

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 attached 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 ex-

penses 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.

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#### § 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