental expenses, prescription and nonprescription medicines, medical insurance premiums including medicare, eyeglasses, hearing aids and batteries, medical related travel cost, the cost of attendant care including a live-in-resident assistant, monthly payments required on accumulated major medical bills including that portion of a household member's nursing home care paid from household income(s).

NOTE: Premiums paid for nursing home insurance are not an allowable deduction unless a household member is housed at a nursing home and that person's income is included in the household income.)

c Handicap assistance includes reasonable attendant care and auxiliary apparatus expenses described as follows for each member with handicaps of the family to the extent needed to enable any family member (including such member with handicaps) to be employed:

(1) That portion of attendant care attributable to specialized medical reasons (the portion attributable to companionship is not counted).

(2) Auxiliary apparatus including but not limited to wheelchairs, oxygen equipment, reading devices for the visually impaired, and the cost of equipment added to cars and vans to permit their use by the handicapped or disabled family member proportionate to the amount of use by such persons.

4 In the case of any nonelderly family, total handicap assistance expense in excess of 3 percent of annual family income may be deducted:

a For any handicap assistance expense described in paragraph 3 c of this definition that is anticipated to occur over the 12 months following the effective date of the certification, using past experience as a guide, to the extent needed to enable any family member (including the handicapped or disabled family member) to be employed.

b The amount of deduction may not exceed the LESSER of the amount by which total expenses for handicap assistance exceed 3 percent of annual family income, or the amount of income received by adult members from such employment.

5 The amounts paid by the family for the care of minors under 13 years of age may be deducted only to the extent such expenses are not reimbursed. In the case of families assisted by American Indian housing authorities, the amount will be the greater of child care expenses; or excessive travel expenses, not to exceed $25 per family per week. Deductions for these expenses are permitted only when such care is necessary to enable a family member to further his or her education or to be gainfully employed, including the gainful employment of the disabled or handicapped family member. When the deduction is to enable gainful employment the amount may not exceed the amount of income received from such employment. When the deduction is to facilitate further education, the amount must not exceed a sum reasonably expected to cover class time and travel time to and from classes. The tenant file must contain justifying documentation. (Child support payments made on behalf of a minor child who does not reside in the unit may not be deducted as a child care expense).

Adjusted monthly income. This is the amount obtained by dividing the adjusted annual income by 12.

Annual income. Annual income is the anticipated total amount of income to be received by all members of the household (even if temporarily absent) to be in residence during 12 months following the effective date of Form FmHA or its successor agency under Public Law 103–354 1944–8, ''Tenant Certification.''

1 *Income Included.* The following are included when determining annual income:

a The gross amount (before any deductions) of wages and salaries, overtime pay, commissions, fees, tips, and bonuses reasonably expected to be received by all members of the household.

b The net income reasonably expected to be received from operations of a business or profession or from rental of real or personal property. Expenditures for business expansion or amortization of indebtedness are not considered in the computation of net income. Net losses will be computed as zero. Deductions from gross business or rental income to arrive at net income may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the trade or business of the adult household members under the straight line method of depreciation. An itemized schedule must be provided in support of any deductions from gross income made under the provisions of this section. The schedule should be consistent with the amount of depreciation permitted for these items for Federal income tax purposes under the straight line method of depreciation.

c Interest, dividends, and other received income as defined under net family assets in this paragraph. On contracts for sale of real estate, deeds of trust, or mortgages held by the applicant, tenant or member, only the interest portion of the monthly or annual payments received by the applicant, tenant or member is included as income.

d The gross amount of periodic payments from Social Security (including Social Security payment received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits (except lump sum settlements), and other similar types of periodic receipts.

e Payments received in lieu of earnings, such as unemployment and disability compensation, worker compensation, and severance pay.

f Periodic and determinable allowances, such as alimony and child support payments, which the applicant, tenant or member can reasonably expect to receive.

g Regularly recurring contributions or gifts received from persons not residing in the dwelling.

h Any amount of education grants or scholarships or Veterans Administration benefits expected to be received on behalf of tenant, cotenant, member, or comember, applicant, or other adult that exceeds attendance expenses for tuition, fees, books, and equipment to include materials, supplies, transportation, and miscellaneous personal expenses of the student (i.e., that portion of benefits received for ''room and board'').

i All regular pay, separation pay, special pay (except hazard duty pay for persons exposed to hostile fire), and allowances of a member of the armed forces who is head of the family or spouse, whether or not that family member lives in the unit.

j Payment received from an adoption incentive program to compensate support of a minor child legally adopted by the tenant household.

k *Public assistance.*

(1) A public assistance payment that DOES NOT designate an amount specifically for rent and utilities shall be counted entirely as income.

(2) A public assistance payment, when administered ''as-paid'' by the public assistance agency, DOES designate a specific amount for rent and utilities and may adjust (or ratably reduce) that amount based upon what the family is currently paying for those items (only one ratable reduction will be permitted). The SUM of the ratably reduced amount for rent and utilities and the amount for subsistence and other needs shall be counted as income.

(3) Example: The public agency's published schedule shows a monthly maximum of $180 for rent and utilities for a particular size family. The public assistance agency has verified that the family will receive $220 monthly for subsistence and other needs. If the agency does not apply a ratable reduction, $400 per month ($180 + $220) will be included in annual income. If the agency applies a ratable reduction (e.g., 20 percent) annual income will be computed as shown below:

Public assistance (P.A.) rent	Income
$180 maximum allowed for housing.	$220 basic needs
	+144 P.A. rent
×.80 P.A. adjustment factor ...	$364 mthly income
$144 monthly P.A. rent	×12 months
	*$4,368 annual income

*Shown on line 17 f of part IV of Form FmHA or its successor agency under Public Law 103–354 1944–8.

2 *Income Exempted.* The following are not included in annual income:

a Income of dependent minors (including foster children) under 18 years of age except as specified under 1d of the definition of annual income in this paragraph. (Tenant, cotenant, member or comember, or spouse of either may never be considered minors.)

b In the case of contracts for sale of real estate, mortgages or Deeds of Trust held by

the tenant, cotenant, member, or comember, the principal portion of the payments received by the tenant, cotenant, member, or comember.

c The value of the allotment provided to an eligible household under the Food Stamp Act of 1977.

d Payments received for the care of foster children.

e Temporary, nonrecurring, or sporadic income (including gifts).

f Lump-sum additions to family assets such as inheritances; capital gains; insurance payments included under health, accident, hazard, or worker compensation policies, and settlements for personal or property losses.

g Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses for any household member. Medical expenses may include those expenses incurred by disabled or handicapped residents so that they may maintain independence in living (e.g., attendant care).

h Amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the Government to a veteran for use in meeting the attendance costs of tuition, fees, books, and equipment to include materials, supplies, transportation, and miscellaneous personal expenses of the student. Any amounts of such scholarships or veterans payments, which are not used for above purposes and are available for subsistence and shelter, are considered to be income of tenant, cotenant, member, comember, or applicant.

i Student loans.

j The special hazard duty pay to a household member serving in the Armed Forces away from home, who is exposed to hostile fire.

k Payments received pursuant to participation in the following programs:

(1) Programs under the Domestic Volunteer Service Act of 1973 including, but not limited to, the National Older Americans Volunteer Programs of the Federal Action Agency for persons age 60 and over including the:

(i) Retired Senior Volunteer Program.

(ii) Foster Grandparent Program.

(iii) Senior Companion Program.

(iv) Older American Committee Service Program.

(2) National Volunteer Antipoverty Programs such as Volunteers in Service to America, Peace Corps, Service Learning Program and Special Volunteer Programs.

(3) Small Business Administration Programs such as the National Volunteer Program to Assist Small Business and Promote Volunteer Service to Persons with Business Experience, Service Corps of Retired Executives and Active Corps of Executives and,

(4) Title V—Community Service Employment for Older Americans which include:

(i) Senior Community Service Employment Program

(ii) National Caucus Center on Black Aged

(iii) National Urban League

(iv) Association National Pro Personas Mayors

(v) National Council on Aging

(vi) American Association of Retired Persons

(vii) National Council of Senior Citizens

(viii) Green Thumb.

(5) Payments received from a State or local low income energy assistance program.

l Relocation payments made pursuant to title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

m Payments received under the Alaska Native Claims Settlement Act.

n Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes.

o Payments or allowances made under the Department of Health and Human Services Low-Income Home Energy Assistance Program.

p That portion of tenant income paid from the Job Training Partnership Act, whether paid directly or through the employer.

q Income derived from the disposition of funds of the Grand River Bank of Ottawa Indians.

r The first $2,000 of per capital shares received from judgment funds awarded by the Indian Claims Commission or the Court of Claims, or from funds held in trust for an Indian tribe by the Secretary of Interior.

s Any funds which a Federal statute specifies must not be used as the basis for denying or reducing Federal financial assistance or benefits to which the recipient would otherwise be entitled. (Note: The Department of Housing and Urban Development (HUD) periodically publishes a notice in the FEDERAL REGISTER identifying the programs and benefits that qualify for this exemption.)

t Income of a resident assistant, as defined in this paragraph.

u Amounts received under training programs funded by HUD.

v Amounts received by a disabled person (including a sight impaired person) that are disregarded for a limited time for purposes of Supplemental Security Income eligibility, and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency.

w Amounts received by a participant in other public assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program.

x Gifts, payments, or credits provided by the borrower for the same purposes as interest credit or rental assistance for the benefit

of residents in accordance with an FmHA or its successor agency under Public Law 103–354 approved budget when needed to alleviate or avoid financial distress in a project for a temporary specified time period identified by FmHA or its successor agency under Public Law 103–354.

y Interest accrual to an annuity that cannot be withdrawn due to the terms of the annuity or its being under the control of others.

z Payments received after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the IN RE Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.)

aa Payments received under the Maine Indian Claims Settlement Act of 1980 (Public Law (Pub. L.) 96–420, 94 Stat 1785).

bb Earned Income Tax Credit Refund Payments

cc Redress payments received by Japanese American internment camp survivors.

dd Reparations paid by foreign governments arising out of the Holocaust.

ee Deferred periodic payments received in a lump sum from SSI and Social Security.

Borrowers. ''Borrowers'' means owners who may be individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations, and other organizations and have received a loan or grant from FmHA or its successor agency under Public Law 103–354 for LH, RRH, RCH, or Rural Housing Site (RHS) purposes.

Caretaker. The individual(s) employed by the borrower or the management agent to handle normal interior and exterior maintenance and upkeep of the project as specified in the management plan.

Cash value of assets. Current market value less cost to convert assets to cash.

Chore service worker. An individual who provides intermittent assistance essential to the well being of household members whose services are compensated by a Federal, State, or local assistance program. A chore service worker will not be a resident of the household living unit.

Congregate Housing. Residential housing for persons or families who are elderly or have handicaps or disabilities, consisting of private apartments and central dining facilities in which a number of specific pre-established services are provided to tenants (short of those services provided by a health care facility that provides health related care and services recognized by the medicaid program). Tenants requiring additional services not provided by the facility will acquire them or provide for them within their own financial, familial, or social resources.

Domestic farm laborers. Persons who receive a substantial portion of their income as laborers on farms in the United States, Puerto Rico, or the Virgin Islands and either are citizens of the United States, or reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, and may include the immediate families of such persons, including retired or disabled domestic farm laborers as defined in subpart D of part 1944 of this chapter.

Elderly (senior citizen). A person who is at least 62 years old. The term elderly (senior citizen) also means individuals with handicaps or disabilities as separately defined in this paragraph, regardless of age.

Elderly family. A household where the tenant, cotenant, member, or comember (individual) is at least 62 years old, disabled or handicapped as defined separately in this paragraph. An elderly family may include a person(s) younger than 62 years of age who is essential to the care and well being of the person who is elderly or has handicaps or disabilities. (To receive an elderly family deduction, the person who is elderly, or has disabilities or handicaps must be the tenant or cotenant or member or comember.)

Eligibility income. The calculated adjusted annual income which is compared to the income limits in exhibit C of subpart A of part 1944 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

Familial status. This term means one or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or individuals; or the designee of such parent or other person having such custody; with the written permission of such parent or other person. The protection against discrimination afforded by familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Forms Manual Insert (FMI). A type of directive which includes a sample of the form and complete instructions for its preparation, use, and distribution.

Group home. Housing that is occupied by individuals who are elderly, or have handicaps or disabilities sharing living space within a rental unit in which a group home resident assistant may be required.

Household. One or more persons who maintain or will maintain residency in one rental or cooperative unit, but not including a resident assistant or chore service worker.

Individual with disability. A person is considered disabled if the person meets the criteria or either of the following:

1 The person has an inability to engage in any substantial gainful activity, but with use of auxiliary apparatus can otherwise participate in gainful activity, by reason of any medically determinable physical or mental impairment, where the disability:

a Has lasted or can be expected to last for a continuous period of not less than 12 months, or which can be expected to result in death, and

b Substantially impedes the ability to live independently, and

c Is of such a nature that such ability could be improved by more suitable housing conditions, or

d In the case of a sight impaired person who is at least 55 years old (within the meaning of sight impairment as determined in section 223 of the Social Security Act), is unable, because of the sight impairment, to engage in substantial gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

e Receipt of veteran's or Social Security Disability payments benefits for disability, whether service-oriented or otherwise does not automatically establish disability.

2 The person has a developmental disability; a severe, chronic disability which;

a Is attributable to a mental or physical impairment or combination of mental or physical impairment; and

b Was manifested before age 22; and

c Is likely to continue indefinitely; and

d Results in substantial functional limitations in three or more of the following areas of major life activity:

(1) Self care

(2) Receptive and expressive language

(3) Learning

(4) Mobility

(5) Self-direction

(6) Capacity for independent living

(7) Economic self-sufficiency

e Reflects the person's need for a combination and sequence of special, interdisciplinary or generic care, or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

Individual with handicap.

1 A person with a physical or mental impairment, that:

a Is expected to be of long-continued and indefinite duration; and

b Substantially impedes the person or is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions.

2 The term handicap further means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. THIS TERM DOES NOT INCLUDE CURRENT ILLEGAL USE OF OR ADDICTION TO A CONTROLLED SUBSTANCE. As used in this definition:

a Physical or mental impairment includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus (HIV) infection, acquired immunodeficiency syndrome (AIDS), mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

b Major life activities means functions such as caring for one's self, performing major tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

c Has a record of such an impairment means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

d Is regarded as having an impairment means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(2) Has a physical or mental impairment that substantively limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has one of the impairments defined in paragraph 2 a (1) and 2 a (2) of this definition but is treated by another person as having such an impairment.

LH. Means Farm labor housing loans and/or grants.

Limited equity. The amount of funds which have accumulated in the cooperative member's patronage capital account and as further described in subpart E of part 1944 of this chapter.

Low-income household. A household having an adjusted annual income not exceeding the maximum low-income limit stated in exhibit C of subpart A of part 1944 of this chapter which is periodically updated (available in any FmHA or its successor agency under Public Law 103–354 Office).

Management agent. The firm or individual engaged by the borrower and charged with the responsibility to manage the project in accordance with a written agreement.

Management agreement. The written agreement between the borrower and management agent setting forth the management agent's

responsibilities and fees for management services.

Management fee. The compensation for providing overall management services for a Multiple Family Housing (MFH) project as described in the management plan. The fee is compensation for the time, expertise, and knowledge required to direct and oversee the present and future operation of the project. A management fee does not include the compensation paid to a site manager.

Management plan. The primary management charter constituting a comprehensive description of the detailed policies and procedures to be followed in managing a project.

Management reserve. That portion of the cooperative occupancy charge which is designated for payment of professional management services.

Member/comember. A person(s) who has executed documents pertaining to a cooperative housing type of living arrangement and has committed himself/herself to upholding the cooperative concept.

Migrant. A domestic farm laborer who works in any given local area on a seasonal basis and relocates his or her place of residence as farm work is obtained in other areas during the year.

Minor. A person who is a Dependent of the tenant, cotenant, member or comember under 18 years of age. A dependent person age 18 or older who is a full-time student is treated as a minor.

Moderate-income household. A household having an adjusted annual income within the maximum moderate-income limit stated in exhibit C of subpart A of part 1944 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 Office).

Net family assets.

1 Net family assets include cash on hand and the value of savings, certificates of deposit, and dollars in checking accounts reported as ''cash on hand.'' It will be such amounts reported on the day of third party verification. This definition also includes the net cash value of real property, cash value of whole life insurance policies, IRAs, market value of bonds and other forms of capital, or personal property held as investments, irrespective of location, minus debts against them, minus cost of converting such assets to cash. Examples of conversion costs are penalties for early withdrawal, broker/legal fees assessed to sell an asset, and settlement costs for real estate transactions.

2 Net family assets also include the value of equity of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) in excess of the consideration received therefrom during the 2 years preceding the effective date of certification/recertification. In the case of a disposition as part of a divorce settlement, the disposition shall not be considered to be for less than fair market value if the household member receives important consideration not measurable in dollar terms.

3 Income from net family assets which is included in annual income is determined as follows:

a If net family assets equal $5,000 or less, annual income includes the actual income derived from the net family assets.

b If net family assets exceed $5,000, annual income includes the greater of:

(1) Actual income derived from all net family assets, or

(2) A percentage of the cash value of such assets based on the Bank Passbook annual savings rate.

4 Net family assets exclude:

a Interests in Indian trust land.

b The value of *necessary* items of personal property such as furniture and automobile(s), and the debts against them.

c The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation.

d The value of a trust fund (i.e., for a minor or a legally incompetent household member) that has been established and the trust is not revocable by, or under the control of, any member of the household, so long as the fund continues to be held in trust.

e A vehicle specially equipped for the handicapped.

f Face value of life insurance policies.

g A cooperative member's patronage capital in the housing cooperative unit in which the family resides.

h Prepaid funerary arrangements and expenses.

i Retirement funds not accessible for withdrawal by a household member.

j Assets legally owned but not accessible or that accrue income to someone else.

k Savings accounts of dependent minors when such accounts are under the minor's social security number.

New housing. Newly constructed or substantially rehabilitated RRH, RCH, or LH project financed by FmHA or its successor agency under Public Law 103–354. For new construction rental assistance (RA) purposes, it further means before any units are occupied.

Nonprofit corporation. A corporation which is organized and operated for purposes other than making gains or profits for the corporation or its members; is legally precluded from distributing to its members any gains or profits during its existence; and in the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a public corporation which will operate the housing for the same or similar purposes.

Occupancy charge. The amount of money charged a cooperative member to cover his/her proportionate share of the cooperative's operating costs and cash requirements.

Operational housing. A completed RRH, RCH, or LH project financed by FmHA or its successor agency under Public Law 103–354 which has been opened for occupancy and has at least been partially occupied by tenants or members.

Overage. The portion of a tenant's or member's net contribution to shelter cost that exceeds basic rent.

Pet. A commonly accepted domesticated household animal (i.e., dog, cat, bird, etc.) owned or kept by a tenant or member.

Profit basis. Applies to an individual or organizational applicant who will operate the housing at rental rates low- and moderate-income nonelderly or nonhandicapped persons, and/or elderly and persons with handicaps of any income can afford, where return on initial investment is not limited to a certain percentage per year.

Project. A project is the total number of rental or cooperative housing units that are operated under one management plan with one loan agreement/resolution.

RCH means Rural Cooperative Housing Loans.

Rental agent. The individual responsible for the leasing of the units. If other than the borrower, this individual may be hired by the borrower or the management agent as specified in the management plan.

Rental assistance (RA). RA, as used in this exhibit, is the portion of the approved shelter cost paid by FmHA or its successor agency under Public Law 103–354 to compensate for the difference between the approved shelter cost and the monthly tenant contribution as calculated according to paragraph IV of this exhibit. When the monthly gross tenant contribution is less than the approved utility allowance which is billed directly to and paid by the tenant, the owner will pay the tenant that difference according to paragraph IX A 2 of exhibit E of this subpart. RA used in cooperative housing will be calculated in the same manner.

Resident assistant. A person(s) residing in a tenant's housing unit who is essential to the well-being and care of the person(s) who are elderly or have handicaps or disabilities residing in the unit, but is not obligated for the person's financial support and would not be living in the unit except to provide the needed support services. While the resident assistant may be a family member, the resident assistant may not be a dependent of the household for tax purposes and is not subject to the eligibility requirements of a tenant or member. A resident assistant is not a chore service worker. A resident assistant may function in any type of housing affected by this subpart.

RHS means Rural Housing Site loans.

RRH means Rural Rental Housing loans.

Service agreement. A written agreement between the borrower and a service provider detailing the specific service to be provided, the cost of the service, and the length of time the service will be provided.

Service plan. A written plan describing how services will be provided to a FmHA or its successor agency under Public Law 103–354 financed project. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

Shelter cost. Consists of basic or note rate rent plus utility allowance when used. Basic or note rate rent must be shown on the project budget for the year and approved according to paragraph XII of this exhibit. Utility allowances, when required, must be determined and approved according to part 1944, subpart E, exhibit A –6, of this chapter. Any changes in rental rates or utility allowances must be processed according to exhibit C of this subpart. The shelter cost in a cooperative housing project will consist of occupancy charge plus utility allowance.

Site manager. The individual employed by the borrower or the management agent who lives at or near the project site and is responsible for the day-to-day operations of the project. A site manager residing at the project site may also be referred to as a resident manager. A site manager is not an ''independent contractor.''

Tenant contribution. The portion of the approved shelter cost paid by the tenant household (tenant rent). For tenants not receiving HUD Section 8, this amount will be calculated according to Form FmHA or its successor agency under Public Law 103–354 1944–8. For tenants receiving HUD Section 8, this will be the amount referred to on HUD Form 50059, ''Certification and Recertification of Tenant Eligibility,'' (or other HUD approved Form), as family contribution. The proportion of tenant income and adjusted income paid as the tenant contribution will vary according to the type of subsidy provided to the household.

Tenant/cotenant. A person(s) who has signed a lease and is, or will be, an occupant of a unit in an RRH or LH project.

Utility allowance. A monetary allowance used by a tenant or member to pay the utility cost portion of their total shelter cost when such amounts are not otherwise included in project rents or occupancy charges.

Very low-income household. A household having an adjusted annual income within the maximum very low-income limit stated in exhibit C of subpart A of part 1944 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

III *Borrower Responsibilities:*

A *General.* All borrowers are responsible for:

1 Understanding the distinction between FmHA or its successor agency under Public Law 103–354 supervised credit and the credit provided by other Federal, State, or conventional loans.

2 Meeting the objectives for which the loan and/or grant was made and complying with the respective program requirements.

3 Understanding the unique characteristics and function of their particular type of borrower entity as provided by charter, articles of incorporation, by-laws, and/or statute.

4 Assuring that a site manager or contact person is in close proximity to their MFH project.

5 Complying with the provisions of their security instruments and any directive issued by FmHA or its successor agency under Public Law 103–354.

6 Following the approved management plan and reporting to FmHA or its successor agency under Public Law 103–354 any changes to the management plan for prior consent, and when appropriate, reporting and obtaining FmHA or its successor agency under Public Law 103–354 prior consent to any change of management agent.

B *Borrowers without a loan agreement.* Unless otherwise specified, these borrowers are exempt from the requirements of this subpart, except for exhibit C of this subpart, as long as the borrower is not in default of any program requirement, security instrument, payment, or any other agreement with FmHA or its successor agency under Public Law 103–354. However, except for LH borrowers not charging for on-farm labor housing, these borrowers must provide evidence of tenant eligibility.

C *Borrowers with a loan and/or grant agreement in a multiple unit project.* These borrowers are responsible for meeting the requirements and conditions of their agreement/resolution and the requirements of this subpart.

D *Borrowers with governing bodies.* The elected or appointed officials comprising the governing body of the borrower are responsible for:

1 Maintaining records of all current members and maintaining membership at the required level.

2 Holding meetings as required by the organizational documents, and as otherwise necessary, to provide proper control and management of its operations, and to keep the membership informed.

3 Coordinating and monitoring activities of established cooperative committees.

E *Borrowers with a membership.* Members of a membership type borrower are responsible for full support of the project and operation by:

1 Promptly paying any dues, fees, and other required charges.

2 Electing responsible officials.

3 Complying with organization rules and regulations.

4 Participating in annual and special meetings.

5 Participating in established cooperative committees to which they have voluntarily accepted assignment.

6 Carrying out duties and services necessary to maintain the cooperative property for which they have voluntarily accepted assignment.

F *Delegation of responsibility and authority.* The borrower may delegate or assign management responsibilities to a property manager such as a management agent, a site manager, or as appropriate, a caretaker. Delegations or assignments of duties and responsibility will be included in written documents such as management agreements and job descriptions. FmHA or its successor agency under Public Law 103–354 will hold the borrower ultimately responsible for management of the project. FmHA or its successor agency under Public Law 103–354 may require a borrower to change the plan of project management and/or make appropriate redelegations of project management responsibility to achieve program objectives.

IV *Rent Subsidy Opportunities:* The available subsidy programs should be considered at the time of developing a project proposal and during project operation as they may be available to meet the tenants' needs. Congregate type services such as meals, limited homecare, medical, transportation, and social activities are not included in these subsidy programs. The subsidy programs are as follows:

A *FmHA or its successor agency under Public Law 103–354 Interest Credit—RRH and RCH Loans.* Regulations are contained in exhibit H to this subpart and include:

1 *Plan I*—Only those borrowers who received this type of interest subsidy prior to October 27, 1980, may continue to utilize this Interest Credit Plan. Those broadly-based nonprofit corporations and consumer cooperatives may continue operating under this plan provided:

a Occupancy is limited to very-low or low-income non-elderly; very low-, low- and moderate-income person(s) who are elderly or have disabilities or handicaps.

b Budgets and rental rates are based on a 3 percent loan amortization.

2 *Plan II*—This interest subsidy is available to broadly-based nonprofit corporations, consumer cooperatives, State or local public agencies, or to other organizations and individuals operating on a limited profit basis.

a Occupancy is limited to very-low, low- and moderate-income persons except as noted in paragraph VI D 2 i of this exhibit.

b Budgets are prepared showing two rental or occupancy charge rates, basic and note rate. The minimum (basic) rate for persons

not receiving rental assistance is based on a 1 percent subsidized rate. The maximum note rate is based on the loan amortized at the interest rate shown in the promissory note.

c Tenant's or member's contribution for shelter cost, calculated according to the FMI for Form FmHA or its successor agency under Public Law 103–354 1944–8, may not exceed the highest of:

(1) Thirty percent of monthly adjusted income, or

(2) Ten percent of gross monthly income, or

(3) If the household is receiving payment for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household's shelter costs (see example in 1k of the definition of annual income in paragraph II of this exhibit), or

(4) The basic rent or occupancy charge when no RA is available from FmHA or its successor agency under Public Law 103–354.

d RRH borrowers whose loans were approved on or after August 1, 1968, may convert from Plan I to Plan II. When they are presently a full profit operation, they may convert to Plan II by executing a new or amended loan resolution or loan agreement and an interest credit and RA agreement according to exhibit H of this subpart.

e RRH borrowers with Plan I Section 8 interest credit agreements may change to Plan II when the 1 percent or 2 percent interest reduction is insufficient for the HUD contract rent to meet budgeting needs. The change of interest credit plan will be approved in accordance with paragraph VII B of exhibit C of this subpart (available at any FmHA or its successor agency under Public Law 103–354 office). A new Form FmHA or its successor agency under Public Law 103–354 1944–7, ''Multiple Family Housing Interest Credit and Rental Assistance Agreement,'' is required.

B *Rental assistance (RA) program—FmHA or its successor agency under Public Law 103–354.* This is a subsidy program available to RRH, RCH, and LH borrowers to assist very-low and low-income tenants and members in paying their shelter cost. RA is not authorized for tenants or members whose adjusted income is initially above the low-income level. RA is not available to LH borrowers who are individual farmowners, partnerships, family corporations, or an association of farmers. RRH borrowers with loans approved on or after August 1, 1968, must be operating under, or change to, Interest Credit Plan II to receive RA. Full profit borrowers may utilize RA by converting to a limited profit operation. The provisions of the RA program are covered in detail in exhibit E of this subpart.

C *HUD project based Section 8 and tenant based Section 8 Rental Certificate or Rental Voucher Program.* These subsidy programs are administered by HUD or others authorized to administer the program such as State Housing Finance Agencies or the local public housing agency. Projects operating under the Memorandum of Understanding between FmHA or its successor agency under Public Law 103–354 and HUD (available at the FmHA or its successor agency under Public Law 103–354 National Office, Washington, DC 20250) will also be subject to the requirements of the Housing Assistance Payments Contract executed by the borrower. Projects accepting tenants utilizing Section 8 rental certificates or rental voucher assistance assigned by a local public housing agency will also comply with any requirements imposed by such agency. However, in all cases, tenants receiving section 8 assistance must meet the eligibility requirements specified in paragraph VI D of this exhibit. Requirements that conflict with FmHA or its successor agency under Public Law 103–354 requirements should be referred to the Servicing Official for guidance. (Generally, the most restrictive HUD or FmHA or its successor agency under Public Law 103–354 requirements or limitations will apply.)

D *State provided subsidy.* This is a subsidy program provided and funded by some States and available to RRH borrowers to assist tenants on approximately the same basis as the FmHA or its successor agency under Public Law 103–354 RA Program. The assistance is in accordance with a CONTRACT between the borrower and the State and concurred in by FmHA or its successor agency under Public Law 103–354.

E *Privately provided subsidy.* This is a subsidy program whereby the project owner(s) or others enter into an Agreement with FmHA or its successor agency under Public Law 103–354 to provide and fund subsidy to tenants of the project on approximately the same basis as the FmHA or its successor agency under Public Law 103–354 RA Program. In some instances, the agreement may include a limit on the number of units and a Per Unit Ceiling on the amount of assistance. Privately provided subsidies are typically referred to as private rental assistance.

V *Management Operations:*

A *Management plan.*

1 A comprehensive management program is essential to the successful operation of a project. A written plan is the primary ingredient which should describe the detailed objectives, policies and procedures in managing the project. A management plan is required to be submitted to the Agency for all projects, new and existing, except for those on-farm LH units where rent is not required. The plan should be developed in detail commensurate to project size and complexity and should be reviewed annually and updated

at least triennially by the borrower. To reflect project needs and to meet current program objectives, use of an addendum is permitted when few changes are made in the update of the plan. Exhibit B–1 of this subpart outlines the requirements of the plan.

2 In the case of congregate housing/group homes, the management plan should describe, in addition to the preceding general items, the specific items in paragraph V B of exhibit J of this subpart.

B *Identity of interest disclosure.*

1 *General principles.* FmHA or its successor agency under Public Law 103–354 requires that applicants/borrowers and/or management agents describe and fully justify any identity of interest, or appearance of same, that exists or will exist between the borrower, management agent, suppliers of materials and/or services, or vendors in any combination of relationship. Identity of interest will be construed as existing between the applicant/borrower and/or management entity and suppliers of materials and/or services described under but not limited to any of the following conditions:

a When there is any financial interest between the applicant/borrower and/or management entity and the supplying entity.

b When one or more of the officers, directors, stockholders or partners of the applicant/borrower or management entity is also an officer, director, stockholder, or partner of the supplying entity.

c When any officer, director, stockholder, or partner of the applicant/borrower and/or management entity has any financial interest whatsoever in the supplying entity.

d When the supplying entity advances any funds to the applicant/borrower and/or management entity.

e When the supplying entity provides and pays on behalf of the applicant/borrower and/or management entity the cost of any materials and/or services in connection with obligations under the management plan/management agreement.

f When the supplying entity takes stock or any interest in the applicant/borrower and/or management entity as part of the consideration to be paid them.

g When there exist or come into being any side deals, agreements, contracts or understandings entered into thereby altering, amending, or cancelling any of the management plan/management agreement documents, except as approved by FmHA or its successor agency under Public Law 103–354.

2 Any individual or organization sharing an identity of interest for the project must certify by memorandum that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract.

a FmHA or its successor agency under Public Law 103–354 Forms 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,'' (available in any FmHA or its successor agency under Public Law 103–354 Servicing office) will be completed and submitted as part of the management plan. Management agents will sign either form as ''applicant.''

b The initial disclosure shall be in effect for a period of 3 years and renewed every 3 years thereafter, except if there are any changes in the business practices of the applicant/borrower and/or management entity during the interim years that include identity of interest concerns, the entity must file amended Forms FmHA or its successor agency under Public Law 103–354 1944–30 and FmHA or its successor agency under Public Law 103–354 1944–31.

c The forms provide notification to the entities of the penalty, under law, for erroneously certifying to the statements contained therein.

d Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of subpart M of part 1940 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

C *Management agreement.* The management agreement is the primary document by which the management agent is guided, evaluated, and compensated. It bears a close relationship to the management plan. A management agreement is required except in cases where the borrower (owner) fills the role of manager. Requirements of a management agreement are listed in exhibit B–2 of this subpart. Exhibit B–3 of this subpart is a sample management agreement. The two types of agreements acceptable to FmHA or its successor agency under Public Law 103–354 are described as follows:

1 The owner hires a professional management agent to oversee and operate the project. The management agent may provide a site manager for on-site management and/or caretaker when justified by the size of the project. A qualifications statement by the management agent is required by the borrower and FmHA or its successor agency under Public Law 103–354. Exhibit B–4 of this subpart provides a guideline for preparing the statement.

2 The owner maintains all or a part of the management role. The owner may use the services of a site manager in providing onsite management and/or services of a caretaker when justified by the size of the project. FmHA or its successor agency under Public Law 103–354 requires a qualifications statement by the owner who proposes to personally provide the management to determine management capability. Exhibit B–5 of this subpart provides a guideline for preparing the statement.

D *Responsibility*. The management plan and management agreement must be based on applicable provisions of local, State, and Federal statutes and the regulatory requirements of the loan used to finance the project, regardless of the management system used. The owner remains totally responsible to FmHA or its successor agency under Public Law 103–354 for the project, regardless of the authority delegated by the owner to the management agent.

E *Compensation for project administration*.

1 *General principles.* Compensation for project administration is the remuneration for performance of administrative duties and responsibilities by those selected by the owner and approved by the Agency as having sufficient background and experience to manage project operations. The administrative duties and responsibilities must be set out in the management plan along with the manner in which compensation will be determined. It is the option of the project owners to determine whether to use a management agent to carry out project administrative functions in full or in agent to carry out project administrative functions in full or in part. Should a management agent be used, it is the option of the owner to decide which duties the management agent will perform and which duties will be performed by others. Whenever the owner chooses to use a management agent, a management agreement must be used. The management agreement must describe the duties and compensation for the services provided by the management agent. Any other duties and compensation for project administration not covered in by the management agreement, may also be considered as project expenditures. All project administrative expenditures must be evaluated by the Agency as being reasonable for the services provided, including the reasonableness of the expenditures for management agent services.

2 *Review of administrative expenses.* The Agency is responsible for determining that project administrative expenses are reasonable for the services performed in administering project operations in an acceptable manner. Therefore, the Agency may use data from FmHA or its successor agency under Public Law 103–354 projects or other sources for use in making this determination. The Agency may establish guidelines for administrative expenses for use within a State or area. Administrative expenses falling within such guidelines for services typically performed under the guidelines may expect expeditious action on requests for budget approval. Administrative expenses falling outside of such guidelines for services typically performed under the guidelines may also warrant approval when justified. The management agent or owner will be primarily responsible for providing evidence that such fees are reasonable for the services performed when the administrative expenses are falling outside of any established guidelines.

3 *Review of management fees.* The Agency is responsible for determining that the fees paid for services performed by management agents are reasonable. Therefore, the Agency may use data from FmHA or its successor agency under Public Law 103–354 projects or other sources for use in determining what fees are reasonable for the services performed in an acceptable manner by management agents. The Agency may establish guidelines for management fees for use within a State or area. Management fees falling within such guidelines for services typically performed under the guidelines may expect expeditious action on requests for approval of management agreements and budgets. Management fees falling outside of those guidelines may also warrant approval when justified. The management agent or owner will be primarily responsible for providing evidence that such fees are reasonable for the services performed when management fees are falling outside of any established guidelines. Whenever disputes arise as to whether an administrative expense is appropriate for listing under the management fee, or as to some other project expense, the Agency will seek to mutually resolve such concerns. This will be done by using the approved management agreement or management plan to determine which services are being performed by the management agent.

4 *Project administrative expenses.*

a *Acceptable administrative expenses.* Those administrative expenses necessary to successfully carry out project operations may be approved provided such expenses do not duplicate any such expenses which may be included in the management fee as specified in the approved management agreement. The instructions that accompany Form FmHA or its successor agency under Public Law 103–354 1930–7, ''Multiple Family Housing Project Budget,'' provide further guidance on acceptable project administrative expenses. Preparation of an IRS required report for the project, if required (e.g., Schedule K–1 (IRS Form 1065), ''Partner's Share of Income, Credits, Deductions, etc.'' is an acceptable project expense.)

b *Unacceptable administrative expenses.* Those administrative expenses not necessary to successfully carry out project operations may be denied. Preparation of income tax returns for project owners are unacceptable project expenses.

5 *Projects with a management agent.* When management agents are used, the duties and compensation of the management agent must be set out in a management agreement. All such agreements are subject to Agency review and concurrence. The amount of compensation for the services rendered is to be

negotiated between the owner and the management agent but is subject to Agency concurrence with the management agreement and approval in the project budget.

6 *Owner-managed projects.* The owner will be authorized to manage the rental project only when FmHA or its successor agency under Public Law 103–354 determines in writing that the owner (either as the individual borrower or as a part of an organizational borrower) has the necessary management capabilities.

a Projects with owners with identity-of-interest relationships to the management agent will not be considered as an owner managed project. A typical management fee may be charged as an expense to the project. The compensation must be according to the provisions of paragraph V E of this exhibit and be reasonable, earned, and not exceed the normal cost of similar services, had such services been provided by an independent management agent.

b Since cooperatives are to be organized as self-managed entities, the board of directors is not expected to have management experience. In lieu of this experience, the adviser to the board will provide management guidance during the formative years of the cooperative. Under the adviser's direction, the cooperative will become accustomed to this role and thus gain the ability to assume management responsibilities. If, after the required trial period outlined in subpart E of part 1944 of this chapter, the cooperative's board is unable to assume management responsibilities, professional management will be hired by the cooperative. We would expect the amount of compensation paid to a cooperative adviser to be less than that paid to other types of management agents in order to provide the members with some equity in the early years. (See subpart E of part 1944 of this chapter).

7 *Initial rent-up fees.* Payment of fees for a one-time effort to achieve initial rent-up of a newly constructed rental project is permitted when it is determined necessary and documented by the FmHA or its successor agency under Public Law 103–354 loan approval official and the loan applicant. Rent-up fees should be paid on a per-unit basis only after each unit has been occupied by the initial tenant. Payment of the rent-up fee and other project management start-up expenses should generally be made from the 2 percent initial operation and maintenance fund. A person or firm, preferably the management agency, may be compensated at a rate negotiated with the applicant/borrower that represents reasonable compensation for the incurred marketing cost and project management start-up expenses.

F *Site manager and/or caretaker services.* The borrower is responsible for describing the plan for site management in the management plan. The plan needs to identify whether the site manager will occupy one of the project units as a revenue producing unit or as a rent free unit, or will live away from the project. The on-site services of a site manager and/or caretaker may be used when justified by the size, composition, and location of a project, whether the project is managed by a management agent or by the owner. There should be a written agreement between the owner or the management agent and the site manager to define the role and duties and compensation for the site manager and to provide a basis for evaluating the site manager's performance. FmHA or its successor agency under Public Law 103–354 may require an on-site resident manager and/or caretaker to assure that the loan objectives are met and/or to protect the tenant's or Government's interests. It is not mandatory that the site manager and/or caretaker meet tenant occupancy eligibility requirements. However, if management considers the occupied unit to be a rental unit, the rent paid will be determined according to the site manager's/caretaker's income.

1 *Calculation of rental rate for site manager or caretaker.* The expense of providing the unit occupied by the site manager or caretaker will be included in the project budget the same as the expense for other nonrevenue producing portions of the project such as a laundry or community room. The rental rate will be determined as follows:

a When used as a revenue producing unit at approved rental rates, the salary paid to the site manager and/or caretaker will be included in the project operation and maintenance expenses. The same amount will be included in the annual income of the site manager and/or caretaker. The site manager and/or caretaker may be an eligible or ineligible tenant and their rent contribution will be based on their total income from all sources as shown on the tenant certification form.

b When the unit is used as a nonrevenue producing unit, the project cost of providing the unit will be treated the same as those of other nonrevenue producing portions of the project. Project rental rates will be established as if the unit did not exist as living quarters. Debt payment will be as if the unit were rented at basic rent. A tenant certification form will not be prepared for this situation.

2 *Owner occupancy.* With the prior approval of the State Director, owners may occupy a unit in the project when the owner will manage the project rather than hiring a management agent or a site manager. The size, composition, and location of the project must justify the services of a site manager or caretaker, and the State Director must determine the owner is capable of performing these services. The rental rate will be included as described in paragraph V F 1 of this exhibit.

G *Projects without a site manager and/or caretaker.* Projects without a site manager and/or caretaker must have, at a minimum, a tenant who will serve as a contact person or have a person who is easily accessible to the project who is able to represent the project manager or owner on maintenance and management matters.

H *Supplemental services.* Supplemental services include laundry, vending machine, commissary store, pay telephones, or similar tenant benefit services.

1 *Borrower provided supplemental services.*

a Income from supplemental services and/or equipment and expense of acquisition and replacement cost shall be planned and recorded as part of the annual operating budget.

b Failure to account for all proceeds is a fraudulent act.

2 *Consignor provide supplemental services.*

a A written contact between the borrower and consignor is required. The contract terms should follow ''industry'' standards for the type of service.

b Comparability in all respects to conventional supplemental services contracts shall govern contract with identity of interest between the contracting parties.

c The borrower's share of income will be shown as planned and actual income in the project operating budget.

d Failure by the contractual parties to account for all proceeds is a fraudulent act.

VI *Renting Procedure:*

A *General.* Preparations for initial rent-up, occupancy and maintenance should begin at least 90 to 120 days ahead of the projected completion date of the project as described in §1944.235 of subpart E of part 1944 of this chapter. This procedure will include a prerent-up conference between the FmHA or its successor agency under Public Law 103–354 Serving Official, the borrower, and the person(s) responsible for project management. Decisions to be made concern the advertisement of available units, affirmative marketing practices, tenant eligibility, and tenant selection criteria. It is important that this conference precede active marketing and the receipt of tenant applications.

B *Accommodations in communication.*

1 The borrower shall take appropriate steps to ensure effective communication with applicants, tenants, members, and members of the public with handicaps and disabilities.

a The borrower shall furnish appropriate auxiliary aids (electronic, mechanical, or personal assistance) where necessary to afford an individual with handicaps or disabilities an equal opportunity to participate in and enjoy the benefits of a MFH project receiving FmHA or its successor agency under Public Law 103–354 financial assistance.

(1) In determining what auxiliary aids are necessary, the borrower shall give primary consideration to the requests of an individual with handicaps or disabilities.

(2) The borrower is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

b Where a borrower communicates with applicants and tenants or members by telephone, telecommunication devices for deaf persons (TDD's) or equally effective communication systems shall be available for use.

2 The borrower shall adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities, and facilities in the project and community.

3 This paragraph does not require a borrower to take any action that the borrower can demonstrate would result in a fundamental alteration in the nature of the project or operation or an undue financial and administrative burden. If an action would result in such undue alteration or burden, the borrower shall take any other action that would otherwise ensure that, to the maximum extent possible, individuals with handicaps or disabilities receive the benefits and services of the project.

C *Affirmative Fair Housing Marketing Plan.* All borrowers with five or more rental units must meet the requirements of §1901.203(c) of subpart E of part 1901 of this chapter by preparing and submitting HUD Form 935.2, ''Affirmative Fair Housing Marketing (AFHM) Plan.'' Records must be maintained by the borrower reflecting efforts to fulfill the plan and will be reviewed by FmHA or its successor agency under Public Law 103–354 and updated by the borrower during compliance reviews for title VI of the Civil Rights Act of 1964. *The approved plan will be posted by the borrower for public inspection at the borrower's project site, rental office, or at any other location where tenant applications are received for the project.* In developing the plan, the following items should be considered:

1 *Direction of marketing activities.* The plan should be designed to attract applications for occupancy from all potentially eligible groups of people in the housing marketing area regardless of race, color, religion, sex, age, familial status, national origin, or handicap. The plan must show which efforts will be made to reach very low-income or low-income groups who traditionally would least likely be expected to apply for such housing without special outreach efforts.

2 *Marketing program.* The applicant or borrower should determine which methods of marketing such as radio, newspaper, TV, signs, etc., are best suited to reach those very low-income or low-income groups who are least likely to apply for occupancy in the project. Marketing should not totally rely on ''word of mouth'' advertising. Appropriate

social agencies and networks should be contacted to assist in reaching elderly (senior citizens), persons with handicaps, etc.

a *Advertising.*

(1) *Frequency.* The borrower should advertise availability of housing units in advance of their availability to allow time to receive and process applications, determine eligibility, and arrange for move-in of tenants or members in a smooth flow of project operation. Advertising by newsprint or electronic media should occur at least annually to promote project visibility, even if there is an adequate waiting list.

(2) *Posters, brochures, etc.* Any radio, TV, or newspaper advertisement, pamphlets, or brochures used must identify the project's handicap accessibility and contain the appropriate fair housing logotype or the equal housing opportunity slogan. A copy of this proposed material is to be submitted along with the HUD Form 935.2 for approval. The nondiscrimination poster entitled ''And Justice For All,'' the ''Fair Housing'' poster and the tenant grievance and appeals procedure must be displayed in the rental office. If the rental office is not on site, the items must be displayed in a common conspicuous place on the site.

b *Signage.*

(1) *Permanent project sign.* A permanent sign identifying the project is required for all MFH projects approved on or after September 13, 1977. To meet minimum requirements for an existing or new project, the sign, subject to state or local code:

(i) Must be located at the primary site entrance and be readable and recognizable from the roadside.

(ii) Must be located near the site manager's (or contact person's) office when the project has multiple sites. Portable signs will be placed where vacancies exist at other site locations of a ''scattered'' project.

(iii) May be of any shape.

(iv) For projects of 8 or more units, must have not less than 16 square feet of area. Smaller projects may have smaller signs.

(v) Including its supports, must be made of durable material.

(vi) Must include the project name.

(vii) Must show rental contact information including but not limited to the project's office location and a telephone number where applicant inquiries may be made.

(viii) Must show the equal housing opportunity logotype (house symbol and slogan) as shown in exhibit B–11 of this subpart, OR the slogan ''Equal Housing Opportunity'' OR the statement ''We are pledge 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, handicap, familial status, or national origin.'' The logotype and/or slogan must be permanently affixed, clearly visible and should be at least equal to approximately 3 to 5 percent of the sign area.

(ix) May display the FmHA or its successor agency under Public Law 103–354 logotype as shown in exhibit B–12 of this subpart.

(2) *Handicap accessibility signs.*

(i) *Parking spaces.* Accessible parking spaces shall be designated as reserved for the disabled by a sign showing the international symbol of accessibility (see exhibit B–13 of this subpart). The sign should be mounted on a post at a height readily visible from an occupied vehicle. In snow areas, the sign needs to be visible above piled snow.

(ii) *Handicap accessibility route.* When the continuous unobstructed ingress/egress handicap accessibility route to a primary building entrance is other than the usual or obvious route, the alternate route for handicap accessibility shall be clearly marked with handicap symbols and directional signs to aid a handicapped person's ingress/egress to the building, through an accessible entrance, and to accessible common use and public and living areas.

c *Community contact.* Community leaders and special interest groups such as community, public interest, religious organizations, and organizations for the handicapped should be contacted in small communities without formal communication media aimed at the group or groups least likely to apply for available housing. Community contacts should also be used in reaching specific elements of the community such as the elderly or particular ethnic groups determined least likely to apply for the available housing.

d *Rental staff.* All staff persons responsible for renting the units must have had training provided on Federal, State, and local fair housing laws and regulations and in the requirements of fair housing marketing and in those actions necessary to carry out the marketing plan. Copies of instructions to the staff regarding fair housing must be attached to the AFHM plan according to the instructions for part 7 of HUD Form 935.2.

3 *Marketing records.* The borrower will be required to develop and maintain a system to provide data to indicate to what extent the borrower is carrying out the objective of the AFHM plan.

D *Tenant eligibility and occupancy guidelines.* The rental agent of the project must be knowledgeable about the FmHA or its successor agency under Public Law 103–354 tenant eligibility and occupancy requirements as they relate to a particular project. FmHA or its successor agency under Public Law 103–354 loans require occupancy of the unit by eligible tenants. Except for migrant farmworker tenants in LH projects, tenant/applicants must occupy the housing unit they qualify for as their permanent residence on the provision they do/will not maintain a

separate subsidized rental unit in a different location.

1 *Eligible tenants.* The following tenant eligibility criteria will apply where appropriate, unless otherwise authorized such as in the case of LH as described in subpart D of part 1944 of this chapter.

a To determine eligibility for occupancy, the applicant's eligibility income must be as defined in paragraph II and include income from net family assets as defined in paragraph II of this exhibit.

b The adjusted annual income must meet the definition of very low-, low- or moderate-income as defined in paragraph II of this exhibit as required for that specific project for applicant selection, tenant contribution, and continued occupancy.

c To determine eligibility for continued occupancy, the tenant's adjusted annual income must be determined at least once every 12 months. When the tenant's adjusted annual income exceeds the moderate-income limit established for the area in which the project is located, the tenant is no longer eligible and will be required to vacate the project according to the terms of the lease and paragraph VI D 6 of this exhibit. Continued occupancy by cooperative members will not be affected by this income criteria. Cooperative members, after initial certification of income eligibility, may remain members regardless of income.

d In RRH projects operating on a Plan I basis, tenants will:

(1) Be a very low-, low-, or moderate-income person who is elderly, or has handicaps, or disabilities, or

(2) Be a very low or low-income nonelderly, nondisabled, or nonhandicapped person.

e In RRH projects operating on a nonprofit or limited profit Plan II basis, tenants will be a very low-, low-, or moderate-income person regardless of age, disability, or handicapping condition.

f In RRH projects operating on a full-profit basis, tenants will:

(1) Be a person of any income who is elderly, or has handicaps, or disabilities, or

(2) Be a very low-, low-, or moderate-income nonelderly, nondisabled, or nonhandicapped person.

g In LH projects designed and operated either for year-round or seasonal occupancy, eligibility is established in subpart D of part 1944 of this chapter.

h Occupancy in RRH project units designated by FmHA or its successor agency under Public Law 103–354 as:

(1) Family housing may be occupied by any combination of elderly, disabled, or handicapped, and/or nonelderly, nondisabled, or nonhandicapped tenants including those tenants with familial status. Marketing priorities for this category should not exclude one group over another.

(2) Elderly housing must be occupied by tenants who are elderly, disabled, and/or handicapped but not at the exclusion of children if they are members of the ''elderly'' household, nor shall it be restricted exclusively for use by tenants who are disabled and/or handicapped.

(3) Housing which consists of specific units in a project designated as family housing and other units designated as elderly housing units should be governed by paragraphs VI D 1 h (1) and (2) of this exhibit.

(4) Congregate housing and group homes shall be occupied by persons described in the definitions for congregate housing and group home, respectively in paragraph II of this exhibit.

i *Tenant of member independence.*

(1) *RRH, RCH, and LH housing.* It shall be a tenant's or member's responsibility to determine the ability to meet the legitimate and uniformly applied requirements of tenancy, thus assuming risk and responsibility of living within and upon the project premises. It shall be the owner's or representative's responsibility to respond to requests for what reasonable accommodations the tenant or member may need, otherwise the owner or its representative MAY NOT under possible penalty prescribed by Pub. Law No. 100–430, 102 stat. 1619 (1988) codified at 42 U.S.C. 3601 et seq:

(i) Judge whether individuals with handicap or disability are capable of independent living.

(ii) Require a physical examination as a condition for tenant or member selection.

(iii) Impose conditional leases requiring individuals with handicaps or disabilities to participate in supportive services.

(2) *Congregate and group home housing and housing with handicap unit(s).* Because the purpose of such housing is to provide specific supportive services to individuals, it is permissible for the owner or its representative to inquire only to the extent necessary in the case of congregate housing whether the project offers the services wanted by the individual and in the case of group home housing, whether the individual has a handicap or disability that would qualify the individual to occupy, or continue to occupy the housing.

(3) *Legal capacity.* Tenants or members in FmHA or its successor agency under Public Law 103–354 financed MFH projects must possess the legal capacity to enter into a lease agreement, except where a legal guardian (an individual) may sign when the tenant or member is otherwise eligible and is a tenant residing in a group housing project.

j For LH projects and units in RRH projects specifically designed and designated for the elderly, disabled, and/or handicapped as defined by FmHA or its successor agency under Public Law 103–354, occupancy is limited solely to those meeting the eligibility

requirements for the specific type of project (i.e., domestic farm laborers, elderly, disabled, and/or handicapped). Eligible occupants in these projects may also include other persons who are usually household members of the families of the domestic farm laborer, or persons who are elderly, or have disabilities, or handicaps. Resident assistants or chore workers will not be considered members of the tenant's household.

k A student or other seemingly temporary resident of the community who is otherwise eligible and seeks occupancy in an RRH or RCH project may be considered an eligible tenant when all of the following conditions are met:

(1) Is either of legal age in accordance with applicable State law or is otherwise legally able to enter into a binding contract under State law.

(2) The person seeking occupancy has established a household separate and distinct from the person's parents or legal guardians.

(3) The persons seeking occupancy is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence is provided to this effect.

(4) The person seeking occupancy signs a written statement indicating whether or not the person's parents, legal guardians, or others provide any financial assistance and such financial assistance is considered as part of current annual income and is verified in writing by the borrower.

l A domestic farm laborer may continue occupancy of an LH project after retirement (having reached age 55) or after becoming disabled [(determined to have an impairment which is expected to be of long-continued and indefinite duration and substantially impedes the person's ability to earn a livelihood from farm labor (as certified by a licensed physician)].

m A tenant who does not personally reside in a rental unit for a period exceeding 60 consecutive days, for reasons other than health or emergency, is considered ineligible for subsidy and shall be required to pay note rate rent in Plan II projects or 125 percent of rent in Plan I projects for the period of absence exceeding 60 consecutive days.

