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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Miscellaneous Amendments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule makes several editorial changes and clarifications to the Child Care Food Program (CCFP) regulations. In addition, some substantive changes to those regulations are made to improve program administration. Restrictions on sponsoring organizations' use of interest bearing accounts are removed. The institution appeal process is clarified and made more flexible. Family-style meal service is presented as an option for institutions. Limitations are placed on the State agency's authority to waive certain overclaims. Certain institution responsibilities with respect to licensing and tax-exempt status are emphasized. State agencies' administrative flexibility is increased in several areas. The application of alternate approval procedures in backlog situations is rescinded. These changes will have the effect of clarifying and streamlining the CCFP.

EFFECTIVE DATE: This final rule is effective April 3, 1985.

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SUPPLEMENTARY INFORMATION:

Classification

This rule making has been reviewed in accordance with Executive Order 12291 and has not been classified as major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation or the ability of U.S. enterprises to compete with foreign-based enterprises. This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The Administrator of the Food and Nutrition Service (FNS) has certified that this rule does not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) the reporting or recordkeeping requirements that are included in this final rule have been submitted to the Office of Management and Budget (OMB) and have been approved under clearance 0584-0055.

Background

The CCFP is authorized by Section 17 of the National School Lunch Act (42 U.S.C. 1766). On May 13, 1983, the Department published at 48 FR 21587 a proposed rule to clarify certain aspects of the CCFP regulations, allow greater flexibility for administering agencies, and enhance Program accountability. The Department established a 60 day period during which interested parties could submit comments for the Department's consideration. During this comment period, the Department received 42 comments from FNS Regional Offices, State administering agencies, participating institutions and other interested parties. Most of the comments approved of the proposed changes. Some commentors, however, expressed disapproval or concern with some of the amendments. Other commentors suggested technical modifications to the proposed language; and some commentors requested clarification on some provisions. In addition, some commentors appeared to have misunderstood aspects of certain proposals.

In developing this final regulation, the Department considered all comments, and this preamble summarizes and discusses the significant issues raised by commentors. The Department wishes to emphasize that this preamble does not generally repeat in detail the reasons for each amendment originally proposed. Therefore, interested parties may wish to refer to the preamble of the proposed rule for a more thorough discussion of the background. For convenience, the Department will discuss the final provisions in the same order as in the preamble to the proposed rule.

1. Review Requirements

Thirty-one commentors addressed the proposal to amend § 226.6(k) to allow State agencies to reduce the number of facilities which must be visited as part of their reviews of sponsors. Of these comments, 16 were opposed; 11 were in favor; and four commented without expressing approval or disapproval. In general, opponents of this proposal believed that such reductions would impair the Program in two ways. First, State agencies would have less opportunity to learn of deficiencies which must be corrected. Secondly, the assistance which States render to providers during visits to facilities would be reduced. Two commentors apparently believed erroneously that the Department was eliminating the specific numerical requirement for performing institution reviews. Other commentors, while not necessarily disapproving of the proposal, recommended that the Department specifically require State agencies to reallocate any resources that may be available due to these reductions. Finally, some commentors found the proposed formulas to be overly complicated.

The Department initially proposed this provision in the belief that the number of facilities which State agencies must review as part of their review of a sponsoring organization might be reduced without impairing program accountability or assistance. In view of the concerns expressed by commentors, the Department has reconsidered this action. The significant reductions under the proposal would have occurred with respect to sponsors of large numbers of facilities (e.g., sponsors with over 200 homes or 25 centers). Consequently, few State agencies would have realized any significant change in their administrative responsibilities. Moreover, while States with large sponsors would have had their review requirements reduced somewhat, the Department's recent experiences with some larger sponsors suggest that a relaxation of review activity would not be in the best interests of the Program at this time. For these reasons, the Department has withdrawn the proposal.

The Department also proposed to amend § 226.6(k) to replace the list of program areas to be reviewed with a more general requirement that in conducting program reviews State agencies assess compliance with the CCFP regulations and applicable instructions. Four commentors approved of this change, while nine disapproved. Those disapproving generally maintained that all CCFP reviews should adhere to the same standards nationwide. There was some concern that the proposed amendment could lead to relaxation of standards on the one hand and harassment of institutions and facilities on the other.

The Department proposed this amendment in order to conform the CCFP to other FNS programs. It should be noted that specific review standards are not included in the existing CCFP provisions; there is only a list of general Program areas to be reviewed. Since in any case State agencies, institutions and facilities are responsible for meeting all requirements set forth in the CCFP regulations and instructions, the Department does not consider that the proposed amendment will result in decreased accountability or harassment of institutions and facilities. Therefore, the Department is adopting the proposed change.

The Department received 30 comments on the proposal to amend §226.16(d)(4)(ii) to permit sponsors of day care homes to make an *average* of three visits per home each year in certain circumstances, rather than requiring *each* home to be visited three times per year. Eleven commentors approved of the proposal, while 19 disapproved. The Department believes, however, that many disapproving commentors misunderstood the nature of the proposed change. Many of those who disapproved appeared to believe that the Department was reducing the overall monitoring requirement for sponsoring organizations.

However, sponsors will perform just as many total annual reviews under the proposed system as they must currently perform. For example, if a sponsor operates 100 day care homes, that sponsor must perform a minimum of 300 annual visits regardless of whether each home is visited three times or an *average* of three visits per home is made each year. The only change is that sponsors can vary the number of annual visits to individual homes to allow for a greater number of visits to homes that need additional guidance and a lesser number of visits to homes with fewer deficiencies.

The Department also wishes to emphasize that sponsors may not exercise this option unless the State agency approves and FNS concurs with the approval. As stated in the preamble to the proposed rule, approval of a request to exercise this option will be based on a finding that the sponsor will be able to allocate its resources more efficiently and to provide better assistance where it is most needed. Approval would not be granted, for example, merely to enable a sponsor to reduce its travel expenses associated with monitoring. It should also be noted that State agencies are not required to permit this option. Moreover, those State agencies which do permit the option may only give approval on a case-by-case basis. In any case, at the minimum each day care home must be reviewed twice per year. For these reasons, the Department does not consider that this option will lead to reduced oversight of day care homes. Finally, one commentor suggested that the Department should modify its requirement that not longer than six months elapse between home reviews.

However, the Department considers that the six-month requirement will be increasingly important for any homes that may be visited only twice a year. Therefore, the proposed rule is adopted without relaxing the requirement that not more than six months elapse between reviews.

2. Interest-Bearing Accounts

Twenty commentors addressed the proposal to delete the provision requiring sponsors to maintain Program payments in non-interest bearing accounts for the period between receipt and disbursement. Thirteen commentors (representing State agencies, FNS Regional Offices, institutions and other interested parties) approved of the proposed rule. Four commentors disapproved, and three parties commented on aspects of the proposal without expressing clear-cut approval or disapproval. As the Department noted in the preamble to the proposed rule, § 3015.46 of the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015) exempts State agencies and their subrecipients (i.e. sponsors, institutions and child care facilities) from the general rule requiring the return of interest earned on advances to the Federal government. Deleting the provision on non-interest bearing accounts allows sponsors to earn interest on advances of Program funds and brings the CCFP regulations into conformity with 7 CFR Part 3015.

In the absence of any Federal restriction, State law and policy governs the use of interest earned by sponsors, institutions and child care facilities on advances of Program funds, unless they are in a program directly administered by FNS. These final regulations amend § 226.7(i) to require State agencies to maintain a statement of the State's law and policy on file. In the States where FNS administers the CCFP directly, interest earned on advances must be returned to FNS, as required by the general rule of 7 CFR 3015.46(a).

Those commentors who disapproved of the proposal were generally concerned that institutions located in some States might benefit from laws which are less stringent than those of other States or the Federal government. However, the Department does not believe that a nationwide requirement would be consistent with 7 CFR Part 3015. States are free to regulate this matter. For this reason, the Department is deleting this provision as provided in the proposed rule. However, States are reminded that 7 CFR Part 3015 instructs them to minimize the time between the disbursement of advances to a recipient and the recipient's need for such monies.

3. Appeals Procedures

The Department proposed six amendments to the institution appeal process in § 226.6(j). First, the State agency would be permitted to be represented at hearings, and as a result, a second proposal would require that the State agency, as well as the appellant, be given 10 days notice of the time and place of the hearing. The third proposal was that institutions would receive no reimbursement for meals served during an appeal of a termination unless they win the appeal. Fourth, the Department proposed to allow State agencies to use their own appeals procedures rather than the CCFP procedures under certain conditions. The fifth proposal would require State agencies to advise institutions of the full appeal process at least once each year, rather than requiring a full description with each notice of an adverse action. Finally, the Department reiterated that State agencies would be accountable for claims based on Federal audits even if a State appeals officer held that the institution was not liable.

There was no disagreement with the proposals to amend § 226.6(j)(3) and (4) to ensure that the State agency has the opportunity to be represented at hearings. These proposed amendments, therefore, are being adopted for the reasons stated in the preamble accompanying the proposal.

Commentors tended to be evenly divided on the other proposals. These provisions are discussed below.

The Department proposed an amendment to § 226.6(j)(9) to reimburse institutions for meals served during an appeal of a termination action only if their appeal is successful. Eleven commentors approved of this proposal, and ten disapproved. In general, those who disapproved were concerned that this policy might discourage institutions from either exercising their right to an appeal or from continuing to serve meals which meet CCFP requirements pending a decision on the appeal. Some commentors noted that institutions are sometimes terminated, not for fraud or health violations, but for cash flow problems. Consequently, there were suggestions for modifying this provision to allow institutions to receive continuous reimbursement if the termination action is for mismanagement of funds but to apply the proposed provision if the termination action is for meal pattern violations. Also, one commentor who basically approved of the proposal suggested a modification for sponsors of homes, whereby operating reimbursement for home providers would continue to be paid regardless of the outcome of the appeal, while administrative reimbursement would be paid only if the sponsor wins its appeal.

As the Department noted in the preamble to the proposed rule, termination actions are taken on the basis of serious deficiencies, generally involving financial mismanagement or fraud. Therefore, unless a review officer determines that the State agency's action in terminating the sponsor was improper, the Department does not believe terminated institutions should continue to receive funds. The Department wishes to emphasize that terminations are the result of *serious* problems. Cash flow difficulties, for example, may be the symptom of underlying management deficiencies and cannot be automatically treated as minor. Moreover, the Department does not believe that the proposed rule would limit an institution's access to an appeal. This policy is in effect in the Summer Food Service Program. The Department is not aware that it has resulted in a diminished number of sponsors pursuing their appeal rights.

The Department also does not concur with commentors' recommendations for the alternate procedures discussed above. Fiscal mismanagement is a serious problem. If the institution in question were to continue to receive reimbursement for meals served regardless of the outcome of the appeal, the State agency would have to either increase its monitoring during the period of the appeal to assure itself of proper management, or risk having to lodge an overclaim against the institution after the appeal. In either event, the administrative cost and complexity would be increased for the State agency without providing additional protection for improperly terminated institutions. Consequently, the Department is adopting this amendment as proposed.

Twenty commentors addressed the proposal to allow State agencies to use their own appeal procedures as long as these procedures conform to certain criteria. Eleven commentors approved of the proposed changes, and nine disapproved. Those who disapproved tended to be concerned that this action might afford institutions less protection than they currently enjoy under the CCFP regulations. Some commentors asserted that the CCFP, as a Federal program, must have a uniform appeals procedure. One commentor suggested that this amendment could permit State agencies to vary their procedures from one institution to another. Finally, one party appeared to believe that the Department was proposing to delete the list of appealable actions currently included in this passage.

The Department does not believe the proposed amendment would result in less protection for institutions. This change was proposed to alleviate those situations in which review officials must follow CCFP guidelines despite the fact that the State has procedures which are followed for appeals in other programs. The Department believes that the criteria which must be met by State appeal procedures will ensure the rights of appellants. It should also be noted that most of the differences between CCFP and State appeal procedures involve time limits for accomplishing certain actions. Essential protections such as the right to a review or hearing, the right to counsel and the right to an impartial review officer are required to be a part of the State procedure substituted for the CCFP system. Moreover, since all appeals must be decided on the basis of the Program regulations and instructions, the uniformity of Program policy will not be undermined. The only change will be in the area of non-substantive appeal procedures. The final rule has been amended to make it clear that State agencies must apply the same procedures to all appellants in the State. Finally, the amendatory directions clearly state that the proposed language replaces only the last sentence of Paragraph (j). The first sentence, which lists appealable actions, has not been altered. In response to one comment, however, the Department is establishing a time limit of 120 days for the entire appeal process to be completed. The Department believes this modification will ensure a speedy review while still allowing flexibility for State agencies. For these reasons, the Department is adopting this amendment.

Commentors were also divided on the proposal to require State agencies to advise institutions of the appeal procedures only once each year. Eleven commentors approved, and seven disapproved of this provision. As the Department stated in the preamble to the proposed rule, State agencies will still be required to advise institutions of their right to appeal each time an appealable action is taken. The intent of the proposal was to remove the burden of decribing the entire appeals procedure each time an adverse action is taken. Some commentors objected to the proposal on the grounds that participants might forego their appeal rights if they are not aware of the procedures for an appeal. The Department wishes to emphasize, however, that the procedures for filing appeals must still be made available to institutions at least once each year. Further, in response to a comment, the Department is adopting the language of the Summer Food Service Program regulations, which require State agencies to provide this information each year when the institution's application for participation in the Program is received. Moreover, the final rule has been amended to provide that this information must be provided at other times during the year to institutions who request it. Therefore, the Department is adopting this amendment, with the changes noted.

Finally, the Department proposed to add a paragraph (j)(12) to clarify the Department's policy that State agencies are liable for overclaims established in Federal audits, even though a State review officer dismisses the overclaim against the institution(s) involved. The Department received 15 comments on this provision, with seven commentors approving and eight disapproving. Those who disapproved tended to believe that it would be unfair to hold State agencies liable for overclaims if the State agency is not able to collect the money from the institution. Commentors were concerned, moreover, that if this situation did exist, review officers may not be free to render an impartial decision. Finally, some commentors suggested that in order to implement this provision, the Department must establish an appeal system for Federal audits.

Once a Federal claim has been established against a State agency based on Federal audit findings, only the Department has the authority to adjust, settle, compromise or deny that claim. The actions of State review officers cannot, therefore, overrule the findings of an audit. The Department does not believe that this provision will result in unfair decisions against institutions that are appealing Federal audit findings. This provision emphasizes the policy which is already in effect, although perhaps not currently understood. Review officers have traditionally been characterized by impartiality, and the Department expects this pattern to continue.

Further, the Department does not agree that this provision is necessarily unfair to State agencies. There are situations in which the State agency, rather than the institution, is responsible for an overclaim cited in a audit. For example, if the violation of Program requirements giving rise to the claim occurred because of improper guidance provided by the State agency, a review officer could properly rule that the institution did not have to repay the State agency for the loss. In such a situation, the State agency is responsible for the action giving rise to the audit claim and the Department can assert the overclaim against the State agency pursuant to § 226.14(c).

Finally, although there is no formal appeal mechanism for Federal audits, the Department believes the audit closure process affords ample opportunity for a just determination of audit findings. Before audit findings become final, representatives of the Office of the Inspector General, FNS and the State agency meet to discuss preliminary findings and recommendations. During this phase of the audit process, the State agency reviews all findings and evidence and presents its own documentation for any findings it believes to be erroneous. A final audit report is issued only after this phase has been completed. Because this process assures the State agency of the right to comment on findings and to present evidence in its behalf, the Department does not consider that an additional level of hearings is needed. For these reasons, the Department is adopting this provision as proposed.

4. Audit Disregard

Fifteen commentors addressed the proposal to allow FNS or the Office of the Insepctor General to disregard an overpayment which does not exceed $100. All fifteen approved of this increase. Some commentors, in fact, suggested an ever higher disregard limit. The Department proposed this increase from the former $35 limit because it is not cost effective to pursue overpayments of less than $100. The Department does not consider, however, that the limit could be further increased at this time without sacrificing accountability. The proposed amendment to § 226.8(e) has been modified slightly to make clear that the language allowing State agencies to disregard certain overpayments refers to overpayments identified in State agency sponsored audits. FNSROs which act as State agencies may disregard overpayments less than $100, while State agencies in State administered programs must follow State law on the subject. It was brought to the Department's attention, however, that the word "any" had been inadvertently omitted from immediately before the word "overpayment" in the proposed rule. Therefore, this word has been restored in the final rule.

5. Meal Requirements

The Department received 12 comments on the proposed clarifications to the snack requirements in § 226.20(a)(3) and § 226.20(d)(2). Sixteen commentors addressed the addition of § 226.20(o), which clarifies that family-style meal service may be employed by institutions. All comments on all three proposals were favorable. Some commentors did suggest that the regulations should outline specific requirements for family-style meals. However, the Department believes such details are more appropriate to guidance materials. Therefore, these three amendments are adopted as proposed.

6. Waiver of Claims

The Department proposed to amend § 226.14(b) to stipulate that State agencies may not accept corrective action in lieu of collection of overpayments for meal pattern violations by institutions which prepare their own meals if the overpayment has been established by a Federal audit. Seven commentors approved of this provision; two disapproved; and two commented on the general desirability of accepting corrective action in such situations.

One disapproving commentor believes that losses of less than $100 should be disregarded. The other questioned the extension of this policy to situations in which an overclaim based on a Federal audit has been dismissed by a State review officer. One approving commentor also stipulated that institutions must be allowed to appeal overclaims. The Department wishes to emphasize that this limitation applies only to claims arising out of Federal audits. As noted in the discussion on appeals, overclaims established by Federal audits may not be waived by State agencies under any circumstances. The Department believes it is consistent with this limitation to require State agencies to pursue collection efforts for all overclaims, as the State agency will be held accountable for any uncollected amounts unless FNS and the Office of the Inspector General waive the loss. As clarified in the new paragraph (j)(11) of § 226.6, this accountability extends to situations in which a claim based on a Federal audit against an institution has been dismissed by a review officer. State agencies continue to have the latitude to accept corrective action in lieu of pursuing overclaim established by means other than Federal audits. For these reasons, this amendment is adopted as proposed.

7. Eligibility Requirements

The Department proposed two amendments which affect institutions' eligibility. The first of these, § 226.6(d)(1)(i) addressed the continued CCFP eligibility of institutions admitted to the CCFP on the basis of participation in another Federal program. The proposal would require those institutions admitted to the other Federal programs on the basis of having valid licenses to maintain those licenses in order to continue to be eligible for the CCFP. This proposal received overwhelming approval from commentors. Seventeen commentors approved, while only two disapproved. The Department noted, however, that approving and disapproving commentors alike appeared to misunderstand the extent to which the proposed amendment would apply. Many commentors believed the proposal would adherence to licensing standards as an absolute condition of eligibility for institutions admitted into the CCFP on the basis of participation in another Federal program. Consequently, opposing commentors were concerned that many safe, well-operated Head Start establishments in their States might be forced out of the CCFP because they were note licensed child care centers. Because of the apparent misunderstanding, the Department wishes to reiterate the application the application and intent of this provision.

By law, facilities which have been approved for another Federal program, primarily Head Start, are eligible to participate in the CCFP as well.

regardless of whether or not they are licensed by State or local authorities.

This consideration is based on the fact that institutions must meet certain performance standards to be admitted to Head Start, and these standards require participants to obtain State or local licensing, where available. If licensing is not available, Head Start applies its own facility standards. The proposed provision would *not* apply to facilities admitted under Head Start's own standards. It has happened, however, that facilities admitted to Head Start on the basis of licenses have occasionally continued to participate in Head Start after having lost their licenses. Since these facilities had not yet been terminated from Head Start, they maintained that they were still eligible to participate in the CCFP. This situation clearly has the potential of permitting participation by institutions whose environments may be detrimental to the health and safety of enrolled children, and the Department believes that it has an obligation to ensure that Program benefits are made available only to institutions which offer high quality child care.

For this reason, the Department proposed that institutions admitted to a Federal program such as Head Start on the basis of licensing would not be eligible for the CCFP if they lose their licenses, even if they have not yet been terminated from that program. In reviewing the preamble to the proposed rule, the Department considers that commentors may have misunderstood the Department's intent. However, the Department does not believe it is necessary to repropose this amendment. The only disapproving commentors were those who thought the proposal could result in the disqualification from the CCFP of numerous high quality Head Start facilities which, for one reason or another, are not licensed. The Department again wishes to provide assurance that licensing is not a condition of CCFP eligibility for these institutions unless it was the basis for admission to Head Start. Approving commentors agreed with the general principle of the amendment. Therefore, the Department is adopting the proposed amendment with language changes to clarify the intent of this passage.

The Department also proposed to amend § 226.15(a) to clarify that the institution, not the State agency, is responsible for documenting compliance with Internal Revenue Service (IRS) requirements when it has been allowed to participate in the CCFP on the basis that it is moving toward obtaining tax-exempt status. Twelve commentors approved of the proposal; one disapproved; and one raised some questions without expressing clear approval or disapproval. Some commentors, while approving of the provision, suggested shortening the length of time an institution can remain on the Program while awaiting IRS approval. Additionally, some commentors requested further clarification on whether institutions in this category could participate for longer than 12 months pending IRS approval of tax-exempt status, and some questions were raised about appeal rights. The Department wishes to emphasize that no change was proposed to this paragraph other than to add the sentence specifying that documentation of compliance with IRS requirements is the institution's responsibility. The Department is not contemplating any further changes to the procedures outlined in this paragraph. State agencies will continue to observe the time limits currently established, and institutions will continue to enjoy the current appeal rights. Therefore, the Department is adopting this amendment as proposed.

