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Code of Federal Regulations

7

Parts 1940 to 1949
Revised as of January 1, 2005

Agriculture

Containing a codification of documents of general applicability and future effect

As of January 1, 2005

With Ancillaries

Published by:
Office of the Federal Register
National Archives and Records
Administration

A Special Edition of the Federal Register

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 7 CFR 1940.301 *refers to title 7, part 1940, section 301.*

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

January 1, 2005.

THIS TITLE

Title 7—AGRICULTURE is composed of fifteen volumes. The parts in these volumes are arranged in the following order: parts 1–26, 27–52, 53–209, 210–299, 300–399, 400–699, 700–899, 900–999, 1000–1199, 1200–1599, 1600–1899, 1900–1939, 1940–1949, 1950–1999, and part 2000 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 2005.

The Food and Nutrition Service current regulations in the volume containing parts 210–299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing parts 400–699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the one volume containing parts 900–999. All marketing agreements and orders for milk appear in the volume containing parts 1000–1199. Part 900—General Regulations is carried as a note in the volume containing parts 1000–1199, as a convenience to the user.

For this volume, Cheryl E. Sirofchuck was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

Title 7—Agriculture

(This book contains parts 1940 to 1949)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE

Part

CHAPTER XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture 1940

Subtitle B—Regulations of the Department of Agriculture (Continued)

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

EDITORIAL NOTE: Nomenclature changes to chapter XVIII appear at 61 FR 1109, Jan. 16, 1996, and at 61 FR 2899, Jan. 30, 1996.

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subparts A–F [Reserved]

Subpart G—Environmental Program

SOURCE: 53 FR 36240, Sept. 19, 1988, unless otherwise noted.

§ 1940.301 Purpose.

(a) This subpart contains the major environmental policies of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354. It also provides the procedures and guidelines for preparing the environmental impact analyses required for a series of Federal laws, regulations, and Executive orders within one environmental document. The timing and use of this environmental document within the FmHA or its successor agency under Public Law 103–354 decision-making process is also outlined.

(b) This subpart is intended to be consistent with the Council on Environmental Ouality's (CEQ) Regulations

for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), 40 CFR parts 1500–1508. CEQ's regulations will not be repeated in this subpart except when essential for clarification of important procedural or substantive points. Otherwise, citations to applicable sections of the regulations will be provided. The CEQ regulations will be available at all FmHA or its successor agency under Public Law 103–354 offices.

(c) This subpart is designed to integrate the requirements of NEPA with other planning and environmental review procedures required by law, or by Agency practice, so that all such procedures run concurrently rather than consecutively. The environmental document, which results from the implementation of this subpart, provides on a project basis a single reference point for the Agency's compliance and/or implementation of the following requirements and policies:

(1) The National Environmental Policy Act, 42 U.S.C. 4321;

(2) Safe Drinking Water Act—Section 1424(e), 42 U.S.C. 300h;

(3) Endangered Species Act, 16 U.S.C. 1531;

(4) Wild and Scenic Rivers Act, 16 U.S.C. 1271;

(5) The National Historic Preservation Act, 16 U.S.C. 470 (See subpart F of part 1901 of this chapter for more specific implementation procedures);

(6) Archaeological and Historic Preservation Act, 16 U.S.C. 469 (See subpart F of part 1901 of this chapter for more specific implementation procedures);

(7) Coastal Zone Management Act—Section 307(c) (1) and (2), 16 U.S.C. 1456;

(8) Farmland Protection Policy Act, subtitle I, Pub. L. 97–98;

(9) Coastal Barrier Resources Act, Pub. L. 97–348;

(10) Executive Order 11593, Protection and Enhancement of the Cultural Environment (See subpart F of part 1901 of this chapter for more specific implementation procedures);

(11) Executive Order 11514, Protection and Enhancement of Environmental Quality;

(12) Executive Order 11988, Floodplain Management;

(13) Executive Order 11990, Protection of Wetlands;

(14) Title 7, parts 1b and 1c, Code of Federal Regulations, Department of Agriculture's National Environmental Policy Act; Final Policies and Procedures;

(15) Title 7, part 3100, Code of Federal Regulations, Department of Agriculture's Enhancement, Protection, and Management of the Cultural Environment (See subpart F of part 1901 of this chapter for more specific implementation procedures);

(16) Title 7, part 658, Code of Federal Regulations, Department of Agriculture, Soil Conservation Service, Farmland Protection Policy;

(17) Title 87, part 12, Code of Federal Regulations, Highly Erodible Land and Wetland Conservation;

(18) Departmental Regulation 9500–3, Land Use Policy (See exhibit A of this subpart);

(19) Departmental Regulation 9500–4, Fish and Wildlife Policy.

(d) The primary objectives of this subpart are for the Agency to make better decisions by taking into account potential environmental impacts of proposed projects and by working with FmHA or its successor agency under Public Law 103–354 applicants, other Federal agencies, Indian tribes, State and local governments, and interested citizens and organizations in order to formulate actions that advance the program goals in a manner that will protect, enhance, and restore environmental quality. To accomplish these objectives, the identification of potentially significant impacts on the human environment is mandated to occur early in the Agency's planning and decisionmaking processes. Important decision points are identified. The completion of the environmental review process is coordinated with these decision points, and this review must be completed prior to the Agency's first major decision on whether or not to participate in the proposal. This early availability of the results of the environmental review process is intended to ensure that Agency decisions are based on an understanding of their environmental consequence, as well as the consequences of alternative courses of action.

(e) Reducing delays, duplication of effort, and superfluous analyses are

provided for in this subpart. FmHA or its successor agency under Public Law 103–354 environmental documents are to be supported by accurate analyses and will concentrate on the issues that are timely and relevant to the action in question, rather than amassing needless detail. Such documents and their preparation and review will be coordinated with other Federal or State agencies jointly participating in proposed actions or related actions, in order to avoid duplication of effort, and to achieve a coordinated and timely response.

(f) Public involvement is desirable, and to facilitate public involvement, environmental documents will be available to interested citizens as early in the decisionmaking process as possible and before decisions are made. Provisions are included for citizens or interested parties to express their views and any concerns.

(g) The FmHA or its successor agency under Public Law 103–354 officials responsible for the environmental review process are identified.

(h) The FmHA or its successor agency under Public Law 103–354 actions covered by this subpart include:

(1) Financial assistance to include grants, loans, and guarantees,

(2) Subdivision approvals,

(3) The management, leasing and sale of inventory property, and

(4) Other major federal actions such as proposals for legislation and the issuance of regulations.

§ 1940.302 Definitions.

Following is a list of definitions that apply to the implementation of this subpart. Please note that § 1940.301(b) of this subpart refers to the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500–1508. Consequently, the definitions contained in part 1508 of the Council's regulations apply to this subpart, as well as those listed below.

(a) *Emergency circumstance.* One involving an immediate or imminent danger to public health or safety.

(b) *Environmental review documents.* The documents required by this subpart for the purpose of documenting FmHA or its successor agency under Public Law 103–354's compliance with the environmental laws and regulations applicable to the FmHA or its successor agency under Public Law 103–354 actions covered in this subpart. These documents include:

(1) Form FmHA or its successor agency under Public Law 103–3541940–22, ''Environmental Checklist for Categorical Exclusions,''

(2) Form FmHA or its successor agency under Public Law 103–354 1940–21, ''Environmental Assessment of Class I Action,''

(3) Environmental Assessment for Class II Actions (exhibit H of this subpart), and

(4) Environmental Impact Statements (EIS).

(c) *Flood or flooding.* A general and temporary condition of partial or complete inundation of land areas, from the overflow of inland and/or tidal waters, and/or the rapid accumulation or runoff of surface waters from any source. Two important classifications of floods are as follows.

(1) A one-percent chance flood or based flood—A flood of a magnitude that occurs once every 100 years on the average. Within any one-year period there is one chance in 100 of the occurrence of such a flood. Most importantly, however, the cumulative risk of flooding increases with time. Statistically, there is about one chance in five that a flood of this magnitude will occur within a 20-year period, the length of time commonly defined as the useful life of a facility. Over a 30-year period, the life of a typical mortgage, the probability of such a flood occurring increases to greater than one chance in four.

(2) A 0.2-percent chance flood—A flood of a magnitude that occurs once every 500 years on the average. (Within any one-year period there is one chance in 500 of the occurrence of such a flood.) As with the one-percent chance flood, the cumulative risk of this flood occurring also increases with time.

(d) *Floodplains.* Lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands. At a minimum, floodplains consist of those

areas subject to a one percent or greater chance of flooding in any given year. The term *floodplain* will be taken to mean the base floodplain, unless the action involves a critical action, in which case the critical action floodplain is the minimum floodplain of concern.

(1) Base floodplain (or 100-year floodplain)—The area subject to inundation from a flood of a magnitude that occurs once every 100 years on the average (the flood having a one-percent chance of being equalled or exceeded in any given year).

(2) Critical action floodplain (or 500-year floodplain)—The area subject to inundation from a flood of a magnitude that occurs once every 500 years on the average (the flood having 0.2-percent chance of being equalled or exceeded in any given year).

(e) *Indirect impacts.* Those reasonably foreseeable environmental impacts that result from the additional public facility, residential, commercial, or industrial development or growth that a federally financed project may cause, induce or accommodate. Consequently, indirect impacts often occur later in time than the construction of the Federal project and can be removed in distance from the construction site. For example, a water transmission line may be designed to serve additional residential development. The environmental impacts of that residential development represent an indirect impact of the federally funded water line. Those indirect impacts which deserve the greatest consideration include changes in the patterns of land use, population density or growth rate, and the corresponding changes to air and water quality and other natural systems.