(1) If the tenant continues to be absent from the unit, the borrower must notify the tenant by certified mail at least 30 days prior to the end of the leasing period, to occupy the living unit by the end of the lease period or the borrower will start termination proceedings.

(2) In those cases where the tenant's lease does not contain the lease clause in paragraph VIII B 4 c of this exhibit, the tenant will be advised that the lease will not be renewed, unless replaced with a lease meeting current requirements.

2 *Occupancy policy and guidelines.*

a *Objective.* The objective of the occupancy policy and guidelines in FMHA financed projects is to achieve utilization of subsidized space without overcrowding or providing more space than is needed by the number of people in the household.

b *Policy.*

(1) FmHA or its successor agency under Public Law 103–354 does not specify the number of persons who may live in MFH housing units of various sizes.

(2) The borrower must set reasonable occupancy standards which will assist as many people as possible without overcrowding the unit or the project and which will minimize vacancies.

(3) In setting the occupancy standards, the borrower must comply with all reasonable State and local health and safety restrictions regarding the maximum number of occupants permitted to occupy a dwelling. In the absence of State or local health safety restrictions, overcrowding shall occur when the TOTAL occupancy level in a housing unit exceeds 2 people per *habitable sleeping room*, except that an additional person(s) may be allowed when a habitable sleeping room provides at least 50 square feet per person. A habitable sleeping room shall not include a kitchen, bathroom, hallway, or dining area.

(4) In placing families on waiting lists and in assigning families to MFH housing, a borrower should allow families to choose whether to opt for larger or smaller units to permit families to occupy units of sufficient size, so that persons of opposite sex (other than spouses) or persons of same sex, persons of different or same generation, and unrelated or related adults may have separate bedrooms according to the particular needs of the family.

(5) Borrowers may have different standards for different projects but such standards must not result in or perpetuate patterns of occupancy which would be inconsistent with title VI of the Civil Rights Act of 1964 or the Fair Housing Act.

(6) For the purpose of determining unit size, borrowers need to include, as members of the household:

(i) All full-time members of the household.

(ii) Dependent minors who are away at school but live with the family during school recesses.

(iii) Dependent minors who are subject to a joint custody agreement but live in the unit at least 50 percent of the time.

(iv) An unborn child or a child in the process of being adopted by or granted custody of an adult.

(v) A foster child residing in the unit, or a household child temporarily residing elsewhere in foster care.

(vi) A live-in attendant.

(7) Borrowers shall not provide bedroom space for others who are not members of the

household such as adult children on active military duty, permanently institutionalized family members, or visitors.

c *Guidelines.* These guidelines are designed to assist the borrower in implementing the occupancy policy into workable occupancy standards. The project occupancy standard should be available for review by applicant, tenant, member, and project representative upon request.

(1) In setting objective occupancy standards, the borrower should set the standards to permit the tenant to select the unit size they deem appropriate to their needs insofar as overcrowding by the household does not happen and underutilization of the unit does not occur. The occupancy standard selected should attempt to reflect ideal ranges of occupant density. In developing an ideal occupancy standard, it should be based so that:

(i) *No more than two* persons *should be required* to occupy a bedroom.

(ii) Persons of different generations, persons of the opposite sex (other than spouses), and unrelated adults *should not be required* to share a bedroom.

(iii) Children of the same sex may share a bedroom.

(iv) Children, with the possible exception of infants, *should not be required* to share a bedroom with persons of different generations, including their parents.

(2) These guidelines should result in the following ideal range of persons per housing unit:

No. of bedrooms	Occupant density range	
	minimum	
0	1	1
1	1	2
2	2	4
3	3	6
4	5	8
5	7	10

For example, if the borrower adopts these standards, households with three people generally should be accomodated in a two bedroom unit and should not receive apartments with more than three bedrooms. Nor should such households be required to live in apartments with fewer than two bedrooms. A household of three persons could be permitted to live in an apartment with fewer than two bedrooms if the household so chooses, unless it would constitute overcrowding OR there is a state or local occupancy law forbidding occupancy of the unit by three or more persons.

(3) If, because of a physical or mental handicap of a household member or a person associated with that household, a family may need a unit that is larger than the unit size suggested by the guidelines in paragraph VI D 2 c (2) of this exhibit, it may be an unlawful failure to make reasonable accommodation to deny such a family the opportunity to apply for and obtain such a unit.

d These occupancy guidelines may serve also as general guidelines for migrant and on-farm LH. Projects developed in compliance with local and/or state design requirements will determine the appropriate occupancy standards for migrant LH. In dormitory type LH housing, there must be at least 400 cubic feet of habitable sleeping area for each person.

e When there are no units of appropriate size available in the project:

(1) The tenant may be admitted and/or remain, provided the unit is not overcrowded or underutilized.

(2) The tenant may receive available rental subsidy if otherwise qualified by income.

f When an occupied unit becomes overcrowded or underutilized and there is a waiting list for the size unit occupied:

(1) The tenant must move to another unit in the project of adequate size and accommodation when it becomes available. If the tenant then refuses to move to the available unit, or if none is available.

(2) Vacate the project within a reasonable time period established by the borrower as specified in the lease or by the end of the lease period, whichever is later.

g To avoid prolonged vacancy and loss of revenue, management may permit temporary occupancy of specially designed handicapped accessible units by households not needing such specially designed features, under the following conditions:

(1) No household needing the specially designed features of a handicapped accessible unit is available to occupy the unit and management has made a diligent effort to reach tenants who qualify for the specially designed unit;

(2) The tenant agrees to transfer to an appropriate unit if and when it becomes available in the project once an applicant with handicaps needing the features of a handicapped accessible unit is on the waiting list and ready to move in;

(3) The responsibility to pay all costs associated with the subsequent move to the appropriate unit shall be mutually determined between the owner and the tenant. The owner's share of cost, if any, may be a project expense; and

(4) The appropriate lease clause in paragraph VIII C of this exhibit is incorporated in the tenant's lease.

h Borrowers with RRH projects specifically built and designated for the elderly prior to October 27, 1980, with only a few or no one-bedroom units, may permit occupancy of two-bedroom units by single eligible tenants if this provision is included in the project occupancy policy. The occupancy policy should reflect the needs of the local market area. This eligibility determination made by management must be included in

the tenant's lease and will entitle such tenant to all benefits without need for further FmHA or its successor agency under Public Law 103–354 approval.

i When a unit cannot be rented under the provisions in paragraph VI D 2 g and h of this exhibit, the Servicing Official may authorize an exception according to paragraph VI D 7 of this exhibit.

j A tenant who was determined eligible and allowed to occupy under regulations in effect prior to October 1, 1986, who does not meet eligibility requirements regarding income or occupancy policy as prescribed in these regulations may be permitted continued occupancy in the same unit for the duration of their residency. This provision specifically refers to:

(1) Elderly tenants of any income level who have occupied their unit, since before October 27, 1980.

(2) Tenants who were determined eligible before October 27, 1980, but did not meet income and occupancy requirements on that date. Examples are:

(i) Individual tenants occupying a unit with separate tenant certifications whose combined income on October 27, 1980, would disqualify joint tenancy.

(ii) Tenant households whose composition did not meet the occupancy guidelines in paragraph VI D 2 c (2) of this exhibit.

(3) Tenants who became income ineligible due to changes of income and shelter cost determination on October 1, 1986. This provision did not apply to normal increase of household income which may have made them ineligible before October 1, 1986.

k For each RRH project specifically designated for the elderly, the borrower or management may not prohibit, prevent, restrict, or discriminate against any tenant for continued occupancy or applicant for occupancy who owns or will keep a pet in their apartment unit unless the approved project pet rules are violated.

l Nothing in this subpart requires that an apartment unit be made available to any individual whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others, Except, when such threat can be removed by applying a reasonable accommodation.

3 *Reasonable accommodations.*

a The Fair Housing Amendment Act of 1988 requires persons to make reasonable accommodations in rules, policies, practices, or services, when such accommodations would afford a handicapped or disabled person equal opportunity to occupy or continue to occupy and enjoy a dwelling unit, including public and common use areas. For example:

(1) It would be unlawful to refuse a person with a sight impairment with a service animal to live in a dwelling unit when there is otherwise a no-pet policy in the apartment complex.

(2) It would be reasonable accommodation to grant a request by an applicant or tenant with a mobility impairment to be assigned a reserved parking space as near to that person's dwelling unit as possible, even though all other designated handicapped parking spaces are already reserved, having been assigned on a first-come, first served basis.

(3) It would be reasonable accommodation to remove a gas cooking stove and install a microwave oven when such accommodations to a tenant or member would remove a direct threat to the project, the tenant and other tenants. Other examples are changing water faucets to push or electronic activated faucets and door knobs to door handles for persons with infirmed hands.

b The Fair Housing Amendment Act requires owners to permit, at the expense of a person with handicaps, reasonable modifications of an existing unit, occupied or to be occupied by a person with handicaps, if the proposed modifications may be necessary to afford that person full enjoyment of the dwelling unit.

(1) The borrower may, where it is reasonable to do so, condition permission for a modification on the applicant or tenant agreeing to restore the interior of the dwelling unit to the condition that existed before the modifications, reasonable wear and tear excepted. (NOTE: It should not, for example, be necessary to remove blocking previously installed to support bathtub handrails when restoring to ''original'' condition since the blocking does not affect future use.)

(2) The borrower may not increase the customarily required security deposit. However, where it is necessary to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of tenancy, the borrower may negotiate as part of such a restoration agreement a provision requiring that a tenant pay into an interest bearing escrow account, over a reasonable period, an amount of money not to exceed the cost of restoration. The interest in any such account shall accrue to the tenant's benefit.

4 *Other items the borrower should consider in determining eligibility of applicants for admission to the project.*

a Any criteria or documentation must be applied uniformly for all applicants for occupancy for the following items:

(1) Verification of income and/or employment according to paragraph VII of this exhibit. (Mandatory in all cases.)

(2) Credit reports to reflect the applicant's past record of meeting obligations. (Optional.)

(3) Prior landlord references to determine if the tenant was responsive to meeting rent

payment obligations, care, and maintenance of the unit. (Optional.)

(4) The applicant's financial capability to meet other basic living expenses and the rental charge, taking into consideration any subsidy assistance that could be made available to the tenant. Where RA is not available, the borrower should inform any very-low or low-income household that would be required but unable to pay the approved rent, including utilities, that they may be eligible for a particular form of rent subsidy described in paragraph IV of this subpart. The borrower should indicate where information about other subsidies can be obtained. (Optional.)

(5) Written verification of an unborn child by a doctor or other qualified third party. (When applicable.)

b A borrower or manager should consider mitigating factors when tenants or members have had or presently have a period of hardship beyond their control, when they have had disputes with creditors, including landlords, or when they were having difficulty paying overburdened rent levels.

5 *Surviving or remaining members of eligible tenant household.*

a *Surviving* members of an elderly, disabled, and/or handicapped tenant's household may continue occupancy of the unit after the death of the original tenant, even though they may not meet the definition of an elderly, disabled or handicapped person stated in paragraph II of this exhibit, provided:

(1) They are eligible occupants with respect to income and were either cotenant or member of the household and have legal capacity to sign and assume the lease,

(2) They occupied the unit with the original tenant at the time that the original tenant died, and

(3) A surviving nonelderly cotenant or comember shall not qualify for the elderly family adjustments to income.

b Surviving members of a domestic farm laborer's household may continue to occupy when they meet the definition of a domestic farm laborer as defined in paragraph II of this exhibit.

c *Remaining* household member(s) of a nonelderly, nondisabled and/or nonhandicapped household, who is included on the current tenant certification may continue to occupy the rental unit if they otherwise independently meet tenant eligibility requirements with respect to income and occupancy standard size and sign a succeeding tenant certification establishing their own tenancy.

d When tenants no longer meet the requirements of paragraph VI D 5 a, b, or c of this exhibit, the provisions for formerly eligible tenants in paragraph VI D 6 of this exhibit shall apply.

6 *Formerly eligible tenants.* Unless authorized by paragraph VI D 2 j of this exhibit, formerly eligible tenants will be required to vacate their unit within 30 days (7 days for migrant farm labor tenants with week-to-week lease agreements) or the end of the term of their lease agreement, whichever is longer. If, however, there is not an eligible applicant on the waiting list available for occupancy, the formerly eligible tenant may remain until there is an eligible tenant on the waiting list available to occupy the unit; at which time, the requirements for notice to vacate stated in paragraph VI D 6 c of this exhibit will take effect. If vacating the unit in the time period described creates an undue hardship on the family, the Servicing Official may permit continued occupancy for a reasonable period of time. The following ''formerly eligible'' situations apply to this paragraph:

a Tenants who no longer meet FmHA or its successor agency under Public Law 103–354 income eligibility requirements. (This includes tenants receiving RA or Section 8 assistance.)

b Tenants in LH projects who no longer meet the farm labor occupation requirements, and who are neither retired nor disabled domestic farm laborers, are considered to be ''formerly eligible tenants'' as long as a need for housing for domestic farm laborers exists in the project's farm market area.

c Tenants who no longer meet the occupancy policy for the project. These tenants must agree in writing to move to a unit of appropriate size in the project when one becomes available, or when an appropriate sized unit does not exist in the project, vacate the project at the termination of their lease. However, the tenant may remain as an ineligible tenant if the unit is not overcrowded and there are no other applicants on the waiting list for the size of unit presently occupied.

7 *Servicing official authority to permit an RRH or LH borrower to rent to ineligible tenants.*

a The Servicing Official may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent vacant units to ineligible persons for temporary periods to protect the financial interest of the Government. Likewise, this provision may extend to a cooperative. This authority will be for the entire project for periods not to exceed one year. Within the period of the lease, the tenant may not be required to move for initially documented ineligibility. A copy of the authorization to rent to ineligibles will be forwarded to the State Office. The following determinations must be made by the authorizing FmHA or its successor agency under Public Law 103–354 official.

(1) There are no eligible persons on a waiting list.

(2) The borrower provided evidence that a diligent but unsuccessful effort to rent any

vacant unit(s) to an eligible tenant household has been made. Such evidence may consist of advertisements in appropriate publications, posting notices in several public places, and other places where persons seeking rental housing would likely make contact; holding open houses, making appropriate contacts with public housing agencies and authorities (where they exist), State and local agencies and organizations, Chamber of Commerce, and real estate agencies.

(3) The borrower will continue with aggressive efforts to locate eligible tenants and submit to the Servicing Office, along with Form FmHA or its successor agency under Public Law 103–354 1944–29, ''Project Worksheet for Interest Credit and Rental Assistance,'' a report of efforts made. The required followup should be posted in the Servicing Office on Form FmHA or its successor agency under Public Law 103–354 1905–6, ''Management System Card-Multifamily Housing.''

(4) To protect the security interest of the Government, the units may be rented for no more than a year after which the lease must convert to a monthly lease. The monthly lease must require that the unit be vacated when an eligible prospective tenant is available. The ineligible tenant will then be given 30 days to vacate.

(5) Tenants residing in RRH units who are ineligible, because their adjusted annual income exceeds the maximum for the RRH project, will be charged the FmHA or its successor agency under Public Law 103–354 approved note rate rental rate for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved note rate rental rate.

(6) Tenants permitted to occupy but who are ineligible for reasons other than income may benefit from RA and/or interest credit.

(7) Tenants residing in off-farm LH units who are ineligible because their adjusted annual income exceeds the maximum for the area will be charged the lesser of the LH project's note rate rent or the prevailing market rent rate for the project as determined by subpart D of part 1944 of this chapter. For on-farm tenants, rent determination may be subject to local discretion with limitations as set out in subpart D of part 1944 of this chapter. Excess rent shall be remitted to the Agency for credit to the Rural Housing Insurance Fund.

b Examples of situations where the Servicing Official may authorize a borrower to rent units to ineligible persons to reduce chronic vacancy are:

(1) In housing designated as ''family'' housing, permitting persons or households to occupy who are not eligible because they have an above normal income.

(2) In housing designated as ''elderly'' housing, permitting persons or households to occupy that meet the definitional requirements of qualifying as elderly, but who otherwise have an above moderate income. This provision will not permit nonelderly persons or households to occupy housing for the elderly.

c When the Servicing Official determines that a borrower may rent to an ineligible tenant, the written authorization must contain the appropriate clauses which must be inserted into the ineligible tenant's lease. At a minimum it should include:

(1) The reason for ineligibility.

(2) The term of ineligible occupancy.

(3) Any conditions under which the tenant will be required to vacate the unit including moving to an appropriate size unit when warranted to comply with the established occupancy standards.

(4) The length of notice the tenant will be given to vacate.

E *Applicant inquiries and waiting lists.*

1 When a prospective tenant or member inquires (by telephone, letter, or visit) concerning the availability of a rental or cooperative unit, the borrower or rental agent will advise the prospective applicant of their right to file an application.

2 When a prospective tenant or member files a completed application for occupancy and is determined eligible, the borrower or rental agent will place the prospect's name chronologically by date and time on the appropriate written waiting list. Exhibit B–14 of this subpart contains a sample waiting list. An application is a written document(s) prescribed by the management providing sufficient information for the rental agent to complete the steps necessary to determine eligibility.

a Eligibility shall be governed by paragraph VI F of this exhibit.

b The actual determination of eligibility will be conducted according to the application process described in paragraph VI F of this exhibit.

c Priority on the waiting list shall be determined according to paragraph VI E 3 of this exhibit. Eligibility for cooperative membership will be determined in accordance with subpart E to part 1944 of this chapter.

3 Separate waiting lists by categories and/or a master waiting list with income levels identified (very low-, low- and moderate-income), and categories or priorities indicated will be maintained for rural rental, cooperative, and year-round occupancy farm labor housing. Each list must be maintained in chronological order. When there are separate lists, they must be cross-referenced for prospective tenants who fit more than one category or priority. Separate lists may be maintained for:

a Income levels (very low-, low-, moderate-income, or ineligible).

b Various size units.

c Units for elderly, disabled, or handicapped persons, families, or any other combination as planned for the project according to the borrower's loan agreement or resolution and management plan.

d Persons who require the special design features of the handicapped accessible units(s) in the project such as persons confined to a wheelchair or requiring other auxiliary apparatus for mobility and/or life support. Persons on this list have priority for these units.

e Holders of Letters of Priority Entitlement issued by FmHA or its successor agency under Public Law 103–354 according to subpart E of part 1965 of this chapter will be given top of the waiting list priority within an income group for the category of unit size for which the applicant qualifies. This same priority shall also extend to persons displaced due to housing rendered uninhabitable or actually seized by legal action (for other than illegal activities).

f In congregate housing projects, priority can be given to tenants who qualify for the services provided by the congregate facility insofar as there is available capacity in the facility to provide the services.

g In LH projects, lists should be maintained in accordance with the priorities of occupancy established by §1944.154 of subpart D of part 1944 of this chapter.

h In only those projects with project based Section 8 units, priority for such units will go to applicants who, at their time of housing need, are involuntarily displaced, or living in substandard housing, or paying more than 50 percent of income for rent.

i Tenant applicants that qualify the borrower for tax credit.

4 For seasonal farm LH a waiting list should be chronologically compiled by date and time received as in paragraphs VI E 2 and VI E 3 of this exhibit. These lists should be maintained for the season in which the project will be operating. Prospective tenants should be advised that the waiting list will terminate on the closing date of the project in any given season. Tenant selection shall be governed according to paragraph VI H 6 of this exhibit.

a Seasonal LH management plans should identify a date when applications will be accepted for a new operating season and a waiting list compiled.

b A process should be specified in the plan for advising prospective tenants of the application process and the dates of project operation.

5 A waiting list must show the racial identity of the prospective tenant. Rental housing managers may determine how the identification is to be made according to the guidance found at exhibit B–14 of this subpart, which may include the use of a code system.

6 When prospective tenants are first assigned to the waiting list, they will be notified of the category(s) to be assigned to their application. Prospective tenants may inquire to determine the *place* of their application on the waiting list. However, to protect the privacy of all prospective tenants, the waiting list should not be shown to any prospective tenants.

7 Borrowers may establish a procedure for purging the waiting list(s) periodically of prospective tenants who are no longer interested in occupancy. The borrower must inform each prospective tenant of this procedure and any actions they must take to maintain their priority position on the waiting list. When a name is removed from the waiting list by the borrower, the prospective tenant must be informed in writing at their last known address. The letter must include appeal rights under subpart L of part 1944 of this chapter.

8 Expired waiting lists must be kept on file by the borrower or management agent until a compliance review has been conducted by FmHA or its successor agency under Public Law 103–354 in accordance with subpart E of part 1901 of this chapter.

F *Applications, eligibility determination and notification of eligibility or rejection.*

1 *Application status for determining eligibility.* All persons desiring to apply for occupancy, whether as the initial applicant household or as a person(s) later joining an existing tenant household, will be provided the opportunity to submit a complete application. The borrower or rental agent will provide prospective tenants or members with a written list of all information required for a complete application and offer assistance in completing the application if needed.

a After the potential tenant or member has submitted all required forms and information but additional information is required, the borrower or rental agent must notify the applicant within 10 days of the items needed to complete a review of eligibility. The application file will be documented on the action taken.

b When the application is complete, and occupancy by the applicant is expected within 90 days of completing the application, eligibility will be determined, including verification of applicant information performed according to paragraph VII of this exhibit; otherwise, verification of applicant information will be initially satisfied upon sufficient review of the information to determine whether the applicant is clearly eligible or not eligible.

c Applicants determined eligible will be added to the waiting list according to paragraph VI E 2 of this exhibit, even when an operational project has few or no vacancies, and there are sufficient active applications from households determined eligible to fill expected vacancies.

d Application fees are discouraged, but when used, any fee charged to a prospective tenant shall be limited to the cost of actual services incurred for obtaining necessary information associated with completing a tenant certification.

2 *Fair housing restrictions and provisions.*

a It shall be unlawful for a person to make an inquiry to determine whether an applicant for a housing unit, or anyone associated with that applicant, has a handicap or disability or to make inquiry as to the nature or severity of a handicap or disability of such a person. However,

b The following inquiries are not prohibited, provided these inquiries are made of all applicants, whether or not they have handicaps or disabilities.

(1) Inquiry into an applicant's ability to meet the requirements of tenancy (i.e., eligibility, history of meeting financial obligations) and without being a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(2) Inquiry to determine whether an applicant is qualified for a housing unit or adjustment to income available only to persons with handicaps or disabilities or to a persons with a particular type of handicap or disability.

(3) Inquiry to determine whether an applicant for a housing unit is qualified for a priority available to persons with handicaps or disabilities or to persons with a particular type of handicap.

(4) Inquiring whether an applicant for a dwelling is a current illegal user of a controlled substance or has a previous conviction of the same.

(5) Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

(6) Inquiring whether an applicant answering positively to F 2 b (4) or (5) of this paragraph has successfully completed a controlled substance abuse recovery program or is presently enrolled in such a program.

3 *Application requirements.* At a minimum to be considered complete, applications must include for each prospective tenant household sufficient information, such as the following, to complete a tenant certification form:

a Name and present address.

b Household income information, as defined under annual income, adjusted annual income, and net family assets in paragraph II of this exhibit.

c Age and number of household members.

d Indication whether applicant requests either a handicap/disability adjustment to income or a special handicapped accessible unit or both.

e Applicant's certification that the unit applied for will be the applicant household's permanent residence and it does/will not maintain a separate subsidized rental unit in a different location.

f Signature and date section.

g Race, national origin and sex designation. This designation shall be placed as the last section of the application form beneath the signature and date section.

(1) The borrower or management agent will request that each prospective tenant or member provide this information on a voluntary basis to enable monitoring or compliance with Federal laws prohibiting discrimination. When the applicant does not provide this information, the rental agent or board will complete this item based on personal observation or surname.

(2) The following disclosure notice shall appear on the tenant application form or on an amendment to the application:

''The information regarding race, national origin, and sex designation solicited on this application is requested in order to assure the Federal Government, acting through the Farmers Home Administration or its successor agency under Public Law 103–354, that Federal Laws prohibiting discrimination against tenant applicants on the basis of race, color, national origin, religion, sex, familial status, age, and handicap are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race/national origin and sex of individual applicants on the basis of visual observation or surname.''

h The application form shall contain the fair housing logotype or slogan and indication of handicap accessibility on the first page of the form.

i Retired or disabled domestic farm labor applicants must meet the definition requirements of § 1944.153 of subpart D of part 1944 of this chapter.

4 *Notification to applicant.* The applicant who has submitted a completed application will be notified in writing that he or she has been selected for immediate occupancy, placed on a waiting list, or rejected.

5 *Applicants determined ineligible.* After due consideration of mitigating circumstances, applicants determined ineligible will be notified in writing of the specific reasons for rejection. The letter will include the following statement: ''The Fair Housing Act prohibits discrimination in the sale, rental or financing of housing on the basis of race, color, religion, sex, handicap, familial status, or national origin. Federal law also prohibits discrimination on the basis of age. Complaints of discrimination may be forwarded to the Administrator, FmHA or its successor agency under Public Law 103–354, USDA Washington, DC 20250.'' This statement can be placed on all materials and correspondence done by

the borrower, owner, or management company.

a The rejection letter must also outline the applicant's rights to appeal the rejection and be sent or hand-delivered according to subpart L of part 1944 of this chapter except for those clearly not eligible for occupancy according to FmHA or its successor agency under Public Law 103–354 regulations.

b When the rejection is based on information from a credit bureau, the source of the credit bureau report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

c Any applicant household may be rejected due to:

(1) A history of unjustified and/or chronic nonpayment of rent and/or financial obligations.

(2) A history of living or housekeeping habits that would pose a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(3) A history of disturbance of neighbors.

(4) A history of violations of the terms of previous rental agreements, especially those resulting in eviction from housing or termination from residential programs.

d Rejection of applicants on a arbitrary basis is prohibited. Examples of such arbitrary rejections includes considering the following factors in determining a tenant's eligibility:

(1) Race, color, religion, sex, age, familial status, national origin, handicap (except in those projects or portions of projects designated for elderly, disabled and/or handicapped, where occupancy by nonelderly, nondisabled or nonhandicapped can be prohibited).

(2) Receipt of income from public assistance.

(3) Families with children of uncertain parentage.

(4) Participation in tenant organizations.

(5) Tenants or tenant family members with AIDS.

e In the case of LH projects, no organization borrower, other than an association of farmers of family farm corporation or partnership, will block lease to, or otherwise require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing.

f Rejected applications must be kept on file by the borrower or management agent for a period of 3 years or until a compliance review has been conducted by FmHA or its successor agency under Public Law 103–354 in accordance with subpart E of part 1901 of this chapter.

G *Tax credit compliance.* The Tax Reform Act of 1986 permits certain RRH borrowers to receive tax credits for low-income housing projects if 20 percent or more of the units are occupied by very low-income tenants whose annual gross income is 50 percent or less of the area median gross income; or 40 percent or more of the units are occupied by tenants whose annual gross income is 60 percent or less of the area median gross income.

1 Eligible borrowers with projects qualified to receive tax credits will follow the tenant selection criteria of paragraph VI H of this exhibit except that tenant selection may be postponed until applicants for occupancy are available whose occupancy will allow borrowers to meet their tax credit requirements.

2 Borrowers using IRS tax credits may neither terminate a tenant's occupancy nor refuse to renew a tenant's lease except for material noncompliance or other good cause as described in paragraph XIV of this exhibit. Tenants whose income increases after initial occupancy and exceeds IRS tax credit thresholds, but otherwise still meet FmHA or its successor agency under Public Law 103–354 income eligibility thresholds, remain qualified to occupy with respect to income eligibility.

H *Tenant and member selection.*

1 An eligible applicant will be selected from a waiting lists(s) identifying the category on basis of the applicant's unit size needed, income level (very low-, low-, moderate-income, or ineligible) or from a priority waiting list, as described in paragraph VI E of this exhibit, when the available size unit meets the applicant's need. The eligible applicant will further be selected on a first-come, first-served basis from the selected category or priority waiting list in the following order:

a Very low-income

b Low-income, up to 60 percent of median income, (in ''tax credit'' projects)

c Low-income

d Moderate-income

e Ineligible

2 When RA is available:

a Very low-income applicants eligible for RA have a priority over all other applicants on each type of waiting list maintained by the borrower in accordance with paragraph XI of exhibit E to this subpart.

b Low-income applicants may be selected provided no very low-income applicants remain on the waiting list.

c Moderate-income applicants may not be selected for occupancy when the number of unassigned RA units equals or exceeds the number of vacant units. (Borrowers unable to use RA may consider requesting a transfer of RA authority according to paragraph XV of exhibit E of this subpart).

3 In only those projects when project based section 8 is available, the following applicants, as described in HUD handbook 4350.3 (available at any HUD regional or area

office), will have priority over other applicants if at the time of their housing needs, they are:

a involuntarily displaced, or

b living in substandard housing, or

c paying more than 50 percent of income for rent.

4 Selections are to be made from the waiting list or category maintained for the particular unit size and/or unit type in which a vacancy exists. If the applicant cannot accept the unit at that time, the reason for not accepting the living unit will be documented in the project records and confirmed with the applicant in writing. The applicant's name will then be removed from the waiting list following the notice procedure at paragraph VI E 7 of this exhibit unless the rental agent determines that hardship exists for reasons such as documented health problems or project rent exceeds 30 percent of adjusted monthly income without RA in which case the applicant's name will remain on the list in chronological order. An applicant whose name has been removed from the waiting list may reapply.

5 When there are no applicant names on the waiting list for the size and/or type of vacant living unit, a name may be selected from the waiting list of another size and/or type of living unit according to the date order of the application on the master waiting list. The selected tenant will be subject to the provisions for ineligible tenants found in paragraph VI D 7 of this exhibit and the provisions of paragraph VI D 2 of this exhibit.

6 In LH projects, paragraphs VI H 1 and 2 of this exhibit do not apply. Eligible LH applicants will be selected according to paragraphs VI H 4 and 5 of this exhibit and the priority stated in §1944.154 (a) of subpart D of part 1944 of this chapter irrespective of the availability of RA. However, when FmHA or its successor agency under Public Law 103–354 concurs with the LH borrower's determination that there is a diminished need for housing for domestic farm laborers in accordance with §1944.154 (b) of subpart D of part 1944 of this chapter, all the provisions of this paragraph are applicable to initial occupancy by applicants eligible only under the RRH program.

I *Tenant or member record file.* A separate file must be maintained for each tenant or member. Tenants must be allowed reasonable access to their own file for review during regular project office hours. This file will include items such as application, tenant certification with attached income and adjustment(s), verification forms and calculations, lease or occupancy agreement and attachments, inspection reports for moving in and moving out, correspondence and notices to the tenant or member, and any other necessary information. The income verification, tenant and member eligibility certification and recertification information must be retained for at least 3 years while the tenant or member is living in the unit and for 3 years after the tenant or member has moved out.

J *Marketing incentives:* Marketing incentives, as described in the management plan, may be used anytime as a means of maintaining occupancy levels and revenue needed to carry out the objectives of the housing and the projections of the annual project budget.

1 When a need is documented, marketing incentives will be included in annual project operations as reflected in the project budget, Form FmHA or its successor agency under Public Law 103–354 1930–7. The incentives will be governed by the guidance at paragraph III B 3 c of exhibit F of subpart B of part 1965 of this chapter (available at any FmHA or its successor agency under Public Law 103–354 office).

2 *FmHA or its successor agency under Public Law 103–354 approval of marketing incentives.*

a When marketing incentives will enhance program objectives during a ''soft'' market and FmHA or its successor agency under Public Law 103–354 is otherwise not aware of any loan servicing difficulties of major concern, cost effective incentives may be approved by the FmHA or its successor agency under Public Law 103–354 Servicing Official as part of normal project budget approval.

b When major loan servicing difficulties exist, cost effective marketing incentives may be approved as part of a servicing plan according to the provisions of exhibit F of subpart B of part 1965 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

VII Certification and Verification of Tenant or Member Income and/or Employment Information and Corrective Actions.

The borrower/management agent shall obtain tenant or member authorization to verify income and/or employment information needed to establish eligibility before pursuing verifications.The Borrower/management agent shall seek verification of income and/or employment information disclosed from third party sources without further involvement of the members of the tenant household. This borrower/management agent shall seek to verify employment for all FMH program recipients. The borrower/management agent shall also seek to verify income for all MFH program recipients, except those residents of LH farm borrowers who are living in housing provided on a nonrental basis. The applicable employment and/or income verifications must normally be verified by the borrower or management agent before the person is determined eligible. Exceptions

may be made for those unusual cases described herein. Information for the determination of eligibility is valid for not more than 90 days before the effective date of the tenant certification. Should verifications reveal discrepancies from the information provided, the borrower or management agent will seek prompt resolution using the principles set out in this subpart.

A *Verification of income from employment.* Verification of income from employment, authorized by the tenant or member/applicant, must be obtained from the employer in writing and filed in the ''Tenant or Member Record File.'' Form FmHA or its successor agency under Public Law 103–354 1910–5, ''Request for Verification of Employment,'' or comparable form, will be used for this purpose. (A reproducible copy of Form FmHA or its successor agency under Public Law 103–354 1910–5 is available in any FmHA or its successor agency under Public Law 103–354 office.)

B *Verification of income from other sources.* Any income from other than employment (e.g., social security, Veterans Administration, public assistance) must be verified in writing by the income source. Verification of income must be documented and filed in the ''Tenant or Member Record File.'' When it is not immediately possible to obtain the written verification from the income source, the income may be temporarily verified by actually examining the income checks, check stubs, or other reliable data the person possesses which indicates gross income.

C *Verification of income and/or employment for LH tenants.*

1 *Verification of income from all sources.* Income verification is required for domestic farm laborers, including migrant farm-workers, except for those farmworkers where their housing is provided rent free on a farm as part of their employment compensation for farm labor performed on the farm where they live and work. All domestic farmworkers, where income verification is required, must have a substantial portion of income from farm labor as defined in §1944.153 of subpart D of part 1944 of this chapter. When the tenants do not have easily verifiable income, the borrower may forecast income expected to be received by the tenant during occupancy for determining eligibility and subsidy assistance.

2 *Farm labor employment verification.* Farm labor employment verification is required for all domestic farm laborers, whether they are year-round, seasonal, or migrant farmworkers, or farmworkers living in rent-free housing on the farm where they work. Such employment verification is in addition to the income verification requirements described in paragraph VII C 1 of this exhibit.

3 *Third party verification.*

a Third party verification of income and employment, as applicable, is required whenever it is possible or available.

b When third party verification of income and employment is not possible or available, for reasons such as refusal or lack of third party availability or cooperation, the borrower may ''self-certify'' the farmworker applicant using any available documents or records the applicant may have or information the applicant can provide. In the absence of available income and employment documents, records, or information, the borrower may forecast income as described in paragraph VIIC1 of this exhibit.

4 *Tenant record file.* Verifications of any type must be documented and filed in the ''Tenant Record File'' or in the borrower loan docket, as appropriate.

D *Sample of tenant or member income and/or employment verification.*

1 The Servicing Office staff is required to make a sample of tenant or member income verifications and adjustments to income; in the case of LH tenants, employment verifications for use in evaluating the adequacy of such verifications. This will normally be performed during a scheduled supervisory visit.

2 The sample will follow the process set out in exhibit F–1 of this subpart. The sample can be derived from information on the certification forms that will be submitted to the Servicing Office in accordance with paragraph VII F of this exhibit and may include verification of information from third party sources. At least six tenant households will be sampled (or 100 percent of all tenant households for projects having six or fewer units) during any sampling.

3 The sample should be representative of very low-, low-, and moderate-income persons in the project, including those receiving subsidy assistance, those paying in excess of the level cited in paragraph IVA2c (1), (2), or (3) of this exhibit for the costs of rent or occupancy charge and utilities, and those paying the note rate rent.

4 The Servicing Office staff will conduct the sample (and document the selection method) at any time he/she may be knowledgeable of discrepancies in income and/or employment verifications.

5 If the sample discloses discrepancies of amounts in excess of $40 monthly or $480 annually, the Servicing Officer will be required to notify the borrower/management agent to resolve the issues. Should resolution not be satisfactorily approved, the Servicing Officer will be required to investigate further and report to the State Director along with a recommendation for further action. Such further actions may include those authorized under FmHA or its successor agency under Public Law 103–354 Instructions 2012–B or 1940–M (available in any FmHA or its successor agency under Public Law 103–354 office) or subpart N of part 1951 of this chapter.

E *Use of HUD certification form for Section 8 or Section 8 Rental Certificate or Rental Voucher Recipients.* HUD Form 50059, or another HUD form approved by HUD for this purpose, may be used in lieu of Form FmHA or its successor agency under Public Law 103–354 1944–8 for the tenants receiving project based Section 8 or tenant based Rental Certificate or Rental Voucher assistance. However, the tenant's income cannot exceed FmHA or its successor agency under Public Law 103–354 limits for the type of housing project involved if it has been calculated according to the formula contained in Form FmHA or its successor agency under Public Law 103–354 1944–8.

F *Certifications and corrective actions.*

1 To be current, the tenant or member certification Form FmHA or its successor agency under Public Law 103–354 1944–8 (or for section 8, the appropriate HUD form) must be submitted in such manner that it is received in the FmHA or its successor agency under Public Law 103–354 Servicing Office by the close of business (COB) of the due date as follows:

a *New tenant or member move-in certification due date.*

(1) *Move in on the 2nd through the 23rd.* The certification is due for receipt in the Servicing Office on or before the first of the next month for all new tenants or members permitted to move in for occupancy from the 2nd through the 23rd day of a month for overage charges to be avoided (EXAMPLE: A change is reported on July 2nd, the effective date is August 1, and the Servicing Office must receive the certification by COB on August 1). If the due date falls on a non-working day, overage will not be charged if the tenant certification is received in the Servicing Office on the next working day.

(2) *Move in from 24th through the 1st of next month.* The certification is due for receipt in the Servicing Office on or before the tenth of the month in which it is effective in order to avoid overage charges (EXAMPLE #1: Move-in is June 24th, effective date is July 1st and the Servicing Office must receive the certification by COB July 10th. EXAMPLE #2: Move-in is July 1st, effective date is July 1st and the Servicing Office must receive by COB July 10th). If the due date falls on a nonworking day, overage will not be charged if the tenant certification is received in the Servicing Office on the next working day.

b *Certification due dates for renewals.* Tenant certifications represent the contractual basis for delivery of benefits to tenants. Therefore, any certification being renewed must be received by Servicing Officials on or before the effective date in order to avoid overage charges. The effective date is the first day of the month following expiration of the current certification. Certifications expire on the last day of the month, 12 months from the effective date (EXAMPLE: The last certification was effective on July 1 and its ending period date was 12 months later on June 30, therefore, the renewed certification effective date is July 1). If the due date falls on a nonworking day, overage will not be charged if the tenant certification is received in the Servicing Office on the next working day.

c *Tenant reported changes and corrective actions.* Changes to unexpired tenant certifications represent adjustments to the existing contractual basis for delivery of benefits to tenants. Therefore, overage may not be invoked as a penalty for any late reporting, since overage is merely an offset to arrive at the proper subsidy benefits a tenant is entitled to receive. Tenants are responsible for reporting any changes in household gross income, adjustments to household income or changes in household size (as set out in paragraph VIIF3a of this exhibit) no later than 30 days after the change occurred. Landlords must recertify tenant households in accordance with the provisions of paragraph VIIF3b of this exhibit. When recertification is required, landlords must promptly seek to verify employment and/or income with third-party sources in accordance with the provisions of paragraphs VII A, B, C, and F 10 of this exhibit. Once verification is obtained from third-party sources, landlords are expected to forward such certifications to the Servicing Office in accordance with the timeframes set out herein.

(1) *Reporting 2nd through 23rd.* If the third-party verifications are received from the 2nd through the 23rd day of the month, the recertification is due for receipt in the Servicing Office on or before the first day of the next month. If the due date falls on a nonworking day, it will be considered on time if received in the Servicing Office on the next working day.

(2) *Reporting 24th through the 1st of the next month.* If the third-party verifications are received from the 24th through the 1st of the next month, the recertification is due for receipt in the Servicing Office on or before the COB on the tenth of the month. If the due date falls on a nonworking day, it will be considered on time if received in the Servicing Office on the next working day.

(3) *Effective date of changed net tenant contribution.* The effective date of a tenant's changed net tenant contribution will be the first day of the month following third-party verification of changes or the first day of the following month (generally 30 days later) permitted according to the tenant notice requirements of State or local law.

(4) *Corrective actions on tenant problems.*

(i) Should the tenant be found to not comply with the 30-day reporting requirements, the landlord may initiate actions as set out in the lease and the Agency may initiate action to ensure appropriate corrective action is taken.

(ii) If the landlord chooses to pursue termination, the landlord need not further pursue recovery of any improper benefits from the tenant but shall instead forward a report on the circumstances to the Agency for its consideration on whether to initiate an appropriate servicing action.

(iii) If the landlord chooses to permit the continued occupancy by the tenant the landlord must take steps to pursue corrective actions, taking into consideration any rights the tenant may have under the grievance procedures in subpart L of part 1944 of this chapter.

(iv) In processing corrective actions where existing certifications have not expired, overage may not be charged for failure to report changes in a timely manner and the note rate rent will not be charged. Processing corrective actions will use the corrected accurate information to establish the proper rent levels, subsidies, and any overage charges using the same principles as would apply had the change been promptly processed.

(v) Upon determining any resulting differences, the landlord may initiate actions to seek recovery from the tenant of any improper benefits derived from inappropriate rent levels or inappropriate subsidies. Such recovery efforts will normally not extend over a 3-month period, but may not ever extend over a 12-month period.

(vi) The Servicing Office may be consulted if guidance is needed on processing corrective actions when payments are affected.

(vii) When appropriate, the Agency may pursue servicing initiatives which may include seeking corrective action by the landlord or using the authorities set out in subpart N of part 1951 of this chapter or FmHA or its successor agency under Public Law 103–354 Instruction 2012–B (available in any FmHA or its successor agency under Public Law 103–354 office).

(5) *Corrective actions on landlord problems.* Should the landlord be found to not comply with the above reporting dates, the Agency may initiate action to ensure that the proper rent levels were assessed, the proper payments were remitted to the Government, and that any remittances involving any improperly paid Government subsidies are recovered by the Government. Such initiations may involve seeking corrected payment remittances, or the use of authorities set out in subpart N of part 1951 of this chapter as cited in paragraph VII F 1 c (4) of this exhibit.

d *Modifications.*

(1) Modifications will likely result from changes to project rents or utility allowances or when the tenant household moves to a different unit within the project. In such cases the landlord may revise the unexpired tenant certification form by notating the changes in rents or utility allowances and recomputing the net tenant contribution when necessary.

(2) Unexpired tenant certification forms showing modification(s) which do not result from changes in income or adjustments to income or change of household size or composition need not be submitted to the Agency. Such modifications do not affect the certification effective dates or expiration dates of the certification form being modified, therefore, the certification expiration date will remain unchanged (and overage is not applicable). (EXAMPLE: Certification with a July, 19xx effective date is in effect for a 12-month period, and any mid-term modification will not alter the July 1, 19xx effective date).

(3) Form FmHA or its successor agency under Public Law 103–354 1951–29, ''Multiple Family Housing—Changes To Tenant Status,'' or similar reporting format, will be prepared and submitted to report the modifications, impact on rental assistance, moveouts, 60-day absences, and expired tenant certifications.

2 When the Servicing Office does not have a certification in the office as required in F 1 of this paragraph, the tenant or member is ineligible for RA and interest credit for that month and overage for the month will be charged to the project account. This does not apply to modification of a certification as described in paragraph VII F 1 d of this exhibit or in a situation as described at paragraph XIV A 5 b (2)(vi) of this exhibit.

a If a formal eviction process has started, the provisions of paragraph VII F 6 d of this exhibit will be followed.

b If the late certification was due to noncooperation by the tenant or member (noncooperation does not include situations beyond the control of the tenant member, such as delays by third-party sources in completing income or employment verifications), overage must be paid and is a project expense; however, the borrower or management agent may attempt to recover the charge by billing the person note rate rent (overage) for the month. If the error was due to the borrower's or management's action, the cost of overage will be a project expense and it will not be charged to the person.

c Overage charges due to negligent management may not be considered cause for a rent increase. The costs should be deducted from return on owner investment or from management agent fees and may be cause for requiring different management.

3 *Reporting changes.*

a *Tenant reporting.* Tenants must report changes in household income (gross income) or adjustments to household income. In addition, any change in household size must be promptly reported to the landlord. Changes to household income may result from changes in hours worked, salary rates, social

security, pensions, public assistance payments, the sale of assets, interest income, the amount of net family assets exceeding $5,000, imputed income, or other sources of income. Changes in adjustments to income may result from changes in household members other than the tenant or cotenant (e.g., changes in the number of minors, disabled, handicapped or full-time students 18 or older), changes in the tenant or cotenant (e.g., changes in the elderly, disabled, or handicapped status), changes in medical care expenses, and changes in child care expenses.

b *Landlord reporting.* Landlords must recertify tenant households whenever permanent changes to gross household income or permanent adjustments to household income result in an increase of $40 or more per month or $480 or more per year. Landlords must recertify tenant households whenever changes to permanent household income or permanent adjustments to household income result in a decrease of $20 or more per month or $240 or more per year. If the permanent gross income of a tenant household does not exceed $20 a month or $240 annually, and the tenant requests certification, the borrower will process the recertification. In addition, landlords must recertify changes in household size or composition.

4 The current certification form will be revised by correcting entries and being initialed by the tenant or member and the owner's representative when there are project changes such as:

a Changed rental or occupancy rates and/or utility allowances.

b Tenant or member relocation within the project.

c Addition or removal of household RA.

5 Form FmHA or its successor agency under Public Law 103–354 1944–8 must be processed as follows:

a Borrowers or their representatives may sign Form FmHA or its successor agency under Public Law 103–354 1944–8 up to 60 days prior to the effective date.

b Borrowers or their representatives should submit Form FmHA or its successor agency under Public Law 103–354 1944–8 to the FmHA or its successor agency under Public Law 103–354 Servicing Office during the 30 day period preceding the effective date. Borrowers should not delay submitting certifications until Form FmHA or its successor agency under Public Law 103–354 1944–29 is submitted. Borrowers should avoid submitting certifications just before or on the first day of a month to reduce impact on first of month account servicing at the Servicing Office, and to minimize late delivery and the charge of overage.

c The FmHA or its successor agency under Public Law 103–354 Servicing Office date stamps each Form FmHA or its successor agency under Public Law 103–354 1944–8 when received, reviews each form submitted and determines that the information is complete, and correctly computed based on the information provided on the form (see Guide Letter 1930–1 for use in noting exceptions).

d The FmHA or its successor agency under Public Law 103–354 approved tenant certifications and recertifications have an effective period of 12 months. The effective period begins on the effective date which is always the first day of a month.

6 Each tenant or member must be recertified within 12 months of the previous certification. Tenants receiving Section 8 assistance will be certified according to HUD regulations.

a It is the tenant's or member's responsibility to provide income information and sign the certification form as a condition for continued occupancy. Failure to do so will cause a charge for overage/surcharge during those months such information was not provided, and it may result in termination of occupancy.

b The borrower's responsibility is to:

(1) Notify the tenant or member that a current certification and income verification is required before the due date and explain the procedure necessary to accomplish recertification. Normally, this initial written notice will be sent 75 to 90 days prior to the expiration date of the current certification; then

(2) Obtain verification of income from tenant or member records and/or directly from tenant or member employers and process the appropriate tenant recertification; and

(3) Submit the signed recertification to be received by the Servicing Office *by the due date* stipulated in paragraph VII F 1.

(c) The borrower must provide a second written notice to the tenant or member 30 days prior to the due date if they have not responded. The second notice must advise the tenant or member that without a current certification, the person will be required to pay note rate rent or occupancy charge (i.e., the person pays overage) and that termination proceedings may be started as of the due date since an annual recertification is required for continued occupancy. [NOTE: In any event, the borrower is required to pay the overage amount to FmHA or its successor agency under Public Law 103–354 according to § 1951.506(a)(5)(iii) of subpart K to part 1951 of this chapter.] If the tenant or member has RA, the person must be advised that without a current certification, the person's RA will be canceled and possibly may not be immediately available for reinstatement should a proper certification be provided at a later date.

d When a notice of termination has been served on a tenant or member for failure to recertify, the borrower must provide a copy of the termination notice to the Servicing Office prepared according to paragraph XIVB of this exhibit. If the Servicing Official does

not receive a new certification on such person(s), the Servicing Official will annotate the project master list with an E beside the ''Expiration Date of Tenant Certification'' on Form FmHA or its successor agency under Public Law 103–354 1944–29 for the appropriate tenant(s) or member(s). The Servicing Official will continue to authorize interest credit and waiver of overages while the termination is being actively pursued until resolution of the termination. The payment of RA will be suspended during the termination process. Upon conclusion of the termination process the RA will either be reinstated or given to another tenant or member.

7 The borrower must submit Form FmHA or its successor agency under Public Law 103–354 1944–29 to the Servicing Office with each payment, report of overage, or request for RA as required in paragraph XIIIC2f(1) of this exhibit. The calculations on part II of the form must be for tenants or members in residence on the first day of the month preceding the payment due date. All calculations will be made as if the tenant or member was in residence for the full month. Adjustments Will Not Be Made to the Borrower's Subsidy, RA Request, Payment, or Overage Charges for Persons Moving in or Out After the First of the Month. (See Guide Letter 1930–1 for any necessary Servicing Official's response after review of Form FmHA or its successor agency under Public Law 103–354 1944–29.)

8 Paragraph VIII B 4 b of this exhibit is a required lease or occupancy agreement provision requiring tenants or members to notify the management of any change in gross household income or adjustments to income, or size or composition of household. Upon receipt of such notice, the borrower must promptly obtain a new certification form and income verification and submit it to the Servicing Office when there is a permanent change in size or composition of the household, or a permanent increase of $40 or more per month ($480 per year) or a permanent decrease of $20 or more per month ($240 per year) in gross household income or adjustment to income.

9 When a borrower/agent believes that an applicant/tenant or member certification or income verification is inaccurate, they may provide the information including the tenant's or member's social security number to the Servicing Office requesting a further verification through the appropriate State employment agency. The Servicing Office will forward the request to the State Director for submission to the State Agency that keeps records on the incomes of wage earners. The State Director will develop a method of obtaining the information from the State Agency. Any reasonable cost for information provided by a State shall be a project expense.

10 Landlords may use the following emergency certification/recertification procedure in the unusual cases described herein, but must otherwise meet the FmHA or its successor agency under Public Law 103–354 submission requirements stated in paragraph VII F 1 of this exhibit:

a When a tenant or member applicant needs to initially occupy before income verification is complete, or when a borrower has been unable to initiate recertification on time, an ''estimated'' verification may be performed and the certification and the lease or occupancy agreement completed and marked ''subject to verification of income.'' Temporary verification may also be obtained through contacts with individuals who may be knowledgeable of the person's income. When no other verifiable source is available, a written, dated, and signed statement, certifying that the disclosed annual gross income of the household is accurate to the best knowledge of the tenant or member, may be accepted. After normal verification is completed, any needed adjustment in tenant or member contribution can be made and recorded on the certification and when appropriate, the lease or occupancy agreement.

b When a tenant or member decides to continue occupancy after giving indication of vacating the project and insufficient time remains to complete the verification of income or when an employer fails to return a verification of income on time, the procedure of F 10 a of this paragraph may be followed.

c When a delay is caused by circumstances beyond the control of the tenant or landlord, such as when delays are encountered in receiving verification of income, employment, etc., from third party sources, the procedure of F 10 a of this paragraph may be followed.

G *Mid-month tenant or member certification*. The certification effective date for a tenant or member starting occupancy on a day other than the first day of the month shall be the first day of the following month. Certification shall be completed according to paragraph VII F of this exhibit.

H *Resolution of suspected inaccurate information*. Should forms, interviews, unit inspections, complaints, or other information bring into question the accuracy or reasonableness of information relied upon to qualify the residents for occupancy or benefits, it should be further explored and resolved by the owner and/or management agent. Should the matter remain unsolved, the borrower or management agent may forward a report to the Agency along with a recommendation for further action. The Agency may evaluate such material to determine whether further action is warranted. Such actions may include those authorized under FmHA or its successor agency under Public Law 103–354 Instructions 2012–B, 1940–M, or subpart N of

part 1951 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

VIII *Lease Agreements, Occupancy Agreements, Rules, and Other Tenant Information:* A lease agreement is a written contract between a tenant and landlord assuring the tenant quiet, peaceful enjoyment and exclusive possession of a specific dwelling unit in return for payment of rent and reasonable use and protection of the property. The contract between a cooperative member and the cooperative is called an occupancy agreement. Should the provisions of any lease or occupancy agreement be in violation of any State or local law, it may be modified to the extent needed to comply with the law; however, the change should be as consistent as possible with the provisions set out herein.

A *Form of lease or occupancy agreement.* Each State Director is encouraged to prepare a sample lease form complying with individual State laws and FmHA or its successor agency under Public Law 103–354 requirements. Occupancy agreements for cooperatives are to be prepared in accordance with applicable State laws and subpart E of part 1944 of this chapter. The State Director may incorporate clauses which meet a specific need in compliance with State law. Any sample lease must be reviewed and approved by the OGC before being provided to borrowers as a guide for preparing an acceptable project lease.

1 All leases will be in writing. Initial leases for units for which tenants are eligible must cover a period of 1 year. If the tenant is not subject to termination of occupancy according to paragraph XIV A of this exhibit, a renewal lease, or an addendum of lease extension, shall cover a period of 1 year. Leases for LH may be for shorter periods where occupancy is typically seasonal. Leases for all tenants signed after notification of intent to prepay, but prior to prepayment, may be for a term which ends on the date of prepayment. Leases for tenants who entered a project with a Letter of Priority Entitlement and who are temporarily occupying a unit for which they are not occupancy eligible, will have the clause in paragraph VIII C 1 of this exhibit inserted to deal with their obligation to move when an eligible unit becomes available.

