

the loan will be adequately secured, taking into account the probable depreciation of the security. The payment period will not exceed 30 years; however, if necessary to ensure affordability, the loan may be amortized for a period not to exceed 50 years.

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§ 1944.215 Special conditions.

(a) *Cost containment.* To achieve affordable rents and occupancy rates (not considering rental assistance or similar subsidies), all development costs will be economical in nature and not include costs for unnecessary or elaborate design features. Cost containment is not to be interpreted as accepting poor design or cheap construction. Projects must provide the features and amenities necessary for the lifestyles of the tenants and members. Consideration must be given to the cost/benefit ratio when evaluating, recommending, or requiring specific design features or construction techniques. Life cycle cost analysis will be employed to determine the types of materials which will reduce operation/maintenance costs even though their initial costs are higher. Operation and maintenance costs factored into proposed operating budgets will be adjusted accordingly. The following guidelines are to be followed when developing projects:

(1) Each State architect/engineer (A/E) will compile and maintain data on costs of all projects. Total project estimates will be compared with estimates available through the Marshall & Swift computer program. These estimates, along with the line item costs recorded in FmHA or its successor agency under Public Law 103-354's Automated Multi-Housing Accounting System (AMAS) cost tracking system, will be used to establish a benchmark for future project costs. Any proposal that exceeds these costs must be carefully evaluated for possible cost reductions. The borrower will be responsible for resolving the differences in cost to bring the project into line with the lesser of the cost tracking system or Marshall & Swift estimates. Final determinations must be realistic, interrelated to maintenance and operation costs, and based upon local conditions and common

sense. The State will consider circumstances such as high land costs, remote rural areas, etc., which could present a problem in achieving such an alignment of costs. The AMAS cost tracking system will be used to record both estimates and actual line item costs. At the time the estimates are being examined by FmHA or its successor agency under Public Law 103-354, the percentages for builder's profit, general overhead, and general requirements will be calculated to determine if they are within the allowable percentages established in accordance with §1944.213(a)(1)(iii) and (a)(1)(iv). They will again be calculated at the time the final estimates are submitted to FmHA or its successor agency under Public Law 103-354. Estimated amounts in excess of the allowable percentages will be reduced to the appropriate percentage. Once the final estimates are approved by FmHA or its successor agency under Public Law 103-354, payment of builder's profit, general overhead, and general requirements will not exceed the estimated amounts.

(2) The elimination or reduction of unnecessary delays in application processing can contribute to cost containment through lower interest and other business expenses on land, inventory, tests, design studies, etc. When reasonable processing timeframes are established, known and followed, appropriate time can be planned for preparing quality application and construction documents. This can result in better instructions to the builder, fewer errors and lower construction costs.

(3) Most materials and systems are available in a range of qualities and prices. The construction documents will be carefully reviewed for specifications that require qualities or grades higher than necessary. These specifications will be accepted only if fully justified and no reasonable alternatives are available.

(4) Designs which employ standard building material dimensions and reduce waste will be used.

(5) Sites will require a minimum amount of site development work. The State Director may authorize a site requiring higher than normal site development costs only if:

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(i) The proposed site and site development costs are less than the cost of the normal site and site development costs; or

(ii) There are no other sites available in the market area with a lower combined cost.

(6) All project site densities (units per acre) will be within the following ranges, regardless of site conditions unless local zoning requirements dictate otherwise:

	Min-imum	Max-imum
One-story buildings	10	14
Two-story buildings	14	18
Three or more story buildings	18	22

(i) For example: A 24-unit project composed of two-story buildings must have a site of at least 1.3 acres. FmHA or its successor agency under Public Law 103-354 will finance the purchase and development of larger sites, but not more than 1.7 acres. Ranges for projects with a mixture of building heights can be interpolated.

(ii) An exception may be made to this provision only if the site in question is the only site available in the market area and its size, shape, or condition makes a portion of the site unsuitable for building. An exception to this requirement must be granted by the State Director or a designee. The applicant must provide written documentation that no other sites are available.