(f) *Mitigation measure.* A measure(s) included in a project or application for the purpose of avoiding, minimizing, reducing or rectifying identified, adverse environmental impacts. Examples of such measures include:

(1) The deletion, relocation, redesign or other modifications of the project's elements;

(2) The dedication to open space of environmentally sensitive areas of the project site, which would otherwise be adversely affected by the action or its indirect impacts;

(3) Soil erosion and sedimentation plans to control runoff during land-disturbing activities;

(4) The establishment of vegetative buffer zones between project sites and adjacent land uses;

(5) Protective measures recommended by environmental and conservation agencies having jurisdiction or special expertise regarding the project's impacts;

(6) Storm water management plans to control potential downstream flooding effects that would result from a project;

(7) Zoning; and

(8) Reuse of existing facilities as opposed to new construction.

(g) *No-action alternative.* The alternative of not approving an application for financial assistance, a subdivision feasibility analysis, or an Agency proposal.

(h) *Practicable alternative.* An alternative that is capable of attainment within the confines of relevant constraints. The test of practicability, therefore, depends upon the particulars of the situation under consideration and those constraints imposed by environmental, economic, legal, social and technological parameters. This test, however, is not limited by the temporary unavailability of sufficient financial resources to implement an alternative. That is, alternatives cannot be rejected solely on the basis of moderately increased costs. The range of alternatives that must be analyzed to determine if a practicable alternative exists includes the following three categories of alternatives:

(1) Alternative project sites or designs,

(2) Alternative projects with similar benefits as the proposed actions, and

(3) The no-action alternative.

(i) *Preparer of Environmental Review Documents.* The FmHA or its successor agency under Public Law 103–354 official who is responsible for reviewing the potential environmental impacts of the proposed action and for completing the appropriate environmental review document. Under the circumstances indicated, the following Agency positions and divisions will act as the preparer of

the environmental review documents covered by this subpart.

(1) *County Office.* When the approval official for the action under review is located at the County Office level, that official will prepare, as required, Environmental Checklist for Categorical Exclusions and Class I and Class II assessments.

(2) *District Office.* When the approval official for the action under review is located at the District Office level, that official will prepare, as required, Environmental Checklist for Categorical Exclusions and Class I and Class II assessments or may delegate this responsibility to either:

(i) The District Office staff member having primary responsibility for assembling the associated pre-application, application or other case materials, analyzing the materials and developing recommendations for the approval official, or

(ii) A County Office staff member having the same responsibilities as the District Office member, if the action is initiated at the County Office level.

(3) *State Program Chief.* For actions approved within the State Office, the Chief will prepare, as required, Environmental Checklist for Categorical Exclusions and Class I and II assessments or may delegate this responsibility to either:

(i) The appropriate State Office Loan Specialist, if not the State Environmental Coordinator (SEC),

(ii) An architect or engineer on the Chief's staff who is not the SEC, or

(iii) A District or County Office staff member located within the office in which the action is initiated and having the responsibilities outlined in paragraph (i)(2)(i) of this section.

(4) *State Environmental Coordinator.* EIS's for actions within the approval authority of County Supervisors, District Directors, and State Office officials.

(5) *Assistant Administrators for Programs.* Checklists, assessments, and EIS's for all actions initiated within their program office.

(6) *Program Support Staff.* Checklists, assessments, and EIS's that the Deputy Administrator for Program Operations requests be done.

(j) *Water resource project.* Includes any type of construction which would result in either impacts on water quality and the beneficial uses that water quality criteria are designed to protect or any change in the free-flowing characteristics of a particular river or stream to include physical, chemical, and biological characteristics of the waterway. This definition encompasses construction projects within and along the banks of rivers or streams, as well as projects involving withdrawals from, and discharges into such rivers or streams. Projects which require Corps of Engineers dredge and fill permits are also water resource projects.

§ 1940.303 General policy.

(a) FmHA or its successor agency under Public Law 103–354 will consider environmental quality as equal with economic, social, and other relevant factors in program development and decision-making processes.

(b) In assessing the potential environmental impacts of its actions, FmHA or its successor agency under Public Law 103–354 will consult early with appropriate Federal, State, and local agencies and other organizations to provide decision-makers with both the technical and human aspects of environmental planning.

(c) When adverse environmental impacts are identified, either direct or indirect, an examination will be made of alternative courses of action, including their potential environmental impacts. The objective of the environmental review will be to develop a feasible alternative with the least adverse environmental impact. The alternative of not proceeding with the proposal will also be considered particularly with respect to the need for the proposal.

(d) If no feasible alternative exists, including the no-action alternative, measures to mitigate the identified adverse environmental impacts will be included in the proposal.

(e) The performance of environmental reviews and the consideration of alternatives will be initiated as early as possible in the FmHA or its successor agency under Public Law 103–354 application review process so that the Agency will be in the most flexible

and objective position to deal with these considerations.

§ 1940.304 Special policy.

(a) *Land use.* (1) FmHA or its successor agency under Public Law 103–354 recognizes that its specific mission of assisting rural areas, composed of farms and rural towns, goes hand-in-hand with protecting the environmental resources upon which these systems are dependent. Basic resources necessary to both farm and rural settlements include important farmlands and forestlands, prime rangelands, wetlands, and floodplains. The definitions of these areas are contained in the appendix to Departmental Regulation 9500–3, Land Use Policy, which is included as exhibit A of this subpart. For assistance in locating and defining floodplains and wetlands, the locations and telephone numbers of the Federal Emergency Management Administration's regional offices have been included as exhibit J of this subpart, and similar information for the U.S. Fish and Wildlife Service's Wetland Coordinators has been included as exhibit K of this subpart. Given the importance of these resources, as emphasized in the Departmental Regulation, Executive Order 11988, ''Floodplain Management,'' and Executive Order 11990, ''Protection of Wetlands,'' it is FmHA or its successor agency under Public Law 103–354's policy not to approve or fund any proposals that, as a result of their identifiable impacts, direct or indirect, would lead to or accommodate either the conversion of these land uses or encroachment upon them. The only exception to this policy is if the approving official determines that

(i) There is no practicable alternative to the proposed action,

(ii) The proposal conforms to the planning criteria identified in paragraph (a)(2) of this section, and

(iii) The proposal includes all practicable measures for reducing the adverse impacts and the amount of conversion/encroachment.

(A) For Farmer Program loans and guarantees, and loans to Indian Tribes and Tribal Corporations, exhibit M of this subpart imposes additional and more restrictive requirements regarding wetland and highly erodible land conservation.

(B) Unless otherwise exempted by the provisions of exhibit M, the proceeds of any Farmer Program loan or loan to an Indian Tribe or Tribal Corporation made or guaranteed by FmHA or its successor agency under Public Law 103–354 cannot be used.

(*1*) For a purpose that will contribute to excessive erosion of highly erodible land (as defined in exhibit M), or

(*2*) For a purpose that will contribute to conversion of wetlands (as defined in exhibit M) to produce an agricultural commodity.

(2) It is also recognized that unless carefully reviewed, some proposals designed to serve the needs of rural communities can adversely affect the existing economic base and settlement patterns of the community, as well as create development pressures on land and environmental resources essential to farm economies. An example of such a proposal might be the extension of utilities and other types of infrastructure beyond a community's existing settlement pattern and into important farmlands for the purpose of commercial or residential expansion, even though there is available space within the existing settlement pattern for such expansion. Not only may the loss of important farmlands unnecessarily result, but the community may be faced with the economic costs of providing public services to outlying areas, as well as the deterioration of its central business or commercial area; the latter may not be able to compete with the newer, outlying commercial establishments. These results are undesirable, and to avoid their occurrence, projects designed to meet rural community needs (i.e., residential, industrial, commercial, and public facilities) will not be approved unless the following conditions are met.

(i) The project is planned and sited in a manner consistent with the policies of this section, the Farmland Protection Policy Act, and Departmental Regulation 9500–3 (exhibit A of this subpart).

(ii) The project is not inconsistent with an existing comprehensive and enforceable plan that guides growth and

reflects a realistic strategy for protecting natural resources, and the project is compatible, to the extent practicable, with State, unit of local government, and private programs and policies to protect farmland. (If no such plan or policies exist, there is no FmHA or its successor agency under Public Law 103–354 requirement that they either be prepared and adopted, as further specified in paragraph (a)(3) of this section.)

(iii) The project will encourage long-term, economically viable public investment by fostering or promoting development patterns that ensure compact community development, that is, development that is limited to serving existing settlement patterns or is located in existing settlement patterns, e.g., the rehabilitation and renovation of existing structures, systems and neighborhoods; infilling of development; the provision of a range of moderate-to-high residential densities appropriate to local and regional needs. When these development patterns or types are not practicable, the development must be contiguous with the existing settlement pattern and provide for a range of moderate-to-high residential densities appropriate to local and regional needs. It is recognized that some FmHA or its successor agency under Public Law 103–354 Community Programs projects are designed to serve rural residents, such as rural water and waste disposal systems and, therefore, cannot be limited in service area to these areas contiguous with existing settlement patterns. These types of projects will be designed to primarily serve existing structures and rural residents in noncontiguous areas. Any additional capacity within the system will be limited to meet reasonable growth needs, and, to the extent practicable, be designed to meet such needs within existing settlements and areas contiguous to them.

(3) The conditions specified in paragraph (a)(2) of this section should not be construed as advocating excessive densities, congestion, or loss of open space amenities within rural communities. Desirable living conditions can be obtained under these objectives, along with economic and social benefits for the community and the surrounding farm operations. Additionally, these conditions should not be construed as requiring localities to develop plans which contain the conditions. In any instance in which these planning conditions or criteria do not exist within the project area, project reviews will not be postponed until the criteria are adopted. Rather, projects will be reviewed and funding decisions made in light of a project's consistency with the contents of this subpart (excluding paragraph (a)(2)(ii) of this section, which would not be applicable).

