

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 out-

lining 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 OF PART 1930—
STEPS FOR FARMERS HOME ADMINIS-
TRATION (FMHA) OR ITS SUCCESSOR
AGENCY UNDER PUBLIC LAW 103-354
PERSONNEL IN CONDUCTING ANNUAL
REVIEW OF MULTIPLE HOUSING OP-
ERATIONS

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 OF PART 1930—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 OF PART 1930—
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 mem-

ber'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 Pro-

gram 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 Appendix 9 of HB-1-3550 (available in any Rural Development 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 Appendix 9 of HB-1-3550 (available in any Rural Development office) which is periodically updated.

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 Appendix 9 of HB-1-3550 (available in any Rural Development 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 Appendix 9 of HB-1-3550 (available in any Rural Development 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 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 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 per-

formed 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 wheth-

er 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 pre-ent-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 non-profit 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 prior-

ities 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 accommodated 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 co-member 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 oc-

cupy 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 sub-

part, 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 an 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, non-disabled 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.

1 *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 farmworkers, 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 non-working 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, move-outs, 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 non-cooperation by the tenant or member (non-cooperation 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 XIII C2f(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 non-handicapped 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 trial.* 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 trial 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 changes 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 logo-type.
- 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 therewith, 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 sub-total 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 follows:

(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-exempt 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 ex-

cess 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.

(i) *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 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 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 Offi-

cial 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.

RHS, RBS, RUS, FSA, USDA

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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..	<i>Budget Planning Process Form</i> 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.	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				

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 **Vacancy rate** =
$$\frac{\text{Total vacancy days for the month}}{\text{Total unit days for the month}}$$
- b **Resident turnover ratio** =
$$\frac{\text{Total units becoming vacant during the period}}{\text{Average units occupied for the period}}$$
- c **Expense ratio** =
$$\frac{\text{Total expense}}{\text{Total income}}$$
- d **O & M cost per unit** =
$$\frac{\text{Total expense (By category)}}{\text{Total no. of units}}$$
- e **Working capital ratio** =
$$\frac{\text{Current assets}}{\text{Current liabilities}}$$
- f **Collection ratio** =
$$\frac{\text{Total collections}}{\text{Total occupancy roll}}$$
- g **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 **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; 67 FR 78327, Dec. 24, 2002]

EXHIBIT B-1 TO SUBPART C OF PART 1930—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 Budg-

et," 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 Describe 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 Describe 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 OF PART 1930—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 OF PART 1930—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 and 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 limitation 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 rel-

evant 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 OF PART 1930—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 accommodation) 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, part-

ner, 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 OF PART 1930—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.

RHS, RBS, RUS, FSA, USDA

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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 OF PART 1930—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 OF PART 1930—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 OF PART 1930—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 OF PART 1930—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 OF PART 1930—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	
	Beginning of fiscal year	Req. annual deposit	Planned ending balance	Withdrawal			Transfer to reserve	Interest earned/used				Ending reserve balance
				Date authorized	Purpose	Amount		Earned on reserve	Transfer to GOA	Left in reserve		
(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)

Reserve Account Tally Instructions

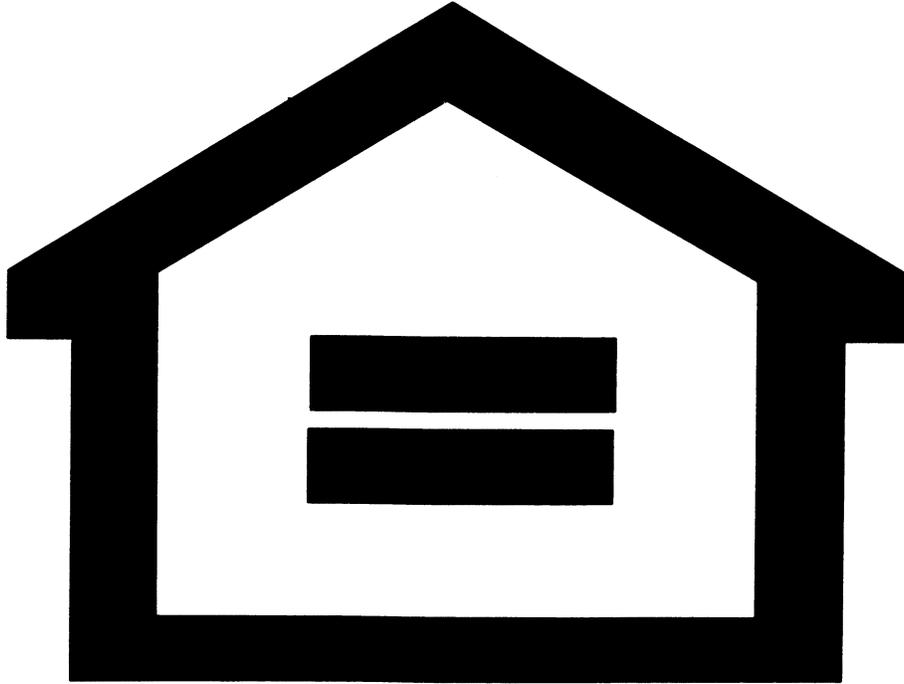
1. Enter month and year that cash flow started from rental income.
2. Enter the ultimate reserve amount to be achieved as shown on the loan agreement/resolution (as modified and increased, if applicable).
3. Enter monthly reserve deposit installment.
4. Enter yearly reserve deposit installment.
5. Enter 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).