(7) Sound judgment and common sense must also be used in construction inspections and final acceptance of projects. Field staff involved in these activities must be careful not to impose additional or unreasonable requirements on the builder that will increase construction costs. States should consider hiring enough construction inspectors to provide more than the required inspections and to allow multiple unscheduled and unannounced visits. The State Office may also, with National Office authorization, contract for inspection services to deter deviations from the FmHA or its successor agency under Public Law 103-354-accepted construction documents. Prefinal and final inspections must be conducted by qualified FmHA or its successor agency under Public Law 103-354 personnel.

(8) Buildings will not include numerous wall and roof breaks, unusual designs requiring excessive corners and foundation off-sets, or that require more exterior entrances than absolutely necessary. Designs will not be considered acceptable that place dining facilities in structures attached to the main building when these amenities can be less expensively included within the main structure.

(9) Buildings will not include roof slopes less than 3/12 nor greater than 6/12 unless otherwise required by local authorities or in order to accommodate severe weather conditions.

(10) The use of repeat designs will be required from applicants whose architects have designed projects previously approved by FmHA or its successor agency under Public Law 103-354. This does not mean "cloned" projects are required throughout the State and/or region. When a repeat design is being used in the same community, the exterior facade (such as color, siding material, etc.) must be noticeably changed except in the case of subsequent phases. The State Office architect will ensure that sufficient differences are included in the proposed plans which will preclude the appearance of "cloned" designs. "Predesigned" buildings must fit the basic existing contours of the proposed site.

(11) The following facilities are considered nonessential and will not be included in the loan unless required by local codes or ordinances:

- (i) Garages/covered parking;
- (ii) Bay/box/picture or similar type windows;
- (iii) Fireplaces;
- (iv) Community room furniture;
- (v) Sliding glass/atrium or similar type doors;
- (vi) Materials atypical for the area;
- (vii) Atriums/solariums;
- (viii) Saunas;
- (ix) Whirlpools;
- (x) Gyms (facilities to accommodate physical exercises may be included in elderly projects without regard to this restriction); and
- (xi) Swimming pools.

(12) Other design features which will only be accepted if determined customary for the area are:

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- (i) Patios/balconies (minimum size which will accommodate handicapped accessibility);
- (ii) Washer and dryer hookups in individual units; and

- (iii) Washers and dryers in individual units.
- (13) The following is a list of allowable amenities according to the type of units:

	Family	Elderly	Congregate	Group home
Active outdoor recreation	Yes	No	No	Yes
Carpet	Yes	Yes	Yes	Yes
Central laundry facilities	Yes	Yes	Yes	Yes
Community rooms	No	Yes	Yes	Yes
Dishwashers	No	No	Yes ¹	¹ Yes
Drapes/blinds/shades	Yes	Yes	Yes	Yes
Elevators for 2-story elderly	No	Yes	Yes	No
Garbage disposals	No	No	Yes ¹	¹ Yes
Lawn sprinklers—financing will depend on geographic area.				

¹ In central kitchens only.

(14) Total on-site parking spaces per living unit will be within the following ranges unless otherwise required by local authorities:

NOTE: Additional spaces for visitors, staff, or health care workers may be provided.

Family		Elderly		Congregate		Group	
Min	Max	Min	Max	Min	Max	Min	Max
1.0	1.5	0.5	1.0	0.25	1.0	0.25	0.5

(15) Management, maintenance, and community rooms should be in accordance with Guide 2 of subpart A of part 1924 of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office). Laundry rooms should be no larger than necessary to accommodate equipment, circulation (including handicapped accessibility) and areas for sorting and folding clothes.

(b) *Type of housing.* All housing will be designed to:

- (1) Be economically constructed and not of elaborate design or materials. All new construction will conform with the applicable development standards of § 1924.5(d)(1) of subpart A of part 1924 of this chapter. The gross square foot living area of new units will be within the ranges listed below. Living area is defined as: All enclosed space for the unit (except unfinished storage space for outdoor items and space needed for heating and/or cooling equipment) and measured from the exterior surface of the framing of exterior walls and the center line of interior party or corridor walls. States should establish ranges within these dimensions to be commensurate with unit sizes in the local market.

For example, when conventional units in the market are at the low end of FmHA or its successor agency under Public Law 103-354's range scale, FmHA or its successor agency under Public Law 103-354 will also build a comparably smaller unit.