8. Administrative Flexibility/Program Simplification

a. *Readmission of seriously deficient institutions.* Nine commentors approved of the Department's proposal to amend § 226.6(c) by deleting the reference to a three year waiting period for readmission of institutions which have been found to be seriously deficient in their operation of any Federal child nutrition program. Two commentors disapproved on the grounds that State agencies would be able to deny readmission indefinitely even though the institution has corrected its deficiencies. These commentors recommended that the passage be revised to require the immediate readmission of institutions which have taken corrective action. The Department wishes to point out that the proposed amendment places the emphasis on corrective action as a precondition of readmission to the Program. However, all other Program requirements must still be met before an institution can be readmitted. Therefore, the Department is adopting the amendment as proposed. The Department also notes that the proposed rulemaking established an inconsistency by not also deleting the three year waiting period for entering into agreements with any institution which had, in the past, been seriously deficient in its operation of one or more child nutrition programs. The Department did not intend this inconsistency. Therefore, this final rule further revises this paragraph to clarify the policy that corrective action is a precondition of approval for any institution which has experienced serious deficiencies.

b. *Health/sanitation and fire/safety inspections.* The Department proposed to define a "current" health, fire or safety permit as one issued within the past 36 months, rather than the past 12 months as presently required under § 226.6(d)(2)(i)(C)*(1)* and *(2)*. This proposal was intended to alleviate the difficulties some jurisdictions experience in attempting to obtain annual inspections. Of 22 comments received on this proposal, 16 disapproved, representing all quarters of the Program. In general, commentors acknowledged that annual permits are occasionally difficult to obtain; nevertheless, the consensus was that the proposed change could be detrimental to the health and safety of children participating in the CCFP. In view of this widespread concern, the Department is withdrawing this proposed amendment.

c. *Commodities/cash-in-lieu of commodities.* Nine commentors approved of the proposed amendment to § 226.6(g), deleting the provision permitting institutions to request a switch from commodities to cash-in-lieu or vice versa during the school year. One commentor disapproved, and one commentor recommended an additional restriction. The disapproving commentor expressed concern that by requiring institutions to elect to receive commodities at the start of the school year, they might not receive the full value of cash-in-lieu because there can be a lack of variety of available foods at that time of the year. While the variety may be limited in July, over the course of the year an ample variety of foods will be available to institutions. One commentor, while not disapproving of the proposal, recommended that no institution, newly admitted or otherwise, should be allowed to elect to receive commodities after June 1. However, the statutes governing the program require that all institutions be accorded the opportunity to receive commodities, except in limited situations. Moreover, the administrative burden is not primarily caused by institutions which are admitted to the program after June 1, but by institutions which desire to change their decision after the State distribution agency has acted. For these reasons, the Department is adopting this provision as proposed.

d. *Corrective action plans.* Thirteen commentors responded to the proposal to modify § 226.7(c) by adding a good cause exception to the 60-day time limit for State agencies to submit corrective action plans. Ten commentors approved, and three disapproved. In general, those who disapproved believed State agencies should be held to standards for corrective action as stringent as those imposed on institutions. It was also suggested that delays by the State agency in accomplishing corrective action could be detrimental to participating institutions in the State. The Department believes, however, that correcting deficiencies at the State level often involves more planning time and deals with more complex issues than at the institution level. It will frequently be necessary for the State agency to receive commitments for funding and staff or to coordinate activities with other agencies of the State in order to deal effectively with many deficiencies. Consequently, the Department continues to believe that development of an effective plan will sometimes require longer than 60 days and that a good cause exception should apply in these instances. The Department wishes to emphasize that it has no intention of relaxing its requirements for corrective action. The amendment merely allows FNS and State agencies to exercise greater flexibility in developing a workable plan and does not affect timeframes for the actual completion of the corrective action. For these reasons, the Department is adopting the provision as proposed.

e. *Sponsor/home agreements.* The Department proposed two amendments dealing with agreements between sponsoring organizations and their day care homes. The first proposal would amend § 226.18(b) to allow State agencies the option of either developing these agreements themselves or requiring their sponsors to formulate their own agreements, subject to State agency approval. Ten commentors approved of this proposal, and five disapproved. Those who disapproved noted that this proposal could increase the administrative burden both for sponsors, who would be responsible for developing the agreements, and State agencies, who would have to review them. In proposing this amendment, the Department intended to increase flexibility and reduce burden by permitting State agencies the option of allowing sponsors which have developed their own agreements to use them, as long as all CCFP requirements were included. State agencies would not, however, be required to extend this consideration to their sponsors. The decision to do so is entirely a State agency option. The Department agrees, however, that it would be unfair for State agencies to require sponsors to develop their own agreement. Such a requirement would be especially burdensome for very small sponsors that lack the resources to develop and print their own forms. Therefore, the Department is modifying the proposed amendment to allow State agencies to approve sponsors' requests to use their own agreements as long as all CCFP requirements are included. The Department is also incorporating this amendment in §226.6(n). The proposed rule excluded this conforming amendment through oversight, and the Department is correcting this omission in the final rule.

The Department also proposed to amend § 226.18(b)(8) to allow State agencies to stipulate limits or procedures for terminations of agreements between sponsors and day care homes for convenience. Ten commentors approved of the proposal, while three disapproved. One State agency was concerned that the proposal could interject State agencies into disputes between sponsors and day care homes by requiring the State agency to determine whether there was sufficient cause for termination. Another disapproving commentor was concerned that the proposal could limit the ability of sponsors to deal with homes which may be violating program requirements. The third opposing commentor was concerned that this provision might enable State agencies to confer monopolies upon selected sponsors. The Department emphasizes that any limitation would be at the State agency's option. State agencies are not required to act in this area. Secondly, the revision does not affect the right of either party to terminate the agreement for cause, which would include instances of program violations. Finally, since agreements are effective only for one year, it is not possible to employ this provision as a means of restricting competition among sponsoring organizations. Therefore, the Department is adopting the amendment as proposed.

f. *Alternate approval in backlog situations.* Eleven commentors addressed the proposal to delete § 226.6(b)(4), which permits State agencies to employ alternate procedures for approving child care centers, outside-school-hours centers and day care homes which have not been previously licensed in situations of backlogs at the licensing agency. Nine commentors approved; one disapproved; and one requested some additional clarification. The one disapproving commentor believed that rescission of alternate approval in these backlog situations may create delays in participation for some providers. The Department does not consider, however, that this effect would be widespread. Moreover, as the Department noted in the preamble to the proposed rule, this provision has created a significant administrative burden for State agencies and has placed State agencies in the untenable position of deciding on the adequacy of facilities when an official licensing agency is available. The Department continues to believe that this responsibility should rest solely with licensing agencies when they exist. One commentor also asked whether or not this elimination of the backlog provision would extend to institutions which are reapplying but have not yet had their licenses officially renewed. The backlog provision in § 226.6(d)(4) was never intended to apply to license renewal situations. In cases in which licensing is available, § 226.6(d)(1) requires the State agency to ensure only that child care centers, outside-school-hours centers and day care homes are either licensed or complying with procedures to renew licensing in situations where the State agency has no information that licensing or approval will be denied. For these reasons, the Department is adopting the proposal to delete this provision. The final regulation also adopts the proposal to delete the reference to this provision in § 226.6(d)(3)(iii) and § 226.6(m).

9. Clarifications/Editorial Changes

The Department proposed two editorial amendments. The first of these specified in § 226.6(m) that institutions are responsible for ensuring that all deficiencies identified during reviews are corrected. The Department proposed this minor change to clarify that institutions have the primary responsibility for maintaining compliance with child care standards. Eight commentors approved of this amendment, and one disapproved. It appears, however, that the one disapproving commentor may have misunderstood the nature of the amendment. The commentor was concerned that the Department was requiring State agencies to review against licensing standards. The amendment merely adds the clause at the end of the first sentence specifying that "the institution shall ensure that all violations are corrected." The remainder of the sentence was unchanged. It should be noted, moreover, that the State agency's review responsibilities in this passage extend only to facilities admitted to the Program under the alternate approval provisions of

§ 226.6(d)(3). Therefore, the Department is adopting this amendment as proposed. The Department does wish to emphasize, however, that ultimate responsibility for compliance with this provision rests with the State agency, and language to this effect has been inserted in the regulation.

The second editorial amendment was to streamline the regulations by deleting the list of items in § 226.6(b) which are required to be considered during the application approval process. Eight commentors approved, and three disapproved. The disapprovals were based on the fact that this provision is not entirely duplicated by a similar provision in § 226.6(e), contrary to the statement made in the preamble to the proposed rule. Consequently, these commentors believed State agencies might not have sufficient guidance on what to consider in approving applications. The Department regrets having made this error in the preamble and agrees that deletion of this list could leave State agencies with insufficient direction with respect to certain annual requirements. Therefore, the Department is withdrawing the proposal to delete these items from the regulations.

10. State Agency Review Systems

Although no specific amendment was proposed, the Department solicited comments on the question of whether or not State agencies should be permitted to substitute their own review systems for the review requirements of § 226.6(k), provided FNS approved of the State agency's system. The intent of any such amendment would be to allow a certain degree of flexibility with respect to frequency of review when the State agency could demonstrate good cause.

Commentors were fairly evenly divided, with six (mostly States) approving of the change and four (mostly institutions) disapproving. Those disapproving were generally concerned with the possibility that State agencies might depart from the Program standards set forth in the regulations. The Department wishes to reiterate, however, that any such proposal would be directed specifically at review systems and issues such as determining standards for frequency of reviews or methods of selecting institutions for review. The reviews would still have to assess compliance with program regulations. The Department is taking all comments under consideration.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs-health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Part 226 is being amended as follows:

1. In § 226.6, by revising the first three sentences of the introductory text of paragraph (c); revising paragraph (d)(1)(i); revising the second sentence of (d)(3); removing paragraph (d)(4); revising paragraph (g); adding two sentences after the first sentence and revising the last sentence of the introductory text of (j); revising the second sentence of paragraph (j)(1); revising the last sentence and adding a new sentence at the end of (j)(3); revising paragraph (j)(4); placing a period after the word "action," in the third sentence; removing the word "and," and adding a sentence at the end of paragraph (j)(9); adding paragraph (j)(12); revising the third sentence of paragraph (k); revising the first and fourth sentences of paragraph (m); and adding a new sentence between the first and second sentence of paragraph (n) to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(c) *Denial of applications and termination of institutions.* The State agency shall not enter into an agreement with any applicant institution identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program at any time and which was seriously deficient in its operation of any such program unless the deficiencies have been corrected to the satisfaction of the State agency, with FNS concurrence. The State agency shall terminate the program agreement with any institution which it determines to be seriously deficient. Following such termination, the institution shall not be eligible to participate in the program until such time as the State agency, with FNS concurrence, determines that the institution has taken appropriate corrective actions to prevent recurrence of the deficiencies that led to a termination from the program. * * *

(d) *Licensing/Approval.* * * *

(1) *General.* * * *

(i) Are licensed or approved by Federal, State, or local authorities, provided that institutions which are approved for Federal programs on the basis of State or local licensing shall not be eligible for the Child Care Food Program if their licenses lapse or are terminated; or

* * * * *

(3) * * * Licensing or approval is not available when (i) no Federal, State, or local licensing/approval standards have been established for child care centers, outside-school-hours care centers, or day care homes; or (ii) no mechanism exists to determine compliance with licensing/approval standards. * * *

* * * * *

(g) *Commodity distribution.* The State shall annually inquire as to the preference of each institution for commodities or cash-in-lieu of commodities. Each institution electing cash-in-lieu of commodities shall receive such payments. Each institution which elects to receive commodities shall have commodities provided to it unless the State agency, after consultation with the State commodity distribution agency, demonstrates to FNS that distribution of commodities to the number of such institutions would be impracticable. The State agency may then, with the concurrence of FNS, provide cash-in-lieu of commodities for all institutions. A State agency request for cash-in-lieu of all commodities shall be submitted to FNS not later than May 1 of the school year preceding the school year for which the request is made. The State agency shall, by June 1 of each year, submit a list of institutions which have elected to receive commodities to the State commodity distribution agency, unless FNS has approved a request for cash-in-lieu of commodities for all institutions. The list shall be accompanied by information on the average daily number of lunches and suppers to be served to children by each such institution.

* * * * *

(j) *Institution appeal procedures.* * * * State agencies may use their own State appeal procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the place, date and procedures of the hearing. The appeal procedures adopted by the State agency shall be made available in writing each year to all institutions at the time of application for participation in the Program and upon request. If the State has not established its own appeal procedures or the procedures do not meet the above listed criteria, the State agency shall observe the following procedures at a minimum:

(1) * * * The notice of action, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the institution has the right to appeal the action;

* * * * *

(3) * * * Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(4) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing;

* * * * *

(9) * * * If the institution or facility has been terminated for this reason, the State agency shall so specify in its notice of action. Institutions electing to continue operating while appealing terminations shall not be reimbursed for any meals served during the period of the appeal if the State agency's action is upheld; and

* * * * *

(12) In cases where an appeal results in the dismissal of a claim against an institution which was asserted by the State agency based upon Federal audit findings, FNS may assert a claim against the State agency in accordance with the procedures outlined in § 226.14(c).

(k) *Program Assistance.* * * * Program reviews shall assess institutional compliance with the provisions of this Part and with any applicable instructions of FNS and the Department. * * *

* * * * *

(m) *Child Care Standards Compliance.* The State agency shall, when conducting administrative reviews of child care centers, outside-school-hours care centers, and day care homes approved by the State agency under paragraph (d)(3) of this section, determine compliance with the child care standards used to establish eligibility, and the institution shall ensure that all violations are corrected and the State shall ensure that the institution has corrected all violations. * * * If, during an administrative review of a child care center, outside-school-hours care center, or day care home not approved by the State agency under paragraph (d)(3) of this section, the State agency observes violations of applicable health, safety, or staff-child ratio standards, or attendance in excess of licensed capacity, the State agency shall promptly refer such violations to the appropriate authority. * * *

(n) * * * However, the State agency may, at the request of the sponsor, approve an agreement developed by the sponsor. * * *

2. In § 226.7, paragraph (c), a new sentence is added between the second and third sentences, and in paragraph (i) a new sentence is added to the end of the text to read as follows:

§ 226.7 State agency responsibilities for financial management.

* * * * *

(c) *Management Evaluations and Audits.* * * * If a State agency makes a showing of good cause, however, FNS may allow more than 60 days in which to submit a plan. * * *

* * * * *

(i) * * * The State agency shall maintain on file a statement of the State's law and policy governing the use of interest earned on advance funds by sponsors, institutions and child care facilities.

* * * * *

3. In § 226.8(e), revising the first sentence to read as follows:

§ 226.8 Audits.

* * * * *

(e) In conducting management evaluations or audits for any fiscal year, FNS or OIG may disregard any overpayment which does not exceed $100. In conducting State agency sponsored audits in State administered programs, the State agency may disregard any overpayment which does not exceed the amount established by State law, regulations or procedures as a minimum for which claims will be made for State losses generally. * * *

* * * * *

4. § 226.14 is amended by adding a new sentence to the end of paragraph (b), to read as follows:

§ 226.14 Claims against institutions.

* * * * *

(b) * * * However, the State agency shall not disregard any overpayments or waive collection action arising from the findings of Federal audits.

* * * * *

5. § 226.15, paragraph (a) is amended by adding a new sentence between the second and third sentence to read as follows:

§ 226.15 Institution provisions.

(a) *Tax-exempt status.* * * * It shall, however, be the responsibility of the institution to document that it has complied with all requirements of IRS and has provided all information requested. * * *

* * * * *

6. § 226.16, paragraph (d)(4)(ii) is revised to read as follows; paragraph (j) is removed, and paragraph (k) is redesignated as paragraph (j).

§ 226.16 Sponsoring organization provisions.

* * * * *

(d) * * *

(4) * * *

(ii) Three times each year at each day care home, provided at least one review is made during each day care home's first four weeks of Program operations and not more than six months elapse between reviews. However, based on case-by-case findings by the State agency that improved efficiency and more effective management will result and subject to FNSRO approval, State agencies may allow some or all of their sponsors to conduct reviews an average of three times each year per day care home, provided that each day care home is reviewed at least twice each year, at least one review is made during each day care home's first four weeks of Program operations, and no more than six months elapse between reviews; and

* * * * *

7. In § 226.18, the second sentence of paragraph (b) is revised and a new sentence after the second sentence has been added; and paragraph (b)(8) is revised to read as follows:

§ 226.18 Day care home provisions.

* * * * *

(b) * * * Sponsoring organizations shall enter into a written agreement with each sponsored day care home which specifies the rights and responsibilities of both parties. This agreement shall be developed by the State agency, unless the State agency elects, at the request of the sponsor, to approve an agreement developed by the sponsor. At a minimum, the agreement shall embody:

* * * * *

(8) The right of the sponsoring organization or the day care home to terminate the agreement for cause or, subject to stipulations by the State agency, convenience; and

* * * * *

8. § 226.20 is amended by removing the words "be served between other

meal types and" from paragraph (a)(3); by revising the paragraph heading of (d)(2); and by adding paragraph (o), to read as follows:

§ 226.20 Requirements for meals.

(a) * * *

(3) Supplemental food shall contain two of the following four components:

* * * * *

(d) *Additional food.* * * *

(2) *Lunch, supper or supplemental food.* * * *

* * * * *

(o) *Family-style meal service.* Meals may be served in a family-style setting.

(Sec. 2, Pub. L. 95-627, 92 Stat. 3603, 42 USC 1766 and Pub. L. 97-35)

Dated: February 19, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-5201 Filed 3-1-85; 8:45 am]

BILLING CODE 3410-30-M

Farmers Home Administration

7 CFR Parts 1807, 1822, 1902, 1930, 1944, 1951, 1955, and 1965

Predetermined Amortization Schedule System (PASS)

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) implements a new regulation and related changes in other regulations governing loan payments and servicing in the new Automated Multiple Housing Accounting System (AMAS) which incorporates a Predetermined Amortization Schedule System (PASS) as the payment application method. The present daily interest accrual system (DIAS) for payment application applies subsidized loan payments as if they are amortized at the subsidized (interest credit) rate usually 1 percent. This creates an inequity because principal for subsidized loans is reduced faster than principal for nonsubsidized loans. This action is taken in response to general public requests for a payment application method and other loan servicing functions consistent with practices in the private sector and Office of Inspector General (OIG) audits suggesting change in FmHA payment application methods so subsidized and nonsubsidized loans are treated equitably. The effect of this regulation will be a change from DIAS to PASS as the method of applying loan payments for all new loans, transfers, reamortizations and voluntarily converted loans after the effective date of the regulation. The related changes allowed by an improved accounting system are better services to borrowers and more efficient money management by FmHA.

EFFECTIVE DATE: The effective date of this regulation will be May 1, 1985.

FOR FURTHER INFORMATION CONTACT: Jeanine L. Johnson, Senior Loan Specialist, Multiple Family Housing Servicing and Property Management (MHSPM) Division, Room 5321-S, Farmers Home Administration, 14th and Independence Avenue, SW., Washington, D.C. 20250, Telephone: (202) 382-9728.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

This document has been reviewed according to 7 CFR, Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of human environment and according to the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

The FmHA programs and projects which are affected by this regulation are subject to intergovernmental consultation in the manner delineated in FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," available in any FmHA Office.

CFDA numbers and titles: 10.405, Farm Labor Housing Loans and Grants; 10.415, Rural Rental Housing Loans; 10.411, Rural Housing Site Loans; and, 10.427 Rural Rental Assistance Payments.

FmHA implements a new Automated Multiple Housing Accounting System (AMAS) with borrower payments applied on PASS, to provide a loan accounting system consistent with the private sector and to provide incentive for borrowers to make timely loan payments. The design of AMAS incorporates recommendations in the President's Private Sector Survey on Cost Control (PPSSCC); requirements of Pub. L. 97-365 known as the Debt Collection Act of 1982; "Reform 88"; and Office of Management and Budget and Government Accounting Office requirements for government accounting system and automated data processing system design.

The benefits to the government from AMAS include better cash management, better control of subsidy funds, better data on use of loan and grant funds, improved account servicing to borrowers, more effective reports available to Congress and FmHA National, State and District Offices on funds and services provided to the public and equitable application of borrower payments whether subsidized or nonsubsidized.

Benefits to borrowers include easier understanding of FmHA's payment application method; ability to project payment applications to interest and principal; and ability to deduct rental assistance from payments made to FmHA.

This action incorporates new and improved administrative procedures made possible by the design of AMAS. The major changes are: Payments based on PASS; computer based use of funds and project data maintained by State and District Offices; computer based tracking of rental assistance; obligation and use of rental assistance maintained by fiscal year of obligation; payment notices for borrowers; better disclosure of payment application including application of subsidy; suspension of rental assistance in problem cases; and transfer of unused rental assistance between projects.

The proposed rule published April 18, 1984, included authority to suspend rental assistance in problem cases or credit sales and authority to reinstate to the present borrower, or a new borrower in the case of a credit sale, so the rental assistance is not lost to the project. Pub. L. 98-181 dated November 30, 1983, requires that, "the Secretary (of Agriculture) shall transfer rental assistance contract authority under this section (Section 521 of the Housing Act of 1949, as amended) from projects where such authority is unused after initial renting and not needed because of a lack of eligible tenants in the area to projects where such authority is needed." The originally proposed language of paragraph XV of Exhibit E of Subpart C of Part 1930 has been revised to incorporate this provision of Pub. L. 98-181.

This action does not incorporate the tenant files and direct billing system described in the proposed rule published April 18, 1984, of § 1951.506 of Subpart K of Part 1951 of Chapter XVIII Code of Federal Regulations. Review of the interim system FmHA proposed to use until the District Offices had computer terminals revealed that the interim system is not feasible. Mailing the tenant data to the Finance Office does not allow enough time to input the data and produce an accurate billing. FmHA will delay implementing tenant files until the District Offices have terminals, proposed sometime in 1985. At that time, a second "final rule" on these regulations will be published and comments received on tenant files will be addressed at that time.

A proposed rule to implement regulations governing AMAS and PASS was published in the **Federal Register** for a sixty (60) day comment period on April 18, 1984, 49 FR 15212. Nine comments were received. All comments received through June 19, 1984, were considered. Five were from borrowers or associations of borrowers, three were from FmHA employees and one was from the Office of Inspector General, USDA.

Discussion of Comments

Five of the nine comments received expressed direct support for the new system. While the other four comments were not negative about the system, they expressed specific concerns about the proposed policies regarding the direct billing and payment system which was proposed.

1. Changes are being made in twelve FmHA administrative regulations to implement improvements related to AMAS.

2. Tenant certification and recertification. Four of the respondents felt the requirement in proposed paragraph VII F3 to Exhibit B to Subpart C of Part 1930 was unfair. It required the borrower to pay overage for a tenant with an expired tenant certification and the overage could not be passed on the the tenant. Several situations were given where it would be beyond the borrower's control to get recertification.

FmHA reviewed the comments and felt they were valid. Paragraph VII F has been rewritten to provide notification to the borrower by the District Office that the tenant certification will expire in 90 days. The borrower must give the tenant notification at 90 days and 30 days prior to expiration of the tenant certification. If the tenant fails to respond, the borrower may charge the tenant market rent if the proper notifications have been made. The borrower will be required to pay overage if a proper tenant certification is not provided.

3. Late fee charges not chargeable to project. Four respondents commented on this provision in paragraph XIII B2 a (4) of Exhibit B of Subpart C of Part 1930. One borrower felt this was unfair because projects with financial difficulties often do not have other resources from which the late fees can be paid.