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EXHIBIT B-11 TO SUBPART C OF PART 1930—EQUAL HOUSING OPPORTUNITY LOGOTYPE
(REQUIRED FOR PROJECT SIGN)



**EQUAL HOUSING
OPPORTUNITY**

RHS, RBS, RUS, FSA, USDA

Pt. 1930, Subpt. C, Exh. B-13

EXHIBIT B-12 TO SUBPART C OF PART 1930—FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354 LOGOTYPE (OPTIONAL FOR PROJECT SIGN)

FmHA

EXHIBIT B-13 TO SUBPART C OF PART 1930—INTERNATIONAL SYMBOL OF ACCESSIBILITY (REQUIRED FOR HANDICAP PARKING SPACE AND ALONG HANDICAP ACCESSIBILITY ROUTE)

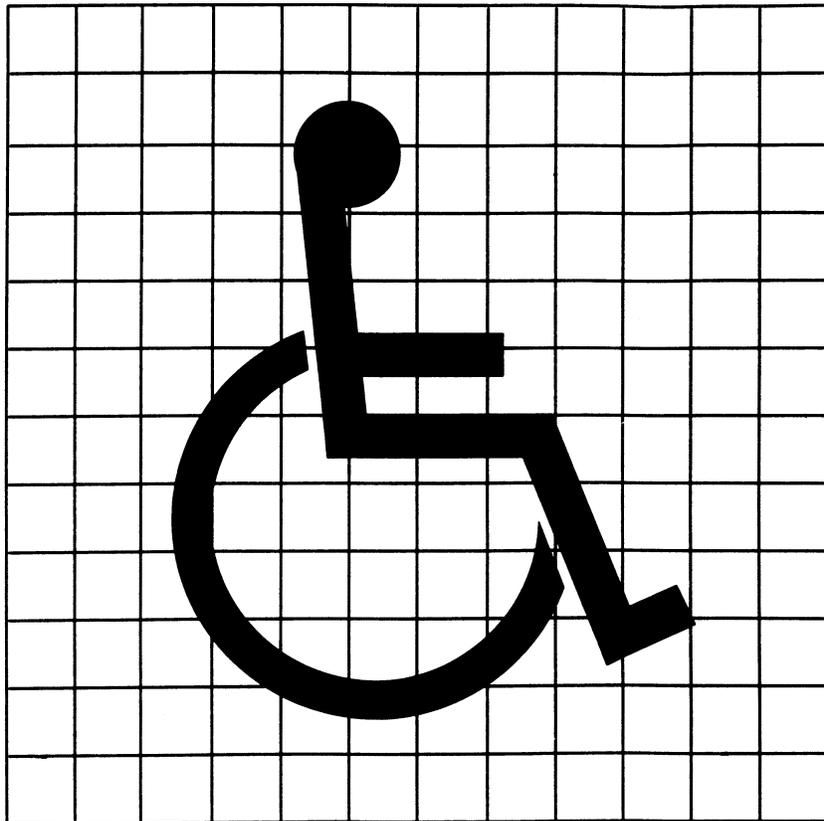


EXHIBIT B- 14 TO SUBPART C OF PART 1930—SAMPLE WAITING LIST

(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 OF PART 1930—
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 re-

quired "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:

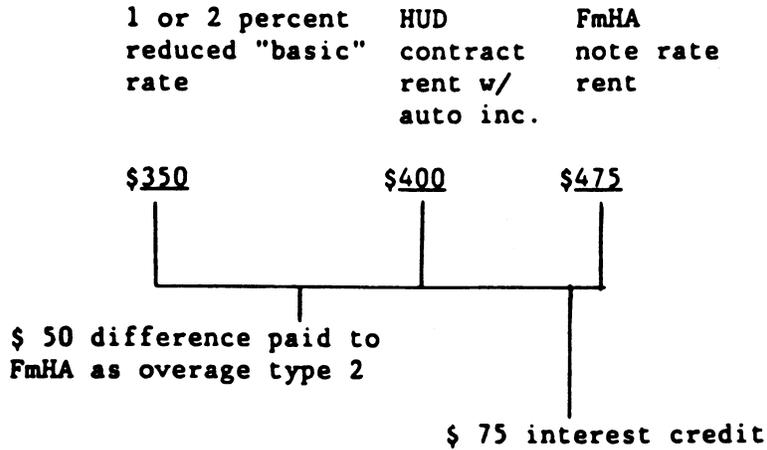
a. *Projects on an Interest Credit plan coded 7 or 8 on Form FmHA or its successor agency under Public Law 103-354 1944-7.* See figure 1 of paragraph VIID 2 a (3) of this exhibit.

(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.

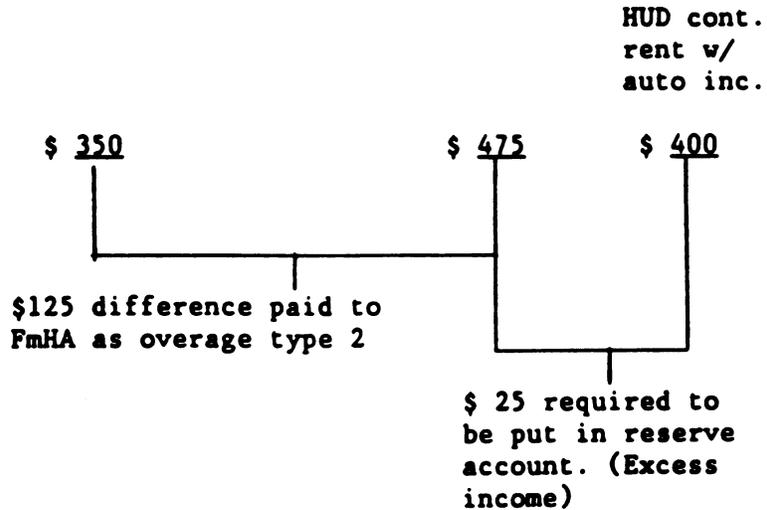
(3) *Figure 1.* Projects with 100 percent of units assisted by HUD Section 8.

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.

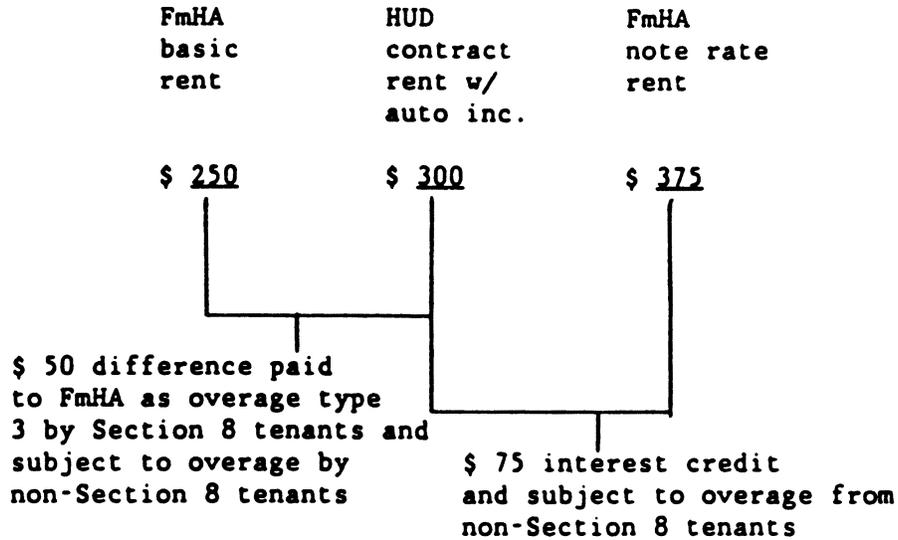
(1) *Calculating overage.* In Section 8/515 projects the overage will be the difference between basic rental rate and the note rate rent including the income from HUD. The overage will be reported as type 3.