Type of unit	Minimum/maximum living area (sq. ft.)
0-Bedroom Unit	350-500
1-Bedroom Unit	500-650
2-Bedroom Unit	650-800
3-Bedroom Unit	800-950
4-Bedroom Unit	950-1100

- (i) An additional 100 to 120 square feet of living area may be added to the 4-bedroom unit guideline for each bedroom in excess of four. Floor areas for living and dining rooms should comply with Guide 2 of subpart A of part 1924 of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office). The maximum square footage in congregate housing units will not exceed 110 percent of the minimum square footages listed above.

(ii) In townhouse units where living area is on two floor levels of the unit, the maximum gross square footage of living area may be exceeded by up to 70 square feet, but only to the extent necessary to accommodate interior stairways.

(iii) Room sizes must be in compliance with the applicable development standard. Minimum room sizes may be determined by the minimum areas in Guide 2 of subpart A of part 1924 of this

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chapter (available in any FmHA or its successor agency under Public Law 103-354 office).

(iv) Additional area to accommodate energy conserving and solar heating elements such as vestibules, heat sinks, solar greenhouses, solar heat storage devices and the like may be allowed in excess of the stated maximum size guidelines. However, such devices, if included, must be justified on a cost effective basis.

(2) Consist of multi-unit type housing with two or more units and appropriate related facilities except for the conversion of section 502 inventory housing as covered in §1944.212(p) of this subpart, manufactured homes and group homes. Single family structures may be considered for cooperative housing projects if economically feasible.

(3) Be residential in character and be designed to meet the needs of eligible tenants or members. Generally, structures should not be more than three stories high. However, low-rise structures with elevators can be considered when the following conditions exist:

(i) There is a serious shortage of suitable building sites, the number of units needed cannot be built due to lack of space on available suitable sites and other building sites are not available.

(ii) Land costs are such that one- to three-story construction would result in a unit cost and rental/occupancy rates in excess of what eligible tenants and members can afford.

(iii) The number of stories proposed for the structure is compatible with other rental structures in the community. If there are no other low-rise rental structures in the community, the proposed structure must be in character with surrounding structures.

(iv) The cost of the units should compare favorably with one- to three-story construction financed with RRH loans. If the costs are higher, the loan will not be approved until the FmHA or its successor agency under Public Law 103-354 State architect or engineer has reviewed the plans, specifications and cost data to assure that further cost savings cannot be achieved without sacrificing the quality and serviceability of the housing.

(v) Elevators will be provided in accordance with the applicable develop-

ment standards. If elevators are included, the subsoil conditions of the site must be adequate for the installation of elevators and sufficient service personnel must be available in the area for service and repair work.

(4) Provide kitchen and bath facilities consistent with the size of the unit. For example, units with three or less bedrooms typically can be designed with one bath. However, townhouse units with three or more bedrooms where living area is on two floors may contain bath facilities on both levels. Kitchen facilities are required in all units; however, in congregate housing, some or all of the units may have limited facilities, such as a cooktop with a small oven and refrigerator.

(5) Give maximum consideration to energy conservation measures and practices. To keep operating costs at a minimum, units should be individually metered for utilities unless adequate justification is provided to show that it would be infeasible.

(6) Meet the needs of tenants with handicaps in rental projects. At least 5 percent of the units in the project or one unit, whichever is greater, must be accessible to or adaptable for persons with physical handicaps. The percentage of the units provided may be modified if an applicant shows, through information obtained from a State, local or independent agency or organization serving people with handicaps, that a different percentage of accessible or adaptable units is appropriate. However, at least one accessible unit will be provided. Adaptable units must be constructed in accordance with the Uniform Federal Accessibility Standards, sections 4.34.3 through 4.34.6.

(7) For covered dwellings, handicap accessibility requirements will be met as set forth in section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act.

(c) *Deferred principal payments.* (1) When construction is funded by multiple advances from FmHA or its successor agency under Public Law 103-354, principal payments on the loan will be deferred for the period of construction.

(2) When an interim financed loan is closed other than the first day of the

month, principal payments will be deferred for the remaining period of the month in which the loan is closed.

(3) When construction is substantially complete and the project is ready for full operation, or the total of principal advances plus accrued interest reaches the MDL, interest on the advances will be accrued to the Amortization Effective Date (AED) and will be capitalized, establishing a new principal (loan) amount.