2 Leases and occupancy agreements must contain an appropriate escalation clause permitting changes in basic and/or note rate rents or occupancy charges prior to the expiration of the document. Such changes would normally be necessary due to changing utility and other operating costs. Any changes must be approved by FmHA or its successor agency under Public Law 103–354 according to exhibit C of this subpart. Leases must specify that no increases in tenant contribution to rent will take place due to prepayment of the FmHA or its successor agency under Public Law 103–354 loan during the term of the lease. Leases must also state that should any Federal subsidies paid to the borrower on behalf of tenants be suspended or canceled, due to a monetary or nonmonetary default by the borrower, the monetary payment made by the tenant to the borrower (or, when applicable, the monetary payment received by the tenant from the borrower) shall not change over that which would have been required had the subsidy remained in place.

3 Pursuant to the Fair Housing Amendments Act of 1988, no provision may be incorporated into a lease that would prohibit:

a Occupancy by families with children under 18 years of age. As applied to housing designated as elderly, those residing with the elderly household who are under 18 years of age may not be excluded under the terms of the lease.

b Occupancy by a person with a handicap who is willing and able to make reasonable modifications to an apartment unit, at the tenant's expense, to afford such person full enjoyment of the apartment. The owner may include in the lease, where reasonable, permission to occupy the apartment on the condition the tenant agrees to restore the interior of the apartment to the condition that existed before any modifications, reasonable wear and tear excepted.

4 In areas where there is a concentration of non-English speaking individuals in the project or in the community, leases or occupancy agreements and the established rules and regulations for the project written in both plain English and the appropriate non-English language must be available to the tenants or members. The tenant or member should have the opportunity to examine and execute either form of lease or occupancy agreement.

5 The form of lease or occupancy agreement to be used by the borrower and any modifications of the same must be approved by the FmHA or its successor agency under Public Law 103–354 Servicing Official. When submitting a lease or occupancy agreement form for FmHA or its successor agency under Public Law 103–354 approval, it must be accompanied by a letter from a practicing attorney licensed in the State regarding its legal sufficiency and compliance with State law and FmHA or its successor agency under Public Law 103–354 regulations.

6 A copy of a properly completed and approved exhibit A–6 of subpart E of part 1944 (when the tenant or member will pay utilities) and a copy of the established rules and regulations for the project will be provided to the tenant or member as attachments to the lease or occupancy agreement.

7 A copy of a properly completed and signed Form FmHA or its successor agency under Public Law 103–354 1944–8 or HUD Form 50059 or other HUD approved form for those

tenants receiving HUD section 8 tenant subsidy will be used to calculate each tenant's contribution and will be provided to the tenant as an attachment to the lease.

B *Required lease or occupancy agreement clauses.* The following clauses will be required in leases used in connection with FmHA or its successor agency under Public Law 103–354-financed housing projects. Only clauses in paragraphs VIII B 1, VIII B 4 b, VIII B 4 d, VIII B 4 e, VIII B 5, and VIII B 7 of this exhibit are applicable to cooperative occupancy agreements.

1 All lease and occupancy agreements must include a statement indicating that the project is financed by FmHA or its successor agency under Public Law 103–354 and is subject to nondiscrimination provisions of title VI of the Civil Rights Act of 1964, title VIII of the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975; and that all complaints are to be directed to the Administrator, FmHA or its successor agency under Public Law 103–354, USDA, Washington, DC 20250. However, complaints of Fair Housing violations may be sent directly to the Secretary of Housing and Urban Development, Washington, DC 20410.

2 All lease agreements must specify that should the unit become overcrowded or underutilized or should the tenant no longer meet the eligibility requirements of the project during the term of the lease agreement, he/she will be required to vacate the unit at the end of the lease term unless eligibility can be established following specified steps, such as moving to an appropriate size unit, or an exception is granted by management.

3 All lease agreements must contain a provision that a tenant household's tenancy still exists during the time that the tenant household's personal possessions remain in the apartment unit after the tenant household has personally ceased occupancy with the intent to vacate and leave the project, until such time the personal possessions have been removed voluntarily or by legal means, subject to the provision of State or local law in such matters.

4 All leases used in FmHA or its successor agency under Public Law 103–354-financed RRH projects must include the following clauses except for persons who are elderly, disabled, or handicapped living in a full profit plan project unless otherwise noted. (Cooperative occupancy agreements must include the clauses contained in paragraphs VIII B 4 b, VIII B 4 d, and VIII B 4 e of this exhibit.)

a ''I understand that I will no longer be eligible for occupancy in this project if my income exceeds the maximum allowable adjusted income as defined periodically by the Farmers Home Administration or its successor agency under Public Law 103–354 for the (State/Territory).''

b ''I agree I must immediately notify the [landlord or cooperative] when there is a change in my gross income or adjustment to income, or when there is a change in the number of persons living in the household. I understand my rent or benefits may be affected as a result of this information. I also understand that failure to report such changes may result in my losing benefits to which I may be entitled or may result in the [landlord or cooperative] taking corrective action if benefits were mistakenly received. I understand the corrective action the [landlord or cooperative] may take includes the initiation of a demand for repayment of any benefits or rental subsidies improperly received, initiation of a notice to cancel any rental assistance or section 8 assistance being received for the balance of my certification period, initiation of a notice to increase my monthly rent to $____ per month (note rate rent for Plan II projects or 125 percent of rent in Plan I projects), or initiation or a notice of termination. I understand that one or more of these remedies may be initiated at the option of the [landlord or cooperative].''

c ''I understand that I must promptly notify the lessor of any extended absences and that if I do not personally reside in the unit for a period exceeding 60 consecutive days, for reasons other than health or emergency, my net monthly tenant contribution shall be raised to $____ per month (note rate rent for Plan II projects or 125 percent of rent in Plan I projects) for the period of my absence exceeding 60 consecutive days. I also understand that should any rental assistance be suspended or reassigned to other eligible tenants, I am not assured that it will still be available to me upon my return. I also understand that if my absence continues, that as landlord, you may take the appropriate steps to terminate my tenancy.''

d ''I understand that should I receive occupancy benefits to which I am not entitled due to my/our failure to provide information or due to incorrect information provided by me or on my behalf by others, or for any other household member, I may be required to make restitution and I agree to repay any amount of benefits to which I was not entitled.''

e ''I understand that income certification is a requirement of occupancy and I agree to promptly provide any certifications and income verifications required by the owner or cooperative board to permit determination of eligibility and, when applicable, the monthly tenant or member contribution to be charged.''

5 Leases and occupancy agreements used by borrowers participating in the FmHA or its successor agency under Public Law 103–354 RA program will contain the following

clauses. (These clauses can be made an addendum to the lease and they must be signed by the lessor and lessee):

''I understand and agree that as long as I receive rental assistance, my gross monthly contribution (as determined on the latest Form FmHA or its successor agency under Public Law 103–354 1944–8, which must be attached to this lease) for rent or occupancy charge and utilities will be $____. If I pay any or all utilities directly (not including telephone or cable TV), a utility allowance of $____ will be deducted from my gross monthly contribution and my resulting net monthly contribution will be $____. If my net monthly contribution would be less than zero, the lessor will pay me $____.

I also understand and agree that my monthly contribution under this lease or occupancy agreement may be raised or lowered, based on changes in the household income or adjustments to income, failure to submit information necessary to certify income, changes in the number and age of persons living in the household, and on the escalation clause in this contract. Should I no longer receive rental assistance as a result of these changes, or the rental assistance agreement executed by the [owner or cooperative] and FmHA or its successor agency under Public Law 103–354 expires, I understand and agree that my monthly contribution may be adjusted to no less than $____ (basic) nor more than $____ (note rate) during the remaining term of this [lease or occupancy agreement], except that based on the escalation clause in this contract these rates may be changed by a Farmers Home Administration or its successor agency under Public Law 103–354 approved rent or occupancy charge change.''

[Note No. 1: Eligible borrowers with LH loans and grants, Plan I direct RRH or insured RRH loans approved before August 1, 1968, may omit the words ''no less than $____ (Basic) nor more than'' from the last sentence of the above statement.]

''I understand that every effort will be made to provide rental assistance so long as I remain eligible and the rental assistance agreement between the [owner or cooperative] and FmHA or its successor agency under Public Law 103–354 remains in effect. However, should this assistance be terminated I may arrange to terminate this contract, giving proper notice as set forth elsewhere in this [lease or occupancy agreement].''

[Note No. 2: The following additional clause is needed by those borrowers with Plan I direct or insured RRH loans approved before August 1, 1968.]

''I further agree that should I be permitted to occupy when my income exceeds maximum limits, I shall pay a 25 percent rental rate surcharge in addition to my rental rate of $____.''

6 For leases with tenants occupying units in which borrowers are operating under Plan I either with or without interest credit approved on or after August 1, 1968:

''I understand and agree that my rent rate of $____ (includes) (excludes) my cost of utilities. I further understand and agree that should I be permitted to occupy when my income exceeds maximum limits, I shall pay a 25 percent rental rate surcharge in addition to my rental rate.''

7 For leases or occupancy agreements in projects which borrowers are operating under Plan II Interest Credit Only:

''I understand and agree that my gross monthly contribution as determined on the latest Form FmHA or its successor agency under Public Law 103–354 1944–8, which must be attached to this contract, for [rent or occupancy charge] and utilities will be $____.

If I pay any or all utilities directly (not including telephone or cable TV), a utility allowance of $____ will be deducted from my gross monthly [rent or occupancy charge] except that I will pay not less than the basic rent nor more than the note rate [rent or occupancy charge] stated below. My net monthly [rent or occupancy charge] will be $____. I understand that should I receive rental subsidy benefits (interest credit) to which I am not entitled, I may be required to make restitution and I agree to pay any amount of benefit to which I was not entitled. I also understand and agree that my monthly tenant [rent or occupancy charge] under this [lease or occupancy agreement] may be raised or lowered based on changes in the household income, failure to submit information necessary to certify income, changes in the number and age of persons living in the household, and on the escalation clause in this contract. My [rent or occupancy charge] will not, however, be less than $____ (basic) nor more than $____ (note rate) during the term of this contract, except that based on the escalation clause in this [lease or occupancy agreement], these rental rates or occupancy charges may be changed by a Farmers Home Administration or its successor agency under Public Law 103–354 approved [rent or occupancy charge] change.''

8 Leases used by borrowers with LH loans and/or grants will use the following additional clauses:

a ''I understand that the project is operated and maintained for the purpose of providing housing for domestic farm laborers and their immediate families. I do hereby certify that a substantial portion of my immediate family income is and will be derived from farm labor. I further understand that domestic farm labor means persons who receive a substantial portion of their income as laborers on farms in the United States

and either are citizens of the United States, or reside in the United States, Puerto Rico, or the Virgin Islands, after being legally admitted for permanent residence therein, and may include the immediate families of such persons. Laborers on farms may include laborers engaged in handling agricultural commodities while in the unprocessed stage. It also includes labor for the production of aquatic organisms under a controlled or selected environment.''

b ''I agree that if my household income ceases to be substantially from farm labor for reasons other than disability or retirement, I will vacate my dwelling after proper notification by the owner.''

9 All leases, including all renewal leases, shall contain the following clause:

''It is understood that the use, attempted use, or possession, manufacture, sale, or distribution of an illegal controlled substance (as defined by local, State, or federal law) while in or on any part of this apartment complex or cooperative is an illegal act. It is further understood that such action is a material lease violation. Such violations (hereafter called a ''drug violation'') may be evidenced upon the admission to or conviction of a drug violation.

The landlord may require any lessee or other adult member of the tenant household occupying the unit (or other adult or nonadult person outside the tenant household who is using the unit) who commits a drug violation to vacate the leased unit permanently, within timeframes set by the landlord, and not thereafter enter upon the landlord's premises or the lessee unit without the landlord's prior consent as a condition for continued occupancy by members of the tenant household. The landlord may deny consent for entry unless the person agrees to not commit a drug violation in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation, or completed a counseling or recovery program.

The landlord may require any lessee to show evidence that any nonadult member of the tenant household occupying the unit, who committed a drug violation, agrees to not commit a drug violation in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation, completed a counseling or recovery program within timeframes specified by the landlord as a condition for continued occupancy in the unit. Should a further drug violation be committed by any nonadult person occupying the unit the landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

If a person vacating the unit, as a result of the above policies, is one of the lessees, the person shall be severed from the tenancy and the lease shall continue among any other remaining lessees and the landlord. The landlord may also, at the option of the landlord, permit another adult member of the household to be a lessee.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land the remaining enforceable provisions shall remain in effect. The provisions set out above do not supplant any rights of tenants afforded by law.

C *Special lease clause.*

1 *Handicapped accessible units occupied by those not needing specially designed features.* A clause should be used in addition to the required clauses in the special situation where management temporarily assigns a nonhandicapped households to occupy a handicapped accessible unit specially designed for handicapped households under the conditions of paragraph VI D 2 g of this exhibit. Any agreements between the landlord and the tenant concerning who bears the costs of moving to another suitably sized vacant unit should be documented.

''I/we acknowledge that I/we am/are occupying a designated handicapped accessible unit. I/we acknowledge that priority for such units is given to those needing special physical design features. I/we acknowledge that I/we am/are permitted to occupy the unit until management issues a notice that a priority applicant is on the waiting list and that I/we must move to another suitably sized vacant unit in the project. Upon receiving this notice, I/we agree to move at [my/our own] [shared (as agreed)] [project] expense within 30 calendar days to the suitably sized vacant unit within the project, if one is available. I/we further understand my/our rental rate will change, when appropriate, to the rental rate for the unit I/we move to and this lease will be modified accordingly.''

2 *Prepayment subject to restrictive-use covenants.* Upon FmHA or its successor agency under Public Law 103–354 approval and acceptance of a prepayment, subject to restrictive-use covenants, the landlord will ensure all existing tenant leases and renewals of such leases are amended to include the following provisions:

''As a condition of the Government's approval of a request to accept early payment on notes owed, the tenant household is protected, to the extent herein disclosed, against involuntary displacement (except for good cause) and against having the tenant household contribution level (rent) materially increased until [insert a date 20 years from the date of the last FmHA or its successor agency under Public Law 103–354 loan or servicing action making the loan subject to prepayment restrictions, or insert ''the tenant household decides to move'' depending

on the restrictive-use provision accepted by the owner (see §1965.215(e)(5) of subpart E of part 1965 of this chapter)]. Specifically, the tenant household contribution level (rent) must be consistent with those necessary to maintain the project for low- and moderate-income tenants. Those tenant households whose tenant household contribution level (rent) did not exceed 30 percent of their monthly adjusted income at the time the prepayment was accepted, may have their tenant household contribution level (rent) raised to the lesser of 30 percent of their monthly adjusted income or 10 percent of their gross monthly income per year. Those tenant households whose tenant household contribution level (rent) exceeded 30 percent of their monthly adjusted income at the time the prepayment was accepted, may have their tenant household contribution level (rent) raised to the lesser of the latest U.S. Consumer Price Index or 10 percent per year.''

D *Other lease provisions.* All leases or occupancy agreements must contain provisions covering:

1 Names of the parties to the contract and all individuals to reside in the unit and the identification of the unit.

2 The amount and due date of monthly contributions.

3 Any penalty for late payment of monthly contributions according to paragraph IX B of this exhibit.

4 The utilities and quantities thereof and the services and equipment to be furnished to the tenant or member by the management or cooperative and the tenant's or member's responsibility to pay utility charges promptly when due.

5 The process by which contribution and eligibility for occupancy shall be determined and redetermined including:

a The frequency of such contribution and eligibility determinations.

b The information which the tenant or member shall supply to permit such determinations: Usually, income verification; names and ages of household members; in congregate facilities, only that essential information about the person's request for provided service(s) to determine whether the project provides the services requested by the applicant/tenant and/or to determine how to best serve the applicant's/tenant's/member's request with reasonable accommodation, referral services, etc. In the case of a group home, the information may also include an assessment by a professional medical examiner or practitioner, social service caseworker, representative of an advocacy group, member of the clergy, etc., that the tenant/applicant provides to support the application or recertification for housing and services.

c The standards by which rents or occupancy charge, eligibility, and appropriate dwelling unit size shall be determined.

d Tenant's household agreement to move to a unit of appropriate size if the household size changes.

e The circumstances under which a tenant or member may request a redetermination of tenant contribution.

f The effect of misrepresentation by the tenant or member of the facts upon which contributions or eligibility determinations are based.

g The time at which shelter cost change, contribution changes, or notice of ineligibility shall become effective.

6 The limitation upon the tenant or member of the right to the use and occupancy of the dwellings. Limitations may not be discriminatory in nature.

7 The responsibilities of the tenant or member in the maintenance of the dwelling and the obligation for intentional or negligent failure to do so.

8 Agreement of management or cooperative to accept a tenant or member contribution without regard to any other charges owed by tenant or member to management or cooperative and to seek separate legal remedy for the collection of any other charges which may accrue to management from tenant(s) or member(s).

9 The responsibility of management to maintain the buildings and any common areas in a decent, safe, and sanitary condition in accordance with local housing codes and FmHA or its successor agency under Public Law 103–354 regulations, and its liabilities for failure to do so.

10 The responsibility of management or cooperative to provide the tenant or member with a written statement of the condition of the dwelling unit (when the tenant or member initially enters into occupancy and when vacating the dwelling unit), and the conditions under which the tenant or member may participate in the inspection of the premises which is the basis for such statement.

11 The circumstances under which management or the cooperative may enter the premises during the tenant's or member's possession thereof, including a periodic inspection of the dwelling unit as a part of a preventive maintenance program.

12 Responsibility of tenant or member to advise management or the cooperative of any planned absence for an extended period, usually 2 weeks or more.

13 Agreement that tenant or member may not let or sublet all or any part of the premises without the consent of management or cooperative and FmHA or its successor agency under Public Law 103–354.

14 Understanding that should the RRH project be sold to a buyer approved by FmHA or its successor agency under Public Law

103–354, the lease will be transferred to the new owner.

15 The formalities that shall be observed by management or the cooperative and the tenant or member in giving notice one to the other as may be called for under the terms of the lease or occupancy agreement.

16 The circumstances under which management or the cooperative may terminate the lease or occupancy agreement, all limited to good cause, and the length of notice required for the tenant or member to exercise the right to terminate.

17 The procedure for handling tenant's or member's abandoned property as provided by State law.

18 Disposition of lease or occupancy agreement if building becomes uninhabitable because of fire or other disaster. Right of owner or cooperative to repair or rehabilitate the building within a certain period or terminate the lease or occupancy agreement.

19 The agreement that any tenant or member grievance or appeal from management's or cooperative's decision shall be resolved in accordance with procedures consistent with FmHA or its successor agency under Public Law 103–354 regulations covering such procedures which are posted in the rental office or at the cooperative.

20 That the lease may be terminated by the tenant, with 30 days notice, prior to expiration of its term for ''good cause'' such as moving to another location for employment, loss of job, severe illness, death of spouse, or other reasons customary or mandatory in the community, or after notification by RRH borrower of intent to prepay. The prior notice on which a cooperative member may cancel an occupancy agreement for ''good cause'' shall be 4 months.

21 The usual signature clause attesting that the lease or occupancy agreement has been executed by the parties.

E *Prohibited lease or occupancy agreement clauses.* Clauses in the classifications listed below shall not be included in any lease or occupancy agreement.

1 *Confession of judgment.* Prior consent by tenant or member to any lawsuit the landlord or board may bring against the tenant or member in connection with the lease or occupancy agreement and to a judgment in favor of the landlord or board.

2 *Distraint for rental or occupancy charge or other charges.* Authorization to the landlord or cooperative board to take property of the tenant or member and hold it as a pledge until the tenant or member performs any obligation which the landlord has determined the tenant or member has failed to perform.

3 *Exculpatory clause.* Agreement by tenant or member not to hold the landlord or landlord's agents or cooperative board liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents or the cooperative board.

4 *Waiver of legal notice by tenant or member prior to actions for eviction or money judgments.* Agreement by tenant or member that the landlord or board may institute suit without any notice to the tenant or member that the suit had been filed.

5 *Waiver of legal proceedings.* Authorization to the landlord or board to evict the tenant or member or hold or sell the tenant's or member's possessions whenever the landlord or board determines that a breach or default has occurred.

6 *Waiver of jury trail.* Authorization to the landlord's or board's lawyer to appear in court for the tenant or member and to waive the tenant's or member's right to trail by jury.

7 *Waiver of right to appeal judicial error in legal proceedings.* Authorization to the landlord's or board's lawyer to waive the tenant's or member's right to appeal on the ground of judicial error in any suit or the tenant's or member's right to file a suit in equity to prevent the execution of a judgment.

8 *Tenant or member chargeable with costs or legal actions regardless of outcome.* Agreement by the tenant or member to pay attorney's fees or other legal costs whenever the landlord or board decides to take action against the tenant or member even though the court finds in favor of the tenant or member. (Omission of this clause does not mean that the tenant or member, as a party to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant or member loses the suit.)

F *Modification of lease or occupancy agreement and notification to tenants or members.* The landlord or board may modify the terms and conditions of the lease or occupancy agreement with FmHA or its successor agency under Public Law 103–354 prior consent, effective at the end of the initial term or a successive term, by serving an appropriate notice on the tenant or members, together with the tender of a revised lease or occupancy agreement or an addendum revising the existing lease or occupancy agreement. This notice and tender shall be delivered to the tenant or member either by first-class mail, properly stamped and addressed or hand-delivered to the premises to an adult member of the household. The date on which the notice shall be deemed to be received by the tenant or member shall be the date on which the first-class letter is mailed or the date on which the copy of the notice is delivered to the premises. The notice must be received at least 30 days prior to the last date on which the tenant or member has the right to terminate the occupancy without executing the revised lease or occupancy agreement. The notice must advise the tenants or members that they may appeal modifications to the lease or occupancy agreement in

accordance with subpart L of part 1944 of this chapter if the modification will result in a denial, substantial reduction, or termination of benefits being received. The same notification will be applicable to any changes in the rules and regulations for the project.

G *Occupancy rules and informative material.* Occupancy rules establish the basis for the management-tenant or member relationship. Occupancy rules and regulations must be provided and explained by the project management to enable the tenant or member to understand the purposes, objectives, and standards of the project. The rules will be approved by the FmHA or its successor agency under Public Law 103–354 State Director or designee, generally together with the project management plan, management agreement, and lease or occupancy agreement form.

1 All rules for occupancy and rent or occupancy charge structures will be in writing posted conspicuously in the borrower's and/or manager's offices and provided to each tenant or member with the lease or occupancy agreement.

2 Proposed changes of any rules for occupancy must be made available to each tenant or member at least 30 days in advance of implementation, and tenants or members must be advised that they may appeal changes in accordance with FmHA or its successor agency under Public Law 103–354 tenant grievance and appeals procedure subpart L of part 1944 of this chapter.

3 Landlords or cooperatives may not place unreasonable restrictions on residents desiring to use federally financed community rooms for their enjoyment. No rule may infringe on the rights of the rental tenants to organize an association of tenants. Such associations may be organized to bargain with management, as well as to act socially and/or provide for the welfare of its members. The project management person or organization should be available and willing to work with a tenant organization. Examples of unreasonable restrictions include rules requiring management representatives to be present in order to use community rooms, rules barring tenant or cooperative organizational meetings from using the rooms, or rules requiring management representatives to be present at any resident organizational meeting held in community rooms.

4 Rules may be promulgated that prohibit activities which are detrimental to management, tenants and members. Such activities include threats to the health or safety of other tenants or members or the employees of the borrower, interference with the quiet enjoyment of the premises by other tenants or members, or damage to the physical structure of the project.

5 The borrower may choose to provide rules for nonelderly projects that either permit or exclude pets except that no rules may be promulgated that would prohibit the occupancy of a household member who requires the services of a service animal to achieve the normal function of that household member.

6 For each RRH project or portion of a project specifically designated for the elderly, the borrower must have established project rules permitting elderly, handicapped, or disabled tenants to keep commonly accepted household pets. These pet rules are to be governed by the following guidelines:

a Pet rules must not:

(1) Prohibit, prevent, restrict, or discriminate against any tenant who owns or keeps a pet in their apartment unit, with respect to continued occupancy in the project unless the approved project pet rules are violated.

(2) Prohibit, prevent, restrict, or discriminate against any applicant who owns a pet with respect to obtaining occupancy in the project.

(3) Charge an extra monthly rental charge for pets.

b Borrowers with operational projects must consult with the tenants of the project when revising pet rules and retain documentation on how the consultation process was conducted.

c. Borrowers with new projects will establish pet rules prior to occupancy, but may revise those rules based on tenant comments and suggestions received after rent-up begins.

d Pet rules will be approved by FmHA or its successor agency under Public Law 103–354 as part of, or an amendment to, the project lease. FmHA or its successor agency under Public Law 103–354 approval will be granted when the rules meet the provisions and intent of this subparagraph.

e Pet rules will be reasonable and will be written to consider at the least the following factors:

(1) Density of project units.

(2) Pet size.

(3) Type of pet.

(4) Potential financial obligations of tenants who own or keep pets.

(5) Standards of pet care.

(6) Pet exercise areas.

(7) State and local animal laws or ordinances.

(8) Liability insurance.

f Pet rules must allow the borrower or project manager authorization to remove from the project any pet whose conduct or condition is duly determined to constitute a nuisance or threat to the health or safety of other tenants or members in the project or persons in the surrounding community.

7 Initial rules will be attached to the lease or occupancy agreement. Approval by FmHA or its successor agency under Public Law 103–354 for changers and additions may be requested as needed.

8 The following items illustrate areas that are among those which should be addressed in rules or informative materials developed by management and provided to all tenants or members prior to move-in:

a Explanation of rights and responsibilities under the lease or occupancy agreement. Where a non-English language is common to a project area, a lease or occupancy agreement written in that language should also be provided.

b Rent payment or occupancy charge policies and procedures should be fully explained.

c Policy on periodic inspection of units.

d Responding to tenant or member complaints.

e Maintenance request procedure.

f Project services and facilities available to tenants or members.

g Office location, hours, and emergency telephone numbers.

h Map showing location of community facilities including schools, health care, libraries, parks, etc.

i Restrictions on storage and prohibition against abandoning vehicles in the project area.

j A rental project newsletter or other printed material distributed to potential tenants or the public. If a newsletter or other printed material is desired, it must contain an appropriate nondiscrimination statement, or fair housing slogan or logotype.

k Community and public transportation schedules.

9 Tenant or member may be permitted to have a guest(s) visit their household. However, the landlord reserves the right to request a recorded declaration of domicile or proof of domicile if it is suspected that the guest is an unauthorized household occupant. Such suspicion may arise whenever an adult person(s) is making reoccurring visits or one continuous visit of 14 days and/or nights in a 45–day period without prior notification of the management. Should the tenant or person in question not provide the requested information needed to confirm other domicile, or should the facts be sufficient to evidence domicile in the project, then the landlord may consider such person(s) a member of the tenant household and may enforce any lease covenants shown to be broken and/or require recertification.

10 No provisions may be incorporated into occupancy rules that would discriminate against or otherwise deny equal opportunity to any person (whether the tenant or a person associated with the tenant) in the terms, conditions, or privileges of rental of a dwelling unit, or in the provision for services or facilities in connection wherewith, because of race, color, religion, sex, familial status, National origin, or handicap.

11 The borrower must establish and enforce rules to ensure there are reasonable accommodations to persons who are handicapped or disabled.

H *Security deposits.*

1 Security deposits are encouraged and they should be used when it is reasonable and customary for the area for assurance of rental payment or charges for damages. The amount of security deposits must be reflected in the borrower's management plan and may not be changed without the written consent of the FmHA or its successor agency under Public Law 103–354 Servicing Official. When security deposits are used, they should not exceed an amount equal to the net tenant contribution for one month or basic rent, whichever is greater. Families receiving a HUD rental subsidy will pay security deposits according to HUD requirements. In an elderly project, the amount of additional security deposit for pets must be reasonable and not designed to prohibit or discourage tenancy but in no case should it exceed the basic rent of the project. Where a service animal is necessary for the normal function of a household member, an additional security deposit for the animal may not be charged. A membership fee, equal to one month's occupancy charge, will be required from members of a cooperative.

2 Security deposits for persons eligible for RA or Section 8 assistance shall be administered in a manner to prevent hardship on the household. If such tenants or members cannot pay the full amount initially, they may be given terms that may ordinarily:

a For RRH projects, not exceed a downpayment of 30 percent of adjusted monthly income plus $15 per month or that amount needed monthly to complete the security deposit within 3 months, whichever is greater (landlords may provide payment over longer terms if desired). For RCH projects, not exceed an initial payment of $25 plus the amount needed monthly to complete the membership fee within 3 months (longer terms may be permitted if desired by the project). Should installments not be met, the total security deposit charge may become due and payable in full.

b For low-income farmworkers in an LH project, not exceed $25 downpayment and $15 per month until an equivalent of one month's project rent is reached. In the case of migrants who will occupy the units for a short period of time, exception to this policy by FmHA or its successor agency under Public Law 103–354 may be made upon written request from the borrower when it is shown that such deposits need to be raised to protect the interest of the government and it will not create a hardship on the tenants.

3 Security deposits or membership fees shall be handled in accordance with any State or local laws governing security deposits. Both security deposits and membership

fees shall be deposited in a separate account when required by State or local law, and such funds must be held in a Federally insured institution, and shall be handled in accordance with any State or local laws governing such deposits. Funds in the security deposit account shall only be used for authorized purposes as intended and represented by the project management in the management plan, and until so used, shall be held by the borrower in trust for the respective tenants. Funds in the membership fee account shall only be used for authorized purposes, until so used, shall be held by the borrower in trust for the respective members.

4 Borrowers may assess fair and reasonable charges to the security deposit or membership fee for damage and loss caused or allowed by the tenant or member. An itemized accounting for such charges must be presented to the tenant or member after the move-out inspection provided for in paragraph X E 2 of this exhibit, unless the tenant or member has abandoned the property and his/her whereabouts are unknown and cannot be ascertained after reasonable inquiry.

5 The owner may not increase, for persons with handicaps, any customarily required security or membership fee deposit for restoration made to earlier modifications that permitted the handicapped person's full enjoyment of the dwelling unit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restoration(s) at the end of the occupancy, the borrower may negotiate as part of such a restoration agreement, a provision requiring that the tenant or member pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restoration(s). The interest in any such account shall accrue to the benefit of the tenant or member.

I *Leases for Section 8 and Section 8 Rental Certificate or Rental Voucher tenants/members.* Guidance on leases for such tenants/members is set out herein; however, the use of any addendum necessary to meet the requirements of FmHA or its successor agency under Public Law 103–354, HUD, or other provider of subsidy or assistance as needed to comply with the requirements of any such other program, may be used as needed. Whenever conflicts or disputes arise, the servicing office may forward a request for guidance to the State Director, along with any recommendation. The State Director may take those actions necessary to resolve the issue with the advice and consent of the Office of the General Counsel.

1 Borrowers/Management agents are encouraged to use HUD approved lease agreements. Evidence of HUD's approval should be contained in the borrower casefile.

2 The HUD approved lease must include modifications of addenda that meet the conditions or requirements of paragraphs VIII A, B1, B2, and B3 of this subpart.

3 An FmHA or its successor agency under Public Law 103–354-approved lease may also be used when acceptable by HUD and the local housing authority when this option proves more practical.

IX *Rent or Occupancy Charge Collection and Account Servicing:* Rents or occupancy charges should be due on the first day of each month of the lease period. The time and place of on-site collection and/or the correct address for payment by mail should be well publicized and consideration should be given to an after-hours depository if needed.

A *Receipts.* A form of serially-numbered receipts should be selected for use and the collection agent held accountable for every receipt. Optional collection services may be considered when they are available.

B *Delinquencies.* A system to identify and detect unpaid rents or occupancy charges within the project should be instituted in the management plan and made known to tenants in their lease. The borrower may adopt the late rental payment penalty and grace period prescribed by State law; otherwise, they may not exceed a grace period of 10 days from the rental or occupancy charge due date and not have the late payment penalty exceed the highest of:

1 An amount up to $10 after the grace period, or

2 An amount equal to 5 percent of the tenant's gross tenant contribution (GTC) (found at line 30 of Form 1944–8) after the grace period,

3 Any late payment policy established should address unusual situations such as tenants receiving income from Social Security, pension and retirement type funds that tenants receive routinely in the few days following the first day of a month. A 5-day grace period following the usual receipt date of such payment could be permitted.

4 The plan should also address any provisions for waivers of late payment penalty, if appropriate

C *Recapture of improperly advanced RA and interest credit.* Recapture of improperly advanced RA and interest credit will be processed in accordance with subpart N of part 1951 of this chapter.

D *Project late fees on Predetermined Amortization Schedule System (PASS) accounts.*

1 Project late fees are charged on PASS account loan payments not received by FmHA or its successor agency under Public Law 103–354 by close of business of the 10th day of the month as further described in § 1951.510(c)(2) of subpart K of part 1951 of this chapter.

2 A borrower may request in writing a waiver of a late fee according to § 1951.510(c)(2) of subpart K of part 1951 of this

chapter. Borrowers may appeal a denial of a request for a late fee waiver under the Agency's uniform appeal procedures set out in subpart B of part 1900 of this chapter.

3 Late fee waivers are determined to be a benefit to the borrower entity and must be reported to IRS by the FmHA or its successor agency under Public Law 103–354 Finance Office.

4 If the cause of the late fee is an FmHA or its successor agency under Public Law 103–354 accounting system error, the FmHA or its successor agency under Public Law 103–354 may suspend sending monthly billings to the borrower until the error is corrected. If delinquency persists after correcting the error, late fees will be charged. Late fees charged as a result of FmHA or its successor agency under Public Law 103–354 error will be administratively corrected and not reported to IRS by the FmHA or its successor agency under Public Law 103–354 Finance Office.

5 Except for cooperatives, project late fees are not a project expense. Borrowers shall record a line item entry on Form FmHA or its successor agency under Public Law 103–354 1930–7 showing late fees, offset by an equal transfer-in of the borrower's own funds or a reduction of the borrower's return to owner.

X *Maintenance:* Maintenance is the process by which a project is kept up in all respects and includes land, buildings, and equipment. Maintenance responsibilities will be included in the management plan. Proper maintenance will help to keep a good image for the project, help to minimize vacancies, and help to preserve the project. Plans and policies for inspections, effective maintenance and repair are to be established at the outset and modified periodically as needed. The following types of maintenance are necessary:

A *Routine maintenance.* Routine maintenance and repairs will be those cost items and services included in the annual budgets to be paid out of the operations and maintenance expense account. It includes regular maintenance tasks of the project that can be prescheduled or planned for, based on equipment availability and property characteristics tasks performed on a regular basis to maintain the appearance of the project and to prevent an accumulation of debris and subsequent deterioration.

B *Responsive maintenance.* This includes all maintenance tasks performed in response to either requests for service from tenants or members or unplanned breakdowns. An essential part of any maintenance system is to plan for requests coming from the dwelling units and for emergencies occurring in the systems serving the apartments. The project manager or the cooperative's board of directors should develop a plan to focus on: who receives the requests, how they are handled, how specific employees or members are assigned to the tasks, and what kind of records are kept. The capacity of the project manager or board to respond to requests and emergencies is one of the true tests of a successful maintenance program.

C *Preventive maintenance.* This is similar to inspection type maintenance. Regular checking and servicing of equipment and systems is done as required by service information. Preventive maintenance of mechanical systems, building exteriors, elevators, and heating and cooling systems in projects require specially trained personnel. The project manager should establish biweekly or monthly schedules in which the routine oiling, adjusting, replacing of filters, and the like is done based on manufacturer's manuals and specifications.

D *Long-term maintenance and replacement (curable depreciation).* These are major expense items which normally do not occur on an annual basis and cannot be afforded from an annual budget income. These expenses include items such as repaving the parking lot or repainting an entire building or project; replacement of furnishings and equipment, including such items as stoves, refrigerators, carpets, water heaters, furnaces, etc., whenever such replacements are beyond the capacity of the project to pay out of the normal operating budget. The borrower may request permission to use reserve funds to pay for these expenses when they occur. However, use of funds out of the reserve account must be preapproved by FmHA or its successor agency under Public Law 103–354.

E *Inspection maintenance.* These are maintenance inspections performed periodically to discover problems before crisis situations develop. The following inspections of each apartment should be made at appropriate times:

1 *Move-in inspection.* Before move-in occurs, the management and the applicant accepted for occupancy should together inspect the unit to be occupied and agree upon any needed repairs. A written inspection report shall be prepared and a copy retained in the tenant's or member's file. Any of the identified deficiencies not corrected prior to occupancy should be noted on the lease or occupancy agreement or inspection move-in report and signed by the tenant or member and borrower's or cooperative's representative.

2 *Move-out inspection.* An inspection should be scheduled with the tenant or member when the management becomes aware that the tenant or member is moving out or has vacated the unit. Whenever possible, the inspection should be performed after the furniture has been moved out and before any portion of the security deposit or membership fee is returned to the tenant or member. Any repairs or costs to be charged to the tenant or member will be according to the terms of the lease or occupancy agreement,

local law, and regulations governing security deposits or membership fees in paragraph VIII H of this exhibit.

3 *Periodic inspection.* An inspection of this type should be made at least annually. The borrower should make provisions in the lease or occupancy agreement for periodic inspection of the units as a part of a preventive maintenance program.

XI *Rent or Occupancy Charge and/or Utility Allowance Changes:* It may be necessary as operating costs and/or revenues fluctuate to consider a change of rental or occupancy charge rates and/or utility allowance to keep the project viable. Before any change of rates or utility allowances may occur, prior written consent of FmHA or its successor agency under Public Law 103–354 is required. The procedure to request and implement a rental or occupancy charge and/or utility allowance change is specifically covered in exhibit C of this subpart.

XII *Borrower Project Budgets:*

A *Budget development and preparation.* Borrowers are responsible for developing project budgets using past actual experiences in developing realistic forecasts of projected project operations. The budgets must reflect realistic income sources, uses and amounts of funds, and allow realistic vacancy and contingency factors. Generated funds must be sufficient to pay the forecasted operating costs and authorized expenditures of the project including reserves and return on investment, leaving adequate cash on hand as a normal course of business. When the income from typical project operations (operational income) is not sufficient to meet the normal project cash requirements, the borrower is responsible for reducing expenditures, seeking FmHA or its successor agency under Public Law 103–354 consent for authorized withdrawals from the reserve account, and/or providing other funds (nonoperational funds) to meet project budget requirements.

1 Budgets will be prepared according to the instructions contained in Form FmHA or its successor agency under Public Law 103–354 1930–7.

2 Borrowers are required to develop a project budget annually.

3 Budgets will cover a 12-month period selected by the borrower that is to be the project fiscal year of operation.

4 Separate budgets will be developed for each project when the borrower owns more than one MFH project.

5 The priority order of planned and actual budget expenditures will be:

a Critical operating and maintenance expenses.

b FmHA or its successor agency under Public Law 103–354 debt service.

c Reserve account requirements.

d Other authorized expenditures.

e Return on owner's investment.

6 Project funds may not be used for borrower organizational expenses, except in the case of a cooperative or a nonprofit organization.

7 When tenants pay their own utilities, an updated or current exhibit A–6 to subpart E of part 1944 of this chapter is to accompany each budget submitted to FmHA or its successor agency under Public Law 103–354 for approval with justification to either retain or change the utility allowance(s).

8 When planned expenses appear to be excessive (such as when expenses at any subtotal level on the budget exceed 5 percent of that shown for typical costs for the area) for the area based on current cost data, the FmHA or its successor agency under Public Law 103–354 budget approval official may require justification prior to any approval action. Such justifications may include evidence that the cost is in line with what others charge for the same or similar services (i.e., cost estimates from others, summaries of rental housing revenues and expenditures from Agency or third-party sources, etc.). Such evidence may also be verified by the Agency at its option. When differences cannot be mutually resolved, the request for budget approval may be denied and the borrower or the borrower's designated representative will be advised of any applicable appeal rights in accordance with subpart B of part 1900 of this chapter. Any unapproved expenditure actually paid which is clearly in excess of a fair and equitable amount may be required to be repaid to the project from any authorized return on owner's investment or from nonproject sources, such that tenant rents will not be increased.

B *Return on investments authorized by borrower's RRH loan agreement/resolution.*

1 Limited profit borrowers may take the return authorized for the project's current budget year without further FmHA or its successor agency under Public Law 103–354 approval under the following conditions. (**Note:** This does not require delaying taking a return on owner's investment pending submission, review and/or action on any required audit by Agency officials):

a Payment may be only once a year based on the project's financial condition as of the end of the project fiscal year. Borrowers are encouraged to draw the return on investment in the days or weeks immediately following the close of the fiscal year. The return on owner's investment must be taken within 9 months of the last day earned, except when the circumstances described in paragraph XII B 2 a of this exhibit are applicable.

b Payment must have been approved as part of the borrower's annual budget on Form FmHA or its successor agency under Public Law 103–354 1930–7.

c The project must produce income at approved monthly rental rates during that

year, which is used to pay for the project expenses in accordance with the approved budget and, when appropriate, an approved servicing plan.

d The balance in the reserve account must be on schedule less any authorized withdrawals not requiring immediate redeposit. The amount of reduction of the annual reserve requirement approved as part of a servicing plan will be considered like an authorized withdrawal not requiring redeposit.

e Payment of the return may not produce a negative ending year unrestricted cash balance on Form FmHA or its successor agency under Public Law 103–354 1930–7.

2 If income is not adequate in any given fiscal year to cover payment of the return to owner, FmHA or its successor agency under Public Law 103–354 may authorize a well-documented request that the return be paid, provided:

a The return can be paid from excess funds available at the end of the following fiscal year of operation, as long as it does not result in a rent increase and the reserve account is current less authorized withdrawals. (Noncash losses of the borrower entity do not qualify to be recouped in following years.) This option is authorized only for the year immediately following the year in which the return was not paid. The prior year's return on owner's investment may be taken first, and any residual left to apply to the current year's return on owner's investment at the borrower's option.

b Release of reserve funds at the end of the current budget year with Servicing Official approval, if the principles set out in paragraphs XII B 1 b, c, and d of this exhibit are met, and further provided that:

(1) The reserve account will not be reduced below the amount required to be accumulated by that time considering any previously authorized withdrawals or adjustments; and,

(2) During the next 12 months, the amount in the reserve account will not likely fall below that required to be accumulated by the end of such 12-month period.

(3) This option is authorized only for the year immediately following the year in which the return was not paid. This does not apply to the return on investment waived while a special market rent budget is in effect.

3 Borrowers operating under a servicing (workout) plan and/or using special servicing market rate rents that call for less than full debt service payment to FmHA or its successor agency under Public Law 103–354 shall forego and cannot recoup the annual return to owner for the budget year that such plans or rents are in place.

4 When the provisions of paragraph XII B 1, 2 of this exhibit are not met only because the payment was not earlier approved on Form FmHA or its successor agency under Public Law 103–354 1930–7, and the conditions are such that approval can now be made, an adjusted form may be submitted to seek approval of the return on owner's investment.

5 Should the return to owner be suspected or discovered as being improperly taken, the Agency may initiate appropriate servicing actions, including using the authorities set out in subpart N of part 1951 of this chapter and/or FmHA or its successor agency under Public Law 103–354 Instructions 2012–B and/or 1940–M (available at any FmHA or its successor agency under Public Law 103–354 office).

C *Advancement (loan) of funds to a RRH project by the owner, member of the organization, or agent of the owner.*

1 Prior written approval by the Servicing Office is required. Such advances may be authorized when justified by unusual short-term conditions. When conditions are not short-term in nature, a servicing plan may be developed and advances may be approved in accordance with the provisions set out in subpart B of part 1965 of this chapter. Justification will be based on the following:

a A review of the documented circumstances and the project operating budget before any funds are advanced (loaned). The financial position of the project must not be jeopardized.

b Funds are not immediately available from any of the following sources:

(1) Reserve funds

(2) Initial operating capital

(3) An imminent rent increase

2 The funds will be applied to ordinary project operating and maintenance expenses.

3 Interest may be charged or paid on the loan from project income; however, interest must be reasonable. The proposal may be denied if FmHA or its successor agency under Public Law 103–354 financing can be provided to resolve the problem in a more cost effective manner.

4 No lien in connection with the loan will be filed against the property securing the FmHA or its successor agency under Public Law 103–354 loan or against project income. The advance may show as an unsecured project liability on financial statements prepared for year-end reports until such time as it is authorized to be repaid.

5 The payback of the advance (loan) may be permitted by the Servicing Official provided the terms and conditions were mutually agreed to by the borrower and FmHA or its successor agency under Public Law 103–354 at the time of the advance and the financial position of the project will not be jeopardized. Payback should only be permitted on the advance when the FmHA or its successor agency under Public Law 103–354 debt is current and the reserve requirements are being maintained at the authorized levels.

D *Special budget planning.*

1 Budgets must be prepared according to the special servicing guidelines of subpart B

of part 1965 of this chapter when a project is experiencing abnormal vacancy or is otherwise detrimentally impacted by economic reversal in the community.

2 The borrower is responsible for obtaining FmHA or its successor agency under Public Law 103–354 approval of budget revisions that reflect significant change to approved operating cost levels that occur during the budget year. Minor revisions to an approved FmHA or its successor agency under Public Law 103–354 budget to reflect changes of 5 percent or less in any subtotal area of the budget need not be subject to FmHA or its successor agency under Public Law 103–354 approval unless specifically required as an approval condition. Other minor revisions of a few line items may be entered on the current approved budget as ''pencil'' changes and initialed by the borrower and approved by FmHA or its successor agency under Public Law 103–354. Major changes involving many budget line items will warrant a new budget being prepared and approved by FmHA or its successor agency under Public Law 103–354.

3 When revisions to approved budgets are required, the Agency action should normally be obtained within 30 days. Should action be delayed, the borrower or management should notify the Agency of any changes which they deem as being essential and in the project's best interest provided such changes do not involve the use of reserve funds, a rent change, or added secured debt, and proceed to meet the needs of the project. In such cases, the borrower may request, and the Agency may grant, postapproval of the actions when shown to be in the best interest of the project.

XIII *Accounting and Reporting Requirements and Financial Management Analysis:*

A *General.* FmHA or its successor agency under Public Law 103–354 anticipates that RRH, RCH, and LH borrowers will account for all project income and expenses through a bookkeeping or accounting system as a normal business practice appropriately reflecting the complexity of project operations. The degree of sophistication will also reflect such factors as the type of borrower; the size, location, and type of project and the type of financial management information needed to provide adequate guidance and supervision to assure program objectives are being met.

1 *Separate accountability.* Separate accountability of funds is required and may be accomplished by bookkeeping entry for each required account for each project owned by the same borrower. The policies set out herein are aimed at facilitating efficient accounting of services by one borrower. Commingling of the funds of two or more different borrowers is prohibited to guard against the failure of one borrower threatening the financial resources of other borrowers (i.e., ensuring that a bankruptcy does not result in freezing bank accounts of several borrowers due to the failure of one borrower to fulfill its responsibilities).

a *Multiple projects owned by one borrower.*

(1) The principle of separate accountability permits a borrower's approved accounting system to combine project funds in one or more bank accounts for two or more projects owned by the same borrower. The principle is met as long as the accounting system segregates and tracks each project's funds separately. This means for example, that a Housing Authority, or any other borrower owning two or more projects, can maintain one bank account for:

(i) All project accounts, or

(ii) The same type of account, such as general operating account or tax and insurance account, for two or more projects.

(2) When the borrower seeks approval of its accounting and funds tracking system according to §1930.122(a)(2) of this subpart, it must demonstrate to FmHA or its successor agency under Public Law 103–354 that the funds tracking system will segregate and maintain separate recordkeeping accountability for separate projects. Such demonstration must include a certification issued by a Certified Public Accountant (CPA) stating the system will function to meet this principle of separate accountability.

b *Multiple projects owned by multiple borrowers.* When a management agent is handling funds for multiple borrowers, the principles of separate accountability within a bank account does not extend across multiple borrowers, thus a separate general operating bank account is required for each separate borrower.

c *Central funds collection and disbursement system.* When a management agent is handling multiple bank accounts for multiple borrowers, a central funds collection and disbursement accounting system may be maintained. This would permit systems under which a management agent could track funds going into and out of the bank accounts of more than one borrower. This practice would facilitate the hiring and paying of firms providing services to multiple borrowers. A central funds collection and disbursement accounting system would permit billings to be prorated between projects and permit funds to be withdrawn from many bank accounts to facilitate payment by one check to a firm providing services to multiple borrowers.

d *Prorating.* The accounting system and/or management plan must document how funds are prorated for revenue and expenses which are not clearly identifiable as being associated with a particular project (e.g., how interest earned on a general operating account or reserve account serving two or more projects owned by a single borrower will be

prorated between projects, etc.) Where this documentation is not present for some unusual reason, and the Agency and the borrower become involved in a dispute over this issue which cannot be mutually resolved, the Agency will consider proration by the number of units in the respective projects to be an appropriate guide for prorating the funds involved.

e *Tenant security deposit concerns.* When tenant security deposits are being accounted for, the provisions of state and local laws must be met. This may dictate that such accounts be held in a separate bank account or otherwise separately identified and may require such funds be held in trust for the tenant. The manner in which tenant security deposits must be kept must also be documented in the accounting system and/or management plan. Where this documentation is not provided for some unusual reason, resolution of any disputes must be done according to State and local law.

2 *Borrowers with loan agreements or resolutions.* Borrowers with loan agreements or resolutions are subject to the following conditions:

a All RRH, RCH, and LH projects with loan agreements or resolutions approved on or after October 27, 1980, are required to comply with the provisions of paragraph XIII of this exhibit.

b All RRH, RCH, and LH projects with loan agreements or resolutions approved prior to October 27, 1980, will be guided by the recordkeeping and reporting requirements of their respective loan agreement or resolution.

(1) They are encouraged, however, to adopt the provisions of this paragraph by amending their existing loan agreement or resolution.

(2) The State Director may require adoption of these provisions when deemed necessary as a loan servicing action.

c Any amendment to an existing loan agreement, or resolution, requires concurrence of all parties and written consent of the Servicing Office staff who may, when deemed necessary, obtain advice from the State Director or the OGC prior to enactment of the amendment.

3 *Individual LH Borrowers.* Individual farm borrowers with nonrental LH units will be considered in general compliance with this paragraph by virtue of completing the recordkeeping and reporting requirements of their farm and home planning with FmHA or its successor agency under Public Law 103–354 as outlined in subpart D of part 1944 of this chapter.

4 *Borrowers without loan agreements or resolutions.* Borrowers without loan agreements or resolutions are required to maintain information in sufficient detail to provide the necessary assurance that program objectives are being met. As necessary to protect the integrity of the program, the State Director may require the borrower to establish a system capable of accounting for project operations and reporting.

B *Accounting System.* A bookkeeping and accounting system provides the financial information needed to effectively plan, control, and evaluate project activity, whether required by FmHA or its successor agency under Public Law 103–354 or not. The type of system should be determined prior to loan closing, but may be revised with FmHA or its successor agency under Public Law 103–354 approval to meet program objectives. The Agency may also prescribe the system to be used. Form FmHA or its successor agency under Public Law 103–354 1930–5, ''Bookkeeping System—Small Borrower,'' can be adapted to the bookkeeping needs of small MFH borrowers. Bookkeeping for MFH operations may be maintained using a cash or accrual method of accounting.

1 *Type of borrower accounts.* As used in this paragraph, the term account is used interchangeably to mean either a ledger (or bookkeeping account) or an actual banking account, or an actual securities account provided any securities account meets the conditions set out herein. Depending upon the complexity of the accounting system being used, these accounts may be further subdivided into subsidiary ledgers or accounts to assist the borrower in providing the information needed for project financial analysis or reporting requirements. Regardless of the number or types of accounts established, or whether a bookkeeping and accounting system is required, the borrower must meet the following:

a All project funds shall be held only in domestic bank accounts insured by an agency of the Federal Government, or backed by collateral provided by the bank, or held in securities meeting the conditions set out herein.

b All funds in any account shall be used only for authorized purposes as described in their loan agreement or resolution and this exhibit.

c All funds received and held in any account, except the tenant security deposit, membership fee, and management reserve (patronage capital), shall be held in trust by the borrower for the loan obligation until used and serve as security for the FmHA or its successor agency under Public Law 103–354 loan or grant.

d All project funds will be accounted for by adequate and clear accounting methods or practices that otherwise maintain proprietary identity of said funds for each borrower.

e Each borrower will maintain at least one demand deposit or checking account. However, it is not necessary for each bookkeeping account within one project to be maintained as a checking account.

f In no case shall project fund accounts be pledged as collateral for non-FmHA or its successor agency under Public Law 103–354 debts.

2 *Accounts.* All RRH, RCH, and LH borrowers will maintain, as a minimum, the accounts required by their loan agreement or resolution. The following accounts are standard for all RRH and RCH loans approved after October 27, 1980, and for those who have amended their previous loan agreements or resolutions to adopt these accounts, or those required by a servicing plan. The following listing of accounts also identifies the order of funding of each of the listed accounts through available project revenues each month:

a *General operating account.* This account records all project income and disbursements exclusive of tenant security deposits. Excess project cash held in this account may be combined with other project funds described in this paragraph in temporary (immediate call) interest bearing accounts when separate bookkeeping records are maintained for the individual project accounts. This account may be further subdivided as folllows:

(1) *Initial operating capital.*

(i) The initial operating capital must be in the form of cash as set forth in §1944.211(a)(6) of subpart E of part 1944 of this chapter.

(ii) The borrower will have deposited the required initial operating cash into the general operating account by the time of the FmHA or its successor agency under Public Law 103–354 loan closing or when interim financing funds are obtained, whichever occurs first. These funds will blend with other revenue that accrues to the account to cover budgeted expenditures including payment of return to owner.

