

regulations regarding the processing of preapplications for Rural Rental Housing (RRH) assistance. This action is necessary to decrease costs associated with the program and to reduce program vulnerability. The intended effect is to improve credit quality and to make our regulations more responsive to the prudent development of RRH complexes in rural America.

EFFECTIVE DATE: March 14, 1994.

FOR FURTHER INFORMATION CONTACT: Gail McCowan, Senior Loan Specialist, Rural Rental Housing Branch, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, Room 5337—South Agriculture Building, Washington, DC 20250, telephone (202) 720-1608.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this final rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this final rule:

- (1) Would have an effect on the economy of less than \$100 million;
- (2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
- (3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and
- (5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Environmental Impact Statement.

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1949, Public Law 91-90, an Environmental Impact Statement is not required.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 2015, subpart V, programs 10.415 Rural

Farmers Home Administration

7 CFR Parts 1924, 1930, and 1944

RIN 0575-AB08

Cost Containment and Vulnerability

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its

Rental Housing Loans and 10.427—Rural Rental Assistance Payments are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0575-0042 and 0575-0033 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The information collection contained in 0575-0047 will not become effective until approved by OMB. Please send written comments to the Office of Information Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, FmHA, AG Box 0743, Washington, DC 20250.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Numbers 10.415, Rural Rental Housing Loans and 10.427, Rural Rental Assistance Payments.

Background

During its audits of FmHA's identity of interest construction cost certification process, the Office of Inspector General found many instances where borrowers were taking advantage of loopholes in FmHA regulations. This resulted in the loss of Government funds through excess profit being paid to paper contractors, failure of the borrowers to reveal identities of interest with related parties, failure on the part of CPA's to adequately perform cost certifications, and numerous other discrepancies of varying severity, all of which have had detrimental effects on the program. OIG reviewed the proposed changes to the regulations and voiced its support for the proposed changes as a mean for reducing fraud, waste, and abuse in the 515 program.

Discussion of Comments

The proposed rule, published in the Federal Register (57 FR 27379-27394) on June 19, 1992, provided for a 60-day comment period ending August 18, 1992. One hundred and twenty-one comments were received during the comment period from the public and from FmHA field employees.

Comments

Implementation Proposal

FmHA has stated that all preapplications and applications on hand will be subject to the final rule with the exception of applications whose plans and specifications have been finalized.

Several persons agreed that preapplications and applications not be "grandfathered" except for those which have received an AD-622 and which are within the District's 150 percent loan approval authority. Other persons objected to not "grandfathering" because of the expense already incurred in developing an application.

Since applicants have already invested substantial sums of money in the development of building plans, FmHA has reconsidered this position. Building plans included with preapplications which have been issued an AD-622 inviting a formal application will not be affected; all other material associated with preapplications will be subject to the provisions of the final rule.

FmHA Instruction 1924-A

1. Section 1924.10 (c)(2)(i)

Comment: Comments were received concerning the requirement that all transfers of funds between line items would require the approval of the servicing official using Form FmHA 1924-7. The general feeling is that estimates are merely estimates and will fluctuate during the construction period. To require the servicing official to approve change orders for every line item change would cause a major paperwork burden on both the contractor and FmHA.

FmHA response: The Agency recognizes the volume of paperwork and delay involved with this requirement. FmHA will, instead, implement a means to flag significant variances in line item costs. Increases or decreases at or above a 15 percent threshold will require documentation from the borrower to justify the differences. The State Director will also have the authority to require documentary justification for less than 15 percent variances if he/she deems it necessary. The documentation will be required at the time the project is cost certified so that construction will not be delayed.

2. Section 1924.13(a)(3)

Comment: Most persons agreed that architectural fees should be reduced when less than full architectural services are provided. It was suggested that it would be appropriate to establish

a range of fees covering a range of similar services. It was also pointed out that an acceptable design in one place can involve a redraw in others due to local code interpretations.

FmHA response: The intent of this requirement is for those instances where the applicant uses a set of plans that has previously been used. Even if a new site requires some modification to adapt the building to the site, it will not require a complete redraw of the building. While there can be no hard and fast rules set by Washington as to the degree of revision needed to qualify the architect for full services, this can be determined at the State level. Compensation is expected to reasonably represent the value of the architect's services to the owner.

3. Section 1924.13(e)(1)(iii)(B)(3) and 1924.13(e)(2)(i)(D)

Comment: A number of persons suggested that more training be provided to FmHA field staff in analyzing the financial statement to determine whether there is sufficient "financial strength to carry out all phases of construction." Another suggestion was that FmHA require a performance and payment bond from all contractors, in which case the credit worthiness will have been determined by a surety company. Several persons pointed out the fact that credit reports do not reflect the financial strength of the contractor.

FmHA response: FmHA has completed phase one of a two phase training program in the proper analysis of financial reports. The training is being conducted by an outside accounting firm and involves State, District, and National Office personnel. We recognize that requiring a payment and performance bond from all contractors would probably eliminate the small yet qualified contractor from participating in the 515 program. Based on the comments that a credit report is not the vehicle through which financial strength can be determined, FmHA will require that each contractor provide a financial statement of its operations. The financial statement will be analyzed to determine if the contractor has the financial strength to pay construction bills prior to obtaining draws from the lender. Language relating to the submission of a financial statement has been added to this section. A credit report will still be required from all contractors.

4. Section 1924.13(e)(1)(iv) and 1924.13(e)(2)(i)(G)

Comment: There was some opposition to eliminating the price of cost certifications from the contract.

FmHA response: FmHA deleted this cost from this section because it intended to contract for cost certifications itself. This would have eliminated the need for including the cost in the construction contract since they would be paid from Agency funds. It has now been determined that the Agency will be unable to contract for all cost certifications, so the previous language pertaining to cost certification expenses has been restored to this section to cover those situations where the borrower will be required by FmHA to obtain the certification.

5. Section 1924.13(e)(1)(v) and 1924.13(e)(1)(v)(E)

Comment: Several persons agreed with the proposal that FmHA contract directly for cost certifications. The most consistently expressed concern was about the delay in the Government contracting process, resulting in increased interim interest expense. There was also some concern about the burden this proposal would place on FmHA. There was a suggestion to have FmHA contract with a CPA to review and/or audit a certain percentage of the cost certifications within the State each year. Also, one person suggested that FmHA allow contracts between the CPA and the contractor when the CPA can certify that he/she has no other relationship with the contractor except for the cost certification. Comments from other persons stated that the ongoing working relationship between the borrower and the CPA is a definite advantage since the CPA is familiar with the accounting system and procedures of the borrower. They felt that having full-time access to the CPA who is responsible for monitoring the construction cost recording process would allow for timely maintenance of records. An FmHA-contracted auditor would not have this familiarity with the borrower's books. One respondent suggested that FmHA publish a guide to tell CPA's how FmHA wants the cost certifications performed and reported. One suggestion is that instead of contracting for cost certifications directly, FmHA should strengthen its ability to debar an incompetent CPA. Another respondent suggested that FmHA establish a list of CPA's who have been designated as acceptable for cost certification. One suggestion was that FmHA make a judgment of whether the borrower's cost certification is

satisfactory instead of hiring the CPA directly.

FmHA response: FmHA has worked with the Office of Inspector General to develop an audit program which CPA's will follow in performing cost certification audits. During recent OIG audits of cost certifications prepared on FmHA-financed rental housing projects, it was discovered that many CPA's were not maintaining the independence required by generally accepted auditing standards. It is obvious from some of the comments that some CPA's who are cost certifying construction costs have also been involved in the maintenance of the borrowers' construction records. FmHA will not have sufficient contracting funds to cover the cost of all certifications; therefore, it anticipates contracting for all certifications on loans of \$1.5 million and over and a random sampling of all other loans. Details will have to be worked out in the contracting process to prevent undue delay in closing loans. In the event FmHA does contract for a cost certification, the borrower will not be responsible for providing a certification since that would duplicate energies and expenses. Any funds earmarked in the loan for cost certification but which are not needed because of an FmHA-contracted certification will be returned on the loan and may not be used for any other purpose.

6. Section 1924.13(e)(1)(v)(A)

Comment: There was some confusion about whether FmHA would be contracting with the CPA who examines the borrower's accounting system or just with the CPA who performs the cost certification. A suggestion was offered that the borrower provide a written assertion that it has an accounting system which complies with the regulations. The cost certification CPA would then report on the validity of the assertion.

FmHA response: It was the intent of this proposal that the borrower's CPA be responsible for verifying that the borrower's accounting system meets the requirements of the regulation so that this responsibility can be removed from FmHA field personnel. Since the Agency does not have accountants on staff, we do not feel we have the expertise to adequately check the borrower's accounting system. We agree with the suggestion that the borrower be allowed to provide a written assertion on the accounting system and that the cost certification CPA report on its validity. This section has been rewritten to incorporate that suggestion.

7. Section 1924.13(e)(1)(v)(B), 1924.13(e)(2)(iv), and 1924.13(e)(2)(viii)(B)

Comment: There was a question as to whether FmHA intends to reduce builder's profit when costs of line item are increased. Another respondent wondered if it is the intent of FmHA to restrict the amount of each line item to the estimated amount. Several persons objected to the restriction of general requirements to the estimated amount. One respondent recommended that any cost savings from project construction be returned on the loan and that the loan be reamortized to reflect a decrease in tenant rent.

FmHA response: FmHA intends that builder's profit be reduced when the total costs of the line item costs exceed their estimates and would result in an increase in the contract amount. The amounts for general overhead, profit, and general requirements will be restricted to their estimated amounts, not the line items to their estimated amounts. FmHA believes that the estimates for general requirements can be accurately determined prior to the start of construction and not deviate significantly thereafter. We do not feel this would result in an undue burden on the borrower. A refund of loan funds can be used to reamortize the loan if it can be shown that the amount refunded will reduce the rents and an exception to the 10 percent requirement has been granted by the National Office.

8. Section 1924.13(e)(1)(v)(C) and 1924.13(e)(2)(viii)(A)

Comment: There was some objection to requiring the borrower to agree that the tests conducted will include FmHA audit requirements. One respondent has recommended that the language be changed to refer to FmHA 1924-A instead of "FmHA regulations" and has provided FmHA with suggested language for this section.

FmHA response: Because of the problems with how cost certifications are conducted, as revealed by OIG, FmHA felt it necessary to institute additional instructions to the CPA/LPA's which are intended to provide uniformity in the examination of construction costs. FmHA sought advice and assistance from the American Institute of Certified Public Accountants in developing the additional instructions referred to as the Audit Program. The Audit Program will be available in FmHA offices. It is FmHA's intent that the borrower recognize the Audit Program and to ensure that the auditor include its requirements in the cost certification process. The language

of this section has been reworded as recommended by AICPA. FmHA has changed the reference from FmHA regulations to FmHA Instruction 1924-A.

9. Section 1924.13(e)(1)(v)(D)

Comment: One respondent objects to the auditor having to certify that he/she has no financial interest in or with the applicant/owner-builder, architect, engineer, attorney, contractor, etc., since Government Auditing Standards prohibit such an identity of interest. Two respondents pointed out an inconsistency in the suggested CPA opinion letter since one paragraph refers to Generally Accepted Government Auditing Standards (GAGAS) and another refers to General Accepted Accounting Principles (GAAP).

FmHA response: Even though the Government Auditing Standards prohibits identities of interest between CPA's and the applicant, architect, engineer, attorney, contractor, etc., OIG audits have revealed apparent close relationships exist between some CPA's and borrowers. Certain CPA's have not maintained an independence from the borrower as required by Government Auditing Standards. There is no inconsistency in the suggested opinion letter since GAGAS pertains to the audit of the construction costs and GAAP pertains to the accounting system which the borrower uses in recording construction costs. OIG has submitted a sample auditor's report which is incorporated in the Audit Program and available in any FmHA office.

10. Section 1924.13(e)(1)(v)(F)

Comment: The opinion was expressed that the CPA who reviews the borrower's accounting system be allowed to cost certify. Also, costs will be duplicated if the borrower has to hire a CPA in addition to FmHA contracting for CPA services. There was objection to denying the right of a CPA to cost certify when that CPA is currently handling the contractor's accounting.

FmHA response: It was originally FmHA's intent that the CPA who reviews the borrower's accounting system not cost certify the project after construction. This was primarily due to the fact that OIG audit findings revealed a lack of independence between CPA's and borrowers. We have reconsidered this prohibition and will allow the same CPA who sets up or examines the borrowers accounting system to certify construction costs. However, the CPA who provides any accounting services to the borrower during construction will not be allowed to cost certify the project. To do so would be a violation

of rules of independence set forth in Government Auditing Standards.

11. Section 1924.13(e)(1)(v)(G)

Comment: There was one objection to using the new forms since the respondent felt FmHA already has an identity of interest statement in use.

FmHA response: The purpose of the new forms is twofold; one to require all borrowers to disclose all identities of interest and the other to identify "paper companies." The identity of interest statement itself has been changed to also include other related parties. The forms also provide notification to all affected parties of the penalty for falsifying the documents. FmHA feels these forms are needed.

12. Section 1924.13(e)(1)(v)(H)

Comment: One respondent objected to having to report a discount or rebate when the original line item costs were based on the discounted amount. Another person offered the rationale that rebates and discounts are incentives to buy "right" and to pay bills on time and that FmHA is attempting to remove these incentives. One respondent requested clarification of the next to last sentence in this section. The general objection was voiced about reducing profit to agree with the reduction in line item costs of construction. One person felt that contractors would use the pretext of obtaining a rebate or discount in order to not contribute additional funds to cover the increase in line item costs. One respondent supported this section.

FmHA response: After due consideration, FmHA has decided that this section more appropriately pertains to multiple advance loans where payments are made by FmHA and the amount of any discounts or rebates will be deducted before invoices are paid. If discounts or rebates are given after the invoices are paid, the funds will be returned to the supervised bank account. Therefore, this section has been amended to delete reference to discounts and rebates.

13. Section 1924.13(e)(1)(v)(I)

Comment: The reference to the HUD regulatory language apparently has caused some confusion since it was merely referenced. One respondent wanted to know if the general contractor has to hammer nails in order to be performing work. Another respondent felt that subcontracting out all or nearly all of the work is a typical and accepted practice. One respondent suggested that this provision be waived if it can be demonstrated that it is to the benefit of the property. One person questioned

whether this provision will pertain to everyone or just in those cases where identity of interest exists; if it pertains to everyone, then this section should be taken from the cost certification portion of the regulation. One respondent requested that we provide a definition of "actual construction." Two respondents requested that a distinction be made between work on new construction and work on a rehabilitation. One respondent agreed with this section.