(4) At loan obligation, the MDL will be established according to §1944.213(a) of this subpart. When the final advance on the loan is issued or the MDL is reached, the Finance Office will:

(i) Accrue interest on all advances through the last day of the month and capitalize the interest as of the AED. When there is a remaining obligation balance, it will be canceled by the Finance Office.

(ii) Establish the new loan amount and the borrower's monthly payments computed over the remaining term of the loan.

(5) The District Office will:

(i) Contact the applicant and complete Form FmHA or its successor agency under Public Law 103-354 1944-52, "Multiple Family Housing Promissory Note."

(ii) Implement Form FmHA or its successor agency under Public Law 103-354 1944-7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement," at AED or when the project is substantially complete and ready for full operation, whichever is later.

(d) *Refinancing Loans.* Each borrower, except those borrower(s) whose loans to build or acquire new units were made pursuant to contracts entered into on or after December 15, 1989, must agree to refinance the unpaid balance of the loan when requested by the Agency. The rates and terms of the refinanced loan must be considered reasonable by the Agency to enable the borrower to offer the units to eligible tenants and members at rates within their payment ability. The refinancing of a loan must comply with the restrictions indicated in §1944.236(b)(5) of this subpart, subpart F of part 1951, and subpart E of part 1965 of this chapter.

(e) *Loan resolution or loan agreement.* The loan resolution or loan agreement contains provisions of policy and procedure which should be carefully read, fully understood by the applicant, and executed by the applicant prior to loan approval. If any provisions are not appropriate to a particular case, proposed substitute language must be approved by FmHA or its successor agency under Public Law 103-354 and OGC. Subpart C of part 1930 of this chapter provides for the maintenance of certain accounts and the pledge of housing income as security. It contains regulatory provisions governing and giving FmHA or its successor agency under Public Law 103-354 power to impose requirements regarding the housing and related operations of the applicant. All sections and requirements determined applicable by OGC will form part of any other loan resolution or agreement that may be submitted by the applicant. These are:

(1) Form FmHA or its successor agency under Public Law 103-354 1944-33, "Loan Agreement."

(2) Form FmHA or its successor agency under Public Law 103-354 1944-34, "Loan Agreement."

(3) Form FmHA or its successor agency under Public Law 103-354 1944-35, "Loan Resolution."

(f) *Cooperative management.* Consideration must be given to the special conditions of a cooperative housing structure concerning management. The following forms of management will be recognized for cooperative housing.

(1) *Self-management.* The primary management objective for small housing cooperatives. To achieve this, education and training efforts should be an on-going part of their early years of operation. Accordingly, modest educational costs will be permitted in the budget as a subheading under management expenses. It is understood that, in the beginning, it may be necessary to obtain some outside services, such as a bookkeeper. If so, then partial self-management can be considered. It will be necessary for a qualified non-member (individual or organization) to advise the board during the formative years of the cooperative. Exhibits F and G to this subpart will be used as a

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guide for determining the qualifications of the adviser.

(2) Partial self-management. Certain management and/or supervisory services contracted from a technical service organization, housing authority, or management firm, etc. If this additional assistance does not enable the cooperative to manage itself, then the ultimate solution will have to be contract management.

(3) Contract management. Professional services contracted for the day-to-day supervision of cooperative operations. The board of directors would develop the policies which would then be administered by the management agent.

(g) *Cooperative membership fee.* Cooperative housing is a form of homeownership. In order to promote a commitment from prospective members, cooperatives will require a membership fee. The membership fee established by the board of directors will be equal to one month's occupancy charge. Once the fee has been established, that amount will be uniformly applied to all members. Members unable to pay a cash membership fee should be permitted to make monthly payments without interest, until the membership fee is paid; however, a cash payment of at least \$25 should be required at occupancy. The period of payment on the membership fee should not exceed 12 months.

(h) *Cooperative limited equity.* (1) RCH loans will only be made to cooperatives which limit the accumulation of equity. The limitations are designed to maintain unit availability for low-income people. In addition, all prospective members must have received, prior to becoming an actual member, a statement of the objectives of the cooperative, debts and a declaration describing limited equity and what it will mean to them. Exhibit H of this subpart will be used for this purpose. Limited equity is further described in "A Guide to Cooperative Housing" which is to be given to prospective members.