(iii) After 2, but before 5 full (12 month) borrower fiscal years of project operation, the borrower may request (in writing) the State Director's authorization to make a one-time withdrawal of the initial operating capital, or a part of it. The one-time withdrawal can never exceed the initial operating capital as described in the loan agreement or loan resolution. The withdrawal can be approved provided that:

(A) The project has achieved at least a 95 percent occupancy level at time of the withdrawal request or achieved a 95 percent occupancy level for a 12-month period preceding the request and show strong prospects of retaining at least a 95 percent occupancy level in the immediate future.

(B) The withdrawal will not affect the financial integrity of the project. After withdrawal, 10 percent of projected project expenses should remain in the general operating account in excess of current liabilities then outstanding. The reserve account must be on schedule less authorized withdrawals. The borrower must demonstrate that all prudent maintenance is being planned and performed, and payment of necessary project expenses are not being deferred.

(C) The State Director determines that the withdrawal will not necessitate a rent increase during the year of withdrawal or during the next year of operation, except that rent increases needed because of normal increases of operation and maintenance expenses unrelated to the withdrawal may be approved; and

(D) The State Director has reviewed and approved any required borrower reports before the initial operating capital is withdrawn. Promptness is expected but actual withdrawal of funds could occur in the sixth year.

(2) *Deposits.* All income and revenue from the housing project shall, upon receipt, be immediately deposited in the general operating account. This will include rent or occupancy charge receipts, housing subsidy payments (including HUD section 8 and FmHA or its successor agency under Public Law 103–354 RA payments), laundry revenue, or any other project income including interest earned on project accounts. The borrower may also deposit other funds at any time which are to be used for purposes authorized by this section, including transfers from the reserve account.

(3) *Disbursements.* The borrower shall pay or fund the actual, reasonable, and necessary monthly project expenses out of the general operating account. Current expenses may include the initial purchase and installation of furnishings and equipment with any other funds deposited in the general operating account which are not proceeds of the loan or income or revenue from the project. (However, nonprofit borrowers are permitted to use loan funds specified for initial operating capital purposes as authorized in subparts D and E of part 1944 of this chapter.) Other authorized disbursements are FmHA or its successor agency under Public Law 103–354 approved installments of debt service; real estate tax and insurance escrow as provided in paragraph XIII B 2 b of this exhibit; reserve, and return on investment as provided in paragraph XIII B 2 c of this exhibit. In RRH accounts, any balance remaining in a general operating account, except as authorized, above, may be retained in this account or transferred to the reserve account. In RCH accounts, any balance in excess of three months of average operating expenses remaining in a general operating account will be transferred into the cooperative's patronage capital account at the end of the fiscal year.

(4) *Unauthorized disbursements.* Except for cooperatives, late fees charged the borrower according to subpart K of part 1951 of this chapter, may not be paid from project income. When late fees are deducted by FmHA or its successor agency under Public Law

103–354 from payments made from project income, the project general operating account must be reimbursed from nonproject income of the owner or management agent or deducted from the owner's return on investment.

b *Real estate tax and insurance escrow account.* According to the borrower's management plan, project funds for periodic payment(s) of real estate taxes and real property insurance may be deposited in a real estate tax and insurance escrow account or held in the general operating account as cash on hand. The escrow account may be an interest bearing account. Deposits to the account should be in monthly increments of one-twelfth of the annual anticipated real estate tax and insurance payments. Any interest earned shall accrue to the project as project operational cash income.

c. *Reserve account.* The reserve account is a required account subject to the requirements set out in this paragraph. The borrower will initiate monthly deposits in this project account, preferably an interest bearing account, starting the same month the first loan payment is due FmHA or its successor agency under Public Law 103–354. As projects age, the required reserve account level may be adjusted to meet anticipated ''life-cycle'' needs, including equipment and facility replacement costs, by amending the loan agreement/resolution. All RRH, RCH, and LH borrowers operating projects (i.e., all LH borrowers exclusive of those on-farm type LH borrowers) are required to establish a reserve account. Effective as of July 26, 1994, reserve funds will be required to be placed in a supervised account. The provisions of subpart A of part 1902 of this chapter apply. Reserve funds on deposit just prior to this date in instruments which are subject to monetary penalties for early withdrawal may be temporarily held for the time needed to avoid such penalties.

(1) *Monthly installments.* Immediately after paying each installment for the orderly retirement of the FmHA or its successor agency under Public Law 103–354 loan, as provided in the borrower's promissory note, required reserve installments shall be transferred to the Reserve Account at least at the monthly rate stipulated by the borrower's loan agreement or resolution starting with the date the first payment is due to the Agency. Monthly transfers will continue until the account reaches the total amount specified in the loan agreement or resolution. Monthly transfers shall be resumed the month following withdrawals that decrease the reserve account balance below its required level until it is restored to the specified total minimum sum.

(2) *Reserve account principles.* Reserve account funds are governed by the following principles:

(i) *Primary use.* The reserve account is primarily used to meet the major capital expense needs of a project. It is expected that the reserve account should rarely have to be used to meet any noncapital expense need of a project; however, the Servicing Official may approve such uses when warranted in unusual circumstances (e.g., a cash income shortfall, using the notice of approval at exhibit B–9 of this subpart).

(ii) *Investment vehicles and institutions.* Reserve account funds not immediately needed to pay for expenses for authorized purposes may be held as set out herein. Reserve account funds may be held in the form of a checking, savings, negotiable order of withdrawal, or similar account at a Federally insured domestic institution such as a bank, savings and loan, or credit union. Reserve account funds may be held in the form of readily marketable obligations of the United States Treasury Department (e.g., U.S. Treasury bonds, U.S. Savings bonds, zero coupon bonds, etc.) at a Federally insured domestic institution or at an insured domestic institution authorized to sell securities. Reserve account funds may also be held in the form of an account (the account may be a tax exempt account or a taxable account) established at an insured domestic institution authorized to sell securities (the institution may or may not charge brokerage fees), provided the accounts so established meet the remaining conditions set out herein and are not used in a speculative manner.

(iii) *Limitations on investments in securities.* Any securities must be backed by the United States (U.S.) Government or an Agency of the U.S. Government, or be triple A (AAA) rated Government National Mortgage Association collateralized tax-emempt bonds or be AAA rated prerefunded bonds. Prerefunded bonds are bonds that originally may have been issued as general obligation or revenue bonds but are now secured, until the call date or maturity, by an ''escrow fund'' consisting entirely of direct U.S. Government obligations that are sufficient for paying the bondholders.

(iv) *Reporting actual costs of securities.* In order to assure that required amounts have been paid into the reserve account, the actual costs of securities (which in many cases may not be the face value) must be shown on the project books. In addition, details of these transactions should be disclosed in footnotes to financial information provided to the Agency.

(v) *Security sales.* When the Agency approves withdrawals from the reserve account and the funds are invested in securities, borrowers must, to the extent that securities are available, assure that securities are sold in an amount which results in proceeds sufficient to cover the disbursement.

(vi) *Forecasting security sales.* Since the sale or redemption of any securities may result

in cash proceeds of less than the amount invested, borrowers should take steps to minimize the risk of loss from converting securities to cash. Needed reserve account withdrawals should be forecasted well in advance to permit Agency approval of anticipated needs such that security sales can be arranged to be sold in favorable market conditions. When sales of securities take place the proceeds will normally be held in a reserve fund at a domestic bank, savings and loan, credit union, or similar institution insured by an Agency of the Federal Government until such time as withdrawals are actually needed for the purposes authorized. Should unusual circumstances require the sale of securities in unfavorable market conditions the borrower will not be required to reimburse the project for any losses incurred.

(vii) *Knowledge required of securities investors.* Those investing in securities must be knowledgeable of common industry practices prior to investing in securities. Knowledge of the various fees that may be associated with the purchase and sale of securities and the maintenance of security accounts must be considered when making security investments (e.g., front end loads or fees, back end loads or fees, maintenance fees, etc.). Such fees may be paid by the general operating account or by the reserve account. However, the Agency must give its prior consent before reserve account funds may be used.

(viii) *Financial advisor limitations.* Project proceeds may not be permitted to be used to pay for the services of a financial advisor to assist in the selecting of securities for investments, since the securities permitted are relatively limited and must meet the requirements set out herein. However, normal brokerage fees may be paid to secure and sell securities. It is recognized that financial advice may also be provided as part of the normal brokerage fee service package to consummate the purchase and sale of securities. Separate financial advisor services fees, apart from normal brokerage fees, are prohibited, however.

(3) *Reserve account tracking.* Any deposit and withdrawal from the reserve account should be recorded on a withdrawal format for tracking and reconciliation of the account similar to that found in exhibit B–10 of this exhibit.

(4) *Excess reserve.* Any amount in the reserve account which exceeds the total sum specified in the loan agreement or resolution may be transferred to the general operating account for the authorized purposes only when it is agreed between the borrower and FmHA or its successor agency under Public Law 103–354 to be in excess of the requirement and there is a specific need for the excess funds. However, the FmHA or its successor agency under Public Law 103–354 Servicing Official may direct the excess sum to be retained in the reserve account or applied as an extra payment on the loan.

(5) *Reserve account use.* Funds in the reserve account may be used for purposes in accordance with this paragraph. The borrower will request withdrawal of reserve funds in a written or confirmed manner before they are needed. Annual budgets are to include realistic routine income and expense levels to avoid the need to use the reserve for routine expenses (operating shortfalls), not caused by emergencies or very unusual servicing situations; but when needed, use of reserve funds may be permitted with Agency approval. The Servicing Official will take prompt action on a request for reserve withdrawal (normally within 5 working days of the request) and provide written authorization to the borrower for any authorized withdrawal of funds by the use of a letter in the form of exhibit B–9 of this subpart (or other similar letter containing at least the information shown on exhibit B–9 of this subpart) before the borrower actually withdraws any funds. Any conditions for approval (e.g., a copy of paid invoices, inspections, etc.) will be indicated in the letter. Although the prior consent of the Government is required for the use of reserve funds, the Servicing Official may post approve the use of reserve funds if they were used for authorized purposes and their expenditure would have been approved had a request for approval been submitted prior to the withdrawal. The borrower must provide documented evidence showing the actual amount and use of funds before the post-approval action. Authorized purposes are:

(i) To meet payments due on the loan obligations in the event the amount for debt service is not sufficient for that purpose.

(ii) To pay cost of repairs or replacements to the housing, furnishings or equipment or shortfalls of current expenses. Withdrawal for planned authorized purposes should be approved in advance during the annual budget approval process.

(iii) To make improvements to the housing project without creating new living units or to retrofit units to make them accessible to the physically handicapped.

(iv) For other purposes desired by the borrower, which in the judgement of the Government will promote the loan purposes, strengthen the security, or facilitate, improve, or maintain the project and the orderly collection of the loan without jeopardizing the loan or impairing the adequacy of the security. Reserve funds may also be used to facilitate payment of fees associated with the buying or selling of securities or maintaining a securities account.

(v) To pay a return on investment at the end of the borrower's project operating year, provided that after such disbursements the amount in the reserve account will not be

less than that required by the loan agreement or resolution to be accumulated by that time (taking into consideration the provisions of any approved servicing plan which may be authorizing a temporary adjustment to these provisions), minus any authorized withdrawals, and provided that the amount in the reserve account will likely not fall below that required to be accumulated during the next 12 months.

(A) In the case of borrowers operating on a limited profit basis, to pay a return on the borrower's initial investment as identified in the loan agreement or resolution.

(B) In the case of borrowers operating on a full profit basis, to pay an annual return as specified in the borrower's loan agreement or resolution.

(6) Exhibit B–10 of this subpart may be used by the borrower and FmHA or its successor agency under Public Law 103–354 to record deposits and withdrawals in the reserve account and to perform reconciliation of the account to determine the current account balance.

d *Management reserve account (patronage capital account).* Any funds in excess of three months of average operating expenses remaining in the general operating account of an RCH project at the end of the fiscal year will be transferred and maintained in a lump sum in an interest bearing patronage capital account and will be handled according to any state laws governing patronage capital. That amount will then be equally assigned, by bookkeeping entry only, to each member. The patronage capital funds will be held by the cooperative in trust for the respective member until that member terminates membership in the cooperative, provided the member has paid all charges and costs due the cooperative. The patronage capital funds will not be used for any other purpose.

e *Security deposit or membership fee account (when applicable).* Upon receipt, all security deposit or membership fee funds collected shall be recorded in a bookkeeping account that is kept separate from the project bookkeeping accounts. These funds shall be deposited in a separate bank account that is kept separate from any project funds and will be handled according to any state or local laws governing security deposits. Funds in the security or membership fee deposit account shall be used only for authorized purposes as intended and represented by the project management plan. They shall be held by the borrower or borrower's management agent in trust for the respective tenants or members until so used. Any amount of the security deposit account which is retained by the borrower as a result of lease or occupancy agreement violations shall be transferred to the general operating account and treated as income of the housing.

(1) The owner will follow all State and local requirements governing the handling and disposition of security or membership fee deposits.

(2) In no case will interest earned on security or membership fee deposits accrue to project management or the owner of a rental project. Any interest earned but not returned to the tenants, or in the case of a cooperative, interest earned on membership fees but not returned to members will, accrue to the project's general operating account for disposition as outlined in the management plan.

C *Borrower reporting requirements.* It is the objective of FmHA or its successor agency under Public Law 103–354 that borrowers will maintain accounts and records necessary to conduct their operation successfully and from which they may accurately report operational results to FmHA or its successor agency under Public Law 103–354 for review, and otherwise comply with the terms of their loan agreements with the Agency. Certain reports are necessary to verify compliance with FmHA or its successor agency under Public Law 103–354 requirements and to aid the borrower in carrying out the objectives of the loan. Some reports must be submitted with the FmHA or its successor agency under Public Law 103–354 payments and others submitted to FmHA or its successor agency under Public Law 103–354 either monthly, quarterly, or annually. Exhibits B–6, B–7, and B–8 of this subpart are to be used as a guide for determining when reports are due and the number of copies required. Borrower accounts and records will be kept or made available in a location within reasonable access for inspection, review and copying by representatives of FmHA or its successor agency under Public Law 103–354 or other agencies of the U.S. Department of Agriculture authorized by the Department.

1 *Accounting methods and records.*

a *Method of accounting and financial statements.* Borrowers may choose a cash or accrual method of accounting, bookkeeping and budget preparation as described in their project management plan. Balance sheets or statements of financial condition may be prepared reflecting the same accounting method, except that the accrual method of reporting financial condition will be used where the borrower is required to submit an annual audit.

b *Approval requirement.* Before loan closing or start of construction, whichever is first, each borrower shall incorporate a description of its method of accounting, bookkeeping, budget preparation, and reporting of financial condition and, when applicable, plans for auditing in the project management plan that must be approved by FmHA or its successor agency under Public Law 103–354.

c *Records.* Form FmHA or its successor agency under Public Law 103–354 1930–5 may be used by small organizations as a method

of recording and maintaining accounting transactions. Automated systems may be used if they meet the conditions of paragraph XVI of this exhibit.

d *Record retention.* Each borrower shall retain all financial records, books, and supporting material for at least 3 years after the issuance of the audit reports and financial statements. Upon request, this material will be made available to FmHA or its successor agency under Public Law 103–354, the Office of Inspector General (OIG), the Comptroller General, or to their representatives.

2 *Management reports and review processes.* The objective of management reports and review processes is to furnish the management and FmHA or its successor agency under Public Law 103–354 with a means of evaluating prior decisions and to serve as a basis for planning future operations and financial conditions. Timely reports and their review furnish necessary information to make sound management decisions. All reports will relate only to the FmHA or its successor agency under Public Law 103–354 financed project and borrower entity. Separate reports will be prepared and submitted for each project owned by the same borrower. Forms necessary in making the required reports may be requested from FmHA or its successor agency under Public Law 103–354. The various review processes described in this paragraph are illustrated at paragraph XIII C 3 of this exhibit.

a *Annual budget and utility allowance.*

(1) *Objective.* It is the objective of FmHA or its successor agency under Public Law 103–354 that project budgets and/or utility allowances be prepared, reviewed, and approved in such manner and timing that the approved budget and/or utility allowance, including any authorized changes to same, become effective on the beginning of a fiscal year of project operation.

(2) *Documents.*

(i) The annual project budget will be prepared on Form FmHA or its successor agency under Public Law 103–354 1930–7 by the borrower or its agent following the instructions on the form. It will reflect budget planning for a 12 month fiscal year. Figures in the ''actual'' column will reflect at least 9 months of actual fiscal year activity and no more than 3 months of estimated activity for the balance of the same fiscal year based on recent actual experience.

(ii) The housing allowance for utilities and other public services will be prepared on exhibit A–6 of subpart E of part 1944 of this chapter. The exhibit A–6 will be prepared by the borrower or its agent following instructions attached to exhibit A–6 of subpart E of part 1944 of this chapter.

(3) *Supporting data.* Any data, justification or other documentation required by the instructions for preparation of Form FmHA or its successor agency under Public Law 103–354 1930–7 and exhibit A–6 of subpart E of part 1944 of this chapter, or otherwise required by the Servicing Official on an individual case basis, shall be attached to the respective document when submitted to the Servicing Office.

(4) *Due date.* The borrower can submit the necessary documents as soon as 9 months of current fiscal year actuals are available, but in sufficient time to meet the objective stated at C 2 a (1) of this paragraph. The Servicing Official needs 15 to 30 days to review project budgets and utility allowances when no changes of rents, occupancy charges, or utility allowances are needed. When such changes are needed, the borrower needs to submit documents to allow sufficient time for review and proper notice of change to tenants or members.

(5) *FmHA or its successor agency under Public Law 103–354 review.* Form FmHA or its successor agency under Public Law 103–354 1930–7 and exhibit A–6 of subpart E of part 1944 of this chapter and any attachment will be reviewed by the Servicing Office as part of the rental or occupancy charge/utility allowance change review and/or annual review process.

b *Rental or occupancy charge budget and/or utility allowance change.*

(1) *Objective.* It is the objective of FmHA or its successor agency under Public Law 103–354 that changes to project rental or occupancy charges and/or utility allowances be incorporated into the annual budget review and planning process in such manner and timing that authorized changes become effective at the beginning of a fiscal year of project operation.

(2) *Documents.* When a rental or occupancy charge and/or utility allowance change is proposed, the borrower or its agent will prepare and submit Form FmHA or its successor agency under Public Law 103–354 1930–7 and exhibit A–6 of subpart E of part 1944 of this chapter and any supporting attachments following the instructions for either document.

(3) *Standards and timing.*

(i) The policies and procedures governing rental or occupancy charge and/or utility allowance change are contained in exhibit C of this subpart, (available in the ''Borrower Handbook'' or any FmHA or its successor agency under Public Law 103–354 office).

(ii) To meet the projected effective date of change, the necessary documents need to be received by the Servicing Official at least 75 days ahead to allow FmHA or its successor agency under Public Law 103–354 review and allow for a 60-day notice to tenants or members of an impending change. The ''actual'' column of Form FmHA or its successor agency under Public Law 103–354 1930–7 shall contain actual data for the fiscal year to date plus the projection of expected data for the remainder of the fiscal year. This projection should cover a period not exceeding 90 days.

The same supporting data standards of paragraph XIII C 2 a (3) of this exhibit will apply.

(iii) Should the borrower need to request a rental or occupancy charge and/or utility allowance change at some time other than described at paragraph XIII C 2 b(3)(ii) of this exhibit (e.g., mid-fiscal year), the Form FmHA or its successor agency under Public Law 103–354 1930–7 shall reflect the project's financial needs for the next 12 months of operation and the ''actual'' column shall reflect the most recent 12 months of actual data. The previous fiscal year's audit report, or Form FmHA or its successor agency under Public Law 103–354 1930–8, as appropriate, shall be submitted with the change request if it was not previously submitted to the Servicing Office.

(4) *FmHA or its successor agency under Public Law 103–354 review.* Exhibit C of this subpart shall govern FmHA or its successor agency under Public Law 103–354 review of the borrower's request for rental or occupancy charge and/or utility allowance change.

c *Quarterly report.*

(1) *Objective.* The objective of FmHA or its successor agency under Public Law 103–354 is for quarterly reports to provide a monitoring means for borrowers and FmHA or its successor agency under Public Law 103–354 to mutually check a borrower's progress in achieving program objectives and when applicable, meeting servicing goals. The Servicing Official may require monthly reports rather than quarterly reports when warranted in unusual situations.

(2) *Document.* Form FmHA or its successor agency under Public Law 103–354 1930–7 will be used by borrowers to prepare the quarterly report.

(3) *Standards.*

(i) For quarterly reports, Form FmHA or its successor agency under Public Law 103–354 1930–7 will be completed following the instructions on the form for preparation of a quarterly report. The quarterly report shall be required upon commencement of any of the following situations:

(A) Start-up of initial occupancy after completion of new construction or substantial rehabilitation.

(B) Reamortization, transfer of an existing project loan or a 100-percent membership change.

(C) Failure to make a scheduled loan payment, failure to maintain required transfers to the reserve account, or failure to maintain reserve accounts at authorized current levels.

(ii) For monthly reports, Form FmHA or its successor agency under Public Law 103–354 1930–7 will be completed following the instructions on the form for preparing a monthly report. The monthly report may be invoked:

(A) When determined essential by the Servicing Official as part of a servicing plan made in accordance with exhibit F of subpart B of part 1965 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(B) When there are factors such as apparent violations of policy or reporting practices, audit findings, sudden increases of vacancy and/or accounts payable or receivables, or other evidence of weak financial condition.

(4) *Frequency and discontinuance of quarterly and monthly reports.*

(i) Reports shall be prepared and submitted at least through the first year of operation for any situation described in paragraph XIII C 2 c (3) of this exhibit and each quarter or month thereafter for new or existing projects until discontinuance is authorized by the Servicing Official. The Servicing Official will evaluate the following in reaching a decision to discontinue:

(A) The project has been operated and maintained in a satisfactory manner during the most recent 6 months of the required reporting period.

(B) An adequate accounting system is functioning properly, is kept current, and the most recent required annual financial reports are complete and have been submitted to the Servicing Office.

(C) Project loan payments to FmHA or its successor agency under Public Law 103–354 are on schedule.

(D) The project reserve account is ahead or on schedule, allowing for authorized expenditures or authorized reduction in funding as set forth in an approved servicing plan or budget.

(E) The annual review has been completed by the Servicing Office and the annual audit, or verification of review when appropriate, has been found acceptable.

(F) The Servicing Official has inspected the project, reviewed project operations, and found them acceptable. If a determination is made to discontinue, a letter shall be sent to the borrower or its agent with a copy sent to the State Director.

(ii) The reporting and audit requirements of paragraphs XIII C 2 c(4)(i) (B) and (E) do not apply when the most recent 6 continuous months of successful operation occur before the first audit and/or annual review is due.

(5) *Due date.* Quarterly (or monthly) reports shall be due in the FmHA or its successor agency under Public Law 103–354 Servicing Office by the 20th day of the month immediately following the close of the respective reporting period.

(6) *FmHA or its successor agency under Public Law 103–354 review.*

(i) The Servicing Official will review the reports for year-to-date status of project operations. When reports reveal actual data that exceeds acceptable tolerance from a forecasted budget Subtotal item, or vacancies and accounts receivable and/or payable

are increasing, the Servicing Official will initiate verbal and/or written dialogue with the borrower for further resolution of problems or to otherwise achieve acceptable progress.

(ii) The Servicing Official will complete the FmHA or its successor agency under Public Law 103–354 review and forward the borrower's report and any related documentation to the State Director by the 30th day of the month following close of the reporting period.

(iii) If the borrower fails to submit its report by the due date, this fact will be reported to the State Director by the 30th day of the month following the close of the reporting period; otherwise, the Servicing Office will complete its review of a submitted report no later than 10 calendar days following receipt of the borrower's report.

d *Annual audit reports and verifications of review.*

(1) *Documents and general standards.*

(i) *Annual audit report.* An audit report will be in the format as prepared by a CPA or Licensed Public Accountant (LPA), provided the LPA was licensed on or before December 31, 1970.

(A) All audits are to be performed in accordance with generally accepted government auditing standards or GAGAS, as set forth in ''Government Auditing Standards'' (1988 Revision), established by the Comptroller General of the United States, and any subsequent revisions (this publication is commonly referred to as the ''Yellow Book'' or ''Government Accounting Office Standards''). In addition, the audits are also to be performed in accordance with applicable portions of various Office of Management and Budget (OMB) Circulars, Departmental Regulations, parts 3015 and 3016 of chapter XXX of title 7, and the FmHA or its successor agency under Public Law 103–354 Audit Program as specified in separate sections of this subpart.

(B) An audit report is required for any project with 25 or more units unless the State Director or Servicing Official determines that a project with 24 or fewer units requires an audit for reasons of good cause. Such reasons include, but are not limited to, situations where project records are incomplete or inaccurate, or it appears that the borrower has not adequately accounted for project funds, or where the borrower's operation consists of multiple projects where each is 24 or fewer units (with subsidy reports prepared for each project). (**Note:** The State Director or Servicing Official may require that the accounts of RHS borrowers be audited if the loan exceeds the 2-year repayment term.)

(C) The project audit report should cover the borrower entity and the expense for preparation of the audit report may include the auditor's preparation of any IRS required borrower entity reports (i.e., Schedule K–1 (IRS Form 1065), ''Partner's Share of Income, Credits, Deductions, etc.'').

(D) The CPA or LPA auditor who prepares the audit report may not be an individual or organization that is associated with the borrower in any manner, other than the performance of the audit review and preparation of the project audit report and required IRS reports, that creates an identity of interest or possible conflict of interest (as described in paragraph V B of this exhibit. For example, the CPA or LPA auditor may not be an employee of the borrower or an employee of any officer of the organization, nor be an employee of any member, stockholder, partner, principal, or have any ownership or other interest in the borrower organization.

(E) The State Director or Servicing Official may authorize the initial audit report to cover a period up to 18 months for new projects whose first operating year does not exceed 6 months.

(F) The State Director may also make an exception to the CPA or LPA audit requirement for not more than one successive year in a specific case providing: the borrower submits a written request; the FmHA or its successor agency under Public Law 103–354 approved budget for the project includes a typical and reasonable fee for the audit but the negotiated cost of an audit would increase the monthly per unit rental rate by more than $4.00; and the required reports, including a CPA or LPA prepared audit, were properly submitted for the prior year's project operations.

(ii) *Verification of review.* Form FmHA or its successor agency under Public Law 103–354 1930–8 will be prepared by a competent person qualified by education and/or experience who has no identity of interest or possible conflict of interest with the borrower or its principals. However, in the case of a nonprofit institution, the verification of review may be made by a committee of the membership but may not include any officer, director, or employee of the borrower.

(A) Form FmHA or its successor agency under Public Law 103–354 1930–8 will be used for the verification of review of project accounts and the review verifier will also review the actual data on Form FmHA or its successor agency under Public Law 103–354 1930–7 for projects with 24 or fewer units unless the requirements of paragraph XIII C 2 d(1)(i)(A) of this exhibit are invoked by the State Director or Servicing Official.

(B) The State Director or Servicing Official may authorize the initial verification of review to cover a period up to 18 months for a new project whose first operating year was less than 6 months.

(iii) *Project operating budget actuals.* An annual report of actuals for the full operating year will be submitted by the borrower, or its agent, using Form FmHA or its successor

agency under Public Law 103–354 1930–7. The report will reflect the actual income and expenses for the project for the borrower's 12-month operating year. The report will be submitted with the annual audit report or Form FmHA or its successor agency under Public Law 103–354 1930–8, as appropriate.

(iv) *Form FmHA or its successor agency under Public Law 103–354 1930–10, ''Annual Multiple Family Housing Project Review.''* When the annual audit report or verification of review is received, parts II C and D of Form FmHA or its successor agency under Public Law 103–354 1930–10 may be prefilled to the extent possible to record previous year status as reported in the audit report or verification of review. The Form FmHA or its successor agency under Public Law 103–354 1930–10 will be completed later as described in § 1930.123 (e)(2) and (i) of this subpart.

(v) *Fraud, abuse, and illegal acts.* If the review verifier becomes aware of any indication of fraud, abuse, or illegal acts in FmHA or its successor agency under Public Law 103–354 financed projects, prompt written notice shall be given to the appropriate Servicing Official.

(2) *Specific standards.*

(i) *State and local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart, 7 CFR part 3015, and OMB Circular A–128, with copies of the audit being forwarded by the borrower to the Servicing Official and the appropriate Federal cognizant agency, if applicable. For guidance in meeting these requirements, the auditor may refer to the American Institute of Certified Public Accountants Audit and Accounting Guide for ''Audits of State and Local Governmental Units.'' The term Federal financial assistance used herein shall mean Federal loan and/or grant funds received by the borrower, but not rental subsidies.

(A) *Cognizant agency.* (*1*) ''Cognizant agency'' means the Federal agency assigned by OMB Circular A–128. Within the U.S. Department of Agriculture (USDA), the USDA OIG shall fulfill cognizant agency responsibilities.

(*2*) Cognizant agency assignments. Smaller borrowers not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA or its successor agency under Public Law 103–354 provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be contacted.

(B) *Audit standards.* It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits.

(*1*) State and local governments and Indian tribes that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128.

(*2*) State and local governments and Indian tribes that receive between $25,000 and $100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128 or in accordance with the FmHA or its successor agency under Public Law 103–354 Audit Program. This is an option of the State and local government or Indian tribe. If the election is made to have an audit performed in accordance with the FmHA or its successor agency under Public Law 103–354 Audit Program, the audit shall be in accordance with paragraph XIII C 2 d(2)(iii) of this exhibit.

(*3*) State and local governments and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from compliance with OMB Circular A–128 and the FmHA or its successor agency under Public Law 103–354 Audit Program. These State and local governments and Indian tribes shall be governed by audit standards prescribed by State and local law or regulation.

(*4*) Public hospitals and public colleges and universities may be excluded from OMB Circular A–128 audit standards. If such entities are excluded, audits shall be made in accordance with paragraph XIII C 2 d(2)(ii) of this exhibit.

(5) Indications of fraud, abuse, and illegal acts shall be referred to FmHA or its successor agency under Public Law 103–354 for processing in accordance with paragraph XIII C 2 d(1)(v) of this exhibit.

(ii) *Nonprofit institutions.* These organizations are to be audited in accordance with this subpart, 7 CFR part 3015, and OMB Circular A–133, with copies of the audit being forwarded by the borrower to the Servicing Office and the appropriate Federal cognizant agency, if applicable. The term Federal financial assistance used herein shall mean Federal loan and/or grant funds received by the borrower, but not rental subsidies.

(A) *Cognizant agency.* See paragraph XIII C 2 d(2)(i)(A) of this exhibit.

(B) *Audit standards.*

(1) Nonprofit institutions that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with the provisions of OMB Circular A–133. However, nonprofit institutions receiving $100,000 or more but receiving awards under only one program have the option of having an audit of their institution prepared in accordance with the provisions of the OMB Circular A–133 or having an audit made of the one program in accordance with paragraph XIII C 2 d(2)(iii) of this exhibit.

For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution will be required to conduct audits for those programs in accordance with paragraph XIII C 2 d(2)(iii) of this exhibit.

(2) Nonprofit institutions that receive at lease $25,000 but less than $100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–133 or in accordance with the FmHA or its successor agency under Public Law 103–354 Audit Program. If the election is made to have an audit performed in accordance with the FmHA or its successor agency under Public Law 103–354 Audit Program, the audit shall be performed in accordance with paragraph XIII C 2 d(2)(iii) of this exhibit.

(3) Nonprofit institutions receiving less than $25,000 a year in Federal financial assistance are exempt from Federal audit standards, but records must be available for review by appropriate officials of FmHA or its successor agency under Public Law 103–354.

(C) *Fraud, waste, and abuse.* Indications of fraud, abuse, and illegal acts shall be processed in accordance with paragraph XIII C 2 d(1)(v) of this exhibit.

(iii) *FmHA or its successor agency under Public Law 103–354 Audit Program.* For-profit organizations and other entities referred to this paragraph by paragraphs XIII C 2 d(2)(i) and/or (ii) of this exhibit, audits will be performed under the guidance of the audit guide entitled ''U.S. Department of Agriculture, Farmers Home Administration or its successor agency under Public Law 103–354-Audit Program'' (available in any FmHA or its successor agency under Public Law 103–354 office).

(3) *Due date.* (i) Annual audit reports and verifications of review, as appropriate, and Form FmHA or its successor agency under Public Law 103–354 1930–7 with 12 months of project operation actuals are due in the Servicing Office no later than 90 days following the close of the project fiscal year.

(ii) If the audit or verification of review and Form FmHA or its successor agency under Public Law 103–354 1930–7 with 12 months of project operation actuals cannot be submitted by the due date, and the owner presents a request for extension supported by evidence that delay is at the request of the auditor, and the request has a reasonable explanation of why an extension of the due date is needed, the Servicing Official may authorize up to a 30-day extension of the due date.

(iii) If an explanation is not forthcoming from the auditor, or the explanation received is without good reason, or the Servicing Official otherwise suspects fiscal difficulty, the Servicing Official may request the borrower to submit to the Servicing Office for review, the project bank statements for the general operating, reserve, and investment accounts covering the most recent 60-day period.

(iv) If the borrower fails to submit the requested bank statements by the date stipulated by the Servicing Official, the Servicing Official will immediately refer the matter to the OIG.

(4) *FmHA or its successor agency under Public Law 103–354 review.* An audit report or verification of review and Form FmHA or its successor agency under Public Law 103–354 1930–7 with 12 months of project operation actuals will be reviewed by the Servicing Official within 60 days following receipt of the audit report or verification of review. From this annual audit review process, the Servicing Official will initiate action on findings and concerns needing immediate attention. Those findings and concerns not needing immediate action will be considered in the next budget planning and annual review process at the end of the fiscal year for implementation in the following fiscal year of project operation.

e *Miscellaneous management reports.* These reports include, but are not limited to, the following items that provide additional or unique information that augment or otherwise support other management reports described in this section:

(1) *Documents and formats.* (i) *Minutes of annual meetings.* Written record of annual meeting of organizational borrowers who, by their organizational charter, are required to maintain such written records.

(ii) *Energy audit.* Prepared according to the guidance of exhibit D of this subpart. Energy audits, including implementation plans for energy conservation, are prepared and submitted on multi-year cycles.

(iii) *Miscellaneous items.* These include other written or electronically stored data or information such as financial or income/expense data, justification statements, or other technical or informative material that stands alone or supports other managements reports described in this section, whether volunteered by the borrower or requested by the Servicing Official.

(2) *Due date.* Annual minutes and miscellaneous items are due along with the report they are attached to as supporting documentation. New energy audits are due with the next submission of Form FmHA or its successor agency under Public Law 103–354 1930–7 following expiration of the old energy audit.

(3) *FmHA or its successor agency under Public Law 103–354 review.* FmHA or its successor agency under Public Law 103–354 review of miscellaneous management reports will coincide with review of the management report that each is attached to as documentation.

f *Project worksheets.*

(1) Submit Form FmHA or its successor agency under Public Law 103–354 1944–29, with the payment to the Servicing Office.

This form must be submitted each month to report overage, occupancy surcharge, and/or request RA, even if a loan payment is not submitted. This form reflects occupancy in the project as of the first day of the month preceding the payment due date. The form will be retained indefinitely.

(2) For LH projects, Form FmHA or its successor agency under Public Law 103–354 1944–29 will be submitted monthly for the LH tenants who receive RA. Otherwise, the Form FmHA or its successor agency under Public Law 103–354 1944–29 covering all LH tenants will be submitted to FmHA or its successor agency under Public Law 103–354 at least once annually with the annual reports. The form will be retained indefinitely.

(3) *Illustration of MFH budget planning, annual review, and annual audit review cycles.*

Items on hand during fiscal year	Last quarter of fiscal year	First quarter of next FY	Second quarter	
Management Reports/items in borrower *casefile.* —Previous fiscal year annual audit or Form FmHA or its successor agency under Public Law 103–354 1930–8..	*Budget Planning Process* Form FmHA or its successor agency under Public Law 103–354 1930–7 & util. allowance Review change or no change of rents or occupancy charges and/or utility allowance.	Annual audit preparation by auditor or Form FmHA or its successor agency under Public Law 103–354 1930–8 by verifier.	FmHA or its successor agency under Public Law 103–354 review of annual audit or Form FmHA or its successor agency under Public Law 103–354 1930–8 60-day review period.	File annual audit or Form FmHA or its successor agency under Public Law 103–354 1930–8 for next budget planning & annual review process.
—Exhibit A–1 —Latest supervisory visit/inspection.	FmHA or its successor agency under Public Law 103–354 starts annual review process.	Form FmHA or its successor agency under Public Law 103–354 1930–7 showing 12 months of project operating actuals submitted by borrower.	FmHA or its successor agency under Public Law 103–354 completes annual review process.	
—Energy audit & implementation plan. —Compliance review ..... —Management plan ..... —Management agreement	—Form FmHA or its successor agency under Public Law 103–354 1930–7. —Review project financial and management reports..	.....	FmHA or its successor agency under Public Law 103–354 may prefill parts II C and D of Form FmHA or its successor agency under Public Law 103–354 1930–10.	
—Identity of Interest (IOI) Disclosure Certificate, Form FmHA or its successor agency under Public Law 103–354 1944—30 and Identity of Interest (IOI) Qualification Form, Form FmHA or its successor agency under Public Law 103–354 1944—31. Other—as applicable	FmHA or its successor agency under Public Law 103–354 completes Form FmHA or its successor agency under Public Law 103–354 1930–10.	.....	Take immediate action on significant items found in the Audit Review.	

D *Financial and management analysis.* Financial and management analysis provides information on the status of the project's operation. Regular analysis by the borrower and/or FmHA or its successor agency under Public Law 103–354 can help identify strengths, weaknesses, and reasonableness of income and expenses so that appropriate corrective actions can be taken. Some methods of analysis FmHA or its successor agency under Public Law 103–354 encourages are:

1 *Budget analysis:* Using quarterly (or monthly if deemed necessary) and annual reports, the borrower or project manager compares actual income and expenses with the budgeted amounts. Any differences between the budget and actual figures indicate areas of the project operation where the manager may need to focus added attention and/or take corrective action.

2 *Ratio analysis:* Ratios are an effective tool for financial analysis. They prescribe various measures of actual operating performance. FmHA or its successor agency under Public Law 103–354 and borrowers should develop a data base of recorded ratios for comparative analysis. Some useful ratios are:

a $$\text{Vacancy rate} = \frac{\text{Total vacancy days for the month}}{\text{Total unit days for the month}}$$

b $$\text{Resident turnover ratio} = \frac{\text{Total units becoming vacant during the period}}{\text{Average units occupied for the period}}$$

c $$\text{Expense ratio} = \frac{\text{Total expense}}{\text{Total income}}$$

d $$\text{O\& M cost per unit} = \frac{\text{Total expense (By category)}}{\text{Total no. of units}}$$

e $$\text{Working capital ratio} = \frac{\text{Current assets}}{\text{Current liabilities}}$$

f $$\text{Collection ratio} = \frac{\text{Total collections}}{\text{Total occupancy roll}}$$

g $$\text{Percent of revenue from Government sources} = \frac{\text{FmHA or its successor agency under Public Law 103-354 HUD Section 8 payments}}{\text{Total market rent}}$$

h $$\text{Management expense per unit} = \frac{\text{Management fee and costs}}{\text{Total no. of units}}$$

XIV *Termination and Eviction:* Borrowers and project managers should actively develop ways and means to avoid forced termination of leases or occupancy agreements and the eviction of tenants or members by considering the following:

A *Entitlement to continued occupancy.*

1 *General.* The borrower or project manager may terminate or refuse to renew any occupancy only for material noncompliance with the lease or occupancy agreement or other good cause such as:

a Noneligibility for tenancy.

b Action or conduct of the tenant or member which disrupts the livability of the project by being a direct threat to the health or safety of any person, or the right of any tenant or member of the quiet enjoyment of the premises and related project facilities, or that results in substantial physical damage causing an adverse financial effect on the project, or the property of others, Except when such threat can be removed by applying a reasonable accommodation.

c Expiration of the lease or occupancy agreement period is not sufficient grounds for eviction of a tenant or member.

2 *Material noncompliance.* Material noncompliance with the lease or occupancy agreement includes:

a One or more substantial violations of the lease or occupancy agreement; or

b Nonpayment or repeated late payment of rent or occupancy charge or any other financial obligation due under the lease or occupancy agreement (including any portion thereof) beyond any grace period constitutes a substantial violation; or

c Admission to or conviction for use, attempted use, possession, manufacture, selling, or distribution of an illegal controlled substance that:

(1) is conducted in or on the premises by the tenant or someone under the tenant's control.

(2) is allowed to happen by a household member or guest because the tenant has not taken reasonable steps to prevent or control such illegal activity; or because the tenant has not taken steps to remove the household

member or guest who is conducting the illegal activity.

(3) It is not the intent that this provision of material lease violation apply to innocent members of the tenant's household who are not engaged in the illegal activity, nor are responsible for control of another household member or guest. It is the intent that such innocent persons can remain in the dwelling unit if an otherwise eligible household remains or can be formed.

3 *Other good cause.*

a Repeated minor violations of the lease or occupancy agreement which disrupt the livability and harmony of the project by adversely affecting the health or safety of any person, or the right of any tenant or member to the quiet enjoyment of the leased premises and the related project, or that have an adverse financial effect on the project.

b The borrower or project manager must base their decision on current objective data, not on supposition that the tenant may or could pose a harm or threat to other persons or property.

c Conduct cannot be considered as other good cause unless the borrower or project manager has given the tenant or member *prior notice* that the conduct will constitute a basis for termination of occupancy.

4 *Rent overburden.*

a Any tenant household (except those receiving Section 8 benefits) paying more than the contribution levels cited in paragraphs IV A 2 c (1), (2), or (3) of this exhibit toward rent, including utilities, is considered to be experiencing rent overburden that may jeopardize a tenant's ability to maintain occupancy.

b Whenever a tenant is experiencing rent overburden, borrowers are encouraged to utilize any available and compatible governmental or private rental subsidies including FmHA or its successor agency under Public Law 103–354 RA and/or interest credit; or to inform tenants where they may apply for Section 8 housing assistance to minimize termination of tenancy.

c With reference to FmHA or its successor agency under Public Law 103–354 RA or interest credit, no further action by the borrower is necessary if the borrower has already requested RA in conjunction with a previous rental or occupancy charge change request.

d For purpose of this provision, the term ''rent overburden'' also refers to occupancy charges paid by cooperative members.

5 *Tenant or member benefits during termination through eviction.*

a *Continued occupancy.* Tenant or member households may continue occupancy through the specified termination date, or if judicial action is initiated to evict, to the specified date in a court order for eviction. In addition, this policy applies when a tenant or member has filed a discrimination complaint and a final decision on the complaint's resolution is awaited from the Department's Office of Advocacy and Enterprise or the Department of Housing and Urban Development.

b *Rental subsidy.* During termination, RA payments and/or interest credit will be administered following this outline according to type of situation:

(1) *Failure to recertify.*

(i) If failure to recertify is the fault of the tenant or member:

(A) The borrower will charge the tenant or member note rate rent or occupancy charge during the period of occupancy with an expired certification and will remit collected overage to the Servicing Office.

(B) If the tenant or member does not pay rent during this period, the project will not be required to pay overage.

(ii) The borrower will send a copy of the termination notice to the Servicing Official, together with a copy of the ''90 day'' and ''30 day'' letters sent to the tenant.

(iii) The Servicing Official will suspend payment of any RA until the recertification process is completed; otherwise until the tenant or member moves out or is evicted by court order, whichever occurs first.

(iv) The Servicing Official will annotate the next processed project master list with an ''E'' for expiration in column 5 of part II of Form FmHA or its successor agency under Public Law 103–354 1944–29 for the appropriate tenant(s) or member(s).

(v) If failure to recertify is the fault of the borrower or management, through no fault of the tenant or member:

(A) The Servicing Official will advise the borrower or management to rescind the notice of termination.

(B) Overage will be paid from project funds or by the management agent, depending on the provisions of the management plan and management agreement.

(C) Until a new tenant certification is effective, the tenant shall continue to pay the rent or occupancy charge established by the expired tenant certification.

(vi) If the termination process is nullified, either by completing the recertification process, by judicial action or the resolution of a discrimination complaint, the Servicing Official will restore RA and request RA payment retroactive to the date it was withheld, based on the newly verified tenant certification. If the termination process ends with voluntary tenant/member move-out or court ordered eviction, whichever occurs first, the RA will be assigned to the next tenant or member that is RA eligible at the time of the move-out or eviction.

(2) *Lease violation.*

(i) The borrower will send a copy of the termination notice to the Servicing Official.

(ii) The Servicing Official will annotate the next processed project master list with a

''T'' for termination in column 5 of part II of Form FmHA or its successor agency under Public Law 103–354 1944–29 for the appropriate tenant(s) or member(s).

(iii) The Servicing Official will continue to authorize RA for the tenant or member.

(iv) The borrower will continue to charge and collect the rental or occupancy charge rate established by the tenant's or member's current tenant certification.

(v) If the termination process is nullified, either by resolution of the lease violation or by court action, normal tenant/member status resumes. If the termination ends with tenant/member move-out or court ordered eviction, whichever occurs first, the RA will be assigned to the next tenant or member that is RA eligible at the time of the move-out or eviction.

(vi) If the tenant certification expires while a notice of termination for lease violation or good cause is in effect (i.e., litigation is pending):

(A) The borrower will continue to assess the rent or occupancy charge to the tenant/member at the rates established by the expired tenant certification, through such time the court has rendered a decision, or the tenant/member has moved out, whichever occurs first. (NOTE: the tenant/member must pay the rent or occupancy charge into an escrow account pending the outcome of litigation.)

(B) The project will not be required to pay overage.

(C) Should the court deny the termination and order reinstatement of occupancy, the borrower shall promptly complete the recertification process as of the current time to become effective as soon as possible, collect the due rent or occupancy charge, and request RA retroactive to the date it was suspended.

B *Notice of lease or occupancy agreement violation.* A notice of lease or occupancy agreement violation is prepared and issued by the borrower or authorized representative. Any such notice must be based on material violation of the lease or occupancy agreement terms or for other documented good cause as determined by the borrower or the project manager.

1 The notice of lease or occupancy agreement violation will be handled according to the terms of the lease or occupancy agreement. Tenants or members will be given prior notice of lease or occupancy agreement violation according to State or local law. The notice must:

a Refer to relevant provisions in the lease or occupancy agreement.

b State the violations with enough information describing the nature and frequency of the problem to enable the tenant or member to understand and correct the problem. In those cases where the lease or occupancy agreement violation is due to the tenant's failure to pay rent or the member's failure to pay occupancy charge, a notice stating the dollar amount of the balance due on the rent or occupancy charge account and the date of such computation shall satisfy this requirement.

c State that the tenant or member will be expected to correct the lease or occupancy agreement violation by a specified date.

d State that the tenant or member may informally meet with the borrower or borrower representative to attempt to resolve the stated violation before the date of corrective action specified in the notice.

e Advise the tenant or member that if he or she has not corrected the stated violation by the date specified, the borrower may seek to terminate the lease or occupancy agreement by bringing forth a judicial action, at which time the tenant or member may present a defense.

2 The notice shall be accomplished by: sending a letter by first class mail to the tenant or member at his or her address at the project; or by serving a copy of the notice on any adult person answering the door at the dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or by affixing the notice to the door. Service shall not be deemed effective until either method of notice as described herein has been accomplished. The date on which the notice shall be deemed to be received by the tenant or member shall be the date on which the required first class letter is mailed, or the date on which the notice provided for in this paragraph is properly given, whichever method of service is used.

C *Notice of termination.*

1 Upon failure by the tenant or member to meet the condition(s) or correct the violation(s) stated in the notice of lease or occupancy agreement violation by the date specified, the tenant or member will be notified that the occupancy is terminated and that eviction is being sought through the appropriate judicial process according to State or local law.

2 The notice of termination is prepared and issued by the borrower or its authorized representative in accordance with the prior notice requirements and provisions of State or local law.

3 If State or local law is silent or otherwise not explicit, the notice must state the reason and basis for the termination of occupancy (i.e., material or other good cause violation, or both).

4 The notice of termination must include the location and regular office hours during which the tenant or member (or counsel) may view its file and copy any information it contains to aid in the tenant's member's defense.

5 The notice will be accomplished in the same manner described at paragraph XIV B 2 of this exhibit.

6 A copy of the notice of termination will simultaneously be forwarded to the Servicing Office.

7 In those states where the notice of lease or occupancy agreement violation automatically becomes the notice of termination after a prescribed period of time, the requirements of the notice of termination have been met.

D *Servicing Official review.*

1 Upon receipt of a copy of notice of termination, the Servicing Official shall promptly review the notice for technical compliance with paragraph XIV C of this exhibit and any applicable State Supplements. The Servicing Official will not review the notice for the merits of the action, nor express any opinion on the merits of the action (this responsibility resides with the State or local court).

2 No further action is required if the notice of termination meets technical requirements of preparation.

3 If the notice of termination fails to meet the technical requirements of preparation, the Servicing Official will:

a Inform the borrower how the notice of termination failed to meet the technical requirements of preparation,

b Inform the borrower to cease the action,

c Inform the borrower that it may reissue a new revised notice of termination if the borrower believes the conditions still warrant such action, and

d Send to the tenant a copy of the Servicing Official's letter that was sent to the borrower.

E *Notice of eviction.* A notice of eviction is prepared and issued by a court of law, not the borrower or its authorized representative. Eviction will be carried out as specified by the terms of the eviction notice and court order.

XV *SECURITY SERVICING:* Security servicing, as referenced in this exhibit, concerns the borrower's general responsibilities in relation to the loan agreement or resolution, note, mortgage, and other loan documents. It does not deal with security items between the borrower and the tenants or members. FmHA or its successor agency under Public Law 103–354 will look to the borrower to fulfill its obligation according to the requirements of the loan agreement or resolution, note, mortgage, and other legal or closing documents. Some items of special emphasis are:

A *Fidelity coverage.* It is the borrower's overall responsibility as described in the management plan to see that fidelity coverage is in place on any personnel entrusted with the receipt, custody, and disbursement of any project monies, securities, or readily saleable property other than money or securities. The borrower should have fidelity coverage in force as soon as there are assets within the organization and it must be obtained before any loan funds or interim financing funds are made available to the borrower. Coverage must be from a company licensed to provide coverage in the state where the project is located. Fidelity coverage obtained should utilize standard industry forms copyrighted by an organization such as the American Association of Insurance Services, or AAIS; Insurance Services Office, Inc., or ISO; or the Surety Association of America, or SSA. Use of the following guidelines will meet the administrative intent of FmHA or its successor agency under Public Law 103–354:

1 Fidelity coverage policies must declare in the insuring agreement(s) that the insurance company will provide protection to the insured against the loss of project money, securities, and property other than money and securities, through any criminal or dishonest act or acts committed by any ''employee,'' whether acting alone or in collusion with others, not to exceed the amount of indemnity stated in the declaration of coverage. The FmHA or its successor agency under Public Law 103–354 minimally requires any insuring policy to include an insuring agreement that covers employee dishonesty.

2 The types of coverage policies acceptable to FmHA or its successor agency under Public Law 103–354 are:

a *Blanket crime policy.* This type of policy usually provides the broader fidelity coverage and economy of cost options. Premiums are subject to discount based on the level of internal control exercised by the insured operation. This type of policy can provide the following insuring agreements:

(1) Employee dishonesty—Form A, Blanket. (Required)

(2) Loss inside the premises—Money and Securities Broad Form. (Recommended)

(3) Loss outside the premises—Money and Securities Broad Form. (Recommended)

(4) Depositor's forgery or alteration. (Recommended)

b *Fidelity bond.* Fidelity bonds limit coverage only to employee dishonesty. Fidelity bonds are generally used when one or two employees are covered. Premiums are based on established rate charges that are usually greater than for blanket crime policies.

(1) *Schedule and position bonds.* A schedule bond covers a named employee and is acquired with each change of employment. A position bond covers a named position of responsibility and permits continuous coverage even though the person holding that position changes. Of the two, a position bond is preferred by FmHA or its successor agency under Public Law 103–354.

(2) *Blanket bonds.* Blanket bonds cover all employees in either of two forms:

(i) Commercial blanket bond (Form A). This bond limits coverage to each loss, irrespective of how many persons are involved.

This form of bond is available on a ''standard'' basis.

(ii) Blanket position bond (Form B). This bond limits coverage to each employee, hence it can provide greater protection if there is collusion of two or more persons. This is a nonstandard form of bond available from some insurance companies who use their own individualized forms.

3 The FmHA or its successor agency under Public Law 103–354 requires only an endorsement listing all FmHA or its successor agency under Public Law 103–354 financed properties and their locations covered under the policy or bond. The policy or bond may also include properties or operations other than FmHA or its successor agency under Public Law 103–354 financed properties on separate endorsement listings.

4 Individual or organizational borrowers will have fidelity coverage when they have employees with access to project assets as cited in paragraph XV A of this exhibit; otherwise, a management company with exclusive access to the borrower's assets will have the fidelity coverage.

5 Borrowers who use a management agent with exclusive access to project assets as cited above will require the Agent to have fidelity coverage on all principals and employees with access to the project assets. Should active management revert to the borrower, the borrower will obtain fidelity coverage as specified in XV A 1 of this paragraph as a first course of business.

6 Fidelity coverage is not required when a loan is made to an individual (a natural person) or a General Partnership and that person or general partner will be responsible for a project's financial activities. (An individual person cannot bond or obtain coverage against its own actions.)

7 In the case of a land trust where the beneficiary is responsible for management, the beneficiary will be treated as an individual.

8 A limited partnership will not be required to have fidelity coverage on its general partners UNLESS one or more of its general partners perform financial acts coming within the scope of the usual duties of an ''employee.''