FmHA response: To eliminate confusion, the reference to the HUD regulation has been removed from this section. OIG audits have found repeatedly that persons who identified themselves as the construction contractor were not qualified to build the project or, for some reason, did not build the project. They, instead, subcontracted out all or most of the construction and still took a full builder's profit. FmHA adamantly opposes the payment of profit to anyone who does not perform the full range of duties of a general contractor. This section does not prohibit a contractor from subcontracting out any or all of the work as long as that contractor does not receive a builder's profit. The Agency has no objection to the contractor being paid for services rendered. FmHA does not foresee any situation where waiver of this provision will benefit the property. This section pertains only to identity of interest borrowers and will remain in this location. For purposes of clarification, we are defining "actual construction" to mean "work" as defined in A.I.A. documents: "... labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations." Irrespective of whether the project is new construction or rehabilitation, the general contractor should not expect to receive a builder's profit if he/she has not performed the full ranges of responsibilities of a general contractor.

14. Section 1924.13(e)(1)(v)(J)

Comment: There was agreement that FmHA implement these new forms. One respondent suggested that more specific requirements be added such as years in business, work performed other than on FmHA-financed.

FmHA response: The new Form FmHA 1944-31 will require the entity to disclose number of years in business. We do not feel that identification of work performed on other than FmHA-financed projects is necessary since the entity is certifying that it is an on-going business.

15. Section 1924.13(e)(1)(vii)(B)(1) and 1924.13(e)(2)(iii)(A)

Comment: One respondent expressed an opinion that this section will eliminate the smaller developers. There was some feeling that this would discourage the participation of owner-builders or that it will cause undue delay in the processing of the preapplication. One respondent recommended that the determination of whether to grant an exception to competitive bidding be made at the application stage rather than at the preapplication stage. One respondent misinterpreted this section to mean competitive bids would be granted rather than the negotiated contracts.

FmHA response: The only new language added to this section requires that FmHA document, in writing, the examination required prior to the State Director granting an exception to competitive bidding. We do not feel that small developers are any more at risk now than before the change since the requirement is not new to this revision. FmHA agrees that the determination of whether to grant an exception to competitive bidding be made during the application stage and have changed the language to reflect this requirement. The correct meaning of this section is that negotiated contracts may be allowed once the State Director has determined all requirements for granting an exception to competitive bidding have been met.

16. Section 1924.13(e)(2)(i)(C)

Comment: One respondent wanted to know under what circumstances will cost estimation services be required and asked where else in the regulation this subject is discussed. Another respondent raised issues which appear to be unrelated to this section and we could not determine to which section the comment referred. Other comments pertain to the deletion of cost certification fees which was previously discussed under § 1924.13(e)(1)(iv).

FmHA response: The existing regulation contained a provision for cost estimation services to be used if FmHA did not agree with the owner-builder's estimate. This was seldom, if ever, imposed. Our recent test of using estimating services proved to be unreliable and inconsistent. The reference to cost estimation has been removed from the regulation.

17. Section 1924.13(e)(2)(iv)

Comment: One respondent suggested that allowances for general overhead, general requirements, and a builder's profit be based on a regional cost rather than on a State average.

FmHA response: This section states that the amounts may be determined by local investigation and also from HUD data for the area. It does not mention a State average.

18. This Respondent Refers to 1924.13(e)(1)(vii)(D)

There is no such section in FmHA Instruction 1924-A.

19. Section 1924.13(e)(2)(viii)

Comment: One respondent asked if the requirement that projects have their costs "audited by FmHA" refers to cost certification contracted by FmHA, OIG or other FmHA audit. Another respondent points out that this section contains a cost certification cutoff for projects of \$350,000 or more and expresses an opinion that there should be no difference between identity of interest and owner-builder. One respondent points out that a FmHA 1924-13 is mandatory for all loans of over \$350,000 and that if the loan is publicly bid this form should not be mandatory.

FmHA response: The reference to "audited by FmHA" falls within the same provision that was discussed earlier concerning FmHA contracting for all cost certifications. The respondent is correct in his observation concerning the \$350,000 cutoff for owner-builders. All owner-builders are identity of interest entities which automatically require a cost certification. The reference to \$350,000 has been removed from this section. FmHA regulation 1944-E now requires that all applicants submit Form FmHA 1924-13 to facilitate the tracking of line item costs in the Agency's upcoming computerized cost tracking system. This applies to all applicants regardless of whether or not an identity of interest is involved.

20. Section 1924.13(e)(2)(viii)(B)

Comment: One respondent suggested that further clarification be added to the section regarding amounts for general overhead, general requirements, and builder's profit as being treated as individual and separate line items amounts or whether all three should be combined, thus eliminating the need for Administrative Notice explanation. Another comment did not appear to pertain to this section.

FmHA response: The Administrative Notice issued on this subject addressed the percentages for establishing separate amounts for general overhead, general requirements, and builder's profit; this section refers to the dollar amounts which are established as a result of the percentage calculation. The FmHA 1924-13 requires that these three items

be listed separately. This section refers to establishing dollar amounts for general overhead, general requirements, and builder's profit and that actual costs for those three items will not exceed their dollar estimates. Language addressing the allowable percentages for general overhead, general requirements, and builder's profit has been added to § 1944.215(a)(1) of subpart E of part 1944.

21. Section 1924.13(e)(2)(viii)(C)

There was one comment and the respondent expressed agreement with this section.

22. Section 1924.13(e)(2)(viii)(D)

Comment: One respondent expressed agreement with this section. Another respondent requested clarification of the reference to HUD regulation.

FmHA response: The reference to the HUD regulations has been dropped from this section as discussed under § 1924.13(e)(1)(v)(I), above.

1944-E

1. Section 1944.211(a)(3)

Comment: A number of objections were expressed to limiting the number of preapplications to five. Several respondents supported this proposal. The reasons were many and too numerous to list. One respondent suggested that the limitation be based on applications and not preapplications and that the number be controlled on a State basis. Many persons suggested that the number of preapplications be based on the financial capacity of the applicant and not on the number of preapplications. Other recommendations include a limit of from 3 to 15 preapplications; 5 preapplications and a nationwide limit of 10; 10 preapplications per District; 15 or 20 with no more than 5 funded and/or under construction at one time; and 10 preapplications nationwide except for preapplications accompanied by a deposit equal to 1 percent of the loan. Other respondents recommended no limit be set for preapplications or applications. Several persons recommended returning preapplications which cannot be funded within a set period of months.

To illustrate his objection to limiting the number of preapplications, one respondent sent several photographs of FmHA-financed apartment complexes which were not being properly managed. The respondent alleged that these apartments were owned by small developers and the photographs serve as an example of what would happen to the section 515 program if only small developers could participate.

FmHA response: The majority of comments were overwhelmingly opposed to restricting the number of preapplications. Therefore, the Agency is not undertaking any changes to this section at this time.

FmHA was concerned over the photographs and investigated the respondent's claim. In all cases, FmHA was taking action to correct the management deficiencies. In almost all cases, the developers of the subject apartments were not small developers. In the one case where the developer would be considered a small developer, the State did not feel the management problems were due to the fact the developer was not a large entity. Therefore, we do not consider this particular objection to the proposed rule to have merit.

2. Section 1944.211(a)(5)

Comment: One respondent expressed an opinion that requiring evidence that the borrower has or can obtain the 3 percent borrower contribution at the preapplication stage is premature and should not be required until prior to obligation.

FmHA response: The ability of the borrower to furnish the contribution is a criterion of eligibility. The Agency feels that eligibility must be established at preapplication stage. If that requirement were to be delayed until the loan is ready to be obligated, the applicant and FmHA would have invested far too much time and money to have the applicant determined not eligible. The 3 percent contribution was increased to 5 percent by the Community Development Act of 1992 for all projects whose members will receive benefits from Low Income Housing Tax Credits. The regulation has already been changed to reflect the increase in the equity contribution requirement.

3. Section 1944.211(a)(5)

Comment: Two respondents expressed the opinion that applicants should be required to furnish the 3 percent borrower contribution from its own resources.

FmHA response: Currently, borrowers have no personal financial obligation to serve as an impetus to seeing that the project operates successfully. We agree that such an obligation will encourage continued interest in overseeing the well-being of the project and it makes sense from a business standpoint. Therefore, FmHA agrees that applicants should furnish the 3 or 5 percent contribution from their own resources and have changed this section to reflect that requirement.

4. Section 1944.211(a)(7)(i)

Comment: Several comments were received concerning the requirement that the applicant provide sufficient cash to cover start-up costs and that a list of such materials and equipment be provided. It was felt that this was an attempt to disallow the use of letters of credit to cover the O&M expenses.

FmHA response: Currently, regulations allow borrowers to provide a letter of credit to cover the total amount needed for operating and maintenance expenses. FmHA has experienced a reluctance on the part of borrowers to draw on the letters of credit since doing so will incur interest expenses for which they are liable. Thus, there have been many instances where there were insufficient funds to cover needed start-up costs. Requiring the borrower to provide the requirement in cash will ensure the availability of adequate funds with which to cover these expenses. The Housing Act of 1949, as amended, states that "The Secretary may require that the initial operating reserve under this section may be in the form of an irrevocable letter of credit * * *". This language provides the Agency the option of whether to require letters of credit or to require the initial O&M in cash. FmHA has determined that more benefits will be derived by projects if cash is furnished for the operating reserves and, for this reason, has decided not to accept letters of credit.

5. Section 1944.212(b)

Comment: A number of comments were received concerning restricting rehabilitation loans to no more than 5 percent of the loan for new construction. Several of the respondents expressed their support for placing this limit on rehabilitation loans. Also, a couple of respondents suggested that FmHA eliminate purchase and rehabilitation of historic buildings altogether. Several respondents did not favor this proposal and misconstrued its intent as an attempt to eliminate rehabilitation of historic buildings.

FmHA response: The cost for purchasing and rehabilitating existing buildings has increased noticeably within the recent past and has, in some cases, exceeded the amount needed for constructing new units. FmHA feels it appropriate to establish a ceiling to ensure maximum use of loan funds. The excess cost of rehabilitation would be better spent to finance more units in other areas of need. Therefore, the Agency feels that a limit should be placed on the amount of Government funds being expended for rehabilitating

historic buildings. While the Agency does not wish to prohibit the purchase and rehabilitation of historic building, it feels that a ceiling is needed to prevent unlimited funds from being used for this purpose. The proposed regulation does not prohibit the borrower from infusing additional cash from its or other sources in order to fully fund the purchase and rehabilitation. FmHA's first consideration must be to providing rental units to its beneficiaries at the lowest cost to the tenants.

6. Section 1944.212(c)(1)

Comment: One respondent expressed an opinion that this section limits the basis of FmHA's maximum loan being 97 percent of total development cost or appraised value. Another respondent stated it does not appear there is a specific provision to accomplish what is required in this section. One respondent suggested adding clarification that FmHA can lend the present market value of the site "as improved" and that the cost of the improvements could not be released until all improvements were in place. One respondent recommended the section be revised to state the lower of the appraised value or purchase price will be used to determine total development cost and the applicant's initial investment. Another respondent recommended we restore the original language of this section. One respondent agreed that loan funds used to purchase land may not exceed the estimated market value as established by an appraisal.

FmHA response: The only changes made to this section are the reference to FmHA Instruction 1922-8 and deletion of the words "in excess of estimated market value" in the last sentence. These changes do not alter how the loan is calculated. The purchase price of land is not the basis for establishing the applicant's initial investment. The FmHA loan is limited to the development cost or the security value of the project, whichever is less; the applicant is responsible for the equity contribution whether it is in the form of land, cash, or a combination of both. After considering the comments, we feel that this section is confusing as written since it should be addressing the amount of loan funds which can be used to purchase land and should not include discussion of how the purchase price affects the applicant's initial investment. The last sentence has been removed.

7. Section 1944.212(c)(2)

Comment: One respondent suggested that the existing language be restored to this section.

FmHA response: The first sentence of the existing paragraph was removed because it already exists under § 1944.213(c)(10).

8. Section 1944.212(c)(3)

Comment: One respondent voiced the opinion that the density requirements referred to in § 1944.215(a)(5) are not definitive. Another respondent suggested that FmHA define excess land. Another respondent felt that this section is in conflict with § 1944.215(a)(6) and should be deleted. One respondent agreed with the section as long as consideration is given to local zoning requirements.

FmHA response: FmHA feels that excess land is adequately defined in this section and in § 1944.215(a)(6). We do not agree that this section conflicts with § 1944.215(a)(6). Section 1944.215(a)(6) states that local zoning ordinances and, in extreme cases, the site size, shape, or condition will be the determining factors in arriving at site density.

9. Section 1944.212(d)

Comment: There were a number of suggestions concerning the establishment of a range of costs for offsite facilities. One respondent recommended that all offsite costs be eliminated from the loan. It was pointed out by several respondents that States have not approved any off-site facility costs. It was also suggested that each situation is unique and should be judged on its own merits and not be compared with past performance. One respondent felt this would place an undue burden on FmHA and that establishing a range would not prove anything since the bottom line must be the actual "as developed" value of the site.

FmHA response: FmHA agrees that every situation has to be judged on its own merit and that it would be impractical to try to establish a range of costs for offsite facilities. The language has been changed to delete this requirement.

10. Section 1944.212(g)

Comment: There was generally an expression of agreement with the addition of blinds as an eligible loan purpose. One respondent, however, suggested that we also include shades with this provision. One respondent wanted to know if individual washer/dryer hookups could be interpreted to mean "laundry facility." Another respondent voiced an opinion that

washer/dryer hookups in addition to a central laundry facility increases marketability of rental units.

FmHA response: FmHA has no objection to including shades in this provision and has amended the language accordingly. Laundry facilities are defined as the actual washers and dryers facilities available to all of the tenants and not just washer and dryer hookups. Washers and dryers owned by individual tenants are not available to all tenants and cannot be considered as "laundry facilities." FmHA stands by its previous position regarding the prohibition of placing washers and dryers in individual units when a central laundry facility is provided unless it is customary for the area for the size of project and type of housing involved. Washer and dryer hookups are an additional expense to overall project costs and, in the majority of cases, are not used by the tenants. Additionally, there have been problems with the hookups leaking and causing water damage to the units.

11. Section 1944.212(i)

Comment: There were numerous objections to disallowing certain fees when the borrowing entity will receive low income housing tax credits, primarily because the end result will be an increase in the borrower's contribution. Other respondents felt that if certain items were required by FmHA, then those items should be funded. One respondent suggested that FmHA automatically increase the equity requirement for low income housing tax credit projects to 5 percent rather than to eliminate certain fees and charges. One respondent suggested that the intent be clarified to mean the legal fees associated with closing the FmHA loan and not the interim lender loan. Another person suggested that all non-low income housing tax credit projects receive an additional 10 points in the rating criteria. One respondent felt that this provision would reduce loan costs and thereby maximize the State's funding allocation.