(2) Inflation equity which accrues on cooperative property is not considered part of members' limited equity and will not be taken from the project when a member vacates the project.

(i) *Interest credits and rental assistance (RA).* (1) Borrowers may receive interest credits if they meet the requirements outlined in exhibit B of subpart C to part 1930 of this chapter.

(2) RA may be provided to eligible tenants and members in eligible projects in accordance with exhibit E to subpart C of part 1930 of this chapter.

(3) At least 95 percent of RA units available for newly constructed projects must be used to assist very low-income tenants and members. Up to 5 percent can be used for low-income tenants and members.

(4) Cooperative members must have sufficient incomes to pay their management reserve charge. RA will not be used for this purpose. Management reserve charge is further described in exhibit A to this subpart.

(j) *Nondiscrimination in use and occupancy.* The borrower will not discriminate or permit discrimination by any agent, lessee or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, age, sex, marital or familial status, mental or physical handicap (tenants must possess the capacity to enter into a legal contract), or national origin, in accordance with subpart E of part 1901 of this chapter.

(k) *Eligibility for occupancy.* Loans will be made on the basis of the housing being occupied by eligible tenants and members as defined in §1944.205 of this subpart. Eligible tenants and members must meet the requirements of exhibit B of subpart C of part 1930 of this chapter.

(l) *Tenant and member certification.* Initial certification and recertifications will be executed on Form FmHA or its successor agency under Public Law 103-354 1944-8, "Tenant Certification," in accordance with exhibit B to subpart C of part 1930 of this chapter.

(m) *Supervision of borrowers.* Supervision will be provided borrowers under subpart C of part 1930 and subpart B of part 1965 of this chapter.

(n) *Establishing profit base on initial investment.* Applicants agreeing to operate on a limited profit basis will be

permitted a return not to exceed 8 percent per annum on their initial investment determined at the time of loan approval. For equity loans to avert prepayment, the rate of return and equity position may be set in accordance with § 1965.213 of subpart E of part 1965 of this chapter. This amount will be reflected in the loan agreement or loan resolution and will not be changed once it is determined. The initial investment may exceed the required contribution in § 1944.213(b) of this subpart and a return allowed on the excess investment if:

(1) Cash contributions made by the applicant from the applicant's own resources, which, when added to the loan and grant amounts from all sources, do not exceed the security value of the project. Proceeds received by the applicant from the syndication of low-income housing tax credits (LIHTC) and contributed to the project may be considered funds from the applicant's own resources for the portion of the proceeds which exceeds:

(i) the allowable developer's fee determined by the State Agency administering the LIHTC, and

(ii) the amounts expected to be contributed to the transaction, as determined by the State Agency administering the LIHTC.

(2) The value of the building site or essential related facilities contributed by the applicant up to the amount which, when added to the loan and grant amounts from all sources, is not in excess of the security value of the project. An appraisal will be completed in accordance with applicable RHS regulations. Value of the applicant's contribution will be determined on an "as is" basis less liens against the property.

(3) Borrowers receiving incentives to avert prepayment may have the amount of borrower equity redefined to include the difference between the value used in determining the incentives and the balance of all loans, including the equity loan, if any. Redefined equity may be received only as a part of an incentive offer developed under § 1965.213 of subpart E of part 1965 of this chapter.

(o) *Intergovernmental review.* FmHA or its successor agency under Public Law

103-354 will consider comments received in accordance with 7 CFR part 3015, "Intergovernmental Review of Department of Agriculture Programs and Activities," when making decisions on loan applications. (See FmHA Instruction 1940-J, available in any FmHA or its successor agency under Public Law 103-354 office.)

(p) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects will comply with subpart G of part 1940 of this chapter.

(q) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 and Executive Order 11988, are applicable to FmHA or its successor agency under Public Law 103-354 authorities permitting financing of housing now located in, or to be located in, special flood or mudslide-prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of part 1806 of this chapter (FmHA Instruction 426.2) and subpart G of part 1940 of this chapter will apply.