9 The minimum amount of fidelity coverage will be the amount calculated by multiplying an exposure index by a coverage factor. When the calculated amount is less than $10,000, minimum coverage of $10,000 must be provided. This calculation is made as follows:

a *Determine exposure index:* Exposure index=25 percent of the SUM of annual cash receipts (rents, cash subsidy, interest, etc.) and cash (cash carryover, reserves, CD's, tax and insurance escrows, etc.). Round to next higher $1,000.

b *Determine coverage:* Coverage = exposure index × coverage factor taken from the coverage chart. Round to next higher $1000.

c *Coverage chart:*

Exposure index	Coverage factor
$100,000 or less	.30
$100,000 to $200,000	.28
$200,000 to $300,000	.26
$300,000 to $400,000	.24
$400,000 to $500,000	.22
$500,000 to $600,000	.20
$600,000 to $700,000	.18
$700,000 to $800,000	.16
$800,000 to $900,000	.14
$900,000 to $1,000,000	.12
$1,000,000 or more	.10

d *Example:* $245,000 exposure index × 26=$63,700 Minimum coverage (rounded) = $64,000

10 A deductible is designed to allow flexibility in balancing what the project can prudently pay from its own assets, at a time of loss, against the economy of annual premiums in its annual budget. The following deductible levels will meet FmHA or its successor agency under Public Law 103–354 requirements:

Fidelity coverage	Deductible level
Under 50,000	$1,000
In the area of $100,000	2,500
In the area of $250,000	5,000
In the area of $500,000	10,000
In the area of $1,000,000	15,000

11 When discussing fidelity coverage with its insurance agent, the borrower and/or management agent should inquire how it can improve its internal controls to reduce exposure to risk. Adoption of improvement measures may result in lower premiums.

12 The premium for a borrower's fidelity coverage on project site employees is a project expense.

13 The premium of a management agent's fidelity coverage for the agent's principals and employees will be the management agent's business expense (i.e., it is included within the management fee). When a project site employee is covered under the ''umbrella'' of the agent's fidelity coverage, the pro rata portion of the premium covering the employee may be considered a project expense.

14 Fidelity coverage should be reviewed during annual review and adjusted when necessary.

B *Insurance.* The minimum amounts and types of insurance required of the borrower will be determined by FmHA or its successor agency under Public Law 103–354 in accordance with subparts A and B of part 1806 of this chapter (FmHA or its successor agency under Public Law 103–354 Instructions 426.1

and 426.2) except as otherwise described in this paragraph. All references to County Supervisor shall be construed to mean Servicing Official when applied to the multiple housing program. The borrower or its agent shall obtain:

1 Adequate fire, extended coverage, and earthquake insurance as needed will be required on all buildings included as security for the loan or grant (see Guide Letter 1930–4 for requesting renewals). The amount of coverage will be not less than the ''Total Estimated Reproduction Cost New of Improvements,'' on page 5 of Form FmHA or its successor agency under Public Law 103–354 1922–7, ''Appraisal Report for Multi-Unit Housing.'' The following additional provisions will apply:

a An initial insurance policy with evidence of first year paid premium will be delivered to the FmHA or its successor agency under Public Law 103–354 Servicing Official at the time of loan closing or transfer of loan, providing at least 1 year of coverage.

b Form FmHA or its successor agency under Public Law 103–354 426–2, ''Property Insurance Mortgage Clause,'' or the provisions thereof printed in the policy or in a blanket letter from an insurance company, must be part of the policy; namely to provide FmHA or its successor agency under Public Law 103–354, as mortgagee, with at least 10 days advance notice of cancellation.

c Evidence of paid premium in subsequent years will not be required.

d Any change of insurance provider or level of coverage or term, will be provided to the Servicing Official by use of part VII ''Notice of Change to Borrower/Project Status,'' of Form FmHA or its successor agency under Public Law 103–354 1930–7.

2 Suitable Worker's Compensation Insurance on all its employees. Worker's Compensation Insurance for employees of a management agent shall be paid out of the agent's management fee. When a project site employee is covered under the ''umbrella'' of the agent's insurance, the portion of premium attributable to a project site employee may be a project expense.

3 Adequate liability insurance.

4 Flood insurance when the project is located in a designated flood hazard area.

5 A blanket insurance policy may be accepted from a borrower when blanket coverage is more cost effective for each FmHA or its successor agency under Public Law 103–354 financed project on a prorata basis, and an endorsement is attached to the policy listing FmHA or its successor agency under Public Law 103–354 financed projects, locations, and coverage limits separate from any other properties covered by the policy.

C *Real estate and personal property taxes.* All borrowers will be required to pay their taxes before they become delinquent and provide FmHA or its successor agency under Public Law 103–354 with proof of payment (see Guide Letter 1930–7 to remind borrowers to pay taxes). An exception to the above may be made if the borrower has formally contested the amount of the property assessment and had escrowed the amount of taxes in question in a manner acceptable to the Servicing Official.

XVI *Automation of FmHA or its successor agency under Public Law 103–354 Forms and Formats:* The various forms and formats approved or prescribed for use by borrowers and their agents throughout this subpart may be prepared on automated systems when the following criteria is complied with:

A *FmHA or its successor agency under Public Law 103–354 forms approved for official use by OMB.*

1 The *identical* wording and nomenclature of an official form must be included in the automated version of the form, including the OMB approval number.

2 The function (i.e., logic or mathematical calculation) of an official form must be the same in an automated version of the form.

3 The name or logo of the source of an automated form must be visibly annotated on each output of the automated form.

4 Nominal spacing adjustment of the content of an official form on the automated format is permitted to accommodate limitations of automation software and hardware.

5 Output size must be 8½ inches × 11 inches.

6 Output on colored paper is permissible but not required by FmHA or its successor agency under Public Law 103–354.

B *Unofficial FmHA or its successor agency under Public Law 103–354 formats.* Items such as management plans, management agreements, waiting lists, and FmHA or its successor agency under Public Law 103–354 guide letters should be automated to the extent possible. Content and completion of the format must be developed according to FmHA or its successor agency under Public Law 103–354 guidelines for the item.

[58 FR 40868, July 30, 1993, as amended at 59 FR 3779, Jan. 27, 1994; 59 FR 6886, Feb. 14, 1994; 62 FR 25065, May 7, 1997]

EXHIBIT B–1 TO SUBPART C—MANAGEMENT PLAN REQUIREMENTS FOR FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 FINANCED MULTIPLE FAMILY HOUSING (MFH) PROJECTS

The objective of a management plan is to describe the property owner's expectations and standards for performance, timing, and results of management of all aspects of the various components of property operation,

maintenance, and compliance with applicable laws and regulations. This exhibit is intended to guide the owner in identifying the various components of property management in an organized manner. The listing of discussion items under each component is intended as further guidance. Items should be added if needed; likewise, those items listed and not applicable to a given property situation need not be addressed.

FmHA or its successor agency under Public Law 103–354 requires management of FmHA or its successor agency under Public Law 103–354 financed MFH projects to be in compliance with applicable Federal, State, and local laws and this regulation. Exhibit B–4 of this subpart will be used by a prospective management agent to provide a resume of management background and/or experience. Exhibit B–5 of this subpart will be used by an owner who proposes to provide direct project management. In rural cooperative housing (RCH), a cooperative's board of directors will manage the business of the cooperative with the assistance of the adviser to the board. If the board is unable, in the adviser's opinion, to manage the cooperative after an adequate period of training, then FmHA or its successor agency under Public Law 103–354 will make the determination of whether the cooperative will hire professional management.

FmHA or its successor agency under Public Law 103–354 will review the management plan to evaluate the borrower's standards for project management. The management plan and any subsequent revisions must be signed by the borrower, and then approved and signed by the authorized FmHA or its successor agency under Public Law 103–354 official. No loan will be closed or construction started, or loan transfer completed, without a properly approved and signed management plan. Management plans should be reviewed annually and updated at least triannually by the borrower. Any updated or modified management plan will need to be reviewed and approved by the Servicing Official at the time of annual review. When only a few changes are needed, use of an addendum to the plan is acceptable to FmHA or its successor agency under Public Law 103–354.

A management plan will reflect understanding of FmHA or its successor agency under Public Law 103–354 program requirements for the project and address each of the following areas:

1 *The role and responsibility of the owner and the relationship and delegations of authority to the management agent.* A management agreement must be provided where a management agent is to be used. If there is no management agent, the management plan should supply the equivalent information concerning the management staff assigned to day-to-day operation of the project even when the owner provides direct management.

a Describe and fully justify any identity of interest as described in paragraph V B of exhibit B of this subpart.

b Identify the supervisory relationships, and to whom the incumbent of the position responsible for the day-to-day operation of the project is accountable.

c Describe the conditions when the management agent must consult the owner before taking any action.

d Identify the person or position in the owner's organization that is the key contact for the management agency. Describe the type of decisions to be made by this contact person.

e Describe the fundamental responsibilities and duties of the owner and the managing agent. Identify any areas of overlap and describe how the overlap will be handled.

f Describe any pro rata divisions of singularly incurred operating expense that is common to the management agent and the owner (project) (i.e., fidelity coverage that may be divided between both).

2 *Personnel policy and staffing arrangements.*

a Describe hiring practices of management and their conformance with equal employment opportunity requirements.

b Include a staffing plan for the project.

c Describe the lines of authority, responsibility, and accountability (internal controls) within the management entity.

d Describe the standards and plans for training and familiarizing employees with their job related responsibilities and applicable FmHA or its successor agency under Public Law 103–354 program requirements. Describe how such training will generally be achieved.

3 *Plans and procedures for marketing units, achieving and maintaining full occupancy, and meeting HUD Form 935.2, ''Affirmative Fair Housing Marketing Plan,'' requirements.*

a Describe how affirmative marketing practices will be used. Describe the outreach and marketing efforts that will be used to reach those low-income and minority persons who are least likely to apply for such housing without special outreach efforts.

b Describe the methods that will be used to achieve and maintain the highest possible level of occupancy. When applicable, indicate any additional compensation or incentives that may be allowed management agents for early initial rent-up. (If this area is not covered in the management plan, it will usually not be allowed by FmHA or its successor agency under Public Law 103–354 at a later date.)

c Describe how the units will be advertised. Indicate minimum levels planned regardless of occupancy levels.

d Describe the appropriate communication system, auxiliary aids, or other assistance that will be used to ensure effective communication with applicants, tenants or

members, and members of the public that have sight or hearing impairments.

e Describe the kinds of reasonable accommodation the project can readily provide such as changing water faucets, kitchen equipment, door knobs, assigning handicap parking spaces, etc.

f Describe the process management will follow in reviewing and determining whether structural modification of an apartment unit is practical and feasible to reasonably accommodate a tenant or household member who has a handicap or disability.

g Indicate whether the FmHA or its successor agency under Public Law 103–354 sample waiting list (exhibit B–14 of this subpart) or some other waiting list will be used. If another waiting list is used, indicate how its use will otherwise comply with FmHA or its successor agency under Public Law 103–354 guidelines.

h Attach copies of sample forms that will be used to record unit condition, and indicate who will receive copies of the inspection forms.

i Describe any orientation services to be provided tenants or members to acquaint them with the project and care of the units. Indicate what printed project information will be given to applicants.

j Identify the person or staff position responsible for determining tenant or member eligibility and their location on the waiting list.

k In projects receiving tax credits, describe how special waiting lists will be established and when eligible tenants with incomes higher than tax credit limits will be considered for occupancy.

4 *Procedures for determining eligibility and for certifying and recertifying incomes.*

a Describe how applications and other records relevant to this function will be kept. If application fees are used, describe them.

b Describe the level of knowledge, skill, and ability that management official(s) will be expected to possess before assuming rental related duties such as application processing, eligibility determination, selection, unit assignment, certification, recertification, rent or occupancy charge collection, and recordkeeping. This discussion should mention training and testing to be provided or obtained to achieve and maintain the level expected.

c Identify whether project funds or the management agent will pay overage when overage is due through no fault of the tenant or member.

5 *Leasing and occupancy policies.*

a Describe the occupancy standards for the project. (This could be shown as an annex to the management plan.)

b Describe the project admissions and leasing/occupancy policies and procedures, and criteria for selecting tenants/members for occupancy. (This could be shown as an annex to the management plan.)

c Describe the level of knowledge, skill, and ability that management official(s) will be expected to understand and apply regarding project lease provisions and prohibitions, occupancy standards, and admissions policies.

d Describe special procedures that will be used where the marketing area includes non-English speaking or reading persons to assure that such persons will understand leases or occupancy agreements and established rules.

6 *Rent and occupancy charge collection policies and procedures.*

a Describe the project rent/occupancy charge collection policy and procedure, covering such matters as where the collection point is, which staff position handles the collection, provisions for collection after normal office hours, recording, and safeguarding of collections.

b Describe the project security deposit/membership fee policy and procedure covering matters similar to the preceding item. Include discussion on handling of any interest earned on such deposits.

7 *Procedures for requesting and implementing a rent or occupancy charge change.*

a Describe the process to be followed for preparation and request of a change of rents/occupancy charges and/or utility allowances, and to notify tenants of such change, to meet FmHA or its successor agency under Public Law 103–354 requirements.

b Identify which staff position or person will process change requests.

c Describe when such change requests will normally be made in terms of economic need and timing within a fiscal year of operation.

8 *Plans and procedures for carrying out an effective maintenance, repair, and replacement program.*

a Describe the project objective and general plan for preventive maintenance.

b Describe where the project's as-built plans and specifications will be located and identify the staff position responsible for updating it as modifications occur.

c Describe the general maintenance procedures and schedules or cycles to: (this list could be attached as an addendum)

(1) Check and service appliances and mechanical equipment.

(2) Perform safety checks of smoke/fire alarms, fire extinguishers, outside lighting, and ice removal, etc.

(3) Inspect and perform maintenance and redecoration incident to tenant/member move-out and move-in.

(4) Perform major interior and exterior painting and redecorating.

(5) Perform major repairs and grounds maintenance.

(6) Remove garbage and trash.

(7) Perform common areas cleanup (parking lot, entryways, hallways, community room, etc.)

d Describe the project policy and procedure for tenants/members to prepare and submit maintenance requests.

e Describe the general timing for handling purchase orders and payments.

f Describe the project policy for budgeting for and/or requesting use of reserve funds for funding major maintenance or replacement items.

g In migrant or seasonally occupied labor housing (LH), describe the above items in terms of season opening and closing dates.

9 *Plans and procedures for providing supplemental services.*

a Describe the types of supplemental services such as laundry and vending machines that will be provided to benefit occupants.

b Explain whether this equipment will be owned and operated by the owner or a consignee (vendor).

c Describe the safekeeping and recording practices (internal control) of any cash collections from use of the equipment.

d Describe who will be responsible for maintaining the equipment and stocking any vending machines.

e When a consignee will operate the equipment, describe the general terms of the consignment contract.

10 *Plans for accounting, recordkeeping, and meeting FmHA or its successor agency under Public Law 103–354 reporting requirements.*

a Briefly describe the type of project accounting methods (i.e., cash or accrual) and records that will be used, how will they be maintained, and which staff position will prepare and maintain them.

b Describe how interest earned on project reserve funds will be prorated and accounted ''separately'' if such funds are deposited jointly with funds of another project owned by the same borrower.

c Describe whether the project bookkeeping chart of accounts and bank accounts is compatible with Form FmHA or its successor agency under Public Law 103–354 1930–7, ''Multiple Family Housing Project Budget,'' requirements, and if not, what adjustments will be made when reporting actuals on the form.

d Identify which staff member or position will be responsible for the preparation and submission of the quarterly and annual reports required by FmHA or its successor agency under Public Law 103–354.

e Provide assurance or explanation that the person or firm who will perform and prepare the annual audit, or verification of review, is not associated with the project, other than to perform the audit or review.

f Discuss the proposed tenant or member record maintenance system including retention of records and identify which person/position will handle and maintain the records.

g Identify where records subject to FmHA or its successor agency under Public Law 103–354 review will be kept and which person/position FmHA or its successor agency under Public Law 103–354 will contract to review the records.

11 *Energy conservation measures and practices.*

a Describe the plan to inform and encourage tenants/members in use of energy conservation practices they can use in their unit to save utility expense (and thus minimize utility allowances and conserve rental assistance).

b Describe the plan to utilize energy conservation practices in the common areas of the project (to conserve operating expense and help minimize rent/occupancy charge levels).

c Describe the project objective in implementing energy conservation measures, if any, as they are identified in an energy audit.

12 *Plans for tenant participation in rural rental housing (RRH) project operations and tenant's relationship with management.*

a Decribe any plans for a tenant organization and how management and staff will work with the organization.

b Describe where the Tenant Grievance and Appeals Procedure (subpart L of part 1944 of this chapter) will be posted in the project and otherwise made available to tenants. Identify which person or staff position will be responsible for responses to and consideration of a tenant/member grievance.

13 *Plans for member participation in RCH project operations.*

a Decribe who will explain to the members the types of committees the cooperative will be using.

b Describe what the cooperative will do to attract member participation on committees.

c Describe how the board members will participate with the committee.

d Describe where the cooperative will post, and otherwise make available to members, the Tenant Grievance and Appeals Procedure (subpart L of part 1944 of this chapter). Identify which person or staff position will be responsible for response to and consideration of a member grievance.

14 *Plan for carrying out management training programs.*

a Describe the standards of training and proficiency that management or board members will be expected to attain and maintain to perform their duties and responsibilities in carrying out project objectives, including compliance with applicable Federal, State, and local laws.

b Describe the plan to conduct internal training and to otherwise use external training sources to maintain levels of attained proficiency.

c For RCH, describe the actions the board will take if a board member(s) does not participate in training.

d For RCH, describe the role the board will assume in making sure the RCH membership as a whole understands its role and functions in the cooperative.

15 *Termination of leases or occupancy agreements and eviction.*

a Identify which person or staff position is responsible for knowing and administering State and local laws and FmHA or its successor agency under Public Law 103–354's requirements regarding termination of leases or occupancy agreement and evictions.

b Identify which person or staff position is responsible for knowing and administering State and local laws and FmHA or its successor agency under Public Law 103–354's requirements regarding the notification that must be given to a tenant or member when termination of lease or occupancy agreement is proposed and subsequent eviction procedures through the State or local judicial process.

16 *Security servicing.*

a Identify which person or staff position is responsible for knowing and complying with FmHA or its successor agency under Public Law 103–354 requirements for fidelity coverage and acquiring such coverage.

b Identify which person or staff position is responsible for knowing and complying with FmHA or its successor agency under Public Law 103–354's insurance coverage requirements and acquiring such coverage.

17 *Management agreement.* Attach a copy of the management agreement, when applicable. (If an initial loan, attach a copy of the proposed management agreement, when applicable.) See exhibit B–2 of this subpart for requirements for management agreements.

18 *RCH board of director/adviser relationship.* Discuss the relationship of the adviser and its effect on decisions made by the board.

19 *Management compensation.*

a If management is provided directly by the owner, describe the amount of management fee, how it will be determined, and how it will be paid.

b In the case of a cooperative, describe the amount of compensation to be paid to the adviser by the board.

20 *On-site management.*

a Describe who (owner, site manager, caretaker, board) will perform on-site management duties and responsibilities.

b Describe the duties and responsibilities of the on-site management staff.

c Identify whether the site manager will live in the project in a rent-free unit or pay rent, or live off-site.

d Describe established office hours and indicate where they will be posted.

21 *Validity of the management plan.* The plan must provide space at the end for the following:

a Date, title, and signature of borrower or borrower's authorized representative.

b Date, title, and signature of the FmHA or its successor agency under Public Law 103–354 official approving the plan.

[58 FR 40868, July 30, 1993, as amended at 62 FR 25065, May 7, 1997]

EXHIBIT B–2 TO SUBPART C—REQUIREMENTS FOR MANAGEMENT AGREEMENTS

A completed and executed management agreement must be reviewed and approved by the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 whenever a management agent is to be used. A management agreement must be submitted to FmHA or its successor agency under Public Law 103–354 for review as part of a project loan docket, whenever there is a change of management agents or ownership, or when a major revision of an existing agreement is necessary or required.

1 A written management agreement is required for any project when the owner retains a management agent. A management agreement is not required when the project is managed by the owner as described in paragraph V E 6 of exhibit B of this subpart. However, a written management plan is required for all projects new and existing, except for on-farm labor housing units where rent is not required. Although the adviser to a cooperative board of directors is not the same type of agent as those who are now managing rental projects, a written agreement between the board and the adviser is required which sets forth their relationship and what the adviser is expected to do for the cooperative. Exhibits F, F–1, and G of subpart E of part 1944 of this chapter outline the functions and responsibilities of an adviser. The agreement may follow the content of exhibit B–3 of this subpart.

2 The management agreement must address how FmHA or its successor agency under Public Law 103–354 requirements will be met. The owner may delegate to the agent any management duties which are not required to be performed by the owner. The owner may delegate selected ownership responsibilities, such as requests for review and/or appeal of adverse decisions by third parties that affect the owner. However, the owner remains totally responsible to FmHA or its successor agency under Public Law 103–354 for all aspects of management.

3 The management plan is the primary management charter, constituting a comprehensive description of the policies and

procedures to be followed in managing the project. The management agreement describes how the objectives and policies in the management plan will be carried out. The agreement should be clear and concise, should not merely repeat the management plan, but indicate how the management agent will implement the plan.

4 The management agreement shall describe the management agent's organization and staffing structure, management controls, and any management company identity of interest relationship(s) such as the borrower, vendors, and suppliers of materials, labor, and services. When such relationships exist, the management agent shall prepare and sign the forms described in paragraph V B 2 a of exhibit B of this subpart as ''applicant''.

5 The management agreement sets forth the standards and expectations negotiated between the borrower and the management agent. The agreement should follow the guidelines of exhibit B–3 of this subpart. Each management agreement should be tailored to the specific conditions and staffing arrangements of the particular project. The site, design, size of the project, and fiscal constraints; market conditions; social factors; local law; and business practices are among the elements which may require variations to exhibit B–3 of this subpart.

EXHIBIT B–3 TO SUBPART C—SAMPLE MANAGEMENT AGREEMENT FOR FARMERS HOME ADMINISTRATION (FMHA) OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 FINANCED MULTIPLE FAMILY HOUSING (MFH) PROJECTS

This Agreement is made this __ day of ___, 19__, between _____ (the ''Owner''), and _____ (the ''Agent'') under the terms and conditions set forth herein.

I *General.*

A *Appointment and acceptance.* The Owner appoints the Agent as exclusive agent for the management of the property described in paragraph I B of this agreement, and the Agent accepts the appointment, subject to the terms and conditions set forth in this agreement.

B *Project description.* The property to be managed by the Agent under this agreement (the ''Project'') is a housing development consisting of the land, buildings, and other improvements which make up Project No. ___. The Project is further described as follows:

Name _____

Location

City: _____

County: _____

State: _____

No. of dwelling units _____

Type of units _____

(Family, Elderly, (Mixed, Congregate)

C *Definitions.* As used in this agreement:

1 ''FmHA or its successor agency under Public Law 103–354'' means the Farmers Home Administration or its successor agency under Public Law 103–354, including any successor agencies.

2 ''Principal Parties'' means the Owner and the Agent.

3 ''Agent,'' as used throughout this agreement, means the person or business entity, including employees at the Agent's office and project site, engaged in the task of providing management of a FmHA or its successor agency under Public Law 103–354 financed MFH project in contractual arrangement with the Owner.

D *Identity of interest.* The Agent discloses to the Owner and FmHA or its successor agency under Public Law 103–354 any and all identities of interest that exist or will exist between the Agent and the Owner, suppliers of material and/or services, or vendors in any combination of relationship. 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,'' completed by the Agent as ''applicant,'' are attached and made part of this agreement.

E *FmHA or its successor agency under Public Law 103–354 requirements.* In performing its duties under this management agreement, the Agent will comply with all relevant requirements of FmHA or its successor agency under Public Law 103–354. FmHA or its successor agency under Public Law 103–354 requirements include preparation of forms and reports in the format of prescribed FmHA or its successor agency under Public Law 103–354 forms and exhibits.

F *Basic information.* As soon as possible, the Owner will furnish the Agent with a complete set of ''as built'' plans and specifications and copies of all guarantees and warranties relevant to construction, fixtures, and equipment. With the aid of this information and inspection by competent personnel, the Agency will become thoroughly familiar with the character, location, construction, layout, plan, and operation of the project, and especially with the physical plant.

G *Compliance with governmental orders.* The Agent will take such action as it may deem necessary to comply promptly with any and all governmental orders or other requirements affecting the project, whether imposed by Federal, State, county or municipal authority, subject, however, to the limitation stated in paragraph IV D of this exhibit with respect to litigation and repairs. Nevertheless, the Agent shall take no action

so long as the Owner is contesting, or has affirmed its intention to contest, any such order or requirement. The Agent will notify the Owner in writing of all notices of such orders or other requirements, within 72 hours from the time of their receipt.

H *Nondiscrimination.* In the performance of its obligations under this agreement, the Agent will comply with the provisions of any Federal, State or local Fair Housing law prohibiting discrimination in housing on the grounds of race, color, religion, sex, familial status, national origin, or handicap. Other nondiscrimination provisions include title VI of the Civil Rights Act of 1964 (Pub. L. 88–352, 78 Stat. 241), Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, as they relate to the FmHA or its successor agency under Public Law 103–354 multi-housing program.

I *Fidelity coverage.* The Agent agrees to furnish, at its own expense, fidelity coverage to the Owner, with copy to the FmHA or its successor agency under Public Law 103–354 Servicing Office on the employees of the Agent who are entrusted with the receipt, custody, and disbursement of any project monies, securities, or readily saleable property other than money or securities. The minimum coverage of $____ will be provided according to the coverage chart found in paragraph XV of exhibit B of this subpart. The Agent will obtain coverage from a company licensed to provide coverage in the project locality. Coverage will be in force to coincide with the assumption of fiscal responsibility by the Agent until that responsibility is relinquished. Endorsement listing FmHA or its successor agency under Public Law 103–354 projects separate from other projects or operations will be obtained and made part of the coverage policy or bond. The other terms and conditions of the coverage, and the surety thereon, will be subject to the requirements and approval of the owner.

J *Bids, discounts, rebates, etc.* With prior approval of the owner, the Agent will obtain contracts, materials, supplies, utilities, and services on the most advantageous terms to the project, and is authorized to solicit bids, either formal or informal, for those items which can be obtained from more than one source. The Agent will secure and credit to the Owner all discounts, rebates, or commissions obtainable with respect to purchases, service contracts, and all other transactions on the Owner's behalf.

II *Management plan.*

A *Description.* Attached is a copy of the management plan for the project, which provides a comprehensive description of the policies and procedures to be followed in the management of the project.

B *Relationship with management plan.* The Agent shall conduct its management activities in accordance with the policies and procedures set forth in the management plan. In addition, the Agent will also carry out the tasks and responsibilities set forth in paragraph IV of this agreement.

C *Division of duties and common expense.* An identification of duties and supervisory relationship for project site staff and Agent's office staff are described in the management plan as is the pro rata division of singularly incurred operating expense common to the Agent and the Owner.

III *Budget.*

A *Preparation.* The Agent shall prepare an original project budget for submission to the owner and FmHA or its successor agency under Public Law 103–354 for approval. For each subsequent fiscal year the Agent shall prepare a new budget.

B *Budget categories.* The budget shall be prepared using the format and categories of FmHA or its successor agency under Public Law 103–354 Form 1930–7, ''Multiple Family Housing Project Budget.''

IV *Agent's authorizations.* The Owner authorizes the Agent to:

A Operate the project according to the Owner's management plan and in compliance with the Owner's loan agreement (or resolution) with FmHA or its successor agency under Public Law 103–354, and applicable FmHA or its successor agency under Public Law 103–354 regulations an guidelines.

B Operate and maintain the project within reasonable tolerance (as defined by FmHA or its successor agency under Public Law 103–354) of the expense category subtotals in the project budget.

C Purchase all material, equipment, tools, appliances, supplies and services necessary for proper maintenance and repair of the project as stipulated by the Owner in the management plan, project budget, and/or other form of written documentation.

D Notwithstanding any of the foregoing provisions or any similar provisions that follow, the prior written approval of the Owner will be required for any expenditure which exceeds $____ in any one instance for litigation involving the project, or labor, materials, or otherwise in connection with the maintenance and repair of the project. This limitations is not applicable for recurring expenses within the limits of the operating budget or emergency repairs involving manifest danger to persons or property, or that are required to avoid suspension of any necessary service to the project. In the latter event, the Agent will inform the Owner of the facts as promptly as possible.

E Represent the Owner in specific matter related to management of the project. (Items such as representing the Owner's interest at appeal hearings may be specified here or may be indicated that such authorizations will be provided in writing as an addendum when appropriate.)

V *Agent's obligations.*

A *Management input during and after FmHA or its successor agency under Public Law 103–354 processing.* The Agent will advise and assist the Owner with respect to management planning and input during FmHA or its successor agency under Public Law 103–354 loan processing and subsequent review. The Agent's specific tasks will be:

1 Participation in any conference with FmHA or its successor agency under Public Law 103–354 officials involving project management.

2 Preparation and submission of Form FmHA or its successor agency under Public Law 103–354 1930–7 as a quarterly report throughout the period from initial occupancy after FmHA or its successor agency under Public Law 103–354 loan closing until such time as no longer required by FmHA or its successor agency under Public Law 103–354. If the management is authorized to sign the reports for the owner, a copy of the signed report as submitted to FmHA or its successor agency under Public Law 103–354 will be provided to the Owner.

3 Participation in the on-site final inspection of the project, required by FmHA or its successor agency under Public Law 103–354 prior to initial occupancy.

4 Continuing review of the management plan, for the purpose of keeping the Owner advised of necessary or desirable changes.

B *Liaison with architect and general contractor.* At the direction of the owner during the planning and construction phases, the Agent will maintain direct liaison with the architect and general contractor, in order to:

1 Coordinate management concerns with the design and construction of the project,

2 To facilitate completion of any corrective work, and

3 To facilitate the Agent's responsibilities for arranging utilities and services pursuant to paragraph V J of this agreement. The Agent will keep the Owner advised of all significant matters of this nature.

C *Marketing.* The Agent will market the rental units according to the management plan, observe all requirements of the Affirmative Fair Housing Marketing Plan, and maintain records of the marketing activity for compliance review purposes.

D *Rentals.* The Agent will offer for rent and will endeavor to rent the dwelling units in the project. The following provisions will apply:

1 The Agent will make preparations for initial rent-up, as described in the management plan.

2 The Agent will follow the tenant selection policy described in the management plan.

3 The Agent will show the premises and available units to all prospective tenants without regard to race, color, national origin, sex, religion, familial status, handicap or age; and will provide for reasonable accommodation to individuals with handicaps.

4 The Agent will take and process all applications received for rentals. If an application is rejected, the Agent will inform the applicant in writing of the reason for rejection. The rejected application, with the reason for rejection noted thereon, will be kept on file until a compliance review has been conducted. If the rejection is because of information obtained from a credit bureau, the source of the report must be revealed to the applicant according to the Fair Credit Reporting Act. A current list of qualified applicants will be maintained.

5 The Agent will prepare all dwelling leases, parking permits, and will execute the same in its name, identified thereon as Agent for the Owner. The terms of all leases will comply with the relevant provisions of FmHA or its successor agency under Public Law 103–354 regulations and State and local law. Dwelling leases will be in a form approved by the Owner and FmHA or its successor agency under Public Law 103–354.

6 The Owner will furnish the Agent with rental and income report forms required by FmHA or its successor agency under Public Law 103–354, showing rents as appropriate for dwelling units, other charges for facilities and services, and income data relevant to determinations of tenant eligibility and tenant rents. In no event will the rents and other charges be exceeded.

7 The Agent will counsel all prospective tenants regarding eligibility and will prepare and verify eligibility certifications and recertifications in accordance with FmHA or its successor agency under Public Law 103–354 requirements.

E *Reports.* The Agent will furnish information (including occupancy reports) as may be requested by the Owner, FmHA or its successor agency under Public Law 103–354, and/or the Office of Inspector General from time to time with respect to the project's financial, physical, or operational condition. The Agent will also prepare and submit:

Form FmHA or its successor agency under Public Law 103–354 1944–8: ''Tenant Certification''

Form FmHA or its successor agency under Public Law 103–354 1944–29: ''Project Worksheet for Interest Credit and Rental Assistance''

Form FmHA or its successor agency under Public Law 103–354 1930–7: ''Multiple Family Housing Project Budget''

The Agent will assist the owner in initiating or completing all additional reporting forms and data prescribed by FmHA or its successor agency under Public Law 103–354 affecting the operation and maintenance of the project.

F *Collection of rents, security deposits and other receipts.* The Agent will endeavor to collect when due all rents, charges, and other amounts receivable on the Owner's account in connection with the management and operation of the project. Such receipts will be deposited immediately in the project's general operating account with _____ (name of bank or such other financial institution designated by the owner), whose deposits are insured by an agency of the Federal Government. The Agent will collect, deposit, and disburse security deposits, if required, in compliance with any State or local laws governing tenant security deposits. Security deposits will be deposited by the Agent in a separate account, at a Federally insured institution. This Account will be carried in the owner's name and designated of record ''Name of Project) Security Deposit as Account.''

G *Accounting system.* The Agent must develop a systematic method to record the business transactions of the project that appropriately reflects the complexity of project operations and the owner's requirements. The Agent may be required to implement and use a bookkeeping and accounting system acceptable to FmHA or its successor agency under Public Law 103–354. The accounts described in paragraph VI of this agreement, as a minimum, will be established and regularly maintained by the Agent.

H *Enforcement of leases.* The Agent will endeavor to ensure full compliance by each tenant with the terms of the lease. Voluntary compliance will be emphasized. The Agent, using the services of local social service agencies when available, will counsel tenants and make referrals to community agencies in cases of financial hardship or other circumstances deemed appropriate by the Agent. Involuntary termination of tenancies should be avoided to the maximum extent consistent with sound management of the project. Nevertheless, and subject to the relevant procedures prescribed in the management plan, the Agent may initiate action to terminate any tenancy when, in the Agent's judgment, there is material noncompliance with the lease or other good cause as prescribed by FmHA or its successor agency under Public Law 103–354 regulations for such termination. The tenant must be properly notified of his/her right to appeal the proposed action according to FmHA or its successor agency under Public Law 103–354 regulations. Attorney's fees, and other necessary costs incurred in connection with such actions will be paid out of the general operating account as project expenses within the itemized limit of the project budget.

I *Maintenance and repair.* The Agent will endeavor to maintain and repair the project in accordance with the management plan and local codes, and keep it in a condition acceptable to the Owner and FmHA or its successor agency under Public Law 103–354 at all times. This will include, but is not limited to, cleaning, painting, decorating, plumbing, carpentry, grounds care, energy conservation measures and practices, and such other maintenance and repair work as may be necessary, subject to any limitations imposed by the Owner in addition to those contained therein.

Incidental thereto, the following provisions will apply:

1 Special attention will be given to preventive maintenance, and to the greatest extent feasible, the services of regular maintenance employees will be used.

2 The Agent will contract with qualified independent contractors acceptable to the Owner for the maintenance and repair of air conditioning, heating systems, and elevators, and for extraordinary repairs beyond the capability of regular maintenance employees. Any identity of interest will be identified in accordance with paragraph V B of exhibit B of this subpart.

3 The Agent will systematically receive and promptly investigate all service requests from tenants, take such action as may be justified, and keep records of the same. Emergency requests will be received and serviced on a 24 hour basis. Serious complaints will be reported to the Owner after investigation.

4 The Agent will advise the Owner of any cost-effective and adaptable energy conservation measures or practices that should be used in the project. The Agent will encourage their use and will assist the Owner during any installation of these measures or institution of practices.

J *Utilities and services.* In accordance with the Owner's management plan, the Agent will make arrangements for water, electricity, gas, fuel oil, sewage and trash disposal, vermin extermination, decorating, laundry facilities, and telephone service.

K *Insurance.* The Owner will inform the agent of insurance to be carried with respect to the project and its operations, and the Agent will cause such insurance to be placed and kept in effect at all times. The Agent will pay premiums out of the general operating account, and premiums will be treated as operating expenses. All insurance will be placed with companies, on conditions, in amounts, and with beneficial interests appearing thereon as shall be acceptable to the Owner and the FmHA or its successor agency under Public Law 103–354 provided that the same will include public liability coverage, with the Agent designated as one of the insured, in amounts acceptable to the Agent as well as the Owner and FmHA or its successor agency under Public Law 103–354. The Agent will investigate and furnish the Owner with full reports on all accidents, claims, and potential claims for damage relating to the

project, and will cooperate with the owner's insurers in connection therewith.

L *Taxes, fees and assessments.* The Agent shall provide for the payment from project funds all taxes, assessments, and government fees for the owner promptly when due and payable. The Agent shall also evaluate local property taxes to determine if they bear a fair relationship to the project value and if they do not, at the direction of the Owner, appeal such taxes on behalf of the Owner or assist the Owner in the appeal, whichever is required by local jurisdiction or is appropriate.

M *Employees and/or services.* The Agent will employ persons and/or services, (or will manage persons and/or services employed by the Owner) to perform duties and responsibilities at the project site as described in the management plan. Compensation of such persons and/or services will be paid as a direct expense to the project as specified in the management plan and this agreement. The Agent will employ sufficient resources (staff and/or services) within the Agent's operation to fulfill Agent's obligation to the Owner under the terms of this agreement.

VI *Project accounts.* The Agent will maintain and safeguard the Owner's project financial accounts and tenant security deposit accounts according to the current requirements set forth in paragraph XIII B 2 of exhibit B of subpart C of part 1930 of this chapter, which is part of the ''Multiple Housing Management Handbook.''

VII *Agent's compensation, tenure, and identification.*

A *Agent's compensation.* The Agent will be compensated for its services for providing management described under this agreement, and the Owner's management plan, by monthly fees, to be paid from the general operating account and treated as a project operation and maintenance expense. Such fees will be payable on the first day of each month for the preceding month. Each monthly fee will be in an amount computed as follows:

(The following are acceptable methods in no order of preference. Any other method of compensation will be fully described and inserted in this section.) The costs incurred by the Agent for performing the specified services listed in this agreement shall be allocated to the owner and Agent as outlined in the agreement, management plan, and approved project budget.

1. $___ occupied unit on the first of a month.

2. % of cash rent collected. (Plan I and full profit)

3. % of basic rents collected. (Plan II)

Maximum annual compensation under this agreement and the approved project budget shall be $___ year.

B *Term of agreement.* This agreement shall be in effect for a period of not more than 3 years, beginning on the ___ day of ___, 19___, subject, however, to the following conditions:

1 This agreement will not be binding upon the Principal Parties until approved by FmHA or its successor agency under Public Law 103–354.

2 This agreement may be terminated by mutual consent of the principal parties as of the end of any calendar month, provided that at least 30 days advance written notice thereof with reasons given is submitted to FmHA or its successor agency under Public Law 103–354.

3 In the event that a petition in bankruptcy is filed by or against either of the Principal Parties, or in the event that either makes an assignment for the benefit of creditors or takes advantage of any insolvency act, the other party may terminate this agreement without notice to the other, provided that prompt written notice with reasons given for such termination is submitted FmHA or its successor agency under Public Law 103–354.

4 It is expressly understood and agreed by and between the Principal Parties that the State Director may terminate this agreement with cause upon the issuance of a 30-day written notice of cancellation to each of the Principal Parties. It is further understood and agreed that no liability will attach to either of the Principal Parties in the event of such termination.

5 Upon termination of this agreement, the Agent will submit to the Owner all project books and records and any financial statements required by the FmHA or its successor agency under Public Law 103–354. After the Principal Parties have accounted to each other with respect to all matters outstanding as of the date of termination, the Owner will furnish the Agent security, in form and Principal amount satisfactory to the Agent, against any obligations or liabilities which the Agency may properly have incurred on behalf of the Owner hereunder.

C *Agent's indemnification.* Notwithstanding any provision of this agreement or any obligation of Agent hereunder, it is understood and agreed: that Owner has assumed and will maintain its responsibility and obligation throughout the term of this agreement for the finances and the financial stability of the project; and that Agent shall have no obligation, responsibility, or liability to fund authorized project costs, expenses, or accounts other than those funds generated by the project itself or provided to the project or to Agent by Owner. In accordance with the foregoing, Owner agrees that Agent shall have the right at all times to secure payment of its compensation, as provided for under paragraph VII A of this agreement, from the operating and maintenance account, immediately when such compensation is due and without regard to other

project obligations or expenses provided the Agent has satisfactorily discharged all duties and responsibilities under this agreement. Moreover, Owner hereby indemnifies Agent and agrees to hold it harmless with respect to project costs, expenses, accounts, liabilities, and obligations during the term of this agreement and further agrees to guarantee to Agent the payment of its compensation under paragraph VII A of this agreement during the term of this agreement to the extent that the project's operating and maintenance account is insufficiently funded for this purpose. Failure of Owner at any time to abide by and to fulfill the foregoing shall be a breach of this agreement entitling Agent to obtain from Owner, upon demand, full payment of all compensation owned to Agent through the date of such breach and entitling Agent, at its option, to terminate this agreement forthwith.

VIII *Interpretative provisions.*

A This agreement constitutes the entire agreement between the Owner and the Agent with respect to the management and operation of the project. No change will be valid unless made by supplemental written agreement approved by FmHA or its successor agency under Public Law 103–354.

B This agreement has been executed in several counterparts, each of which shall constitute a complete original agreement, which may be introduced in evidence or used for any other purpose without production of any of the other counterparts.

C This agreement is NOT in full force and effect unless and until concurred with by FmHA or its successor agency under Public Law 103–354.

D At all times, this agreement will be subject and subordinate to all rights of the FmHA or its successor agency under Public Law 103–354, and will work to the benefit of and constitute a binding obligation upon the Principal parties and their respective successors and assigns. To the extent that this agreement confers rights upon the consenting parties, it will be deemed to work to their benefit, but without liability to either, in the same manner and work with the same effect as though the consenting parties were primary parties to the agreement.

The Principal Parties [by their duly authorized officers] have executed this agreement on the date first above written.

Owner: _____
By: _____
Title: _____
Agent: _____
By: _____
Title: _____

As lender or insurer of funds to defray certain costs of the project and without liability for any payments hereunder, the Farmers Home Administration or its successor agency under Public Law 103–354 hereby concurs with this agreement.

Farmers Home Administration or its successor agency under Public Law 103–354
By: _____
Title: _____
Date: _____

Attachments: Management plan, Loan resolution or agreement, Identity of Interest Disclosure Certificate, Identity of Interest Qualification Form.

[58 FR 40868, July 30, 1993, as amended at 59 FR 6886, Feb. 14, 1994]

EXHIBIT B–4 TO SUBPART C—OUTLINE FOR PROSPECTIVE MANAGEMENT AGENT OF A MULTIPLE FAMILY RENTAL OR LABOR HOUSING PROJECT

Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 expects that Multiple Family Housing (MFH) property and program financed by the Agency will be managed to comply with authorizing statutes and regulatory requirements in meeting the objective of providing decent, safe, and sanitary housing for eligible tenants and members.

The following outline is intended to be a guide that borrowers can use in evaluating the level and quality of services that a prospective management agent plans to provide in the management of a multiple housing project. The borrower is encouraged to add those items it deems appropriate and to delete any that do not apply.

1. Provide your name, address, name of project, location of project, and the name of the owner.

2. Provide information about projects previously or presently managed by the management entity and its employees, including information relative to default history, mortgage relief history, and foreclosure history along with an explanation of the circumstances that led to such actions.

3. Describe your firm including number of main office staff employed in the following capacities: supervisory, clerical, maintenance, and social services.

4. Explain where project records will be kept.

5. Describe your plan for project on-site staff including their duties and work frequency.

6. Give the distance in miles from your home office and the nearest branch office, if applicable, to the project.

7. Describe the accounting system, rent-up procedure, rent collection policy, and preventive maintenance program including energy conservation you intend to use in the proposed project.

8. Describe any and all identities of interest as described in paragraph V B of exhibit B of this subpart.

9. Describe the frequency and type of direct supervision to be given the site manager.

10. Give a description of your financial condition, stability, and financial resources.

11. Describe your plan to implement applicable FmHA or its successor agency under Public Law 103–354 accounting requirements for the project. If you have managed this type of project before, cite those projects as an indication of your knowledge of such requirements. If you have not managed such projects, indicate your understanding of what needs to be done to fulfill such requirements.

12. Please also describe.

a. Your plans for handling tenant grievances and appeals, providing tenant counseling, and using outside social service agencies.

b. The extent of your knowledge of FmHA or its successor agency under Public Law 103–354 requirements for tenant eligibility, tenant certifications and recertifications.

c. Your plans to train your personnel in the management of FmHA or its successor agency under Public Law 103–354 MFH, including training on the nondiscrimination and fair housing (reasonable accomodation) provisions of the civil rights laws.

13. Describe the internal controls you will use to safeguard project monies, securities, and readily saleable property other than money and securities.

14. Provide evidence of fidelity coverage capacity.

15. Include where appropriate the following statement: ''I hereby certify that there is no close association between the management agent and the owner of the above described project in such manner that creates a possible conflict of interest.'' If such an association exists (e.g., the management agent is a member, stockholder, partner, principal, etc., of the borrower organization, familial relationship) explain the relationship in detail (this may be combined with item 8 of this exhibit).

EXHIBIT B–5 TO SUBPART C—OUTLINE FOR OWNER WHO PROPOSES OWNER-MANAGEMENT OF A MULTIPLE FAMILY RENTAL OR LABOR HOUSING PROJECT

Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 expects that Multiple Family Housing (MFH) property and program financed by the Agency will be managed to comply with authorizing statutes and regulatory requirements in meeting the objective of providing decent, safe, and sanitary housing for eligible tenants and members.

The following outline is intended to be a guide that the borrower can use in describing the level and quality of services that the borrower plans to provide in the management of an MFH project. The borrower is encouraged to add those items it deems appropriate and to delete any that do not apply. Response to the outline will be used by FmHA or its successor agency under Public Law 103–354 to evaluate the level and quality of project management planned by the borrower when the borrower plans to provide the project management.

1. Provide name of owner, address, and the name and location of project. State the number or rental units in the proposal.

2. Provide information about your previous projects, regardless of the source of financing, including mortgage relief and foreclosure history along with an explanation of the circumstances that led to such actions.

3. List names and addresses of management agents who manage your previously or presently owned projects, if any.

4. Describe your understanding of the responsibilities connected with owning and managing an MFH project under FmHA or its successor agency under Public Law 103–354.

5. Outline your experience and capabilities in providing housing for low- and moderate-income tenants.

6. Describe your intended tenure of ownership and the extent of personal involvement in operating and managing this project.

7. Describe any identities of interest as described in paragraph V B of exhibit B of this subpart.

8. Describe your intentions and capacity to meet negative cash flow situations.

9. Describe your plans for the management and maintenance of the proposed project. If you intend to manage the project, describe your own management capacity by answering applicable portions of exhibit B–4 of this subpart.

10. Describe the internal controls you will use to safeguard project monies, securities, and readily saleable property other than money and securities.

EXHIBIT B–6 TO SUBPART C—MONTHLY AND QUARTERLY PROJECT MANAGEMENT REPORTS

Report of item required	Due date	Prepared by	Report or item applicable to	Distribution	References and notes
Project worksheet for interest credit and rental assistance (Form FmHA or its successor agency under Public Law 103–354 1944–29).	Monthly payment date.	All borrowers (Agent).	Each project	Copy kept by borrower; original goes to the FmHA or its successor agency under Public Law 103–354 Servicing Office with payments.	Instructions for preparation are in the FMI for Form FmHA or its successor agency under Public Law 103–354 1944–29.
Quarterly Report (Form FmHA or its successor agency under Public Law 103–354 1930–7, Multiple Family Housing Project Budget).	Due in FmHA or its successor agency under Public Law 103–354 Servicing Office by the 20th of month following each reporting period; forward to State Office by the 30th.	All borrowers (Agent).	Each project until discontinued.	Copy kept by borrower. Original and one copy goes to FmHA or its successor agency under Public Law 103–354 Servicing Office; Servicing Office to forward original to State Office. *State Office makes copy and signed original returned to Servicing Office.	Reports will continue until written notice for discontinuance is received from FmHA or its successor agency under Public Law 103–354 Servicing Official. Instructions for preparation are in the FMI for Form FmHA or its successor agency under Public Law 103–354 1930–7.

*Signed copy goes to State Office when Servicing Office staff have received delegated approval authority.

EXHIBIT B–7 TO SUBPART C—ANNUAL PROJECT MANAGEMENT REPORTS

Report of item required	Due date	Prepared by	Report or item applicable to	Distribution	References and notes
Multiple Family Housing Project Budget Form FmHA or its successor agency under Public Law 103–354 1930–7.	In last quarter of fiscal year in sufficient time for FmHA or its successor agency under Public Law 103–354 approval before start of next fiscal year.	Borrower (Agent) ..	All projects	Copy kept by borrower. Original and one copy to FmHA or its successor agency under Public Law 103–354 Servicing Office; original with comments to State Office by Servicing Office. *State Office makes copy (with State Office comments) and returns original to Servicing Office.	Instructions for preparation are in the FMI for Form FmHA or its successor agency under Public Law 103–354 1930–7.

Report of item required	Due date	Prepared by	Report or item applicable to	Distribution	References and notes
Housing allowance for Utilities & Other Public Services (Exhibit A–6 to subpart E of part 1944 of this chapter).	Must be submitted with Form FmHA or its successor agency under Public Law 103–354 1930–7.	Borrower (Agent) ..	Plan II and rental assistance projects where tenant pays any utilities.	Copy kept by borrower. Original and one copy to FmHA or its successor agency under Public Law 103–354 Servicing Office with backup data; Servicing Office returns original to borrower after State Office approval.*.	Instructions for preparation are in subpart E of part 1944 of this chapter.
Note: All Preceding Items Will Be Submitted Separate From Audit/Verification of Review					
Audit Report	Within 90 days following close of borrower's fiscal year.	Borrower's CPA or LPA in accordance with booklet ''U.S. Department of Agriculture, Farmers Home Administration or its successor agency under Public Law 103–354 Audit Program''.	Projects with 25 or more units in one or more projects, or as required by FmHA or its successor agency under Public Law 103–354 State Director.	Copy kept by borrower. Original and one copy to FmHA or its successor agency under Public Law 103–354 Servicing Office; one copy to State Office.	Will be submitted separately from other borrower management reports.
Multiple Family Housing Borrower Balance Sheet (Form FmHA or its successor agency under Public Law 103–354 1930–8).	Within 90 days following close of borrower's fiscal year.	Borrower (Agent) ..	All projects	Copy kept by borrower. Original and one copy to FmHA or its successor agency under Public Law 103–354 Servicing Office. Servicing Office sends original to State Office. *State Office makes copy and returns signed original to Servicing Office.	Instruction for preparation in the Forms Manual Insert for Form FmHA or its successor agency under Public Law 103–354 1930–8.
Verification of Review (in lieu of audit report) according to this subpart (Form FmHA or its successor agency under Public Law 103–354 1930–8).	Within 90 days following close of borrower's fiscal year.	Qualified individual, independent of the borrower.	Projects with 24 or fewer units.	Copy kept by borrower. Original to FmHA or its successor agency under Public Law 103–354 Servicing Office; Servicing Office makes one copy for State Office.	Instruction for preparation in the FMI for Form FmHA or its successor agency under Public Law 103–354 1930–8. Submitted separate from annual review items.

*Signed copy goes to State Office when Servicing Office staff have received delegated approval authority.

EXHIBIT B–8 TO SUBPART C—MISCELLANEOUS PROJECT MANAGEMENT REPORTS OR SUBMITTALS

Report of item required	Due date	Prepared by	Report or item applicable to	Distribution	References and notes
Minutes of Annual Meeting (when applicable).	Submit with next Form FmHA or its successor agency under Public Law 103–354 1930–7, ''Multiple Family Housing Project Budget''.	Borrower	All organizational borrowers with governing bodies, and all corporations.	Two copies to FmHA or its successor agency under Public Law 103–354 Servicing Office; one to be sent by Servicing Office to State Office.	
Energy Audit	Submit with next Form FmHA or its successor agency under Public Law 103–354 1930–7.	Energy Auditor	All projects	One copy to Servicing Office.	Exhibit D of this subpart.
Request for Rental Assistance (Form FmHA or its successor agency under Public Law 103–354 1944–25).	When rental assistance is requested.	Borrower (Agent) ..	Multiple Family Housing borrowers and applicants with tenants paying rent in excess of 30% of their adjusted income.	Original and copy to Servicing Office; submit to State Office for approval after Servicing Office review.	Refer to exhibit E of this subpart for material to be included with request. Instructions for preparation are in Forms Manual Insert for Form FmHA or its successor agency under Public Law 103–354 1944–25.
Compliance reviews (review conducted within the 1st reporting year after the project opens for operation).	Nov. 1st to Oct. 31st of each year.	FmHA or its successor agency under Public Law 103–354 Servicing Official.	All Multiple Family Housing borrowers.	Copy to State Office; original retained in Servicing Office.	Refer to 1901.204(e) of subpart E of part 1901 of this chapter.
(a) Initial reviews (Form FmHA or its successor agency under Public Law 103–354 400–8, ''Compliance Review'' (Non-discrimination Recipients of Financial Assistance through FmHA or its successor agency under Public Law 103–354)*.	The Oct. 31st following loan closing.				
(b) Subsequent reviews (Form FmHA or its successor agency under Public Law 103–354 400–8).	Minimum of every 3 years.				
Management Plan	Start of operations; update every third year of operation.	Borrower	All borrowers except those with nonrent LH projects.	Original to borrower; copy to Servicing Office.	Reviewed annually during annual review.

Report of item required	Due date	Prepared by	Report or item applicable to	Distribution	References and notes
Management Agreement (Exhibit B–3 of this subpart).	Start of management by management agent.	Borrower and management agent.	All borrowers not providing their own management.	Copies with FmHA or its successor agency under Public Law 103–354 concurrence to Borrower, management agent and FmHA or its successor agency under Public Law 103–354.	Reviewed at least annually during annual review.
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''.	Start of operations or whenever there is a change in identity of interest relationship.	Borrower, management agent, individuals, vendors or organizations sharing identity of interest with the project.	All borrowers	Original to Servicing Office; copies to borrower and any other individual or organization sharing identity of interest with the project.	Reviewed at least annually during annual review.