FmHA response: The Community Development Act of 1992 increased the equity contribution to 5 percent for borrowers whose members will receive benefits from Low Income Housing Tax Credits. The regulation has already been changed to reflect this increase. The original language pertaining to related costs has been restored. Legal fees pertain to the costs associated with the FmHA loan closing only; clarification has been added to the section. FmHA does not agree with the suggestion to allow an additional 10 points for non-low income housing tax credit projects.

The purpose of the priority points is to direct funding to the areas of greatest need and the lack of tax credits is not an indication of need.

12. Section 1944.212(j)

Comment: There were several respondents who expressed opposition to allowing payment for assistance to nonprofit groups because of the inequity in handling profit vs. nonprofit applicants.

FmHA response: FmHA published this section to correct a typographical error in the original section; however, the Agency feels that the payment for technical assistance is appropriate for nonprofits since they must rely on their own resources which, in some cases, are slim or nonexistent.

13. Section 1944.213(b)(1)

Comment: One respondent understood this section to mean the nonprofit organization may provide the initial operating capital and/or relocation costs incurred and suggested that the section be revised to include relocation costs in the loan.

FmHA response: This section states that the loan may provide for the development cost or the security value of each project, whichever is less, plus the 2 percent O&M and/or the relocation costs. This provision allows for the inclusion of relocation costs in the loan.

14. Section 1944.213(b)(2)

Comment: While 3 respondents agreed with the proposed computation of the loan amounts, numerous others disagreed. Most felt that the Agency was attempting to increase the borrower's equity contribution.

FmHA response: FmHA has removed the examples from this section and, instead, will provide instructions to its staff in how loans should be calculated in a new Exhibit A-12. The Exhibit provides administrative guidance only and is not being published with this document. A copy is available in any FmHA office.

15. Section 1944.213(c)(10)

Comment: One respondent expressed an opinion that there should be an exception to this provision which allows the person who has owned land for a period of at least 3 years to recover costs associated with the increase in value and betterment of the site. Another respondent suggested the restriction be expanded to provide that there be no common interest for at least 3 years and that the option be with the owner of public record; an exception could be made for subsequent loans on adjacent property.

FmHA response: FmHA does not agree with this suggestion. Regulations, except in the case of a broadly-based nonprofit organization, prohibit the use of loan funds to purchase land from the applicant or a member of the applicant organization. In the case of a nonprofit organization, the appraisal will determine the value which can be included in the loan. We think the suggestion concerning common interest has merit and have changed this section to add a 3-year provision.

16. Section 1944.213(c)(12)

Comment: One respondent felt that this section is no longer needed in light of the provisions of § 1944.211(a)(7) (i) and (ii) which would require the applicant to put up in cash the amount necessary for the initial 2 percent O&M.

FmHA response: FmHA agrees with this comment and the section has been deleted.

17. Section 1944.213(d)

Comment: A few respondents expressed their opinion that this provision would be burdensome and time-consuming. One respondent pointed out that the expense of a market study is always incurred prior to the applicant's filing a preapplication. Another respondent pointed out the language of this section does not allow for predevelopment loans from nonprofit organizations as was originally intended.

FmHA response: Since most borrowers are familiar with the process and are aware of what must be done during the preapplication and application phase, obtaining written verification from FmHA should pose no undue delay. OIG strongly recommended that FmHA be aware of the applicant's intention to incur debts before they are actually incurred to preclude the appearance of giving blanket approval for all such expenses. We agree that the language does not allow for predevelopment loans from nonprofit organizations and the language has been amended to correct this omission. We have also exempted market studies from the prior written approval requirement since they must be completed prior to filing a preapplication.

18. Section 1944.213(e)(1)

Comment: Several persons objected to this section because of the delay it would cause during the construction process. Some suggested that FmHA require post-approval instead of pre-approval to avoid such delays.

FmHA response: The Agency feels that obtaining pre-approval from the

District Office will not sufficiently hamper the construction process if the contractor and borrower react in a timely manner. The only two occurrences which will allow an increase in per unit cost is design changes by FmHA or State or local jurisdictions or changes in financing approved by FmHA. Neither of these events would be construed as an emergency.

19. Section 1944.215(a)

Comment: Two respondents expressed agreement with this section. Another respondent voiced an opinion that to require more expensive building materials and, even though maintenance costs will be less, is contradictory to cost containment goals.

FmHA response: The Agency has witnessed what happens when cheaper building materials are used to initially control costs. The results have been high maintenance costs over the life of the materials and the ultimate replacement of the materials. While construction costs may be lower using the cheaper building materials, these savings are more than overshadowed by the high maintenance costs necessary to prolong the use of the materials. FmHA strongly advocates the use of low maintenance and long life materials in its construction.

20. Section 1944.215(a)(1)

Comment: There were several comments expressed about the costs being "locked in" to either our cost tracking system or to the Marshall & Swift estimates, thereby not allowing any inflation increases. It was also noted that projects with abnormally high or low costs should not be entered into the system and that only newer (one year old) projects be tracked. It was felt that the borrower should not be responsible for resolving differences between a proposed project's costs and those costs in the FmHA tracking system or in the Marshall & Swift estimates. Another respondent suggested that the tracking system allow for a comparison of bedroom sizes rather than project to project comparison. One respondent felt that the tracking system should provide for a distinction between new construction and rehabilitation.

FmHA response: The new cost tracking system will allow FmHA to track by line item the costs of construction. For instance, the final estimated cost of concrete for a proposed project will be recorded in the system at the time the loan is obligated. Once the project has been built and the costs are certified (identity of interest projects), the certified cost of concrete

will also be recorded in the system and will become the basis for establishing a benchmark on costs. This should take into consideration the inflationary escalation of costs during the construction period. Thereafter, the line item costs for each new proposal will be compared with the amounts recorded in the tracking system. Local FmHA offices will allow for future inflationary increases just as they do now. Only the projects received and processed after the tracking system comes on line will be entered. We intended that significant differences between an applicant's cost estimates and the estimates of our established tracking costs or Marshall & Swift be resolved since FmHA will not arbitrarily accept any estimates which appear out of line or unreasonable. We foresee the borrower's responsibility for resolving the differences in cost as either providing justification for the differences or taking whatever action is required to ensure the best estimates are being considered in the construction. This method of tracking construction costs will make no distinction between numbers of bedrooms or new construction vs. rehabilitation; costs will be tracked on a line item basis and not on a project basis.

21. Section 1944.215(a)(2)

Comment: A few respondents suggested that FmHA establish timeframes for District and State Offices to follow during preapplication and application review processing. Another respondent suggested that the AD-622 cover only the authorization to develop plans and specifications and that the balance of the application not be pursued until receipt of the plans and specifications and after the appraisal is completed. It was felt that this would reduce the time between signing of the construction documents and the start of construction.

FmHA response: From periodic assessments made of the multi-family housing program by FmHA's National Office, it is apparent that the field staff's time is being utilized to its fullest extent. The large volume of preapplications being filed has placed a considerable burden on the field, particularly when those preapplications which will not continue to be processed because of their rating must still receive some degree of attention. To place timeframes on the field for each step of processing would be unrealistic since they would most likely be impossible for the staff to meet. We do not agree that authorizing just the completion of plans and specifications would reduce the time between signing of the construction contract and the actual

start of construction, since there are many other items needed to complete the application and these could not be addressed until we authorized the applicant to proceed to a full application. The cost estimates should be updated at the time the construction contract is signed so that the most up-to-date estimates are obtained prior to approving the loan.

22. Section 1944.215(a)(3)

Only one comment was received and the respondent agreed with this section.

23. Section 1944.215(a)(4)

Only one comment was received and the respondent agreed with this section.

24. Section 1944.215(a)(5)

Comment: There were numerous objections to establishing a set number of units per acre because of the size, shape, and condition of sites.

FmHA response: FmHA feels that more diligent efforts could be expended by applicants in locating more viable sites. Sites which have sections unsuitable for building should be avoided. However, if a situation exists where the only available site is of a size, shape, or condition which makes a portion unsuitable for building and the only alternative is to not provide units, then a request to the State Office for an exception to this density requirement may be considered. Such language has been added to the section.

25. Section 1944.215(a)(6)

Comment: Several respondents expressed the opinion that hiring construction inspectors is unrealistic at a time when FmHA staff is being reduced. They also pointed out that delay in obtaining timely construction inspections by FmHA has been a problem and suggested including language in the regulation that would require necessary inspections within a reasonable timeframe.

FmHA response: The hiring of construction inspectors is a suggestion which may or may not be possible to follow. If not, it may be possible for States to contract for these services. The comment about not having timely construction inspections by FmHA provides an appropriate case-in-point for adequate inspection coverages. This subject will be discussed at future training meetings with the field staff. FmHA feels that the proposed language is appropriate as proposed.

26. Section 1944.215(a)(7)

Comment: There were several comments that the restriction of

building design will result in all buildings being shaped like a box.

FmHA response: FmHA feels this is an overreaction and that this section will not lead to the construction of boxes. We have observed, in many States, how a simple yet attractive design is an asset to the community. These types of simple designs do not deter potential tenants from seeking residency. The Agency feels that the design of some of the housing units now in existence have gone beyond what is necessary to provide decent, safe, and sanitary living units. The Housing Act of 1949, as amended, specifies that "no loan shall be made or insured . . . unless the Secretary finds that the construction involved will be undertaken in an economical manner and will not be of elaborate or extravagant design or materials."

27. Section 1944.215(a)(8)

Comment: Two respondents recommended against setting the building roof slope limits proposed in this section, one because of the snow loads in the northern States and the other because they could result in a building which lacks interest.

FmHA response: FmHA agrees with the argument against setting the lower slopes in cases where there are heavy snow loads. The wording has been changed to allow the State Director to authorize a higher slope if needed to accommodate severe weather conditions. The Agency disagrees with the opinion that these slopes will result in a lack of building interest.

28. Section 1944.215(a)(9)

Comment: Several respondents expressed agreement with this section. Several others felt that the use of repetitive designs would result in "cloned" projects.

FmHA response: FmHA does not feel that the use of repeat designs will have any detrimental effect on the aesthetic value of FmHA-financed units. In fact, several States now require the use of repeat designs without detrimental effects. The National Office assesses the 515 program in multiple States each year, which includes a visual inspection of the rental stock. We have not found the use of repeat designs to be offensive or boring in any State. FmHA feels that the submission of new designs for all projects needlessly increases the amount of Government funds needed since the amount of architectural fees is based on the level of services provided. Repeat designs will decrease the amount being paid for architectural fees since the use of "shelf" plans will reduce the detailed architectural services needed.

29. Section 1944.215(a)(10)

Comment: Several respondents stated that community room furniture should be included as an eligible loan expense: one respondent supported the inclusion of dining room furniture in congregate housing. Another respondent supported the inclusion of community rooms in family projects and garbage disposals. A few respondents suggested allowing sliding glass doors where patios/balconies are permitted. One respondent suggested adding whirlpools to developmentally disabled housing. Two respondents supported the inclusion of bay/box/picture windows. One respondent voiced support for prohibiting fire places, garages and covered parking. Two respondents supported this section.

FmHA response: Community and congregate dining room furniture is the responsibility of the borrower and its expense should be covered by the initial O&M funds. Outdoor recreation facilities for family projects are allowable loan expenses and are intended to substitute for community room facilities allowed in elderly projects. The Agency considers community rooms to be an essential part of the daily living requirement for those elderly projects which can support the additional expense of the facilities. The obvious reason for not allowing community rooms in family projects is that family activities are not necessarily curtailed by age or climate and they are more mobile than elderly residents, which means their choice of entertainment can extend beyond their living accommodations. FmHA does not feel that garbage disposals are necessary and has recommended against financing them in the past. In addition to the initial cost of the disposal units, too often problems develop because of lack of care in what is processed through them, resulting in additional expense of the repairs. FmHA does not agree that sliding glass doors are necessary even when patios/balconies are customary for the area. FmHA contends that if a developmentally disabled person requires whirlpool therapy, then it should fall within the responsibility of a professional to provide the service at a therapist's facility. Some of the States which were previously allowing bay/box/picture windows have discontinued this practice in accordance with the efforts to contain costs, an action which we support.

30. Section 1944.215(a)(11)

Comment: One respondent supported the inclusion of individual patios for the elderly as a means for increasing

socialization. Two respondents supported washer and dryer hookups for all types of units.

FmHA response: FmHA views the community room as instrumental in encouraging elderly tenant socialization. In a recent survey conducted by the National Association of Home Builders, tenants were asked to list amenities in order of their desirability. This survey showed that balconies were ranked by the tenants at number 15 out of a list of 16 amenities. We place individual patios in the same category with balconies. See discussion of washer and dryer hookups under § 1944.212(g), above.

31. Section 1944.215(a)(12)

Comment: One respondent voiced support for allowing outdoor recreation for elderly projects for those occasions where there are minor children in the unit and where grandchildren come to visit. There was support expressed for the allowance for garbage disposals and community rooms for family projects.

FmHA response: Playground equipment would either stand idle in the case where there were no minors living with the elderly or would attract children from outside the project. The noise generated as a result of playgrounds would not be viewed as a welcome addition by some of the elderly residents who enjoy peaceful surroundings. FmHA response to community rooms for family projects and garbage disposals has already been discussed under § 1944.215(a)(10) above.

32. Section 1944.215(a)(13)

Comment: Several respondents objected to the number of parking spaces for elderly since more persons now keep their cars for a longer period of time, particularly since those persons reside in rural areas with no other means of transportation. One respondent recommended that spaces for visitors and health care workers not be included in the calculation. One respondent suggested that this limit be recommended and not mandated. One respondent recommended the limit be set at 1.5 to 2 for family and .5 to 1.25 for elderly; another respondent recommended .75 to 1.25 for elderly. One respondent supported this section.

FmHA response: A 1990 congregate housing study revealed that only 21 percent of congregate tenants owned cars. The proposed allowance for congregate parking spaces is based on that percentage. In order to accommodate the additional cars owned by persons in elderly projects, we have changed the language of this section to

allow for additional spaces for visitors and staff.

33. Section 1944.215(a)(14)

Comment: A number of respondents objected to establishing a range of acceptable allowances for earthwork. A couple of respondents mistakenly interpreted this section to mean that the allowance cover the combination of landscaping and earthwork.

FmHA response: FmHA's cost tracking system will allow us to capture landscaping and earthwork costs; therefore, the section has been amended to delete the requirement that ranges be established.