(r) *Location of housing.* (1) The location of the project should expand the supply of decent, safe, and sanitary housing for very low-, low- and moderate-income elderly persons, persons with disabilities, and families in a non-discriminatory way. The location should promote a greater choice of housing opportunities in the housing market area.

(2) Project locations are to promote equal access for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, marital status, physical or mental disability, or familial status, thereby opening up nonsegregated housing opportunities for minorities.

(3) Except as otherwise permitted by paragraph (r)(6) of this section, housing projects must be located in residential areas as part of established rural communities where essential public facilities (such as schools, hospitals and generally central water and sewer systems) and services (such as shopping, medical, and pharmaceutical) are readily available in close and convenient proximity to the site. Public facilities

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and services must be adequate to support the needs of the tenants and members and the housing project. (See FmHA Instruction 1922-B which is available in any FmHA or its successor agency under Public Law 103-354 office.)

(4) In order to provide housing at the lowest cost possible, preference in accordance with §1944.231 of this subpart will be given to loan requests in which specific tracts of land will be donated by States, units of local government, public bodies, and nonprofit organizations, provided the following conditions are met:

(i) The land is suitable for the proposed housing and meets the site criteria of this paragraph (r) and the environmental requirements of part 1940, subpart G, of this chapter; and

(ii) Site development costs of the donated site do not exceed the cost of purchasing an alternative site and the site development costs for the alternative site. For example, if the site development costs of the donated site are \$50,000 and purchasing an alternative site would cost \$20,000 and \$15,000 to develop, donation of the site would not be cost effective or qualify for preference; and

(iii) Due to no land cost, the overall cost of the project has been reduced compared to similar type projects; and

(iv) The donor of the site has owned the site for at least 1 year. The State Director may waive the 1-year restriction when it is clearly documented that the donation of the land was not intended to circumvent the provisions of this paragraph; and

(v) A return on investment is not paid to the borrower for the value of the donated land nor is the value of the land considered as part of the borrower's contribution; and

(vi) There is no identity of interest between the donor of site (including any members of the donor entity) and the applicant for the loan (including any members of the applicant entity); or

(vii) In cases where there is an identity of interest between the donor of the site (including any members of the donor entity) and the applicant for the loan (including any members of the applicant entity), the applicant meets the

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requirements of §1944.231(e) of this subpart.

(5) Noncontiguous rental sites. (i) Noncontiguous sites within the same community may be considered if feasible. Each site must meet all FmHA or its successor agency under Public Law 103-354 site criteria and an appraisal must be made on each site in accordance with subpart B to part 1922 of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office). The units must be managed under one management plan with one loan agreement/resolution.

(ii) If a small community cannot support a project containing enough units to make it cost effective or in cases involving conversion of 502 inventory units, FmHA or its successor agency under Public Law 103-354 will consider a project which includes more than one site in the same or different communities. The State Office and applicant must mutually agree that the location of the sites will not adversely effect the efficiency of management and servicing of the projects. The requirements of paragraph (r)(5)(i) of this section will also apply.

(6) FmHA or its successor agency under Public Law 103-354 will consider financing new construction or the purchase and rehabilitation of existing structures (in accordance with §1944.212(b) of this subpart) located in the downtown business areas of rural communities that have established a comprehensive strategy for meeting their community development and housing needs. That strategy must include the redevelopment, rehabilitation, restoration or revitalization of the downtown business area. The proposed project site must be located within the downtown business redevelopment/revitalization area and the following conditions must be met:

(i) Essential public facilities (such as schools, hospitals and generally central water and sewer systems) and services (such as shopping, medical and pharmaceutical) must be readily available in close and convenient proximity to the site and must be adequate to support the needs of the tenants and members and the housing project.

(ii) The community must have an official short-term community development and housing plan which sets forth its comprehensive strategy for meeting identified community development and housing needs. The plan will include the need for eliminating and preventing economic decay, slums or blight; the need of benefiting the lower-income population; or other community development needs having a particular urgency. The strategy should include a community-wide component which describes the development strategy of the governing body, the major objectives the governing body seeks to accomplish, the priorities it has established, the factors taken into account in selecting areas for treatment and the anticipated public and private sources of funds necessary to conduct the treatment of each area selected. In addition, the plan should contain the following component strategies:

(A) *Neighborhood revitalization*: The strategy for alleviating physical deterioration, maintaining viable neighborhoods and stimulating investment to upgrade neighborhoods affected by blight and deterioration.

