

effort to attract applications for housing from all groups in the market area determined least likely to apply for the available housing. If it is anticipated that applications for housing may result in a concentration of occupancy by race, color, religion, sex or national origin, outreach efforts will be extended to persons who would not be expected to apply for the housing. The efforts will be conducted for a reasonable period of time prior to the normal period for receipt of applications and commencing not less than 90 days prior to project completion.

(3) Prior to initial occupancy by any person, the servicing official and the applicant will reconvene to assess implemented marketing activity by thoroughly reviewing the marketing plan, and the extent of achievement of plan objectives. If original marketing concepts prove to be less than effective and/or if there are changes in the housing market, the applicant may be required to modify the marketing plan for the project. If the servicing official determines that the applicant is in noncompliance with the plan and a modification to the plan is not warranted, the matter will be referred to the FmHA or its successor agency under Public Law 103-354 Administrator, attention Equal Opportunity Staff Director, through the State civil rights coordinator.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 26590, July 14, 1988; 54 FR 39728, Sept. 28, 1989; 55 FR 29561, July 20, 1990; 56 FR 2240, Jan. 22, 1991; 56 FR 67483, Dec. 31, 1991; 57 FR 36590, Aug. 14, 1992; 58 FR 40953, July 30, 1993; 58 FR 44272, Aug. 20, 1993; 59 FR 6890, 6896-6897, Feb. 14, 1994; 59 FR 54788, 54789, Nov. 2, 1994; 62 FR 25065, May 7, 1997]

#### § 1944.236 Loan closing.

(a) *Applicable regulations.* RRH loans will be closed in accordance with subpart B of part 1927 of this chapter and any State supplements. Loan dockets for organizations and, in special cases, dockets for individuals will be sent through the State Office to OGC for closing instructions. A profit or limited profit organization or individual applicant may use any designated attorney or title insurance company to close the loan in accordance with the applicable loan closing instructions if

the attorney or title insurance company and its principals or employees are not members, officers, directors, trustees, stockholders or partners of the applicant entity. Nonprofit organizations may use a designated attorney who is a member of their organization if the cost is in accordance with § 1944.212(j) of this subpart.

(b) *Mortgage.* Unless OGC determines the Form to be inappropriate, Form FmHA or its successor agency under Public Law 103-354 1927-1 (state), "Real Estate Mortgage for \_\_\_\_\_," will be used. For loans to organizations, Form FmHA or its successor agency under Public Law 103-354 1927-1 will be modified as prescribed by or with the advice of OGC with respect to the name, address, and other identification of the borrower, the style of execution and the acknowledgement.

(1) The mortgage or other instrument will contain the following covenant:

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 and the regulations issued pursuant thereto for as long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for as long as the purchaser owns it, whichever is longer.

(2) When a loan resolution or loan agreement is used, include an additional paragraph in the mortgage to read as follows:

This instrument also secures the obligations and covenants of borrower set forth in borrower's Loan Resolution (Loan Agreement) of (Date), which is hereby incorporated herein by reference.

(3) For a loan to an individual when a loan agreement is not used, additional paragraphs will be included in the mortgage to read as follows:

(i) "Occupancy of the housing and related facilities on the property will be limited to eligible tenants as defined in the regulations of the Farmers Home Administration or its successor agency under Public Law 103-354 unless the Government gives prior written approval to other occupancy."

(ii) "As required by the Government: Borrower will permit the Government to inspect and examine the operation

of the housing and the books, records, and operations of borrower; submit regular and special reports pertinent to the purpose of the loan or the Government's financial interest; subject rents and charges and other terms of rental agreements with tenants of the housing, and compensation to employees connected with its operation, to prior approval by the Government, or to adjustment at the direction of the Government when necessary in its judgment to carry out the purpose of the loan or protect its financial interests; and comply with any other requirements which in the discretion of the Government are reasonably appropriate to the purpose of the loan or protection of the Government's interests. Revenue from the housing will be first used to pay operation and maintenance costs of such housing and to make adequate provision to meet required payments as they become due on the FmHA or its successor agency under Public Law 103-354 rural rental housing loan."

(4) For a loan to a limited partnership, the following nonrecourse language should be inserted, subject to modification by the OGC:

No partner, either general or limited, will have any personal liability for the payment of all or any part of the indebtedness.

(5) For all section 515 RRH and RCH loans used to build or acquire new units made pursuant to a contract entered into on or after December 15, 1989, the following language will be included in the mortgage:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 515 of title V of the Housing Act of 1949, and FmHA or its successor agency under Public Law 103-354 regulations then in effect during the full term of this mortgage. No eligible person occupying the housing will be required to vacate nor any eligible person denied occupancy for housing prior to the close of such period because of a prohibited change in the use of the housing. A tenant or person wishing to occupy the housing may seek enforcement of this provision as well as the Government.

(6) For the following categories of loans, the language set forth in exhibit A-1 or A-2, as appropriate, of subpart E of part 1965 of this chapter will be in-

cluded in the mortgage instead of the language contained in paragraph (b)(5) of this section:

(i) Equity loans made to avert prepayment.

