

not be a dependent 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. Rural Housing Service.

RRH. Rural Rental Housing.

Rural area. Open country or rural places as defined in §3550.10 of this title.

Rural rental housing. Structures in a rural area which are or will be suitable for, and available to, eligible tenants on a rental basis for dwelling use. The structures may include related facilities where appropriate.

Section 515. Section 515 of title V of the Housing Act of 1949 (42 U.S.C. 1485 *et seq.*).

Security value. The present market value of the real estate offered as security for the loan as determined by the loan approval official less the unpaid principal balance plus past due interest on any other liens against it. Other liens will include any prior liens and Junior liens to be or likely to be taken or subordinated at or immediately after loan closing.

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

Servicing office. FmHA or its successor agency under Public Law 103-354 servicing office or other place designated by the FmHA or its successor agency under Public Law 103-354 State Director where loan requests are processed.

Servicing official. FmHA or its successor agency under Public Law 103-354 servicing official or other FmHA or its successor agency under Public Law 103-354 staff member designated by the

State Director to be responsible for processing loan requests.

State Agency. The Agency within a State that has been given the responsibility to allocate low-income tax credits.

Subscription agreement. The initial contract between the prospective cooperative member and the cooperative specifying the terms of application for membership and the amount of the membership fee contributed by the member. An example of the agreement is in exhibit I of this subpart.

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).

[56 FR 2232, Jan. 22, 1991; 56 FR 47376, Sept. 19, 1991, as amended at 56 FR 66960, Dec. 27, 1991; 58 FR 40951, July 30, 1993; 58 FR 44263, Aug. 20, 1993; 59 FR 6886, 6897, Feb. 14, 1994; 62 FR 25066, May 7, 1997; 62 FR 67222, Dec. 23, 1997; 67 FR 78328, Dec. 24, 2002]

§§ 1944.206-1944.210 [Reserved]

§ 1944.211 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for an RCH or RCH loan, the applicant must:

(1) Be a citizen of the United States or a legally admitted alien for permanent residence in the United States; an organization as defined in §1944.205 of this subpart; or an American Indian tribe, band, group, or nation (including Alaskan Indians, Aleuts, Eskimos, and any Alaskan native village), which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512).

(2) Be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that allow establishment of rent or occupancy charges within the payment ability of eligible tenants or members.

(i) For an individual, the assets of both the applicant and spouse will be considered.

(ii) For nonprofit organizations, the assets of the individual members will not be considered.

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(3) Have the ability and intention to maintain and operate the housing for the purposes for which the loan is made.

(4) With the exception of a nonprofit organization, consumer cooperative or public body, provide from its own resources the borrower contribution required by §1944.213 (b) of this subpart. This contribution must be in the form of cash, land, or a combination thereof.

(5) Own the housing and related land or become the owner when the loan is closed. In addition to the owner of full marketable title, an owner may be a lessee of a tract of land owned by a nonpublic body, State, political subdivision, public body, or public agency, or American Indian tribal lands which are not available for purchase. The State Director must determine that leaseholds are fully marketable in the area. The following conditions must be met when considering leasehold interests:

(i) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security.

(ii) The amount of the RRH or RCH loan against the property will not exceed the estimated market value determined in accordance with subpart B of part 1922 of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office).

(iii) The unexpired term of the lease on the date of loan approval must be at least 25 percent longer than the repayment period of the loan and rent charged for the lease does not exceed the rate being paid for similar leases in the area.

(iv) The borrower's interest must not be subject to summary foreclosure or cancellation.

(v) The lease must:

(A) Not restrict the right to foreclose the RRH or RCH mortgage or to transfer the lease.

(B) Permit FmHA or its successor agency under Public Law 103-354 to bid at a foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(C) Permit FmHA or its successor agency under Public Law 103-354 to occupy or sublet the property and sell the leasehold for cash or credit if the lease-

hold is acquired through foreclosure (or voluntary conveyance in lieu of foreclosure), or if the borrower abandons the property.

(D) Permit the borrower, in the event of default or inability to continue with the lease and the loan, to transfer the leasehold, subject to the RRH or RCH mortgage, to a transferee with the assumption of the RRH or RCH debt.

(vi) The advice of OGC will be obtained as to legal sufficiency of the lease. When the State Director is uncertain as to whether a loan can be made on a leasehold, he/she should request National Office evaluation and instruction.

(6) Have or be able to obtain the initial operating capital and other assets needed for a sound loan. Loans made to nonprofit organizations, consumer cooperatives, and to State or local public agencies may include up to 2 percent of the development cost for initial operating expenses.

(i) The applicant will provide a detailed list of all materials and equipment needed to be funded by the initial operating capital including, but not limited to, property and liability insurance premiums, fidelity bond premiums when the applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction, purchase of office equipment and furniture, community room furnishings, other movable equipment and furnishings, congregate items referenced in §1944.224 of this subpart, advertising expenses, management fees, etc. The list will be approved by the servicing office based upon similar projects in the State. The initial 2 percent operating and maintenance (O&M) expenses, plus any amounts needed for these items above the 2 percent, must be provided in cash.