(B) *Housing*: The community-wide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. Reference to any current Department of Housing and Urban Development approved housing assistance plan would be helpful as part of this component strategy.

(C) *Economic development*: The strategy for attracting private investment in the business community and for solving the critical problems which may be the result of a stagnating or declining tax base or from population outmigration.

(iii) Evidence must be presented from the local governing body verifying that the community has adopted, through resolution or other official act, the community development and housing plan referenced in paragraph (r)(6)(ii) of this section. A copy of the adopted plan should be made available to FmHA or its successor agency under Public Law 103-354. While it is not necessary that the downtown redevelopment/revitalization area be formally

designated as an urban renewal or other similar area, evidence supporting a local determination that the downtown business area meets the criteria established in the community development and housing plan must be maintained in the locality's records. Documentation received from the local governing body must also identify the site or structure involved in the applicant's proposal as part of or essential to the downtown redevelopment/revitalization area.

(iv) Evidence must be presented to FmHA or its successor agency under Public Law 103-354 verifying the intended commitment of public and private resources which will be available for completing any other integrally related redevelopment/revitalization activities being undertaken in the downtown business area along with the applicant's proposed project.

(v) Prior review and concurrence must be received from the National Office before the State Director or servicing official authorizes the applicant to develop a complete application. All of the information required in paragraph (r)(6) of this section must be provided by the applicant before National Office review.

(7) The property for which a loan is made must be located in a rural area as defined in 7 CFR 3550.10. However, if the area where the site is located has changed from rural to nonrural in accordance with the most current official census figures, loan requests received before the date the area was determined nonrural will be processed as expeditiously as possible and loans closed if the applicants are otherwise eligible. Such loans must still be eligible and feasible, and processed in accordance with §1944.231 of this subpart.

(s) *Clean Air Act and Water Pollution Control Act Requirements*. When the contract exceeds \$100,000, the contractor will comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR part 15 which prohibit the

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awarding of nonexempt Federal contracts, grants or loans to facilities included on EPA's list of violating facilities. The contractor will report violations to the EPA.

(t) *Concurrence with construction contracts.* A construction contract between the borrower and contractor for development of a project will contain a provision that it is not in full force and effect until the State Director concurs in writing in the form, content and execution of the contract. Before loan closing or before the start of construction, whichever occurs first, the State Director or his/her delegate will concur with the contract form, content and execution by including the following paragraph at the end of the contract:

"The Farmers Home Administration or its successor agency under Public Law 103-354, as a potential lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, hereby concurs with the form, content, and execution of this contract."

Date _____
Farmers Home Administration or its successor agency under Public Law 103-354
By: _____
Title: _____

(u) *Historic preservation requirements.* The servicing official must take the necessary action to assure that the applicant will comply with the provisions of subpart F of part 1901 of this chapter. This regulation concerns compliance with the National Historic Preservation Act of 1966, the Archeological and Historic Preservation Act of 1974 (Public Law 93-291), and Executive Order 11593 dated May 13, 1971.

(v) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Public bodies and agencies which have the power of eminent domain and/or condemnation must comply with the requirements of this Act. The applicant must provide assistance for relocation of displaced persons from a site on which a project will be located. RHS loan funds may be increased over and above the appraised value of the property to cover costs incurred in the relocation of displaced persons. Until instructions are published by the National Office, the Department regulations found at part 21 of this title should be followed and the National Of-

fice should be consulted for guidance in developing an RRH or RCH loan for a project affected by this Act. Generally, if there are alternative sites of equal quality which meet the Agency's requirements, the site with the least relocation impact will be selected.

(w) *Rental assistance (RA) and market feasibility.* (1) As evidence of market feasibility, an applicant that proposes a project which is expected to use RHS RA units will only be required to demonstrate that a market exists for tenants or members eligible for the RA.

(2) To evidence market feasibility for projects which are expected to use RA from sources other than RHS, applicants will be required to demonstrate that:

(i) The assistance will be provided for at least 5 years.

(ii) A market exists for persons and families eligible for the assistance. The amount of the RA to be provided must be considered when determining the number of families that would be income eligible for the project.