Two respondents felt FmHA should allow late fees to be paid by the project if there was adequate income to cover the expenses or FmHA should allow payments to be paid from reserves. One respondent fully supported charging late fees and not allowing them to be charged to the project account.

FmHA has not changed the regulations. For projects with financial difficulties there is a provision for excepting late fees in § 1951.510(c)(2)(v) of Subpart K of Part 1951.

Under PASS, a borrower has 40 days from the date rents are due until a late fee is assessed on the account. If there is a reason why sufficient rents are not being generated to make the payment and pay the operating expenses, the borrower should meet with FmHA and develop a plan to correct the problem. If late fees are assessed because of poor financial management by the borrower, the tenants should not be required to bear the cost of late fees in the form of increased rent to pay increased operating costs. Loan agreements allow for the release of reserve funds to make loan payments with District Director approval.

4. The Finance Office deducting payment from rental assistance. One borrower commented that when a project has financial difficulties, the rental assistance is needed for operating costs but the borrower might be paying other costs and deferring payment to FmHA. Failure to receive all rental assistance could force the account into foreclosure.

A provision has been made in paragraph X B 1 of Exhibit E to Subpart C to Part 1930 for the District Director to release a portion of the rental assistance to a delinquent borrower based on a servicing plan for the project.

5. Assigning rental assistance other than the first of the month. One respondent requested interpretation of present paragraph XI C to Exhibit E to Subpart C of Part 1930 since all rental assistance requests must now be based on residency as of the first day of each month.

FmHA agrees that this paragraph has caused an inconsistency so the paragraph has been revised to make adjustments to an existing tenant's contribution to coincide with the first day of the month.

6. Capitalizing construction interest on multiple advance loans. Two borrowers commented on the problem in § 1944.176(d)(3) of Subpart D of Part 1944 (and § 1944.212(m) of Subpart E of Part 1944) related to capitalizing interest on multiple advance loans rather than loaning funds to pay this interest. For accounting purposes this seems to deny them a tax deduction.

Capitalizing construction interest in multiple advance loans has been FmHA practice on single family loans since 1976. However, this was not available on multiple family housing loans until AMAS was designed. This is a good money management practice for FmHA since loan funds are conserved. Also, the government does not have funds in transit from the U.S. Treasury to the borrower and back to the U.S. Treasury as an interest payment.

At the suggestion of one respondent, we have revised § 1944.212(m) of Subpart E to Part 1944 to require the District Director to report to the borrower the amount of interest accruing monthly upon request from the borrower.

7. Escrow accounts for rents collected before a project is ready for occupancy. One respondent questioned if the escrow account specified in paragraph VI C of Exhibit B to Subpart E of Part 1944 is the same as the general operating account (formerly the general fund account) required by the borrower's loan agreement.

As originally written, this was a separate account. However, another account seemed burdensome since the borrower already has a general fund account for this purpose. The regulations are revised.

8. Payment Due Dates. One association of borrowers requested clarification about administratively changing payment due dates to the first day of the month when loans convert to PASS on the effective date of the regulation.

FmHA needs to change all payment due dates to the first day of the month to implement PASS and the direct billing system. Terms of promissory notes will not be changed for borrowers who have not signed a conversion agreement. However, FmHA has administratively determined that borrowers will not be determined delinquent until after the first day of the month. Prior to the effective date of this regulation all FmHA borrowers affected by AMAS will be notified that the payment due for a given month can be deferred until the first day of the following month.

Thereafter, all payments will be requested to be paid on the first day of the month. (For example: A payment due in November will be due December 1.) Final due dates for loans will not be changed.

9. Late fee exceptions. Two borrowers felt State Directors authority to make an exception for late fees should include all borrowers.

This change has been made in §1951.510(c)(2)(v) of Subpart K of Part 1951.

10. Treasury Ruling. Two borrowers urged FmHA not to implement AMAS until the U.S. Treasury Department has determined the tax impact of PASS.

FmHA has designed AMAS, including PASS, for several compelling reasons as stipulated at the beginning the SUPPLEMENTARY INFORMATION. It would not be in the best interest of the government to delay implementing AMAS. FmHA will start applying payments on PASS when AMAS is implemented to provide equitable treatment to subsidized and nonsubsidized borrowers.

11. Changes from DIAS to PASS. One borrower organization requested that we require approval of requests for conversion from DIAS to PASS provided all conditions in the regulation are met.

This change has been made in § 1951.517(b)(2) of Subpart K of Part 1951.

List of Subjects

7 CFR Part 1807

Loan programs—Agriculture, Loan programs—Housing and community development, Mortgages.

7 CFR Part 1822

Loan programs—Housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Rural housing.

7 CFR Part 1902

Accounting, Banks, banking.

7 CFR Part 1930

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

7 CFR Part 1944

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

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Mortgages.

7 CFR Part 1955

Foreclosure, Government acquired property.

7 CFR Part 1965

Administrative practice and procedure, Low and moderate income housing—Rental, Mortgages.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1807—TITLE CLEARANCE AND LOAN CLOSING

1. Section 1807.1 (d) is amended in the first sentence following the words "requirements of" by removing the reference "§ 1822.95 (a) of this chapter" and inserting in its place the reference "§ 1944.236 (a) of Subpart E of Part 1944 of this chapter."

2. Section 1807.1 (e) is amended by removing the reference in the last sentence from "Subpart C of Part 1918 of this chapter" and inserting in its place the reference "Subpart E of Part 1924 of this chapter."

3. In § 1807.2, paragraph (f)(3) is removed and paragraphs (f)(4) through (f)(13) are redesignated as (f)(3) through (f)(12) respectively.

PART 1822—[AMENDED]

Subpart-G—Rural Housing Site Loan Policies, Procedures, and Authorizations

4. Section 1822.271 paragraphs (d), (e), and (g) introductory text are revised to read as follows:

§ 1822.271 Processing applications.

* * * * *

(d) *Preparation of docket forms.*—(1) *Request for obligation of funds and fund analysis.* Forms FmHA 1944-50, "Multiple Family Housing Borrower/Project Characteristics," and FmHA 1944-51, "Multiple Family Housing Obligation-Fund Analysis," will be completed in accordance with the Forms Manual Insert (FMI).

(2) *County committee certification or recommendation.* County committees will not be used to review RHS loan applications.

(e) *Assembly, review and distribution of complete loan docket items.* When all items required for the complete loan docket have been furnished, they will be examined thoroughly to make sure they are properly and accurately prepared and are complete in all respects, including dates and signatures. The loan docket items will be assembled in the following order and distributed as follows:

Form No.	Name of form or document	Total No. of copies	Signed by borrower	Number for loan docket	Copy for borrower
	Application Letter and Attachments	2		1-0	1-C
	Evidence of Legal Authority (copy or citation of specific provisions of State statutory authority).	2	1	1-0	1-C
	Proof of Organization (certified copy of Articles of incorporation)	2	1	1-0	1-C
	Certified copy of Bylaws	2	1	1-0	1-C
	List of names and addresses of officers, directors and members	2	1	1-0	1-C
	Narrative plan and other supporting information	2	1	1-0	1-C
	Evidence of Need				
	Certified Copy of Loan Resolution	1	1	1-0	
FmHA 440-4	Assurance Agreement	2	1	1-0	1-C
FmHA 400-1	Equal Opportunity Agreement (when applicable)	2	1	1-0	1-C
FmHA 400-3	Notice to Contractors and Applicants	3		1-C	1-C
FmHA 400-6	Compliance Statement (when applicable)	3		1-C	1-C
	Survey of land given as security, plans specifications, cost estimates, and proposed manner of development	3	1	1-0	1-C
	Operating budget (if administrative expenses are to be included in loan).	2	1	1-0	1-C
	Appraisal Report with Attachments	1		1-0	
	Preliminary Title Opinion and a Final Title Opinion or a title insurance binder and a mortgage title insurance policy.				
	Option or copy of deed, purchase contract, or other instruments of ownership.				
FmHA 1944-50	Multiple Family Housing Borrower/Project Characteristics.	1		[1] 1	
FmHA 1944-51	Multiple Family Housing Obligation-Fund Analysis	2	2	[1] 1	1

[1] Data input to Finance Office through field office terminals

* * * * *

(g) *Loan approval authority and State Office action.* The State Director is authorized to approve loans in accordance with this Subpart and Subpart A of Part 1901 of this chapter.

As soon as it is evident that a loan will be approved, the State Director will complete Exhibit A to Subpart C of Part 2015 of this chapter and submit to the FmHA Finance Office through field office terminals that information contained in Form FmHA 1944-50, "Multiple Family Housing Borrower/Project Characteristics." The State Director may redelegate approval authority to qualified State Office employees. When a docket or preliminary application is received in the State Office, the State Director will:

* * * * *

5. In § 1822.274, paragraph (c) is revised to read as follows:

§ 1822.274 Loan closing.

* * * * *

(c) *Promissory note.* Form FmHA 1944-52, "Promissory Note," will be used. Instructions for preparation will be in accordance with the FMI and the following:

(1) The total amount to be shown in the note will be the amount of the loan shown on Form FMHA 1944-51. The note will be dated the date of the loan closing.

(2) The note will be signed in accordance with FmHA Instruction 427.1 and the FMI for Form FmHA 1944-52.

(3) Payments shall not be deferred.

* * * * *

6. In § 1822.278, paragraph (f) is revised to read as follows:

§ 1822.278 Special requirements for RHS, section 523 loans (loans to organizations providing sites for self-help housing).

* * * * *

(f) *Note forms.* Form FmHA 1944-52, "Multiple Family Housing Promissory Note," will be used. See § 1822.274 (c).

* * * * *

PART 1902—SUPERVISED BANK ACCOUNTS

Subpart A—Loan and Grant Disbursement

7. In § 1902.1 paragraphs (a) and (b) are revised to read as follows:

§ 1902.1 General.

(a) Forms FmHA 1940.1, "Request for Obligation of Funds" and FmHA 1944-51, "MFH Obligation—Fund Analysis," provide for: (1) Obligation only, (2) obligation and check request for the full amount of the loan or grant, and (3) obligation and check request for a partial amount of the loan or grant except for MFH. The instructions on when and how to use these forms are contained in the Forms Manual Inserts (FMI) for these forms. Instructions for using Form FmHA 1944-51 for obligation and check request via computer terminal may also be found in the "Multiple Family Housing User Procedures."

(b) Forms FmHA 440-57, "Acknowledgement of Obligated Funds/Check Request" and FmHA 1944-57, "MFH Acknowledgement of Obligated Funds/Check Request," provide for: (1) The initial loan check, (2) all subsequent loan checks, (3) making corrections on the data in the loan account as reflected on the form, (4) notifying the Finance Office of the loan closing date and the loan amortization effective date, and (5) providing requested information from the Finance Office; and, (6) for Multiple Family Housing (MFH) loans providing Maximum Debt Limit and Appraised Value. The instructions on when and how to use these forms are contained in the FMI for the forms. However, for MFH loans and grants whenever possible, check obligation requests and loan closings should be done via the field office computer terminal. Instructions may be found in the "Multiple Family Housing User Procedures."

* * * * *

§ 1902.2 [Amended]

8. Section 1902.2(a)(2) is amended by adding "or Form FmHA 1944.57" after "Form FmHA 440-57" in the last sentence.

9. Section 1902(b) is revised to read as follows:

§ 1902.2 Policies concerning disbursement of funds

* * * * *

(b) For all construction loans and those loans using multiple advances, only the actual amount to be disbursed at loan closing will be requested either through the initial submission of Form FmHA 1940-1 or 1944-50 through Form FmHA 440-57 or 1944-57. Subsequent checks will be ordered as needed by submitting Form FmHA 440-57 or Form FmHA 1944-57 to the Finance Office. All obligations, check request and loan closing data for MFH loans must be accomplished through field office terminals. Requesting checks using Form FmHA 1944-57 is authorized only when the system is expected to be down for an extended period.

* * * * *

10. In § 1902.2, paragraph (c) is amended by adding after the last sentence, "For all RRH, RCH, LH or RHS loans, interest will accrue from the date of the check."

11. Section 1902.2, paragraph (d) is amended by adding "(and Form FmHA 1944-51, for multiple family housing)" after "Form FmHA 1940-1" in the first sentence.

12. In § 1902.2, paragraph (e) is amended by adding "or Form FmHA 1944-53, 'MFH Cancellation of Checks and/or Obligations'" after "FmHA 1940-10, 'Cancellation of U.S. Treasury Check and/or Obligations'" for multiple family housing loans in the first sentence.

13. Section 1902.3, paragraph (a) is amended by changing the end of the sentence after "FMI" to read ". . . Forms FmHA 1940-1, FmHA 1944-51, FmHA 440-57 and FmHA 1944-57."

PART 1930—GENERAL

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

14. Exhibit A is amended by adding paragraph III H to read as follows:

Exhibit A of Subpart C—Steps for FmHA Personnel in Conducting Annual Analysis of Rental Operations

* * * * *

III. * * *

H. Did the borrower charge late fees to project accounts?

* * * * *

15. Exhibit B is amended by revising paragraph VII F and adding paragraph XIII B 2 a (4) to read as follows:

Exhibit B of Subpart C—Multiple Housing Management Handbook

* * * * *

VII. * * *

F. *Certification of tenant income.* 1. The borrower must initially submit Form FmHA 444-8, or for tenants receiving section 8 Assistance, the acceptable Department of Housing and Urban Development (HUD) tenant certification form to the District Office for each tenant. The initial signed tenant certification must be submitted to the FmHA District Office on or before the day the tenant occupies the unit. The District Office will review the tenant certification and verify that the information contained on the form is complete and correctly computed based on information contained on the form.

2. Each tenant must be recertified within twelve months of the previous certification. Tenants receiving section 8 assistance will be recertified according to HUD regulations.

a. Ninety (90) days prior to the required recertification, the District Office will notify the borrower in writing that a tenant recertification is required and specify the due date. The due date will be the first day of the month following the expiration date of the tenant certification. Failure to receive the notification does not relieve the borrower of responsibility to provide the recertification under the requirements of this regulation and Covenant 3 of Form FmHA 1944-7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement."

b. The borrower must:

(1) Notify the tenant that a current tenant certification and income verification is required before the due date and explain the procedure necessary to accomplish recertification;

(2) Process the appropriate tenant certification and verification of income; and

(3) Submit the completed and signed recertification to the District Office by the due date.

c. The borrower must provide a second written notice to the tenant 30 days prior to the due date if the tenant has not responded. The second notice must advise the tenant that without a current tenant certification, the tenant will be required to pay market rent and that eviction proceedings may be started as of the due date since an annual recertification is required for continued occupancy. If the tenant has rental assistance (RA), the tenant must be advised that without a current tenant certification, the tenants RA will be cancelled and may not be immediately available for reinstatement should a proper tenant certification be provided at a later date.

3. The borrower must submit Form FmHA 1944-29, "Project Worksheet for Interest Credit and Rental Assistance," to the District Office with each payment, report of overage or request for RA as required in paragraph XIII C 1 b of this Exhibit. The calculations on Part II of the form must be for tenants in residence on the first day of the month for which the payment or request is submitted. All calculations will be made as if the tenant will be in residence for the full month. Adjustments will not be made to the borrower's subsidy, payment or charges for overage for tenants moving in or out after the first of the month.

4. On form FmHA 1944-29, the District Director will authorize interest credit and RA *only* for tenants with current tenant certifications. For tenants without current tenant certifications, the borrower must pay overage to FmHA.

A. When the borrower provides evidence that the tenant has been properly notified as required by paragraph 2. b. and c. above, and the tenant has failed to respond, the District Director may authorize the borrower in writing, to charge the cost to the tenant. The authorization may be by separate letter or by a signed statement on a copy of the Form FmHA 1944-29 submitted by the borrower. The borrower must continue to charge the tenant market rent until the tenant provides an acceptable tenant certification or the tenant vacates the unit. Any unpaid overage will continue to be unpaid rent owed by the tenant to the borrower.

b. If the tenant is receiving RA and has not submitted the required recertification by the due date, the RA will be reassigned using priorities in paragraph XI B of Exhibit E to this subpart.

* * * * *

XIII * * *

B. * * *

2. * * *

a. * * *

(4) *Unauthorized Disbursements.* Late fees charged the borrower according to Subpart K of Part 1951 of this chapter, may not be paid from project income. When late fees are deducted by FmHA from payments made from project income, the project General Operating Account must be reimbursed from nonproject income of the owner or management agent or deducted from the owner's return on investment.

* * * * *

16. Exhibit B is further amended in paragraph XIII. c. 1. b. by removing the last sentence.

17. Exhibit E is revised to read as follows:

Exhibit E of Subpart C—Rental Assistance Program

Exhibit E—Rental Assistance Program

I. *General.* The objective of the rental assistance program is to reduce rents paid by low-income households. This Exhibit sets forth the policies and procedures and delegates authority under which rental assistance (RA) will be extended to eligible tenants occupying eligible Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) projects financed by FmHA. This Exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public Agency. Rental assistance will supplement the benefits available to tenants under the interest credit program outlined in Exhibit B to Subpart E of Part 1944 of this chapter.

II. *Definitions.*

A. *Eligible Tenants.* Any low-income household, handicapped person, or senior citizen meeting the following requirements:

1. The household adjusted annual income must not exceed the low income limit established for the area as indicated in Exhibit C to Subpart A of Part 1944 of this chapter.

2. The household must be unable to pay the approved rental rate plus utility allowance within 25 percent of their adjusted monthly income.

3. The household must meet the occupancy standard stated in Exhibit B to this Subpart and in the borrower's RA agreement, except:

a. Tenants occupying an inappropriate size unit, who are covered by paragraph VI B 2 e of Exhibit B to this Subpart, are considered eligible tenants for RA provided they agree, in writing, to move at their own expense to the next available unit of appropriate size. If the project does not contain a unit of appropriate size, the tenant may occupy an inappropriate size unit and receive RA.

b. Tenants who initially occupied an apartment unit prior to November 14, 1977, and who were determined eligible for occupancy at that time under guidelines then in effect, may remain in that apartment for an indefinite period and receive RA (and interest credit benefits) even though they do not meet the present occupancy standards, as long as they remain in the same unit and are income eligible under current FmHA regulations. Such tenants may receive RA if it becomes available to them without meeting the present occupancy standard.

c. Ineligible tenants, with State Director approval, who are income eligible but occupancy ineligible, may receive RA as long as they are permitted to occupy a unit as an ineligible tenant.

B. *Eligible Project.*

1. All projects must operate under Interest Credit Plan II RA to be eligible to receive RA, except LH loans, direct RRH, and insured RRH loans approved prior to August 1, 1968, which must operate under Plan RA. To be eligible for RA the project must have a:

a. RRH insured or direct loan made to a broadly-based nonprofit organization, or State or local agency, including Senior Citizen Housing (SCH), or

b. RRH insured loan to an individual or organization who has or will execute a Loan Resolution or Loan Agreement agreeing to operate the housing on a limited profit basis as defined in § 1944.205(r) of Subpart E to Part 1944 of this chapter, or

c. RCH insured or direct loan, or

d. LH loan, or an LH loan and grant combination, made to a broadly-based nonprofit organization or nonprofit organization of farmworkers or a State or local public Agency.

2. Borrowers may utilize HUD's Section 8 Housing Assistance Payments Program for existing housing and FmHA RA for other eligible households in the same project.

3. Projects with all or a part of the rental units under contract with the Department of Housing and Urban Development (HUD) developed under the Section 8 program for new construction or rehabilitation, by either the dual or single track processing procedures will not be considered an eligible project for RA.

C. *Operational Project.* Any FmHA financed project which has been occupied by tenants for at least 90 days. This may also include newly constructed projects in which a diligent effort has been made to rent the units and at least some units have been occupied.

D. *New Project.* Any FmHA financed, newly constructed project or a project which meets the definition of major rehabilitation in § 1944.212 of Subpart E of Part 1944 of this chapter.

E. *Rental Assistance.* Rental assistance (RA), as used in this Exhibit, is the difference between 25 percent of the household's adjusted monthly income and the approved rental rate (including the approved utility allowance, when applicable) for the rental unit being occupied by the household. When the household's adjusted monthly income is less than the approved utility allowance which is billed directly to and paid by the tenant, the owner will pay the household that difference according to paragraph IX A 2 of this Exhibit. Rental assistance is further defined as:

1. For projects operating on Interest Credit Plan II RA, the difference between 25 percent of the household's adjusted monthly income and the basic rent, including utilities for the rental unit.

2. For projects operating on Plan RA, the difference between 25 percent of the household's adjusted monthly income and the approved market rental rate, including utilities for the rental unit.

F. *Approved Rental Rate.* The approved rental rates (basic and/or market rent) are those shown on the budget for the year and approved according to § 1930.124 of this Subpart plus utility allowances, when required, which have been determined and approved according to Exhibit A-5 to Subpart E of Part 1944 of this chapter. Any change in rental rates or utility allowance must be processed according to Exhibit C to this Subpart.

G. *Utility Allowances.* The allowance approved by FmHA according to Exhibit A-5 to Subpart E of Part 1944 of this chapter, to cover the cost of utilities which are payable directly by the households.

H. *Replacement Units.* RA units which replace RA units in RA agreements expiring because obligated funds have been fully disbursed.

III. *Utilization of Rental Assistance.* All borrowers with eligible projects as defined in paragraph II B of this Exhibit are encouraged to utilize the RA program and receive RA payments on behalf of low-income tenants. Generally, the borrower, or the borrower's approved management agent, will initiate the processing of a RA application.

IV. *Priority of Rental Assistance Applications.* The National Office may establish a State quota on the number of RA units that may be approved and obligated in any fiscal year. The State Director will limit the approval of RA to no more than the number of units allocated to the State. Unless otherwise stated by the National Office, the State allocation will indicate the number of RA units for operational projects and the number of RA units to be used for new construction. Priority in allocating RA units will be as follows:

A. *Allocation to Projects Within a State.* The State Director will distribute any RA units allocated to the State according to any specific guidance established by the National Office. When no specific guidance is established by the National Office the State Director will approve requests for RA to projects according to the provisions of this Exhibit.

1. *Replacement Units:* The State Director will distribute or reserve RA units and give priority to projects needing replacement units before any initial or additional units are allocated to other new or operational projects. The State Director should ascertain how many RA units are expected to expire in each District Office during the current fiscal year and the first quarter of the following fiscal year.

2. *Operational Housing:* The State Director will distribute any remaining RA units allocated to the State for initial or additional units in operational RRH, RCH, and LH projects based on Forms FmHA 1944-25, "Request for Rental Assistance," that have been submitted by eligible borrowers. Priority will be given to projects based on the earliest date that Forms FmHA 1944-25 and other information is received by the State Director in acceptable form. The number of RA units granted in any project will be based on the number of households in the project eligible for RA up to the maximum allowed, including exceptions granted by the State Director and National Office. The National Office will notify the State Director each year of any specific date by which all requests for RA must be submitted to FmHA for consideration.