*If initial rent-up has not occurred by initial review, a subsequent review will be due within 1 year following initial occupancy and then every 3 years.

[58 FR 40868, July 30, 1993, as amended at 59 FR 6886, Feb. 14, 1994]

EXHIBIT B–9 TO SUBPART C—NOTICE OF AUTHORIZATION TO WITHDRAW AND USE RESERVE FUNDS

To: Borrower Name, Borrower Address

Subject: Authorization to Withdraw and Use Reserve Account Funds

Project Name & Number

This letter authorizes the withdrawal of $____ from the subject reserve account to be used for _____ (describe uses)

. _____

• The (This) amount of $____ is a capital replacement/improvement expenditure and repayment by increasing the reserve payment level is not required; however, the period of deposits are extended until the required deposit level is achieved.

• The (This) amount of $____ is an annual operating and maintenance expense and must be restored in the reserve account plus any required annual reserve payment before any return on investment can be authorized subsequent to this date. (During the second to fifth year of project operation, add this sentence if the initial operating capital has not yet been withdrawn, ''This amount will be deducted from the initial operating capital to be withdrawn if said capital is being withdrawn during the current budget year, and this amount has not been restored to the reserve account.'')

• The (This) amount of $_____ is an annual recurring type of expense and must be restored in the reserve account according to the terms and conditions contained in your special servicing work-out plan with Farmers Home Administration or its successor agency under Public Law 103–354.

(Add any additional discussion required.)

The correct level of funding of the project reserve account after this disbursement is (amount) as of (date).

/s/

Servicing Official

• Select appropriate paragraph(s).

EXHIBIT B–10 TO SUBPART C—RESERVE ACCOUNT TALLY

Starting Date: (1)

Amount Shown on Loan Agreement/Resolution: $(2)

Contribution: $(3)/Month × 12 = $(4) Annually

Fiscal year	Planned deposits			Planned use of reserve			Actual deposits				End of fiscal year	Comments
				Withdrawal				Interest earned/used				
	Beginning of fiscal year	Req. annual deposit	Planned ending balance	Date authorized	Purpose	Amount	Transfer to reserve	Earned on reserve	Transfer to GOA	Left in reserve	Ending reserve balance	
(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)

Reserve Account Tally Instructions

1. Enter month and year that cash flow started from rental income.

2. Enter the ultimate reserve amount to be achieved as shown on the loan agreement/resolution (as modified and increased, if applicable).

3. Enter monthly reserve deposit installment.

4. Enter yearly reserve deposit installment.

5. Enter borrower fiscal year for which records apply.

6. Enter fiscal year beginning balance carried forward from preceding fiscal year.

7. Enter the required annual deposit. If borrower is authorized by an approved budget to contribute less than the amount required by the loan agreement, enter the reduced amount. For amounts ''restored'' to reserve after a previous withdrawal, enter restored amount in this column on a separate line and describe in comment column.

8. Enter the required balance at the end of the borrower fiscal year.

9. Enter the date of authorization for withdrawal from reserve.

10. Enter the purpose (capital or annual recurring expense); and describe in comment column any agreement (see exhibit B–9 of this subpart) to restore the withdrawal.

11. Enter amount of authorized withdrawal.

12. Enter the actual amount paid into the reserve account.

13. Enter amount of interest earned on reserve deposit during fiscal year.

14. Enter portion of earned interest transferred to project general operating account.

15. Enter balance of earned interest left (accrued) in the reserve account. (NOTE: At borrower's choice, this amount may be used to help meet or increase the annual reserve deposit.)

16. Enter the reserve balance at the end of the fiscal year.

Balance at end of last fiscal year.

Less authorized withdrawal.

Plus transfer to reserve.

Plus accrued interest.

NOTE: Reconciliation of the current account balance may be accomplished by entering the following calculations of the tally sheet.

(1) Calculate: Gross Potential Reserve (GPR); No. of Deposit Installments since start date × $ amount of installments = GPR. Then separately,

(2) Add: regular and extra deposits = $ Additions.

(3) Subtract: FmHA or its successor agency under Public Law 103–354 authorized withdrawals = $ Subtractions.

(4) Result: current balance = $ balance.

(5) Compare GPR to current balance.

17. Enter appropriate notes (e.g., withdrawal uses, explain discrepancies with other documents).

EXHIBIT B–11 TO SUBPART C—EQUAL HOUSING OPPORTUNITY LOGOTYPE
(REQUIRED FOR PROJECT SIGN)

EXHIBIT B–12 TO SUBPART C—FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 LOGOTYPE (OPTIONAL FOR PROJECT SIGN)

FmHA

EXHIBIT B–13 TO SUBPART C—INTERNATIONAL SYMBOL OF ACCESSIBILITY (REQUIRED FOR HANDICAP PARKING SPACE AND ALONG HANDICAP ACCESSIBILITY ROUTE)

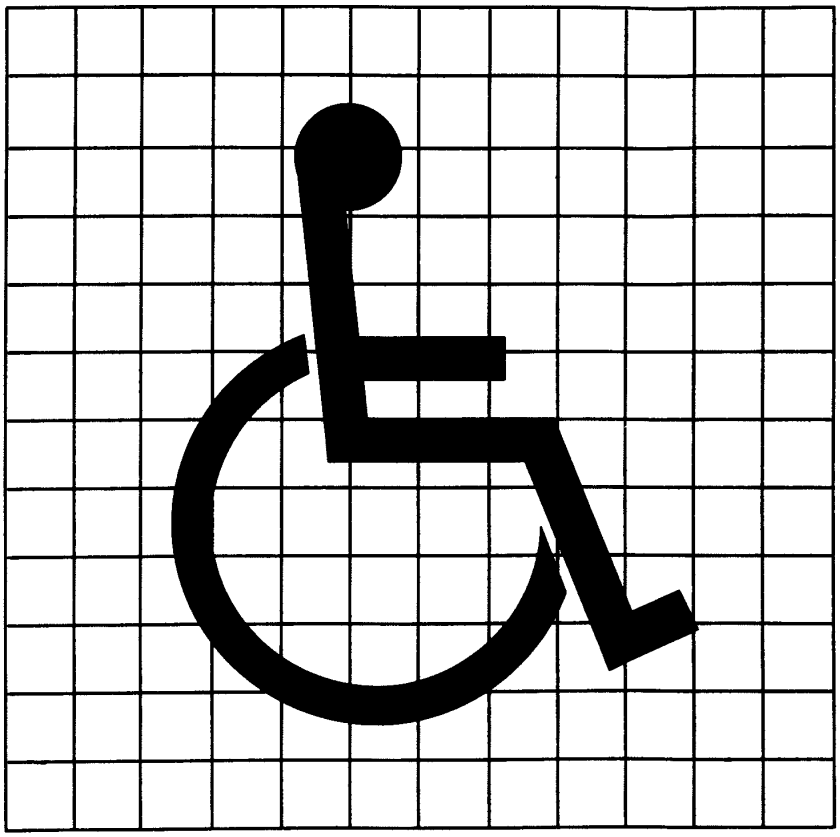


EXHIBIT B–14 TO SUBPART C—SAMPLE WAITING LIST

(1) Project Name.

(2) Location.

Applicant information							Selection criteria														
App. No.	Date/time	Name/address	Phone No.	Race code	HH size		Displ. prior yes/no	Income level				Unit size				RA elig. yes/no		Dates contacted for occupancy	Lease date	Removal date	Comments
								VL	L	M	I	1 br	2 br	3 br	4 br						
(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)				(12)				(13)	(14)	(15)	(16)	(17)	(18)

Waiting List Instructions

This sample waiting list may be used as a model in developing a project waiting list. It combines income level and unit size groupings on one page. Separate pages for different income levels or unit sizes are an option.

Waiting lists need to be updated periodically by carrying forward active applications and removing applications that have become tenants or members or have been withdrawn. This should be done with sufficient frequency so that a substantial number of lines on the waiting list are filled with active applications. Retired waiting lists must be kept through the next compliance review performed by Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354.

Description of Input:

1. Project name—Self-explanatory.
2. Location—Project location name.
3. Application No.—This is the sequential number of the order by which the completed application was received. This may be a continual sequence from a given start date or it may be the sequential number in a particular year. Example: 93–3 denotes the third application received in 1993.
4. Date/time—The date and time a completed application is received.
5. Name/address—Name of applicant and current street and/or mailing address.
6. Phone number—Applicant's current phone number or a contact person's phone number.
7. Race code—Local management should use a code known to itself of the code provided in Form FmHA or its successor agency under Public Law 103–354 1944–8, ''Tenant Certification.'' Use letters or numbers or a combination of both. Do not state or abbreviate racial or ethnic descriptions.
8. Household size—The total number of people who will actually occupy a unit.
9. Blank column—For optional use; for labor housing purposes.
10. Displaced priority—If applicant possesses a letter of priority entitlement (LOPE) issued by FmHA or its successor agency under Public Law 103–354 or from other assisted housing enter yes/LOPE. If applicant is displaced due to a natural disaster or catastrophe, housing rendered uninhabitable, or seized by legal action (other than for illegal activity) enter yes/other. Enter no if applicant is not a displacee.

NOTE: Section 8 applicants who at time of housing need are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent have priority over other Section 8 applicants.

11. Income level—Enter a checkmark under the income level determined by income verification.
12. Unit size—Enter a checkmark under each unit size the applicant is qualified to occupy or deems appropriate to its need. Circle the checkmark denoting the size requested. Legend: VL—Very low-income, L—Low-income, M—Moderate-income, I—Ineligible.
13. Rental assistance eligibility—Indicate whether or not the income level qualifies the applicant to receive rental assistance (RA). (If RA is being used in the project).
14. Blank column—For optional use. It could denote Sec. 8 handicap status, elderly family status, LH status, or tax credit eligibility status.
15. Dates contacted for occupancy—Enter the dates management contacted or attempted to contact the applicant to offer an apartment for occupancy. Note the method of contact and the results.
16. Lease date—Fill in date of Lease to denote that applicant has changed to tenant status.
17. Removal date—Enter date of removal from the waiting list, when applicable.
18. Comments—Self-explanatory.

EXHIBIT C TO SUBPART C—RENTAL AND OCCUPANCY CHARGE AND/OR UTILITY ALLOWANCE CHANGES

I. *Objectives*

This exhibit prescribes the method of processing changes in the monthly rental or occupancy charge rates for tenants or members in Farmers Home Administration (FmHA) or

its successor agency under Public Law 103–354 Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), and Labor Housing (LH) projects. This exhibit covers all RRH, RCH, and LH loans (except ''nonrental'' LH loans), including those approved before the date of this subpart.

II. *Definitions*

A. *Approval official.* State Director or designated State and Servicing Office staff with delegated authority according to § 1930.143 of this subpart.

B. *Utility.* Sewer, water, trash collection, electricity, natural gas, and any other fuel used specifically for cooking, heating, and/or cooling.

C. *Rental or occupancy charge rate (rental or occupancy charge).* The term rental rate means RRH or LH project rent rates that include utilities; or net project rent rates plus an allowance for utilities, either of which should be equal in value. In RCH projects, the term occupancy charge means the charge for occupancy including utilities; or the net charge for occupancy exclusive of an allowance for utilities according to the operating plan of the cooperative.

III. *Initial Understanding With Borrower*

A. All RRH, RCH, and LH applicants will be informed at the application stage of the agency's rental or occupancy charge change procedure. All borrowers will be advised that any proposed rent or occupancy charge changes must comply with this exhibit. Utility allowance changes will comply with this exhibit and exhibit A–6 of subpart E of part 1944 of this chapter. This exhibit will also apply to rental changes resulting from the Department of Housing and Urban Development's (HUD) Automatic Annual Adjustment Factors for units receiving section 8 assistance. Request for a rental or occupancy charge change will be based on a realistic projected budget for the interim year or the ensuing full year.

B. *Rental or occupancy charge change policies.*

1. Rental or occupancy charge rates in projects financed in whole or in part by an RRH, RCH, or LH loan may not be raised without FmHA or its successor agency under Public Law 103–354 written consent according to requirements in loan agreements, loan resolutions, and other instruments executed in connection with RRH, RCH, and LH loans.

2. Changes requiring only prior FmHA or its successor agency under Public Law 103–354 review are those which are beyond the borrowers' control to cover changes in taxes or utilities, and changes which do not result in an increase in the tenant's or member's total shelter cost.

3. Borrowers are encouraged to have the effective date of needed changes coincide with the start of their fiscal year or with the start of the season in the case of LH projects occupied on a seasonal basis.

4. Change requests normally should be made 60 to 90 days prior to the end of the borrower's fiscal year.

5. It is anticipated that rental or occupancy charge changes would not be necessary more frequently than once a year.

6. Changes in rental or occupancy charge rates will apply to all units in the project.

7. Projects with operating budgets that consistently generate a surplus of unrestricted cash greater than 10 percent of project yearly expense (exclusive of any qualifying refund of 2 percent initial operating capital contribution) should reduce their rental or occupancy charge rates.

8. Current tenant or member certifications on Form FmHA or its successor agency under Public Law 103–354 1944–8, ''Tenant Certification,'' or other form approved by FmHA or its successor agency under Public Law 103–354 must be on file in the Servicing Office.

C. All borrowers are encouraged to participate in the FmHA or its successor agency under Public Law 103–354 rental assistance (RA) program. However, unless the Administrator notifies State and Servicing Offices otherwise, all borrowers with projects meeting the eligibility requirements of paragraph II B of exhibit E of this subpart, except full profit borrowers, will be automatically treated as having applied for rental assistance, since section 530 of title V of the Housing Act of 1949, as amended, requires such consideration.

D. Borrowers must accept RA when it is available and it appears that a rental or occupancy charge change will cause any very low or low-income tenant to pay in excess of 30 percent of adjusted monthly income for shelter costs. If FmHA or its successor agency under Public Law 103–354 does not have RA appropriation available for this purpose, the borrower is encouraged to use other sources of governmental subsidies. The availability or unavailability of governmental subsidies will not preclude FmHA or its successor agency under Public Law 103–354 from processing a rental or occupancy charge change request. The borrower will retain the option of submitting an RA request at any time that it appears that any verylow- or low-income tenant cannot pay in excess of 30 percent of adjusted monthly income in shelter costs, even without a rent change action. In such cases, the borrower must apply for RA on Form FmHA or its successor agency under Public Law 103–354 1944–25, ''Request for Rental Assistance,'' unless such form is already on file at the FmHA or its successor agency under Public Law 103–354 Servicing Office.

E. Even though RA is not available, borrowers are encouraged to convert to Interest

Credit Plan II to give tenants and members the most favorable rental rates possible.

IV. *Borrower's Responsibility in Processing Rental or Occupancy Charge Change Requests Which Change Housing Costs to Tenants or Members*

A. When an RRH, RCH, or LH borrower determines that a project rental or occupancy charge change is needed, the borrower must meet or consult with the Servicing Office staff, unless such requirement is waived by the Servicing Office, to review the following information before the ''Notice to Tenants (members) of Proposed Rent (Occupancy Charge) and Utility Allowance Change,'' exhibit C–1 of this subpart, is posted and delivered to the tenants or members:

1. Facts demonstrating the need and justification for a rental or occupancy charge change in accordance with paragraph III A of this EX.

2. A new operating budget for the borrower fiscal year showing:

a. Currently approved budget at old rents or occupancy charges.

b. Actual income and expenses to date.

c. Proposed budget at proposed new basic rents or occupancy charges.

d. Proposed budget at proposed new note rate rents or occupancy charges (when applicable).

3. An application for RA is considered to have been automatically filed with the Agency. However, the borrower may submit an application for RA at any time on Form FmHA or its successor agency under Public Law 103–354 1944–25, if the borrower's project is an eligible project and the proposed change will cause any very low- and low-income tenants or members to pay in excess of 30 percent of adjusted monthly income for shelter costs.

4. A new energy audit, if one is due, or a listing of deferred improvements identified in a previous energy audit that were performed within the past 5-year period according to the requirements of exhibit D of this subpart.

5. Information on actual utility costs for representative units in the project and, whenever any utility allowance was approved over 12 months ago, an updated exhibit A–6 of subpart E of part 1944 of this chapter when tenants or members pay their own utilities.

6. Any other information the borrower believes necessary to justify the proposed shelter cost change.

B. *Required actions and timeframes for shelter cost changes.* Requests for shelter cost changes (i.e. changes to the rent and/or utility allowance) may be submitted at any time, however, the Agency encourages such requests to be submitted within the last quarter of the calendar year in conjunction with the annual budget review.

1. *Agency action.*

a. The Agency must act on any shelter cost change request and take one of the following actions within 25 days of its receipt:

(1) Review the request package and if it is incomplete, return it to the borrower/manager, advising what additional information is needed, or

(2) Request a meeting with the borrower/manager and state the proposed meeting date. The request should inform the borrower/manager of the purpose of the meeting. When a meeting is held, the Servicing Official will either:

(i) Approve posting of the proposed rental or occupancy charge change and advise the borrower in writing to post the notice, or

(ii) If the proposed change as submitted is not acceptable, the Servicing Official and the borrower/manager will arrive at a mutually acceptable change, and the Servicing Official will authorize in writing, posting of the agreed to revised figure, OR

(iii) Reject posting of the proposed change, advise the borrower in writing to not post the notice and advise the borrower of their appeal or review rights in accordance with subpart B of part 1900 of this chapter.

(3) If the borrower/manager does not attend the proposed meeting or other mutually agreed date, the change request will be considered withdrawn and returned to the borrower/manager, or

(4) The Servicing Official may waive the meeting requirement and authorize the posting subject to any minor changes or other requirements listed, if any, or

(5) Allowing posting of the request by not taking action on the request (de facto posting approval).

b. Once a rental or occupancy charge change has been permitted to be posted, the only decision that can be made is to ''approve'' or ''reject,'' which would be based on material concerns in comments of the tenants or members. When the request is rejected, the borrower will be advised of any appeal or review rights in accordance with subpart B of part 1900 of this chapter.

2. *Borrower action.* When approval to post notice is given by FmHA or its successor agency under Public Law 103–354, the borrower is required to:

a. *Notify tenants or members.*

(1) Tenants or members must be notified in writing at least 60 days before the anticipated effective date of change using exhibit C–1 of this subpart. The written notice may be delivered by mail or by other means. In addition, the borrower must post at least one notice in a visible place at the project site.

(2) *Tenant or member comment period.* Tenants or members will be informed of their right to submit comments to the Servicing Office during the 20-day period following the date of the notice. Tenants or members will also be informed of their rights to inspect

and copy records on file with the Agency, which are related to the request, throughout the 20-day period.

b. *Notify the Agency.* The Agency must be given a copy of the written and dated notification which was mailed or delivered to the tenants or members.

3. *Implementation timeframes.* Shelter cost changes cannot be implemented until such time as the tenants or members are informed of the changed rates. When increases are involved, tenants or members must be informed at least 30 days in advance of their effectiveness or such longer time as State law may prescribe. Tenants or members receiving notice of a shelter cost increase via the use of exhibit C–1 of this subpart will already have been ''informed at least 30 days in advance'' and need not receive a second notice provided the final approval action (i.e., See exhibit C–2 of this subpart) does not change the shelter cost rate established in exhibit C–1.

V. *Determination by FmHA or its successor agency under Public Law 103–354*

A. *Actions by servicing official.* The Servicing Official will not consider a rental or occupancy charge change application complete and acceptable until the borrower has complied with all terms listed in paragraph IV of this exhibit. When the application and all attachments for the proposed change have been received (including the tenant or member comments when notification is required), the Agency will:

1. Review all the material submitted.

2. Review a copy of the borrower's latest Form FmHA or its successor agency under Public Law 103–354 1944–29, ''Project Worksheet for Interest Credit and Rental Assistance.''

3. Determine if RA is available for an eligible project on behalf of the low-income tenants or members. If RA is available, and it is apparent from record sources that at least one tenant is eligible for RA, the Servicing Office staff must require the borrower to apply for RA if an application for RA using Form FmHA or its successor agency under Public Law 103–354 1944.25 is not already on file at the Servicing Office.

4. When the change is requested for energy saving improvements identified in an energy audit, the Servicing Official shall determine the cost effectiveness and financial impact of the proposed improvements from information contained in the energy audit. The Servicing Official's determination will be made according to paragraph VI of exhibit D of this subpart.

5. When State Office approval is required, the Servicing Office will submit to the State Director (see Guide Letter 1930–3 for outlining the change request package being submitted):

a. Appropriate recommendations on the request,

b. An indication of the number of tenants or members who will need RA as a result of the rent changes,

c. All the material received from the borrower, including tenant or member comments or objections at the end of the 20-day comment period, and

d. A short narrative describing the general tone and material content of tenant or member comments and concerns.

6. When a member of the Servicing Office staff is the approval official, the documentation required by paragraph V A 5 of this exhibit, will be attached to the rent change request.

7. When the borrower has requested RA, complete Form FmHA or its successor agency under Public Law 103–354 1944–25 and forward it to the State Director.

B. *Actions by the approval official.* When the application, attachments, and comments are received, the approval official will review the material to determine if the change is justified and act on the request within 25 days. The borrower will be notified by the Approval Official of the determination within 45 days from the date the ''Notice to Tenants (Members) of Proposed Rent (Occupancy Charge) and Utility Allowance Change'' (Exhibit C–1 of this subpart) is posted, otherwise the request will be considered approved.

1. *Approval actions.*

a. When a change is approved, the Approval Official will notify the borrower by using exhibit C–2 of this subpart. The notice letter (Exhibit C–2 of this subpart) will be prepared using the required and/or optional paragraphs as applicable. The reasons for the approved rent change should be concise. The notice letter will be mailed or hand delivered to each tenant or member *and* posted in a conspicuous places(s).

b. When the borrower's project is operated on a profit basis and the purpose of the rental change is for: justified operating and maintenance expense; funding the reserve account; other project expenses; and providing or maintaining a profit, the change may be allowed as long as eligible tenants can afford the new rental rate.

2. *Disapproval actions.* When the Servicing Official determines an application for a proposed rental or occupancy charge change is not justified on the basis of the information submitted, the Servicing Official will notify the borrower in writing of the reason(s) why the change is not approved. The borrower will be advised of their appeal rights in accordance with subpart B of part 1900 of this chapter. Rental or occupancy charge changes may not be approved when any of the following circumstances exist:

a. The borrower is able but unwilling: To comply with applicable tenant eligibility requirements; the audit and reporting requirements of this subpart; or, the conditions set forth in the borrower's loan agreement or resolution, interest credit and/or rental assistance agreement, promissory note, or mortgage.

b. The budget for the project reflects sufficient income at the present rental or occupancy charge structure to meet operation and maintenance expenses which are appropriate and reasonable in amount, meet the FmHA or its successor agency under Public Law 103–354 debt service requirements, meet the required reserve account deposit, and provide a return to the borrower, when appropriate.

c. The borrower's project is operated on a profit basis and the proposed rental change is for purposes other than meeting operation and maintenance expenses and debt service (i.e., the purpose is to allow excessive profits and the proposed rental change will result in rental rates in excess of what eligible tenants can afford).e State Director is able to provide RA to the project and the borrower's project is operated on a nonprofit basis, or a limited profit basis (as defined in §1944.205 of subpart E of part 1944 of this chapter); but the borrower has not applied for RA within the most recent period of 180 days prior to the rental change request or otherwise already has an application for RA on file at the Servicing Office on Form FmHA or its successor agency under Public Law 103–354 1944–25.

VI. *Unauthorized Rental or Occupancy Charge Changes*

When a borrower implements a change that does not meet the requirements of this exhibit, the borrower will be notified in writing that: the change has not been authorized; and the rates must be rolled back to the last FmHA or its successor agency under Public Law 103–354 authorized level. Tenants or members affected by the unauthorized change will be given a rebate or credit for the unauthorized amounts retroactive to the date of the unauthorized change. Those borrowers that fail to comply the provisions of this paragraph will be handled according to §1965.85(d) of subpart B of part 1965 of this chapter or paragraph X of this exhibit.

VII. *Annual Adjustment Factors for Section 8 Units*

A. *HUD allowance of change.*

1. If the Servicing Official disapproves a rental rate change, or approves a lesser amount than permitted by HUD, as a result of HUD's annual adjustment factors for units receiving Section 8 assistance, the Servicing Official must require the borrower to deposit any excess funds, the difference between the FmHA or its successor agency under Public Law 103–354 approved note rate rent and the higher HUD authorized rental rate, into the reserve account.

2. If this results in an accumulation of funds in the reserve account behind the sum shown in the loan agreement or loan resolution, the interest credit reduction on a Section 8/515 project should be adjusted or canceled through field office terminals.

3. This adjustment or cancellation can be done without borrower consent for projects with interest credit agreements dated on or after October 27, 1980. For projects with interest credit agreements dated before October 27, 1980, this cancellation or reduction of interest credit may occur only with the borrower's written consent.

4. When interest credit cannot be canceled or reduced, the Agency will collect overage. Overage, for each tenant, in this instance is the difference between the FmHA or its successor agency under Public Law 103–354 interest credit reduced rate rent and the lesser of the FmHA or its successor agency under Public Law 103–354 note rate rent or the HUD contract rent. The total overage collected should not exceed an amount equal to the interest credit authorized by the interest credit agreement for the period of time covered by the loan payment installment.

5. Even though interest credit is canceled or nullified by collecting overage, the borrower will still be required to operate on a limited profit basis.

B. *HUD disallowance of change.* If HUD will not allow an annual adjustment of rents, and the project operating budget justifies need for rent(s) greater than HUD's contract rent(s), the State Director only may authorize conversion from a plan of 1 or 2 percent interest reduction (Interest Credit Plan II) to a plan of debt amortization at 1 percent interest plus overage up to the HUD contract rent(s) level by meeting the requirements of paragraph IV A2e of exhibit B of this subpart.

C. *Reviewing budgets where HUD subsidies are involved.* FmHA or its successor agency under Public Law 103–354 has the responsibility to review and approve project budgets based on need to meet the cash flow and expense requirements without regard to HUD's automatic annual adjustment. Since HUD and FmHA or its successor agency under Public Law 103–354 approved rent rates frequently differ, it may be necessary to have a 3 column budget in projects with Section 8 Housing Assistance Program (HAP) agreements. (Refer to the examples shown in paragraph VIID of this exhibit).

1. *When HUD contract rent and the 1 or 2 percent reduced rate are the same.* In a project where 100 percent of the units receive Section 8 (100 percent Section 8 projects), and the HUD contract rent rate and the 1 or 2 percent reduced rate are the same, only the

HUD contract rent rate column on the budget is needed.

2. *When HUD contract rent falls between the 1 or 2 percent reduced rate and the FmHA or its successor agency under Public Law 103–354 note rate.* In a 100 percent Section 8 project where the HUD contract rental rate falls between the 1 or 2 percent reduced rate rent and the note rate rent, a 3 column budget showing the 1 or 2 percent reduced rate rent, the HUD contract rental rate, and FmHA or its successor agency under Public Law 103–354 note rate rent is needed.

3. *When HUD contract rate exceeds the FmHA or its successor agency under Public Law 103–354 note rate.* In a 100 percent Section 8 project without interest credit and where the HUD contract rental rate exceeds the note rate rent, the budget should show 2 columns reflecting each rent rate. The difference between the two rent rates is considered excess funds and is to be deposited in the reserve account.

4. *When part of units are covered by Section 8 HAP contract.* In a project where only part of the units are under a Section 8 HAP contract, a 3 column budget of basic rental rate, HUD contact rental rate, and note rate rent is needed. The HUD contract rental rate may fall between the basic and note rate, or it may be higher than the note rate rent.

D. *Overage payments and excess income from an interest credit agreement:*

1. Overage is the amount by which total rental payments paid or to be paid by the tenants or members exceed the total basic monthly rental rate. In 100 percent Section 8/515 projects, and Plan II projects, where the HUD contract rental rate exceeds the approved 1 or 2 percent (or greater percentage in the case of Plan II) reduced rental rate, the FmHA or its successor agency under Public Law 103–354 approved rate is the required ''basic'' monthly rental rate. Whenever FmHA or its successor agency under Public Law 103–354 approves a note rate rent change for a lesser amount than the change permitted by HUD, the FmHA or its successor agency under Public Law 103–354 Servicing Official must require the borrower to deposit any excess funds into the reserve account.

2. Any Section 8 subsidy funds paid by HUD are paid on behalf of the tenant or member, and therefore, any Section 8 payments are not considered as excess funds until after any benefits provided by the interest credit agreement are recovered. Therefore, the following applies:

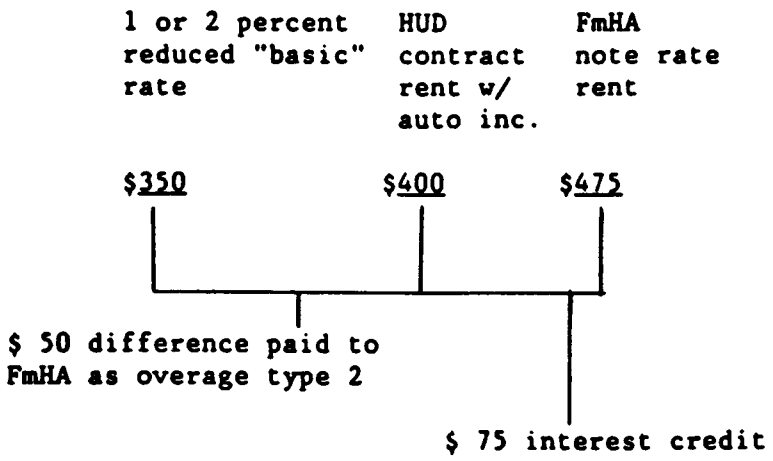
a. *Projects on an Interest Credit plan coded 7 or 8 on Form FmHA or its successor agency under Public Law 103–354 1944–7.* See figure 1 of paragraph VIID 2 a (3) of this exhibit.

(1) *When HUD rate is equal to or less than FmHA or its successor agency under Public Law 103–354 note rate.* In 100 percent Section 8/515 projects when the HUD contract rental rate is more than the 1 or 2 percent reduced rate and is either equal to or less than the FmHA or its successor agency under Public Law 103–354 note rate rent, overage will be paid to FmHA or its successor agency under Public Law 103–354 in an amount equal to the difference between the HUD contract rental rate and the 1 or 2 percent reduced rate.

(2) *When HUD rate is greater than FmHA or its successor agency under Public Law 103–354 note rate.* In 100 percent Section 8/515 projects when the HUD contract rental rate is greater than the FmHA or its successor agency under Public Law 103–354 note rate rent, overage will be paid to FmHA or its successor agency under Public Law 103–354 as in D 1 of this paragraph, and the amount equal to the difference between the HUD contract rental rate and the FmHA or its successor agency under Public Law 103–354 note rate rent will be deposited in the reserve account as excess income. In 100 percent Section 8/515 projects, when the HUD contract rental rate exceeds the note rate rent the borrower/manager needs to use FmHA or its successor agency under Public Law 103–354 Form 1944–29, part I, items 23 through 29, to document the required deposit in the reserve account.

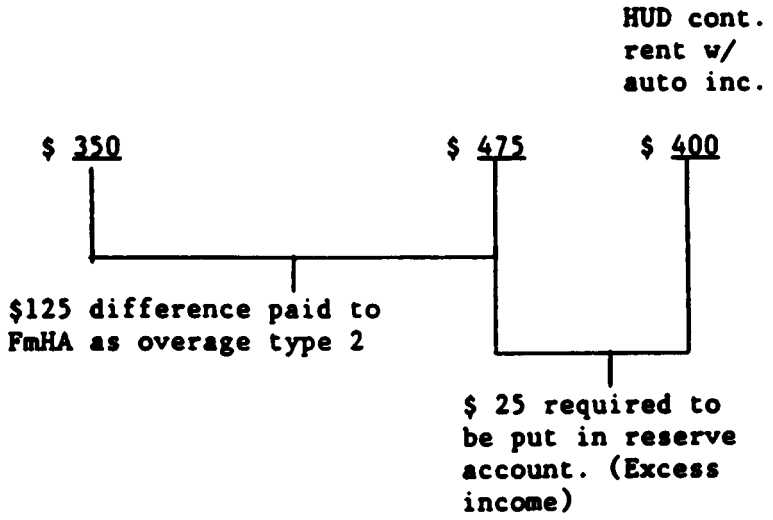
(3) *Figure 1.* Projects with 100 percent of units assisted by HUD Section 8.

Example 1



NOTE: If the HUD contract rent and FmHA or its successor agency under Public Law 103–354 1 or 2 percent reduced rent are the same, then the first budget column would not apply.

Example 2



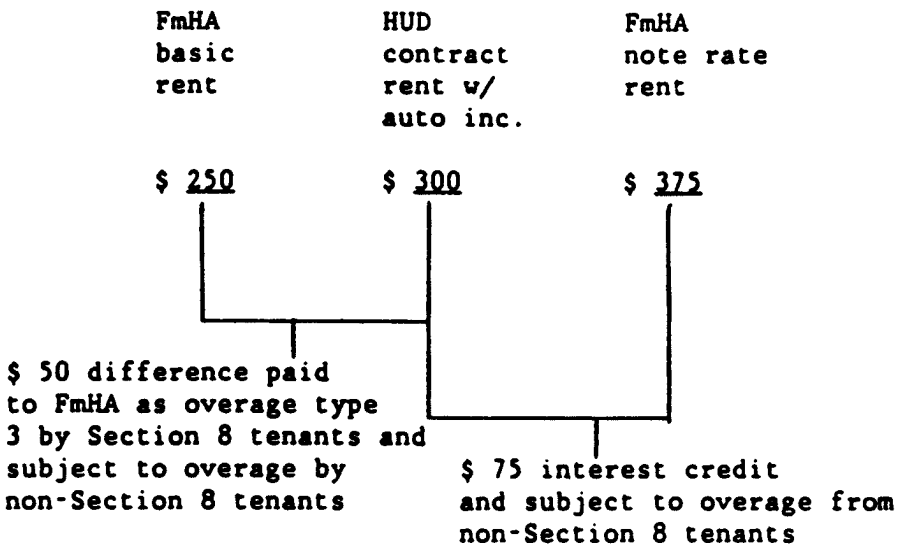
b *Projects on Interest Credit Plan II and receiving Section 8 Assistance.* See figure 2 of paragraph VII D 2 b (3) of this exhibit.

(1) *Calculating overage.* In Section 8/515 projects the overage will be the difference between basic rental rate and the note rate rent including the income from HUD. The overage will be reported as type 3.

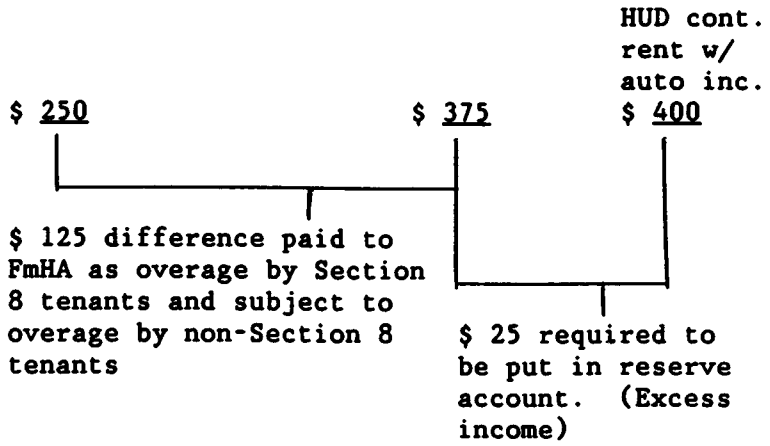
(2) *Depositing excess income in the reserve account.* In the cases where the HUD contract rental rate exceeds the note rate rent, the difference is excess income and will be deposited in the reserve account. The borrower/manager should use FmHA or its successor agency under Public Law 103–354 Form 1944–29, part I, item 23 through 29, to document the required deposit in the reserve account.

(3) *Figure 2.* Projects with some HUD Section 8/515 units.

Example 1:



Example 2:



VIII *Rental or Occupancy Charge Control Preemption Policy*. In order to carry out the provisions of this subpart and to protect a housing source in rural areas for very low-, low- and moderate income families; the financial obligation of borrowers; and the financial interest of the government in such housing, the entire field of rental or occupancy charge control that may be exercised by any local rental control board or other authority pursuant to State and local law, as it affects housing covered by this subpart, is hereby preempted.

IX *Special Servicing Market Rate Rent (SMR) Change:* When a Plan II or Plan II RA RRH project is experiencing serve vacancies due to poor local market conditions, an SMR change may be implemented to attract and keep tenants who could pay more than basic rent as part of a workout plan according to the provisions of exhibit F of subpart B of part 1965 of this chapter. An SMR addresses

the situation where some existing and prospective tenants are not willing to pay 30 percent of adjusted income or note rate rent because the rental rates would exceed those of other rental properties in the community. This action may only be taken after supervisory efforts by FmHA or its successor agency under Public Law 103–354 and management efforts by the borrower have not produced an acceptable level of occupancy. For the purposes of this paragraph, market area and community are used as defined in paragraph I of exhibit A–8 of subpart E of part 1944 of this chapter.

A *Eligibility for SMR.* Based on borrower documentation and FmHA or its successor agency under Public Law 103–354 servicing records, the Servicing Official will prepare a written recommendation for borrower eligibility for an SMR.

1 *Based on borrower documentation and Servicing Office verification:*

a Over the most recent 6-month period, the monthly vacancy rate has averaged at least 15 percent or the project shows financial losses considering the following:

(1) Each month was at least 12 percent vacant, and

(2) When RA is not available, units subsidized by funds of the project/owner will be considered vacant for SMR calculations, or

(3) The project submits financial records that show a 15 percent loss of rents available below basic rent not including project provided subsidies, and provided

(4) The loss of rents available is not a result of management's failure to effectively market the units.

b Comparable market rental rates in the community are lower than the previously approved FmHA or its successor agency under Public Law 103–354 note rate rents. Exhibit A–2 of subpart E of part 1944 of this chapter can be used to document comparable market rents.

c The borrower has aggressively marketed the project including the following actions:

(1) Significant outreach efforts in the community, including (but not limited to) contacts listed in the Affirmative Fair Housing Marketing Plan.

(2) The borrower had obtained approval from FmHA or its successor agency under Public Law 103–354 for a servicing workout plan, exclusive of SMR features, at least 3 months earlier.

d The borrower complies with FmHA or its successor agency under Public Law 103–354 regulations and encourages occupancy through good maintenance and positive relations with tenants.

e The borrower has provided a signed statement agreeing to forego, without provision to recoup, the return on initial investment while operating with an SMR.

f The borrower has submitted a project budget on Form FmHA or its successor agency under Public Law 103–354 1930–7, ''Multiple Family Housing Project Budget,'' with only minimally sufficient operation and maintenance expenses. The project budget should continue to fund other cash expenditures such as FmHA or its successor agency under Public Law 103–354 payments and the reserve account, except for the return on initial investment which the borrower has agreed to forego according to paragraph IX A 1 e of this exhibit.

2 *Based on Servicing Office servicing actions and documentation:*

a The project has been operational for at least 24 months. The National Office may make exceptions to this requirement on a case-by-case basis for extreme hardship.

b No more than 10 percent of budgeted expenses are reflected in unrestricted cash on hand, and reserve account balances do not exceed the required accumulation-to-date minus authorized withdrawals.

c The Servicing Official has reviewed and discussed with the borrower the feasibility of using borrower contributed funds, including advances, in accordance with paragraph XII C of exhibit B of this subpart.

d The Servicing Official has reviewed and approved a project budget with only minimally sufficient operation and maintenance expenses and other expenses as specified in paragraph IX A 1 f of this exhibit.

e The Servicing Official has reviewed any market studies or surveys received from MFH loan applicants for the market area and considered any information that may conflict with the request for an SMR.

B *Approval of SMR.*

1 The State Director may approve the use of an SMR when the conditions listed in paragraph IX A of this exhibit are met.

2 While a request for an SMR is pending or an SMR is in effect, requests to develop new FmHA or its successor agency under Public Law 103–354 units in the area will be handled in accordance with §1944.213(f) of subpart E of part 1944 of this chapter.

C *Implementing an SMR.*

1 After the use of an SMR has been approved by the State Director, the Servicing Official will establish an SMR for the project with the borrower.

a The SMR will be obtained by adjusting the ''FmHA or its successor agency under Public Law 103–354 Debt Payment'' item in the ''Proposed Budget'' column of Form FmHA or its successor agency under Public Law 103–354 1930–7, to reflect a payment to FmHA or its successor agency under Public Law 103–354 amortized at an interest rate which is less than the full note rate on the borrower's promissory note. The interest rate chosen may never be less than 2 percent.

b The interest rate of the SMR budget will be set at a level that will make project

SMR rental rates comparable with community rental rates. This rate will remain constant except as provided in paragraph 4 D of this exhibit.

2 The initial change to SMR rents or a decrease in SMR rents will be accomplished in accordance with the following:

a The borrower will submit to the Servicing Official, the items listed in paragraph IV A 1, 2, 4, 5, and 6 of this exhibit.

b The Servicing Official shall review the budget and supporting documentation, and when found to be acceptable, notify the borrower in writing that the budget is approved. A copy of the approved budget will be forwarded to the State Director.

c In addition to any State requirements, the borrower notifies each tenant or member of the new rates and/or utility allowance and:

(1) Include in the notice an explanation of the changes and events which necessitated the change. Also, the explanation must specify any adverse and/or positive effect the change may have on the tenants or members.

(2) Mail a copy of the notice to the tenant or member at least 30 days prior to the effective date of the change.

(3) Offer the tenants or members an opportunity to meet with management to discuss the change and review any material contributing to the change.

(4) Inform the tenants or members of their right to request a review of the rate change approval decision within 45 days of the date of the notice by writing to the next higher FmHA or its successor agency under Public Law 103–354 approval official. Until the request is resolved, the tenants or members are required to pay the changed amount of rent as indicated in the notice of approval.

3 When an SMR is implemented in a Plan II section 8/515 Project, use lines 23 through 29 of Form FmHA or its successor agency under Public Law 103–354 1944–29 to report any additional payments to the reserve account required when HUD contract rents exceed SMR rental rates.

D *Changing an SMR.*

1 An SMR may be increased or decreased whenever the local market conditions warrant, but must be reviewed at least annually.

a If the local market conditions that caused the need for the SMR have not been resolved and corrected, document same and update the monitoring timeframes and proceed no further. However,

b If the local market conditions have changed and change in the SMR is warranted, the requirements listed in paragraphs IX D 2, 3, and 4 of this exhibit apply.

2 An SMR must have the SMR rate rent increased by a minimum of 10 percent per year (or a higher amount if mutually agreed to by the borrower and FmHA or its successor agency under Public Law 103–354) when the:

a Vacancy rate drops to 10 percent or below for 6 consecutive months, or

b The borrower does not continue to satisfy the conditions of paragraphs IX A 1 c (1) and (2), d, e, or f of this exhibit.

3 An SMR is completely terminated when the note rate rent is regained.

4 An increase in an SMR will be accomplished in accordance with paragraph IV of this exhibit.

E *Disapproval of SMR.* When the approval official determines a request for an SMR is not justified on the basis of the information submitted, the approval official will notify the borrower in writing of the reason(s) why the SMR is not approved. The borrower will be advised of their appeal rights in accordance with subpart B of part 1900 of this chapter.

X *Special Problem Cases.* Problem cases which cannot be handled under this subpart should be submitted to the National Office for review with the State Director's recommended plan of action.

[58 FR 40868, July 30, 1993, as amended at 58 FR 44263, Aug. 20, 1993]

EXHIBIT C–1 TO SUBPART C—NOTICE TO TENANTS (MEMBERS) OF PROPOSED RENT (OCCUPANCY CHARGE) AND UTILITY ALLOWANCE CHANGE

_____

Date Posted

You as a tenant (member) are hereby notified that, subject to Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 approval, rents (occupancy charge) and utility allowances will be changed effective _____. (at least 60 days from this posting or other timeframe if required by State law)

_____ (Project Owner Name) has filed with FmHA or its successor agency under Public Law 103–354, United States Department of Agriculture, a request for approval of a change in the monthly rent (occupancy charge) rates and/or utility allowances of the (Name of apartment complex) for the following reasons:

1.
2.
3.
4.

Planned rent (occupancy charge) changes are as follows:

Unit size	Present rent (occupancy charge)		Proposed rent (occupancy charge)		Amount changed
	Basic	Note rate	Basic	Note rate	

Planned utility allowance changes are as follows:

Unit size	Present utility allowance	Proposed utility allowance	Amount changed

(Use where applicable such as when only basic or note rate rents and/or utility allowances are changing and the tenant is receiving rental assistance: Since you receive subsidy, your contribution for rent (occupancy charge) and utilities will not be changed so long as your income and household composition remain unchanged).

All materials justifying the proposed changes have been reviewed by FmHA or its successor agency under Public Law 103–354 and will be made available to you and other tenants (members) to inspect and copy at _____ during the hour of _____.

You may submit comments or objections in writing to the FmHA or its successor agency under Public Law 103–354 Servicing Official during the 20-day period immediately following the posting of this notice. Comments or objections should include reasons or information you feel should be considered by the FmHA or its successor agency under Public Law 103–354 Servicing Official. Your comments or objections must be filed prior to _____ with the FmHA or its successor agency under Public Law 103–354 Servicing Official, _____, at the Servicing Office located at _____,

These comments will be reviewed by the FmHA or its successor agency under Public Law 103–354 Servicing Official and forwarded to the FmHA or its successor agency under Public Law 103–354 approval official who will decide if the change(s) should be approved.

Each tenant (member) will be notified in writing of the FmHA or its successor agency under Public Law 103–354 decision to approve or deny the change. The approved rents and utility allowances will then be effective upon the effective date given above. If the approved change cannot be made effective by such date, an additional notice will be posted and the tenants (members) will be notified in writing that new rents (occupancy charges) and utility allowances will be effective at the next rent (occupancy charge) due date following the additional notice and the FmHA or its successor agency under Public Law 103–354 approval.

By _____

Borrower/Borrower's Representative

EXHIBIT C–2 TO SUBPART C—NOTICE OF APPROVED RENT (OCCUPANCY CHARGE) AND UTILITY ALLOWANCE CHANGE

Dear

You are hereby notified that the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 has reviewed the request for a change in shelter costs for the _____ project(s), and considered all justifications provided by project management [and comments provided by tenants]. The FmHA or its successor agency under Public Law 103–354 has approved the following rent (occupancy charge) and/or utility allowance rates listed below. The changes for all units will become effective on _____, 19___. (Insert effective date shown in exhibit C–1 of this subpart or later effective date in accordance with last paragraph of exhibit C–1 of this subpart.) The change is needed for the following reasons:

(Insert Reasons for Approval)

The approved changes are as follows:

Unit size	Present rent (occupancy charge)		Approved rent (occupancy charge)	
	Basic	Note rate	Basic	Note rate

The approved utility allowance changes are as follows:

Unit size	Present utility allowance	Proposed utility allowance	Approved utility allowance

Should you have any questions or concerns, you may contact FmHA or its successor agency under Public Law 103–354. The FmHA or its successor agency under Public Law 103–354 Servicing Office address is:

(Use the following required and/or optional paragraphs where applicable.)

*You must notify the tenants (members) of FmHA or its successor agency under Public Law 103–354's approval of the rent (occupancy charge) and utility allowance changes by posting this letter in the same manner as the ''Notice to Tenants (Members) or Proposed Rent (Occupancy Charge) and Utility Allowance Change (Exhibit C–1 of this subpart).'' This notification must be posted in a conspicuous place and cannot be substituted for the usual written notice to each individual tenant (member).

*This approval does not authorize you to violate the terms of any lease (occupancy agreement) you currently have with your tenants (members).

**For those tenants (members) receiving rental assistance (RA), their costsfor rent (occupancy charge) and utilities will continue to be based on the higher of 30 percent

of their adjusted monthly income or 10 percent of gross monthly income or if the household is receiving payments for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household's shelter cost. If tenants are receiving Housing and Urban Development (HUD) Section 8 subsidy assistance, their costs for rent and utilities will be determined by the current HUD formula.

**Your application for RA units on behalf of eligible tenants (members) has been received (or is on hand). Since RA units are not available, the approved rate and/or allowance change is subject to your acceptance of the RA units should they become available.

**This rate and utility allowance change is conditioned on the requirement that you carry out energy conservation measures and operating practices as determined necessary by the project energy audit. You will be allowed _____ days for completion of the work. FmHA or its successor agency under Public Law 103–354 assistance may be available to finance any needed improvements.

**You may file an appeal regarding the rate and utility allowance change as approved within 45 days of the date of this notice. See attached Form FmHA or its successor agency under Public Law 103–354 1900–1, ''Request for Appeal of Adverse Action,'' for your appeal rights. A request for a hearing must be sent to the Area Supervisor, National Appeals Staff, (T3address), postmarked no later than (*30 days from date of this letter*).

*You must inform the tenants (members) of their right to request an explanation of the rate and utility allowance change approval decision within 45 days of the date of this notice by writing to (*insert the name and address of next higher FmHA or its successor agency under Public Law 103–354 approval official*). All tenants (members) are required to pay the changed amount of rent (occupancy charge) as indicated in the notice of approval.

*Any tenant who does not wish to pay the FmHA or its successor agency under Public Law 103–354 approved rent changes may give the owner a 30-day notice that they will vacate. The tenant will suffer no penalty as a result of this decision to vacate, and will not be required to pay the changed rent. However, if the tenant later decides to remain in the unit, the tenant will be required to pay the changed rent from the effective date of the changed rent.

Sincerely,

FmHA or its successor agency under Public Law 103–354 Approving Official

*Required

**Optional, as applicable

EXHIBIT D TO SUBPART C—ENERGY AUDIT

I *Objective:* It is the objective of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 that Multiple Family Housing (MFH) financed by the Agency incorporates energy conservation measures and operating practices in keeping with the National Energy Strategy for a more efficient, less vulnerable, and environmentally sustainable energy future. Monitoring of this objective will be accomplished by energy audit.

II *Purpose and Intended Outcome:*

A The purpose of this exhibit is to define the FmHA or its successor agency under Public Law 103–354 requirements for energy audits. While energy audits will review the functioning of energy conservation measures initially incorporated in the housing, or previously retrofitted, and identify need for any further measures, the main thrust of energy audits will be to evaluate and/or recommend operating practices used in individual dwelling units and the common areas of a project.

B The intended outcome is to reduce tenant or member utility expenses; reduce project operating and maintenance expense; reduce usage of subsidy; improve the marketability of units and value of the property; conserve national energy resources within cost effectiveness; and increase the comfort and enjoyment level of tenants or members.

III *Borrower Responsibility:*

A *Initial audit.* An initial energy audit is required for each project during the third year of operation following completion of construction for ''early'' detection and correction of any deficiencies in energy conservation measures and/or operating practices.

B *Subsequent audit.* A subsequent energy audit is required at least within 5 years of the initial audit and at 5-year intervals thereafter, to identify if energy conservation improvements are needed.

C *Submission of audit.* The borrower shall submit a copy of the initial or subsequent energy audit along with the next submission of Form FmHA or its successor agency under Public Law 103–354 1930–7, ''Multiple Family Housing Project Budget.'' The borrower's plan for implementing the recommended improvements shall be included in the project budget. The submitted copy of the energy audit will be retained in the file by the Servicing Office for review during subsequent annual reviews. If any of the improvements are deferred due to cost ineffectiveness, the borrower shall, each year thereafter, include with the annual project budget, an updated cost feasibility analysis of the deferred improvements, along with the borrower's recommendation for implementing the improvements.

D *Cost of audit.* An energy audit is beneficial to the operation of an MFH project. The cost of the audit is an operational expense. The cost should be consistent with the size of the project and comparable to the cost of other audits in the area. The cost may be paid from annual revenue or from the reserve account depending on the amount.

IV *Performance of Energy Audit:*

A An energy audit shall be an in-depth, on-site inspection of the building shell and of the space heating, space cooling, ventilation, and water heating equipment for the building. It shall be conducted by a qualified energy auditor.

B Persons shall be considered qualified to perform an energy audit if they:

1 Are authorized under a State Plan approved by the Department of Energy (DOE) in accordance with the requirements in 10 CFR part 456,

2 Are authorized under a Federal Standby Plan promulgated by DOE in accordance with the requirements in 10 CFR part 456, or,

3 Can otherwise demonstrate that they possess the technical skills and knowledge necessary to perform energy audits.

C When persons meeting the qualifications in paragraph IV B of this exhibit are not available, the FmHA or its successor agency under Public Law 103–354 State Director, with prior National Office approval, may institute a plan and method to accomplish the requirements of this exhibit using Agency staff and resources, provided it is cost and time effective to perform such task.

D The energy auditor shall inspect the building to determine which energy saving measures and operating practices should be improved. The energy auditor is expected to summarize the results of this inspection and projected cost savings in priority order and include them in a written report.

1 The report shall address the condition or application of the following energy saving measures:

a Caulking and weatherstripping;

b Central high efficiency air conditioners;

c Ceiling, wall, and floor insulation;

d Crawlspace or foundation wall insulation;

e Duct or pipe insulation;

f Water heater insulation;

g Storm or thermal windows and doors;

h Heat-reflective window and door material;

i Crawlspace and/or attic ventilation;

j Energy management devices;

k Clock thermostats;

l Furnace efficiency modifications; and

m Vent dampers for water heaters, furnaces, and boilers.

2 The report may address the following energy saving measures if significant benefits can be shown in the opinion of the energy auditor:

a Solar domestic hot water systems;

b Active solar space heating system;

c Combined active solar space heater and solar domestic hot water systems; and

d Passive solar space heating and cooling systems.