34. Section 1944.215(a)(15)

Comment: One respondent recommended that congregate projects where an expanded meal service is designed to provide meals to all of the community's elderly citizen be exempted from the limitations of the Manual of Acceptable Practices (MAP). The same respondent pointed out that the MAP is a supplement to an obsolete minimum property standards. Another respondent pointed out that the MAP is not available in any FmHA office. One respondent agreed with this section.

FmHA response: The MAP is no longer in print. Guidance pertaining to the size of these facilities can be found in Guide 2 of FmHA Instruction 1924-A. This section has been changed to reflect the proper reference.

35. Section 1944.215(b)(1)

Comment: Several respondents objected to this way of measuring square footages. Two others objected to restricting congregate units to 110 percent of the minimum square footages since this dimension may not allow sufficient square footages to meet the requirements of the Americans with Disabilities Act. One respondent voiced the opinion that setting the square foot limits will lead to a drop to the minimum footages and adversely impact the rentability. One respondent recommended a lower maximum square footage. One respondent recommended eliminating the reference to "related facilities" since their inclusion will distort the square footage of "living area."

FmHA response: The methodology described in this section for calculating living area is consistent with common industry practices. Congregate living units are not affected by the Americans with Disabilities Act. We do not understand the concern that setting the square foot limit will lead to a drop to the minimum footages since these ranges have been in existence for some

time and have not resulted in an automatic drop in square feet. We reason to lower the maximum square footage since the size of the unit can be controlled within the allowable ranges. The section has been changed to eliminate "related facilities" from being included in the computation of living area.

36. Section 1944.215(e)

Two comments were received and the respondents supported this section.

37. Section 1944.215(w)(3)

Comment: A number of respondents objected to FmHA's requiring the applicant to reveal the percentage of tax credits it will seek. Several persons appeared to misinterpret the intent of the section. A few of the respondents felt that FmHA is attempting to make the determination of the number of tax credit units the project will receive. One respondent suggested that the section be amended to state that the "market study" will be subject to further examination and not the preapplication itself. One respondent points out that the project is requesting rental assistance, the affordability of basic rent is irrelevant. One person recommended that the word "percentage" be changed to "number" to avoid confusion. Several persons supported this section.

FmHA response: FmHA regulations require that the Agency determine whether a proposed project is feasible. In order for a project to be feasible, the must be persons of sufficient incomes to support the expenses and to amortize the loan. The market for 515 projects depends on the existence of persons with a lower level of incomes in those cases where tax credits are awarded to the borrower. Many market analysts are still determining need based on income up to the moderate level. This becomes an issue when there is not sufficient rent subsidy for all units. In order to make a proper analysis of feasibility, we must determine the level of incomes which will be required to support the project. Even if the applicant requests 100 percent rental assistance and there is sufficient subsidy to cover all of the units, FmHA is not absolved of its responsibility of examining feasibility. FmHA feels that it is imperative that we are aware of the number of tax credit units anticipated so that the appropriate level of incomes can be studied. In no way does FmHA intend to become involved in the determination of the number of tax credits assigned to a project by the State Agencies. We however, provide information to State Agencies as to the amount of financial assistance granted to the

borrower by FmHA. The word "percentage" has been changed to "amount" and the words "percentage of units targeted for tax credit eligible persons" have been added.

38. Section 1944.231(a)(2)

Comment: A number of respondents supported this section with the stipulation that no other preapplication be authorized until the second market study has been completed and a determination made on the original preapplication. Two respondents pointed out that the 45-day period in which to respond to the applicant is not sufficient to accomplish the necessary processing.

FmHA response: FmHA agrees that the preapplication hold its position in the ranking and has amended the section to state that no other preapplication will move ahead of the preapplication in question until the feasibility issue has been resolved. The contracts will be similar to those used by the Agency in obtaining appraisals in that the State will let one contract under which the market studies will be prepared by one or more market analysts. This will eliminate the need for contracting for each individual study, thus saving processing time.

39. Section 1944.235(a)(1)

Comment: Two respondents suggested that closing instructions be furnished to the borrower within a certain timeframe.

FmHA response: The issuance of the closing instructions involves coordination and input from another Government Agency. While FmHA may request more expeditious issuance of the closing instructions, it has no control over when the instructions will be furnished. Additionally, we have no way of knowing how the process is impacted by that Agency's workload.

40. Section 1944.235(a)(2)

Comment: One respondent supported this section. Another respondent stated that this section does not agree with the earlier requirement concerning what amount needs to be furnished to cover the initial O&M amount discussed in § 1944.211(a)(7)(i).

FmHA response: This issue was discussed under § 1944.211(a)(7)(i), above.

41. Section 1944.235(b)(3)

Comment: One respondent suggested that an appeal process be included for co-general partners. One respondent suggested that another provision be added to allow transfer of an obligation when the applicant is unable to continue for legitimate reasons and the

transferee is eligible for 515 assistance. Another respondent suggested consideration be given to who is responsible for the default so that a co-general partner who is innocent of the default will not be penalized by being denied access to the program for 5 years.

FmHA response: We interpret the first and last respondent comments to pertain to the same concern. FmHA does not agree that a co-general partner be exempt from these provisions since the loan was made to the entity and it is up to the entity to maintain its financial integrity. The regulations already contain provisions for handling cases where the entity chooses to transfer an obligation without monetary default. There would be no penalty in that case.

42. Section 1944.235(c)(1)

Comment: One respondent suggests that the language be changed to allow interim lenders who are now making loans to only FmHA-financed projects. Another suggested that the language be changed to state "other than identity of interest companies." Another respondent felt that the record of providing financing to non-FmHA projects be on a national basis and not limited to the State in which a particular loan is made. A respondent suggested that the language be changed to state the lender be "authorized" to do business in a State since not all States require the lender to be licensed. Two respondents suggested that FmHA provide the interim financing to eliminate the expense connected with outside interim financing. Two other respondents voiced their objection to this section. Two respondents supported this section.

FmHA response: FmHA feels strongly that the borrower not provide its own interim financing. The interim lender is responsible for inspecting each stage of construction. If borrowers are allowed to provide their own interim financing they, in essence, would also be allowed to inspect their own construction. FmHA feels that inspections by arms-length third parties will provide a more objective assessment of construction standards and quality. The language has been changed to state that the lender be "authorized" to do business in a State rather than "licensed." As long as interim financing can be secured at reasonable rates, fees, and terms, FmHA does not feel that the wholesale use of Government funds for interim financing is in keeping with the intent that local lenders be given the opportunity of furnishing the interim financing.

43. Section 1944.236

Comment: Two respondents objected to nonprofit borrowers being able to use an attorney who is a member of their organization while limited profit borrowers are prohibited from doing the same.

FmHA response: The only change being made to this section is to correspond to a recent wording change in FmHA's closing regulation. The use of member attorneys by nonprofit groups has been allowed by the regulation for some time. FmHA does not consider the relationship between a nonprofit borrower and its attorney in any way resembles the relationship between a profit-motivated borrower and its attorney. The nonprofit attorney has no financial interest in the nonprofit whereas the reverse can be true of the attorney who is a member of the limited profit.

44. Section 1944.237(a)

Comment: One respondent suggested that this section be amended to make clear that subsequent loans to existing borrowers for rehabilitation do not have to go through the preapplication process. Another respondent felt that this will adversely affect developers who acquired land for a future second phase. Another respondent recommended that this section show what types of paperwork are needed for a subsequent loan or that the information be contained in an exhibit to the regulation. Two respondents expressed their opinion that the language which states that subsequent loans made on or after December 15, 1989, cannot be prepaid is contrary to prior interpretations by the National Office. Another person suggested that this section be revised to permit the addition of office, laundry, maintenance, or other community space not be subject to rating and ranking. One respondent agreed with this section.

FmHA response: This section states that subsequent loans to develop additional units must be rated and ranked. All other subsequent loans which do not fall within this definition are excluded, including rehabilitation of existing FmHA-financed units. It was always FmHA's intention that subsequent loans to develop additional units be subject to the rating system; this section merely clarifies that intention. FmHA agrees that some guidance be added to the regulation which better defines what types of paperwork are required for subsequent loans. The types of paperwork needed for subsequent loans has been added to the regulation as Exhibit A-14.

Prepayment is covered by proposed changes now being incorporated in FmHA regulations. Office, laundry, maintenance, and other community space facilities are not considered living units and do not fall under this definition.

45. Exhibit A

Paragraph IV.B.6

Comment: Two respondents expressed their opinion that no new AD-622 be issued until the market question is resolved.

FmHA response: This was discussed under section 1944.231(a) above.

46. Exhibit A-2

Comment: One respondent felt that a new column "housing condition" be added to this exhibit.

FmHA response: The respondent did not make known whether the reference to housing condition refers to the overall condition or to the interior condition of the units. If the latter, we have deliberately not required this type of information since it would be almost impossible for a market analyst to inspect the inside of the units. In the case of the overall exterior condition of the property, FmHA feels this analysis is subject to the personal feelings of the analyst and would not be based on any uniform means for ranking the physical condition. FmHA does require the analyst to give an opinion as to the upkeep of the existing stock in accordance with Exhibit A-8, "Outline of Professional Market Study."

47. Exhibit A-7

Paragraph I.A

Comment: There were many objections raised to this section that requires an audited financial statement. It was pointed out that, even if individual financial statements could be audited, the cost for providing the original and updates during the processing period would be prohibitive. These same individuals objected to providing a copy of their prior year income tax return because it is deemed an invasion of privacy. One respondent pointed out the hardship this would create for nonprofit applicants and proposed that they be able to provide their most recent audited statement. One respondent supported this section but suggested that "current" be defined as the end of the company's last fiscal year and that updates be unaudited. One respondent suggested that instead of requiring audited financial statements, a good review of financial statements by FmHA personnel would ensure financial security. Several persons

pointed out the fact that most applicants are newly established organizations which have no financial record to audit. One respondent representing a Certified Public Accounting firm stated that it is often impracticable to conduct an examination of personal financial records in accordance with generally accepted accounting principles and to express an unqualified opinion. That respondent recommended the section be changed to require that the personal financial statements either be compiled or reviewed and stated that a detailed and complete underwriting of creditworthiness can be performed on compiled or reviewed personal financial statements that are comprehensively prepared. Two respondents supported this section.

FmHA response: In light of the difficulty in obtaining audited financial statements of individuals, FmHA will continue with the requirements currently in existence and has eliminated the word "audited" from this section. The Agency also feels that a proper analysis of a financial statement will provide a better understanding of an applicant's creditworthiness than would an individual's income tax statement. FmHA maintains the position that a financial statement not be more than 6 months old when the preapplication is filed.

48. Exhibit A-7

Paragraph I.H

Respondents agreed with this section.

49. Exhibit A-7

Paragraph II.A

Comment: One respondent recommended that FmHA establish a percentage of elderly homeowners that could be considered as potential tenants. Two respondents disagreed with the use of a checklist in evaluating market studies. A few respondents disagreed with limiting the area of consideration to 20 percent of the substandard rental units. Two respondents objected to the use of professional market studies in the analysis of need and suggested that personal contact with possible tenants, talking with other apartment owners, or conducting a newspaper questionnaire would provide a more credible means for determining need. One respondent suggested that we include a definition of "substandard units." Also, that respondent pointed out that the same persons who reside in "overcrowded" units are being doublecounted, first from the substandard category and second from the new households

category. One respondent agreed with this section.

FmHA response: FmHA does not agree that elderly homeowners should be considered in the need for units. That is not to say these elderly homeowners cannot live in the FmHA-financed unit. We do not feel that the general market can absorb the sale of multiple homes at one time. Exhibit A-8 does state that if the economic conditions reflect normal selling times for homes in the market area, then elderly homeowners may be considered as a secondary market. FmHA has had in use a checklist for analyzing market studies for some time; this regulation now requires its use to enhance internal control over administration of the program. The purpose of the checklist is to enable the reviewer to determine if all segments of Exhibit A-8 have been addressed by the study.

Market demand and feasibility is created by several factors. One of those factors is the demand created by persons who are living in substandard units and seeking decent, safe and sanitary housing which can be financed by FmHA. Currently, there is no limit on the percentage of substandard units which an analyst can project in determining market demand. For example, if there are 100 units of substandard housing in a given market, analysts can and have stated that 80, or any other arbitrary, percentage of the families living in these units create a portion of the demand. We have found that the percentage of units projected as a result of substandard housing varies significantly from study to study. In addition, without any boundaries, it provides the market analyst with a contingency to justify demand. The 20 percent limitation was offered based upon previous experience with market analysis. Without a threshold, FmHA is defenseless in challenging a professional market analyst. It is reasonable to set a limit since there is no objective methodology in which to actually determine how many people residing in substandard units will move to a newly completed Section 515 complex. The Agency will, however, allow a higher number if the analyst can clearly document that the occupants of more than 20 percent of the occupied substandard rental units are willing and able to relocate to the proposed housing. The documentation will be in the form of signed survey sheets prepared expressly to capture such information.

The use of market studies does not prohibit anyone from doing more to assess the market, such as making contacts. Placing a questionnaire in a newspaper does not ensure the return of

any responses. A definition of substandard has been added.

FmHA feels it necessary to standardize the way need is calculated in order to provide some uniformity in market studies. The revised Exhibit A-8 outlines the sources of demand which will be accepted by the Agency. There was a discrepancy between this section and the Exhibit A-8 language in delineating sources of need. This section of the regulation has been changed to agree with the language of Exhibit A-8.

Paragraph II.F

Comment: One respondent suggested that the tax credit income information be provided with the application and not with the preapplication.

FmHA response: Feasibility must be determined during the preapplication stage and the ranges of local incomes must be established at that time. For this reason, the Agency cannot change this requirement. Other discussions concerning tax credit incomes is found under § 1944.215(w)(3).

50. Exhibit A-7

Paragraph III.C

Comment: One respondent suggested adding a provision that the option to buy be with the current owner of public record.

FmHA response: We agree with this suggestion and have added that provision.

51. Exhibit A-7

Paragraph IV.F

Comment: One respondent objected to applicants who publicly bid their projects having to submit a Form FmHA 1924-13. One respondent felt that requesting this much detail information at the preapplication stage would not prove useful since cost estimates change markedly between preapplication and application. One respondent supported this section.

FmHA response: FmHA's new cost tracking system will track the trade item costs of each project. The Form FmHA 1924-13 provides a breakdown of trade item costs which will readily facilitate the use of the cost tracking system. Otherwise, the value of the tracking system will be diminished, thus not allowing the Agency to establish cost data comparisons. Persons submitting bids must have prepared extensive cost estimates in preparing the bid. Therefore, we do not feel this will cause an undue burden on the contractor.