3. *New Housing:* Any RA units allocated to the State for new construction will be distributed on a priority basis in the following order:

a. RRH or RCH projects to be provided in areas where HUD Section 8 units under the FmHA set-aside are not available.

b. Applications for RRH and RCH loans where the market survey information indicates that without RA, a large percentage of the prospective tenants will be paying in excess of 25 percent of their adjusted monthly income for rent including utilities. When the number of RA units available is inadequate to cover all such applications, the units will be distributed giving priority to those projects located in areas identified as having the greatest housing needs and selected for funding in accordance with § 1944.231(c) of Subpart E of Part 1944 of this chapter.

c. For LH projects, RA units will be allocated by the National Office on a case-by-case basis at the time the projects are considered for funding at the National Office level.

4. *Limitation on number of units of rental assistance in each project:* The maximum number of rental units in a project to obtain RA is limited to the following:

a. No limitation for eligible LH loan and grant projects.

b. No limitation for RRH, RCH or SCH projects designed and limited to housing for the senior citizen or handicapped, except that the State Director may limit the percentage of RA units granted to no more than 40 percent of the number of rental units if it appears that the number of RA units distributed to the State will not be adequate to approve all requests for RA.

c. An RCH or RRH project designed and/or primarily occupied by low- and moderate-income households will be limited to not more than 40 percent of the total number of rental units in the project.

d. An RCH or RRH project originally planned and designed for a mix of senior citizens or handicapped persons and low- and moderate-income households will be limited to not more than 40 percent of the total number of rental units designed for low- and moderate-income households but there will be no limitation on the rental units designed for and occupied by senior citizens or handicapped persons.

B. *Granting Exceptions.*

1. *State Directors Authority.* An exception to the 40 percent limitation indicated in paragraphs IV A 4 c and d of this Exhibit may be granted by the State Director for up to 70 percent of the rental units in any particular project. (Number of units $\times$ 70 percent $=$ number of RA units rounded to the next higher whole number.) However, the total number of units of RA granted by the State Director, including exceptions, cannot exceed the number of RA units allocated to that State. Exceptions will be granted only when RA units are available, or can be made available, and the following conditions exist:

a. When more than 40 percent of the rental units are occupied by households who are paying more than 25 percent of their ajdusted income for rent, including utilities, and such units are no larger than needed to meet the household's need, or

b. Other tenants in a project that is being assisted at the 40 percent level experience a hardship as a result of an income decrease or a rental increase and must obtain RA to remain in the project, or

c. The project is located in or is being developed in an area or community having a low median per capita income based on the county data in accordance with Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA Office). Also, the majority of the proposed tenants are now or will be paying in excess of 25 percent of their income for rent including utilities.

2. *Replacement Agreements.* The State Director may approve RA agreements for replacement units which exceed his/her approval authority, provided the units were intitially authorized in writing by the National Office.

3. *National Office Authority.* The National Office may authorize the State Director to approve RA up to 100 percent of the rental units in family and mixed projects on a case-by-case basis. The project must be located in or proposed in an area or community having a low mediam per capita income based on the county data in accordance with Exhibit C of Subpart A of Part 1944 of this chapter (available in any FmHA office.) Also, the majority of the tenants are now, or will be, paying in excess of 25 percent of their income for rent including utilities. Exception requests must be submitted to and aproved by the National Office prior to approving the loan or requesting obilgation of rental assistance for more than 70 percent of the rental units in the projects.

C. *Processing Exception Requests.* A request for an exception to the 40 percent limitation will be submitted by the borrower to the District Director. After reviewing the request for completeness, accuracy, and sufficient documentation to fully support the request, the District Director will submit the request with the documentation and recommendations to the State Office by memorandum for approval. Included in the memorandum will be the number and percentage of rental units in excess of the 40 percent limit and justification for the approval. When National Office authorization is required to exceed the 70 percent limitation, the State Director will request this authorization by memorandum and will submit the following:

1. Operational Projects

a. Form FmHA 1944-25,

b. Form FmHA 1944-29, "Project Worksheet for Interest Credit and Rental Assistance," with all columns completed for each tenant in the project,

c. A copy of the project's waiting list for occupancy identifying eligible prospective tenants on the top of the waiting list whose incomes have been verified and who are willing to occupy vacant units if an exception to the 70 percent limitation is made,

d. A copy of any existing RA agreement and modifications thereto which may be in effect on the project,

e. The comments of the District Director, and

f. The comments and recommendations of the State Director.

2. New Projects

a. Form FmHA 1944-25,

b. Complete data and documentation on the rental housing market,

c. Complete data and documentation on the income of the households likely to be served,

d. The comments of the District Director, and

e. The comments and recommendations of the State Director.

V. *Processing of Rental Assistance Applications.* All requests for RA will be processed according to this paragraph and may be approved by the State Director.

A. *Operational Projects.*

1. A borrower with an eligible project in which there are tenants paying in excess of 25 percent of their adjusted income for rent is encouraged to file Form FmHA 1944-25, with the District Director. A separate Form FmHA 1944-25 will be submitted for each project. The borrower should include the following with each request.

a. Form FmHA 1944-29, with all columns completed for each tenant in the project. (All Forms FmHA 444-8, "Tenant Certification," must be current.)

b. Approved or proposed budget for the year on Form FmHA 1930-7, with Exhibit A-5 to Subpart E of Part 1944 of this chapter attached, when applicable.

2. Prior to the full disbursement of obligated funds on any agreement, a borrower or approved management agent may submit a request for replacement RA units. This request should contain all the material requested in paragraph V A 1 of this Exhibit and should be submitted no later than three (3) months prior to the expected full disbursement of obligated funds, to allow time for processing the request. The number of replacement units may not exceed the number of units that are expiring. Once replacement units have been requested, additional units may not be requested until Form FmHA 1944-51, "Multiple Family Housing Obligation—Fund Analysis", is received obligating the replacement units. Form FmHA 1944-51 requesting the additional units must be coded sequentially as required in paragraph V C 5.

3. The District Director will review the budget, Exhibit A-5, Form FmHA 1944-29, and Form FmHA 1944-25 submitted by the borrower to assure that the items are complete and accurate. The District Director will complete Form FmHA 1944-25 and submit all data provided by the borrower to the State Director with appropriate comments and recommendations.

B. *Projects to be Funded.*

1. Applicants requesting funding for new projects who are planning to utilize the RA program, should submit a completed Form FmHA 1944-25 to the County Supervisor or District Director, as appropriate, when submitting a preapplication or application for funding.

2. The number of units of RA requested should be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.

C. *State Director Action on Requests for Rental Assistance.* Only the State Director or delegated members of the State Office staff may approve or disapprove rental assistance requests.

1. *Approval Actions.* When the State Director determines that RA can be obligated or transferred, Part III of Form FmHA 1944-51, "Multiple Family Housing Obligation—Fund Analysis," for obligation, or Form FmHA 1944-55, "Multiple Family Housing Transfer of Rental Assistance," for transfers, will be prepared and distributed according to the FMI. Form FmHA 1944-27, "Rental Assistance Agreement," will not be executed or amended until the obligation or transfer is verified by the Finance Office. The State Office will verify the obligation or transfer via the computer terminal, on the day following the request.

2. *Completing Agreements.* When the State Director verifies that RA units have been obligated or transferred by the Finance Office, the State Director will forward a copy of either Form FmHA 1944-51 or Form FmHA 1944-55 to the District Director. The District Director will complete Form FmHA 1944-27, and attach the appropriate copies of Form FmHA 1944-51 on Form FmHA 1944-55 according to the FMI.

a. *Initial Agreements.* The District Director will prepare an original and two copies of Form 1944-27. When the project does not have a Form FmHA 1944-7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement" in effect, the District Director will prepare an original and three copies. The District Director and the borrower will then execute the originals and all copies of Form FmHA 1944-27 and Form FmHA 1944-7. The forms will be distributed according to their FMIs.

b. *Replacement or Modified Agreements.* When an RA agreement initiated prior to May 1, 1985, is replaced or modified, a new Form FmHA 1944-27 will be prepared and distributed according to the FMI. For every replacement or modification after May 1, 1985, the original and all copies of the affected RA agreement will be notated, assembled and distributed by the District Director according to the FMI.

3. *Modification of an Existing Agreement.* After any request for a change in the amount of RA has been obligated by the Finance Office, the Form FmHA 1944-27 will be prepared, signed and distributed according to the FMI. A new Form FmHA 1944-7 is not required.

4. *Denial of Rental Assistance Request.* If RA cannot be provided, the State Director will inform the borrower, in writing, of the reasons. The borrower will be given appeal rights according to Subpart B of Part 1900 of this chapter in all cases except when RA is not available from the State's allocation or the National Reserve.

5. *Rental Assistance Agreement Numbers.*

a. Each RA agreement will be assigned a six digit Rental Assistance Agreement Number by the Finance Officer as follows:

(1) First two digits—Fiscal Year (FY in which the funds were obligated, i.e., 85, 86, etc.

(2) Second two digits—Initial obligation for the project will be coded 01. Renewal obligations will be coded sequentially starting with 02.

(3) Third two digits—Initial obligation will be coded 00. Each modification where units are added to the agreement by obligation will be coded sequentially starting with 01.

b. RA Agreements with units obligated before FY 1985 will be coded as follows:

(1) First two digits—FY initial obligation was made on the project, i.e., 78, 79, 80, etc.

(2) Second two digits—Will always be "00."

(3) Third two digits—Indicate the number of modifications plus 1. (RA Agreement with two modifications on September 30, 1984, will be designated "03.")

c. The Finance Office will assign RA agreement number when RA is obligated on Form FmHA 1944-51 or transferred on Form FmHA 1944-55. The Finance Office will also track RA agreements by number and notify the District Office on Form FmHA 1951-53, "Multiple Family Housing Transaction Record."

VI. *Terms of the Rental Assistance Agreement.*

A. *Effective Date.* Each "Rental Assistance Agreement" will be effective the first day of the month in which it is executed. If assistance is granted to a project under an appeal according to paragraph XVI of this Exhibit, the effective date will be retroactive to the first day of the month in which the assistance was denied, provided the borrower agrees to make any appropriate refunds to tenants who would have been entitled to RA during the retroactive period.

B. *Term.*

1. *Twenty (20) Year Agreement.* Twenty (20) year agreements are restricted to new projects or modifications of existing twenty (20) year agreements. The agreement shall be effective for twenty (20) years form the effective date of the agreement. This agreement may be modified or terminated in accordance with the terms of the RA agreement. The agreement will expire when the funds obligated for the RA units described in Section 1 of the agreement are fully disbursed. This can be any time before or after the end of the 20-year term. Upon expiration of the agreement, a replacement agreement may be executed. If a replacement agreement is considered, it will be for a five (5) year period.

2. *Five (5) Year Agreement.* Five (5) year agreements may be used for operational projects, or for new projects when twenty (20) year units are not available. The agreement shall be effective for five (5) years from the effective date of the agreement. This five (5) year agreement may be modified or terminated in accordance with the terms of the RA agreement. The agreement will expire when the funds obligated for the RA units described in Section 1 of the agreement are fully disbursed. This can be any time before or after the end of the five (5) year period.

3. *Modification of Agreements.* RA agreements may be modified:

a. To add or subtract RA units assigned to the project through obligation or through transfer from another rental assistance agreement;

b. To reinstate a suspended RA agreement to a new borrower in the same project after a voluntary conveyance or a foreclosure and a credit sale within the Multi-Family Housing program; or

c. To transfer a suspended RA agreement to a new borrower and a different project after liquidation of the project assets or after the loan is paid in full.

4. *Amendment of Agreements.* Any existing RA agreement executed prior to the effective date of this regulation, which will have a remaining obligation balance at the end of the 5-year or 20-year expiration date stated in Section 9, "Term of the Agreement," may be modified by the use of Form FmHA 444-27A, "Amendment to Rental Assistance Agreement." The amended agreement will expire when the obligated funds are fully disbursed.

5. *Replacement Agreements.* Replacement RA agreements for either 5-year or 20-year agreements will be for a five (5) year period. All requirements in paragraph VI B 2 and 3 of this exhibit apply. Expiring RA agreements and replacement RA agreements may run concurrently for one month so any undisbursed obligation balance on the expiring RA agreement can be liquidated.

VII. *Recordkeeping Responsibilities.*

A. The State Director will maintain Form FmHA 444-28, "Record of Rental Assistance Agreements." Any changes which are made in the number of rental units assisted will be recorded on Form FmHA 444-28.

B. The Finance Office (FO) will track the use of RA and ensure that RA is not disbursed or credited to a borrower's account in excess of the RA obligation. Quarterly and annually, the FO will provide the District Director with an RA payment and obligation status report for each project. The annual version of this report will be filed in Position 2 of the project case file and maintained indefinitely.

C. The District Director will notify the borrower to apply for replacement RA units when the RA Undisbursed Balance reaches a level sufficient to cover approximately 6 months of RA requests. This figure will be based on the project's average monthly request for RA.

D. Information on FmHA Rental Assistance on Form FmHA 2033-42, "Multi-Family Housing Information Status Tracking and Retrieval System," (MISTR) regarding balance of RA funds must be updated annually at the end of each fiscal year by the District Director and State Director.

VIII. *Responsibilities of Borrower in Administering the Rental Assistance Program.* The borrower and management agent for each project receiving RA should fully understand the responsibilities and requirements of carrying out the program. The following guidelines will be followed:

A. RA payments will not be made directly to eligible tenants receiving RA except as specified in paragraph IX A. The borrower will maintain an accurate accounting of each tenant's utility allowance and payments made to tenants. All other RA payments will be recorded as a credit to the tenant's monthly rental payment.

B. The borrower must submit Form FmHA 444-8 for each tenant as required in paragraph VII F of Exhibit B to this Subpart (Management Handbook).

C. The incomes reported by the tenants must be verified by the borrower in accordance with paragraph VII of Exhibit B to this Subpart (Management Handbook).

D. Borrowers utilizing RA must comply with § 1930.124 of this Subpart. RA will not be approved for a project until the operating budget has been approved by the FmHA State Office or the District Director. District Directors, with assistance from the State Office, must closely supervise and assist borrowers in complying with all accounting and management requirements.

E. A borrower participating in the RA program must have an FmHA approved lease with the assisted household. All leases must comply with the provisions of paragraph VIII of Exhibit B to this Subpart (Management Handbook).

F. The borrower will be responsible to FmHA for any errors made in the administration of the RA program which are made by the borrower or the borrower's authorized management agent. Errors in computation or other unauthorized use of RA will require, at a minimum, the repayment of any incorrectly advanced RA funds. If the error or unauthorized use of RA appears to be deliberate or intentional, the State Director will refer the case to the Office of Inspector General according to Subpart B of Part 2012 (available in any FmHA Office).

IX. *Handling Utility Allowances.*

A. *Payment of Utilities.*

1. When the tenant is billed directly for utilities, rent paid by the tenant receiving RA will be the difference between the established utility allowance and 25 percent of the household's adjusted monthly income.

2. When utilities are paid by the household receiving RA and 25 percent of the household's monthly adjusted income is less than the allowance for utilities, the borrower will pay the household the difference between the utility allowance and 25 percent of the household's adjusted monthly income.

3. In a project where the owner pays all utilities, the tenant rent will be the full 25 percent of the adjusted monthly income up to the approved rent for the rental unit being occupied.

B. *Determining the Allowance.* The utility allowance will be determined and recorded by the use of Exhibit A-5 to Subpart E of Part 1944 of this chapter.

C. *Changes in Allowances.* The utility allowance should be reviewed annually and adjusted if there are substantial changes in utility and public service rates. Normally, allowances will be adjusted on an annual basis if necessary when the owner submits a new budget for approval. Changes in utility allowance which will result in changed rent paid by tenants will be processed according to Exhibit C to this Subpart.

X. *Method of Payment of Rental Assistance to Borrower.*

A. Regular monthly rental assistance payments.

1. *Borrower Responsibilities.*

a. Any RA due the borrower will be deducted from the balance of scheduled loan payments, any delinquent payments, and other charges due on Form FmHA 1944-29, "Project Worksheet for Interest Credit and Rental Assistance," and the remaining balance must be submitted to the District Office. If the RA due the borrower exceeds the balance of scheduled loan payments, delinquent payments and other charges, an RA check for the excess will be issued by the Finance Office.

b. Each month the borrower must forward to the District Director a separate Form FmHA 1944-29 and any new Form FmHA 444-8, for each project according to the instruction attached to the form.

2. *District Director Responsibilities.*

a. When a Form FmHA 1944-29 and new Form FmHA 444-8 are received, the District Director will:

(1) Review Form FmHA 444-8 and verify that the information contained on the form is complete and correctly computed based on information contained in the form.

(2) Review Form FmHA 1944-29 and ensure that entries are supported by the current Form FmHA 444-8.

(3) Submit the borrower's payment and payment data to the Finance Office using Form FmHA 1944-9, "Multiple Family Housing Certification and Payment Transmittal."

b. The District Director should verify the accuracy of the borrower's servicing address shown on the Finance Office record. When the address shown is incorrect, Form FmHA 1944-50, "Multiple Family Housing Borrower/Project Characteristics" will be prepared and the Finance Office record corrected via a field computer terminal. File Form FmHA 1944-50 in the borrower casefile.

B. When a project loan account is delinquent, the District Director should counsel with the borrower and develop a servicing plan in accordance with § 1965.85(b) of Subpart B of Part 1965 of this chapter. This plan should incorporate detailed provisions for continuing operation of the project and paying the account current.

1. As part of the servicing plan, the District Director may agree to releasing a portion of the monthly RA for project operation. This amount will be shown in the "Amount of Rental Assistance Check" block on Form FmHA 1944-9. The check will be delivered to the District Director.

2. The RA Check may be released to the borrower according to the servicing plan.

C. An RA payment request must be based on actual occupancy as of the first day of the month, except for the initial month of rent-up in a new project. During the initial month of participation by a new project in the RA program, the borrower must collect RA on a prorata basis for eligible tenants occupying the project. This initial RA request may be submitted with the borrower's first payment and subtracted from the payment due.

XI. *Assigning Rental Assistance To Tenants:*

A. *New Project.* Applications for occupancy should be accepted during the construction phase of the project and placed on a waiting list. During initial rent-up period the following priorities will apply:

1. Until all the RA units have been assigned, a number of apartment units in the project equal to the number of RA units will

be initially reserved for applicant households who qualify for RA as defined in paragraph II A of this Exhibit. Applications qualifying for RA will be considered on a first come, first served basis, by-passing those applicants on the waiting list whose income is above the low-income limit for the area. The balance of the apartment units will be rented simultaneously to other tenants on a first come, first served basis. The District Director may grant a written waiver to this requirement when review of the borrower's method of advertising the rental units satisfactorily demonstrates that households eligible for RA are not available or do not desire occupancy.

2. If there are still vacant units, those applicants by-passed because they did not qualify for RA will be considered for occupancy on a first-come first-served basis.

3. After the project is fully occupied, or when the District Director determines that the initial rent-up period is ended, the priority procedures in paragraph XI B for operational projects will be followed.

B. *Operational Project.* To determine priority for assigning an available RA unit in an operational project, the latest Form FmHA 1944-29 must be updated as of the date the unit is available, assuring that columns 3 through 9 are current and accurate.

1. Priority for assigning RA is as follows:

a. *Eligible tenant in project. First priority* will be given to eligible households in residence paying the highest percentage of annual adjusted income for rent plus utilities.

b. *Eligible applicants from waiting list. Second priority* will be given to eligible applicants on the waiting list. All tenants will be selected on a first come, first served basis as provided in paragraph VI E of Exhibit B to this Subpart (Management Handbook). No eligible household occupying a rental unit in the project may be required to move from the project to allow an applicant on the waiting list who is eligible for RA, to move in.

c. *Ineligible tenants: Third priority* for RA will be given to occupancy ineligible households living in the project with State Director approval. The requirement of paragraph II A 3 c of this Exhibit must be met.

2. When the project has vacancies and RA is not available, an applicant who is eligible for RA may elect to accept occupancy without the benefit of RA. After occupancy, the household will be considered for RA according to paragraph XI B 1 of this Exhibit. If the applicant elects not to accept occupancy because RA is not available, their application will retain its priority date on the waiting list if the rental agent determines that a hardship to the applicant will exist according to paragraph VI E 2 of Exhibit B to this Subpart.

3. Eligible tenants receiving the benefits of RA may continue receiving such benefits as long as they remain eligible for rental assistance and there is an RA agreement in effect.

C. *Assigning Rental Assistance Other Than The First of The Month:*

1. When a tenant receiving RA vacates before the end of the month, the RA unit should be immediately reassigned to another tenant or an applicant using the priorities given in paragraph XI B of this exhibit.

2. When RA is assigned to an applicant and the applicant initially enters the project on a day other than the first of the month, the applicant's tenant contribution for housing costs will be prorated for the remaining portion of the month the same as if the tenant was receiving RA. [Example: Basic rent of $200 and the tenants monthly contribution with RA would be $120, the pro rata amount for ½ month would be $60.]

3. When RA is assigned to a tenant other than the first of the month, no adjustment to their tenant contribution on Form 1944-29 for that month will be made. The tenant will begin to receive the benefits of RA as of the first day of the next month.

4. No adjustment will be made on Form FmHA 1944-29 to request additional RA payment or to refund any excess RA payment or overage when RA is reassigned other than the first of the month.

XII. *Rental Assistance Assigned to Wrong Household:* When the tenant has correctly reported income and household size, but RA was assigned to a household in error, that tenant's RA benefit should be cancelled and reassigned. Incidents involving incorrect reporting are addressed in paragraph IX C of Exhibit B to this Subpart (Management Handbook).

A. Before the borrower notifies the tenant, the borrower or management agent shall review the case with the District Director. If the District Director verifies that an error has been made based on information available at the time the unit was assigned, the tenant will be given 30 days written notice that the unit was assigned in error and that the RA benefit will be cancelled effective on the next monthly rental payment due date after the end of the 30 day notice period. The tenant will also be notified in writing that:

1. The tenant has the right to cancel the lease based on the error made by the borrower and the loss of benefit to the tenant.

2. The RA granted in error will not be recaptured.

3. The tenant may meet with management to discuss the cancellation and the facts on which the decision was based. If the facts are accurate and the tenant cannot produce further evidence proving eligibility for RA, there will be no appeal from the decision. If the tenant feels there is justification for further review the borrower must give the tenant appeal rights under Subpart L of Part 1944 of this chapter.