(b) *Endangered species.* FmHA or its successor agency under Public Law 103–354 will not authorize, fund, or carry out any proposal or project that is likely to

(1) Jeopardize the continued existence of any plant or wildlife species listed by the Secretary of the Interior or Commerce as endangered or threatened; or

(2) Destroy or adversely modify the habitats of listed species when such habitats have been determined critical to the species' existence by the Secretary of the Interior or Commerce, unless FmHA or its successor agency under Public Law 103–354 has been granted an exemption for such proposal by the Endangered Species Committee pursuant to paragraph (h) of section 7 of the Endangered Species Act.

(c) *Wild and scenic rivers.* FmHA or its successor agency under Public Law 103–354 will not provide financial assistance or plan approval for any water resource project that would have a direct and adverse effect on the values for which a river has been either included in the National Wild and Scenic Rivers System or is designated for potential addition. Additionally, FmHA or its successor agency under Public Law 103–354 will not approve or assist developments (commercial, industrial, residential, farming or community facilities) located below or above a wild, scenic or recreational river area, or on any stream tributary thereto which will invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area.

(d) *Historic and cultural properties.* As part of the environmental review process, FmHA or its successor agency under Public Law 103–354 will identify

any properties that are listed in, or may be eligible for, listing in the National Register of Historic Places and are located within the project's area of potential environmental impacts. Consultations will be undertaken with State Historic Preservation Officers and the Advisory Council on Historic Preservation, through the implementation of subpart F of part 1901 of this chapter, in order to determine the most appropriate course of action for protecting such identified properties or mitigating potential adverse impacts to them.

(e) *Coastal barriers.* Under the requirements of the Coastal Barrier Resources Act, FmHA or its successor agency under Public Law 103–354 will not provide financial assistance for any activity to be located within the Coastal Barrier Resources System unless

(1) Such activity meets the criteria for an exception, as defined in section 6 of the Act, and

(2) Consultation regarding the activity has been completed with the Secretary of the Interior.

(f) *Water and energy conservation.* FmHA or its successor agency under Public Law 103–354 will encourage the conservation of water and energy in the development of its programs and policies and will encourage applicants to incorporate all economically feasible water and energy-saving features and designs within their proposals.

(g) *Intergovernmental initiatives on important land resources.* On a broader scale, FmHA or its successor agency under Public Law 103–354 will advocate, in cooperation with other USDA agencies (through the USDA State-level committee system), the retention of important farmlands and forestlands, prime rangeland, wetlands and floodplains whenever proposed conversions to other uses

(1) Are caused or encouraged by actions or programs of a Federal Agency, or

(2) Require licensing or approval by a Federal Agency, unless other needs clearly override the benefits derived from retention of such lands.

(h) *Water quality.* FmHA or its successor agency under Public Law 103–354 will not provide financial assistance to any activity that would either impair a State water quality standard, including designated and/or existing beneficial uses that water quality criteria are designed to protect, or that would not meet antidegradation requirements.

§ 1940.305 Policy implementation.

(a) *Environmental impact analysis.* The implementation of the environmental impact analysis requirements described in this subpart serves as the primary mechanism for FmHA or its successor agency under Public Law 103–354 as follows:

(1) Incorporating environmental quality considerations into FmHA or its successor agency under Public Law 103–354 program and decision-making processes,

(2) Obtaining the views of the public and government agencies on potential environmental impacts associated with FmHA or its successor agency under Public Law 103–354 projects, and

(3) Using all practicable means to avoid or to minimize any possible adverse environmental effects of FmHA or its successor agency under Public Law 103–354 actions.

(b) *Natural resource management.* The State Director will develop a natural resource management guide. This guide will serve as an essential mechanism for implementing § 1940.304 of this subpart; and, therefore, the guide must be consistent with and reflect the objectives and policies contained in § 1940.304 of this subpart. At the same time, however, it must be tailored to take into account important State, regional, and local natural resource management objectives. The guide will be issued as a State Supplement for prior approval. The basic content, purposes, and uses of the guide are enumerated in exhibit B of this subpart and can be summarized as follows:

(1) The guide will serve as a mechanism for assembling an inventory of the locations within the State of those natural resources, land uses, and environmental factors that have been specified by Federal, State and local authorities as deserving some degree of protection or special consideration;

(2) The guide will summarize the various standards or types of Federal, State, or local protection that apply to

the natural resources, land uses, and environmental factors listed in the inventory; and

(3) Applications for individual projects must be reviewed for consistency with the guide.

(c) *Intergovernmental initiatives.* When commenting on proposed Federal actions subject to environmental impact statements, FmHA or its successor agency under Public Law 103–354 commentors will focus on the consistency of these actions with the appropriate State natural resource management guide. A similar focus or element will be addressed in FmHA or its successor agency under Public Law 103–354's review of the Environmental Protection Agency's 201 Wastewater Management Plans.

(d) *Farmland Protection Policy Act and Departmental Regulation 9500–3, Land Use Policy.* The natural resource management guide serves as a tool for implementing the requirements of the Act and the Departmental Regulation at the broad level of implementing the Agency's programs at the State level. These requirements must also be followed in the review of applications for financial assistance or subdivision approval, as well as the disposal of real property. FmHA or its successor agency under Public Law 103–354's implementation procedures for the project review process are contained in exhibit C of this subpart.

(e) *Endangered Species.* FmHA or its successor agency under Public Law 103–354 will implement the consultation procedures required under section 7 of the Endangered Species Act as specified in 50 CFR part 402. It is important to note that these consultation procedures apply to the disposal of real property and all FmHA or its successor agency under Public Law 103–354 applications for financial assistance and subdivision approval, including those applicants which are exempt from environmental assessments. FmHA or its successor agency under Public Law 103–354's implementation procedures are contained in exhibit D of this subpart.

(f) *Wild and scenic rivers.* Each application for financial assistance or subdivision approval and the proposed disposal of real property will be reviewed to determine if it will affect a river or portion of it, which is either included in the National Wild and Scenic Rivers System, designated for potential addition to the system, or identified in the Nationwide Inventory prepared by the National Park Service (NPS) in the Department of the Interior (DOI). FmHA or its successor agency under Public Law 103–354's procedures for completing this review are contained in exhibit E of this subpart.

(g) *Historic and cultural properties.* (1) As part of the environmental review process, FmHA or its successor agency under Public Law 103–354 will identify any properties that are listed in or may be eligible for listing in the National Register of Historic Places, and located within the area of potential environmental impact. Identification will consist of consulting the published lists of the National Register and formally contacting and seeking the comments of the appropriate State Historic Preservation Officer (SHPO). Since it is not always possible from the consultation with the SHPO to determine whether historic and cultural properties are present within the project's area of environmental impact, it may be necessary for FmHA or its successor agency under Public Law 103–354 to consult public records and other individuals and organizations, such as university archaeologists, local historical societies, etc. These latter discussions should take place before initiating a detailed site survey since they may provide reliable information that obviates the need for a survey. However, whenever insufficient information exists to document the presence or absence of potentially eligible National Register properties and where the potential for previously unidentified properties is recognized by FmHA or its successor agency under Public Law 103–354, the SHPO, or other interested parties, FmHA or its successor agency under Public Law 103–354 will conduct the necessary investigations to determine if such properties are present within the area of potential environmental impact. FmHA or its successor agency under Public Law 103–354 will involve the SHPO in the planning and formulation of any historic, cultural, architectural or archaeological testing,

studies or surveys conducted to investigate the presence of such properties and will utilize persons with appropriate knowledge and experience.

(2) If the information obtained, as a result of the consultation and investigations conducted by FmHA or its successor agency under Public Law 103–354, indicates the presence of an historic or cultural property within the area of potential environmental impact that, in the opinion of the SHPO and FmHA or its successor agency under Public Law 103–354, appear to meet the National Register Criteria (36 CFR 60.4), the property will be considered eligible for the National Register of Historic Places. If the SHPO and FmHA or its successor agency under Public Law 103–354 do not agree on the property's eligibility for the National Register or if the Secretary of the Interior or the Advisory Council on Historic Preservation so requests, FmHA or its successor agency under Public Law 103–354 will request a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR part 63. Consultations will be initiated with the SHPO and the Advisory Council on Historic Preservation in accordance with 36 CFR part 800, through the implementation of subpart F of part 1901 of this chapter, to determine the most appropriate course of action to protect all National Register and eligible properties within the area of potential environmental impact.

(3) Further instructions detailing the procedures to be followed in considering and protecting historic and cultural properties and the responsible Agency officials are contained in subpart F of part 1901 of this chapter. These procedures will be followed whenever a proposal, considered by FmHA or its successor agency under Public Law 103–354, has the potential to affect National Register or eligible properties.

(h) *Coastal barriers.* In those States having coastal barriers within the Coastal Barrier Resources System, each application for financial assistance or subdivision approval, as well as the proposed disposal of real property, will be reviewed to determine if it would be located within the system, and, if so, whether the action must be denied on this basis or meets the Act's criteria for an exception. To accomplish the review, all affected State, District and County Offices will maintain a current set of maps, as issued by DOI, which depict those coastal barriers within their jurisdiction that have been included in the system. FmHA or its successor agency under Public Law 103–354's implementation procedures for accomplishing this review requirement and for consulting as necessary with DOI are contained in exhibit F of this subpart. The exceptions to the restrictions of the Coastal Barrier Resources Act are contained in exhibit L of this subpart.

(i) *Water and energy conservation.* Water and energy conservation measures will be considered at both the program and project level in a manner consistent with program regulations.

(j) *Noise abatement.* For purposes of assessing noise impacts and for determining the acceptability of housing sites in terms of their exposure to noise, FmHA or its successor agency under Public Law 103–354 has adopted and follows the standards and procedures developed by the U.S. Department of Housing and Urban Development (HUD) and contained in 24 CFR part 51 of subpart B entitled, ''Noise Abatement and Control.''

(k) *Water quality.* Each application for financial assistance or subdivision approval and the proposed disposal of real property will be reviewed to determine if it would impair a State water quality standard or meet antidegradation requirements. When necessary, the proposed activity will be modified to protect water quality standards, including designated and/or existing beneficial uses that water quality criteria are designed to protect, and meet antidegradation requirements.