52. Exhibit A-8

Comment: One respondent suggested that a definition of substandard be included. One respondent asked if FmHA intends to prepare and distribute special tabulations of substandard units by its definition, by occupancy, tenure, income, and household size. Several respondents expressed objection to FmHA not considering elderly homeowners as a basis of need. Several respondents objected to the 20 percent ceiling on substandard units which FmHA will accept in the determination of need. One respondent raised the question of who is responsible for determining if the analyst is qualified and what the qualifications are for preparing a study. That person also wanted to know if the study is incomplete, is the preapplication determined incomplete and returned to the applicant. Two respondents felt that requiring the market analyst to make an on-site visit was a significant improvement in this exhibit. One respondent suggested that the exhibit be used as a guide only and not mandated. One respondent asked if FmHA intended to exclude rentoverburdened households from rentup demand estimates. That respondent also expressed an opinion that the listing of small businesses in the Site section of the exhibit would be construed to mean those businesses must be available in order for a community to be considered eligible for FmHA financing. Other comments and suggestions offered on the technical content of the exhibit are too numerous to list here.

FmHA response: A definition for substandard has been included. HUD furnished FmHA with information pertaining to occupancy in substandard units based on the 1980 census. That information was disseminated to our field staff for distribution to market analysts. We are in the process of coordinating with HUD to obtain this same data when it becomes available. (See discussion of elderly homeowners under Exhibit A-7, Paragraph II.A. and a discussion of substandard housing under Exhibit A-7, Paragraph II.A.). The qualifications of a market analyst and the responsibility for determining whether an analyst is qualified are iterated in Exhibit A-7 of this instruction. If a market study is incomplete, the applicant may furnish additional information to complement the market study without the necessity of returning the entire preapplication. This will inevitably delay the processing of the preapplication. The requirement that a market analyst visit the site of the proposed project was not

introduced with this revision; it has always been a requirement. The purpose of the exhibit is to require enough information on which a feasibility decision can be based and to establish uniformity in the content of studies. Prior to FmHA issuing the exhibit, the market studies varied greatly and all did not contain the most basic types of information. We have seen a marked improvement in the studies because of the issuance of the exhibit. While FmHA originally allowed applicants to consider the exhibit as a guideline, we did not feel it prudent to continue this practice. The exhibit is, therefore, required in order for the study to be acceptable to the Agency; market studies which do not contain Exhibit A-8 requirements will not be acceptable. We understand that the HUD information on rentoverburdened households is not yet available. In the interim, language has been added to the exhibit which invites the analyst to include this type of information where available. While this exhibit is not the proper vehicle for establishing policies concerning required community services and facilities, the Site section has been reworded to state that the businesses listed are an example of the types of business which may be located in the community.

Many of the proposed changes are based on comments and recommendations submitted from market analysts over the past two years. Market analysts have expressed differing opinions concerning the content of this exhibit. We have considered all of these differing opinions and have amended the exhibit to include what we consider a rational and understandable basis for a market study. We have attempted to correct the original exhibit requirements where it lacked sufficient statistics to make a determination for elderly and congregate projects. Other changes made to the exhibit will standardize the types of information market studies will contain and provide the uniformity heretofore missing. We have considered all comments and the exhibit now reflects those changes which FmHA has determined appropriate for inclusion.

53. Exhibit A-9

Paragraph 2

Comment: One respondent suggested a rewrite of this section to include other items of construction.

FmHA response: This section has been reworded to further define what types of information on related costs must be submitted in addition the Form FmHA 1924-13.

Paragraph 5

Comment: A few respondents recommended that the market information be updated after 12 months rather than requiring a new study.

FmHA response: FmHA feels this is reasonable and has changed the wording to reflect an update rather than a new study.

54. Exhibit A-10 is Amended to Include Language Implementing Section 515(x)(2) of the Housing Act of 1949, as Amended, to Provide for Cooperation between FmHA and State Agencies in Developing a Comprehensive Housing Affordability Strategy (CHAS)

Other comments: Other comments were received which were general in nature and did not pertain to any specific issues. These comments have not been addressed by FmHA.

List of Subjects**7 CFR Part 1924**

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Low and moderate income housing.

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low- and moderate-income housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

Accordingly, parts 1924, 1930, and 1944, chapter XVIII, title 7, Code of Federal Regulations are amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

2. Section 1924.4 is amended by redesignating paragraphs (i)(4) through (i)(7) as (i)(5) through (i)(8), respectively, and by adding paragraphs (i)(4) and (i)(9) to read as follows:

§ 1924.4 Definitions.

(i)
(4) Between the spouse, significant other, relatives, and step-relatives of the principal owners of the party of the first part and its management, such as Grandmother, Aunt, Daughter, Granddaughter, Grandfather, Uncle, Son, Grandson, Mother, Sister, Niece, Cousin, Father, Brother, Nephew;

(9) An identity of interest will also exist when another party can significantly influence the management or operating policies of the transacting parties or if it has an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

3. Section 1924.13 is amended by revising paragraphs (a)(3), (e)(1)(iii)(B)(2), (e)(1)(iv), (e)(1)(v), (e)(1)(vii)(B)(2), (e)(2)(i)(B), (e)(2)(i)(G), (e)(2)(i)(H), (e)(2)(ii)(C), (e)(2)(iii)(A), (e)(2)(iv), (e)(2)(v), and (e)(2)(viii) to read as follows:

§ 1924.13 Supplemental requirements for more complex construction.

(3) *Architectural fees.* Fees for architectural services shall not exceed the fee ordinarily charged by the profession for similar work when FmHA financing is not involved. The fee should cover only the architectural services rendered by the architect. The reduction or elimination of any services described in paragraph (a)(5) of this section shall be directly reflected in the fee. Fees for special services rendered by the architects, such as the packaging of the loan application or additional nonarchitectural services, will not be authorized to be paid with loan funds.

(2) A current, dated and signed financial statement of the contractor's operations indicating the payment status of accounts and any contingent liabilities that may exist. FmHA personnel will be responsible for analyzing the financial statement as to the sufficiency of the contractor's financial capability to carry out construction. The financial strength must demonstrate the ability of the contractor to pay all bills prior to

receiving periodic draws of funds from the lender.

(iv) *Contract cost breakdown.* In any case where the loan approval official feels it appropriate, and prior to the award or approval of any contract in which there is an identity of interest as defined in § 1924.4 (i) of this subpart, the contractor and any subcontractor, material supplier or equipment lessor sharing an identity of interest must provide the applicant and FmHA with a trade-item cost breakdown of the proposed contract amount for evaluation. The cost of any surety as required by § 1944.222 (h) and (i) of subpart E of part 1944 of this chapter and § 1924.6 (a)(3) of this subpart, or cost certification as required by paragraph (e)(1)(v) of this section, will be included in the proposed contract amount and shown under General Requirements on Form FmHA 1924-13, which is available in all FmHA offices. FmHA personnel will be responsible for reviewing the estimates on Form FmHA 1924-13 to determine if the dollar amounts total correctly, to assure that costs are categorized under their appropriate columns, and to confirm that the estimated costs for all line items are reasonable and customary for the State.

(v) *Cost certification.* Whenever the State Director determines it appropriate, and in all situations where there is an identity of interest as defined in § 1924.4 (i) of this subpart, the borrower, contractor and any subcontractor, material supplier, or equipment lessor having an identity of interest must each provide certification using Form FmHA 1924-13 as to the actual cost of the work performed in connection with the construction contract. The construction costs, as reported on Form FmHA 1924-13, must also be audited, in accordance with Government Auditing Standards, by a CPA, or LPA licensed on or before December 31, 1970. In addition, certain agreed upon procedures (available in any FmHA office) will be performed in accordance with Attestation Standards. In some cases, FmHA will contract directly with a CPA or LPA for the cost certification. In that event, documentation necessary to have the costs of construction certified by an FmHA contractor that they were the actual costs of the work performed, as reported on Form FmHA 1924-13, will be provided. Funds which were included in the loan for cost certification and which are ultimately not needed because FmHA contracts for the cost certification will be returned to the loan. FmHA personnel will utilize

Exhibit M of this subpart (available in any FmHA office) and Form FmHA 1924-26, "Cost Certification Worksheet," to assist in the evaluation of the cost certification process.

(A) Prior to the start of construction, the borrower, contractor and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must submit, to the CPA or LPA, the accounting system that the borrower, contractor, subcontractor, material supplier or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable, the borrower must provide a written assertion that it has an accounting system that is suitably designed to provide for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted on Form FmHA 1924-13. Costs pertaining to a specific line item will be set up in the accounting system for that particular account. For instance, only costs of materials, supplies, equipment, and labor associated with concrete will be shown in the concrete account. The accounting system must also restrict costs to those pertaining to a specific project so that costs from multiple projects will not be commingled. The independent CPA or LPA shall report on the borrower's assertion in accordance with the Standards for Attestation Engagements of the American Institute of Certified Public Accountants (AICPA). The borrower's and the CPA or LPA's reports on the accounting system shall be provided to FmHA by the borrower.

(B) Prior to final payment to anyone required to cost certify, a trade-item breakdown showing the actual cost compared to the estimated cost must be provided to the owner and FmHA. Form FmHA 1924-13 is the form of comparative breakdown that must be used, and contains the certifications required of the applicant and contractor prior to final payment. The amounts for builder's general overhead, builder's profit, and general requirements, respectively, shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(1)(iv) of this section for any contractor, subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the borrower. The amounts for general overhead, builder's profit, and general requirements must be established prior to FmHA approving the construction contract and will not be changed during the course of construction. This applies to all contractors, subcontractors, material

suppliers, or equipment lessors having or sharing an identity of interest with the applicant. Contract change orders will be processed to adjust the contract amount downward prior to the final payment to the contractor, if necessary, to assure that the amounts shown in the certificate of actual costs do not exceed the amounts represented in the contract cost breakdown. Reduction in the builder's profit, and general overhead if needed, will counterbalance any increase reflected in the contract costs. Any funds remaining as a result of hard cost savings will be applied to the account as an extra payment or used for eligible loan purposes approved by FmHA as long as the improvements are genuinely needed and will enhance marketability of the project. All increases or decreases of 15 percent or more in line item costs will require documentation as to the reason for the increases and/or decreases. The State Director may require documentation for increases and/or decreases of less than 15 percent, if he/she determines it necessary. This information will be required with the cost certification.

(C) The CPA or LPA audit, performed in accordance with Government Auditing Standards, will include such tests of the accounting records and such other auditing procedures of the borrower and the contractor (and any subcontractor, material supplier or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in accordance with the construction contract he/she considers necessary to express an opinion on the construction costs as reported on Form FmHA 1924-13. The CPA or LPA shall also perform the additional agreed upon procedures specified by FmHA (available in any FmHA office), performed in accordance with Attestation Standards, for the applicant and the contractor (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in accordance with the construction contract.

(D) Upon completion of construction and prior to final payment, the CPA or LPA will provide an opinion concerning whether the construction costs, as reported on Form FmHA 1924-13, present fairly the costs of construction in conformity with eligible construction costs as prescribed in FmHA regulations.

(E) In some cases, cost certification will be obtained by FmHA through direct contract with the CPA or LPA. The borrower and his/her CPA or LPA

will cooperate fully with the contract CPA or LPA by providing all documentation necessary to conduct the certification. FmHA reserves the right to determine, upon receipt of the certified Form FmHA 1924-13 and the auditor's report, whether they are satisfactory to FmHA. If not satisfactory to FmHA, the borrower will be responsible for providing additional information.

(F) There will exist no business relationship between the CPA or LPA and the borrower except for the performance of the examination of the cost certification, accounting systems work, and tax preparation. Any CPA or LPA who acts as the borrower's accountant (performing manual or automated bookkeeping services or maintains the official accounting records) will not be the same CPA or LPA who cost certifies the project.

(G) Forms FmHA 1944-30, "Identity of Interest (IOI) Disclosure Certificate" and FmHA 1944-31, "Identity of Interest (IOI) Qualification Form," provide written notification to the borrower that willful and intentional falsification of cost certification documents will result in debarment of all violators in accordance with the provisions of FmHA Instruction 1940-M (available in any FmHA office). These forms require the disclosure of all identities of interest associated with project construction, certify the entity's ability to provide the contracted service, and cite the penalties for failure to disclose or falsify such certification. Each applicant/borrower will be required to complete and sign the forms (available in any FmHA office).

(H) Subcontracting development work.

(1) Contractors will not be allowed to obtain a profit and overhead unless they are performing actual construction. "Actual construction" means "work" as defined in American Institute of Architects (AIA) documents: "... labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations." Under this definition, contractors who choose to subcontract out construction of the project to another contractor will not obtain a builder's fee (general overhead and profit) when:

(i) More than 50 percent of the contract sum in the construction contract is subcontracted to one subcontractor, material supplier, or equipment lessor, and/or

(ii) Seventy-five percent or more with three or fewer subcontractors, material suppliers and/or equipment lessors.

(2) Note: If two or more subcontractors have common

ownership, they are considered as one subcontractor.

(3) How to apply rule:

(i) The 50 percent rule will apply when division of the amount of the largest subcontract by the contract sum of the construction contract results in more than 50 percent.

(ii) The 75 percent rule will apply when division of the sum of the amounts of the three largest subcontracts by the contract sum of the construction contract results in 75 percent or more.

(I) Qualified contracting entities. Contractors, subcontractors, material suppliers, and any other individual or organization sharing an identity of interest and providing materials or services for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract. Form FmHA 1944-31 will be prepared and executed by the contracting entities. The form provides notification to the entities of the penalty, under law, for erroneously certifying to the statements contained therein. Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of FmHA Instruction 1940-M (available in any FmHA office).

(vii) * * *

(B) * * *

(1) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the requirements have been met and the costs are reasonable, an exception to competitive bidding may be granted. Written documentation of the State Office review results will be placed in the application file.

(2) * * *

(i) * * *

(B) Dated and signed financial statements on the owner-builder's operation (including balance sheets and statements of income and expense) from current and prior years indicating the payment status of the owner-builder's accounts and any contingent liabilities that may exist. FmHA personnel will be responsible for analyzing the financial statement as to the sufficiency of the owner-builder's financial capability to carry out construction. The financial strength must demonstrate the ability of the owner-builder to pay all bills prior to receiving periodic draws of funds from the lender.

(G) A current, dated, and signed trade-item cost breakdown of the estimated total development cost of the project which has been prepared by the applicant/owner-builder. Form FmHA 1924-13 will be used for this purpose. If cost certification services are required by FmHA, the cost of such services may be included in the total development cost of the project. Any subcontractor, material supplier, or equipment lessor sharing an identity of interest with the applicant/owner-builder as defined in § 1924.4(i) of this subpart must also provide a trade-item cost breakdown of the proposed amount.