B. Reassigning rental assistance:

1. The RA unit will be reassigned to the household which was erroneously denied the RA unit. The assignment will be based on the Form FmHA 1944-29 from which the original priority was established, when the unit was erroneously assigned. The RA will not be retroactive unless the reassignment was based on an appeal by the tenant. Retroactive RA may not exceed the project's remaining RA obligation balance.

2. If the originally denied household now has RA, or is no longer a resident, the RA will be assigned based on a current Form FmHA 1944-29 and the priorities in paragraph XI of this Exhibit.

XIII. *Rental Assistance Payment Cancellation:* When a RA check must be cancelled, the following procedure will be followed:

A. *Return of the original rental assistance Treasury Check:* The District Office will prepare Form FmHA 1944-53, as specified in the FMI and mail it to the MFH Unit in the Finance Office.

B. *Return of all or a portion of the monthly rental assistance payment or refund of rental assistance previously advanced:* A check from the borrower made payable to Farmers Home Administration (FmHA) will be submitted to the MFH Unit in the Finance Office on Form FmHA 1944-53, completed according to the FMI.

XIV. *Terminating Existing Rental Assistance Agreements Obligated in Prior and/or Current Fiscal Years.*

A. When a project's obligated funds are fully disbursed under any given RA agreement number, RA will be automatically terminated by the Finance Office. The Finance Office will notify the District Office on Form FmHA 1951-51, "Multiple Family Housing Transaction Record." The District Office will notate Form FmHA 1944-27 according to the FMI to indicate that a termination has occurred. The District Director will notify the borrower in writing that the obligation under the RA agreement number has expired and the RA agreement number must be stricken from the agreement.

1. *For all RA obligations before FY 1985.* RA is considered fully disbursed by the Finance Office when all RA funds obligated before FY 1985 are disbursed.

2. *For all RA obligations after FY 1984.* RA is considered fully disbursed by the Finance Office when all RA funds obligated in a particular FY are disbursed. This includes RA transferred from a different MFH project.

3. When an RA agreement (Form FmHA 1944-27) consists of several different obligations (Form FmHA 1944-51, Part III, or Form FmHA 1944-55) identified by different RA agreement numbers, and the obligations will not be fully disbursed at the same time, only those RA agreement numbers with fully disbursed obligation will be terminated.

B. Prior to Full Disbursement of Obligated Funds:

1. *Prior Fiscal Year Obligations.* Prior fiscal year (FY) obligations *will not* be terminated. They will be suspended by the State Director using procedures in paragraph XV of this exhibit.

2. *Current Fiscal Year Obligations.* The State Director is authorized to terminate RA agreements prior to the disbursement of obligated funds if the funds were obligated during the current FY. The undisbursed funds for the RA obligation will be returned to the current FY obligation authority.

XV. *Suspending or Transferring Existing Rental Assistance Agreements.*

A. RA may be suspended or transferred according to the requirements for each situation described in Paragraph XV B and the following:

1. *Suspension.*

a. The State Director may approve a suspension of a project's RA agreement and obligation as a result of the servicing actions described in Paragraph XV B 2, 3, and 4 of this exhibit. The State Director will maintain records and control of the suspended RA.

b. The District Director will notify the borrower in writing and the Finance Office by memorandum.

c. After notification, the Finance Office will suspend all RA payments to the affected project.

d. The State Director may reinstate the RA to the same borrower in the same project, by memorandum to the Finance Office.

2. *Transfer.*

a. Only the State Director may approve a RA transfer.

b. RA may be transferred to any borrower with an RA eligible project according to the priorities established by this Exhibit or the National Office.

c. The amount of RA which may be transferred must be:

(1) A specific unit and dollar amount. The dollar value of each RA unit to be transferred will be determined by dividing the transferring project's total remaining RA obligation(s) balance in the transferring RA agreement by the total number of obligated RA units in the RA agreement.

(2) A unit and dollar value equal to or less than those shown on the current RA agreement for the transferring project for example, a portion of an RA agreement unit and remaining obligation dollar value may be transferred.

d. RA units identified by different RA agreement numbers must be transferred with separate RA agreement numbers on Form FmHA 1944-55.

e. When the State Director approves an RA transfer, Form FmHA 1944-55 completed according to the FMI, wil be used to notify the Finance Office except as noted in Paragraph XV B 1 below.

f. Form FmHA 1944-27, with Form FmHA 1944-55, attached will be completed according to the FMI for each transferee. The transferors RA agreement will be modified by attaching a copy of Form FmHA 1944-55 according to the FMI to indicate that a portion of the agreement has been transferred. When all the RA units on a RA agreement have been transferred, the transferor's present agreement will be so documented.

B. RA may be suspended and/or transferred in the following situations according to the following directions:

1. *RA transfer accompanying a loan transfer.* When a loan is transferred to an eligible borrower, the transferee may assume the transferor's RA agreement. The RA will be transferred using Form FmHA 1944-55 which will be forwarded to the Finance Office with Form FmHA 1965-9, "Multiple Family Housing Assumption Agreement" as required in § 1965.65 (c)(11) of Subpart B of Part 1965 of this chapter.

2. *Suspension and transfer after a voluntary conveyance.* When a project with RA is voluntarily conveyed to the Government, the RA will be suspended rather than cancelled. When Form FmHA 1965-19, "Multiple Family Housing Advice of Mortgaged Real Estate Acquired" is sent to the Finance Office. Form FmHA 1944-55 must be attached indicating the Code 4 status of the suspended RA units according to the FMI. If the project is sold through a credit sale within the program, the suspended RA may be transferred to the project's new borrower, or a different project if it is not needed.

3. *Suspension and transfer after a liquidation.* When a project with RA is liquidated through sale outside of the program or the loan is paid in full, the RA will be suspended and, subsequently, transferred to a different FmHA financed project.

4. *Suspension and transfer or reinstatement due to a servicing action.* When servicing a project's account according to § 1965.85 of Subpart B of Part 1965 of this chapter and the account is accelerated, the RA will be suspended and either:

a. Transferred with the project to a new borrower when all appeals and redemption periods of the defaulting borrower have expired and a credit sale is to be completed, or

b. Transferred to a different project if the defaulting project is subsequently sold outside the program, or

c. Reinstated to the same project when the defaults are corrected and the State Director reinstates the borrower's account.

5. *Transfer of unused RA.* When RA is unused after initial rent-up and not needed because of a lack of eligible potential tenants in the area, all or a portion of it may be transferred when the State Director determines that the following conditions have been met:

a. The borrower demonstrates that:

(1) The original market survey completed according to Exhibit A-6, Subpart E of Part 1944 of this chapter clearly indicates no significant need for rental housing by households in the market area that would require RA for occupancy, and that there are no eligible tenants in the project not receiving RA or there are no eligible applicants on the waiting list who could use RA when obtaining occupancy. The State Director may require a new market survey for the project to make this determination if the original market survey for the project does not adequately address potential very low-income tenants in the area, or does not reflect current market conditions.

(2) When the market survey indicates that there are a significant need for rental housing by households in the market area that would have required RA for occupancy, but all or a substantial portion of the RA units available remain unused after a two year period since initial availability, the borrower must demonstrate that:

(i) a good faith effort was made to market the project to RA eligible applicants;

(ii) the waiting list does not contain RA eligible applicants and the project is not occupied by RA eligible tenants who do not receive RA; and

(iii) project management has not used a policy of discouraging RA eligible households from applying for or obtaining tenancy in the project.

(3) Rent increases anticipated for the following two years will not prompt a request for RA according to the provision of Exhibit C of this subpart.

b. The District Director recommends the RA transfer after reviewing documentation submitted by the borrower and finding that the applicable conditions of Paragraph XV B 5 of this exhibit have been met.

6. *Transfer due to an uncloseable loan.* When RA will be unused because the loan to which it was obligated will not be closed, or the RA agreement is not signed, the RA obligation may not be transferred except as provided under the conditions of § 1944.235 (b) of this chapter. However, if this situation occurs during the same FY of obligation, the obligation should be cancelled and reobligated immediately using current authorities. Obligations from prior fiscal year must be cancelled and will be lost unless the conditions of § 1944.235 (b) of Subpart E of Part 1944 of this chapter exist.

XVI. *Rights for Appeal if Rental Assistance is not Granted or is Cancelled by Farmers Home Administration.*

A. Borrowers who have requested RA in writing and are denied such assistance (whether in whole or in part) by Farmers Home Administration, or when RA is cancelled, will be notified in writing of the specific reasons why they have been denied RA as specified in Subpart B of Part 1900 of this chapter.

B. If at any time a borrower or a household is granted RA under an appeal, the borrower or household will receive the next available RA unit.

C. Borrower denial of RA to tenants will be handled according to Subpart L of Part 1944 of this chapter.

XVII. *Forms and Exhibits.* Exhibit A-5 to Subpart E of Part 1944 of this chapter and Form FmHA 1944-7 are to be used in determining the amount of rental assistance to be provided.

Exhibit E of Subpart C—[Removed]

18. Exhibit E-1 is removed.

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

19. In § 1944.157, paragraph (a)(7)(iii) is revised to read as follows:

§ 1944.157 Eligibility requirements.

(a) * * *

(7) * * *

(iii) The amount of the labor housing (LH) loan against the property will not exceed the maximum security value or Maximum Debt Limit (MDL) determined in accordance with Subpart A of Part 1809 (FmHA Instruction 422.1), or Subparts B and C of Part 1922 of this chapter, as appropriate.

* * * * *

20. In § 1944.158, paragraph (j) is revised to read as follows:

§ 1944.158 Loan and grant purposes.

* * * * *

(j) Pay interest which will accrue during the estimated construction period if interim financing is used [or if loan will be closed using multiple advances on daily interest accrual (DIAS) with annual installment and deferred principal). In the case of multiple advances when the loan is closed on a predetermined amortization schedule system (PASS) or on DIAS with monthly installments, loan funds will not be used for construction interest. Accrued interest during the construction period will be capitalized when construction is substantially complete and the project is ready for full operation.

* * * * *

21. Section 1944.159 is amended by adding paragraph (c) to read as follows:

§ 1944.159 Rates and terms.

* * * * *

(c) *Amortization schedule.* LH loans, including subsequent loans closed after May 1, 1985, must be on PASS if the project has year-round occupancy and monthly income. LH loans requiring annual installments due to seasonal income may be closed on the daily interest accrual system (DIAS) with monthly or annual payments. All loans on any project receiving a subsequent loan on or after May 1, 1985, must be converted to PASS if the subsequent loan is on PASS. Accounting and processing payments for PASS loans will be handled under Subpart K of Part 1951 of this chapter.

§ 1944.171 [Amended]

22. In § 1944.171, paragraph (d), the list of loan and/or grant docket items is amended by removing the entries for Form FmHA 444-5, "Multiple Family Housing Fund Analysis" and Form FmHA 1940-1, "Request for Obligation of Funds," from the list and inserting in their place:

Form No	Name of form or document	Total number of copies	Signed by borrower	Number for docket	Copy for borrower
FmHA 1944-50	Multiple Family Housing Borrower/Project Characteristics.	1		1-0	
FmHA 1944-51	Multiple Family Housing obligation—Fund Analysis	3	3-0 & 2C	1-0	1

23. Section 1944.171 is amended by revising paragraph (e) and adding paragraph (h) to read as follows:

§ 1944.171 Preparation of completed loan and/or grant docket.

* * * * *

(e) *Submission of docket to State Office.* (1) The loan and/or grant docket needing State Office approval, including comments and recommendations by the District Director, will be submitted to the State Office. The State Director will prepare and include in the docket a memorandum to the District Director which will either require additional information if the material submitted is inadequate or will set forth the conditions of loan approval. The proposed conditions of loan approval must indicate if construction will be financed by multiple advances or interim financing if the loan will be closed on DIAS or PASS, and when the payment will be made, if an annual payment is indicated due to seasonal income.

(i) Loans for multiple advance construction on PASS or DIAS monthly installments will include the cost of construction *less* the cost of interest during construction. To determine the recommended loan amount the District Director should determine the authorized loan amount including construction interest, then subtract the estimated construction interest from the loan amount. Interest during construction will be capitalized as authorized in § 1944.158 (j) of this Subpart.

(ii) Loans for interim financed construction may include the cost of interest during construction as authorized in § 1944.158 (j) of this Subpart.

(iii) Loans for multiple advance construction on DIAS, with annual installment and deferred principal payments, may include the cost of interest during construction as authorized in § 1944.158 (j).

(2) The advice of the Office of the General Counsel (OGC) should be obtained for all loans and/or grants to organizations and associations of farmers and their comments included in the memorandum to the State Director. If the State Director determines that the loan and/or grant should be approved, the State Director will approve the loan and/or grant and sign the memorandum to the District Director as required by paragraph (e)(1) of this Section.

* * * * *

(h) *Establishing borrower/project data.* Prior to loan approval, the State Director, District Director or a designee will input into the accounting system through field office terminals, the information contained in Form FmHA 1944-50.

24. In § 1944.173, paragraph (b) is revised to read as follows:

§ 1944.173 Loan and grant approval-delegation of authority.

* * * * *

(b) *Approval of loan or grant.* When a loan or grant is approved:

(1) The approving official will prepare and sign Form FmHA 1944-51 in an original and one copy. The State Director, District Director or a designee will record the obligation of loan and/or grant funds for the project through a field office terminal in accordance with the FMI for Form FmHA 1944-51 and the MFH User Procedure.

(2) The individual obligating the loan or grant will record the date and time of the obligation and sign Form FmHA 1944-51 in accordance with the FMI.

(3) The obligation date of loan and/or grant funds will be confirmed through use of field terminals the following work day.

(4) The Finance Office will mail the State Office Form FmHA 1944-57, "MFH Acknowledgement of Obligated Funds/Check Request," confirming the reservation of funds with the obligation date inserted as required by the FMI for Form FmHA 1944-57. Form FmHA 1944-57 will be prepared and distributed in accordance with the FMI.

(5) Form FmHA 1944-51 *will not* be mailed to the Finance Office unless there is an excessive time period in which the terminals are not operable. Immediately after confirming the reservation of funds for not-for-profit organizations and public bodies, through use of the terminal operating station, the State Director will call the Information Division in the National Office as required by Subpart C of Part 2015 of this Chapter. Notice of approval to the applicant will be accomplished by mailing the applicant's signed copy of Form FmHA 1944-51 on the obligation date. The State Director, District Director or a designee will record the actual date of applicant notification on the original of Form FmHA 1944-51 and include the original of the form as a permanent part of the District Office project file with a copy in the State Office file.

(6) Determine the maximum rental rates to be charged domestic farm labor for occupancy of the housing, and advise the applicant, in writing, of these maximum rates. In determining the maximum rental rates due consideration must be given to the income and earning capacity of the prospective occupants of the housing and the cost of operating and maintaining such housing. As a general guide, the rental charges should not exceed 25 percent of the occupant

families' estimated adjusted annual income.

* * * * *

§ 1944.173 [Amended]

25. Section 1944.173 is further amended in paragraph (c) by removing in the first and second sentences the references to "Form FmHA 440-1" and inserting in their place "Form FmHA 1944-51."

§ 1944.175 [Amended]

26. Section 1944.175, paragraph (a)(2) is amended in the first sentence by removing the reference to "Form FmHA 440-57" and inserting in its place the reference "Form FmHA 1944-57."

27. Section 1944.175 is further amended by revising paragraphs (b)(2), (b)(3), (c), (e)(1) and (e)(2) to read as follows:

§ 1944.175 Actions subsequent to loan and/or grant approval.

* * * * *

(b) * * *

(2) Except as indicated in paragraph (b)(1) of this section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, the advances should not exceed 24 in number or extend longer than 2 years beyond loan closing. The retained percentage withheld from the contract or to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering, or architectural costs, interest when authorized, and other expenses, as needed. The borrower will prepare Form FmHA 440-11, "Estimate of Funds Needed for 30-day Period Commencing ———," modified as needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director. After the District Director determines that the estimates prepared by the borrower are adequate, the District Director will indicate the amount on Form FmHA 1944-57 in accordance with the FMI and request the amount through field office terminals in accordance with MFH User Procedures. As an example, for a loan and/or grant of $100,000, the advances may be made as follows: Assuming that the loan and/or grant will be closed on July 1, the borrower will complete Form FmHA 440-11 in sufficient time so that the the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	$30,000
Land acquisition	5,000
Architectural	4,000
Legal	1,000
Total	40,000

An advance in the amount of $40,000 would then be available on July 1, the date of loan closing. The second advance will also be based on the borrower's estimate prepared on Form FmHA 440-11, and will be prepared in sufficient time so that the estimate of funds might be broken down as follows:

Construction	$20,000
Architectural	1,000
Total	21,000

The amount will be indicated on Form FmHA 1944-57 and requested through field office terminals. The same procedure will be followed for each advance until the project is completed.

(3) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(c) *Requesting a Check.* When loan approval conditions can be met, including any real estate lien required, and a date for loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with either paragraphs (a) or (b) of this Section. The District Director's delegate will then order the loan and/or grant check through the field office terminal so that it will be available on or just before the date set for loan closing.

* * * * *

(e) * * *

(1) The District Director will prepare Form FmHA 1944-53, "Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation," in an original and three copies (4 copies if the check is received in the District Office from the Regional Disbursing Office). The original and copies will be sent to the State Director with the reasons for requesting cancellation. If the State Director approves the request for cancellation, he/she will make appropriate adjustments in the records to control loan allocations and submit cancellation of the obligation through field office terminals in accordance with the MFH User Procedure. Forms FmHA 1944-53 will be distributed in accordance with the FMI.

(2) If the loan or grant check is received in the District Office, the District Director will return it to the Finance Office with original and one copy of Form FmHA 1944-53.

* * * * *

28. In § 1944.176, paragraph (d) is revised to read as follows:

§ 1944.176 Loan and/or grant closing.

* * * * *

(d) *Promissory note.* (1) Form FmHA 1944-52, "Multiple Family Housing Promissory Note," will be used for all LH loans except those secured by bonds. Payments on LH loans will be scheduled on a monthly or annual basis in accordance with the expected schedule of income from the project. If periodic payments are desired on an annual note they may be scheduled on Form FmHA 440-9.

(2) The note will be dated the date of loan closing as authorized in § 1807.2(f)(8) of Part 1807 of this chapter (paragraph II F 8 of FmHA Instruction 427.1).

(3) In the case of multiple advances on PASS or DIAS monthly installments, payments will be deferred for the period of construction and any remaining period until the project is operational. When construction is substantially complete and/or the project is ready for full operation or interest plus principal reaches the "Maximum Debt Limit (MDL) at Amortization Effective Date (AED)," the accrued interest on advances will be capitalized establishing a new loan amount. The MDL at AED will be established according to § 1944.157(a)(7)(iii) of this Subpart. The borrower's payment of principal and interest will be established according to the FMI for Form FmHA 1944-52, "Multiple Family Housing Promissory Note." At loan closing the Finance Office will be notified of the projected AED and the MDL at AED on Form FmHA 1944-57. When the MDL at AED is reached or the loan is fully advanced, Finance Office will:

(i) Capitalize the construction interest. When there is a remaining obligation balance, the remaining obligation will be cancelled by the Finance Office.

(ii) Notify the District Office of the new loan amount and the borrower's scheduled loan payment.

(iii) Prepare and forward to the District Office Form FmHA 1944-7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement" if RA has been obligated for the project.

(iv) The District Office will complete Forms FmHA 1944-52 and FmHA 1944-7 according to the FMI's.

(4) Deferred principal payments may be permitted up to 2 years when determined to be necessary and advisable. Accrued interest must be paid annually when the loan is closed on DIAS; however, smaller than regular payments of principal or no payments of principal may be provided for the first and second installments after loan closing.

(5) The promissory note(s) will be signed in accordance with Part 1807 of this chapter (FmHA Instruction 427.1) and any supplemental instructions from OGC.

(6) After loan closing the original note and copies will be distributed according to the FMI. The loan closing information will be transmitted via the field office terminals when the loan is closed with a promissory note.

(7) For a loan to a public body, the forms of obligation will be determined in accordance with Exhibit H to this of Subpart.

* * * * *

§ 1944.176 [Amended]

29. Section 1944.176(f)(2) is amended by removing the reference "FmHA Instruction 405.1" and inserting in its place "FmHA Instruction 1905–A."

§ 1944.177 [Amended]

30. Section 1944.177 is amended by removing the references in the last sentence "Forms FmHA 440–1, FmHA 440–57 and FmHA 444–5" and inserting in their place "Forms FmHA 1944–51 and FmHA 1944–57."

31. In Exhibit H, paragraphs (5)(i) and (5)(ii) are revised to read as follows:

Exhibit H—Information Pertaining to Preparation of Notes of Bonds and Bond Transcript Documents for Public Body Applicants

* * * * *

(5) * * *

(i) *First preference—Form 1944–52.* If legally permissible, use Form FmHA 1944–52, "Multiple Family Housing Promissory Note."

(ii) *Second preference—single instrument with amortized installments.* If Form FmHA 1944–52 is not legally permissible, use a single instrument showing on the face the full amount of the loan and providing for amortized installments with provisions for entering the date and amount of each FmHA advance on the reverse thereof or an attachment to the instrument. Form FmHA 1944–52 should be followed to the extent possible. The first amortized payment will be due one amortized payment period following the AED.

See the FMI for Form FmHA 1944–52 for specific instructions.

* * * * *

Exhibit I—[Amended]

32. In Exhibit I the reference in the fourth paragraph of the guide letter "Form FmHA 440–57, 'Acknowledgement of Obligated Fund/Check Request,' " is removed and the reference "Form FmHA 1944–57, 'Multiple Family Housing Acknowledgement of Obligated Funds/Check Request,' " is inserted in its place.

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

33. In § 1944.212, paragraph (m) is revised to read as follows:

§ 1944.212 Loan purposes.

* * * * *

(m) Pay construction interest as follows:

(1) In the case of multiple advances, loan funds will not be used to pay construction interest. Accrued interest during construction will be capitalized when construction is substantially complete and the project is ready for full operation. When requested by the borrower, each month the District Director shall provide the borrower monthly computations of the amount of interest that is accruing during the construction period.

(2) Interest accrued on projects using interim financing may be included in the loan amount.

* * * * *

34. In § 1944.213, paragraph (a)(3) is added to read as follows:

§ 1944.213 Limitations.

(a) * * *

(3) For all applicants, the amount of the loan after capitalized construction interest is considered will not exceed the loan limits in paragraphs (a)(1) and (a)(2) of this section. All borrowers must agree in writing to provide funds from their own resources to pay any cost for completing construction after the maximum debt limit (MDL) is reached.