(ii) The O&M cash will be deposited into the general operating account in accordance with the provisions of the loan agreement or loan resolution. FmHA or its successor agency under Public Law 103-354 will be provided with documentation of the deposit prior to the start of construction or loan closing (whichever is first) and

such funds will be used for authorized purposes only.

(iii) If the borrower provided the initial 2 percent operating capital from its own funds, the State Director may, in accordance with subpart C of part 1930 of this chapter, authorize the borrower to make a one-time withdrawal from project funds. The borrower must request in writing the withdrawal after 2 years, but before 5 full (12-month) borrower fiscal years of operation.

(7) Possess the ability, experience, and the legal and financial capacity to incur and carry out the obligations required for the loan.

(8) Agree to comply with all FmHA or its successor agency under Public Law 103-354 requirements, such as those set forth in the loan resolution, loan agreement, the form of note, the mortgage and FmHA or its successor agency under Public Law 103-354 regulations.

(9) Provide necessary management to assure the successful operation of the project. Management services may be provided by the applicant, a management firm or an agent. Management will be handled in accordance with exhibit B to subpart C of part 1930 of this chapter.

(10) In the case of a private nonprofit organization:

(i) If operating in one community and its trade area, meet the following additional requirements for an RRH loan:

(A) The organization must maintain a broadly-based membership reflecting a variety of interests in the community. The organization should have at least 25 members. The number of members may be decreased for projects with less than 25 units.

(B) Each member must be limited to one vote in the affairs of the organization.

(C) A majority of the members must reside in the community or the trade area where the housing will be located.

(D) At least five of the members must be recognized as leaders in civic, governmental, fraternal, religious, and other community organizations of the community where the housing will be located.

(E) There must be at least five people on the board of directors and they must be selected by a procedure that

insures that the interests of minorities and women are adequately represented.

(F) The directors must be members of the organization.

(G) The organization should adopt articles of incorporation and bylaws substantially conforming to the model articles and bylaws set forth in exhibits C and D, modified as appropriate in accordance with State law. The State Director, with the assistance of OGC, may develop a model set of articles of incorporation and bylaws for the State which are consistent with exhibits C and D and publish an appropriate State supplement.

(ii) If operating in more than one community or on a county or regional basis and providing or planning to provide rental housing in more than one community, meet the following requirements in addition to those in paragraph (a)(10)(i) of this section, with the exception of (a)(10)(i)(C) of this section:

(A) The membership base should be representative of the area being served with at least five members representing a variety of interests from each community where the housing will be located.

(B) The organization's articles of incorporation and bylaws must include the requirements outlined in paragraph (a)(10)(ii)(A) of this section.

(11) In the case of transfers of projects to nonprofit corporations which receive subsequent loans to avert prepayment, meet the requirements of §1965.216 (c) of subpart E of part 1965 of this chapter.

(12) In the case of a cooperative:

(i) Each member must be limited to one vote in the affairs of the Cooperative.

(ii) The number of directors must not be less than 5, or whatever is allowable under State law.

(13) In the case of a limited partnership:

(i) The general partners must be able to meet the financial requirements of §1944.211(a)(4) of this subpart if the partnership is not able to when the loan request is filed.

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(ii) The general partners must maintain a minimum 5 percent financial interest in the partnership. For this purpose, the minimum 5 percent requirement will be deemed to have been met if the general partner has a minimum 5 percent interest in the residuals or refinancing proceeds. The general partner will not be required to have a minimum 5 percent interest in current profits, losses, and cash distributions of the partnership. For example, an agreement where the general partners have such a 5 percent interest in a limited partnership and receive only 1 percent of the profits while the limited partners receive 99 percent of the profits would be allowable.

(iii) The partnership must agree that new general partners can be brought into the organization only with the prior written consent of FmHA or its successor agency under Public Law 103-354.

(14) Be willing to honor the long-term commitment associated with receipt of a section 515 loan. Borrowers or principals of borrower organizations who sell or transfer loans less than 5 years old will not be considered eligible for further participation in the program as borrowers or principals (i.e., a general partner in a limited partnership) for at least 5 years from the date of the loan or assumption closing. The State Director may make an exception to this provision only if the transfer or sale meets the hardship provisions of § 1965.65(a)(4) of subpart B of part 1965 and the applicant meets all other eligibility requirements.

(15) Meet the following requirements if the applicant, including the principals, has prior or existing RHS debts and is applying for a new or subsequent loan or requesting incentives to preclude prepayment. Applicants who do not meet these requirements will be rejected for failure to meet the applicable provisions of this section, as well as § 1965.213(c)(2)(i) of subpart E of part 1965 of this chapter, if applicable.