(H) Prior to the start of construction, the owner-builder and any subcontractor, material supplier, or equipment lessor sharing an identity of interest must submit, to the CPA or LPA, the accounting system that the owner-builder, subcontractor, material supplier or equipment lessor and/or the CPA or LPA proposes to set up and use in maintaining a running record of the actual cost. In order to be acceptable, the owner-builder must provide a written assertion that it has an accounting system that is suitably designed to provide for a trade-item basis comparison of the actual cost as compared to the estimated cost submitted on Form FmHA 1924-13. Costs pertaining to a specific line item will be set up in the accounting system for that particular account. For instance, only costs of materials, supplies, equipment, and labor associated with concrete will be shown in the concrete account. The accounting system must also restrict costs to those pertaining to a specific project so that costs from multiple projects will not be commingled. The independent CPA or LPA shall report on the owner-builder's assertion in accordance with the Standards for Attestation Engagements of the AICPA. The owner-builder's and the CPA or LPA's reports on the accounting system shall be provided to FmHA by the owner-builder.

(ii) * * *

(C) The total development cost of the project does not exceed that which is typical for similar type projects in the area. The total development cost recognized by FmHA for each individual case will be determined by the MFH Coordinator with the advice of the State Architect.

(iii) * * *

(A) If, after a full review of the case documents by the appropriate members of the State Office staff, the State Director determines that the

requirements have been met and the construction cost is reasonable, an exception to competitive bidding may be granted. Written documentation of the State Office review results will be placed in the application file.

(iv) The development cost of the project may include a typical allowance for general overhead, general requirements and a builder's profit. These amounts may be determined by local investigation and also from HUD data for the area. The applicant/owner-builder and any subcontractors, material suppliers and equipment lessors having or sharing an identity of interest with the applicant/owner-builder may not be permitted a builder's profit, general overhead, and general requirements which exceed the amounts represented on their cost breakdown.

(v) Under no circumstances will loan funds be used to pay the owner/builder or its stockholders, members, directors or officers, directly or indirectly, any profits from the construction of the project except a typical builder's fee for performing the services that would normally be performed by a general contractor under the contract method of construction. Discounts and rebates given the owner-builder in advance must be deducted before the invoices are paid. If discounts or rebates are given after the invoices are paid, the funds must be returned to the supervised bank account or applied on the interim construction loan, as appropriate. Under no circumstances will the dollar amount be placed in the reserve account.

(viii) The applicant/owner-builder and any subcontractor, material supplier, or equipment lessor sharing an identity of interest as defined in § 1924.4(i) of this subpart must each provide certification as to the actual cost of the work performed in connection with the construction of the project on Form FmHA 1924-13 prior to final payment. The construction costs, as reported on Form FmHA 1924-13, must be audited by a CPA, or LPA licensed on or before December 31, 1970, in accordance with Government Auditing Standards, and certain agreed upon procedures (available in any FmHA office) performed in accordance with Attestation Standards. In some cases, FmHA will contract directly with a CPA or LPA for the cost certification. In that event, documentation necessary to have the costs of construction certified by an FmHA contractor that they were the actual costs of the work performed, as reported on Form FmHA 1924-13, will

be provided. Funds which were included in the loan for cost certification and which are ultimately not needed because FmHA contracts for the cost certification will be returned on the loan.

(A) The CPA or LPA's audit, performed in accordance with Government Auditing Standards, will include such tests of the accounting records and such other auditing procedures of the applicant/owner-builder (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in connection with the construction of the project he/she considers necessary to express an opinion on the construction costs as reported on Form FmHA 1924-13. Upon completion of construction and prior to final payment, the CPA or LPA will provide an opinion as to whether the construction costs as reported on Form FmHA 1924-13 present fairly the costs of construction in conformity with eligible construction costs as prescribed in FmHA regulations. FmHA reserves the right to determine, upon receipt of the certified Form FmHA 1924-13 and the auditor's report, whether they are satisfactory to FmHA. At a minimum, the CPA or LPA shall also perform any additional agreed upon procedures (available in any FmHA office) specified by FmHA, performed in accordance with Attestation Standards, of the owner-builder (and any subcontractor, material supplier, or equipment lessor sharing an identity of interest) concerning the work performed, services rendered, and materials supplied in connection with the construction. There will exist no business relationship between the CPA or LPA and the borrower except for the performance of the examination of the cost certification, accounting systems work, and tax preparation. Any CPA or LPA who acts as the borrower's accountant (performing manual or automated bookkeeping services or maintains the official accounting records) will not be the same CPA or LPA who cost certifies the project.

(B) Prior to final payment to anyone required to cost certify, FmHA must be provided with a certification and a trade-item breakdown showing the actual cost compared to the estimated cost furnished in accordance with paragraph (e)(2)(i)(G) of this section. Form FmHA 1924-13 is the form of comparative breakdown that must be used, and contains the certification required of the applicant/owner-builder prior to final payment. The amounts for builder's general overhead, general

requirements, and builder's profit shall not exceed the amounts represented on the estimate of cost breakdown provided in accordance with paragraph (e)(2)(i)(G) of this section for the owner-builder or any subcontractor, material supplier, or equipment lessor having or sharing an identity of interest with the applicant/owner-builder. Final payment to the owner-builder will be adjusted, if necessary, to assure that the amounts shown on the certificate of actual cost do not exceed the amounts represented on the cost breakdown. Any funds remaining as a result of hard cost savings will be applied to the account as an extra payment or used for eligible loan purposes approved by FmHA as long as the improvements are genuinely needed and will enhance marketability of the project. All increases or decreases of 15 percent or more in line item costs will require documentation as to the reason for the increases or decreases. The State Director may require documentation for increases or decreases of less than 15 percent, if he/she determines it necessary. This information will be required with the cost certification.

(C) Subcontracting development work.

(1) Owner-builders will not be allowed to obtain a profit and overhead unless they are performing actual construction. "Actual construction" means "work" as defined in AIA documents: " * * * labor, materials, equipment, and services provided by the contractor to fulfill the contractor's obligations." Under this definition, owner-builders who choose to subcontract out construction of the project to another contractor will not obtain a builder's fee (general overhead and profit) when:

(i) More than 50 percent of the total cost of the building construction is subcontracted to one subcontractor, material supplier, or equipment lessor, and/or

(ii) Seventy-five percent or more with three or fewer subcontractors, material suppliers, and/or equipment lessors.

(2) Note: If two or more subcontractors have common ownership, they are considered as one subcontractor.

(3) How to apply rule:

(i) The 50 percent rule will apply when division of the amount of the largest subcontract by the total amount of the building cost results in more than 50 percent.

(ii) The 75 percent rule will apply when division of the sum of the amounts of the three largest subcontracts by the total building cost results in 75 percent or more.

(D) Qualified contracting entities. Contractors, subcontractors, material suppliers, and any other individual or organization sharing an identity of interest and providing materials or services for the project must certify that it is a viable, ongoing trade or business qualified and properly licensed to undertake the work for which it intends to contract. Form FmHA 1944-31 will be prepared and executed by the contracting entities. The form provides notification to the entities of the penalty, under law, for erroneously certifying to the statements contained therein. Debarment actions will be instituted against entities who fail to disclose an identity of interest in accordance with the provisions of FmHA Instruction 1940-M (available in any FmHA office).

4. Section 1924.50 is revised to read as follows:

§ 1924.50 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0042. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 4 hours per response, with an average of 37 minutes 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 U.S. Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575-0042), Washington, DC 20503.

PART 1930—GENERAL

5. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

§ 1930.123 [Amended]

6. Section 1930.123 is amended by revising in the first column of paragraph (i) the words "Identity of Interest Disclosure Certification Memorandum"

to read "Forms FmHA 1944-30, Identity of Interest (IOI) Disclosure Certificate, and FmHA 1944-31, Identity of Interest (IOI) Qualification Form."

7. Exhibit B of subpart C is amended by redesignating paragraphs V B 2 a and V B 2 b as paragraphs V B 2 b and V B 2 d, respectively, by revising newly redesignated paragraph V B 2 b, and by adding paragraphs V B 2 a and V B 2 c; by removing paragraph XIII B 2 a (1)(iii), by redesignating paragraph XIII B 2 a (1)(iv) as XIII B 2 a (1)(iii), and by revising paragraphs XIII B 2 a (1)(i), XIII B 2 a (1)(ii), and the introductory text of newly redesignated paragraph XIII B 2 a (1)(iii) to read as set forth below; and by revising in the first column of paragraph XIII C 2 f (3) the words "Identity of Interest Disclosure Certification Memorandum" to read "Identity of Interest (IOI) Disclosure Certificate, Form FmHA 1944-30 and Identity of Interest (IOI) Qualification Form, Form FmHA 1944-31".

Exhibit B of Subpart C—Multiple Housing Management Handbook

V . . .
B . . .
2 . . .

a FmHA Forms 1944-30, "Identity of Interest (IOI) Disclosure Certificate," and FmHA 1944-31, "Identity of Interest (IOI) Qualification Form," (available in any FmHA 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 1944-30 and FmHA 1944-31.

c The forms provide notification to the entities of the penalty, under law, for erroneously certifying to the statements contained therein.

XIII . . .
B . . .
2 . . .
a . . .
(1) . . .

(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 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:

8. Exhibit B-3 of subpart C is amended by revising paragraph I D and the list of Attachments at the end of this exhibit to read as follows:

Exhibit B-3 of Subpart C—Sample Management Agreement for Farmers Home Administration (FmHA) Financed Multiple Family Housing (MFH) Projects

D *Identity of interest.* The Agent discloses to the Owner and FmHA 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 1944-30, "Identity of Interest (IOI) Disclosure Certificate," and FmHA 1944-31, "Identity of Interest (IOI) Qualification Form," completed by the Agent as "applicant," are attached and made part of this agreement.

Attachments: Management plan, Loan resolution or agreement, Identity of Interest Disclosure Certificate, Identity of Interest Qualification Form.

Exhibit B-3 of Subpart C [Amended]

9. Exhibit B-3 of subpart C is amended by revising in the first column the words "Identity of Interest (IOI) Disclosure Certificate Memorandum" to read "Forms FmHA 1944-30, 'Identity of Interest (IOI) Disclosure Certificate,' and FmHA 1944-31, 'Identity of Interest (IOI) Qualification Form'."

PART 1944—HOUSING

10. The authority citation for part 1944 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

11. Section 1944.205 is amended by removing the definition for "Irrevocable letter of credit;" by adding the definitions for "Servicing office" and "Servicing official;" and by revising the definition for "Initial operating capital" to read as follows:

§ 1944.205 Definitions.

Initial operating capital. Cash to pay for costs such as property and liability

insurance premiums, fidelity coverage premiums if an organization, utility hookup deposits, maintenance equipment, movable furnishings and equipment, printing lease forms, and other initial operating expenses. The initial operating capital will be at least 2 percent of the total development cost of the project.

Servicing office. FmHA servicing office or other place designated by the FmHA State Director where loan requests are processed.

Servicing official. FmHA servicing official or other FmHA staff member designated by the State Director to be responsible for processing loan requests.

12. Section 1944.211 is amended by removing paragraph (a)(6)(iii); by redesignating paragraph (a)(6)(iv) as paragraph (a)(6)(iii); and by revising paragraphs (a)(4), (a)(6)(i) and (a)(6)(ii) to read as follows:

§ 1944.211 Eligibility requirements.

(a) . . .
(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.

(6) . . .
(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 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.

13. Section 1944.212 is amended by adding paragraph (c)(3)(iii) and by revising the introductory text of paragraph (b), paragraphs (c)(1), (c)(2), (c)(3)(ii), (g), (i), and the introductory text of paragraph (j) to read as follows:

§ 1944.212 Loan and grant purposes.

(b) Purchase and rehabilitate existing buildings only when the loan for such 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.

(c) * * *

(1) Loan funds used to purchase land may not exceed the estimated market value of the site in its present condition as shown by a current appraisal in accordance with FmHA Instruction 1922-B (available in any FmHA office).

(2) With prior written approval of the State Director, loan funds may be used to buy land from a member of a broadly-based nonprofit applicant/organization.

(3) * * *

(ii) The cost of the excess land is a reasonable portion of the loan; and

(iii) The site density requirements of § 1944.215(a)(6) of this subpart are met.

(g) Purchase and install ranges, refrigerators, drapes, blinds/shades, drapery rods, and clothes washers and dryers. Laundry facilities are required in all projects and clothes washers and dryers should be provided in a central laundry room. Normally, a minimum of one washer and dryer should be provided for every 8 to 12 units in a project. Clothes washers and dryers may not be installed in individual units if the installation is not customary in the area for the size of project and type of housing involved. In any case, both central and individual laundry facilities will not be provided in a single project.

(i) Pay related costs such as fees and charges for market studies, tax credit application, legal (costs pertaining to the closing of the FmHA loan only), archeological, architectural, engineering, environmental, and other appropriate technical and professional services. The fees and charges may be paid to an applicant or officer, director, trustee, stockholder, member, or agent of the applicant provided those fees and

charges are reasonable and typical for the area and are earned and the identity of interest is disclosed. Legal, technical, and professional fees do not include the costs incurred in the formation or incorporation of the limited profit applicant, costs of syndication, or the payment of a loan packaging or development fee.

(j) Provide loan funds to enable a nonprofit group or public body to pay fees for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist it in the formation or incorporation and development and packaging of its loan docket and project, as well as legal, technical and professional fees incurred in the formation or incorporation of the applicant entity.

14. Section 1944.213 is amended by removing paragraph (c)(12); by redesignating paragraphs (b)(4), (b)(5), and (b)(6) as paragraphs (b)(5), (b)(6), and (b)(7), respectively; by adding paragraph (b)(4); and by revising paragraphs (c)(6), (c)(10), the introductory text of paragraph (d), paragraph (d)(1)(ii), and the introductory text of paragraph (e)(1) to read as follows:

§ 1944.213 Limitations.

(b) * * *

(4) The examples set forth in Exhibit A-13 of this subpart (available in any FmHA office) provide clarity in determining the proper loan amount for various types of loans.

(c) * * *

(6) Facilities contrary to cost containment measures defined in § 1944.215 (a) of this subpart.

(10) Land which the applicant or a member of an applicant/organization owns or land which is owned by any other organization in which any member of the applicant/organization has an interest, or has had an interest within the last 3 years, including any commission due on the sale thereof, except as authorized in § 1944.212(c)(2) of this subpart.