* * * * *

35. In § 1944.215, paragraphs (c) and (d) are revised to read as follows:

§ 1944.215 Special conditions.

* * * * *

(c) *Deferred principal payments.* (1) In the case of multiple advances only, payments for principal may be deferred for the period of construction. Accrual of interest may not be deferred. When construction is substantially complete and the project is ready for full operation or interest plus principal reaches the "Maximum Debt Limit (MDL) at Amortization Effective Date (AED)" the accrued interest on advances will be capitalized establishing a new loan amount. The MDL at AED will be established according to § 1944.213(a) of this subpart. The borrower's monthly payment of principal and interest will be established according to the FMI for Form FmHA 1944–52, "Multiple Family Housing Promissory Note."

(2) At loan closing the Finance Office will be notified of the projected AED and the MDL at AED on Form FmHA 1944–57, "Multiple Family Housing Acknowledgement of Obligated Funds/Check Request." When the final advance on the loan is issued or the MDL at AED is reached, the Finance Office will:

(i) Accrue construction interest through the last day of the month and capitalize the interest as of the first day of the following month. When there is a remaining obligation balance, the remaining obligation will be cancelled by the Finance Office.

(ii) Notify the District Office of the new loan amount and the borrower's monthly loan payments.

(iii) Prepare and forward to the District Office Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement," if interest credit was indicated on Form FmHA 1944–51, "Multiple Family Housing Obligation-Fund Analysis." Interest credit will not be implemented until the District Office notifies the Finance Office of the effective date.

(3) The District Office will contact the borrower and complete Forms FmHA 1944–52 and FmHA 1944–7 according to the FMIs.

(d) *Refinancing loans.* Each borrower must agree to refinance the unpaid balance of the loan at the request of FmHA whenever it appears to FmHA that the borrower is able to obtain a loan from responsible cooperative or private credit sources at rates and terms which FmHA considers reasonable, and still rent the units to eligible occupants at rental rate within their payment ability. The refinancing of a loan must comply with the restrictions indicated in § 1944.236(b)(4) of this Subpart. For all loans closed prior to December 21, 1979, the State Director shall comply and the borrower agrees to the restrictive provisions of § 1965.90(b) of Subpart B of Part 1965 of this chapter as a condition for the State Director's approval or acceptance of prepayment of the FmHA loan.

* * * * *

36. In § 1944.231 paragraphs (b)(5)(ii)(A)(*3*), (c)(3)(i), and (c)(3)(ii)(C) are revised to read as follows:

§ 1944.231 Processing preapplications.

* * * * *

(b) * * *

(5) * * *

(ii) * * *

(A) * * *

(*3*) Original and one copy of Form FmHA 1940-21, "Environmental Assessment for Class I Action" or Exhibit H, dependent on whether the assessment is a Class I or Class II action in accordance with Subpart G of Part 1940 of this chapter.

* * * * *

(c) * * *

(3) * * *

(i) In States that allocate funds to the District as prescribed by the National Office, the State Director will notify the District Director of the review results. The State Director will return the preapplication information and the executed original Form FmHA 1940-21 or Exhibit H of Subpart G of Part 1940 of this chapter, as appropriate, to the District Office with authorization for the District Director to prepare and issue Form AD 622.

(ii) * * *

(C) The State Director will notify the District Director of the review results. The State Director will return the preapplication information and the executed original Form FmHA 1940-21 or Exhibit H of Subpart G of Part 1940 of this chapter, as appropriate, to the District Office with authorization for the District Director to prepare and issue Form AD 622.

* * * * *

37. Section 1944.232 is amended by revising paragraphs (d)(1) and the first two entries in the table in paragraph (d)(2) and adding paragraph (h) to read as follows:

§ 1944.232 Preparation of completed loan docket.

* * * * *

(d) * * *

(1) Prior to presenting the properly assembled application to the approval official, the District Director will:

(i) Provide comments and recommendations for loan approval. Proposed conditions of loan approval must indicate if construction will be financed by multiple advances or interim financing.

(ii) Obtain the written analysis and recommendations of the FmHA State Office Architect/Engineer.

(iii) Obtain the analysis and recommendations of a member of the State Office Rural Housing staff. This analysis will include a review of and recommendation concerning the proposed conditions of loan approval.

(A) Loans for multiple advance construction will include the cost of construction *less* the estimated cost of interest during construction. To determine the recommended loan amount the District Director should determine the authorized loan amount including construction interest, then subtract the estimated construction interest from the loan amount. Interest during construction will be capitalized as authorized in § 1944.212(m) of this subpart.

(B) Loans for interim financed construction may include the cost of interest during construction as authorized in § 1944.212(m) of this subpart.

(2) * * *

Form No.	Name of form or document	Total number of copies	Signed by borrower	Number for loan docket	Copy for Borrower
FmHA 1944-50	Multiple Family Housing Borrower/Project Characteristics.	1		1-0	
FmHA 1944-51	Multiple Family Housing Obligation—Fund Analysis	3	3-0 and 2C	1-0	1

* * * * *

(h) *Establishing borrower/project data.* Prior to loan approval, the State Director/District Director or a designee will establish on the Finance Office accounting record through field office terminals, that information contained in Form FmHA 1944-50, "MFH Borrower/Project Characteristics" as indicated in the FMI and MFH User Procedures.

38. In § 1944.233, paragraph (b)(2)(i)(A) is revised, paragraph (b)(2)(i)(B) and (b)(2)(i)(G) are removed and paragraphs (b)(2)(i)(C) through (b)(2)(i)(F) are revised and redesignated as (b)(2)(i)(B) through (b)(2)(i)(E) respectively, and paragraphs (b)(2)(ii) and (b)(3) are revised to read as follows:

§ 1944.233 Loan approval.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) The loan approval official will prepare and sign Form FmHA 1944-51 in an original and two copies. The State Director, District Director or a designee will establish through field office terminals obligation of loans and/or grant funds for the project in accordance with the FMI and the MFH User Procedures.

(B) The individual making the request will record the date and time of request and sign Form FmHA 1944-51.

(C) The obligation date of loan and grant funds will be confirmed through use of field office terminals the following work day by the State Director, District Director or a designee. If funds cannot be reserved for a project because funds are not available within the State allocation, the system will not update. The State Office should call the Multiple Family Housing Unit in the Finance Office to resolve any apparent problem.

(D) The Finance Office will mail Form FmHA 1944-57 to the State Office confirming the reservation of funds with the obligation date inserted.

(E) Form FmHA 1944-51, will *not* be mailed to the Finance Office. An exception to this policy will be made only when field office terminals are inoperable and prior authorization has been obtained from the State Director or a designee. Immediately after confirming, through use of the field office terminals, the State Director will call the Information Division in the National Office as required by Subpart C of Part 2015 of this chapter (FmHA Instruction 2015-C). Notice of approval to the applicant will be accomplished by mailing the applicant's signed copy of Form 1944-51 on the obligation date. The State Director or his/her designee will record the actual date of the applicant's notification on the original of the form as a permanent part of the District Office project file and place a copy in the State Office file.

(ii) Disapproval. If a loan is disapproved after the docket has been developed, the reason for such action will be shown on the original Form 1944-51 and the form will be initialed and dated. The District Director will notify the applicant of the disapproval of the loan and the reasons therefore. The disapproved docket will then be handled in accordance with Subpart A of Part 2033 of this chapter (FmHA Instruction 2033-A). If disapproval is not at the applicant's request or by mutual agreement, the applicant will be notified that he/she may request a further review of the decision in accordance with Subpart B of Part 1900 of this chapter (FmHA Instruction 1900-B).

(3) *Distribution of items.* After the loan is approved, the contents of the docket will be distributed as follows:

(i) After being processed, an original and copy of Form FmHA 1944-57 will be processed and distributed by the Finance Office.

(ii) To the State Office: One copy of Form FmHA 1944-51.

(iii) To the District Office: The original Form FmHA 1944-51 will be retained in the borrower's case folder.

(iv) To the applicant: Signed copy of Form FmHA 1944-51.

* * * * *

§ 1944.235 [Amended]

39. § 1944.235 is amended by removing the reference "Form FmHA 440-57" in the first sentence of paragrpah (c)(1)(ii) and inserting in its place, "Form FmHA 1944-57."

40. § 1944.235 is further amended by revising paragraphs (c)(2)(ii), (d) and (f) to read.

§ 1944.235 Actions subsequent to loan approval.

* * * * *

(c) * * *

(2) * * *

(ii) Except as indicated in paragraph (c)(2)(i) of this section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, the advances should not exceed 24 in number or extend longer than 2 years beyond loan closing. The retained percentage withheld from the contract to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering, or architectural costs, and other expenses as needed. The borrower will prepare Form FmHA 440-11, "Estimate of Funds Needed for 30-day Period Commencing ———," modified as needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director or the District Director's designee. After it is determined that the estimate prepared by the borrower is adequate, the advance will be requested through field office terminals and recorded on Form FmHA 1944-57, in accordance with the FMI and the MFH User Procedure. As an example, for a loan of $100,000, the advances may be made as follows: Assuming that the loan will be closed on July 1, the borrower will complete Form FmHA 440-11 in sufficient time so that the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	$30,000
Land acquisition	5,000
Architectural	4,000
Legal	1,000
Total	40,000

An advance in the amount of $40,000 would then be available on July 1, the date of loan closing. The second advance will also be based on the borrower's estimate prepared on Form FmHA 440-11, and will be prepared in sufficient time so that the estimated amount of funds will be available on August 1. This estimate of funds might be broken as follows:

Construction	$20,000
Architectural	1,000
Total	21,000

Form FmHA 1944-57, specifying the amount of the second advance will be prepared and funds will be requested through field office terminals. The same procedure will be followed for each advance until the project is completed.

* * * * *

(d) *Requesting check.* When loan approval conditions can be met, including any real estate lien required, and a date for FmHA loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with either paragraph (c)(1) or (2) of this section. The District Director or the District Director's delegate will then order the loan check through field office terminals so that it will be available on or just before the date set for loan closing.

* * * * *

(f) *Cancellation of loan.* Loans may be cancelled after approval and before loan closing as follows:

(1) The District Director will prepare Form FmHA 1944-53, "Multiple Family Housing Cancellation of U.S. Treasury Checks and/or Obligation," in an original and three copies (4 copies if the check is received in the District Office from the Regional Disbursing Office). The original and copies will be sent to the State Director with the reasons for requesting cancellation. If the State Director approves the request for cancellation, the State Director will make appropriate adjustments in the records to control loan allocations and submit the cancellation of the obligation through field office terminals in accordance with the terminal operating manual.

(2) Form FmHA 1944-53 will be distributed in accordance with the FMI.

(3) If the loan check is received in the District Office, the District Director will return the check using paragraphs (f)(3)(i) or (ii) of this section depending on the methods by which the check was issued.

(i) *Treasury Check Method.* Return it to the Finance Office with an original and one copy of Form FmHA 1944-53, except if the check was issued by the National Finance Center the cancellation will be performed in accordance with the procedures contained in FmHA Instruction 2024-P.

(ii) *Electronic Wire Transfer Method.* Request that the financial institution mark it "void" and issue a check payable to FmHA. This check will be endorsed and deposited through the Concentration Banking System. An original and one copy of Form FmHA 1944-53 completed in accordance with the FMI will be forwarded to the Finance Office.

(4) All interested parties will be notified of the cancellation as provided in Part 1807 of this Chapter (FmHA Instruction 427.1). Unless the cancellation of the loan is by mutual agreement, the applicant will be notified that the decision may be appealed in accordance with Subpart B to Part 1900 (FmHA Instruction 1900-B).

* * * * *

41. In § 1944.236, paragraph (c) is revised to read as follows:

§ 1944.236 Loan closing.

* * * * *

(c) *Promissory note.* (1) Form FmHA 1944-52 will be used. Regular amortized payments for principal and interest will be scheduled on a monthly basis. Instruction for preparation in the FMI for the note will be followed.

(2) The amount to be shown on the note will be the same as shown on Form FmHA 1944-51 or the new adjusted amount of the loan after increase or decrease as appropriate. The note will be dated the date of loan closing except as authorized in Part 1807 of this chapter (FmHA Instruction 427.1). If the first day of the month falls on Saturday, Sunday or a holiday, the note may be dated the first, loan closing will be the last working day prior to the first and the closing documents will be filed on the first working day following the first.

(3) Payments of rental rural housing (RRH) loans will be scheduled on the note in accordance with the FMI. As provided in § 1944.215 (c) of this Subpart, the principal installments may be deferred until construction is substantially complete and the project is ready for full operation.

(4) The note(s) will be signed in accordance with the FMI and Part 1807 of this chapter (FmHA Instruction 427.1).

(5) On or after May 1, 1985, all loans will be closed on a Predetermined

Amortization Schedule System (PASS) as described in Subpart K of Part 1951 of this chapter. If the loan is a subsequent loan, all other loans on the project must be converted to PASS.

(6) All RRH loans to be secured by revenue bonds or other forms of security other than a real estate mortgage or deed of trust will be forwarded to the National Office prior to loan approval with all necessary information for review and further instructions.

* * * * *

42. Section 1944.238 is revised to read as follows:

§ 1944.238 Assigning case numbers, project numbers and initial and subsequent loan codes.

A borrower may obtain financing for more than one project. The borrower's social security or tax identification number must be provided with each loan application

(a) The loan approval official will assign the borrower's case number using the State and county codes where the project will be located and the borrower's social security number or tax identification number. See the FMI for Form FmHA 1944-51 for specific instructions.

(b) Each project will be assigned a project number by the Finance Office. When the same social security or tax identification number is identified in a future case number anywhere in the nation, the Finance Office will assign project numbers sequentially.

(c) When the total number of units financed are built or purchased at one place at one time, the loan will be coded as the initial loan on the project.

(d) A subsequent loan will be coded when an additional loan or loans are necessary to complete, improve, repair and/or expand the project initially financed as indicated in § 1944.237 of this subpart.

43. In Exhibit A, under the heading "APPLYING FOR A LOAN" numbered paragraph 1 is revised to read as follows:

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

* * * * *

Applying for a Loan

* * * * *

1. *Identification of the applicant.* The name, social security or tax identification number, address, and occupation of an individual or organization applying for an insured RRH loan must be provided. Providing the social security or tax identification number is mandatory and a loan may be denied for refusal to furnish the number. Organizations should attach a certified copy of their charter or article of incorporation and bylaws, names of members of the board of directors, and a list of names and addresses of stockholders, partners, or members showing their percentage interest in ownership of the organization. Groups being organized should list the names and addresses of the organizers, their proposed percentage interest in ownership, and the type of organization they plan to form.

* * * * *

44. In Exhibit A-6 numbered paragraph 1.f. is revised and numbered paragraph 6 is added to read as follows:

EXhibit A-6 of Subpart E—Information To Be Submitted With Preapplication for Rural Rental Housing (RRH) Loan

* * * * *

1. * * *

f. The social security or tax identification number will be required in all cases. The loan will be denied for refusal to furnish the required social security or tax identification number.

(i) In the case of an individual, the social security number of the applicant must be provided and also that of the spouse, when they have joint responsibility for the loan.

(ii) In the case of a partnership, the tax identification number of the partnership must be provided whenever available, and also the social security numbers of all the general partners and their spouses.

(iii) In the case of a limited partnership, the tax identification number of the limited partnership, is required. The social security number of all the general partners and their spouses should be secured, if at all possible.

(iv) In the case of a company, corporation, or nonprofit organization the tax identification number of the organization is required. The social security number of the officers should be secured, if at all possible.

(v) If an organization does not have a tax identification number, the social security number of one of the officers must be used.

* * * * *

6. *Projects of 25 units or more:* Comments must be submitted in accordance with 7 CFR, part 3015, "Intergovernmental Review of Department of Agriculture Programs and Activities." See FmHA Instruction 1940-J, available in any FmHA office.

45. Exhibit B is amended by adding paragraph II G and revising paragraphs III A, VI C and VII A and VII C to read as follows:

Exhibit B—Interest Credits on Insured RRH and RCH Loans

* * * * *

II. * * *

G. *"Surcharge."* Twenty-five (25) percent of the established rent in a Plan I project which is added to the rent of an ineligible tenant.

III. * * *

A. Plan I will be only to broadly based nonprofit corporation and consumer cooperatives. Except for subsequent loans to projects approved before August 1, 1968, Plan I interest credit will no longer be available for new loans after October 27, 1980. All borrowers operating on Plan I as of October 27, 1980, may continue operating under it according to the applicable requirements of this Exhibit and of this subpart.

* * * * *

VI. * * *

C. Vacancies. When all construction is not completed but, some units are ready for occupancy and the contractor consents in writing to permit occupancy, the State Director may authorize the rental of those completed units to eligible tenants at the rent they would be paying should the FmHA loan be closed. A prerent-up conference is required according to § 1944-235 (i) of this Subpart. All income generated must be deposited in the General Operating Account and used for management and operation of the units.

* * * * *

VII. * * *

A. *Interest Credit and Rental Assistance Agreement.*

(1) Multiple Advance Loans. Interest credit may become effective the first day of the month following substantial completion of construction when the project is ready for full operation, which is the AED. When the District Director determines that the project is ready for full operation the borrower and the District Director should execute Form FmHA 1944-7. A separate Form FmHA 1944-7 will be executed for each loan on the project.

(2) Interim Financing and Servicing. Effective dates for interim financed loans and servicing actions will be according to the FMI for Form 1944-7.

* * * * *

C. *Borrowers who are not receiving interest credit.* If an eligible borrower did not execute a Form FmHA 1944-7 according to paragraph VII A of this exhibit, interest credit may be instituted at any time during the life of the loan provided the borrower agrees to the requirements of Form FmHA 1944-7 and this exhibit. When Form FmHA 1944-7 is executed it will be effective for the next monthly payment due.

* * * * *

46. In Exhibit D the fourth paragraph is amended by removing the form reference "Form FmHA 440-57, Acknowledgement of Obligated Funds/Check Request" in the last sentence and inserting in its place "Form FmHA 1944-57, Multiple Family Housing Acknowledgement of Obligated Funds/Check Request."

47. In § 1944.554, paragraph (a)(7) is revised to read as follows:

§ 1944.554 Reasons for grievance and appeal.

(a) * * *

(7) Denials of RA.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

Subpart A—Account Servicing Policies

48. Section 1951.3 is revised as follows:

§ 1951.3 Authorities and responsibilities.

County Supervisors and District Directors are responsible for servicing all FmHA accounts serviced by the County Office and District Office as prescribed by this Subpart under the general guidance and supervision of District Directors and State Office personnel. Full use will be made of the Office Management System in account servicing. For the purpose of this Subpart, all references to "County Supervisor" shall be construed to mean "District Director" for all loans serviced by the District Office.

49. In 1951.6, paragraphs (g) and (h) are added to read as follows:

§ 1951.6 Handling payments.

* * * * *

(g) *Borrowers with Rural Rental Housing (RRH), Rural Cooperative Housing (RCH) or Labor Housing (LH) loans on a Predetermined Amortization Schedule System (PASS).* Loans on PASS will be administered under Subpart K of this Part.

(h) *Borrowers with RRH, RCH, LH, Rural Housing Site Loans (RHS) and Site Option (SO) loans administered under this Subpart.* RRH, RCH, LH, RHS and SO loans on a daily interest accrual system (DIAS) for applying payments administered under this Subpart are subject to the direct billing and payment requirements in § 1951.506 of Subpart K of this Subpart. All payments are requested to be paid on the first day of the month following the date shown on the promissory note, except loans with principal and interest bonds issued before May 1, 1985. All payments are considered delinquent for reporting purposes on the 15th day of the month following the requested payment date if the unpaid portion of the payment exceeds $15.00

50. In § 1951.7, a new paragraph (b)(5)(v) and a new paragraph (g) are added to read as follows:

§ 1951.7 Accounts of borrowers.

* * * * *

(b) * * *

(5) * * *

(v) For collection only accounts in District Offices, the State Director will review the accounts as required in paragraphs (b)(5)(i) through (b)(5)(iv) of this section and the District Director will serve the account.

* * * * *

(g) *Inquiry for Multiple Family Housing (MFH) Loans.* Inquiry for all RRH, RCH, LH, RHS and SO loans and grants will be made through field terminals using procedures in the "MFH Users Procedures" manual or by contacting the MFH Unit in the Finance Office.

51. Subpart K is addded to Part 1951 to read as follows.

PART 1951—SERVICING AND COLLECTIONS

* * * * *

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

Sec.
1951.501 General.
1951.502 [Reserved]
1951.503 Authorities and responsibilities.
1951.504 Definitions and statements of policy.
1951.505 [Reserved]
1951.506 Processing payments.
1951.507 Maintaining borrower accounts.
1951.508–1951.509 [Reserved]
1951.510 Payment application.
1951.511 [Reserved]
1951.512 Changes in the application of loan payments.
1951.513 Overpayments and refunds to borrowers.
1951.514 Recoverable and nonrecoverable cost charges.
1951.515 Promissory notes for borrowers who convert to PASS.
1951.516 [Reserved]
1951.517 Conversion from DIAS to PASS.
1951.518–1951.547 [Reserved]
1951.548 Exception authority.
1951.549 [Reserved]
1951.550 OMB Control Number.

Authority: 42 U.S.C. 1980; 7 CFR 2.23; 7 CFR 2.70.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

§ 1951.501 General.

(a) This subpart prescribes the policies, authorizations, and procedures for implementing and servicing PASS for all of the following Farmers Home Administration (FmHA) Multiple Family Housing (MFH) loan recipients which includes Farm Labor Housing (LH) and Rural Rental Housing (RRH) including Rural Cooperative Housing (RCH) and Congregate Housing and includes:

(1) All MFH loans, credit sales, reamortizations, and transfers closed on or after May 1, 1985, and

(2) All MFH loan recipients converting from the Daily Interest Accrual System (DIAS) to PASS according to § 1951.517 of this subpart, except:

(i) Seasonal LH and LH loans to individual farmers may be closed on monthly or annual payment schedules and also may be closed on Daily Interest Accrual under Subpart A of Part 1951 of this chapter. Instructions for scheduling payments are according to the Forms Manual Insert (FMI) for Form FmHA 1944–52, "Multiple Family Housing Promissory Note."

(ii) Rural Housing Site (RHS) loans and Site Option (SO) loans will be closed and serviced on Daily Interest Accrual under Subpart A of Part 1951 of this chapter. Payment billing and application are subject to § 1951.506 and § 1951.510 of this subpart.

