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(iii) In the case of a loan, and to the extent possible, the co-owner(s) should also sign the security instrument.

(3) A leasehold interest in the property to be repaired, rehabilitated, or replaced. When the potential HPG recipient's "ownership" interest in the property is based on a leasehold interest, the lease must be in writing and a copy must be included in the grantee's file. The unexpired portion of the lease must not be less than 5 years and must permit the recipient to make modifications to the structure without increasing the recipient's lease cost.

(4) A life estate, with the right of present possession, control, and beneficial use of the property.

(5) Land assignments may be accepted as evidence of ownership only for American Indians living on a reservation, when historically the permits have been used by the tribe and have had the comparable effect of a life estate.

(c) *Other evidence of ownership.* The following items may be accepted as evidence of ownership if a recorded deed cannot be provided:

(1) Any legal instrument, whether or not recorded, which is commonly considered evidence of ownership.

(2) Evidence that the person(s) receiving assistance from the HPG grantee is listed as the owner of the property by the local taxing authority and is responsible for any real estate taxes.

(3) Affidavits by others in the community that the person(s) receiving assistance from the HPG grantee has occupied the property as the apparent owner for a period of not less than 10 years, and is generally believed to be the owner.

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26209, May 13, 1997]

§ 1944.662 Eligibility of HPG assistance on rental properties or co-ops.

(a) *Ownership.* The owner(s) of rental properties or co-ops must own the dwelling at the time of receiving assistance from the HPG grantee. The dwelling must be located in a rural area and be in need of housing preservation assistance. Evidence of ownership may be a photostatic copy of the instrument evidencing ownership. Owners of rental properties and co-ops are

required to submit evidence of ownership for retention in the grantee's files. Any of the following will satisfy or fulfill this requirement of ownership:

(1) Full marketable title.

(2) An undivided or divided interest in the property to be repaired or rehabilitated.

(3) A leasehold interest in the property to be repaired or rehabilitated. Ownership interest in the property is based on a leasehold interest. The lease must be in writing and a copy must be included in the grantee's file. The unexpired portion of the lease must not be less than 5 years and must permit the recipient to make modifications to the structure without increasing the recipient's lease cost.

(4) Land assignments may be accepted as evidence of ownership only for American Indians living on a reservation, when historically the permits have been used by the tribe and have had the comparable effect of a life estate.

(b) *Tenant eligibility.* The following requirements must be met in order for a unit within a rental property or co-op to be assisted with HPG funds:

(1) The tenant must have income that meets the very low- or low-income definition.

(2) The tenant must be the intended occupant of the unit, but is not required to have resided previously in the dwelling.

(3) Any owner(s) who receives assistance from an HPG grantee or a member of the immediate family of the owner(s), who also resides in the unit within the dwelling to be repaired or rehabilitated is eligible to have their unit repaired or rehabilitated, if they are income eligible and meet all other requirements.

(c) *Identity of interest.* When an identity of interest, as defined in §1924.4(i) of subpart A of part 1924 of this chapter, exists between a nonprofit entity and the owner(s) of a dwelling, the property is not eligible for assistance.

§ 1944.663 Ownership agreement between HPG grantee and rental property owner or co-op.

HPG assistance may be provided by a grantee with respect to rental properties or co-ops only if the following

conditions are met by the rental property owner(s) or by the co-op during a minimum 5 year restrictive period beginning on the date agreed upon in the agreement between the grantee and the rental property owner (or co-op). The HPG grantee is responsible for preparing, executing, and monitoring for compliance, the ownership agreement with the owner(s) of the rental property or the co-op. The rental property owner(s) or the co-ops are required to enter into an ownership agreement with the grantee to assure compliance with the requirements of this section.

(a) *Ownership agreement.* At a minimum, the ownership agreement must include the following clauses:

(1) The owner(s) agrees to make the units repaired or rehabilitated available for occupancy to very low- or low-income persons for a period of not less than 5 years, such restrictive period beginning on the date agreed upon in the agreement between the grantee and the rental property owner(s) or co-op.

(2) The owner(s) agrees to pass on to the tenants any reduction in the debt service payments resulting from the HPG assistance provided by the HPG grantee to the owner(s).

(3) The owner(s) of rental properties agrees not to convert the units to condominium ownership. In the case of co-ops, the owner(s) agrees not to convert the dwelling(s) to condominium ownership or any form of cooperative ownership not eligible under this section. This paragraph (a)(3) is subject to the restrictive period noted in paragraph (a)(1) of this section.

(4) The owner(s) agrees not to refuse to rent a unit to any person solely because the person is receiving or is eligible to receive assistance under any Federal, State, or local housing assistance program.

(5) The owner(s) agrees that the units repaired or rehabilitated will be occupied or available for occupancy by persons of very low- or low-income.

(6) The owner(s) agrees to enter into and abide by written leases with the tenants and that such leases shall provide that the tenants may be evicted only for good cause.