§ 1940.306 Environmental responsibilities within the National Office.

(a) *Administrator.* The Administrator of FmHA or its successor agency under Public Law 103–354 has the direct responsibility for Agency compliance with all environmental laws, Executive orders, and regulations that apply to FmHA or its successor agency under

Public Law 103–354's program and administrative actions. As such, the Administrator ensures that this responsibility is adequately delegated to Agency staff and remains informed on the general status of Agency compliance, as well as the need for any necessary improvements. The Administrator is also responsible for ensuring that the Agency's manpower and financial needs for accomplishing adequate compliance with this subpart are reflected and documented in budget requests for departmental consideration.

(b) *Deputy Administrator Program Operations.* (1) The Deputy Administrator for Program Operations has the delegated overall Agency responsibility for developing and implementing environmental policies and compliance procedures, monitoring their effectiveness, and advising the Administrator on the status of compliance, to include recommendations for any necessary changes in this subpart. The incumbent is also responsible for developing and documenting, as part of the Agency's budget formulation process, the manpower and financial needs necessary to implement this subpart.

(2) The specific responsibilities of the Deputy Administrator—Program Operations are as follows:

(i) Provide for the Agency an interdisciplinary approach to environmental impact analysis and problem resolution, as required by the CEQ regulations;

(ii) Provide the leadership and technical expertise for the implementation of the Agency's environmental policies with special emphasis being placed on those policies relating to natural resource management, energy conservation, and orderly community development;

(iii) Coordinate the implementation of this subpart with affected program offices;

(iv) Provide policy direction and advice on the implementation of this subpart to Agency staff, particularly to SECs and technical support personnel within State Offices;

(v) Consult and coordinate, as needed or upon request, with the Department's interagency committees dealing with environmental, land use, and historic preservation matters;

(vi) Monitor the Agency's record in complying with this subpart;

(vii) Provide training programs and materials for the Agency staff assigned the functions identified in this subpart;

(viii) Review, as necessary, applications for funding assistance, proposed policies and regulations, and recommend their approval, disapproval, or modification after analyzing and considering their anticipated adverse environmental impacts, their benefits, and their consistency with the requirements of this subpart;

(ix) Develop and direct Agency procedures for complying with environmental legislation, Executive orders, and regulations, including, but not limited to, those listed in §1940.301(c) of this subpart;

(x) Maintain a position identified as the Senior Environmental Specialist (hereafter called the Environmental Specialist), who will serve as the responsible Agency official under the National Environmental Policy Act and the National Historic Preservation Act, maintain liaison on environmental matters with interested public groups and Federal agencies, and serve as the focal point for developing and coordinating the Agency's procedures for the requirements listed in §1940.301(c) of this subpart; and

(xi) Review and evaluate legislative and administrative proposals in terms of their environmental impact.

(c) *Assistant Administrators for Programs.* The Assistant Administrators for Programs will:

(1) Ensure, as necessary, that environmental assessments and EISs for proposed program regulations are prepared by their staff;

(2) Ensure that all proposed actions that fall under the requirements of this subpart, and that are submitted to the National Office for approval or concurrence, contain adequate analyses and documentation of their potential environmental impacts (Transfer of program funds from National Office to State Office control to enable the State Office to approve an application is not considered to be National Office approval of or concurrence in an application);

(3) Consider and include, in the development of program regulations, feasible policies and mechanisms that promote program goals in a manner that either enhances environmental quality or reduces unnecessary adverse environmental impacts; and

(4) Designate one or more staff members to serve as a program environmental coordinator, having generally the same duties and responsibilities within the program office as the SEC has within the State Office (See § 1940.307(b) of this subpart).

§ 1940.307 Environmental responsibilities within the State Office.

(a) *State Director.* The State Director will:

(1) Serve as the responsible FmHA or its successor agency under Public Law 103–354 official at the State Office level for ensuring compliance with the requirements of this subpart; and

(2) Appoint one individual to serve as the SEC. Thereafter, the SEC will report directly to the State Director on the environmental matters contained in this subpart.

(b) *State Environmental Coordinator (SEC).* The SEC will:

(1) Act as advisor to the State Director on environmental matters and coordinate the requirements of this subpart;

(2) Review those Agency actions which are not categorically excluded from this subpart (see §§ 1940.311 and 1940.312 of this subpart) and which require the approval and/or clearance of the State Office and recommend to the approving official either project approval, disapproval, or modification after analyzing and considering the—

(i) Anticipated adverse environmental impacts,

(ii) The anticipated benefits, and

(iii) The action's consistency with this subpart's requirements;

(3) Represent the State Director at conferences and meetings dealing with environmental matters of a State Office nature;

(4) Maintain liaison on State Office environmental matters with interested public groups and local, State, and other Federal agencies;

(5) Serve as the State Director's alternate on State-level USDA committees dealing with environmental, land use and historic preservation matters;

(6) Solicit, whenever necessary, the expert advice and assistance of other professional staff members within the State Office in order to adequately implement this subpart;

(7) Provide technical assistance as needed on a project-by-project basis to State, District, and County Office staffs;

(8) Develop controls for avoiding or mitigating adverse environmental impacts and monitor their implementation;

(9) Provide assistance in resolving post-approval environmental matters at the State Office level;

(10) Maintain records for those actions required by this subpart;

(11) Coordinate for the State Director the development of the State Office natural resource management guide;

(12) Provide direction and training to State, District, and County Office staffs on the requirements of this subpart; and

(13) Coordinate for the State Director the monitoring of the State Office's compliance with this subpart and keep the State Director advised of the results of the monitoring process.

(c) *Program Chiefs.* State Office Program Chiefs will:

(1) Be responsible for the adequacy of the environmental impact reviews required by this subpart for all program actions to be approved at the State Office level or concurred in at that level;

(2) Coordinate the above reviews as early as possible with the SEC, so that the latter can assist in addressing the resolution of any unresolved or difficult environmental issues in a timely manner; and

(3) Incorporate into projects and actions measures to avoid or reduce potential adverse environmental impacts identified in environmental reviews.

§ 1940.308 Environmental responsibilities at the District and County Office levels.

(a) The District Director will be responsible for carrying out the actions required by this subpart to be completed at the District Office level.

(b) The County Supervisor will be responsible for carrying out the actions

required by this subpart to be completed at the County Office level.

(c) In discussing FmHA or its successor agency under Public Law 103–354 assistance programs with potential applicants, District Directors and County Supervisors will inform them of the Agency's environmental requirements, as well as the environmental information needs and responsibilities that FmHA or its successor agency under Public Law 103–354 applicants are expected to address. (See § 1940.309 of this subpart.)

§ 1940.309 Responsibilities of the prospective applicant.

(a) FmHA or its successor agency under Public Law 103–354 expects applicants and transferees (*and in the case of the loan guarantee programs, borrowers and transferees*) to consider the potential environmental impacts of their requests at the earliest planning stages and to develop proposals that minimize the potential to adversely impact the environment. Prospective applicants should contact County Supervisors or District Directors, as appropriate, to determine FmHA or its successor agency under Public Law 103–354's environmental requirements as soon as possible after they decide to pursue FmHA or its successor agency under Public Law 103–354 financial assistance.

(b) As specified in paragraph (c) of this section, applicants for FmHA or its successor agency under Public Law 103–354 assistance will be required to provide information necessary to FmHA or its successor agency under Public Law 103–354 to evaluate their proposal's potential environmental impacts and alternatives to them. For example, the applicant will be required to provide a complete description of the project elements and the proposed site(s) to include location maps, topographic maps, and photographs when needed. The applicant will also be required to provide data on any expected gaseous, liquid and solid wastes to be produced, including hazardous wastes as defined by the Resource Conservation and Recovery Act or State law, and all permits and/or correspondence issued by the appropriate local, State, and Federal agencies which regulate treatment and disposal practices.

(c) Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information,'' will be used for obtaining environmental information from applicants whose proposals require an environmental assessment under the requirements of this subpart. These same applicants must notify the appropriate State Historic Preservation Officer of the filing of the application and provide a detailed project description as specified in Item 2 of Form FmHA or its successor agency under Public Law 103–354 1940–20 and the FMI. If the applicant's proposal meets the definition of a Class II action as defined in § 1940.312 of this subpart, all of Form FmHA or its successor agency under Public Law 103–354 1940–20 must be completed. If the applicant's proposal meets the definition of a Class I action as defined in § 1940.311 of this subpart, the entire form need not be completed, but just the face of the form and categories (1), (2), (13), (15), (16), and (17) of Item 1b of the FMI. As an exception to the foregoing statement, an applicant for an action that is normally categorically excluded but requires a Class I assessment for any of the reasons stated in § 1940.317(e) of this subpart is not required to complete Form FmHA or its successor agency under Public Law 103–354 1940–20. Additionally, for Class I actions within the Farm Programs, a site visit by the FmHA or its successor agency under Public Law 103–354 official completing the environmental assessment obviates the need for the applicant to complete any of the form, and the adoption by FmHA or its successor agency under Public Law 103–354 of a Soil Conservation Service (SCS) environmental assessment or evaluation for the action obviates the need to complete the form for either a Class I or Class II action.

(d) Applicants will ensure that all required materials are current, sufficiently detailed and complete, and are submitted directly to the FmHA or its successor agency under Public Law 103–354 office processing the application. Incomplete materials or delayed submittals may seriously jeopardize consideration or postponement of a proposed action by FmHA or its successor agency under Public Law 103–354.

(e) During the period of application review and processing, applicants will not take any actions with respect to their proposed undertakings which are the subject of the application and which would have an adverse impact on the environment or limit the range of alternatives. This requirement does not preclude development by applicants of preliminary plans or designs or performance of other work necessary to support an application for Federal, State, or local permits or assistance. However, the development of detailed plans and specifications is discouraged when the costs involved inhibit the realistic consideration of alternative proposals.