(d) *Obligations incurred before loan closing.* When an applicant files a preapplication for a loan, the servicing official will advise the applicant not to start construction or incur any indebtedness until the loan is closed, except for those cases involving interim financing; the guidelines outlined in § 1944.235(c)(1) of this subpart will then

apply. During the period of preapplication review and processing, applicants will not take any actions with respect to their applications which would have an adverse impact on the environment or limit the choice of reasonable alternatives. This requirement does not preclude the applicant from developing preliminary plans or designs or performing other work necessary to support an application for Federal, State, or local permits or assistance. If the applicant incurs debts for work, materials, land purchase, or other authorized fees and charges before the loan is closed, the State Director may authorize the use of loan funds to pay the debts when all of the following conditions exist and debts were authorized in writing by FmHA prior to their being incurred (market studies will be exempt from this requirement):

(1) * * *

(ii) Prior to the date of preapplication as part of a predevelopment loan specifically intended as temporary financing from a public agency or nonprofit organization and the State Director secures prior concurrence from the National Office; or

(e) * * *

(1) No increase in per unit development cost will be approved, whether the circumstance causing the cost increase occurs before, during, or after the construction period, unless these conditions were unforeseen factors beyond the owner's control and the increase in cost was approved by FmHA in writing before the expense was incurred. (In case of an emergency, the requirement that the cost be approved by FmHA in writing before the expense is incurred is waived as long as the servicing official is notified by the next working day.) Such costs are:

15. Section 1944.215 is amended in paragraph (b)(1)(iii) by adding the words "(available in any FmHA office)" at the end of the paragraph; by revising in paragraph (h)(1) the words "What is Cooperative Housing?" to read "A Guide to Cooperative Housing"; and by revising paragraph (a), the introductory text of paragraphs (b) and (b)(1), paragraph (b)(1)(i), and the introductory text of paragraph (e) and by adding paragraph (w)(3) to read as follows:

§ 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'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 preapplication estimates are being examined by FmHA, 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 this paragraph. They will again be calculated at the time the final estimates are submitted to FmHA. Estimated amounts in excess of the allowable percentages will be reduced to the appropriate percentage. Once the final estimates are approved by FmHA, payment of builder's profit, general overhead, and general requirements will not exceed the estimated amounts. Allowable percentages for builder's

profit, general overhead, and general requirements will not exceed 10 percent, 4 percent, and 7 percent, respectively. This will not be interpreted to mean that, if historical percentages for these costs were below 10, 4, and 7, respectively, FmHA will allow the costs to be increased automatically. Adequate justification and documentation will be required to approve an increase to 10, 4, or 7 percent for cases where any of the costs were previously below those levels.

(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:

(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- mum	Max- mum
One-story buildings	10	14
Two-story buildings	14	18
Three or more story build- ings	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 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-accepted construction documents. Prefinal and final inspections must be conducted by qualified FmHA personnel.

(8) Buildings will not include numerous wall and roof breaks, unusu. 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. 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. "Pre-designed" 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:

(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	Yes	Yes ¹	Yes.
Drapes/blinds/shades	Yes	Yes	Yes	Yes.
Elevators for 2-story elderly	No	Yes	Yes	No.
Garbage disposals	No	No	Yes 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 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's range scale, FmHA 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 office). The maximum square footage in congregated housing units will not exceed 110 percent of the minimum square footages listed above.

(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 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 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:

• • • • •

(w) • • • • •
(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.

§ 1944.222 [Amended]

16. Section 1944.222 is amended in paragraph (g) by adding the words "from the current owner of public record" at the end of the first sentence.

§ 1944.224 [Amended]

17. Section 1944.224 is amended in paragraph (a)(3)(i) by revising the reference to "§ 1944.211 (a)(6)(ii)" to read "§ 1944.211 (a)(6)(i)."

18. Section 1944.231 is amended by removing the definitions for "District Director" and "District Office" in paragraph (a), by redesignating paragraphs (e)(2) through (e)(4) as paragraphs (e)(3) through (e)(5), respectively, by adding a paragraph (e)(2), and by revising the introductory text of paragraph (e) to read as follows:

§ 1944.231 Processing preapplications.

(e) *Determining eligibility and feasibility.* After rating the preapplication, if the priority processing point score is sufficient to potentially authorize issuance of an AD-622 inviting a formal application within the next 24 months (except for RCH preapplications), the servicing official will review the proposal to determine eligibility, feasibility, and compliance with loan purposes, policies, and regulations. Eligibility/feasibility reviews will be completed in priority point score order. Where a tie in priority point score exists, the order of review will be determined in accordance with paragraph (c)(5) of this section. In cases where the market study is incomplete or not in accordance with Exhibit A-8 of this subpart, applicants will be required to have the study supplemented to agree with FmHA requirements. The time involved in supplementing the market study will cause the preapplication to be delayed in determining feasibility.

(2) In those cases where the need for new rental units is questioned by the servicing official, another market study may be obtained by the servicing office at its discretion through contract with a

market analyst. The same market analyst who provided an assessment for the applicant will not be used. Issuance of all AD-622s in that market area will be delayed until the FmHA market study has been completed and its contents reviewed by FmHA.

19. Section 1944.235 is amended by removing paragraph (a)(1); by redesignating paragraphs (a)(2) through (a)(5) as paragraphs (a)(1) through (a)(4), respectively; by revising newly redesignated paragraph (a)(2) and the introductory text of paragraph (c)(1); and by adding paragraphs (b)(3) and (c)(1)(viii) to read as follows:

§ 1944.235 Actions subsequent to loan approval.

(a) . . .

(2) Ensure that the servicing office has on file evidence that a deposit has been made to the general operating account of an amount of initial operating capital sufficient to cover the expected start-up costs.

(b) . . .

(3) Monetary default by original applicant/entity. An obligation may be transferred to any person or applicant eligible to receive an RRH loan when the original applicant/entity is in monetary default which has or may result in foreclosure by the interim lender, and:

(i) The applicant/entity assuming the obligation, or the interim lender, removes any liens filed against the property;

(ii) There have been no deviations from the FmHA approved plans and specifications;

(iii) The transferee will not be composed of any principals of the transferor;

(iv) The transfer will be in the best interest of the FmHA and prospective tenants;

(v) The applicant/entity and all members thereof whose obligations are transferred will not be considered eligible for further participation in the RRH program for at least 5 years from the date of the transfer of the FmHA loan obligation; and

(vi) Prior approval is obtained from the National Office.

(c) . . .

(1) *Interim financing.* When the amount of the loan exceeds \$50,000, the applicant may obtain interim financing from commercial or public sources for the construction period if it can be obtained at reasonable interest rates, fees, and terms, and in the best financial interests of the Government. Interim financing will be obtained to preclude

the necessity for multiple advances of FmHA funds. The interim lender must be authorized to operate in the State in which the project will be located and must have an established record of providing financing to entities other than FmHA-financed projects. Since the interim lender is responsible for inspecting construction along with FmHA, the borrowing entity (including any of its identity of interest entities) cannot provide interim financing to its own project. Interim financing will be used subject to the following:

(viii) Because interest rates can fluctuate between the time construction estimates are finalized and completion of construction, any excess funds remaining from interim financing will be returned on the FmHA loan. Also, interim funds remaining because of early completion of construction will be returned. The leftover interest may be used for certain other eligible loan purposes critical to the completion of the project which were unknown to the applicant and contractor at the time the loan was approved, provided prior National Office concurrence is obtained.

§ 1944.236 [Amended]

20. Section 1944.236 is amended paragraph (c)(3) by revising the reference "§ 1944.215 (d)" to read "§ 1944.215 (c)."

21. Section 1944.237 is amended by revising paragraphs (a) and (c)(2) to read as follows:

§ 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 for equity and 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 be rated and ranked in accordance with the priority point system contained in § 1944.231 of this subpart. Other subsequent loan requests do not have to compete for funding under the priority point system.

(c) . . .

(2) If the initial investment and 2 percent O and M amounts are sufficient to cover only the initial FmHA loan, 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)(1) of this subpart. The required amount c

Initial investment is described in § 1944.213 (b) of this subpart.

22. Exhibit A of subpart E is amended by revising paragraph VIII to read as follows:

Exhibit A of Subpart E—How To Bring Rental and Cooperative Housing to Your Town

VIII Exhibits

The following exhibits may be used when applicable and, if necessary, adapted to meet the specific needs of applicants.

Exhibit

- A-1 Legal Services Agreement
- A-2 Survey of Existing Rental Housing
- A-3 Rental Housing Survey
- A-4 Cooperative Housing Survey
- A-5 Housing Survey Summary
- A-6 Housing Allowances for Utilities and Other Public Services
- A-7 Information to be Submitted with Preapplication for a Rural Rental Housing (RRH) or a Rural Cooperative Housing (RCH) Loan
- A-8 Outline of Professional Market Study
- A-9 Information to be Submitted with Application for Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) Loans
- A-10 Administrative Process for Combining Farmers Home Administration (FmHA) Assistance with Low-Income Housing Tax Credits
- A-11 Processing Guidelines for Loans for Equity to Avert Prepayment
- A-12 Market Study Checklist (available in any FmHA office)
- A-13 Work Sheet for Loan Calculation (available in any FmHA office)
- A-14 Information to be Submitted for Subsequent Loans (available in any FmHA office)

23. Exhibit A-7 of subpart E is amended by adding the words "subpart V," after the words "part 3015," in paragraph VII; by adding paragraph II.J; and by revising the introductory text of paragraph I.A., and paragraphs I.A.(3), I.A.(6), the introductory text of paragraph I.A.(7), I.H., I.L.A., the introductory text of paragraph II.B., paragraphs II.C., II.F., the last sentence of paragraph II.G, III.C., and IV.F to read as follows:

Exhibit A-7 of Subpart E—Information to be Submitted With Preapplication for a Rural Rental Housing (RRH) or a Rural Cooperative Housing (RCH) Loan

I. . . .

A. Financial Statements for Rental Projects—Each applicant must submit a current, signed, and dated financial statement. The financial statement must reflect sufficient financial capacity to meet the applicant's equity capital and initial operating capital requirements. Applicants

may contribute cash, free and clear title to the building site, or a combination of both as an equity contribution. The initial operating capital must be furnished in cash.

(3) A financial statement will be required for limited partners in a limited partnership who will have 10 percent or more ownership.

(6) When the applicant and/or general partner(s) have multiple applications pending and/or when the State Director is uncertain of the applicant's ability to provide the necessary borrower contribution required by § 1944.213 (b) of this subpart, 2 percent initial capital contribution and/or other assets needed for a sound loan, the State Director may request the applicant to submit additional financial information relative to its financial position. This information may be obtained from 6- to 12-month projected pro forma statements with supporting schedules.

(7) All financial statements submitted must contain the following statement immediately preceding the signature line:

H. Farmers Home Administration (FmHA) requires that applicants disclose identities of interest that will exist in the development of the proposed housing. Forms FmHA 1944-30, "Identity of Interest (IOI) Disclosure Certificate," and 1944-31, "Identity of Interest (IOI) Qualification Form," (available in any FmHA office) will be completed and submitted as part of the preapplication package.

II. . . .

A. Economic justification and project size should be based on the housing need and demand from eligible prospective tenants or members who are permanent residents of the community and its surrounding trade area. Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, temporary residents of a community (such as college students in a college town, military personnel stationed at a military installation within the trade area, or others not claiming their current residence as their legal domicile) should be discounted in determining need and project size. The market study will reflect the types and sizes of units which are needed in the market area. For example, if the full market analysis shows a need for one-bedroom, two-bedroom, three-bedroom, and four-bedroom units, the preapplication must contain a percentage of three- and four-bedroom units to correspond to the need expressed by the market study in order to accommodate the larger families. The need will not be based on persons who own their own homes but will be derived from:

- (1) Persons migrating into the area;
- (2) Persons dwelling in family units who desire to move into their own units (elderly persons living with family members will only be considered if evidence of their interest in moving into the project is furnished with the market study);
- (3) Conservative estimate (not to exceed 20 percent) of households living in substandard

rental housing (lacking complete plumbing facilities or 1.01 or more persons per room). (A higher percentage will be allowed only if it can be clearly documented by signed survey sheets, developed expressly for this purpose, that occupants of more than 20 percent of the occupied substandard rental units are willing and able to move into the proposed project.);

(4) Demolition of rental stock;

(5) Allowance for a 5 percent vacancy rate in the growth of households since the last census; and

(6) Conservative estimate (not to exceed 20 percent) of households experiencing rent overburden provided the analyst has made a determination there are sufficient households in the market area to occupy any rental units vacated by those lower income persons who choose to move into the proposed project from the existing units.

B. A detailed study based upon data obtained from census reports, State or county data centers, individual employers, industrial directories, or chambers of commerce is required. FmHA personnel will utilize the market study checklist found at Exhibit A-12 of this subpart (available in any FmHA office) as a means for measuring market study credibility. The study will include:

C. Exhibit A-8 of this subpart outlines the information which professional rental market studies will be required to follow. The qualifications of the person preparing the market study should include some housing or demographic experience. The market study will be used by FmHA in evaluating market feasibility but will not be the sole factor in such a determination. The data and information provided in the market study will be used to supplement FmHA's knowledge of the market area and to facilitate rational judgment concerning the need for new rental units. Other considerations will be FmHA's experience with the housing market in the State and local area and U. S. Department of Housing and Urban Development's (HUD's) analysis of market feasibility for the proposed units.

F. The analyst must affirm that he/she actually made an on-site visit to the market area and that failure to do so may result in denial of further participation in the section 515 program by the analyst.

G. . . . The Cooperative Housing Survey form located at Exhibit A-4 of this subpart and in "A Guide to Cooperative Housing" may be used for this purpose.

J. Identification of the amount of tax credit units anticipated to be requested from the State Agency, the income percentage on which the credits will be based, and the percentage of project units targeted for tax credit eligible persons. This information is needed to determine the levels of incomes in the market area which will support the basic rents while also qualifying the borrower for tax credits.

III. . . .

C. The applicant will provide evidence of having control of the proposed site either by

	1990	19__1	19__
Civilian Labor Force 2.			
Unemployment Rate of Unemployment			

	1990	19__	19__
Employment.			
Change in Total			
Employment.			

Number

Percent

	Total	Annual	Total	Annual
1980-1990.				
1990-19__.				
19__-19__.				
(2-year projection).				

¹ Preliminary—based on monthly data through

² Data based on place of residence.

Source:

2. *Employment data.* In order to determine how employment affects the market area, it will be necessary to show the number of employed persons for a 3-year period up to the current year, the increase and/or decrease and the percentage of unemployed at the county level. The employment figures can be obtained from the State Employment Commission.