(7) The owner(s) agrees that, in the event the owner(s) or the owner's successors in interest fail to carry out the

requirements of this section during the applicable period, they shall make a payment to FmHA or its successor agency under Public Law 103-354 in an amount that equals the total amount of assistance provided by the grantee plus interest thereon (without compounding) for each year and any fraction thereof that the assistance was outstanding. The interest rate shall be that as determined by FmHA or its successor agency under Public Law 103-354 at the time of infraction taking into account the average yield on outstanding marketable long-term obligations of the United States during the month preceding the date on which the assistance was initially made available.

(8) The owner(s) agrees that, notwithstanding any other provisions of law, the HPG assistance provided to the owner(s) shall constitute a debt which is payable in the case of any failure of this section and shall be secured by a security instrument provided by the owner(s) or co-op to the grantee, that provides for FmHA or its successor agency under Public Law 103-354 to take such action upon incapacity or dissolution of the grantee.

(9) The owner(s) agrees and certifies that the assistance is being made available in conformity with Public Law 88-352, the "Civil Rights Act of 1964," and Public Law 90-284, the "Civil Rights Act of 1968."

(b) *Responsibilities of the grantee.* The grantee is responsible for insuring through verification and monitoring that the areas listed below are in compliance:

(1) That HPG funds used for loans, grants, or interest reduction payments providing repair or rehabilitation assistance to owners of rental properties or co-ops are not in excess of 75 percent of the total cost of all repairs and rehabilitation activities eligible for HPG assistance.

(2) That the owner(s) is not repairing and/or rehabilitating any unit unless it meets the requirements of §1944.662 (b)(3) of this subpart.

(3) That rental property units being repaired and/or rehabilitated and occupied by owners or members of the owner's immediate family meet all other requirements of this subpart.

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(4) That, for multi-units not considered eligible as a result of paragraph (b)(2) or (b)(3) of this section, the grantee and owner(s) shall agree on a method, if any is needed, of determining the prorata share of repairs and rehabilitation activities to the dwelling, based on a percentage of the ineligible units to the total dwelling.

§ 1944.664 Housing preservation and replacement housing assistance.

(a) Grantees are responsible for providing loans, grants, or other comparable assistance to homeowners, owners of rental properties or co-ops for housing preservation or for replacement housing as described in §1944.656.

(b) HPG funds used for loans, grants, or interest reduction payments to provide rental repair and/or rehabilitation assistance to owners of rental properties or co-ops shall not exceed the requirement noted in §1944.663(b)(1) of this subpart.

(c) Authorized housing preservation assistance includes, but is not limited to, cost of labor and materials for:

(1) Installation and/or repair of sanitary water and waste disposal systems, together with related plumbing and fixtures, which will meet local health department requirements;

(2) Energy conservation measures such as:

(i) Insulation; and

(ii) Combination screen-storm windows and doors;

(3) Repair or replacement of the heating system including the installation of alternative systems such as woodburning stoves or space heaters, when appropriate and if local codes permit;

(4) Electrical wiring;

(5) Repair of, or provision for, structural supports and foundations;

(6) Repair or replacement of the roof;

(7) Replacement of severely deteriorated siding, porches or stoops;

(8) Alterations of the unit's interior or exterior to provide greater accessibility for any handicapped person;

(9) For properties listed on or eligible for the National Register of Historic Places, activities associated with conforming repair and rehabilitation activities to the standards and/or design comments resulting from the consulta-

tion process contained in §1944.673 of this subpart;

(10) Necessary repairs to manufactured housing provided:

(i) For homeowners only, the recipient owns the home and the site on which the home is situated and the homeowner has occupied that home on that site for at least 1 year prior to receiving HPG assistance; and

(ii) For homeowners, owners of single- or multiple-unit rental properties, and co-ops, the manufactured housing is on a permanent foundation or will be put on a permanent foundation with HPG funds. Advice on the requirements for a permanent foundation is available from FmHA or its successor agency under Public Law 103-354. Guidance may be found in §1944.223(e) of subpart E of this part and in exhibit J of subpart A of part 1924 of this chapter;

(11) Additions to any dwelling (conventional or manufactured) only when it is clearly necessary to alleviate overcrowding or to remove health hazards to the occupants; or

(12) Relocation costs either permanent or temporary for assistance to rental properties or co-ops, as noted in §1944.667 of this subpart.

(d) Authorized replacement housing assistance includes, but is not limited to:

(1) Building a dwelling and providing related facilities for use by the individual homeowner as a permanent resident;

(2) Providing a safe and sanitary water and waste disposal system, together with related plumbing and fixtures, which will meet local health department requirements;

(3) Providing minimum site preparation and other on-site improvement including grading, foundation plantings, and minimal landscaping, and other on-site improvements required by local jurisdictions;

(4) Providing special design features or equipment when necessary because of physical handicap or disability of the HPG recipient or member of the household;

(5) Purchasing and installing approved energy saving measures and approved furnaces and space heaters