(f) Applicants are required to provide public notification and to fully cooperate in holding public information meetings as described in §§ 1940.318(e), 1940.320 (c) and (g), and 1940.331 (b) and (c) of this subpart.

(g) Any applicant that is directly and adversely affected by an administrative decision made by FmHA or its successor agency under Public Law 103–354 under this subpart may appeal that decision under the provisions of subpart B of part 1900 of this chapter.

§ 1940.310 Categorical exclusions from National Environmental Policy Act (NEPA) reviews.

(a) *General guidelines.* The following actions have been determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. They will not be subject to environmental assessments or impact statements. It must be emphasized that even though these actions are excluded from further environmental reviews under NEPA, they are not excluded from either the policy considerations contained in §§ 1940.303 through 1940.305 of this subpart or from compliance with other applicable local, State, or Federal environmental laws. Also, the actions preceded by an asterisk (*) are not excluded from further review depending upon whether in some cases they would be located within, or in other cases, potentially affect:

(1) A floodplain,

(2) A wetland,

(3) Important farmlands, or prime forestlands or rangelands,

(4) A listed species or critical habitat for an endangered species,

(5) A property that is listed on or may be eligible for listing on the National Register of Historic Places,

(6) An area within an approved State coastal zone management program,

(7) A coastal barrier or a portion of a barrier within the Coastal Barrier Resources System,

(8) A river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System,

(9) A sole source aquifer recharge area, or

(10) A State water quality standard (including designated and/or existing beneficial uses and antidegradation requirements).

(i) Whether location within one of the preceding resource areas is sufficient to require a further review or a potential impact to one of them must also be identified to require a review is determined by FmHA or its successor agency under Public Law 103–354's completion of Form FmHA or its successor agency under Public Law 103–354 1940–22 in accordance with the FMI and § 1940.317 of this subpart.

(ii) When the categorical exclusion classification is lost, as specified in § 1940.317 of this subpart, the action must be reviewed under the requirements of paragraph (g) of that section. This requirement serves to implement § 1508.4 of the CEQ regulations which requires Federal agencies to detect extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

(iii) Further guidance on the use of these exclusions is contained in § 1940.317 of this subpart.

(b) *Housing assistance.* *(1) The provision of financial assistance for the purchase of a single family dwelling or a multi-family project serving no more than four families, i.e. units;

(2) The approval of an individual building lot that is located on a scattered site and either not part of a subdivision or within a subdivision not requiring FmHA or its successor agency under Public Law 103–354's approval;

*(3) Rehabilitation, replacement, or renovation of any existing housing

units, with no expansion in the number of units;

(4) Self-Help Technical Assistance Grants;

*(5) The approval of a subdivision that consists of four or fewer lots and is not part of, or associated with, building lots or subdivisions;

(6) Technical Supervisory Assistance Loans and Grants;

(7) Weatherization of any existing housing unit(s), unless the property is listed in the National Register of Historic Places or may be eligible for listing, or is located either within the Coastal Barrier Resources System or in a listed or potentially eligible historic district, in which case the application will require a Class I assessment as specified in §1940.317(g) of this subpart;

(8) The financing of housing construction or the approval of lots in a previously approved FmHA or its successor agency under Public Law 103–354 subdivision provided that

(i) The action is consistent with all previously adopted stipulations for the multi-family housing project or subdivision, and

(ii) The FmHA or its successor agency under Public Law 103–354 environmental impact review that was previously completed for the original application is still current with respect to applicable environmental requirements and conditions present at the site, and it assessed the lots or expansion for which approval is being requested;

(9) The purchase of any existing, non-FmHA or its successor agency under Public Law 103–354 owned housing unit(s), unless the property is listed in the National Register of Historic Places or may be eligible for listing, or is located either within a 100-year floodplain, the Coastal Barrier Resources System, or in a listed or potentially eligible historic district, in which case the application will require a Class I assessment as specified in §1940.317(g) of this subpart; and

(10) Appraisals of nonfarm tracts and small farms for rural housing loans.

(c) *Community and business programs and nonprofit national corporations loan and grant program.* *(1) Financial assistance directed to existing businesses, facilities, and/or structures that does not involve new construction or large increases in employment; does not involve a facility that presently or previously produced or stored hazardous waste or disposed of hazardous waste on the facility's property; and does not result in the increased production of gaseous, liquid, or solid wastes, or a change in the type or content of such wastes as long as waste production, handling, treatment and disposal practices presently comply with applicable Federal, State and local regulations and there is no history of violations. If any of these waste production, handling, treatment, disposal or compliance criteria cannot be met, a Class I assessment must be initiated to include a narrative discussion of the types and quantities of wastes produced and the adequacy of the treatment, storage, and disposal practices, if the involved wastes meet the criteria for a Class I assessment contained in §1940.311(b)(3)(iii) of this subpart. If not, a Class II assessment must be completed.

*(2) Projects that solely involve the acquisition, construction, reconstruction, renovation, or installation of facilities, structures or businesses, for replacement or restoration purposes, with minimal change in use, size, capacity, purpose or location from the original facility (e.g., replacement in-kind of utilities such as water or sewer lines and appurtenances, reconstruction of curbs and sidewalks, street repaving, and building modifications, renovations, and improvements);

(3) Project management actions relating to invitation for bids, contract award, and the actual physical commencement of construction activities;

(4) Financial assistance for a technical assistance grant under the nonprofit national corporation loan and grant program;

(5) Projects that solely involve the purchase and installation of office equipment, public safety equipment, or motor vehicles; and

(6) Amendments to approved projects meeting the criteria of paragraph (e)(2) of this section.

(d) *Farm programs.* (1) Financial assistance for the purchase of an existing farm, or an enlargement to one, provided no shifts in land use are proposed

beyond the limits stated in paragraphs (d) (10) and (11) of this section;

(2) Financial assistance for the purchase of livestock and essential farm equipment, including crop storing and drying equipment, provided such equipment is not to be used to accommodate shifts in land use beyond the limits stated in paragraphs (d) (10) and (11) of this section;

(3) Financial assistance for:

(i) The payment of annual operating expenses, which does not cover activities specifically addressed in this section or § 1940.311 or § 1940.312 of this subpart;

(ii) Family living expenses, and

(iii) Refinancing debts;

*(4) Financial assistance for the construction of essential farm dwellings and service buildings of modest design and cost, as well as repairs and improvements to them;

(5) Financial assistance for onsite water supply facilities to serve a farm dwelling, farm buildings, and livestock needs;

(6) Financial assistance for the installation or enlargement of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres, provided that neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in, or designated for, potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property or the Wild and Scenic Rivers System require that a review be initiated under a Class I assessment as specified in § 1940.317(g) of this subpart.

(7) Financial assistance that solely involves the replacement or restoration of irrigation facilities, to include those facilities described in paragraph (d)(6) of this section, with minimal change in use, size, capacity, or location from the original facility(s) provided that neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property, or the Wild and Scenic Rivers System require that a Class I assessment be completed as specified in § 1940.317(g) of this subpart. Also, to qualify for this exclusion, the facilities to be replaced or restored must have been used for similar irrigation purposes at least two out of the last three consecutive growing seasons. Otherwise, the action will be viewed as an installation of irrigation facilities.

(8) Financial assistance for the development of farm ponds or lakes of no more than 5 acres in size, provided that, neither a State water quality standard, a property listed or potentially eligible for listing on the National Register of Historic Places, a river or portion of a river included in or designated for potential addition to the Wild and Scenic Rivers System, nor a wetland is affected. If a wetland is affected, the application will fall under Class II as defined in § 1940.312 of this subpart. Potential effects to a water quality standard, an historic property, or the Wild and Scenic Rivers System require that a review be initiated under a Class I assessment as specified in § 1940.317(g) of this subpart;

*(9) Financial assistance for the conversion of:

(i) Land in agricultural production to pastures or forests, or

(ii) Pastures to forests;

*(10) Financial assistance for land-clearing operations of no more than 15 acres, provided no wetlands are affected, and financial assistance for any amount of land involved in tree harvesting conducted on a sustained yield basis and according to a Federal, State or other governmental unit approved forestry management and marketing plan; and

(11) Financial assistance for the conversion of no more than 160 acres of pasture to agricultural production, provided that in a conversion to agricultural production no State water

quality standard or wetlands are affected. If a wetland is affected, the application will fall under Class II as defined in §1940.312 of this subpart. If a water quality standard would be impaired or antidegradation requirement not met, a Class I assessment is required as specified in §1940.317(g) of this subpart.

(e) *General exclusions.* (1) The award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analyses;

(2) For actions other than those covered by exhibit M of this subpart, loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities and amendments and revisions to approved projects, including the provision of additional financial assistance that do not alter the purpose, operation, location, or design of the project as originally approved;

(3) The issuance of regulations and instructions, as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing the Agency's financial assistance programs;

(4) Procurement activities for goods and services, routine facility operations, personnel actions, and other such management activities related to the operation of the Agency;

(5) Reduction in force or employee transfers resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar circumstances; and

*(6) The lease or disposal of real property by FmHA or its successor agency under Public Law 103–354 whenever the transaction is either not controversial for environmental reasons or will not result in a change in use of the real property within the reasonably foreseeable future.

§1940.311 Environmental assessments for Class I actions.