(b) All MFH loan recipients not described in paragraph (a) of this section will continue to be subject to the servicing and collection requirements of Subpart A of Part 1951 of this chapter. For the purposes of this subpart, all references to "County Supervisor" in Subpart A of Part 1951 shall be construed to mean "District Director."

§ 1951.502 [Reserved]

§ 1951.503 Authorities and responsibilities.

District Directors are responsible for administering this subpart under the general guidance and supervision of the State Director. The District Office Management System will be fully used to accomplish this responsibility.

§ 1951.504 Definitions and statements of policy.

(a) *Advance regular payment.* Regular payments made at election of the borrower to pay the account ahead of schedule. These payments may be either full or partial payments and will be applied to the amortized payment schedule by the Finance Office.

(b) *Amortization schedule.* An amortization schedule is the projected application of periodic payments to principal and interest at the promissory note rate so the debt will be paid in full over the number of periods specified in the promissory note, assumption agreement (new terms), or reamortization agreement. Computation is based on a 30-day month and a 360-day year.

(c) *Audit receivables.* Loan, grant or subsidy funds which were used by the borrower for unauthorized purposes; have been identified by the Office of Inspector General (OIG) in an audit; and, which FmHA is requiring the borrower to repay.

(d) *Conversion.* The act of changing a borrower's account from DIAS to PASS.

(e) *Daily Interest Accrual System (DIAS).* A system whereby interest is charged daily from the date a payment is received in the District Office to the next date a payment is received. A daily interest accrual factor is computed by multiplying the outstanding principal balance by the effective interest rate and dividing by 365 days. Computation is always based on a 365 day year. Interest on each payment is charged on the actual number of days that a principal balance is outstanding.

(f) *District Director.* For the purpose of this subpart the term includes the Assistant District Director, and other qualified District staff who may be delegated responsibilities according to § 1930.143 of Subpart C of Part 1930 of this chapter, and the provisions of Subpart F of Part 2006 of this chapter (available in any FmHA office). In the case of LH loans still being serviced in the County Office, this definition also includes qualified County Office staff. This definition further includes the Area Loan Specialists in Alaska, Island Directors in Hawaii, Directors of Western Pacific Territories, and other qualified staff members in Alaska, Hawaii, and Western Pacific Territories, respectively.

(g) *Extra payment.* Extra payments are applied all to principal on the end of the loan and are funds derived from:

(1) Sale of basic chattel or real estate security, including rental or lease of real estate security of a depreciating or depleting nature.

(2) Refinancing of real estate debt.

(3) Mineral royalties.

(4) Cash proceeds of real property insurance as provided in Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1).

(5) Sale of real estate not mortgaged to the Government, pursuant to a condition of loan approval.

(6) Transactions of a similar nature which reduce the value of the security for the loan(s).

(h) *Project late fee.* The amount charged a borrower's project account for a delinquent payment according to § 1951.510(c)(2) of this subpart, or when an uncollectible regular payment has been processed according to § 1951.506(c) of this subpart.

(i) *Overage.* This term refers to both "overage" and "surcharge" described in Exhibit B to Subpart E of Part 1944 of this chapter.

(j) *Payment effective date.* The payment effective date is the day of the month on which payments will be effectively applied to the account by the Finance Office for the month payment is due regardless of the payment reception date. On PASS all payments will be applied as of the first day of the month.

(k) *Payment reception date.* The day of the month the payment is received in the District Office.

(l) *Predetermined Amortization Schedule System (PASS).* System whereby FmHA will apply loan payments based on an amortization schedule.

(m) *Promissory note installment.* The unrounded amortized installment shown on the promissory note, conversion agreement, assumption agreement or reamortization agreement, whichever is currently in effect.

(n) *Recoverable costs.* Additional project costs such as vouchered insurance or taxes which FmHA requires a borrower to pay.

(o) *Refund payment.* Payments from unused loan funds which are applied to principal on the end of the loan account.

(p) *Regular payment.* All monthly payments scheduled according to PASS. Does not include extra payments, advance regular payments, refund payments or voluntary additional principal payments.

(q) *Subsidized installment.* The promissory note installment reduced by the terms of Form FmHA 1944–7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement." The subsidized installment is the unrounded amortized installment computed at the subsidized interest rate.

(r) *Subsidy credit.* The difference between a borrower's monthly promissory note installment and the monthly subsidized installment.

(s) *Voluntary additional principal payment.* Payments applied all to principal which are made at the election of the borrower in addition to regularly scheduled payments and with FmHA approval. Such payments will not affect the schedule payment status or change the amount of the regular monthly payments. Funds for voluntary additional principal payments are derived from sources other than extra payment sources. Payments will be applied to current loans only.

§ 1951.505 [Reserved]

§ 1951.506 Processing payments.

(a) *Regular payments.* Regular payments and advance regular payments will be processed as follows:

(1) All payments will be based on tenants occupying the units as of the first day of the month for which the payment statement is generated.

(2) The borrower must mail all Forms FmHA 444–8, "Tenant Certification," or for tenants receiving Section 8 assistance, the acceptable Department of Housing and Urban Development (HUD) form, to the District Director on the same day, or before, the tenant occupies the unit. The District Director will verify the information on the tenant certification as required in paragraph VII F of Exhibit B to Subpart C of Part 1930 of this chapter. The data from the verified tenant certifications should be entered on a "master" Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance" filed with the current tenant certifications in the District Office servicing file. Only tenants with current tenant certifications shown on this "master" list may be certified for interest credit or rental assistance.

(3) On the 20th day of each month, the Finance Office will generate and mail to each borrower Form FmHA 1944–9A, "Multiple Family Housing Statement of Payment Due," showing the current monthly payment due, unpaid late fees, any other charges to the account, and delinquent payments, if any, due on the first day of the following month. This payment statement will be determined from current Finance Office records but will not reflect overage due from the borrower or rental assistance due the borrower.

(4) Upon receipt of Form FmHA 1944–9A, the borrower will submit to the District Office Form FmHA 1944–29 with the payment indicated or adjusted as indicated in paragraph (a)(5) of this section.

(5) Form FmHA 1944–29, prepared by the borrower must reflect the following:

(i) Only tenants occupying units the first day of the month for which payment is due.

(ii) If tenants are listed on Form FmHA 1944–29 for the payment month for whom the District Office does not have current tenant certifications, supporting tenant certifications must be attached.

(iii) Interest credit and rental assistance may be claimed only for tenants with current tenant certification as specified in paragraph VII F 4 of Exhibit B to Subpart C of Part 1930 of this chapter.

(iv) Overage up to the market rent must be paid to FmHA by the borrower for tenants without current tenant certifications. The District Director may determine that the tenant may be required to reimburse the borrower for that overage as allowed in paragraph VII F 4 a of Exhibit B to Subpart C of Part 1930 of this chapter.

(v) The borrower may subtract any rental assistance due the project (supported by current tenant certifications) from the payment due and remit a "net" payment. Calculations supporting the "net" payment must be shown on Part I of Form FmHA 1944–29.

(6) The District Director will verify that data on current tenant certifications held in the District Office supports claims on Form FmHA 1944–29. The District Director will prepare and forward Form FmHA 1944–9, "Multiple Family Housing Certification and Payment Transmittal," to the Finance Office with the borrower's payment.

(b) *Other payments.* Payments made through the District Office will be processed according to Subpart B of Part 1951 of this chapter (available in any FmHA office).

(c) *Uncollectible payment.* Uncollectible's will be handled under Subpart A of this Part or if a payment transmittal system using local banking facilities is in effect, the local financial institution contracted to accept collectibles from the District Office will prepare a debit voucher for all items returned as uncollectible and will provide the local FmHA office with a copy of the debit voucher and the item. The FmHA office will verify the information and send one copy to the Finance Office using procedures established for concentration banking. Delays of more than one day in sending these items must be explained in a letter to the Director, Finance Office. Prompt action will be taken to obtain a valid replacement collection item from the borrower. When received, the replacement item will be scheduled on a Form FmHA 1944–9. The payment effective date for payments other than refunds and extra payments will be the first day of the month during which the replacement payment is received in the District Office.

§ 1951.507 Maintaining borrower accounts.

(a) *Accounts of active borrowers.* The foundation for proper and timely debt payment is sound budgeting and monthly review of income and expenses by the borrower and, as necessary, the District Office staff. Account maintenance, therefore, must begin with initial planning and must be an integral part of ongoing analysis, planning and folllow-up management assistance.

(b) *Accounts of collection-only borrowers.* Collection only accounts will be serviced according to § 1951.7(b) of Subpart A of this part.

(c) *Notifying borrowers of late fees and past due payments.* The Finance Office will automatically notify each borrower of late fees for payments which were unpaid on the 10th day of the month. A copy of the notice will be mailed to the District Office servicing the account.

(d) *Subsequent servicing.* Delinquent accounts will be serviced according to the respective program requirements. Accounts will also be serviced under Subpart B of Part 1965 of this chapter.

(e) *Maintaining records of accounts in District Offices.* Records of accounts will be maintained in the District Office. Form FmHA 1905–6, "Managment System Card—Multifamily Housing," or other systems authorized by FmHA regulations will be maintained for each project.

(1) The Finance Office will provide Form FmHA 1951–53 "Multiple Family Housing Transaction Record," for each transaction on the borrower's account, including all loan payments, overage or surcharges, rental assistance, project late fee charges, recoverable cost charges, and corrections to the account required in § 1951.506 of this subpart. These transaction records will be retained in the project servicing file until Form FmHA 1951–54, "Multiple Family Housing Annual Statement of Loan Account From —— To ——," is received and all transactions are accounted for and reconciled with District Office records.

(2) Form FmHA 1905–6 for projects on PASS will be flagged with an orange signal between Position "5" and "RRH".

§§ 1951.508–1951.509 [Reserved]

§ 1951.510 Payment application.

(a) *Regular payment due date.* The regular payment due date is the first day of each month. All months will be counted as 30 days (360 day year).

(b) *First regular payment.*

(1) The first regular amortized payment after loan closing for transfers (new terms), reamortizations, voluntary conversions, credit sales, or loans closed after interim financing *must* be at least one (1) month from closing. For example, if a loan is closed on January 31, the first regular amortized payment will be due March 1. For multiple advance loans the first payment must be at least one (1) month after the final advance.

(2) For transfers (same terms) payments on loans already on PASS will be due on the next scheduled due date.

(3) Transfers (same terms) converting from DIAS to PASS are loans retaining the same interest rate and final due date and regular amortized payments will be due 30 days form either the date of closing or the interest only installment, whichever is later.

(c) *Delinquent payments.*

(1) A loan payment is considered delinquent the first day following the due date if it is not received by the District Office. However, borrowers will be allowed a ten (10) day grace period following the due date to make their payment. Late fees will be charged, effective on the eleventh (11th) day of the month. Thereafter, late charges will be assessed as described in paragraphs (c) (2) and (3) of this section.

(2) The project account will be charged a late fee when the regular payment is not received in the District Office by the tenth (10) day of the month the payment is due or when the payment is applied by the Finance Office and does not fully pay the regular payment and other charges for each project loan. Late fees collected by the Finance Office will be deposited in the Rural Housing Insurance Fund (RHIF).

(i) The project late fee is six percent of the total regular payment(s) due shown on the promissory note(s), conversion agreement(s), assumption agreement(s) or reamortization agreement(s).

(ii) A project late fee will be charged for any unpaid portion of the regular payment(s) exceeding $15.00.

(iii) A project late fee will be charged one time only, for each regular payment.

(iv) Project late fees may not be paid from project income as specified in paragraph XIII.B.2.a.(4) of Exhibit B to Subpart C of Part 1930 of this chapter.

(v) Exceptions may be made to late fee charges only as follows:

(A) The State Director may allow an exception for any project for three (3) monthly project late fee charges in any calendar year, based on the State Director's determination that the late fees place an unfair burden on the project. For each exception requested, the borrower must provide a written explanation of the circumstances which caused the late payment and what actions will be taken to bring the account current.

(B) The National Office may authorize exceptions to late fees for borrowers who have late fees exceeding the State Director's exception authority. When the State Director determines that the application of a late fee would place an unfair burden on the borrower, the State Director may submit a request for an exception to the late fee to the National Office. The request will include an explanation of the circumstances, a recommendation for action and all relevant case file material. The National Office will review the request and notify the State Director what action should be taken on the account.

(C) When an exception to late fees is granted, the State Director will notify the Finance Office and the borrower on Form FmHA 1951–51, "Multiple Family

Housing Exception to Late Fees," completed according to the FMI.

(D) When an application for late fee exception is denied the State Director must give the borrower appeal rights under Subpart B of Part 1900 of this chapter.

(3) When a regular payment continues to be delinquent on the first of the month following the delinquent payment due date, interest will be charged on the unpaid principal at the note rate until all regular payments, recoverable cost charges and late fees have been paid current in accordance with the number of full installments required by the promissory note. This interest will be in addition to the scheduled interest of the regular payment. The account will no longer be on the previous amortization schedule. The account may be brought back on the previous amortization schedule by making a voluntary additional principal payment in an amount equal to the scheduled principal that was used to pay the additional interest charged.

(d) *Subsidy credit.* When the Finance Office receives the regular payment, subsidy credit will be applied to the loan account before any payment or other credit is applied to the account. Subsidy credit will be applied first to accrued interest and then to principal after all interest is paid. Subsidy credit will not be applied to late fees, audit receivables, or recoverable cost charges.

(e) *Regular payments.* Regular payments will be applied in the following priority:

(1) Amortized audit receivables.

(2) Unamortized audit receivables.

(3) All project late fees due.

(4) Recoverable costs due.

(5) Overage.

(6) All other interest due.

(7) Principal.

(8) Any remaining regular payment will be applied as an advance regular payment unless specifically designated otherwise.

(f) *Advance regular payments.* These payments affect the payment status of the loan. The loan account must be current before a payment can be applied as an advance payment. The payment effective date will be the due date of the next regular payment which is not fully paid.

(g) *Extra and refund payments.* Both will be applied as principal to the last installment to become due under the note.

(h) *Voluntary additional principal payments.* These payments will only be credited to the account when all regularly scheduled payments on the account have been paid. Voluntary additional principal payments are credited all to principal, as of the payment effective date, and do not affect the payment status of the loan.

(i) *Projects with initial and subsequent loan(s).* Regular payments on projects with an initial and subsequent loan(s) will be applied according to the priorities listed in § 1951.510(e) of this subpart. Each priority item will be paid for all project loans before moving to the next item. Payments will be applied for each priority item in accordance with the loan number, beginning with the initial loan and ending with the highest numbered subsequent loan.

(j) *Final payments.* Final payments will be applied on the next payment due date or the final due date shown on the promissory note, assumption agreement or reamortization agreement, whichever is sooner. The District Office must contact the Finance Office for the amount of the final payment. Final payment should be accepted under conditions specified in § 1965.90 of Subpart B to Part 1965 of this chapter.

§ 1951.511 [Reserved]

§ 1951.512 Changes in the application of loan payments.

(a) *Authority to change payments.* District Office employees with State Director authorization according to § 1930.143 of Subpart C to Part 1930 of this chapter are authorized to approve reapplication of loan payments between accounts when payments have been applied in error. All authorization for reapplication of payments must conform to the policies expressed in this subpart. No change may be made if the loan is paid in full, the cancelled note or notes have been returned to the borrower, and the security instruments have been satisfied.

(b) *Method for changing application of loan payments.*

(1) The District Office will make a copy of Form FmHA 1944-9 which submitted the original payment to the Finance Office.

(2) The required changes should be marked on Form FmHA 1944-9 in red and the form should be marked "CORRECTED COPY".

(3) The reason for the required change should be noted on the form.

(4) Copies of any justifying documentation should be attached to the corrected copy. (Copies should also be maintained in the District Office files.)

(5) The bottom right hand corner of the form should be signed:

"Approved by:
(Signature of authorizing person)".
Title: ______

(6) The corrected copy and all attached documentation should be mailed in a separate envelope to the Finance Office, Multifamily Housing Unit, marked "Open Addressee Only".

(7) A copy of the corrected form should be retained in the District Office until the change in application has been processed.

(c) *Changes by the Finance Office in application of remittance.*

(1) Reapplication of collections will be made when processing Forms FmHA 1944-9 or other effective date transactions that are dated prior to the date of last payment on the borrower account. Form FmHA 1951-53 will be forwarded to the District Office to show the reapplication.

(2) When necessary, the Finance Office will correct improperly prepared Forms FmHA 1944-9. If necessary the Finance Office will contact the District Office for correct data to ensure correct application of payments.

§ 1951.513 Overpayments and refunds to borrowers.

Overpayments and refunds to borrowers will be processed according to § 1951.13 of Subpart A of this part.

§ 1951.514 Recoverable and nonrecoverable cost charges.

The District Director will service recoverable and nonrecoverable cost items according to § 1951.14 of Subpart A of this part.

§ 1951.515 Promissory notes for borrowers who convert to PASS.

Promissory notes in the hands of investors when a loan is converted to PASS will be repurchased by the Finance Office and forwarded to the District Office for storage.

§ 1951.516 [Reserved]

§ 1951.517 Conversion from DIAS to PASS.

(a) *Conversion prior to May 1, 1985.* The account of any existing RRH loan recipient who elected to convert to PASS before October 31, 1983, by following instructions prescribed by FmHA, and who signed their conversion documents before May 1, 1985, or any recipient of a new loan, credit sale, or transfer (new terms) closed between November 1, 1983, and April 30, 1985, who elected to convert to PASS, will be converted on May 1, 1985, as if the loan has been on an amortization schedule from the date of the loan, transfer (new terms), or reamortization (new terms), whichever occurred later.

(b) *Conversion on or after May 1, 1985.*

(1) *Required conversion.* After *May 1, 1985,* all MFH loans, transfers or reamortizations must be closed on PASS, except LH loans specified in § 1951.501(a)(3) of this Subpart. All borrowers receiving subsequent loans or reamortizations must convert all initial and subsequent loans on the project to PASS. If the subsequent loan and conversion are not closed on the first of the month, the interest from the date of closing to the first of the month will be capitalized. Recoverable costs and unpaid interest may be capitalized on coversions required by subsequent loans or reamortization of one loan on the project account.

(2) *Voluntary conversion.* District Directors shall approve voluntary conversion of any account from DIAS to PASS upon a request by the borrower, when the following conditions are met:

(i) The loan account and reserve account are current less any authorized withdrawals at the time of conversion.

(ii) Conversion does not result in a rent increase.

(iii) The conversion is effective the first day of the month.

(3) *Processing conversions.* The following actions must be taken to convert an account from DIAS to PASS:

(i) Form FmHA 1951-50, "Multiple Family Housing Conversion Agreement," will be completed according to the FMI except loans converted on Form FmHA 1965-9, "Multiple Family Housing Assumption Agreement," or FmHA 1965-16, "Multiple Family Housing Reamortization Agreement." The terms of Forms FmHA 1965-9 and FmHA 1965-16 convert the account to PASS.

(ii) When the borrower will continue to receive interest credit following conversion, the current interest credit agreement will be cancelled by preparing and submitting a new Form FmHA 1944-7. Form FmHA 1944-7 should be attached to Form FmHA 1951-50, and submitted to the Finance Office, Attention: Multiple Family Housing Unit.

(iii) On the back of the original note or assumption agreement (new terms), below all signatures and endorsements, the District Director will insert the following: "A Form FmHA 1951-50 dated ——— 198—, in the principal sum of $———, has been given to modify the payment schedule of the note.

(4) *Principal balance to be converted.* For transfers and reamortizations, the applicable transfer or reamortization form will convert the account. The principal balance converted to PASS will be established according to the FMI for Forms FmHA 1965-9, or FmHA 1965-16, and the following:

(i) For transfers (new terms), any unpaid interest to the date of closing may be capitalized. When the transfer is other than the first day of the month, the interest from closing to the first of the following month will be established as an "interest only" installment due on the first of the following month. The interest only installment should be collected at transfer closing. See FMI for Form 1965-9 for details.

(ii) For transfer (same terms), interest will not be capitalized. Accrued interest from the last payment to the date of closing will be collected at closing. If the transfer is other than the first of the month, the interest from the previous payment to date of closing will be paid by the transferor and an interest only installment will be established for the balance of the month based on PASS. The interest only installment will be due on the first of the following month by the transferee and must be collected at transfer closing. To establish the interest only installment, use the formula shown on the FMI for Form FmHA 1965-9.

(iii) Reamortizations will always be closed the first day of the month. Unpaid interest to the date of closing may be capitalized.

(iv) Audit receivables may not be transferred or reamortized.

(5) *Terms of Conversion.* All conversion on Form FmHA 1951-50 will be at the interest rate and within the remaining terms shown on the converting promissory note, assumption agreement (new terms) or reamortization agreement (new terms).

§§ 1951.518-1951.547 [Reserved]

§ 1951.548 Exception authority.

The Administrator of the Farmers Home Administration may, in individual cases, make an exception to any requirements of this Subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government. The Administrator will exercise the authority only at the request of the State Director. The District Director will submit the request supported by data: demonstrating the adverse impact; identifying the particular requirement involved; showing proper alternative courses of action; and, identifying how the adverse impact will be eliminated.

§ 1951.549 [Reserved]

§ 1951.550 OMB Control Number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0575-0106.

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans and Acquisition of Property

52. Section 1955.10 is amended by revising the third entry in the list of forms in paragraph (f)(1), by adding two additional forms after Form FmHA 465-8 in the list of forms in paragraph (f)(1), and by revising paragraphs (f)(2), (f)(3), (h)(1)(ii), (i)(2), (j)(3), (j)(4) and (j)(5) to read as follows:

§ 1955.10 Voluntary conveyance of real estate and related security.

* * * * *

(f) * * *

(1) * * *

Form No. and Name of Form	Number of copies	Signed by borrower	Voluntary conveyance docket
* * *			* *
1922-7—Appraisal Report for Multi Unit Housing.	1		1—Original.
* * *			* *
1965-18—Multiple Family Housing Release from Personal Liability.	2		2—Original and Copy.
1965-19—Multiple Family Housing Advice of Mortgage Real Estate Acquired.	2	1—Original	2—Original and Copy.
* * *			* *

(2) If the present market value of security property does not equal or exceed the total FmHA debt, and if the voluntary conveyance involves a release from liability, the County Supervisor will obtain a current financial statement and information about the present income of the borrower and any cosigner. If financial information cannot be obtained, the voluntary conveyance offer must be reviewed and approved by the District Director prior to acceptance. The County Supervisor will execute Form *FmHA 465-8* after voluntary conveyance has been approved and the determination made to release the borrower from personal liability. The District Director will execute Form FmHA 1965-18 for multiple family housing loans.