3 The auditor shall inspect the building and report any improvement of energy conserving operating practices that can lead to immediate energy savings. These practices include, but are not limited to, the following:

a Furnace efficiency maintenance and adjustments (air filters should be changed frequently);

b Water flow reduction on showers and faucets;

c Sealing leaks and check insulation of pipes and ducts;

d Raising thermostat settings in summer and lowering them in winter;

e Cleaning baseboard convectors and refrigerator coils;

f Nightime temperature setback;

g Reducing energy use when apartment is unoccupied;

h Plugging leaks in attics, basements, and fireplaces;

i Efficient use of shading; and

j Reduce water heater temperature setting (should not exceed 120 degrees Fahrenheit).

4 The report shall include a list of any recommended energy saving measures and/or operating practices. The following information shall be provided as applicable:

a Description;

b Estimated useful life;

c Estimated annual energy cost savings in the first year;

d Cost; and

e Estimate of any incremental annual operation and maintenance costs.

5 The report shall include a summary of the energy auditor's qualifications.

V *Funding:* Improvements may be funded from annual project income, project reserve, a subsequent loan, borrower's funds, or any other FmHA or its successor agency under Public Law 103–354 authorized funding which will keep the improvement cost effective. Plans for funding the improvements should be included in the borrower's recommendation for implementation.

VI *Servicing Official Responsibility:*

A The Servicing Official shall determine the cost effectiveness and financial impact of the proposed improvements from information contained in the energy audit.

1 *Cost effectiveness.* Cost effectiveness shall be determined by comparing the value-in-use of the facility with and without the proposed energy saving improvement. Exhibit D of FmHA or its successor agency under Public Law 103–354 Instruction 1922–B, (available in any FmHA or its successor

agency under Public Law 103–354 office), describes the ''value-in-use'' approach that may be used to appraise cost effectiveness.

2 *Financial impact.* Financial impact shall be determined by comparing the estimated net energy and operation and maintenance costs savings in the first year to the annual cost of amortizing a loan to install the proposed energy saving improvement. A positive financial impact occurs when the first year annual savings equals or exceeds the annual cost of amortizing any loan(s) for the proposed energy savings improvement. Exhibit D–1 of this subpart may be used to organize the calculation of the financial impact.

3 When the identified and/or deferred improvements determined by an energy audit obtained within the immediate past 5-year period are found to be cost effective and have a positive financial impact, the Servicing Official shall recommend or require that any rent or occupancy charge increase approval requested by the borrower be conditioned upon installation of such energy saving improvement(s).

4 The Servicing Official may recommend a rent or occupancy charge increase for energy saving improvements which are not ''cost effective'' whenever the borrower contributes sufficient funds to reduce the cost of the improvement so that, on the basis of the FmHA or its successor agency under Public Law 103–354 investment only, the improvement is cost effective. A positive first year financial impact is not required. Any contribution made by the borrower to reduce the cost of the improvement to the cost effective limits will not be an eligible contribution for computing return on investments. The project reserve may not be utilized for such contribution.

B When the improvements are not cost effective or do not have a positive financial impact, and the borrower does not elect to reduce the cost of the energy saving measures as described in paragraph VI A 4 of this exhibit, the Servicing Official shall recommend deferral of implementation of the improvements. Any deferred improvements must be analyzed during each subsequent year's annual analysis.

C A copy of the decision regarding the energy audit will be included in the annual reports forwarded to the State Director.

VII *State Director Responsibility:* The State Director shall review the Servicing Official's recommendations and the decision regarding implementation of the proposed improvements and/or practices as a part of the annual report review.

VIII *Development:* All development will be performed in accordance with the requirements of subpart E of part 1944 of this chapter and subpart A of part 1924 of this chapter, except that §1924.6 (b)(3)(i) of subpart A of part 1924 of this chapter will not apply to improvements made by the owner-builder method.

IX *Rent or Occupancy Charge Change:* Any rental or occupancy charge change necessitated by the improvements must be processed as set forth in exhibit C of this subpart.

EXHIBIT D–1 TO SUBPART C—CALCULATION OF FINANCIAL IMPACT (ENERGY AUDIT)

A. First Year Annual Savings (from audit).	$_____
B. Annual Cost of Amortized Loan (from calculation in part D below).	$_____
C. Difference (A–B) (if zero or greater, energy saving measure has a positive financial impact).	$_____
D. Calculation of Annual Cost of Amortized Loan for Energy Saving Measure:	
1. Appraisal of Energy Saving Measure (for calculation of appraised value, of FmHA or its successor agency under Public Law 103–354 Instruction 1922–B see exhibit D available in any FmHA or its successor agency under Public Law 103–354 office).	$_____
2. Amortization Factor (for calculation of Amortization Factor, use interest rate of Rural Rental Housing and Rural Cooperative Housing from FmHA or its successor agency under Public Law 103–354 Instruction 440.1, exhibit B (available in any FmHA or its successor agency under Public Law 103–354 office); the Useful Life or weighted average of Full Life for more than one energy saving measure from the energy audit; and the Amortization Factor from FmHA or its successor agency under Public Law 103–354 Instruction 440.1, (available in any FmHA or its successor agency under Public Law 103–354 Office).	×_____
3. Annual Cost (Appraisal × Amortization Factor enter answer in part B above).	$_____

EXHIBIT E TO SUBPART C—RENTAL ASSISTANCE PROGRAM

I *General.* The objective of the rental assistance (RA) program is to reduce rents paid

by low-income households. This exhibit sets forth the policies and procedures and delegates authority under which RA will be extended to eligible tenants occupying eligible Rural Rental Housing (RRH) and eligible members occupying Rural Cooperative Housing (RCH) projects financed by the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354. For the purposes of this exhibit, the term ''tenant'' also means ''member.'' This exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public agency. RA will supplement the benefits available to tenants under the interest credit program outlined in exhibit H to this subpart.

II *Definitions.*

A *Eligible tenants.* Any very low-income, or low-income household meeting the following requirements:

1 The household adjusted annual income must not exceed the very low- or low-income limit established for the area as indicated in exhibit C of subpart A of part 1944 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 Office).

2 The household must be unable to pay the approved rental rate plus utility allowance within a portion of their income not exceeding the highest of:

a 30 percent of their adjusted monthly income;

b 10 percent of gross monthly income; or

c If the household is receiving payments for public assistance from a public agency, the portion of such payments which is specifically designated by that agency to meet the household's shelter cost.

3 The household must meet the occupancy policy established for the project and approved by FmHA or its successor agency under Public Law 103–354 according to paragraph VI D 2 of exhibit B of this subpart.

4 The household must have an unexpired and signed Form FmHA or its successor agency under Public Law 103–354 1944–8, ''Tenant Certification,'' on file with the borrower.

B *Eligible project.*

1 All projects must operate under Interest Credit Plan II RA to be eligible to receive RA, except LH loans, direct RRH, and insured RRH loans approved prior to August 1, 1968, which must operate under Plan RA. To be eligible for RA the project must have a:

a RRH insured or direct loan made to a broadly-based nonprofit organization, or State or local agency, including Senior Citizen Housing;

b RRH insured loan to an individual or organization who has or will execute a loan resolution or loan agreement agreeing to operate the housing on a limited profit basis as defined in §1944.205 of subpart E to part 1944 of this chapter;

c RCH insured or direct loan; or

d LH loan, or an LH loan and grant combination, made to a broadly-based nonprofit organization or nonprofit organization of farmworkers or a State or local public agency.

2 Borrowers may utilize the Department of Housing and Urban Development (HUD) Section 8 Housing Assistance Payments Program and FmHA or its successor agency under Public Law 103–354 RA in the same project. In such cases, Form FmHA or its successor agency under Public Law 103–354 1944–7, ''Multiple Family Housing Interest Credit and Rental Assistance Agreement,'' for the project will reflect coding for ''Plan II RA.''

3 Borrowers will provide RA to only those eligible tenants occupying LH, RCH, or RRH rental housing units financed by FmHA or its successor agency under Public Law 103–354.

C *Operational project.* A completed RRH, RCH, or LH project financed by FmHA or its successor agency under Public Law 103–354 which has been opened for occupancy and has at least been partially occupied by tenants.

D *New projects.* Newly constructed or substantially rehabilitated RRH, RCH, or LH project financed by FmHA or its successor agency under Public Law 103–354. For new construction RA purposes, if further means before any units are occupied.

E *Rental assistance.* RA, as used in this exhibit, is the portion of the approved shelter cost paid by FmHA or its successor agency under Public Law 103–354 to compensate for the difference between the approved shelter cost and the monthly tenant contribution as calculated according to paragraph IV A 2 c of exhibit B to this subpart. When the household's monthly gross tenant contribution is less than the approved utility allowance which is billed directly to and paid by the tenant, the owner will pay the household that difference according to paragraph IX A 2 of this exhibit.

F *RA agreement.* The term refers to Form FmHA or its successor agency under Public Law 103–354 1944–27, or its predecessor. Form FmHA or its successor agency under Public Law 103–354 444–27 and Form FmHA or its successor agency under Public Law 103–354 444–27A.

G *RA obligation.* The obligation consisting of the number of RA units and associated dollar amounts of rental assistance specified in a particular RA agreement.

H *RA obligation number.* The identification number associated with a particular RA obligation.

I *Replacement units.* RA units which replace RA units in RA agreements expiring because obligated funds have been fully disbursed.

J *Servicing units.* RA units which increase the number of RA units resulting in initial or additional RA agreements.

K *Shelter cost.* The approved shelter cost consists of basic or note rate rent plus utility allowance when used. Basic or note rate rent must be shown on the project budget for the year and approved according to §1930.122(b)(1). Utility allowances, when required, are determined and approved according to part 1944, subpart E, exhibit A–6, of this chapter. Any changes in rental rates or utility allowances must be processed according to exhibit C of this subpart.

L *Utility allowances.* The allowance approved by FmHA or its successor agency under Public Law 103–354 according to exhibit A–6 of subpart E of part 1944 of this chapter to cover the cost of utilities which are payable directly by the households.

III *Utilization of RA.* All borrowers with eligible projects as defined in paragraph II B of this exhibit are encouraged to utilize the RA program and receive RA payments on behalf of eligible tenants. Generally, the borrower, or the borrower's approved management agent, will initiate the processing of a RA application.

IV *Priority of RA applications.*

A *State of allocations.* The National Office may establish a State quota on the number of RA units that may be approved and obligated in any fiscal year. The State Director will limit the approval of RA to no more than the number of units allocated to the State. Unless otherwise stated by the National Office, the State allocation will indicate the number of RA units for operational projects and the number of RA units to be used for new construction.

B *Allocation to projects within a State.* The State Director will distribute any RA units allocated to the State according to any specific guidance established by the National Office. When no specific guidance is established by the National Office the State Director will approve requests for RA to projects according to the provisions of this exhibit. Priority in allocating RA units will be as follows:

1 *Replacement units:* The State Director will distribute or reserve RA units and give priority to projects needing replacement units before any initial or additional units are allocated to other new or operational projects. The State Director should ascertain how many RA units are expected to expire in each Servicing Office during the current fiscal year and the first quarter of the following fiscal year.

2 *New housing:* Any RA units allocated to the State for new construction will be distributed on a priority basis in the following order:

a Applications for RRH and RCH loans where the market survey information indicates that a large percentage of the prospective tenants needed RA. When the number of RA units available is inadequate to cover all such applications, the units will be distributed giving priority to those projects having highest need located in areas identified as having the greatest need for low-income housing, and selected for funding in accordance with §1944.231 of subpart E of part 1944 of this chapter.

b For LH projects, RA units will be allocated by the National Office from the National Office reserve on a case-by-case basis at the time the projects are considered for funding at the National Office level.

3 *Operational housing:* When the National Office provides an allocation for servicing RA units, the State Director will distribute them to operational RRH, RCH, and LH projects based on Form FmHA or its successor agency under Public Law 103–354 1944–25, ''Request for Rental Assistance,'' that have been submitted by eligible borrowers. Priority will be given to projects based on this exhibit and administrative directives issued by the National Office under the annual RA allocations or other authorizations or guidelines established through the budget process. The National Office will notify the State Director each year of any specific date by which all requests for RA must be submitted to FmHA or its successor agency under Public Law 103–354 for consideration.

V *Processing of RA applications.* All requests for RA will be processed according to this paragraph and may be approved by the State Director.

A *Operational projects.*

1 A borrower with an eligible project in which there are tenants paying in excess of 30 percent of their adjusted income for rent should be encouraged to have on file a Form FmHA or its successor agency under Public Law 103–354 1944–25 with the Servicing Official to avoid delays in processing future servicing requests. Once a Form FmHA or its successor agency under Public Law 103–354 1944–25 is on file at the FmHA or its successor agency under Public Law 103–354 Servicing Office, subsequent submittals of the form will not be necessary to support subsequent approvals of RA by FmHA or its successor agency under Public Law 103–354. A separate Form FmHA or its successor agency under Public Law 103–354 1944–25 will be submitted for each project. The borrower should include the following with each request.

a Form FmHA or its successor agency under Public Law 103–354 1944–29, ''Project Worksheet for Interest Credit and Rental Assistance,'' with all columns completed for each tenant in the project. (All Forms FmHA or its successor agency under Public Law 103–354 1944–8 must be current.)

b Approved or proposed budget for the year on Form FmHA or its successor agency under Public Law 103–354 1930–7, ''Multiple

Family Housing Project Budget,'' with exhibit A–6 of subpart E of part 1944 of this chapter attached, when applicable.

2 Prior to the full disbursement of obligated funds on any agreement, a borrower or approved management agent may submit a request for replacement RA units. The request should contain all the material requested in paragraph V A 1 of this exhibit and should be submitted no later than 3 months prior to the expected full disbursement of obligated funds, to allow time for processing the request. The number of replacement units may not exceed the number of units that are expiring. Once replacement units have been requested, additional units may not be requested until Form FmHA or its successor agency under Public Law 103–354 1944–51, ''Multiple Family Housing Obligation-Fund Analysis,'' is received obligating the replacement units. Form FmHA or its successor agency under Public Law 103–354 1944–51 requesting the additional units must be coded sequentially as required in paragraph V C 5 of this exhibit.

3 The Servicing Official will review the budget, exhibit A–6 of subpart E of part 1994 of this chapter, Form FmHA or its successor agency under Public Law 103–354 1944–29, and Form FmHA or its successor agency under Public Law 103–354 1944–25 submitted by the borrower to assure that the items are complete and accurate. The Servicing Official will complete Form FmHA or its successor agency under Public Law 103–354 1944–25 and submit all data provided by the borrower to the State Director with appropriate comments and recommendations.

B *Projects to be funded.*

1 Applicants requesting funding for new projects who are planning to utilize the RA program, should submit a completed Form FmHA or its successor agency under Public Law 103–354 1944–25 to the Servicing Official when submitting a preapplication or application for funding.

2 The number of units of RA requested should be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.

C *State Director action on requests for RA.* Only the State Director or delegated members of the State Office staff may approve or disapprove RA requests.

1 *Approval actions.* When the State Director determines that RA can be obligated or transferred, part III of Form FmHA or its successor agency under Public Law 103–354 1944–51 for obligation, or Form FmHA or its successor agency under Public Law 103–354 1944–55, ''Multiple Family Housing Transfer of Rental Assistance,'' for transfers, will be prepared and distributed according to the Forms Manual Insert (FMI). Form FmHA or its successor agency under Public Law 103–354 1944–27, ''Rental Assistance Agreement,'' will not be executed or amended until the obligation or transfer is verified by the Finance Office. The State Office will verify the obligation or transfer via the computer terminal on the day following the request.

2 *Completing RA agreements.* When the State Director verifies that RA units have been obligated or transferred by the Finance Office, the State Director will forward a copy of either Form FmHA or its successor agency under Public Law 103–354 1944–51 or Form FmHA or its successor agency under Public Law 103–354 1944–55 to the Servicing Official. The Servicing Official will complete Form FmHA or its successor agency under Public Law 103–354 1944–27, and attach the appropriate copies of Form FmHA or its successor agency under Public Law 103–354 1944–51 or Form FmHA or its successor agency under Public Law 103–354 1944–55 according to the FMI.

a *Initial RA agreements.* The Servicing Official will prepare the original and two copies of Form FmHA or its successor agency under Public Law 103–354 1944–27. When the project does not have a Form FmHA or its successor agency under Public Law 103–354 1944–7 in effect, the Servicing Official will prepare an original and three copies. The Servicing Official and the borrower will then execute the originals and all copies of Form FmHA or its successor agency under Public Law 103–354 1944–27 and Form FmHA or its successor agency under Public Law 103–354 1944–7. The forms will be distributed according to their FMIs.

b *Replacement or modified RA agreements.* When a Form FmHA or its successor agency under Public Law 103–354 444–27 initiated prior to May 1, 1985, is replaced or modified, a new Form FmHA or its successor agency under Public Law 103–354 1944–27 will be prepared and distributed according to the FMI. For every replacement or modification on or after May 1, 1985, the original and all copies of the affected RA agreement will be noted, assembled and distributed by the Servicing Official according to the FMI.

3 *Modification of an existing RA agreement.* After any request for a change in the amount of RA has been obligated, a copy of Form FmHA or its successor agency under Public Law 103–354 1944–51 or Form FmHA or its successor agency under Public Law 103–354 1944–55 will be attached to Form FmHA or its successor agency under Public Law 103–354 1944–27 and distributed according to the FMI. A new FmHA or its successor agency under Public Law 103–354 1944–7 is not required.

4 *Denial of RA Request.*

a If RA funds are available but cannot be provided due to a determination of ineligibility, the State Director will inform the borrower, in writing, of the reasons. The borrower will be given appeal rights in accordance with subpart B of part 1900 of this chapter in such cases. When RA funds are not

available from the State's allocation or the National Office Reserve the decision will be considered nonappealable, however, the decision is still reviewable, under subpart B of part 1900 of this chapter.

b Should RA not be available for lack of appropriation to replace an expiring RA obligation, the State Director will advise the borrower to notify tenants of the increase to their contribution to rent following the notification requirements of exhibit C of this subpart. Tenants who cannot afford the increased rent shall be given the opportunity to quit the lease and vacate the project without penalty.

5 *RA obligation numbers.*

a Each RA obligation will be assigned a six digit RA obligation number by the Approving Official as follows:

(1) First two digits—Fiscal year (FY) in which the funds were obligated (i.e., 85, 86, etc).

(2) Second two digits—Numbers in sequential order for each fiscal year starting with 01 (i.e. 93–01, 93–02, 94–01, 94–02).

(3) Third two digits—All obligations will be coded 00.

b RA obligation obligated before FY 1985 will be coded as follows:

(1) First two digits—FY initial obligation was made on the project (i.e., 78, 79, 80, etc.)

(2) Second two digits—Relate to the pre-Automated Multi-housing Accounting System conversion loan number to which the RA obligation was processed.

(3) Third two digits—Indicate the number of modifications plus 1. (Form FmHA or its successor agency under Public Law 103–354 1944–27 with two modifications on September 30, 1984, will be designated ''03.'')

c The Finance Office will track RA obligations and undisbursed balances by number.

VI *Terms of the RA Agreement.*

A *Effective date.* Each Form FmHA or its successor agency under Public Law 103–354 1944–27 will be effective the first day of the month in which it is executed. If assistance is granted to a project under an appeal according to paragraph XVI of this exhibit, the effective date will be retroactive to the first day of the month in which the assistance was denied, provided the borrower agrees to make any appropriate refunds to tenants who would have been entitled to RA during the retroactive period.

B *Term.*

1 *Twenty-year RA agreement.* Twenty-year agreements were authorized during the initial years of the RA program through FY 1982. Twenty-year agreements were restricted to new projects or modifications of existing 20-year agreements. The agreement is effective for 20-years from the effective date of the agreement. This agreement may be modified or terminated in accordance with the terms of the RA agreement. The agreement will expire when the funds obligated for the RA units described in section 1 of Form FmHA or its successor agency under Public Law 103–354 1944–27 are fully disbursed. This can be any time before or after the end of the 20-year term. Upon expiration of the agreement, a replacement agreement may be executed. If a replacement agreement is considered, it will be for a 5-year period.

2 *Five-year RA agreement.* Five-year agreements may be used for operational projects, or for new projects when 20-year units are not available. The agreement shall be effective for 5 years from the effective date of the agreement. This 5-year agreement may be modified or terminated in accordance with the terms stated on Form FmHA or its successor agency under Public Law 103–354 1944–27.

The agreement will expire when the funds obligated for the RA units described in section 1 of Form FmHA or its successor agency under Public Law 103–354 1944–27 are fully disbursed. This can be any time before or after the end of the 5-year period.

3 *Modification of RA agreements.* Forms FmHA or its successor agency under Public Law 103–354 1944–27 may be modified:

a To add or subtract RA units assigned to the project through obligation, through transfer from another RA obligation, or as an incentive to avert prepayment.

b To reinstate a suspended RA obligation(s) to a new borrower in the same project after a voluntary conveyance or a foreclosure and a credit sale within the Multiple Family Housing (MFH) program; or

c To transfer a suspended RA obligation(s) to a new borrower and a different project after liquidation of the project assets or after the loan is paid in full.

4 *Amendment of RA agreements.*

a Any existing RA obligation executed prior to February 15, 1983, which will have a remaining obligation balance at the end of the 5-year or 20-year expiration date stated in section 9, ''Term of the Agreement,'' may be modified by the use of Form FmHA or its successor agency under Public Law 103–354 444–27A, ''Amendment to Rental Assistance Agreement.'' The amended agreement will expire when the obligated funds are fully disbursed.

b Any existing RA agreement on earlier Form FmHA or its successor agency under Public Law 103–354 444–27 or exhibit D–2 (of now obsolete FmHA or its successor agency under Public Law 103–354 Instruction 444.5) containing an occupancy standard may be amended by mutual consent of the borrower and FmHA or its successor agency under Public Law 103–354 when a new occupancy policy for the project is approved according to paragraph VI D 2 of exhibit B of this subpart. To amend the form:

(1) Delete section 5 of the original and the borrower's copy and have the deletion dated

and initialed by the appropriate FmHA or its successor agency under Public Law 103–354 official and the person(s) authorized to sign for the borrower.

(2) Type the following statement on the reverse of the original agreement and the borrower's copy and have the statement dated and initialed by the appropriate FmHA or its successor agency under Public Law 103–354 official and the person(s) authorized to sign for the borrower. ''Amended (date) _____ by authority of paragraphs VI B 4 of exhibit E and VI D 2 a of exhibit B of subpart C of part 1930, chapter XVIII, title 7, Code of Federal Regulations.''

5 *Replacement RA obligations.* Replacement RA obligation(s) for either 5-year or 20-year obligations will be for a 5-year period. All requirements in paragraphs VI B 2 and 3 of this exhibit apply. Expiring RA obligations and replacement RA obligations may run concurrently for a period of 30–50 days so any undisbursed obligation balance on the expiring RA agreement can be liquidated.

VII *Recordkeeping Responsibilities.*

A The Finance Office (FO) will track the use of RA obligation and ensure that RA obligation is not disbursed or credited to a borrower's account in excess of the RA obligation. Quarterly and annually, the FO will provide the Servicing Official with an RA payment and obligation status report for each project. The annual version of this report will be filed in position 2 of the project case file and maintained indefinitely.

B The Servicing Official will notify the borrower to apply for replacement RA obligation when the RA undisbursed balance reaches a level sufficient to cover approximately 6 months of RA requests. This figure will be based on the project's average monthly request for RA.

VIII *Responsibilities of Borrower in Administering the RA Program.*

The borrower and management agent for each project receiving RA should fully understand the responsibilities and requirements of carrying out the program. The following guidelines will be followed:

A RA payments will not be made directly to eligible tenants receiving RA except as specified in paragraph IX A of this exhibit. The borrower will maintain an accurate accounting of each tenant's utility allowance and payments made to tenants. All other RA payments will be recorded as a credit to the tenant's monthly rental payment.

B The borrower must submit Form FmHA or its successor agency under Public Law 103–354 1944–8 for each tenant as required in paragraph VII F of exhibit B of this subpart.

C The incomes reported by the tenants must be verified by the borrower in accordance with paragraph VII of exhibit B of this subpart.

D Borrowers utilizing RA must comply with §1930.122(b)(1) of this subpart. RA will not be approved for a project until the operating budget has been approved by the FmHA or its successor agency under Public Law 103–354 State Office or the Servicing Official. Servicing Officials, with assistance from the State Office, must closely supervise and assist borrowers in complying with all accounting and management requirements.

E A borrower participating in the RA program must have an FmHA or its successor agency under Public Law 103–354 approved lease with the assisted household. All leases must comply with the provisions of paragraph VIII of exhibit B of this subpart.

F The borrower will be responsible to FmHA or its successor agency under Public Law 103–354 for any errors made in the administration of the RA program which are made by the borrower or the borrower's authorized management agent. Errors in computation or other unauthorized use of RA will require, at a minimum, the repayment of any incorrectly advanced RA funds. If the error or unauthorized use of RA appears to be deliberate or intentional, the State Director will refer the case to the Office of Inspector General according to FmHA or its successor agency under Public Law 103–354 Instruction 2012–B (available in any FmHA or its successor agency under Public Law 103–354 office).

IX *Handling Utility Allowances.*

A *Payment of utilities.*

1 When the tenant is billed directly for utilities, rent paid by the tenant receiving RA will be the difference between the established utility allowance and the portion of income cited in paragraphs II A 2 a, b, or c of this exhibit.

2 When utilities are paid by the household receiving RA and the portion of income cited in paragraphs II A 2 a, b, or c of this exhibit is less than the allowance for utilities, the borrower will pay the household the difference between the utility allowance and one of those limits of the household's adjusted monthly income.

3 In a project where the owner pays all utilities, the tenant rent will be the portion of income cited in paragraphs A 2 a, b, or c of this exhibit up to the approved rent for the rental unit being occupied.

B *Determining the allowance.* The utility allowance will be determined and recorded by the use of exhibit A–6 of subpart E of part 1944 of this chapter.

C *Changes in allowances.* The utility allowance should be reviewed annually and adjusted if there are substantial changes in utility and public service rates. Allowances will be adjusted on an annual basis if necessary when the owner submits a new budget for approval. Changes in utility allowance which will result in changed rent paid by tenants will be processed according to exhibit C of this subpart.

X Method of Payment of RA to Borrower

A *Regular monthly RA payments.*

1 *Borrower responsibilities.*

a Any RA due the borrower will be deducted from the balance of scheduled loan payments, any delinquent payments, and other charges due on Form FmHA or its successor agency under Public Law 103–354 1944–29 and the remaining balance must be submitted to the Servicing Office by check. If the RA due the borrower exceeds the balance of scheduled loan payments, delinquent payments and other charges, no additional payment is due from the borrower and an RA check for the excess will be issued by the FO.

b Each month the borrower must forward to the Servicing Official a Form FmHA or its successor agency under Public Law 103–354 1944–29. Any new Forms FmHA or its successor agency under Public Law 103–354 1944–8 must be submitted to the Servicing Office as required in exhibit B of this subpart. Both forms must be prepared for each project according to the instruction attached to the respective forms.

2 *Servicing Official responsibilities.*

a When new Forms FmHA or its successor agency under Public Law 103–354 1944–8 are received, the Servicing Official will immediately date stamp each form with the receival date, review each Form FmHA or its successor agency under Public Law 103–354 1944–8 and verify that the information contained on the form is complete and correctly computed based on information contained in the form.

b When a Form FmHA or its successor agency under Public Law 103–354 1944–29 is received, the Servicing Official will:

(1) Date stamp each form FmHA or its successor agency under Public Law 103–354 1944–29, and review the form and assure that entries are supported by the current form FmHA or its successor agency under Public Law 103–354 1944–8.

(2) Enter the payment data via field office terminals as required in exhibit A to subpart K of part 1951 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

c The Servicing Official should verify the accuracy of the borrower's servicing address shown on the FO record. When the address shown is incorrect, corrections must be made on AMAS screen M5A ''Record Borrower/Project Data'' via a field computer terminal.

B When a project account is delinquent, the Servicing Official may agree to release a portion of the monthly RA for project operation according to provisions authorized in a servicing plan developed in accordance with exhibit F of subpart B of part 1965 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 Office).

C An RA payment request must be based on actual occupancy as of the first day of the month.

XI Assigning RA to tenants

A *New project.* Applications for occupancy should be accepted during the construction phase of the project, after the preconstruction conference has been held, and placed on a waiting list. During initial rent-up period, the following priorities will apply:

1 Until all the RA units have been assigned, a number of apartment units in the project equal to the number of RA units will be initially reserved for eligible tenants as defined in paragraph II A of this exhibit who qualify for RA, even if there are applications on other lists that applied earlier. Applications qualifying for RA will be considered according to the priority established by paragraph XI B of this exhibit, by passing those applicants on the waiting list whose income is above the low-income limits for the area. The remaining units equal to the number of units that will not be subsidized with RA can be rented simultaneously to other applicants.

2 If a substantial number of apartment units reserved to be used with RA units remain vacant after initial rent-up and the borrower could rent those units to applicants not eligible for RA, the borrower may request a transfer of unused RA units in accordance with paragraph XV B 5 of this exhibit. However, applicants not eligible for RA cannot be selected to occupy units initially reserved to be used with RA until the unused RA units are transferred.

3 If there are still vacant units, those applicants by-passed because they did not qualify for RA will be considered for occupancy on a first-come, first-served basis.

B *Operational RRH and RCH projects.* To determine priority for assigning an available RA unit in an operational project, the latest Form FmHA or its successor agency under Public Law 103–354 1944–29 for the project must be updated as of the date the unit is available, assuring that columns 3 through 9 of part II are current and accurate.

1 *First priority* for assigning RA must always be given to eligible very low-income households in the following order:

a Eligible *very low-income tenants* paying the highest percentage of adjusted annual income for approved shelter costs.

b Eligible *very low-income applicants* from the project waiting list according to the order provided in paragraph VI H of exhibit B of this subpart. No eligible tenant household in the project may be required to move from the project to allow an applicant on the waiting list who is eligible for RA to move in.

2 *Second priority* for assigning RA will be given to eligible households with low-income in the following order.

a Eligible *low-income tenants* in the project paying the higher percentage of adjusted annual income for approved shelter cost.

b Eligible *low-income applicants* from the project waiting list. Low-income applicants will be selected according to paragraph VI H of exhibit B of this subpart, provided the borrower has satisfied the requirements of paragraph XI C of this exhibit.

3 *Third priority* for RA will be given to occupancy ineligible tenants as described in paragraph VI D 7 b of exhibit B of this subpart living in the project.

4 Eligible tenants receiving the benefits of RA may continue receiving such benefits as long as they remain eligible for RA, as the RA calculation formula shows a moderate income tenant that was initially eligible for RA as a very low- and/or low-income tenant who still needs RA and there is an RA agreement in effect.

C *Limits on low-income RRH and RCH applicants who may receive occupancy and RA:*

1 When no more very low-income applicants are on the waiting list *and RA is available,* eligible low-income applicants may obtain occupancy and receive RA provided that:

a For projects available for initial occupancy prior to November 30, 1983, no more when 25 percent of the vacant units receiving RA may become occupied by low-income tenants other than very low-income tenants.

b For projects available for initial occupancy on or after November 30, 1983, no more than 5 percent of the vacant units receiving RA may become occupied by low-income tenants other than very low-income tenants.

2 The borrower may rent units and provide RA to other than very low-income applicants/tenants in excess of the percentage in paragraph XI C 1 a and b of this exhibit respectively, only when there are no more very low-income applicants or tenants available in the market area. The borrower must have documentation in its file and available to FmHA or its successor agency under Public Law 103–354 for its review to show the efforts made, and the facts used to determine that there are currently no more very low-income applicants in the market area.

D *Operational LH projects:* Tenants who meet the definitional requirements of domestic farm laborers found at §1944.153 of subpart D of part 1944 of this chapter shall be assigned RA in the following priority order within the subcategories of priority occupancy established by that subpart:

1 Very low-income.

2 Low-income.

E *Assigning RA other than the first of the month:*

1 When a tenant receiving RA vacates before the end of the month, the RA unit should be immediately reassigned to another tenant or an applicant using the priorities given in paragraph XI B of this exhibit.

2 When RA is assigned to an applicant and the applicant initially enters the project on a day other than the first of the month, the applicant's tenant contribution for housing costs will be prorated for the remaining portion of the month the same as if the tenant was receiving RA. [EXAMPLE: Basic rent of $200 and the tenants monthly contribution with RA would be $120, the prorate amount for ½ month would be $60.]

3 When RA is assigned to a tenant other than the first of the month, no adjustment to their tenant contribution on Form FmHA or its successor agency under Public Law 103–354 1944–29 for that month will be made. The borrower will begin to receive reimbursement of RA for the tenant as of the first day of the next month.

4 No adjustment will be made on Form FmHA or its successor agency under Public Law 103–354 1944–29 to request additional RA payment or to refund any excess RA payment or overage for the previous month when RA is reassigned other than the first of the month.

XII *RA assigned to wrong household:* When the tenant has correctly reported income and household size, but RA was assigned to a household in error, that tenant's RA benefit should be canceled and reassigned. Incidents involving incorrect reporting are addressed in subpart N of part 1951 of this chapter.

A Before the borrower notifies the tenant, the borrower or management agent shall review the case with the Servicing Official. If the Servicing Official verifies that an error has been made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice that the unit was assigned in error and that the RA benefit will be canceled effective on the next monthly rental payment due date after the end of the 30-day notice period. The tenant will also be notified in writing that:

1 The tenant has the right to cancel the lease based on the error made by the borrower and the loss of benefit to the tenant.

2 The RA granted in error will not be recaptured from the tenant.

3 The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. If the facts are accurate and the tenant cannot produce further evidence proving eligibility for RA, there will be no appeal from the decision. If the tenant feels there is justification for further review, the borrower must give the tenant appeal rights under subpart L of part 1944 of this chapter.

B *Reassigning RA.* The RA unit will be reassigned to the next eligible household,

based on Form FmHA or its successor agency under Public Law 103–354 1944–29 from which the original priority was established, when the unit was erroneously assigned. The RA will not be retroactive unless the reassignment was based on an appeal by the tenant. Retroactive RA may not exceed the project's remaining RA obligation balance.

XIII *RA payment cancellation:* When an RA check must be canceled, the following procedure will be followed:

A *Return of the original RA U.S. Treasury Check:* The Servicing Office will prepare Form FmHA or its successor agency under Public Law 103–354 1944–53, ''Multiply Family Housing Cancellation of U.S. Treasury Check and/or Obligation'' as specified in the FMI and mail it to the MFH unit in the FO.

B *Return of all or a portion of the monthly RA payment or refund of RA previously advanced:* A check from the borrower made payable to FmHA or its successor agency under Public Law 103–354 will be submitted to the MFH unit in the FO on Form FmHA or its successor agency under Public Law 103–354 1944–53, completed according to the FMI.

XIV *Terminating existing RA agreements obligated in prior and/or current FYs.*

A When a project's obligated funds are fully disbursed under any given RA obligation number, RA will be automatically terminated by the FO and no further RA requests will process against the RA obligation number. The Servicing Official must monitor these balances through field office terminals and AMAS Report No. 513–C. The Servicing Office will modify Form FmHA or its successor agency under Public Law 103–354 1944–27 according to the FMI to indicate that a termination has occurred. The Servicing Official will notify the borrower in writing that the obligation under the RA obligation number has expired and the RA obligation number must be stricken from the agreement.

1 *For all RA obligations before FY 1985.* RA is considered fully disbursed by the FO when all RA funds obligated before FY 1985 are disbursed.

2 *For all RA obligations after FY 1984.* RA is considered fully disbursed by the FO when all RA funds obligated in a particular FY are disbursed. This includes RA transferred from a different MFH project.

3 When a Form FmHA or its successor agency under Public Law 103–354 1944–27 consists of several different obligations (Form FmHA or its successor agency under Public Law 103–354 1944–51, part III, or Form FmHA or its successor agency under Public Law 103–354 1944–55) identified by different RA obligation numbers, and the obligations will not be fully disbursed at the same time, only those RA obligation numbers with fully disbursed obligation will be terminated.

B *Prior to full disbursement of obligated funds:*

1 *Prior FY obligations.* Prior FY obligations will not be terminated. They will be suspended by the State Director using procedures in paragraph XV of this exhibit.

2 *Current FY obligations.* The State Director is authorized to terminate RA obligation prior to the disbursement of obligated funds if the funds were obligated during the current FY. The undisbursed funds for the RA obligation will be returned to the current FY obligation authority.

XV *Suspending or transferring existing RA.*

A *RA may be suspended or transferred according to the requirements for each situation described in paragraph XV B of this exhibit and the following:*

1 *Suspension.*

a The State Director may approve a suspension of a project's RA agreement and obligation as a result of the servicing actions described in paragraphs XV B 2, 3, and 4 of this exhibit. The State Director will maintain records and control of the suspended RA.

b The State Director or Servicing Office will notify the borrower in writing, stating the reason(s) the RA is suspended.

c The Servicing Office will put a suspend code on the account. This is done on the M5A ''Record Borrower/Project Data'' screen in AMAS using Suspend Code 7. After suspension, only RA payments described in paragraph XV B 4 of this exhibit will be processed by the Servicing Office.

d The State Director may approve reinstatement of the RA to the same borrower in the same project. After approval, the Servicing Office will remove the suspend code from the project using the M5A screen.

e The State Director may reinstate the RA to the same borrower in the same project by removing the suspend code from the M5A screen through field office terminals.

2 *Transfer.*

a Only the State Director may approve an RA transfer.

b RA may be transferred to any borrower with an RA eligible project according to the priorities established by this exhibit or the National Office.

c AMAS will determine the per unit value of the RA obligation being transferred by dividing the undisbursed balance of the RA obligation on the date the transfer is processed by the number of RA units in the agreement. The number of units being transferred times the per unit value equals the total amount transferred. After the transfer processes the State Director should enter the dollar amount of the transfer in the Remarks area of Form FmHA or its successor agency under Public Law 103–354 1944–55.

d RA units identified by different RA obligation numbers may be transferred. New RA obligation numbers should be assigned according to the FMI for Form FmHA or its

successor agency under Public Law 103–354 1944–55.

e All or any portion of the units in an RA Agreement with an undisbursed balance may be transferred by the State Director.

f When the State Director approves an RA transfer, Form FmHA or its successor agency under Public Law 103–354 1944–55 completed according to the FMI, will be used to notify the FO except as noted in paragraph XV B 1 of this exhibit.

g Form FmHA or its successor agency under Public Law 103–354 1944–27, with Form FmHA or its successor agency under Public Law 103–354 1944–55 attached, will be completed according to the FMI for each transferee. The transferee may use the transferred units effective the first day of the month in which the transfer is approved.

h The transferor's Form FmHA or its successor agency under Public Law 103–354 1944–27 will be modified by attaching a copy of Form FmHA or its successor agency under Public Law 103–354 1944–55 according to the FMI to indicate that a portion of the agreement has been transferred. When all the RA units on a RA agreement have been transferred, the transferor's present agreement will be so documented.

B *RA may be suspended and/or transferred in the following situations according to the following directions:*

1 *RA transfer accompanying a project transfer.* When a project is transferred to an eligible borrower, the transferee may assume the transferor's liquidated RA obligation(s). Form FmHA or its successor agency under Public Law 103–354 1944–55 will be forwarded to the FO attached to Form FmHA or its successor agency under Public Law 103–354 1965–10, ''Information on Assumption of Multiple Family Housing Loans,'' as required in §1965.65(c)(11) of subpart B of part 1965 of this chapter.

2 *Suspension and transfer after a voluntary conveyance or foreclosure sale.* When a project with RA is voluntarily conveyed to the Government or acquired by foreclosure sale, the RA obligation will be automatically suspended under the borrower's name when the FO processes Form FmHA or its successor agency under Public Law 103–354 1965–19, ''Multiple Family Housing Advice of Mortgaged Real Estate Acquired.'' These units will be held in suspense until the final disposition of the acquired property has been determined. During the inventory period tenants will pay 30 percent of their income for rent. Tenants entitled to reimbursement for utilities will be paid from project income.

3 *Suspension and transfer after a liquidation or prepayment.*

a When a project with RA is liquidated through sale outside of the program or the loan is paid in full, the RA will be suspended and, subsequently, transferred to a different FmHA or its successor agency under Public Law 103–354 financed project in accordance with paragraph XV B 3 b of this exhibit, if applicable, or if not, to another project at the State Director's discretion.

b When a tenant receiving RA is, or will be, displaced from an FmHA or its successor agency under Public Law 103–354 project due to prepayment or liquidation, the RA the tenant was receiving will be transferred, or suspended and transferred, to any other FmHA or its successor agency under Public Law 103–354 project, regardless of location, to which the displaced tenant moves. That tenant will be given first priority for a unit of RA, regardless of other priorities for the RA, if all the following conditions are met:

(1) The borrower is eligible to receive and administer RA.

(2) The tenant is eligible to occupy the project and to receive RA.

(3) The tenant had taken all the following steps to insure eligibility to receive priority for the unit of RA:

(i) Had been placed on at least one waiting list for a FmHA or its successor agency under Public Law 103–354 project with a Letter of Priority Entitlement.

(ii) Moved to the project as soon as the name was reached on a waiting list, even if it meant temporarily occupying an ineligible unit. The ineligiible unit may not differ from the one for which the tenant is eligible by more than one bedroom.

(iii) Moved to an eligible unit as soon as one was available.

(4) The RA has not previously been transferred for the tenant's current displacement.

c Procedures for transferring RA and modifying RA agreements outlined in paragraphs VC and XV A2 of this exhibit will be followed, but the receiving project borrower need not submit Form FmHA or its successor agency under Public Law 103–354 1944–25 if the RA was received as a result of the occupancy of a displaced tenant.

4 *Suspension and transfer or reinstatement due to a servicing action.*

a When servicing a project's account according to §1965.85 of subpart B of part 1965 of this chapter and the account has been accelerated:

(1) The RA will be suspended to the extent that no payments will be credited to the project's account. Interest credit will be credited to the project's account until the appeal period for the acceleration has expired. After the expiration of the appeal period, if it is determined that foreclosure will proceed, the interest credit will be cancelled as of the last day of the month in which the appeal period expired. RA will be automatically suspended by the interest credit cancellation.

(2) That portion of the monthly RA not needed to pay the project monthly installment and other charges as specified in paragraph VIII of exhibit A to subpart K of part

1951 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office) may be processed and returned to the project operating account to maintain project operation.

(3) RA agreements expiring during the acceleration and appeal process may be renewed in order to continue payment of RA as described in paragraph XV B 4 a (2) of this exhibit.

b After final disposition of the acceleration, expiration of the appeal and redemption period of the defaulting borrower the RA will be:

(1) *Transferred with a credit sale.* If the project is sold through a credit sale to an eligible borrower within the program, the suspended RA should be transferred from the previous borrower's case number and project number to the new case number and project number. Form FmHA or its successor agency under Public Law 103–354 1944–55 will be attached to Form FmHA or its successor agency under Public Law 103–354 1965–20 ''Multiple Family Housing Advice of Mortgaged Real Estate Sold,'' when it is sent to the FO, or

(2) *Transferred to a different project when the defaulting project is sold outside the program.* When the suspended RA is not needed for the project after the credit sale or other disposition of the acquired property, the State Director should transfer the RA to a different project or projects as provided in paragraph XV A 2 of this exhibit, or

(3) Reinstated to the same project when the defaults are corrected and the State Director reinstates the borrower's account.

c The borrower will be apprised of the appeal rights available under subpart B of part 1900 of this chapter upon notification of the pending suspension. The suspension will not be effective until these appeal rights have been exhausted.

5 *Transfer of unused RA.* When RA is unused after initial rent-up and not needed because of a lack of eligible potential tenants in the area, all or a portion of it may be transferred when the State Director determines that the following conditions have been met:

a The borrower describes the efforts made to market the subsidized units and further demonstrates that:

(1) The market survey indicated there should be a significant need for rental housing by households in the market area that would have required RA for occupancy, but all or a substantial portion of the RA units available remain unused after a 2-year period since initial availability. The borrower must:

(i) Document the efforts made to market the project to RA eligible applicants;

(ii) Demonstrate that the waiting list does not contain RA eligible applicants and the project is not occupied by RA eligible tenants who do not receive RA; and

(iii) Certify that project management has not used a policy of discouraging RA eligible households from applying for or obtaining tenancy in the project.

(2) Rent increases anticipated for the following 2 years will not prompt a request for RA according to the provision of exhibit C of this subpart.

b The Servicing Official recommends the RA transfer after reviewing documentation submitted by the borrower and finding that the applicable conditions of paragraph XV B 5 of this exhibit have been met.

c If, after the end of the initial year of a RA agreement, the borrower has not used a portion of the RA units for any ensuing consecutive 12-month period, the State Director may transfer the number of unused units, minus at least one, to another project without the borrower's request. If the remaining unit(s) remains unused after an additional 12-month period, the State Director may authorize its transfer to another project. This would apply only if the current agreement is on form FmHA or its successor agency under Public Law 103–354 1944–27 and when:

(1) The borrower has made the efforts described in paragraphs XV B 5a (1)(i), (ii), and (iii) of this exhibit to market the project to tenants needing RA, or if the borrower's failure to use RA has resulted in an acceleration of the loan account.

(2) The Servicing Official has reviewed the project occupancy list, waiting list, past RA usage, and any other data available and verified that there is no apparent RA needs in the project.

(3) The State Director has notified the borrower at least 30 days in advance of FmHA or its successor agency under Public Law 103–354's intent to transfer the RA units and has given the borrower appropriate appeal rights in accordance with subpart B of part 1900 of this chapter.

(4) If the borrower appeals the decision, the appeal is resolved in accordance with subpart B of part 1900 of this chapter before any transfer action is taken.

(5) The transfer will be completed in accordance with paragraph XV A 2 of this exhibit.

6 *Transfer due to an unclosable loan.* When RA will be unused because the loan to which it was obligated will not be closed, or the RA agreement is not signed, the RA obligation may not be transferred except as provided under the conditions of § 1944.235 (b) of subpart E of part 1944 of this chapter. However, if this situation occurs during the same FY of obligation, the obligation should be cancelled and reobligated immediately using current authorities. Obligations from prior FY must be canceled and will be lost unless the conditions of § 1944.235 (b) of subpart E of part 1944 of this chapter exist.

XVI *Rights for appeal if RA is not granted or is cancelled by FmHA or its successor agency under Public Law 103–354.*

A Borrowers who have requested RA in writing and are denied such assistance due to a determination of ineligibility by FmHA or its successor agency under Public Law 103–354, or when RA is cancelled, will be notified in writing of the specific reasons why they have been denied RA and will be notified of their appeal rights in accordance with subpart B of part 1900 of this chapter.

B If at any time a borrower or a household is granted RA under an appeal, the borrower or household will receive the next available RA unit.

C Borrower denial of RA to tenants will be handled according to subpart L of part 1944 of this chapter.

XVII *Forms and exhibits.* Exhibit A–6 to subpart E of part 1944 of this chapter and Form FmHA or its successor agency under Public Law 103–354 1944–7 are to be used in determining the amount of RA to be provided.

[58 FR 40868, July 30, 1993, as amended at 62 FR 25065, 25066, May 7, 1997]

EXHIBIT F TO SUBPART C—FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 MULTIPLE FAMILY HOUSING SUPERVISORY VISIT—PRE-VISIT WORKSHEET

Purpose and Use of This Document

Use this document to help organize information and plan for a supervisory visit, compliance review, and physical inspection. It should be completed far enough in advance so that all relevant concerns and issues surrounding project operations are known and considered prior to the site visit.

Appropriate Servicing Office staff should examine the project casefile, consult with coworkers, and review any outstanding issues raised by FmHA or its successor agency under Public Law 103–354's most recent annual review of project operational and financial status. Other relevant issues may be obtained from a variety of sources such as ongoing tenant certification or payment processing concerns, Automated Multi-housing Accounting System (AMAS) status, correspondence from tenants or project management, or other issues contained in the running record.

Use your available tracking systems, AMAS, FOCUS, or Multi-housing Tenant File System (MTFS) to gather statistical information relevant to this document and the visit, to help define current project status and to determine if that status falls within acceptable FmHA or its successor agency under Public Law 103–354 norms for occupancy or financial operations.

Thoroughly review the management plan and management agreement to assure that the management practices at the project are in accordance with FmHA or its successor agency under Public Law 103–354 procedure and with the way project management has agreed to operate.

You should use the random sampling technique contained in exhibit F–1 of this subpart to establish a sample of tenants for conducting tenant file reviews, interviews and apartment unit reviews, or wage matching. You may use an alternative sampling technique; however, you must fully explain any alternative sampling techniques on this document. Also, you may supplement your random sample with additional tenants that appear to represent unique occupancy or verification situations.

You may contact tenants to advise them of your visit and provide them the opportunity to express their view of project operations. Exhibit F–2 of this subpart may be used for this purpose.

FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 MFH SUPERVISORY VISIT—PRE-VISIT WORKSHEET

Project name:

_____

Borrower name:

_____

Borrower ID and project number:

_____

Project location:

_____

Project management:

_____

FmHA or its successor agency under Public Law 103–354 visit to be completed by:

_____

General information.

Visit Date: (– –) Bor/Mgt notified of visit: (– –) _____

Tax Credit Eligible: (y)(n) Number of Sec. 8 Units: _____

Project Type: (RRH)(RCH)(LH) Number of RA Units: _____

Latest tenant termination notice attached: (y)(n)(na) _____

Project's latest tenant grievance attached: (y)(n)(na) _____

Current tenant information for supervisory visit.

[Latest MTFS project worksheet attached. As of: (– –)] _____

Total Units: _____

Vacant Units: _____

Overburdened Tenants: _____

Tenants Receiving RA: _____

Unused RA Units: _____

Expired Certifications: _____

Current tenant information for compliance review.

[Latest MTFS documentation attached. As of: (– –)] _____

Tenants by race national origin code.

White, Non-Hispanic: _____
Black, Non-Hispanic: _____
Asian, Pacific Island: _____
American Indian, Alaska Native: _____
Hispanic: _____

Tenants by Sex.

Male, single member household: _____
Female, single member household: _____
Family (nonsingle member) household: _____

Tenants by handicapped/disability status.

Designated handicapped household member: _____
Designated disabled household member: _____
Number of designated handicapped units: _____
Number of designated handicapped units occupied by a handicapped or disabled household member: _____

REVIEW OF CURRENT DOCUMENTATION

	Date of most recent action or approval: (Enter date)	Outstanding concerns: (Check if yes, and explain briefly in Comments below)
1.	(___ ___ ___) Supervisory Visit	_____
2.	(___ ___ ___) Physical Inspection of Property	_____
3.	(___ ___ ___) Compliance Review	_____
4.	(___ ___ ___) Management Plan	_____
5.	(___ ___ ___) Management Agreement	_____
6.	(___ ___ ___) Affirmative Fair Housing Marketing Plan	_____
7.	(___ ___ ___) Lease	_____
8.	(___ ___ ___) Occupancy Rules	_____
9.	(___ ___ ___) Rent Change	_____
10.	(___ ___ ___) Energy Audit and Implementation Plan	_____

Comments:

Other operational or financial concerns:

Additional documentation for the upcoming visit:

Most recently completed exhibit A–2 of this subpart attached: (y)(n)(na)

Most recently approved Form FmHA or Its Successor Agency Under Public Law 103–354 1930–7 Multiple Family Housing Project Budget attached: (y)(n)

Tenants selected for tenant file review:

Name and unit number

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Tenants selected for interview and apartment unit review (if other than above):

Name and unit number

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Tenants selected for wage match (if other than above):

Name and unit number

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Tenant data review actions:

Reviewed tenant records & selected tenant sample: (– –)

Tenant list sent to State Office for wage match: (– –)

Final Report to file, borrower, HUD etc.: (– –)

Exhibit F–1 (of this subpart) process used to select tenant sample: (y)(n)

Explanation of other sampling process attached: (y)(n)(na)

EXHIBIT F–1 TO SUBPART C—SUGGESTED RANDOM SAMPLING TECHNIQUE FOR TENANT REVIEWS

Enter information to be used in the sampling calculation.

A. _____ Total number of revenue producing units.

B. _____ Percentage of units to be reviewed (based on Servicing Office preference for

sample size, expressed as a decimal, for example .10 for 10 percent or .50 for 50 percent).

NOTE: At least six tenant households will be sampled or 100 percent of all households for projects having six or fewer units.

Determine the sample size.

C. _____ (A times B)

Determine the sampling ''interval.''

D. _____ (A divided by C)

Determine the ''starting point'' of the sample.

E. _____ (the last digit of the current calendar year)

Sampling process.

Using the most current project worksheet, start selecting tenants with the tenant at the ''starting point'' (E) and select every tenant on the worksheet at the ''interval'' (D). To assure that you have a full sample (C), you may need to ''wrap around'' the project worksheet.

For example:

A 24-unit project is to be visited. Based on the June 1, 199X, project worksheet, a 25 percent sampling will be used.

A. Total number of units is 24
B. Percentage to be reviewed is ''.25''
C. Sample size is 6
D. Interval is 4
E. Starting point is X year digit

Starting with the second tenant on the project worksheet, every fourth occupied unit will be selected for the sample.

EXHIBIT F–2 TO SUBPART C—SUGGESTED FORMAT FOR A PRE-VISIT TENANT CONTACT LETTER

Date
Name
Address
Dear Tenant:

The Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 of the United States Department of Agriculture (USDA) financed the apartment project where you now live. At least once every three years, FmHA or its successor agency under Public Law 103–354 makes a site inspection and management review. The purpose of the visit is to help assure that this FmHA or its successor agency under Public Law 103–354 financed project is being operated in accordance with Federal laws and regulations.

Our next visit is scheduled for _____ at approximately _____. We would appreciate knowing any questions, comments, or concerns that you would like to share with us regarding your occupancy. We may be able to talk to you directly during the visit, or you may want to contact us before the visit at:

(Insert Servicing Office Address)

Some of the issues FmHA or its successor agency under Public Law 103–354 reviews during the visit are to determine: if fair and equal access is provided to apartments in your project; if outstanding maintenance, repair, or security concerns exist; how income is verified or certified; and if occupancy charges are at FmHA or its successor agency under Public Law 103–354 approved levels.