The Agency's proposals and projects that are not identified in §1940.310 of this subpart as categorical exclusions require the preparation of an environmental assessment in order to determine if the proposal will have a significant impact on the environment. For purposes of implementing NEPA, the actions listed in this section are presumed to be major Federal actions. If an action has a potential to create a significant environmental impact, an EIS must be prepared. (In situations when there is clearly a potential for a significant impact, the EIS may be initiated directly without the preparation of an assessment.) It is recognized that many of the applications funded annually by FmHA or its successor agency under Public Law 103–354 involve small-scale projects having limited environmental impacts. However, because on occasion they have the potential to create a significant impact, each must be assessed to determine the degree of impact. The scope and level of detail of an assessment for a small-scale action, though, need only be sufficient to determine whether the potential impacts are substantial and further analysis is necessary. Therefore, for the purpose of implementing NEPA, FmHA or its successor agency under Public Law 103–354 has classified its smaller scale approval actions as Class I actions. The format which will be used for accomplishing the environmental assessment of a Class I action is provided in Form FmHA or its successor agency under Public Law 103–354 1940–21. An important aspect of this classification method is that it allows FmHA or its successor agency under Public Law 103–354's environmental review staff to concentrate most of its time and efforts on those actions having the potential for more serious or complex environmental impacts. Additional guidance on the application of NEPA to Class I actions is provided in §1940.319 of this subpart.

(a) *Housing assistance.* If either of the following actions is an expansion of a previously approved FmHA or its successor agency under Public Law 103–354 housing project, see §1940.310(b)(8) of this subpart to determine if it meets the requirements for a categorical exclusion. In the case of an expansion for which an environmental assessment was not done for the original FmHA or its successor agency under Public Law 103–354 project, the size of the proposal for assessment purposes is determined by adding the number of units in the

original project(s) to those presently being requested.

(1) Financial assistance for a multifamily housing project, including labor housing which comprises at least 5 units, but no more than 25 units; and

(2) Financial assistance for or the approval of a subdivision, as well as the expansion of an existing one which involves at least 5 lots but no more than 25 lots; and

(3) Financial assistance for a housing preservation grant.

(b) *Community and business programs and nonprofit national corporations loan and grant program.* Class I assessments will be prepared for the following categories:

(1) Financial assistance for water and waste disposal facilities and natural gas facilities that meet all of the following criteria:

(i) There will not be a substantial increase in the volume of discharge or the loading of pollutants from any existing or expanded sewage treatment facilities, or a substantial increase in an existing withdrawal from surface or ground waters. A substantial increase may be evidenced by an increase in hydraulic capacity or the need to obtain a new or amended discharge or withdrawal permit.

(ii) There will not be either a new discharge to surface or ground waters or a new withdrawal from surface or ground waters such that the design capacity of the discharge or withdrawal facility exceeds 50,000 gallons per day and provided that the potential water quality impacts are documented in a manner required for a Class II assessment and attached as an exhibit to the Class I assessment.

(iii) From the boundaries listed below, there is no extension, enlargement or construction of interceptors, collection, transmission or distribution lines beyond a one-mile limit estimated from the closest point of the boundary most applicable to the proposed service area:

(A) The boundary formed by the corporate limits of the community being served.

(B) If there are developed areas immediately contiguous to the corporate limits of a community, the boundary formed by the limits of these developed areas.

(C) If an unincorporated area is to be served, the boundary formed by the limits of the developed areas.

(iv) The proposal is designed for predominantly residential use with other new or expanded users being small-scale commercial enterprises having limited secondary impacts.

(v) For a proposed expansion of sewage treatment or water supply facilities, such expansions would serve a population that is no more than 20 percent greater than the existing population.

(vi) The proposal is not controversial for environmental reasons, nor have relevant questions been raised regarding its environmental impact which cannot be addressed in a Class I assessment.

(2) Financial assistance for group homes, detention facilities, nursing homes, or hospitals, providing a net increase in beds of not more than 25 percent or 25 beds, whichever is greater; and

(3) Financial assistance for the construction or expansion of facilities, such as fire stations, real stores, libraries outpatient medical facilities, service industries, additions to manufacturing plants, office buildings, and wholesale industries, that:

(i) Are confined to single, small sites; and

(ii) Are not a source of substantial traffic generation; and

(iii) Do not produce either substantial amounts of liquid or solid wastes or any of the following type(s) of wastes:

(A) Gaseous, liquid, or solid waste that is hazardous toxic, radioactive, or odorous;

(B) Either a liquid waste, whether or not disposed of on-site, that cannot be accepted by a publicly owned treatment works without first receiving pretreatment, or a liquid waste discharge that is a point source subject to a Federal, or State discharge permit; or

(C) Gaseous waste or air pollutant that will be emitted either from a new source at a rate greater than one hundred tons per year or from an expanded

source at a rate greater than twenty-five tons per year.

(4) Financial assistance for a livestock-holding facility or feed-lot meeting the criteria of §1940.311(c)(8) of this subpart.

(c) *Farm Programs.* In completing environmental assessments for the following Class I actions and the Class II actions listed in §1940.312(d), special attention will be given to avoiding a duplication of effort with other Department agencies, particularly SCS. For applications in which the applicant is receiving assistance from other agencies, technical assistance from SCS, for example, FmHA or its successor agency under Public Law 103–354 will request from that agency a copy of any applicable environmental review conducted by it and will adopt that review if the requirements of §1940.324 of this subpart are met. FmHA or its successor agency under Public Law 103–354 will work closely with the other Federal Agencies to supplement previous or ongoing reviews whenever they cannot be readily adopted.

(1) Financial assistance for the installation or enlargement of irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate at least 80 acres, but no more than 160 acres and provided that no wetlands are affected, in which case the application will fall under Class II as defined in §1940.312 of this subpart:

(2) Financial assistance for the development of farm ponds or lakes of more than 5 acres in size, but no more than 10 acres, provided that no wetlands are affected. If wetlands are affected, the application will fall under Class II as defined in §1940.312 of this subpart;

(3) Financial assistance for land-clearing operations encompassing over 15 acres, but no more than 35 acres, provided that no wetlands are affected. If wetlands are affected, the application will fall under Class II as defined in §1940.312 of this subpart;

(4) Financial assistance for the construction of energy producing facilities designed for on-farm needs such as methane digestors and fuel alcohol production facilities;

(5) Financial assistance for the conversion of more than 160 acres of pasture to agricultural production, but no more than 320 acres, provided that in a conversion to agricultural production no wetlands are affected, in which case the application will fall under Class II as defined in §1940.312 of this subpart;

(6) Financial assistance to grazing associations;

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises utilizing no more than 10 acres, provided that no wetlands are affected. If wetlands are affected, the application will fall under Class II as defined in §1940.312 of this subpart; and

(8) Financial assistance for a livestock-holding facility or feedlot having a capacity of at least one-half of those listed in §1940.312(c)(9) of this subpart. (If the facility is located near a populated area or could potentially violate a State water quality standard, it will be treated as a Class II action as required by §1940.312(c)(10) of this subpart.)

(d) *General.* (1) Any Federal action which is defined in §1940.310 of this subpart as a categorical exclusion, but which is controversial for environmental reasons, or which is the subject of an environmental complaint raised by a government agency, interested group, or citizen;

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities, and amendments and revisions to all approved actions listed either in this section or equivalent in size or type to such actions and that alter the purpose, operation, location or design of the project as originally approved;

(3) The lease or disposal of real property by FmHA or its successor agency under Public Law 103–354 which meets either the following criteria:

(i) The lease or disposal may result in a change in use of the real property in the reasonably foreseeable future, and such change is equivalent in magnitude or type to either the Class I actions defined in this section or the categorical exclusions defined in §1940.310 of this subpart; or

(ii) The lease or disposal is controversial for environmental reasons,

and the real property is equivalent in size or type to either the Class I actions defined in this section or the categorical exclusions defined in § 1940.310 of this subpart.

§ 1940.312 Environmental assessments for Class II actions.

Class II actions are basically those which exceed the thresholds established for Class I actions and, consequently, have the potential for resulting in more varied and substantial environmental impacts. A more detailed environmental assessment is, therefore, required for Class II actions in order to determine if the action requires an EIS. The format that will be used for completing this assessment is included as exhibit H of this subpart. Further guidance on Class II actions is contained in § 1940.318 of this subpart. Class II actions are presumed to be major Federal actions and are defined as follows:

(a) *Housing assistance.* If either of the following actions is an expansion of a previously approved FmHA or its successor agency under Public Law 103–354 housing project, see § 1940.310(b)(8) of this subpart to determine if it meets the requirements for a categorical exclusion, otherwise it is a Class II action.

(1) Financial assistance for a multifamily housing project, including labor housing, which comprises more than 25 units; and

(2) Financial assistance for, or the approval of, a subdivision as well as the expansion of an existing one, which involves more than 25 lots.

(b) *Community and business programs and nonprofit national corporations loan and grant program.* (1) Class II actions are those which either do not meet the criteria for a categorical exclusion as stated in § 1940.311 of this subpart, or involve a livestock-holding facility or feedlot meeting the criteria for a Class II action as defined in paragraphs (c) (9) and (10) of this section; and

(2) Non-technical assistance grant or loan guarantee under nonprofit national corporation loan and grant program.

(c) *Farm programs.* In completing environmental assessments for the following actions, FmHA or its successor agency under Public Law 103–354 will first determine if the applicant has sought technical assistance from the Soil Conservation Service (SCS). If not, the applicant will be requested to do so. Subsequently, an approved loan will be structured so as to be consistent with any conservation plan developed with the application by SCS. However, the FmHA or its successor agency under Public Law 103–354 approving official need not include an element of the conservation plan within the loan agreement if that official determines that the element is both nonessential to the accomplishment of the plan's objectives and so costly as to prevent the borrower from being able to repay the loan. The SCS environmental review will be adopted by FmHA or its successor agency under Public Law 103–354 if the requirements of § 1940.324 of this subpart are met.

(1) Financial assistance for the installation or enlargement of irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers either designed to irrigate more than 160 acres or that would serve any amount of acreage and affects a wetland;

(2) Financial assistance for the development of farm ponds or lakes either larger than 10 acres in size or for any smaller size that would affect a wetland;

(3) Financial assistance for land-clearing operations either encompassing more than 35 acres or affecting a wetland, if less than 35 acres is involved;

(4) Financial assistance for the construction or enlargement of aquaculture facilities;

(5) Financial assistance for the conversion of more than 320 acres of pasture to agricultural production or for any smaller conversion of pasture to agricultural production that affects a wetland;

(6) Financial assistance to an individual farmer or an association of farmers for water control facilities such as dikes, detention reservoirs, stream channels, and ditches;

(7) Financial assistance for the use of a farm or portion of a farm for recreational purposes or nonfarm enterprises either utilizing more than 10

acres or affecting a wetland, if less than 10 acres is involved.