(3) For multiple housing facilities, the District Director will, whenever possible, obtain a statement from the borrower as to any income or expenses related to the property which are due but unpaid, such as rent or lease proceeds, security deposits, and utility bills.

* * * * *

(h) * * *

(1) * * *

(ii) After the designated attorney, title insurance company, or OGC determines that the transaction has been properly closed, all documents will be returned to the initiating office with the notation of date when title to the property was vested in the Government. The County Supervisor (or District Director) will forward copies of this Form FmHA 465-6 (Form 1965-19 for MFH cases) according to the FMI. The County Supervisor will notify the District Director of completion of any conveyance which the District Director approved. For Multiple Family Housing projects with rental assistance (RA), Form FmHA 1944-55, "Multiple Family Housing Transfer of Rental Assistance" must be attached indicating status of the RA while the property is in inventory.

* * * * *

(j) * * *

(2) *Completing Form 465-6, "Advice of Mortgaged Real Estate Acquired" or Form FmHA 1965-19, "Multiple Family Housing Advice of Mortgaged Real Estate Acquired."* Immediately after the transaction is closed in accordance with the closing instructions and the amount of credit to be allowed on the account is determined, the County Supervisor will complete and send Form FmHA 465-6 according to the FMI. The District Director will complete Form FmHA 1965-19 for multiple family housing properties and distribute according to the FMI. The value of acquired real property entered into the inventory account in all cases will be the present market value. The County Supervisor (or District Director for MFH loans) will inventory and appraise acquired personal property and submit a list of the property to the Finance Office with Form FmHA 465-6, or Form FmHA 1965-19 prepared by the District Director for MFH properties. For Multiple Family Housing projects with RA, Form FmHA 1944-55 must be attached indicating status of the RA while property is in inventory.

(3) *Leases.* (i) The County Supervisor (or District Director) will send a copy of any assigned agricultural, mineral, or other lease on the property to the Finance Office with Form FmHA 465-6. (Form FmHA 465-19 will be used for MFH cases). If an oral lease on the property or on a portion of it existed, a new lease will be executed in writing on Form FmHA 465-2, "Lease of Security Property," or other form approved by OGC. The lessee and the County Supervisor (for FmHA lessor) will execute the form. The County Supervisor will assign a number to the lease. The number for an individual will consist of the FmHA State and County codes, the last digit of the fiscal year, and a sequential number beginning with 001, e.g., 48-71-6001. Each fiscal year the sequential number will begin again with 001. For an organization or business it will be the FmHA State and County Code and Internal Revenue Service employer number. The County Supervisor will send a copy of the lease to the Finance Office. After assigning an advice number to Form 465-6 (Form FmHA 1965-19 for MFH Cases), the Finance Office will advise the County Supervisor (or District Director) by memorandum, with a copy to the State Director, of such identification of the inventory property and lease.

(ii) The County Supervisor (or District Director) will collect payments due and payable after the Government inventory conveyance is closed and deposit them in a Treasury general account or forward them to the Finance Office as miscellaneous collections in accordance with the Forms Manual Insert (FMI) for Form FmHA 451-2, "Schedule of Remittances," or Form FmHA 1944-9, "Multiple Family Housing Certification and Payment Transmittal," for MFH loans. Receipt for collections made in accordance with this Subpart will be issued to: Lease proceeds from property formerly owned by (borrower's name and case number) and leased to (name of lessee)."

(4) *Satisfied account.* The Finance Office, the County Supervisor (or District Director), as appropriate, will stamp the borrower's note "satisfied by surrender of security and release from liability," when the account is fully satisfied. The County Supervisor (or District Director) will release the lien of record and deliver the satisfied note and Form FmHA 465-8, "Release from Personal Liability," (Form FmHA 1865-18, "Multiple Family Housing Release from Personal Lability" for MFH cases) to the borrower.

(5) *Unsatisfied account.* When the account is not satisfied and the debt cannot be settled according to Part 1864 of this Chapter, the borrower will be classified as "collection only" by processing Form FmHA 404-1, "Case Reclassification," and Form FmHA 450-10, "Multiple Family Housing Change Borrowers Name/Address Case Number/Project Number/Loan Number," and submitting them to the Finance Office with Form FmHA 465-6. (Forms FmHA 1944-54, "Borrower's Address or Name Change" and FmHA 1965-19 will be used for MFH cases). The remaining amount will be accelerated by written notice. The Finance Office will send the County Supervisor (or District Director) a current transaction record. The loan record card will be reconciled with the transaction record or Form FmHA 451-11 and the account service for collection under § 1951.7(b) of Subpart A of Part 1951 of this Chapter. In such cases, the FmHA mortgage will be released of public record, but not satisfied. The type of release will be prescribed by a State Supplement approved by OGC and cleared as required by Subpart B of Part 2006 of this chapter.

53. In § 1955.15 paragraphs (d)(12) through (d)(15) are revised to read as follows:

§ 1955.15 Foreclosure of loans secured by real estate.

* * * * *

(d) * * *

(12) *Completion of Form FmHA 465-6 or Form FmHA 1965-19.* If FmHA is the successful bidder at the foreclosure sale, the County Supervisor (or District Director) will complete and forward Form FmHA 465-6 (Form FmHA 1965-19 for MFH cases) according to the FMI. The form will be completed without waiting for the final report on acquired property from OGC and will be dated as of the date of sale.

(13) *Appraising personal property.* The County Supervisor (or District Director) will inventory and appraise personal property acquired at the foreclosure sale with the real estate and submit a list of such items to the Finance Office with Form FmHA 465-4 (Form FmHA 1965-19 in MFH cases). A copy of the list will be sent to the State Director.

(14) *Leases.* If the sale is made subject to an agricultural, mineral, or other lease in which the lessor's interest is acquired by FmHA through the sale, the County Supervisor (or District Director) will submit a copy of the lease to the Finance Office with Form FmHA 465-6 (Form FmHA 1965-19 for MFH cases). If a lease is terminated on act of sale, a new lease may be considered as provided by §1955.63(a)(1) of Subpart B of this part. For lease numbering see § 1955.10(j)(3) of this subpart.

(i) Any oral lease in effect at the time the Government acquires the property will be reduced to writing on Form FmHA 465-2 or other form approved by OGC. If a written lease cannot be obtained, request assistance from OGC. The lessee and County Supervisor or District Director (for FmHA lessor) will execute the form. The County Supervisor (or District Director) will notify any lessee in writing that the Government has acquired the former lessor's rights under any lease and will direct the lessee to remit all payments to the County Supervisor (or District Director).

(ii) Payments to FmHA under a lessee which were due and payable before the date of the foreclosure sale will be applied first on any balance remaining on the debt after foreclosure and then on any other FmHA claim against the borrower. Any surplus remaining will be remitted to the borrower.

(15) *Deficiency Judgment.* (i) If a deficiency judgment is obtained under paragraph (b)(2) of this section, the account will be classified as a judgment case and the County Supervisor will send Form FmHA 455-20, "Notice of Judgment," to the Finance Office. (For MFH cases the District Director should contact the State Office or MFH Unit in the Finance Office for instructions on altering Form 455-20 to meet the requirements of the Automated Multiple Housing Accounting System (AMAS)). The account will be serviced in accordance with Section 1962.49(e) of *Subpart A of Part 1962* of this chapter. When action to obtain a deficiency judgment is pending at the time Form FmHA 465-6 (Form FmHA 1965-19 for MFH cases) is sent to the Finance Office, the action will be indicated on the form.

(ii) If a deficiency judgment is not obtained and the debt cannot be settled under Part 1864 of this chapter (FmHA Instruction 456.1), the County Supervisor (or District Director) will submit Forms FmHA 404-1 and FmHA 450-10 (Form FmHA 1944-54 for MFH cases) to the Finance Office to reclassify the account to collection only in accordance with FmHA Instruction 404.1 available in all FmHA Offices.

* * * * *

Subpart B—Management of Property

54. In § 1955.54, paragraph (a) is revised to read as follows:

§ 1955.54 Authorities and responsibilities.

(a) *Line authority.* This authority is from the Administrator to State Director, District Director, and County Supervisor. Assistance, guidance and counsel are available from the Property Management Specialist and Program Staff in the State Office and from the appropriate program divisions and Property Management Staff in the National Office. Full use will be made of these resources. County Supervisor means District Director or a designee in the case of a multiple family housing loan.

* * * * *

Subpart C—Disposal of Acquired Property

55. In § 1955.104, paragraph (a) is revised to read as follows:

§ 1955.104 Authorities and responsibilities.

(a) *Line authority.* This authority is from the Administrator to State Director, District Director, and County Supervisor. Assistance, guidance, and counsel are available from the Property Management Specialist and Program Staff in the State Office and from the appropriate program divisions in the National Office. Full use shall be made of these resources. County Supervisor is to mean District Director or a designee in the case of a multi-family housing loan.

* * * * *

56. In § 1955.116, paragraphs (a)(2)(vi)(C) and (b)(4)(iv) are revised to read as follows:

§ 1955.116 Sale of real estate that was acquired pursuant to the Consolidated Farm and Rural Development Act (CONACT).

* * * * *

(a) * * *
(2) * * *
(vi) * * *

(C) When the transaction is closed, the County Supervisor will send the original and one copy of Form FmHA 465-6A, "Advice of Mortgaged Real Estate Sold" (Form FmHA 1965-20, "Multiple Family Housing Advice of Mortgaged Real Estate Sold," in MFH cases), to the Finance Office and a copy to the State Director. When rental assistance (RA) has been in suspense for an acquired property, disposition of the RA must be indicated on Form FmHA 1944-55, "Multiple Family Housing Transfer of Rental Assistance," and a copy of Form FmHA 1944-55 must be forwarded to the Finance Office with Form FmHA 1965-20.

(b) * * *
(4) * * *

(iv) *Organization property.* Upon acceptance of the bid or offer, the State Director will forward the original Form FmHA 465-10, the names and legal description to be placed in the deed, the amount and terms of the note and mortgage, and other pertinent material to OGC requesting that they provide the appropriate legal instruments and instructions for closing the transaction. The State Director will execute and acknowledge the Quitclaim Deed. Deed execution may not be redelegated. When the transaction is closed, the County Supervisor will send the original and copy of Form FmHA 465-6A (Form FmHA 1965-20 in MFH Cases with Form FmHA 1944-55 when appropriate).

57. In § 1955.117, paragraphs (e)(6)(i) and (f)(7) are revised to read as follows:

§ 1955.117 Sale of real estate that secured Rural Housing (RH) loans.

* * * * *

(e) * * *
(6) * * *

(i) The property will be conveyed by a Quitclaim Deed. The State Director with the assistance of OGC, will develop a Quitclaim Deed. Deed execution, by the State Director may not be redelegated. When the transaction is closed, the County Supervisor will send the original and copy of Form FmHA 465-A (Form FmHA 1965-20 in MFH cases) to the Finance Office and a copy to the State Director.

* * * * *

(f) * * *

(7) After the transaction is closed, the County Supervisor will send the original and one copy of the Form FmHA 465-6A (Form FmHA 1965-20, "Multiple Family Housing Advice of Mortgage Real Estate Sold," will be prepared by the District Director in MFH cases) to the Finance Office and a copy to the State Director. Any RA held in suspense by the Finance Office must be transferred to an eligible borrower under the authorities in paragraph XV of Exhibit E to Subpart C of Part 1930 of this chapter. A copy of Form FmHA 1944-55 transferring the RA must be attached to Form FmHA 1965-20.

PART 1965—REAL PROPERTY

Subpart B—Security Servicing for Multiple Housing Loans

58. Section 1965.65 is amended by adding paragraphs (a)(9) and (b)(12) and revising paragraphs (b)(8), (c)(10) and (c)(11) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

(a) * * *

(9) All transfers are subject to the payment application system conversion requirements in Subpart K of Part 1951 of this chapter.

(b) * * *

(8) When the spouse of a deceased individual borrower is not currently liable for the indebtedness, a transfer and assumption to the spouse can be accomplished through use of Form FmHA 1965-9, "Multiple Family Housing Assumption Agreement," on the same rates and terms if the account is current or new rates and terms if the account is not current. If the spouse is determined to be an eligible applicant according to

applicable provisions of the respective loan program and this Subpart, the approval official may waive the submission by the assuming spouse of any form or material not required by OGC to complete the assumption, if the present forms and materials in the current casefile are otherwise acceptable.

* * * * *

(12) Forms FmHA 1944-50, "Multiple Family Housing Borrower/Project Characteristics" and 1944-51, "Multiple Family Housing Obligation—Fund Analysis" must be processed in accordance with their respective FMIs for all transferees to update the accounting system.

(c) * * *

(10) If the transfer involves an RRH or RCH loan using interest credit with a Form FmHA 1944-7 or 444-7, "Interest Credit and Rental Assistance Agreement" in effect, the transferee may also receive interest credit by executing a new Form FmHA 1944-7 effective the date of transfer. RRH and RCH loans will not be converted from a subsidized (interest credit) basis to a nonsubsidized (full profit) basis as part of the transfer process. If the transfer is to be made on a nonprofit or limited profit basis, the transferee may receive interest credit if the loan is eligible for interest credit according to Exhibit B to Subpart E of Part 1944 of this Chapter. A new Form FmHA 1944-7 will be executed by the transferee, attached to Form FmHA 1965-9, "Multiple Family Housing Assumption Agreement" and a copy of Form FmHA 1944-50, "Multiple Family Housing Borrower/Project Characteristics" and forwarded to the Finance Office, MFH Unit, when the transfer is closed. The borrower project data on Form FmHA 1944-50 should have been established when the transfer was approved.

(11) A transferee may participate in the RA program if the transferor's project is an eligible project and the transferee is an eligible borrower according to Exhibit E to Subpart C of Part 1930 of this chapter. If the transferor participates in the RA programs, the transferee may assume the remaining portion of the transferor's RA agreement when the transferee is eligible. When the transferee is assuming the transferor's RA agreement, Form FmHA 1944-55, "Multiple Family Housing Transfer of Rental Assistance." will be executed and attached to the new or existing Form FmHA 1944-27. A copy of Form FmHA 1944-55 and a copy of Form FmHA 1944-50 will be attached to Form FmHA 1965-9 and forwarded to the Finance Office. If the transferee will not be assuming an existing RA agreement, the agreement will be suspended by memorandum to the Finance Office. Subsequently, the State Director must transfer the suspended RA unit(s) to another project(s), using Form FmHA 1944-55, in accordance with Exhibit E of Subpart C of Part 1930 of this chapter.

* * * * *

§ 1965.65 [Amended]

59. Section 1965.65 is further amended in paragraph (d)(3) by changing the reference in the last sentence from "Form FmHA 460-5" to "Form FmHA 1965-9."

60. Section 1965.65 is further amended by revising paragraphs (f)(1) and (f)(2) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

* * * * *

(f) * * *

(1) Form FmHA 465-5, "Transfer of Real Estate Security," must be completed to reflect the agreement between the transferor and transferee. The form will be prepared to show all agreements involved such as the proration of taxes and insurance, title, legal and filing fees, equity and method of payment, charges to the loan account other than principal and interest, future dated payments presently credited to the account, assignment of project accounts and leases, and other appropriate items. Additional information may also be attached to this form when necessary to fully describe the proposed transaction. The transfer will become effective the data Form FmHA 1965-9 is executed.

(2) Form FmHA 1965-9 will be executed according to the FMI. The unpaid principal balance and accrued interest to be shown on Form FmHA 1965-9 will be determined by accessing the project account record via field terminal. When this is not possible, the unpaid principal balance, accrued interest, and any other charges will be computed from Form FmHA 1951-53, "Multiple Family Housing Transaction Record" or Form FmHA 451-11, "Statement of Account." The transferee will be advised of the total amount paid as of the closing date which has not been credited to the account, the payment required to place the account on schedule as of the previous installment due date and, any payments required to bring any monthly or annual payments current, and the amount needed to bring the reserve account current less any authorized withdrawals. If the loan account or the reserve account cannot be brought current or less than the total debt is assumed, the transfer will be closed on new terms at the note rate or the current interest rate, whichever is greater.

* * * * *

61. Section 1965.65 is further amended by redesignating paragraph (f)(6)(iii) as paragraph (f)(6)(iv), by revising paragraph (f)(6)(ii), and by adding a new paragraph (f)(6)(iii) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

* * * * *

(f) * * *

(6) * * *

(ii) Loans for RRH and RCH projects which are amortized on an annual payment basis and transferred through the use of Form FmHA 1965-9 shall be converted to a monthly payment amortization and are subject to PASS.

(iii) LH loans may continue to be transferred on a DIAS basis or may be converted to PASS when the approval official determines such a conversion will not be detrimental to the successful operation of the project.

* * * * *

§ 1965.65 [Amended]

62. In the following places in § 1965.65(f), change the reference from "Forms FmHA 460-5" or "FmHA 460-9" to "Form FmHA 1965-9":

Paragraph (5) first sentence.

Paragraph (6) introductory text, first sentence.

Paragraph (6)(iv) second sentence.

Paragraph (7) first sentence.

63. In § 1965.65 (f)(11) the table of forms is amended by changing the reference from "Form FmHA 1940-1, 'Request For Obligation of Funds' " to "FmHA 1944-51, 'Multiple Family Housing Obligation/Fund Analysis' "; by changing the reference from Form FmHA 460-9, 'Assumption Agreement "(Same Terms) (Eligible Transferee)' " to "FmHA 1965-9, 'Multiple Family Housing Assumption Agreement' "; by removing the reference to Form FmHA 460-5, "Assumption Agreement" (new terms); by changing the reference to "Form FmHA 465-8, 'Release from Personal Liability' " to "FmHA 1965-18, 'Multiple Family Housing Release from Personal Liability' " and by adding the following entry between the reference to Forms FmHA 440-4 and FmHA 1944-51.

Form No.	Name of form or document	Total number of copies	Signed by borrower	Number for loan docket	Copy for borrower
FmHA 1944-50...	Multiple Family Housing Borrower/Project Characteristics.	3		1	

64. Section 1965.65 is further amended by revising paragraph (f)(13)(i) to read as follows:

§ 1965.65 Transfer of real estate security and assumption of loans.

* * * * *

(f) * * *

(13) * * *

(i) *Identification*. Payments received on the date of transfer will be remitted on Form FmHA 1944-9, "Multiple Family Housing Certification and Payment Transmittal," prepared to show "Transfer in process for account owned by (borrower's name, case number and project number) to be transferred to (name of transferee case number and project number assigned by the Finance Office upon input of Form FmHA 1944-50 data)."

* * * * *

65. Section 1965.68 is amended by revising paragraphs (a)(1)(viii), and (a)(2)(vi) to read as follows:

§ 1965.68 Consolidation.

(a) * * *

(1) * * *

(viii) Rental assistance (RA) agreements will not be consolidated. The Finance Office will track each RA agreement under a separate RA agreement number.

* * * * *

(2) * * *

(vi) RA agreements will not be consolidated with the consolidation of loan agreements/resolutions. The Finance Office will track each RA agreement under a separate RA agreement number.

* * * * *

66. Section 1965.68 is further amended by revising paragraph (b)(1)(i), by redesignating paragraphs (b)(1)(ii) through (b)(1)(v) as paragraphs (b)(1)(iii) through (b)(1)(vi) respectively, by adding a new paragraph (b)(1)(ii), by revising paragraph (b)(1)(iii), by redesignating paragraph (b)(2)(v) as paragraph (b)(2)(vi), and by adding a new paragraph (b)(2)(v) to read as follows:

§ 1965.68 Consolidation.

* * * * *

(b) * * *

(1) * * *

(i) Form FmHA 1944-52, "Multiple Family Housing Promissory Note," will be prepared for the notes or assumption agreements being consolidated according to the FMI. If the District Office does not have possession of the original note or assumption agreement, the District Director will call the Finance Office to request the return of the original form so it is in the District Office before a new Form FmHA 1944-52 is processed. A copy of the new Form FmHA 1944-52 will be sent to the Finance Office according to the FMI. All promissory notes will be prepared on a monthly payment basis. A new Form FmHA 1944-7 will also be prepared and submitted to the Finance Office in accordance with this FMI.

(ii) Form FmHA 1965-17 will be completed to show all of the notes which have been consolidated in the new Form FmHA 1944-52. A copy of the completed Form FmHA 1965-17 will also be sent to the Finance Office according to the Forms Manual Insert (FMI). Form FmHA 1944-50 will also be completed and submitted in accordance with the FMI to reflect the nature of the new project.

(iii) The original and District Office copies of all notes or assumption agreements that are consolidated, will be stamped "Consolidated," by the District Office. The original instruments being consolidated will be filed with the borrower's new consolidated note and a copy will be filed in the borrower's case file. When the consolidated or rescheduled note has been paid in full or otherwise satisfied, it and all other instruments will be handled according to the provisions of 1951.15 of Subpart A of Part 1951.

* * * * *

(2) * * *

(v) Form FmHA 1965-17A will be completed to show pertinent information on the loan agreements/resolutions being consolidated in accordance with the FMI. A copy of the completed Form FmHA 1965-17A, together with a Form FmHA 1944-50 reflecting the "new project" will be sent to the Finance Office according to the respective FMI.

* * * * *

67. Section 1965.70 is amended by revising paragraph (d)(1) to read as follows:

§ 1965.70 Reamortization.

* * * * *

(d) * * *

(1) Form FmHA 1965-16, "Multiple Family Housing Reamortization Agreement," will be completed according to the FMI. The effective date and the due date for all payments will be the first of the month, except for LH loans whose due date will be established in accordance with the FMI.

* * * * *

§ 1965.70 [Amended]

68. Section 1965.70 is further amended in paragraphs (d)(7) and (d)(8) by changing the reference from "Form FmHA 452-2" to "Form FmHA 1965-16."

69. Section 1965.85(b)(1)(i) is amended by adding classification number C5 between classification number C4 and X1 to read as follows:

§ 1965.85 Default and liquidation.

* * * * *

(b) * * *

(1) * * *

(i) * * *

C5—Requesting an exception to the late fee charged to the account according to Subpart K of Part 1951 of this chapter, when appropriate.

* * * * *

§ 1965.90 [Amended]

70. Section 1965.90(c)(5) is amended in the second sentence by changing the reference from "Form FmHA 460-5 or 9" to "Form FmHA 1965-9."

These amendments are issued under the authority of 42 U.S.C. 1980; 7 CFR 2.23; 7 CFR 2.70.

Dated: November 13, 1984.

Charles W. Shuman,

Administrator, Farmers Home Administration.

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1 and 53

Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: In a notice published in the Federal Register February 11, 1985 (50 FR 5548), the Nuclear Regulatory Commission established in a final rule procedures and criteria for determining whether a person owning or operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity. The rule implemented NRC responsibilities under