(i) The applicant, including the principals, must be in compliance with existing debts in accordance with all legal and regulatory requirements and agreements, including the Promissory Note, Loan Agreement, and mortgage, all applicable local, state, and federal

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laws, and must provide regular financial and other required reports within required timeframes; or, if the applicant fails to meet any of these requirements, has an approved workout plan in effect that meets the provisions of paragraph (a)(15)(ii) of this section.

(ii) An applicant or principal with an approved workout plan in effect to correct deficiencies in an existing RHS debt may be considered for eligibility if the applicant or principal has been in compliance with the provisions of the workout plan for 6 months. The State Director may waive this requirement for borrowers who have acted in good faith but are in noncompliance through circumstances beyond their control, including substantial local economic downturn, natural disaster, assuming responsibility for a troubled loan through substitution of the general partners, or assuming a loan with an existing workout plan.

(iii) Applicants and principals must be in compliance with the provisions of the Civil Rights Act of 1964 (in accordance with their Form RD 400-4, "Assurance Agreement") and all other civil rights laws. If the Agency has reasonable grounds, based on a substantiated complaint, the Agency's own investigation, or otherwise, to believe that the representations of an applicant or borrower as to civil rights compliance are in some material respect untrue or are not being honored, assistance may be deferred or denied.

(iv) Applicants or principals who have been debarred but whose debarment period has expired will be considered for eligibility subject to all requirements of this section.

(v) Applicants, including principals, who have been determined ineligible by one state may not be determined eligible by another State until the problems have been corrected or workout plans are in effect in all States in which the applicant or principal is operating.

(b) *Authorized representative of an applicant.* FmHA or its successor agency under Public Law 103-354 will deal only with the applicant or its authorized representative and the representative's technical advisers. An authorized representative of a nonprofit applicant must have no pecuniary interest in the

award of the architectural or construction contracts, the purchase of equipment or the purchase of the land for the housing site.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7491, Mar. 9, 1988; 54 FR 14336, Apr. 11, 1989; 56 FR 2235, Jan. 22, 1991; 58 FR 38924, July 21, 1993; 58 FR 40952, July 30, 1993; 59 FR 6886, Feb. 14, 1994; 62 FR 25065, 25074, May 7, 1997]

§ 1944.212 Loan and grant purposes.

RRH and RCH loans may be made to qualified applicants to:

- (a) Construct new housing.
- (b) Purchase and rehabilitate existing buildings only when the loan for such purchase and rehabilitation does not exceed by 5 percent the loan for new construction in the same area and when moderate or substantial modifications, repairs or improvements to the structures are necessary to meet the requirements of decent, safe, and sanitary living units.
 - (1) All rehabilitation work to be performed must be classified as either moderate or substantial rehabilitation as defined in exhibit K of subpart A to part 1924 of this chapter.
 - (2) The structure to be rehabilitated must be physically and structurally sound enough to afford maximum safety (including fire safety) to the residents of the structure after rehabilitation.
 - (3) Rehabilitation must be planned and accomplished so that the resulting housing will:
 - (i) Meet the applicable development standards as provided for in §1924.5(d)(1) of subpart A of part 1924 of this chapter and any applicable historic preservation requirements.
 - (ii) Create a suitable and appealing living environment and be substantially equivalent to new construction in quality and livability.
 - (4) The applicant must submit complete plans and specifications for rehabilitation for FmHA or its successor agency under Public Law 103-354's review and acceptance.
 - (5) The rehabilitated project must generally meet the provisions of §1944.215(b) of this subpart.
 - (6) When the downtown location of a rehabilitation project dictates such, a portion of the structure (such as part

of the ground floor and basement) can be designated for commercial use on a lease basis. Loan funds, however, cannot be used to finance any cost associated with the commercial space. In order to determine the correct loan amount for the residential portion of such a structure, the following guidelines will apply:

- (i) The applicant must supply a complete cost breakdown for purchasing and rehabilitating the entire structure into its joint residential/commercial use.
- (ii) The costs that can be easily and appropriately identified as being part of either the commercial or residential portion of the structure should be separated.
- (iii) The costs which cannot be easily and appropriately isolated (such as the cost associated with repair or renovation of a boiler, the value of the structure "as is," and certain mechanical or electrical components that will benefit both commercial and residential tenants or members will be prorated between the two uses based on the percentage of equipment load (example—central boiler or air conditioning) which would be necessary for each portion of the structure.
- (iv) For the purposes of the loan limitations in §1944.213(b) (1) and (2) of this subpart, the term *development cost* means the development costs associated with or prorated to the residential use of the structure, and the term *security value* is the security value of the project exclusive of the value contributed to the land and structure(s) by the commercial space. The capitalization approach to value is one means by which FmHA or its successor agency under Public Law 103-354 may establish the value contributed by the commercial space.
- (v) The applicant must rely on other sources of financing for all costs associated with or prorated to the commercial space, given the FmHA or its successor agency under Public Law 103-354 security requirements of §1944.221 of this subpart.
- (7) The applicant may not lease any authorized commercial space without the prior written consent of the State Director. Prior to loan closing, the advice of OGC will be obtained as to any