(8) Financial assistance for alteration of a wetland;

(9) Financial assistance for a livestock-holding facility or feedlot located in a sparsely populated farming area having a capacity as large or larger than one of the following capacities; 1,000 slaughter steers and heifers; 700 mature dairy cattle (whether milkers or dry cows); 2,500 swine; 10,000 sheep; 55,000 turkeys; 100,000 laying hens or broilers when facility has unlimited continuous flow watering systems; 30,00 laying hens or broilers when facility has liquid manure handling system; 500 horses; and 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine, and sheep; (The term *animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0) and

(10) Financial assistance for a livestock-holding facility or feedlot which either could potentially violate a State water quality standard or is located near a town or collection of rural homes which could be impacted by the facility, particularly with respect to noise, odor, visual, or transportation impacts and having a capacity of at least one-half of those listed in paragraph (c)(9) of this section.

(d) *General.* (1) Any action which meets the numerical criteria or other restriction for a Class I action contained in §1940.311 of this subpart, but is controversial for environmental reasons. If the action is the subject of isolated environmental complaints or any questions or concerns that focus on a single impact, air quality, for example, the analysis of such a complaint or questions can be handled under the assessment format for a Class I action, Form FmHA or its successor agency under Public Law 103–354 1940–21, as explained in §1940.319 of this subpart. When several potential impacts are questioned, however, the assessment format (exhibit H of this subpart) for a Class II action must be used to address these questions;

(2) Loan-closing and servicing activities, transfers, assumptions, subordinations, construction management activities and amendments and revisions to all approved actions listed either in this section or equivalent in size or type to such actions and that alter the purpose, operation, location, or design of the project as originally approved;

(3) The approval of plans and State Investment Strategies for Energy Impacted Areas, designated under section 601 Energy Impacted Area Development Assistance Program, as well as the applications for financial assistance (excluding the award of planning funds) for Energy Impact Areas;

(4) Proposals for legislation as defined in CEQ's regulations, §1508.17;

(5) The issuance of regulations and instructions, as well as amendments to these, that described either the entities, proposals and activities eligible for FmHA or its successor agency under Public Law 103–354 financial assistance, or the manner in which such proposals and activities must be located, constructed, or implemented; and

(6) The lease or disposal of any real property by FmHA or its successor agency under Public Law 103–354 which either does not meet the criteria for a categorical exclusion as stated in §1940.310(e)(6) of this subpart or a Class I action as stated in §1940.311(d)(3) of this subpart.

§1940.313 Actions that normally require the preparation of an Environmental Impact Statement (EIS).

The environmental assessment process will be used, as defined in this subpart, to identify on a case-by-case basis those actions for which the preparation of an EIS is necessary. Given the variability of the types and locations of actions taken by FmHA or its successor agency under Public Law 103–354, no groups or set of actions can be identified which in almost every case would require the preparation of an EIS.

§ 1940.314 Criteria for determining a significant environmental impact.

(a) EISs will be done for those Class I and Class II actions that are determined to have a significant impact on the quality of the human environment. The criteria for determining significant impacts are contained in § 1508.27 of the CEQ regulations.

(b) In utilizing the criteria for a significant impact, the cumulative impacts of other FmHA or its successor agency under Public Law 103–354 actions planned or recently approved in the proposal's area of environmental impact, other related or similarly located Federal actions, and non-federal related actions must be given consideration. This is particularly relevant for frequently recurring FmHA or its successor agency under Public Law 103–354 actions that on an individual basis may have relatively few environmental impacts but create a potential for significantly impacts on a cumulative basis. Housing assistance is one such example. Consequently, in reviewing proposals for subdivisions and multi-family housing sites, consideration must be given to the cumulative impacts of other federally assisted housing in the area, including FmHA or its successor agency under Public Law 103–354's. The boundaries of the area to be considered should be based upon such factors as common utility or public service districts, common watersheds, and common commuting patterns to central employment or commercial areas. Additionally, the criteria for significant impacts utilized by the other involved housing agency(s), (VA and HUD, for example) must be reviewed when there is a potential for cumulative impacts. FmHA or its successor agency under Public Law 103–354 will consult with HUD for determining a significant impact whenever the total of HUD and FmHA or its successor agency under Public Law 103–354 housing units being planned within a common area of environmental impact exceeds the HUD thresholds listed in its NEPA regulations. (See 24 CFR part 50.)

(c) Because the environmental values and functions of floodplains and wetlands are of critical importance to man, and because these areas are often extremely sensitive to man-induced disturbances, actions which affect wetlands and floodplains will be considered to have a significant environmental impact whenever one or more of the following criteria are met:

(1) The public health and safety are identifiably affected, that is, whenever the proposed action may affect any standards promulgated under the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*) or similar State authorities.

(2) The preservation of natural systems is identifiably affected, that is, whenever the proposed action or related activities may potentially create or induce changes in the existing habitat that may affect species diversity and stability (both flora and fauna and over the short and long term) or affect ecosystem productivity over the long term.

(3) The proposal, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Examples of such actions include facilities which produce, use, or store highly volatile, toxic, or water-reactive materials or facilities which contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events (i.e., hospitals, nursing homes, schools).

§ 1940.315 Timing of the environmental review process.

(a) The FmHA or its successor agency under Public Law 103–354 office to which a potential applicant would go to seek program information and request application materials will notify the applicant of the major environmental requirements applicable to the type of assistance being sought. Emphasis should be placed on describing FmHA or its successor agency under Public Law 103–354's natural resource management policies, the nature and purpose of the environmental impact assessment process, and the permissible actions of the applicant during this process.

(b) When a preapplication is either filed by the applicant or required by FmHA or its successor agency under Public Law 103–354 for a project not categorically excluded, the prospective

applicant will be requested to complete Form FmHA or its successor agency under Public Law 103–354 1940–20 at the time of the issuance of Form AD–622, ''Notice of Preapplication Review Action,'' or other notice inviting an application. Form AD–622 will clearly inform the applicant that during the period of application review, the applicant is to take no actions or incur any obligations which would either limit the range of alternatives to be considered or which would have an adverse effect on the environment, and that satisfactory completion of the environmental review process must occur prior to the issuance of the letter of conditions for Community Programs and prior to loan approval for all other programs where a preapplication is used. FmHA or its successor agency under Public Law 103–354 must make its environmental reviews simultaneously with other loan processing actions so that they are an integral part of the loan process. Whenever the potential for a major adverse environmental impact is recognized, such as issues pertaining to floodplains, wetlands, endangered species, or the need for an EIS, priority consideration will be given to resolving this issue by appropriate FmHA or its successor agency under Public Law 103–354 staff. Loan processing need not cease during this resolution period, but loan processing actions will not be taken that might limit alternatives to be considered or whose outcome may be affected by the environmental review. The environmental impact review (whether a categorical exclusion, environmental assessment or EIS) must be completed prior to the issuance of the letter of conditions for Community Programs, prior to issuance of a conditional commitment for the Business and Industry and Farmer Program Guaranteed Loan Programs, and either prior to loan approval or obligation of funds, whichever occurs first, for all other programs where a preapplication is used. As an exception, however, whenever an application must be submitted to the National Office for concurrence or approval, the environmental review must be completed prior to and included in the submission to the National Office. The environmental impact review is not completed by FmHA or its successor agency under Public Law 103–354 until all applicable public notices and associated review periods have been completed and FmHA or its successor agency under Public Law 103–354 has taken any necessary action(s) to address comments received. The exception to the provisions of this paragraph is contained in §1940.332 of this subpart.

(c) When a preapplication is not filed, the prospective applicant will be required to complete Form FmHA or its successor agency under Public Law 103–354 1940–20 at the earliest possible time after FmHA or its successor agency under Public Law 103–354 is contacted for assistance but no later than when the application is filed with the appropriate FmHA or its successor agency under Public Law 103–354 office. (For the exception to this statement as regards Farm Programs' Class I actions, see §1940.309(c) of this subpart.) FmHA or its successor agency under Public Law 103–354 will not consider the application to be complete, until FmHA or its successor agency under Public Law 103–354 staff have completed the environmental impact review, whether an assessment or EIS.

(d) For those applications that meet the requirements of a categorical exclusion, Form FmHA or its successor agency under Public Law 103–354 1940–22 will be completed by FmHA or its successor agency under Public Law 103–354 as early as possible after receipt of the application. The application will not be considered complete until either the checklist is successfully completed or the need for any further environmental review is identified and completed.

§1940.316 Responsible officials for the environmental review process.

(a) *Approving official.* With the exception of paragraph (b)(2) of this section, the FmHA or its successor agency under Public Law 103–354 official responsible for executing the environmental impact determination and environmental findings for a Class I or Class II action will be the official having approval authority for the action as specified in subpart A of part 1901 of this chapter (available in any the

Agency or its successor agency under Public Law 103–354 office).

(b) *State Office level.* (1) When the approval official is at the State Office level, the responsible Program Chief will have the responsibility for preparing the appropriate environmental review document. Whenever the Chief delegates this responsibility in accordance with § 1940.302(i) of this subpart, the Chief is responsible for reviewing the environmental document to ensure that it is adequate, that any deficiencies are corrected, and that it is signed by the preparer. When the document is satisfactory to the Chief, the Chief will sign it as the concurring official. When no delegation occurs, the Chief will sign as the preparer. If the environmental review document is either a Class I or Class II assessment, it must be provided to the SEC for review prior to being submitted to the approval official for final determinations. The SEC will review the assessment and provide recommendations to the approval official.