(2) *Depositing excess income in the reserve account.* In the cases where the HUD contract

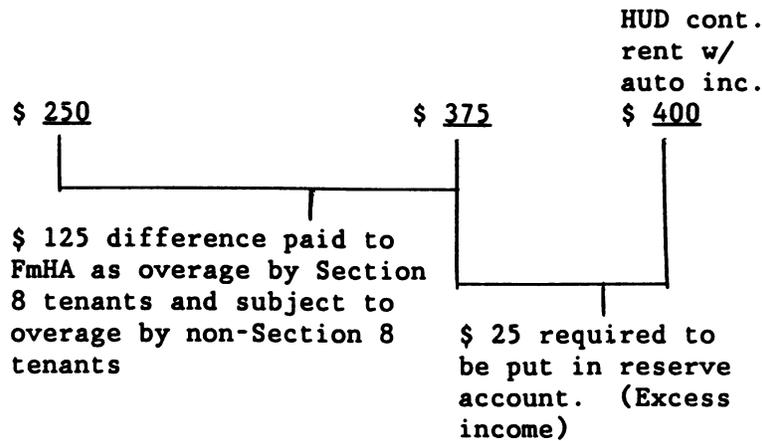
rental rate exceeds the note rate rent, the difference is excess income and will be deposited in the reserve account. The borrower/manager should use FmHA or its successor agency under Public Law 103-354 Form 1944-29, part I, item 23 through 29, to document the required deposit in the reserve account.

(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

RHS, RBS, RUS, FSA, USDA

Pt. 1930, Subpt. C, Exh. C-1

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 OF PART 1930—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
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(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 OF PART 1930—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
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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 costs for 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), post-marked 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 OF PART 1930— 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 Nighttime 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 saving 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 chap-

ter 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 OF PART 1930—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 OF PART 1930—
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 Appendix 9 of HB-1-3550 (available in any Rural Development 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 dis-

tributed 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 1944 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 re-

stricted 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 receipt 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 oper-

ation 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 than 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 re-assigned 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 re-assignment 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 ineligible 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 XVA2 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; 67 FR 78327, Dec. 24, 2002]

**EXHIBIT F TO SUBPART C OF PART 1930—
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: _____

RHS, RBS, RUS, FSA, USDA

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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 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)

Tenants selected for interview and apartment unit review (if other than above):

Name and unit number

EXHIBIT F-1 TO SUBPART C OF PART 1930—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 OF PART 1930—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 OF PART 1930—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

RHS, RBS, RUS, FSA, USDA

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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 ineligible are placed on a unit transfer list.

___ Occupancy ineligible 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.

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- ___ 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:

RHS, RBS, RUS, FSA, USDA

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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 OF PART 1930—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)

	Tenant 1	Tenant 2	Tenant 3
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:

Borrower ID and Project Number:

EXHIBIT G-2 TO SUBPART C OF PART 1930—FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354 MULTIPLE FAMILY HOUSING SUPERVISORY VISIT—TENANT INTERVIEW AND UNIT REVIEW

Date of Visit:

Management Representative Present:

Project Name:

FmHA or Its Successor Agency Under Public Law 103-354 Review Completed by:

Borrower Name:

	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)
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 OF PART 1930—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 *Eligibility:* 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 pre-occupancy or pre-occupancy 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 RD 1944-29. The agency representative will

transmit the payments to the Finance 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.

[58 FR 40868, July 30, 1993, as amended at 68 FR 61331, Oct. 28, 2003]

EXHIBIT H-1 TO SUBPART C OF PART 1930—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

Budget for note rate rent**a	Budget for basic rent**
Two bedroom rent: 700/5200 = .1346 × 2958 = 398.15 (341.35 × 4) + (398.15 × 4) = \$2,958 monthly income \$35,489 ÷ 12 = \$2958* cost/ mo.	Two bedroom rent: 700/5200 = .1346 × 1432 = 192.75 (165.25 × 4) + (192.75 × 4) = \$1432 monthly income \$17,175 ÷ 12 = \$1432* cost/ mo.

^aOne 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.)

^bAnnual 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 OF PART 1930—
RURAL RENTAL HOUSING LOANS AND
THE HOUSING AND URBAN DEVELOP-
MENT SECTION 8 RENTAL CERTIFI-
CATE AND RENTAL VOUCHER PRO-
GRAMS (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 ad-

justed 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 nor-

mal 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 OF PART 1930—
MANAGEMENT OF CONGREGATE HOUSING AND GROUP HOMES

I Purpose: This exhibit prescribes additional requirements for the management of congregate housing and group homes. It ap-

plies 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 com-

bined; 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 themselves 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]