(ii) Subsequent loans to nonprofit organizations or public agencies made in conjunction with transfers to avert prepayment.

(iii) Subsequent loans for any purpose other than to build or acquire new units.

(7) Additional guidance on closing transfers and loans to nonprofit corporations and public agencies to avert prepayment is contained in §1965.217(e) of subpart E of part 1965 of this chapter.

(c) *Promissory note.* (1) Form FmHA or its successor agency under Public Law 103-354 1944-52, "Multiple Housing Promissory Note," will be used. Regular amortized payments for principal and interest will be scheduled on a monthly basis. Instruction for preparation in the FMI for the note will be followed.

(2) The amount to be shown on the note will be obligated amount as shown on Form FmHA or its successor agency under Public Law 103-354 1944-51, "Multiple Family Housing Obligation-Fund Analysis." The note will be dated the date of loan closing except as authorized in subpart B of part 1927 of this chapter. If the first day of the month falls on Saturday, Sunday or a holiday, the note may be dated the first, loan closing will be the last working day prior to the first and the closing documents will be filed on the first working day following the first.

(3) Payments on loans will be scheduled on the note in accordance with the FMI and as provided in §1944.215(c) of this subpart.

(4) The note(s) will be signed in accordance with the FMI and subpart B of part 1927 of this chapter.

(5) All loans will be closed on PASS as described in subpart K of part 1951 of this chapter. If the loan is a subsequent loan, all other loans on the project must be converted to PASS.

(6) All loans to be secured by revenue bonds or other forms of security other than a real estate mortgage or deed of trust will be sent to the National Office

prior to loan approval with all necessary information for review and further instructions.

(d) *Recorded mortgage.* When the real estate mortgage is returned by the recording official, the servicing official will retain the original in the borrower's case folder. If the original is retained by the recording official for the county records, a conformed copy, including the recording data showing the date and place of recordation and book and page number, will be prepared and filed in the borrower's case folder. A copy of the mortgage, conformed as to all matters except the recording date, will be delivered to the borrower.

(e) *Date of closing—establishment of account.* (1) A loan is considered closed when the security instrument is filed of record or, if no security instrument is record, when the loan funds are deposited in the supervised bank account or otherwise made available to the borrower after the borrower executes and delivers the note any and other required instruments.

(2) After the loan is closed, the account and case folder will be established at the servicing office following the requirements of FmHA Instructions 1905-A and 2033-A (available in any FmHA or its successor agency under Public Law 103-354 office).

[53 FR 2159, Jan. 26, 1988, as amended at 56 FR 2240, Jan. 22, 1991; 56 FR 67483, Dec. 31, 1991; 58 FR 38925, July 21, 1993; 59 FR 6890, 6896-6897, Feb. 14, 1994]

#### § 1944.237 Subsequent loans.

(a) A subsequent loan is made to an applicant/borrower to complete, improve, repair, and/or make modifications to the project initially financed by FmHA or its successor agency under Public Law 103-354, or for equity and/or other purposes when authorized by the provisions of subpart E of part 1965 of this chapter to avert prepayment. A subsequent loan to develop additional units must compete for funding in accordance with § 1944.231 of this subpart. Other subsequent loan requests do not have to compete for funding.

(b) If the designation of an area changed from rural to nonrural after the initial FmHA or its successor agency under Public Law 103-354 loan was made, a subsequent loan can be made,

only to make necessary improvements and repairs to the property or for equity and other purposes when necessary to avert prepayment.

(c) In case where the loan is to complete the original housing under the initial FmHA or its successor agency under Public Law 103-354 loan:

(1) If the applicant/borrower provided an initial investment greater than required under the initial FmHA or its successor agency under Public Law 103-354 loan, the excess may be credited toward the required amount of the initial investment of the subsequent loan per § 1944.213 (b) of this subpart; the applicant/borrower should only be required to put up additional funds for this purpose if needed. The same applies to initial Operating and Maintenance (O and M) requirements.

(2) If the initial investment and 2 percent O and M amounts are sufficient to cover only the initial FmHA or its successor agency under Public Law 103-354 loan, the applicant/borrower must provide the additional respective amounts to cover the subsequent loan. The 2 percent O and M amounts must be in the form of cash as described in § 1944.211 (a)(6) of this subpart. The required amount of the initial investment is described in § 1944.213 (b) of this subpart.

(d) If the loan is to repair and/or improve an existing project which has been in operation for some time, then:

(1) The applicant/borrower should not be required to provide the initial 2 percent O and M amount since its purpose is to cover project start-up costs.

(2) The applicant/borrower must provide the initial investment per § 1944.213(b) of this subpart unless it provided more than the required initial investment when the loan was made. When the applicant/borrower has more than the required amount invested in the initial loan, the excess may be credited toward the required investment for the subsequent loan. The applicant/borrower should be required to contribute additional funds only if needed. The applicant/borrower will not be given consideration for any increased equity or value that the property may have since the date of the initial FmHA or its successor agency under Public Law 103-354 loan.