Your response to this letter is completely voluntary. We appreciate your assistance.

Sincerely,

Servicing Official

EXHIBIT G TO SUBPART C—FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 MULTIPLE FAMILY HOUSING SUPERVISORY VISIT—SUMMARY OF FINDINGS

Project name:

_____

Borrower name:

_____

Borrower ID and project number:

_____

Date of visit:

_____

Persons interviewed:

_____

FmHA or its successor agency under Public Law 103–354 visit completed by:

_____

Purpose and use of This Document

This document summarizes the findings obtained during the subject supervisory visit. Information is collected directly by the FmFA reviewer on this form or summarized from information obtained from any of the following sources:

1. Pre-visit worksheet (Exhibit F of this subpart)
2. A concurrent compliance review
3. A concurrent project physical inspection
4. Tenant file reviews
5. Tenant interviews & unit reviews
6. Tenant wage matching findings
7. FmHA or its successor agency under Public Law 103–354 docket information
8. Any other relevant document or worksheet

FmHA or its successor agency under Public Law 103–354 will review the project file and any other project management documentation prior to the visit to identify areas of concern.

The FmHA or its successor agency under Public Law 103–354 reviewer may prepare questions in advance to draw responses from project management or tenants that will enable FmHA or its successor agency under Public Law 103–354 to answer the question on

the supervisory visit forms. The questions should be prepared to allow the respondent to describe how tasks or functions are performed (i.e., who, what, when, where, or why), rather than ''do you do this.''

The findings are listed to highlight areas of project management and operation activities as they relate to the project management plan as described in exhibit B–1 of this subpart.

Concerns resulting from this supervisory visit may be used as a basis for requiring improved borrower/project management performance.

Status/Analysis (Indicate Yes, No, or Not Applicable)

1. Identity of interest (IOI) and relationship of borrower, management agent and suppliers.

____ Borrower and management agent IOI properly disclosed.
____ Borrower & material/services suppliers IOI properly disclosed.
____ Management Agent & material/services suppliers IOI properly disclosed.
____ Are IOI provided management, material and services comparable in cost, quality or scope to ''arms-length'' transactions?

Comments:

2. Personnel policy and staffing.

____ Personnel policy and staffing per management plan.

Comments:

3. Marketing and Occupancy.

Signs and posters compliance.

____ Project sign.
____ Equal Housing LOGO on sign.
____ Handicapped LOGO at handicapped parking space.
____ Sign indicates where to apply for housing.
____ Equal Housing Opportunity posters visible.
____ ''. . .and Justice for All'' posters visible.

Affirmative marketing.

____ Affirmative Fair Housing Marketing Plan (AFHMP) available for review.
____ AFHMP signed and dated by authorized FmHA or its successor agency under Public Law 103–354 official.
____ Advertising documented (Attach copies).
____ Race/Ethnic composition of the project reflects market area.

Applications Management/Occupancy Policy

____ Applications accepted at project.
____ Applications accepted from anyone.
____ Proper documentation of applicant contacts.
____ Proper written documentation of withdrawn/rejected applicants.
____ Applicants on waiting list. Number: _____.
____ Applicants with a Letter of Priority. Number: _____.
____ Tenant file review indicates proper application maintenance.
____ Waiting list meets 1930–C requirements.
____ Most recent tenant selection met 1930–C requirements.
____ Correct priorities for selection followed.
____ Marketing and occupancy policy per management plan.
____ Occupancy ineligible tenants properly admitted.
____ Occupancy ineligibles are placed on a unit transfer list.
____ Occupancy ineligibles have appropriate lease clauses.

Achieving full occupancy.

____ Tenant vacancy percentage is within an acceptable range.
____ Tenant turnover rate is within an acceptable range.
____ Tax credit eligibility is not affecting project viability.
____ Marketing incentives are used to attract tenants.

Comments:

4. Determining eligibility and adjusted income.

____ Income included or excluded correctly.
____ Frequency and timing of verification is correct.
____ Manager believes tenant provided data is accurate & complete.
____ Form FmHA or its successor agency under Public Law 103–354 1944–29, updated before rental assistance (RA) is assigned.
____ All qualified households listed on the updated Form FmHA or its successor agency under Public Law 103–354 1944–29.
____ RA assignment policy meets 1930–C, exhibit E requirements.
____ Most recent tenant RA assignment met 1930–C, requirements.
____ Tenant file review indicates income/status correctly verified.
____ Tenant file review indicates income/information correct on Form FmHA or its successor agency under Public Law 103–354 1944–8, ''Tenant Certification.''.
____ Tenant file review indicates proper recertification notice.
____ Determining eligibility & adjusted income per management plan.
____ Site manager's income verified by third party when appropriate.

Comments:

5. Leasing and occupancy policies.

____ Tenants placed in units according to occupancy standards.
____ Tenant lease prepared by project site manager.
____ Tenant file review indicates rent is properly determined.
____ Tenant file review indicates correct lease maintenance.

____ Tenant file review indicates FmHA or its successor agency under Public Law 103–354 approved lease used.
____ Tenant file review indicates FmHA or its successor agency under Public Law 103–354 approved occupancy rules.
____ Leasing and occupancy policies per management plan.

Comments:

6. Rents, occupancy charges, and occupancy surcharges.

____ Utilities paid by tenants correspond to FmHA or its successor agency under Public Law 103–354 approved levels.
____ Tenants do not pay additional utility fees or charges.
____ Actual costs for tenant utilities verified annually.
____ Tenant rent payments accepted and tracked on site.
____ Rent payments on site are adequately protected.
____ Tenants receive appropriate evidence of cash payment.
____ Rent and occupancy charge policy per management plan.
____ Tenant security deposit processing per management plan.
____ Application fees per 1930–C and management plan.

Comments:

7. Rent changes.

____ Rents and utility allowances charged are FmHA or its successor agency under Public Law 103–354 approved.
____ Most recent rent change per 1930–C and management plan.
____ Most recent utility allowance per 1944–E and management plan.

Comments:

8. Maintenance, Repair, and Replacement.

____ Maintenance per management plan.
____ Routine repair and replacement per management plan.
____ Routine unit inspection per management plan.
____ Services (i.e., exterminating) provided per management plan.
____ Security services provided per management plan.
____ Followup needed on exterior items inspected.
____ Followup needed on energy efficiency items inspected.
____ Followup needed on interior items inspected.
____ Followup needed on miscellaneous items inspected.
____ Followup needed on individual units inspected.
____ Capital improvements needed, planned and reserve account use plan updated.

Comments:

9. Supplemental Services.

____ Laundry and vending machines operated per management plan.
____ Laundry and vending proceeds handled per management plan.

Comments:

10. Accounting, Recordkeeping, and FmHA or its successor agency under Public Law 103–354 Reporting.

Project Records

____ Project O&M expenses appear per approved Form FmHA or its successor agency under Public Law 103–354 1930–7.
____ Project capital expenses appear per approved Form FmHA or its successor agency under Public Law 103–354 1930–7.
____ Project revenue appears per approved Form FmHA or its successor agency under Public Law 103–354 1930–7.
____ Project account information reviewed, balances obtained:

Reserve account: _____
General operating account: _____
Tax and insurance escrow: _____
Tenant security deposit account: _____

____ Accounts are kept per 1930–C and management agreement.
____ Funds are protected by a Federal agency or bank collateral.
____ Bookkeeping location per management plan.
____ Project financial information maintained per management plan.
____ Project is operated as part of a ''consolidated'' project.
____ If operations are consolidated, arrangement per 1930–C.
____ Internal control conducted per management plan.
____ Do multiple accounts by borrower or management entity in one bank exceed collateral limits.

Tenant Records

____ Current tenant files retained for 3 years.
____ Former tenant and rejected applicant files retained 3 years.
____ Privacy of tenant files adequately protected.
____ Tenant files maintained per management plan.

Comments:

11. Energy conservation measures and practices.

____ Implemented feasible measures identified by energy audit.
____ Physical inspection recommends further energy conservation.
____ Physical inspection recommends more tenant education efforts.

Comments:

12. Tenant participation and relationship with management.

____ Tenant appeals since last visit. Number _____.

____ Tenants are being informed of their appeal rights.

____ ''FmHA or its successor agency under Public Law 103–354 Instruction 1944–L'' posted for review by tenants.

____ Standing hearing panel for the project.

____ Records maintained of settlements and hearings.

____ Project management is responsive to tenant grievances.

Comments:

13. Management training programs.

____ Site manager training per management plan.

____ Site manager has received FmHA or its successor agency under Public Law 103–354 requirements training.

Date of last FmHA or its successor agency under Public Law 103–354 requirements training: (____-____-____)

____ Site manager ''certified'' from an FmHA or its successor agency under Public Law 103–354 recognized source.

____ Equal Opportunity training per AFHMP.

Comments:

14. Termination of leases and eviction.

____ The latest tenant termination was properly conducted.

____ The latest eviction was properly conducted.

____ Is termination and eviction per 1930–C and management plan.

Comments:

15. Management agreement plan and project operations.

____ Project uses the management plan as a working document.

____ The management plan accurately describes project operations.

____ The management agreement accurately describes project operations.

____ Indication of an unreported change to insurance coverage.

____ Indication of an unreported change to fidelity coverage.

____ Indication of unreported change to management.

____ Indication of unreported change to borrower entity.

Comments:

16. Management compensation.

____ Management fee paid per management agreement.

Comments:

17. On-site management.

____ Site manager compensation per management plan and agreement.

____ Site manager's unit operated per management plan.

Date current site manager hired: (____-____-____)

Comments:

FmHA or its successor agency under Public Law 103–354 MFH Supervisory Visit—Conclusions and Recommendations

Listed below are the major findings of the supervisory visit, compliance review, and physical inspection of the project, and any followup actions required by the Servicing Office.

FmHA or its successor agency under Public Law 103–354 MFH Supervisory Visit—Rating

Above Average ____ Satisfactory____ Below Average____ Unsatisfactory____

Next follow-up needed (Letter, telephone, etc.) _____

Next scheduled review _____

FmHA or its successor agency under Public Law 103–354 MFH Supervisory Visit—Additional Rural Cooperative Housing Questions

____ The cooperative treasurer has received relevant training.

____ The board of directors considers and acts on new member applications.

____ Applicants are screened for suitability before being placed on the waiting list.

____ There are signed ''What is Cooperative Housing?'' forms indicating the member recognizes and accepts the responsibilities associated with cooperative living.

____ Cooperative members perform maintenance functions.

____ Maintenance functions are contracted out. Explain:

____ The borrower cooperative is working with FmHA or its successor agency under Public Law 103–354.

____ The board of directors holds monthly meetings.

____ There is an agreement with the adviser.

____ The adviser to the board attends each meeting.

____ It appears that the board has control over the cooperative's operations.

____ The cooperative has active committees. What are the committees and how many members on each?

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

How often do the committees meet? _____

____ A board member attends committee meetings.

____ Management agreements and contracts are being followed.

Comments:

FmHA or Its Successor Agency Under Public Law 103–354 MFH Supervisory Visit—Additional Labor Housing Questions

____ In the case of on-farm LH, the housing is serving eligible farm laborers employed by this LH borrower.
____ Borrower is ( ) charging, or ( ) not charging rent in accordance with their FmHA or its successor agency under Public Law 103–354 approved budget.
____ Properly verifying farm labor employment.
____ Properly determining ''substantial'' portion of income from farm labor.

Comments:

FmHA or Its Successor Agency Under Public Law 103–354 MFH Supervisory Visit—Additional Congregate Housing or Group Home Questions

____ Project provides a basic services package to tenants.
____ Project provides optional services package to tenants.
____ Meals provided per service agreement.
____ Transportation provided per service agreement.
____ Housekeeping provided per service agreement.
____ Personal service provided per service agreement.
____ Recreational/social services provided per service agreement.

Comments:

EXHIBIT G–1 TO SUBPART C—FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 MULTIPLE FAMILY HOUSING SUPERVISORY VISIT—TENANT FILE REVIEW

Project Name:

Borrower Name:

Borrower ID and Project Number:

Date of Visit:

Management Representative Present:

FmHA or Its Successor Agency Under Public Law 103–354 Review Completed by:

	Tenant 1	Tenant 2	Tenant 3
Apartment number	_____	_____	_____
Tenant name	_____	_____	_____
Application:			
Signed and dated	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
EO Statement	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
1930–C requirements met	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Credit report/references	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Verifications/Documentation:			
Handicap/disability	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Signed asset statement	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Assets documented	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Income	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Medical expenses	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Child care expenses	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
FmHA or its successor agency under Public Law 103–354 ''wage match'' used.	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Correct Value on Certification:			
Assets	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Income	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Medical	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Child care	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Remaining calculations	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Occupancy standards met	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Lease:			
FmHA or its successor agency under Public Law 103–354 approved.	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Correct rent/provisions	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Re-Certification Notice:			
Used 75–90 day notice	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Used 30 day notice	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Other Documentation:			
Annual inspection	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Move-in inspection	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Record of contacts	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Unit repairs & maintenance	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
3 years of tenant files	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Follow-up Required	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)

Comments:

EXHIBIT G–2 TO SUBPART C—FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 MULTIPLE FAMILY HOUSING SUPERVISORY VISIT—TENANT INTERVIEW AND UNIT REVIEW

Project Name:

Borrower Name:

Borrower ID and Project Number:

Date of Visit:

Management Representative Present:

FmHA or Its Successor Agency Under Public Law 103–354 Review Completed by:

	Tenant 1	Tenant 2	Tenant 3
Apartment number	_____	_____	_____
Tenant name	_____	_____	_____
NTC from MTFS	_____	_____	_____
From Tenant Interview:			
Number of bedrooms	_____	_____	_____
Number of individuals	_____	_____	_____
Date of occupancy	(- -)	(- -)	(- -)
Rent paid	_____	_____	_____
Utilities paid (average)	_____	_____	_____
Knows verification rules	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Knows grievance procedures	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Maintenance is acceptable	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Repairs are acceptable	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Other comments	_____	_____	_____
From FmHA or its successor agency under Public Law 103–354 Apartment Review—Maintenance Needed:			
Energy Efficiency Items Inspected:			
Insulation	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Caulking & weatherstrip	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Storm doors & windows	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Water saver devices	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
_____	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Interior Items Inspected:			
Floors, carpets, tiles	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Stairs, walks, common areas	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Cabinets, doors	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Painting	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Curtains & shades	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Refrigerators & ranges	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Garbage disp. & exhaust	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Compactor & incinerator	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Electrical fxtrs & system	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Plumbing fxtrs & systems	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Heating & air condition	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
Hot water, boiler room	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)
_____	(y)(n)(na)	(y)(n)(na)	(y)(n)(na)

Comments:

EXHIBIT H TO SUBPART C—INTEREST CREDITS ON INSURED RURAL RENTAL HOUSING AND RURAL COOPERATIVE HOUSING LOANS

I *Purpose:* This exhibit outlines the policies and conditions under which interest credits will be made on insured Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans.

II *Definitions:* As used in this exhibit:

A *Interest credit* is the amount of assistance the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 may give a borrower toward making its payments on an insured RRH or RCH loan.

B *Interest credit and rental assistance (RA) agreement* is an agreement between FmHA or its successor agency under Public Law 103–354 and the borrower providing for interest credits and/or RA for RRH or RCH loans. This agreement will be on Form FmHA or its successor agency under Public Law 103–354 1944–7, ''Multiple Family Housing Interest Credit and Rental Assistance Agreement.''

C *Project* is the total number of rental or cooperative housing units that are operated under one management plan with one loan agreement/resolution.

D *Basic rent* is determined on the basis of operating the project with payments of principal and interest on a loan to be repaid over a 30-year or longer period at 1 percent per annum and covering budgeted project expenses. Basic rent also means basic occupancy charge.

E *Note rate rental* is a unit rental charge determined on the basis of operating the project with payments of principal and interest which the borrower is obligated to pay under the terms of the promissory note and meet budgeted project expenses. Note rate rental also means note rate occupancy charge in an RCH housing project.

F *Overage* is the amount by which total rental or occupancy charge payments paid or to be paid by the tenants or members of a project exceed the total basic monthly charge.

G *Surcharge* is 25 percent of the established rent in a Plan I project which is added to the rent of an ineligible tenant or member.

III *Eligibilty:* Borrowers may receive interest credit provided the loan was made on or after August 1, 1986, to a nonprofit corporation, consumer cooperative, State or local public agency, or to any individual or organization operating on a limited profit basis; is repaid over a period of 30 years or more; and meets the other requirements of this exhibit subject to the following limitations:

A Plan I will be only to broadly-based nonprofit corporations and consumer cooperatives. Except for subsequent loans to projects approved before August 1, 1968, Plan I interest credit is no longer available. All borrowers already operating on Plan I may continue operating under it according to the applicable requirements of this exhibit and of this subpart. A subsequent loan on a Plan I project approved after August 1, 1968, will require the project to convert to Plan II.

B Plan II will be available to broadly-based nonprofit corporations, cooperatives, State or local public agencies, or to profit organizations and individuals operating on a limited profit basis.

C Units must be ready for occupancy (decent, safe, and sanitary) to qualify for interest credit.

IV *Options of Borrowers:* An eligible borrower operating under Plan I or Plan II, as described below, will determine interest credits on its loan in the respective manner indicated.

A *Plan I.*

1 Borrowers operating under this plan must agree to limit occupancy of the housing to very low-or low-income nonelderly and very low-, low- and moderate-income elderly, disabled, or handicapped persons.

2 A borrower under Plan I generally must:

a Determine that there is firm market and continuing demand for rental housing by persons within the applicable income limits.

b Prepare a budget on the basis of a 3 percent loan.

c Determine rentals to be charged.

d Determine adjusted personal income of each tenant or member and have each tenant or member complete Form FmHA or its successor agency under Public Law 103–354 1944–8, ''Tenant Certification.'' Determine the monthly rent or occupancy charge to be paid by each tenant or member household.

B *Plan II.*

1 Borrowers operating under this plan must agree to limit occupancy of the housing to households, including elderly, disabled, and handicapped persons of very-low, low- and moderate-incomes. Under Plan II, interest credits are based on the cost of operating the project and the size and income of the household.

2 A borrower under Plan II generally must:

a Prepare one budget form that reflects two rent levels; the first level on the basis of a 1 percent interest rate loan to determine basic rental; the second level on the basis of a loan at the interest rate shown in the promissory note to determine note rate rental.

b Determine both basic rental and note rate rental for the different units based on the two budgets. (See exhibit H-1 of this subpart).

c Determine adjusted personal income of each tenant or member and have each tenant or member complete Form FmHA or its successor agency under Public Law 103–354 1944–8. Determine the monthly rent or occupancy charge to be paid by each tenant or member household.

d Determine the required monthly payment on the loan at 1 percent interest plus overage for the month for the total units. The amount of the project payment will be entered on Form FmHA or its successor agency under Public Law 103–354 1944–29, ''Project Worksheet for Interest Credit and Rental Assistance.''

V *Determining the Amount of Payment:*

A *For Plan I.* The amount of payment will be determined by using the amortization factor for a payment at a 3 percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all surcharges.

B *For Plan II.* The amount of payment will be determined by using the amortization factor for a payment at a 1 percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all overage.

C *For the project.* The payment amount for all loans on the project will be added together to determine the project payment. The amount due FmHA or its successor agency under Public Law 103–354 will also include all overage, surcharges, late fees, audit receivables, and cost item charges.

VI *Special Conditions:*

A *Leases or occupancy agreements.* Borrowers participating in the interest credit program must have an FmHA or its successor agency under Public Law 103–354 approved lease or occupancy agreement with the assisted household. Leases and occupancy agreements must comply with the requirements of paragraph VIII of exhibit B of this subpart.

B *Rental surcharges to ineligible tenants.* If a unit is rented in accordance with the provisions of paragraph VI A of this exhibit to a tenant who is ineligible because the income exceeds the maximum income limits, the ineligible tenant will:

1 Under Plan I, be charged a 25 percent rental surcharge. To illustrate, if the unit normally rents for $100 per month, this ineligible tenant would pay $125 per month. The 25 percent surcharge, or $25 in this illustration, would be paid on the account and would be included with, but in addition to, the regular payment on the loan.

2 Under Plan II, be charged the note rate rental.

C *Vacancies.*

1 When all construction is not completed but some units are ready for occupancy and the contractor consents in writing to permit occupancy, the State Director may authorize the occupancy of those completed units to eligible tenants or members at the rent or occupancy charge they would be paying as if the amortization effective date (AED) and subsidy levels had been established. A prerent-up or preoccupancy conference is required before marketing and rent-up begins. All income generated must be deposited in the general operating account and used for management and operation of the units except for member's patronage capital contributions.

2 Multi-Family Housing units rendered unusable due to fire, natural cause, or other damage requiring less than 180 days to repair or replace shall be assumed to be rented or occupied at the monthly basic rate rental or occupancy charge rate. If the units are not repaired or replaced within the 180 day period, they shall thereafter be assumed to be unmarketable and the units will be carried at the monthly note rate rental or occupancy charge rate (i.e., full overage for such units will be paid by the borrower until the units are again ready for occupancy). The Form FmHA or its successor agency under Public Law 103–354 1944–7 will be cancelled, effective the first day of the month following the 180-day period.

3 The State Director may make an exception to the 180-day period if *all* of the following conditions are met:

a The repairs have not been started or completed due to circumstances beyond the borrower's control; and

b The borrower must be able to show that they have acted in good faith and they face serious financial difficulties in maintaining the project for existing tenants and they are unable to meet the payments on the indebtedness without the subsidy.

4 Any borrower directly or indirectly affected by action under this subpart will be granted the appropriate appeal rights according to subpart B of part 1900 of this chapter.

5 RRH or RCH units vacant for lack of tenant or member applications on the waiting list or for repair not associated with paragraph VI C 2 of this exhibit shall be assumed to be charged at the basic rent.

D *Interest credit for tenants in projects under the Department of Housing and Urban Development (HUD) Housing Assistance Payment Program or FmHA or its successor agency under Public Law 103–354 rental assistance.* When any rental units in an RRH project are leased under the new construction Section 8 program, Form HUD 50059, ''Certification and Recertification of Tenant Eligibility,'' or other acceptable HUD Form will be completed. When any rental units in an RRH project are leased under the FmHA or its successor agency under Public Law 103–354 RA program, Form FmHA or its successor agency under Public Law 103–354 1944–8 will be completed.

E *Special cases.* Situations not covered by this exhibit or exhibit E to this subpart will be handled individually with instructions from the National Office.

F *Understanding eligibility.* The borrower should understand the eligibility requirements for occupancy of the housing. Instructions for tenant or member eligibility are in paragraph VI D of exhibit B of this subpart.

VII *Execution of Agreements:*

A *Interest credit and rental assistance agreement.*

1 *Multiple advance loans.* Interest credit may become effective the first day of the month following substantial completion of construction when the project is ready for full operation, which is the AED. When the Servicing Official determines that the project is ready for full operation, the borrower and the Servicing Official should execute Form FmHA or its successor agency under Public Law 103–354 1944–7. A separate Form FmHA or its successor agency under Public Law 103–354 1944–7 will be executed for each loan on the project.

2 *Interim financing and servicing.* Effective dates for interim financed loans and servicing action will be according to the Form Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103–354 1944–7.

B *Change in interest credit plan.* A borrower under Plan I may change, if it can meet the requirements of the other plan, by

executing a new Form FmHA or its successor agency under Public Law 103–354 1944–7.

C *Borrowers who are not receiving interest credit.* If an eligible borrower did not execute a Form FmHA or its successor agency under Public Law 103–354 1944–7 according to paragraph VII A of this exhibit, interest credit may be instituted at any time during the life of the loan provided the borrower agrees to the requirements of Form FmHA or its successor agency under Public Law 103–354 1944–7 and this exhibit. When Form FmHA or its successor agency under Public Law 103–354 1944–7 is executed, it will be effective for the first of the month in which the Form FmHA or its successor agency under Public Law 103–354 1944–7 is executed.

D *Borrowers who have had interest credit terminated.*

1 If an interest credit agreement on Form FmHA or its successor agency under Public Law 103–354 1944–7 has been terminated because the benefits were not needed and circumstances change to where an interest credit is again needed, a new Form FmHA or its successor agency under Public Law 103–354 1944–7 may be executed.

2 If an interest credit agreement on Form FmHA or its successor agency under Public Law 103–354 1944–7 has been terminated because of the borrower's failure to comply with requirements and the appropriate corrective actions have been accomplished, a new Form FmHA or its successor agency under Public Law 103–354 1944–7 may be executed.

VIII *Tenant or Member Certification:* Tenant or member certification and recertification for interest credit borrowers will be performed in accordance with paragraph VII of exhibit B to this subpart.

IX *Project Payments:* With each payment made, the borrower will complete Form FmHA or its successor agency under Public Law 103–354 1944–29. The FmHA or its successor agency under Public Law 103–354 representative handling the transmittal to the Finance Office will transmit the payments according to subpart B of part 1951 of this chapter and exhibit A of subpart K of part 1951 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

A *Plan I.*

1 The borrower will make monthly payments in an amount necessary to repay the project loans as if the loans carried a 3 percent interest rate. When a rental surcharge is collected as described in paragraph VI B of this exhibit, the surcharge will be included and will be credited as interest to the account as a regular payment. The special handling of payments involving rental surcharges is explained in paragraph IX A 2 of this exhibit.

2 When a payment is made for any month that involves a rental surcharge, Form FmHA or its successor agency under Public Law 103–354 1944–29 will be completed with the amount of the surcharge being inserted in the spaces provided. This form will be completed and the amount shown and will be charged to the project account regardless of whether the surcharge is actually collected by the borrower.

B *Plan II.* The borrower will make monthly payments as though the project notes were written at a 1 percent interest rate plus any overage due and payable whether or not collected from the tenant or member.

X *Servicing:* Handling of interest credits when servicing a project's accounts according to §1965.85 of subpart B of part 1965 of this chapter will be handled according to the applicable parts of subpart A of part 1955 of this chapter. Any unusual cases that cannot be serviced in accordance with these sections should be submitted to the National Office with the State Director's recommendations.

EXHIBIT H–1 TO SUBPART C—EXAMPLE OF INTEREST CREDIT DETERMINATION FOR RURAL RENTAL HOUSING OR RURAL COOPERATIVE HOUSING PROJECTS (PLAN II)

$260,000 loan—approved during 1987 fiscal year project contains four 1-bedroom units (600 sq. ft. each) and four 2-bedroom units (700 sq. ft. each) total floor area = 5200 sq. ft.

Budget for note rate rent**[a]	Budget for basic rent**
Operating, maintenance, vacancy and contingency allowance, reserve and return to investor, if applicable: $10,560	Operating, maintenance, vacancy and contingency allowance, reserve and return to investor, if applicable: $10,560
Loan repayment at 9½% interest: $260M × $95.88[b] $24,929	Loan repayment at 1% interest: $260M × $25.44[b] $6,615
Total annual cost $35,489	Total annual cost $17,175
$35,489 ÷ 12 = $2958* cost/month	$17,175 ÷ 12= $1432* cost/month
One bedroom rent: 600/5200 = .1154 × 2958 = 341.35	One bedroom rent: 600/5200 = .1154 × 1432 = 165.25
Two bedroom rent: 700/5200 = .1346 × 2958 = 398.15	Two bedroom rent: 700/5200 = .1346 × 1432 = 192.75
(341.35 × 4) + (398.15 × 4) = $2,958 monthly income	(165.25 × 4) + (192.75 × 4) = $1432 monthly income
$35,489 ÷ 12 = $2958* cost/mo.	$17,175 ÷ 12 = $1432* cost/mo.

[a] One budget form reflecting two rent levels must be prepared; one level for the note rate rent and another level for the basic rent. (The expense items in the budgets shown in this illustration are only for illustration purposes and are not itemized.)

[b] Annual amount using monthly amortization factor for 50 years. If the regular installment on the note was amortized using a factor for less than 50 years, substitute the appropriate factor for a corresponding number of years.

* Rounded to the nearest dollar.

** In cooperatives, the term ''rent'' shall mean ''occupancy charge.''

EXHIBIT I TO SUBPART C—RURAL RENTAL HOUSING LOANS AND THE HOUSING AND URBAN DEVELOPMENT SECTION 8 RENTAL CERTIFICATE AND RENTAL VOUCHER PROGRAMS (EXISTING UNITS)

I *General.* This exhibit contains the policies and procedures that will be followed by the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 to permit the utilization of existing Section 515 Rural Rental Housing (RRH) units and the Department of Housing and Urban Development (HUD) *tenant-based* Section 8 Rental Certificate and Rental Voucher Programs.

II *Applicability*. This exhibit is not applicable to units in Section 515/8 projects which use the *project-based* Section 8 new construction and substantial rehabilitation programs. Otherwise, FmHA or its successor agency under Public Law 103–354 RRH borrowers are authorized to utilize the procedure outlined in this exhibit and the HUD Section 8 Rental Certificate Program or the Rental Voucher Program for existing housing as outlined in HUD's regulations 24 CFR part 882 and 24 CFR part 887 (as amended) respectively. To promote the use of these programs with existing projects, the following action should be taken:

A Servicing Officials should inform RRH borrowers operating in the area of their jurisdiction of the contents of this exhibit.

B The HUD Section 8 program could benefit any eligible tenant in an RRH project who is paying more than 30 percent of its income for rent and utilities. Therefore, RRH borrowers should advise tenants who are paying more than 30 percent of their adjusted income for housing of the possibility of obtaining Section 8 housing assistance payments. Those tenants paying 50 percent or more of their adjusted income for housing have preference over those paying less. In the Rental Certificate Program, families generally pay 30 percent of their monthly adjusted income toward the rent and the total rent to the owner must be below a maximum amount. Section 8 Rental Certificate and Rental Voucher assistance is administered by local Public Housing Agencies (PHA) authorized by HUD to administer the program in the area. This Section 8 assistance can be used in the unit of the family's choice anywhere in the State where the issuing PHA is located, and in certain areas in adjacent States. Families must apply to the PHA and come to the top of its waiting list through normal PHA selection preferences.

C The HUD Rental Voucher Program uses a ''shopper's incentive.'' If a unit rents for less than the payment standard established by the local PHA, the eligible family benefits by paying less than 30 percent of its monthly adjusted income toward rent and utilities, subject to a minimum rent calculation by the PHA. If a unit rents for more than the payment standard for the area (not the actual rent), the housing assistance payment is not increased, nor is the family told it must find another unit, as in the Rental Certificate Program. Instead, the family pays the entire difference between the rent and the rental voucher payment standard. The family may rent the unit if it is willing to pay more than 30 percent of its income toward rent. There is no maximum rent as in the Rental Certificate Program.

D In Rural Cooperative Housing (RCH), cooperatives are considered rental housing in the Section 8 Rental Certificate and Rental Voucher programs. Wherever the word tenant appears in this exhibit, it shall also mean member; rent shall also mean occupancy charge; and lease shall also mean occupancy agreement.

III *FmHA or its successor agency under Public Law 103–354 Policies Concerning Rental Rates and Payments.*

A Under the Section 8 Rental Certificate and Rental Voucher Programs, the PHA will pay a portion of the tenant's rent including utility allowance as described in paragraphs II B or C of this exhibit, whichever is appropriate. The contract rent to be established under either HUD program will be as follows:

1 For borrowers with a 3 percent direct RRH loan and borrowers operating in accordance with interest credit Plan I, the contract rent will be the note rate rental rate for the units as determined by the current approved annual budget using a 3 percent amortization factor for principal and interest payments;

2 For borrowers operating without interest credit, the contract rent will be the note rate rental rate for the unit as determined by the current approved annual budget using the amortization factor for the note rate of interest for principal and interest payments;

3 For borrowers operating in accordance with interest credit Plan II, the contract rent:

a For Rental Certificate participants will be the basic rental rate as determined by the current approved annual budget using a 1 percent interest amortization factor for principal and interest payments;

b For Rental Voucher participants, the rent to owner must be the lesser of the note rate rent for the unit as approved by FmHA or its successor agency under Public Law 103–354 OR the payment standard approved by the PHA (but not less than basic rent approved by FmHA or its successor agency under Public Law 103–354).

(1) When basic rent is less than the PHA approved payment standard, the borrower will collect and remit the difference between the basic rent and payment standard to FmHA or its successor agency under Public

Law 103–354 as overage to avoid double subsidy on behalf of the tenant.

(2) Should the PHA inadvertently pay the owner (borrower) more than the amount specified in the housing assistance contract between the PHA and the owner, the owner shall return the overpayment to the PHA as an excess payment

B The method of calculation and transmittal of the scheduled payment to the Finance Office will be in accordance with paragraph IX of exhibit H of this subpart.

IV Responsibilities.

A *Family*. A household family must apply to the PHA and be issued a Certificate of Family Participation or a Rental Voucher to obtain the appropriate housing assistance. Households receiving housing assistance under either program will be responsible for fulfilling all of their obligations under the Certificate of Family Participation or Rental Voucher issued to them by the PHA and under the lease with the owner. However, a lease violation is not necessarily a reason for terminating Section 8 assistance.

B *Owner (FmHA or its successor agency under Public Law 103–354 borrower)*. Upon being presented a Certificate of Family Participation or a Rental Voucher by a family, an owner wishing to participate in the program shall sign a Request for Lease Approval (Form HUD 52517–A) which is then submitted to the PHA. After PHA approval the owner will execute a Housing Assistance Contract (Form HUD 52535–A) with the PHA and a lease with the tenant. Owners shall be responsible (and subject to review or audit by the PHA or HUD) for performing all of their obligations under the contract and lease.

C *FmHA or its successor agency under Public Law 103–354.*

1 FmHA or its successor agency under Public Law 103–354, in accordance with existing regulations, will be responsible for normal loan servicing and supervision, including but not limited to:

a Obtaining and reviewing all reports from the borrower in accordance with paragraph XIII C of exhibit B of this subpart.

b Review and approval of budgets and rental rates.

c Collection of required payments and review of the borrower's establishment and maintenance of required accounts.

2 FmHA or its successor agency under Public Law 103–354 will not be responsible for the requirements and conditions of the contract entered into between the PHA and owner but will cooperate with HUD and the PHA to the extent possible to assure that the borrower carries out all obligations under the contract.

V Special Conditions.

A *Eligibility of family*.

1 The PHA will determine a household's eligibility before the Certificate of Family Participation or Rental Voucher is issued. To be eligible for either form of housing assistance, the household's income as determined by HUD generally may not exceed the very low-income limit, based on 50 percent of the median income for the area. The household's eligibility for housing assistance payments under the Rental Voucher program continues until the amount payable by the family equals or exceeds the payment standard or when the amount payable by the family equals or exceeds the rent to owner plus any applicable utility allowances. However, when these conditions are exceeded, the family may still be able to occupy a rental unit under the FmHA or its successor agency under Public Law 103–354 interest credit program if 30 percent of the family's adjusted gross income is greater than the lowest established rental rate for the unit. In both the Rental Certificate and Rental Voucher Programs, the housing assistance contract terminates when 1 year has elapsed since the last Housing Assistance Payment (HAP) to the owner.

2 Form FmHA or its successor agency under Public Law 103–354 1944–8, ''Tenant Certification,'' will not be required for tenants who have obtained a Certificate of Family Participation or a Rental Voucher from the PHA. A copy of the Certificate of Family Participation or the Rental Voucher, however, needs to be provided to the FmHA or its successor agency under Public Law 103–354 Servicing Official.

3 At admission, the tenant's adjusted household income must not exceed the maximum income limitations (initially in the case of RCH) as authorized by FmHA or its successor agency under Public Law 103–354 for the project.

B *Security deposits*. According to HUD regulations, the owner may require a household to pay a security deposit. For certificate participants the maximum amount will be the greater of the amount of one month's total tenant payment or $50. For voucher participants, the security deposit may not exceed the lesser of the limit established by the PHA or one month's rent to the owner. Under HUD regulations, if a certificate household vacates a unit and the security deposit is insufficient, the owner may claim reimbursement from the PHA in an amount not to exceed two month's contract rent. For voucher participants, the owner may claim up to one month's rent to owner for amounts owed under the lease. Neither program allows claims for reimbursement of unpaid rent for the period after the family moves from the unit.

C *Payment for vacated units.*

1 *Rental Certificate Program*. If a certificate family vacates the unit in violation of the

provisions of the lease, the owner may receive the full housing assistance payment for the month in which the family vacates and then in the amount of 80 percent of the contract rent for a vacancy period not exceeding an additional month or the expiration or other termination of the lease, whichever comes first.

2 *Rental Voucher Program.* If the voucher family moves from the unit, the owner shall promptly notify the PHA. The PHA shall make no additional housing assistance payment to the owner for any month after the month in which the family moves out. However, the owner may retain the housing assistance payment for the month in which the family moves.

D *Recertification for families with either a Section 8 Rental Certificate or Rental Voucher.*

1 The PHA, not the FmHA or its successor agency under Public Law 103–354 borrower, must reexamine the income and family composition of all Rental Certificate and Rental Voucher families at least annually, and adjust the housing assistance payment made on behalf of the family to reflect any changes in the family's monthly adjusted income, size, or composition. Once a HAP contract expires, recertification responsibility reverts to the borrower and FmHA or its successor agency under Public Law 103–354 forms and income verification and certification requirements apply.

2 All changes in family composition must be reported to the PHA.

3 A family may request a redetermination of the housing assistance payment at any time, based on a change in the family's income, adjusted income, size, or composition.

4 Whether reporting of increases of family income between annual recertifications is required is determined by the PHA. The PHA policy must be stated in its administrative plan.

E *Rent changes.*

1 *When project rents in all units change.*

a *Rental Certificate Program.* Rents for tenants receiving rental certificate assistance under HUD Form 52535–A (Section 8 Existing Housing Assistance Payments Contract for Subsidized Units) may change after the beginning (day 1) of the HAP contract term for the initial leasing of the unit with Section 8 assistance. The amount of the contract rent adjusts automatically when the subsidized rent is changed. However, the adjustments are subject to rent reasonableness limitations which are determined by the PHA. Adjustments may not result in material differences between the rents charged for assisted and comparable unassisted units as determined by the PHA.

b *Rental Voucher Program.* Rents for tenants receiving rental voucher assistance may not change until the end of the initial 12 months of the individual lease, even though all unit rents may have been changed in the meantime. The lease may provide that the owner may increase the tenant's rent any time AFTER the first anniversary of the lease, but the Owner must give the tenant and the PHA 60 days prior written notice of any increase before it takes place.

2 *When tenant household income, size, and composition change.* The following items apply to both the Section 8 Rental Certificate and Rental Voucher Program.

a The PHA must examine the income and family composition of all rental certificate and rental voucher families at least annually and adjust the housing assistance payment made on behalf of the family to reflect any changes in the family's income, size, or composition.

b All changes in family composition must be reported to the PHA.

c A family may request a redetermination of the housing assistance payment at any time, based on a change in the family's income, size, or composition.

d Whether reporting of increases of family income between annual recertifications is required is determined by the PHA. The PHA policy must be stated in its administrative plan.

(1) Should household income INCREASE to where HUD assistance becomes zero, the HAP contract between borrower/owner and the PHA remains in effect for 12 more months. When 12 months of ''zero'' assistance occurs, the HAP contract automatically terminates. However, if during that year the family's income decreases to the level where subsidy is needed again, the PHA will resume subsidy payments under the HAP contract after notification by the family of the change.

(2) In both the Rental Certificate and Rental Voucher programs, the tenant's lease term runs concurrently with the Housing Assistance Contract until the tenant or owner terminates the lease or the PHA terminates the contract. In a situation where a tenant's income increases to where the tenant does not receive a subsidy for 12 months, the owner can offer the tenant a new lease for execution. If the tenant fails to execute the new lease after a reasonable time, the owner may terminate the tenant's occupancy.

F *Changes in household size and composition.*

1. An increase in household size that results in the occupied unit not meeting the PHA occupancy standards or housing quality standards (namely, overcrowding) requires the PHA to issue the household a new rental certificate or rental voucher for a larger unit. The PHA must provide assistance to the family in locating another unit. The PHA may not terminate the current contract unless the family has rejected with good cause the offer of a new unit.

2. If the OWNER fails to maintain the dwelling unit at acceptable housing quality

standards, the PHA may, after unsuccessful efforts to correct the problem, terminate or abate the housing assistance payments, even though the household continues to occupy the unit.

3. A decrease in household size will not necessarily require the household to move. In the Rental Voucher Program, the household may rent a unit with greater number of bedrooms than indicated on the housing voucher and still receive housing assistance. In the Rental Certificate Program, the family may continue to receive assistance in the unit if the gross rent (contract rent plus utility allowance) is within the fair market rent for the smaller size unit appropriate for the size and composition of the family.

G *Limitation of owner's participation in the two programs.* HUD's regulations provide that assistance under Section 8 Certificates will not exceed 40 percent of the total number of units in the project; however, this limitation may be exceeded on a case-by-case basis for the purpose of relieving hardship of a particular household or households with the approval of the HUD field office. There is no corresponding limit under the HUD Rental Voucher program. The HUD limits shall not affect the number of rental assistance units the project receives through FmHA or its successor agency under Public Law 103–354.

H *Special problems.* Any problems on utilizing either the HUD Section 8 Certificate or the Rental Voucher program for existing RRH projects not covered by this exhibit should be referred to the National Office by the State Director.

EXHIBIT J TO SUBPART C—MANAGEMENT OF CONGREGATE HOUSING AND GROUP HOMES

I *Purpose:* This exhibit prescribes additional requirements for the management of congregate housing and group homes. It applies in addition to other requirements in this subpart.

II *Objective:* The objective in the management of congregate and group home housing is to provide shelter and predetermined services as separate components, based on a market study identification of need, that are affordable to the housing's tenant base. It is further the objective to permit resident tenants to cover their individual medical and discretionary needs, and/or service needs or preferences not provided or arranged by the housing provider, within their own financial, familial and social resources.

III *Definitions:*

Congregate housing. Residential housing for persons or families who are elderly, or have handicaps, or disabilities, consisting of private apartments and central dining facilities in which a number of preestablished services are provided to tenants (short of those services provided by a health care facility that provides health related care and services recognized by the medicaid program). Tenants requiring additional services not provided by the facility will acquire them or provide for them within their own financial, familial, or social resources.

Group home. Housing that is occupied by individuals who are elderly or have handicaps or disabilities, sharing living space within a rental unit in which a group home resident assistant may be required.

Service agreement. A written agreement between the borrower and the congregate or group home service provider detailing the specific service to be provided, the cost of the service, and the length of time the service will be provided.

Service contract. A written contract between the borrower and the tenant listing the package of services selected by the tenant that will be provided or arranged by the borrower, the fee or fees to be charged, and applicable conditions and agreements pertaining thereto.

Service plan. A written plan describing how services will be provided to congregate housing or group home projects. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

Tenant base. The demographic and economic profile of eligible people in a housing market area who would benefit, whether by need or preference, from the housing and supportive services provided by a congregate housing or group home facility located in the market area.

IV *Rent Subsidy Opportunities:* Congregate housing and group homes are subject to the provisions of paragraph IV of exhibit B of this subpart. Subsidy discussed in that paragraph cannot be used to pay for services in congregate housing or group homes.

V *Management Operations:* Borrowers must comply with paragraph V of exhibit B of this subpart in managing congregate housing and group homes. In addition, borrowers must submit a service plan that explains how services will be provided.

A *Borrower's experience.* Borrowers and management agents must outline their experience and plans for providing congregate and group home services when completing the management outline in either exhibit B–4 or B–5 of this subpart. Borrowers who are not experienced with congregate housing/group homes must obtain assistance from organizations or individuals experienced with congregate issues in developing management and servicing plans. The service provider's experience and ability to furnish the services must be documented.

B *Management plan.* In addition to the general requirements for a management plan described at paragraph V A of exhibit B of

this subpart, the management plan should describe the plan for management of features unique and essential to congregate/group home housing. This portion of an overall management plan may either be incorporated within the framework of the management plan or as an addendum to the plan. The following areas should be described:

1 *Tenant mix.* For congregate housing, describe the mix of tenants who will have a greater number of services and tenants who will have a lesser number of services that the project is designed to accommodate. For group home housing, describe the ''group(s)'' of tenants the group home is intending to serve such as elderly tenants, developmentally disabled, or mentally impaired persons.

2 *Marketing plan.* Describe the strategies, ways and means that marketing and advertising will be focused to attract and retain tenants from the market area (tenant base) that would benefit by the congregate/group home housing project.

3 *Service package.* Describe the basic and any alternative ''package'' of service(s), or combination of service packages, that a tenant may acquire at the project. Describe any deviations to a service package that can be accommodated on an individual tenant basis by the project in a reasonable and practical manner.

4 *Referral service.* Describe the plan for identifying other services available to tenants and for establishing liaison between the project and the other services. Describe the plan to make the information of such services available and known to tenants. Describe what arrangements the project can provide as part of a service package to help tenants use referral services.

5 *Tenant consultation.* Describe how the project management staff will use tenant consultation to assist tenants with information, modification of service package, referral to medical, clinical, family or other services, and identifying what, if any, reasonable accommodations or assistance are needed and whether they are feasible and practical to provide.

6 *Emergency evacuation plan.* Describe what the project will do to inform and train tenants on safe evacuation of an apartment and building. Describe which community/public services will be informed about and incorporated into the project evacuation plan.

C *Service plan.* Congregate housing/group home borrowers must submit a service plan as defined in paragraph III of this exhibit. See exhibit E of subpart E of part 1944 of this chapter for guidance on the issues that should be included in the plan. The service plan will be an addendum to the management plan when appropriate, or subject to the signature and authorization requirements of the management plan when the service provider is not the borrower or management agent.

D *Service agreements.* Borrowers must submit a service agreement for each service they do not provide directly. The agreement must stipulate the specific service to be provided, the cost of the service and the length of time the service will be provided. The service agreement will be an addendum to the management agreement when appropriate, or subject to the signature and authorization requirements of the management agreement when the service provider is not the borrower or management agent.

Initial service agreements must be effective for at least 1 year after the project becomes operational. Subsequent agreements must be effective for at least 1 year.

E *Service contract.* Borrowers must submit a sample of the service contract for Agency review for compliance with Fair Housing Act requirements/restrictions and Agency requirements in or referenced by this subpart. The service contract may not be a requirement for occupancy in the congregate housing project and it must be made separate and apart from the occupancy lease agreement.

VI *Renting Procedure:* In addition to meeting the conditions of paragraph VI of exhibit B of this subpart, borrowers must meet the following conditions.

A *Eligible tenants.* Tenants must meet the general provisions of paragraph VI D of exhibit B of this subpart and be eligible to occupy congregate or group home housing as defined in paragraph III of this exhibit. Borrowers must be careful to follow the condition described in paragraph VI D 1 i of exhibit B of this subpart when inquiring about the applicant's or tenant's request for congregate/group home housing and the service it provides.

B *Tenant selection.* Borrowers must meet the provisions of paragraph VI H of exhibit B of this subpart. Borrowers should be further guided by the following in selecting tenants for congregate housing and group homes:

1 *Congregate housing.*

a *Tenant mix.* It is the primary intent of a congregate housing project to provide or arrange for service packages made up of various component services to serve the needs of tenants needing such services. If it is not feasible to provide service packages to all tenants, the borrower may serve tenants needing services and tenants not needing services. The number of tenants that can be served with service package(s) will be described in the project management plan. Project management should be consulted when establishing the tenant mix. The plan should establish a percentage of tenants who will use a service package with a greater number of component services as differentiated from tenants whose service package

will contain fewer services. As existing tenants age and new tenants move in, the percentage may fluctuate. Farmers Home Association must concur with the proposed plan.

b *Selecting services needed or wanted by tenants in congregate housing.*

(1) It is the borrower's responsibility to inform applicants or tenants about the supportive services provided at or by the congregate project. Such services or service packages need to be identified on the project's application form as part of an application package.

(2) It is the applicant's or tenant's responsibility to identify and request the services or service package provided by the project which that person desires or needs.

(3) The borrower may have the applicant/tenant provide only such essential information about the person's desire for provided service(s) to determine whether the project provides the services desired by the applicant/tenant and/or to determine how to best serve the applicant's/tenant's request for services with reasonable accommodation, referral services, etc. The essential information may include an explanation by the applicant/tenant. In the case of a group home, it may also include an assessment by a professional medical examiner or practitioner, social service caseworker, representative of an advocacy group, member of the clergy, etc. that the tenant/applicant provides to support the application for housing and services.

c *Waiting lists.* To sustain the number of tenants requesting services, management may maintain waiting lists for tenants requesting large component service packages, small component service packages, and those wanting a service package at a later time. Management may choose tenants from the lists in such manner to maintain the feasibility in providing services, however, priority in tenant selection should go to an applicant requesting a service package over one requesting a service package at some later date. The other provisions contained in paragraph VI H of exhibit B of this subpart concerning waiting lists are applicable.

2 *Group home.* A group home may limit occupancy to a specific group of tenants. For example, a group home may limit occupancy to eligible elderly tenants, developmentally disabled people, or mentally impaired tenants. This limitation will be outlined in the borrower's management plan. The following will apply to group homes.

a Applicants for group home housing must demonstrate their need for such housing.

b Tenants of group homes cannot be required to be a part of an ongoing training or rehabilitation program sponsored by the applicant or other organization.

c Tenants should be selected from the local area before considering other areas.

C *Determining per unit rental rates for group living arrangements.* A ''unit'' in a group home consists of the space occupied by a specific tenant household. It may be a traditional apartment unit, a bedroom, or a portion of a bedroom. Rents are determined as follows:

1 When all units are of equal size, divide operational costs equally.

2 When all units are not of equal size, determine the size of each unit and divide operational costs accordingly.

a The size of traditional units is their square footage.

b The size of nontraditional units is the bedroom or portion of bedroom occupied by the household and portion of the common area to be used by all potential units in nontraditional units.

3 A unit occupied by a resident assistant is not considered a revenue producing unit and would be excluded from the rent determination.

VII *Verification and Certification of Tenant Income, and/or Employment and Review of Support Services:* The provisions of paragraph VII of exhibit B of this subpart apply. In addition to recertifying income, management should consult with each tenant to explain the available support services and determine if the tenant desires any available services not presently used and/or if any other practical and feasible accommodations can be provided to the tenant.

VIII *Lease Agreements:* In addition to the conditions contained in paragraph VIII of exhibit B of this subpart, the following should be addressed:

A *Tenants who request services in congregate housing.* If a tenant requests services, the lease must contain the following clauses:

1 ''I understand that use of the service package I have selected is not mandatory, and if I later choose to modify or not renew my service contract, such action on my part will not cause default under the terms of this lease agreement. I further understand and agree that I may not use any aspect of dissatisfaction with my service contract as grounds to withhold rents due under the terms of this lease agreement.''

2 ''The lessor warrants that the following basic services will be made available to all tenants for a fee separate and apart from any rent described in the terms of this lease. The basic services are: _____.

If these services cannot later be provided, such failure or inability to provide the services will not constitute a breach of this lease agreement and the lessor will hold the tenant harmless should the tenant elect to terminate this lease on the grounds that provision of these services was cause for the tenant to apply for and accept occupancy in this congregate housing project.''

B *Services provided to people other than tenants of FmHA or its successor agency under Public Law 103–354 financed congregate housing.* If the meal facility serves people other than the tenants of the project, the borrower must obtain a lease from the service provider and require payment sufficient to cover the annual operating expenses, debt services and reserve account attributable to the portion of increased space that is in excess of the needs of the tenants in the project. Tenants of the congregate housing must have priority in receiving the services. When the facilities are provided with loan funds, the following conditions must be met:

1 The services to be provided and the fees to be charged (if any) must be fully documented in the service plan, if provided by the applicant, or in the service plan and lease agreement if the services will be provided by others.

2 Any lease agreement must be approved by the State Director or the loan approving official and contain the following statement: ''This agreement will not be effective until approved by the State Director of the Farmers Home Administration or its successor agency under Public Law 103–354, U.S. Department of Agriculture, or the State Director's delegated representative.''

IX *Rent Collection:* The provisions of paragraph IX of exhibit B of this subpart will apply for services as well as rent. Tenants must pay charges for the services as documented in their lease. The payment for rent or services may be made separately or combined; however, payments for rent and services must be accounted for separately.

X *Borrower Project Budgets:* Borrowers must separate the revenue and expenses of project operations from the service component. Form FmHA or its successor agency under Public Law 103–354 1930–7, ''Multiple Family Housing Project Budget,'' must reflect project operations only. Also, if project employees provide any part of the services, the project operation budget and the services budget must reflect the proration of employee compensation between the respective budgets as further described in exhibit E of subpart E of part 1944 of this chapter.

XI *Accounting and Reporting Requirements and Financial Management Analysis:* Borrowers must maintain separate financial records for the operation and maintenance of the project and the service component. Funds allocated to the operation and maintenance of the project may not be used to supplement the cost of services, nor may service component funds be used to supplement the project operation and maintenance. Detailed financial reports on the service component will not be required unless specifically requested by FmHA or its successor agency under Public Law 103–354, and then only to the extent necessary for FmHA or its successor agency under Public Law 103–354 and the borrower to discuss the affordability (and competitiveness) of the service component by the tenant base in keeping with the objective stated in paragraph II of this exhibit. The project audit, or verification of accounts on Form FmHA or its successor agency under Public Law 103–354 1930–8, ''Multiple Family Housing Balance Sheet,'' together with an accompanying Form 1930–7 showing actuals, must allocate revenue and expense between project operations and the service component.

XII *Termination of Tenancy and Eviction.* In keeping with the spirit and provisions of the Fair Housing Amendments Act of 1988, a tenant living in congregate or group home housing project may remain as long as they are eligible to occupy and the tenant expresses or otherwise maintains they can care for themself with or without services provided by the project, or by familial or social services from outside the project. Tenants are otherwise bound by the terms of their lease and their occupancy may be terminated only according to the provisions contained in paragraph XIV of exhibit B of this subpart.

PARTS 1931–1939 [RESERVED]