(iii) For the term of the loan remaining after RA is no longer available, an adequate rental market exists for the project without the assistance.

(iv) During the term of the RA contract, the provider will make available the amounts required at least annually.

(3) Feasibility for projects receiving tax credits will require a more extensive examination since tax credits are predicated on renting to very-low income persons. Applicants choosing to apply for tax credits will be responsible for identifying the amount of tax credits it anticipates requesting from the State, as well as the income percentage on which the credits will be based, and the percentage of units targeted for tax credit eligible persons. The market study must substantiate the presence of persons whose incomes would qualify for tax credits who cannot afford the basic rent and those persons whose incomes are tax credit eligible but who are still able to afford the basic rent.

(x) *Civil Rights Impact Analysis.* It is the policy within the Rural Development mission area to ensure that the consequences of any proposed project

approval do not negatively or disproportionately affect program beneficiaries by virtue of race, color, sex, national origin, religion, age, disability, or marital or familial status. To ensure compliance with these objectives, the RHS approval official will complete Form RD 2006-38, "Civil Rights Impact Analysis Certification."

[56 FR 65981, Dec. 20, 1991, as amended at 58 FR 38924, July 21, 1993; 58 FR 40953, July 30, 1993; 58 FR 44265, Aug. 20, 1993; 59 FR 6887, 6897, Feb. 14, 1994; 59 FR 49346, Sept. 28, 1994; 61 FR 39851, July 31, 1996; 62 FR 25067, 25075, May 7, 1997]

§§ 1944.216–1944.220 [Reserved]

§ 1944.221 **Security.**

(a) *Mortgage.* Each loan will be secured in a manner that adequately protects the financial interest of the Government. A first mortgage will be taken on the property purchased or improved with the loan, except as indicated in paragraphs (a)(1) and (a)(3) of this section and, for projects that are funded jointly by RHS and other sources, as indicated in §1944.233(f).

(1) A second mortgage will be taken on a site developed with prior loan(s) when a subsequent loan is made to complete or finish out units on the site or when a second initial loan is made to develop units on a contiguous site.

(2) Personal liability will not be required for the members or stockholders of any corporation or trust or any partners in a limited partnership. Personal liability will be required of all members of other partnerships. For limited partnerships, the State Director will obtain the advice of the Regional Attorney as to any modifications needed in the promissory note and mortgage.

(3) If it is impossible or inadvisable for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible.

(b) *Financing statement.* To secure the FmHA or its successor agency under Public Law 103-354 loan, each borrower will execute Form FmHA or its suc-

cessor agency under Public Law 103-354 440-25, "Financing Statement," and a security agreement at loan closing pledging all revenue from the housing project. This includes any FmHA or its successor agency under Public Law 103-354 RA payments State or private RA payments and/or rent or occupancy payments.

(c) If a bond is used in lieu of a promissory note to evidence a loan, it must be sent to the National Office for review prior to loan closing. OGC must also review the proposed bond.

[53 FR 2159, Jan. 26, 1988, as amended at 56 FR 2238, Jan. 22, 1991; 62 FR 25075, May 7, 1997]

§ 1944.222 **Technical, legal, and other services.**

(a) *Appraisals.* When real estate is taken as security, the property will be appraised without regard to such factors as race, color, religion, sex, handicap, marital or familial status, or National origin, and it is unlawful to use an appraisal where the person knows, or reasonably should know, that the appraiser improperly took into consideration the factors indicated above. Appraisals for FmHA or its successor agency under Public Law 103-354 will be done by the multiple housing appraiser or a designated contract appraiser authorized to make real estate appraisals. If security involves less than five rental units, the property will be appraised under subpart C of part 1922 of this chapter. For security involving five or more rental units, the appraisal will be made under FmHA Instruction 1922-B (available in any State or servicing office). Form FmHA or its successor agency under Public Law 103-354 1922-7, "Appraisal Report for Multi-Unit Housing," will be completed to show the depreciated replacement value of all the buildings existing or to be constructed on the property to be taken as security.

(b) *Architectural and engineering services.* (1) Housing and related facilities will be planned and developed in accordance with subparts A and C of part 1924 of this chapter. The housing will be designed to meet the needs of the types of persons who will likely occupy it.