Example

County

Year	Number	Change	Unemployment %
19__.			
19__.			
19__.			
19__ (through current year).			

Source

3. *Major employers.* This section will contain information pertinent to an analysis of the economic stability of the town. The major employers within the town and market area, the product or service offered by each employer, location of employer, and year each employer was established are types of data FmHA will need to evaluate. It is also important to know if the larger employers intend to increase or decrease number of employees in the immediate future or if there have been any significant recent changes in number of employees.

Example

Employer	Product/Service	Location	Year Established
Washington Aircraft.	Crop Dusting.	Town -----	1957

In addition, the study will include the number of employees and average weekly salary listed in the place of work employment data for the classification groups of manufacturing; construction; trade; services; transportation, communications, and utilities (TCU); finance, insurance, and real estate (FIRE); and government.

4. *Employment outside of county.* The analyst will give the percentage of persons employed inside the county and driving times, if appropriate.

Source

B. *Demographic profile.*

1. *Population.* The analyst will need to show population changes between 1980 and 1990, the reasons for the changes, the current year estimate and projected change. This information will be provided for the town, the market area, and the county. Any change in the County subdivisions (CCD, Township, Election District, etc.) between census years will have to be explained. These are to be shown in numeric characters as well as percentages.

Example

Year	Total			Annual	
	No.	Change	%	Change	%
1980.					
1990.					
19__ (current estimate).					

Projected: 19__ (2 years)

2. *Age characteristics.*

Age	Town, 1980-1990			County, 1980-1990		
	1980	1990	Change	1980	1990	Change
Under 18.						
19-34.						
35-54.						
55-64.						
65-74.						
75-84.						
85+.						

3. *Households.* A breakdown by town, market area, and county for last 2 census years, a current year estimate and a

projection to the year the housing would be built (24 months) will have to be illustrated so that household formations can be tracked.

This data will tell us what portion of a housing demand is being created by an increase in numbers of new households.

Year	In group			Persons per household
	Population	Quarters	Households	
1980.				
1990.				
19__.				

Projected: 19__ (2 years)

4. Households by Size/Type/Age of Members (elderly and congregate projects).

	Market		
	Town	Area	County
Households with: 1 or more age 60 years and over. 1 person house- hold.			
2 or more per- sons (family).			
2 or more per- sons (nonfamily).			
1 or more age 65 and over. 1 person house- hold.			
2 or more per- sons (family).			
2 or more per- sons (nonfamily).			

5. Household type and relationship—Persons 65+ (elderly and congregate projects).

	Market		
	Town	Area	County
Total.			
In Households.			
In Family House- holds.			
Householder.			
Spouse.			
Other Rel- atives.			
Nonrelatives.			
In Nonfamily Households.			
Male House- holder.			
Living Alone.			
Not Living Alone.			
Female House- holder.			
Living Alone.			

	Market		
	Town	Area	C
Not Living Alone. Nonrelatives. In Group Quar- ters. Institution (per- sons). Other Persons in Group Quarters.			

6. Households by tenure. This section is one of the more important aspects of the market analysis. This information will enable FmHA to more closely pinpoint the number of households which would comprise the target group of its evaluation. If the project percentage of renters exceeds the historic percentage of renters, the analyst will have to explain why there is an increase. The information will be provided for town, market area, and county.

Example

Year	Total households	Owner	Percent	Renter	Percent
1980.					
1990.					
Estimate: 19__					
Projected: 19__ (2 years).					

7. Households by size. The study will provide number of households by household size for the town, market area, and county.

8. Tenure by age. Tenure by age of householder for town, market area, and county (elderly and congregate projects).

	Owner	Renter	Total
55-64.			
65-74.			
75 years +.			

9. Households by income group. With the advent of Low Income Housing Tax Credits (LIHTC), we have found that more emphasis must be placed on analyzing persons whose incomes qualify for LIHTC. This means families who earn 60 percent or less of the median income as established by the U. S. Department of Housing and Urban Development (HUD). Therefore, feasibility for projects expecting to receive tax credits will also be based on the incomes required to

support the tax credits. This could mean a level of incomes either slightly lower or higher than FmHA very low-incomes. For those tax credit units occupied by low-income families, the monthly gross rent cannot exceed 30 percent of the family income. Gross rent includes utilities, but excludes payments of rental assistance by Federal, State, and local entities. The applicant will be responsible for notifying FmHA and the market analyst of the amount of tax credits being requested, the income percentage on which the credits will be based, and the percentage of project units targeted for tax credit eligible persons. In those cases where less than 100 percent of the units will be designated for tax credit eligible persons, the incomes needed to support the non-LIHTC units will need to be analyzed. Income data will be shown for total and renter households. This information will be presented as follows: (It is recommended that decile distribution of incomes be

obtained from HUD. Other sources are acceptable and must be identified.)
Incomes Needed to Support Proposed Rent:
+ Utilities (without LIHTC):

1-Bed- room	2-Bed- room	3-Bed- room	4-Bed- room
\$_____	\$_____	\$_____	\$_____

Number of Tax Credit Units Requested for Project:

Percentage of Units to be Designated for Tax Credit Eligible Persons:

Tax Credit Eligible Incomes: (based on 50% [] or 60% [] of income)
\$_____ \$_____ \$_____ \$_____
Tax Credit Eligible Rents:
\$_____ \$_____ \$_____ \$_____
Proposed Project Rents:
\$_____ \$_____ \$_____ \$_____

Town or Market Area

Household income groups	All households		Renter households	
	Number	Percent	Number	Percent
Less than \$000.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
Total.				
Median.				
Elderly Household Income Groups:				
Less than \$.				
\$000-\$000.				

Household income groups	All households		Renter households	
	Number	Percent	Number	Percent
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
Total.				

Incomes of those eligible to live in the proposed project, considering tax credits and availability of rental assistance (RA):
\$000-\$000

Source:
County

Household income groups	All households		Renter households	
	Number	Percent	Number	Percent
Less than \$000.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
Total.				
Median.				
Elderly Household Income Groups:				
Less than \$.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
\$000-\$000.				
Total.				

Incomes of those eligible to live in the proposed project, considering tax credits and availability of RA:
\$000-\$000
\$000-\$000

Source:

C. Housing supply profile

1. *Building permits issued for the last 10 years.* The Housing Units Authorized by Building Permits and Public Contracts (C-40 Construction Report), furnished by the

Bureau of the Census, provides a list of permits issued in all reporting jurisdictions. This publication is printed monthly and annually. If available, the number of units which have been demolished over the last 5 years will be needed.

Example:

Year	Town			County		
	Single family	Multifamily	Demol.	Single family	MultiFamily	Demol.
19____.						
19____.						
19____.						
19____.						
Through current year.						

2. *Housing stock.* The study must include the number of units within the town and county (where available), both single family and multi-family, the number of mobile homes by tenure, along with the number of

substandard units by tenure, based on the most recent census data. Occasionally, a situation will exist within a community where a number of detached single family homes are standing vacant. How this

condition may affect the rental market must be evaluated and discussed.

Example:

Inventory Change Profile

	Single family	Multifamily	Mobile home	
			Own	Rent
1980 Stock _____				
1990 Stock _____				

	Annual	Percent
Change in Number of Units.		

3. *Existing rental housing.* The analyst must determine where the proposed project will fit into the present housing stock. To accomplish this, the analyst will survey the existing units and will discuss how they (a) would be comparable with the proposed

project in overall appeal; (b) are less than desirable because of the age factor or upkeep; (c) are inconveniently located; (d) do not provide the appropriate bedroom mix for the community need, etc.

4. *Details of existing stock.*

a. Additional narrative which describes the rental stock and provides tenant characteristics may be included. The survey will include both subsidized and nonsubsidized rentals. In those communities containing too many rental properties to list, all subsidized and a representative number of conventional projects will be included. Those conventional projects which have rent levels comparable to the proposed project will be listed. Because elderly persons may reside in family designated projects, the analyst will need to list all existing units and not just the existing elderly units. Photographs of the comparables are required.

b. The analyst will explore the availability of individual Section 8 certificates with the local housing authority since they can be used on any project to bring the existing rents into an affordable range. For instance, 10 to 15 available Section 8 certificates in a

community could have an influence on the determination for new units and the number should be reduced to correspond to this availability. However, before automatically reducing the number of proposed units to match the number of available Section 8 units, the reason the certificates are available must be explored. (e.g., owners of non-Government subsidized units will not accept the certificates). (The bedroom sizes which the certificates cover must match the prospective bedroom sizes in the proposed project bedroom mix.)

c. The information needed in the survey must include the characteristics shown below. In conjunction with the survey, the analyst is expected to discuss the reasons for extended vacancies, either in individual developments or in the community in general. The data needed are:

Name of Project
No. of Units
Bedroom Mix
Amenities: (if available)
Drapes
Carpet
Type (i.e., family, elderly)
Year Built
Rent levels
Vacancies
Location
Central Cooling
Dishwasher
Garbage Disposal
TV Cable

IV. Housing demand forecasts.

The analyst must give a projection of the housing needs for a specified forecast period. The information should include the following as a minimum:

Sources of demand	Town	Market area
	Renter	Renter
New Households (from the most recent census year plus 2-year projection)	_____	_____
20 of Persons Living in Substandard Rental Units	+ _____	+ _____
Plus Demolition of Rental Stock	+ _____	+ _____
20 of Persons Experiencing Rent Overburden	+ _____	+ _____
Plus Vacancy (.05 of New Household Growth)	+ _____	+ _____
Total Demand	_____	_____
Number of Total Demand Determined Income Eligible (tax credit eligible, if applicable)	_____	_____
Less Number of Units in Planning Stage (FmHA/HUD) and Comparable Rental Units	- _____	- _____
Net Demand	_____	_____

If a penetration percentage is used in the study analysis, explain how that particular percentage was chosen.

Recommended Number By Unit Size:

One _____
Two _____
Three _____
Four _____

Names and positions of individuals in the community who provided information for the study:

I affirm that I, or an individual under contract to my company, have made a physical inspection of the market area and that information has been used in the full assessment of the need and demand for new rental units. I understand that misrepresentation of this statement may result in denial of further participation in the FmHA Section 515 program.

Market Analyst

25. Exhibit A-9 of subpart E is amended in the introductory text of paragraph 9 by revising the words "Statement of Budget and Cash Flow" to read "Multiple Family Housing Project Budget" and by revising the exhibit heading and paragraphs 2 and 3 to read as follows:

Exhibit A-9 of Subpart E—Information To Be Submitted With Application for Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) Loans

2. Updated cost estimates on Form FmHA 1924-13, "Estimate and Certificate of Actual Cost," will be submitted by all applicants, along with the updated estimates of associated costs specified in Exhibit A-7 of this subpart.

5. If more than 12 months have transpired since the applicant submitted the market analysis, the State Director may require that it be updated if he/she determines it necessary.

26. Exhibit A-10 of subpart E is amended by adding paragraph II C to read as follows:

Exhibit A-10 of Subpart E—Administrative Process for Combining Farmers Home Administration (FmHA) Assistance With Low-Income Housing Tax Credits

II
C. The State Director or designee will cooperate with the State Agency in the development of the Comprehensive Housing Affordability Strategy (CHAS) plan to ensure that, to the extent possible, resources available from FmHA are coordinated with the CHAS

plan to maximize the use of housing funds in rural areas. This cooperation may include, but is not limited to, the sharing of Census data and priority point scores throughout the State, providing information on funding levels, preapplications and applications, and rural area designations made by FmHA.

§§ 1944.222, 1944.231, 1944.235, 1944.246, Exhibit A-6 (Amended)

27. 7 CFR chapter XVIII, part 1944, subpart E is amended by revising the words "District Office" to read "servicing office" in the following places:

- a. Section 1944.222 (a)
- b. Section 1944.231 (b), (c)(6), introductory text of (d), and (i)(1)(vi)
- c. Section 1944.235 (f)(1)
- d. Section 1944.246 (b)(3)
- e. Exhibit A-6, paragraph IV

§§ 1944.235, 1944.236, 1944.239 (Amended)

28. 7 CFR chapter XVIII, part 1944, subpart E is amended by revising the words "district office" to read "servicing office" in the following places:

- a. Section 1944.235 (e)(1)
- b. Section 1944.236 (e)(2)
- c. Section 1944.239 (introductory text)

§§ 1944.205, 1944.212, 1944.215, 1944.222, 1944.231, 1944.232, 1944.235, 1944.236, 1944.246, Exhibits A, A-6, and B
[Amended]

29. 7 CFR chapter XVIII, part 1944, subpart E is amended by revising the words "District Director" to read "servicing official" in the following places:

- a. Section 1944.205, the definition of "Dealer-contractor"
- b. Section 1944.212 (l)(1)
- c. Section 1944.215 (r)(6) (v) and (u)
- d. Section 1944.222 (g)
- e. Section 1944.231—the heading of (c), (c)(1)—3 times, (c)(3), (c)(4), introductory text of (c)(5)—2 times, (c)(6)—2 times, (c)(8), newly designated (e) (4) and (5), (f)(2), (i)(1)(i), (i)(1)(viii), (i)(5)(iv), (j)(3)—2 times
- f. Section 1944.232 (c)—2 times
- g. Section 1944.235 (c)(1)(v), introductory text of (c)(1)(vii), (c)(2)(ii), (d)—2 times, (e)(1), (e)(2), (f)(1), introductory text of (h), (h)(1)—2 times, (h)(2), and (h)(3)—2 times
- h. Section 1944.236 (d)
- i. Section 1944.246 (b)(2)(ii)
- j. Exhibit A—paragraphs II. A., II. B., III. C., the undesignated paragraph following paragraph III. C.—2 times, IV. A.—3 times, IV. B. 1. b.—2 times, IV.B.6.a., IV.B.7.b., the introductory text of IV.B.8.b., IV.B.9.c., IV.B.12., the introductory text of IV.B.16.a., IV.B.22.—2 times, V. A.—2 times, V. C., V. D., VI. A. 1.
- k. Exhibit A-6, paragraph IV
- l. Exhibit B, at the end of the undesignated paragraph beginning "FmHA has required the applicant".

§ 1944.231 and Exhibit A [Amended]

30. 7 CFR chapter XVIII, part 1944, subpart E is amended by revising the words "District Director's" to read "servicing official's" in the following places:

- a. Section 1944.231 (i)(1)(iv)
- b. Section 1944.231 (i)(1)(v)
- c. Section 1944.231 (k)(3)
- d. Exhibit A, paragraph III.A.

Dated: January 19, 1994.

Bob Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94-3117 Filed 2-11-94; 8:45 am]

BILLING CODE 3410-07-4