(2) Whenever the preparer and the SEC do not concur on either the adequacy of the assessment or the recommendations reached, the State Director, whether or not the approving official, will make the final decision on the matter or matters in disagreement. The State Director will also make the final decision whenever a State Office approving official disagrees with the joint recommendations of the preparer and the SEC. In either case, should the State Director desire, the matter will be forwarded to the National Office for resolution. The Program Support Staff will coordinate its resolution with the appropriate Assistant Administrator. Failure of these parties to resolve the matter will require a final decision by the Administrator. The State Director should also request the assistance of the National Office on actions that are too difficult to analyze at the State Office level.

(c) *District or County Office level.* The approval official for the action under review will be responsible for preparing the appropriate environmental review document and completing the environmental findings and impact determinations for Class I and Class II assessments, except in the circumstances outlined in paragraph (d) of this section. Whenever the approval official delegates the preparation of the environmental review in accordance with § 1940.302(i) of this subpart, the approval official must, after exercising the same responsibilities assigned to the Program Chief as indicated in paragraph (b)(1) of this section, sign the environmental review document as the concurring official. Both District Directors and County Supervisors will contact, as needed, the SEC for technical assistance in preparing specific environmental review documents.

(d) *Multi-level review.* When the approval official is at the County Office or District Office level but the action must be forwarded to the State Office for concurrence, the responsible Program Chief will perform the responsibilities of the concurring official with respect to the environmental review document and the SEC will review it, if a Class I or Class II assessment, in a similar manner as indicated in paragraph (b) of this section. Responsibilities similar to those of the Program Chief will exist for the District Director when the County Supervisor forwards an action to the District Office for concurrence.

(e) *Reservation of authority.* The Administrator reserves the right to request a State Director to forward to the National Office for review and approval any action which is highly controversial for environmental reasons, involves the potential for unique or extremely complex environmental impacts or is of national, regional, or great local significance. State Directors have a similar right with respect to District and County Offices.

§ 1940.317 Methods for ensuring proper implementation of categorical exclusions.

(a) The use of categorical exclusions exempts properly defined actions or proposals from the review requirements of NEPA. It does not exempt proposals from the requirements of other environmental laws, regulations or Executive orders. Each proposal must be reviewed to determine the applicability of other environmental requirements. Extraordinary circumstances may cause an application

to lose its categorical exclusion and require a Class I environmental assessment, as further specified in paragraph (e) of this section. Section 1508.4 of CEQ's regulations state that ''any procedures under this section will provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.'' For example, an application for approval of a subdivision of four lots is normally excluded from a NEPA review (see §1940.310(b)(5) of this subpart) but is not exempt from the requirements of Executive Order 11990, ''Protection of Wetlands.'' In the processing of this application, FmHA or its successor agency under Public Law 103–354 must determine if a wetland is to be impacted. Assuming that the development of the proposed subdivision site necessitates the filling of 2 acres of wetland, such a potential wetland impact, under the requirements of §1940.310(a) of this subpart, represents an extraordinary circumstance that causes the application to lose its categorical exclusion. An environmental assessment for a Class I action must then be initiated. This assessment serves the purposes of providing for the extraordinary circumstance by analyzing the degree of potential impact and the need for further study as well as completing and documenting FmHA or its successor agency under Public Law 103–354's compliance with the Executive order. In this particular example, unless an alternative site could not be readily located and the approving official wanted to further pursue consideration of the application, the environmental assessment would determine that there was a significant impact and an EIS would be required. (See §1940.314 of this subpart.)

(b) The approving official for an action will be responsible for ensuring that no action which requires an environmental assessment is processed as a categorical exclusion. In order to fulfill this responsibility, Form FmHA or its successor agency under Public Law 103–354 1940–22 will be completed for those actions that would normally be categorically excluded and as further defined in paragraph (c) of this section. When Form FmHA or its successor agency under Public Law 103–354 1940–22 must be prepared and the approving official delegates its preparation in accordance with §1940.302(i) of this subpart, the approving official must sign the form as the concurring official. If that approving official must, prior to approval, forward the action to a District or State Office for review, a second concurrence must be executed by the Program Chief or District Director, as determined by the level of review being conducted. The checklist is filed with the application and serves as FmHA or its successor agency under Public Law 103–354's documentation of compliance with the environmental laws, regulations and Executive Orders listed on the checklist. Whenever the preparer is within the State Office or is in the National Office, the FmHA or its successor agency under Public Law 103–354 office where the processing of the application was initiated is responsible for providing sufficient site and project information in order to complete the checklist.

(c) Form FmHA or its successor agency under Public Law 103–354 1940–22 need not be completed for all categorical exclusions as defined in §1940.310 of this subpart but only for those listed below. This list identifies the exclusions by their subject heading and paragraph number within §1940.310 of this subpart. Additionally, for the housing assistance exclusion identified in §1940.310(b)(8), for farm programs exclusions listed in §1940.310(d)(2) and (3), and for community and business programs exclusions processed under §1940.310(e)(2) of this subpart, a notation must be made in the docket materials or running record for the action by the processing official that the specific criteria of the applicable exclusion have been met for the action under review.

(1) Housing assistance—(b), (1), (2), (3), (5), (7), and (9);

(2) Community and Business Programs—(c) (1) and (2);

(3) Farm Programs—(d) (1) through (11);

(4) General exclusions—(e)(2), if action covered by exhibit M of the subpart, and (6).

(d) In applying the definition of a categorical exclusion to a project activity, the preparer must consider the following two elements in addition to

the specific project elements for which approval is requested.

(1) If the application represents one of several phases of a larger proposal, the application will undergo the environmental review required for the elements or the size of the total proposal. For example, if approval of a four-lot subdivision is requested and the application evidences or the reviewer knows that additional phases are planned and will culminate in a 16-lot subdivision, the categorical exclusion does not apply and an environmental assessment for a Class I action must be initiated and must address the impact of developing 16 lots. Should the applicant subsequently apply for approval of any of these additional phases, no further environmental assessment will be required as long as the original assessment still accurately reflects the environmental conditions found at the project site and the surrounding areas.

(2) If the application represents one segment of a larger project being funded by private parties or other government agencies, the size and elements of the entire project are used in determining the proper level of environmental assessment to be conducted by FmHA or its successor agency under Public Law 103–354. If an environmental assessment is required, it will address the environmental impacts of the entire project.

(e) Under any one of the following circumstances, an action that is normally categorically excluded loses its classification as an exclusion and must be reviewed in the manner described in paragraph (g) of this section. The following listing corresponds to the list of land uses and environmental resources contained in part 2 of Form FmHA or its successor agency under Public Law 103–354 1940–22.

(1) Wetlands—the proposed action:

(i) Would be located adjacent to a wetland or a wetland is within the project site, and

(ii) The action would affect the values and functions of the wetland by such means as converting, filling, draining, or directly discharging into it;

(2) Floodplains—the proposed action:

(i) Includes or involves an existing structure(s) located within a 100-year floodplain (500-year floodplain if critical action), or

(ii) Would be located within a 100-year floodplain (500-year floodplain if critical action) and would affect the values and functions of the floodplain by such means as converting, dredging, or filling or clearing the natural vegetation;

(3) Wilderness (designated or proposed)—the proposed action:

(i) Would be located in a wilderness area, or

(ii) Would affect a wilderness area such as by being visible from the wilderness area;

(4) Wild or Scenic River (proposed or designated or identified in the Department of the Interior's nationwide Inventory)—the proposed action:

(i) Would be located within one-quarter mile of the banks of the river,

(ii) Involves withdrawing water from the river or discharging water to the river via a point source, or

(iii) Would be visible from the river;

(5) Historical and Archeological Sites (listed on the National Register of Historic Places or which may be eligible for listing)—the proposed action:

(i) Contains a historical or archeological site within the construction site, or

(ii) Would affect a historical or archeological site;

(6) Critical Habitat or Endangered/Threatened Species (listed or proposed)—the proposed action:

(i) Contain a critical habitat within the project site,

(ii) Is adjacent to a critical habitat, or

(iii) Would affect a critical habitat or endangered/threatened species;

(7) Coastal Barrier Included in Coastal Barrier Resources System—the proposed action would be located within the Coastal Barrier Resources System;

(8) Natural Landmark (listed on National Registry of Natural Landmarks)—the proposed action either:

(i) Contains a natural landmark within the project site, or

(ii) Would affect a natural landmark;

(9) Important Farmlands—the proposed action would convert important farmland to a nonagricultural use(s) except when the conversion would result from the construction of on-farm

structures necessary for farm operations;

(10) Prime Forest Lands—the proposed action would convert prime forest land to another use(s), except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(11) Prime Rangelands—the proposed action would convert prime rangeland to another use(s) except when the conversion would result from the construction of on-farm structures necessary for farm operations;

(12) Approved Coastal Zone Management Area—the proposed action would be located within such area and no agreement exists with the responsible State agency obviating the need for a consistency determination for the type of action under consideration;

(13) Sole Source Aquifer Recharge Area—the proposed action would be located within such area and no agreement exists with the Environmental Protection Agency (EPA) obviating the need for EPA's review of the type of action under consideration; and

(14) State Water Quality Standard—the proposed action would impair a water quality standard, including designated and/or existing beneficial uses, or would not meet applicable antidegradation requirements for point or nonpoint sources.

(f) From the above paragraph (e), it should be noted that the location within the project site of any of the land uses and environmental resources identified in paragraphs (e) (1), (2), (9), (10), (11), (12), and (13) of this section is not sufficient for an action to lose its categorical exclusion. Rather, the land use or resource must be affected in the case of paragraphs (e) (1), (2), (9), (10), and (11) of this section. For paragraphs (e) (12), (13) and (14) of this section, further review and consultation can be avoided by written agreement with the responsible agency detailing the types of actions not requiring interagency review.

(g) Whenever a categorical exclusion loses its status as an exclusion for any of the reasons stated in paragraph (e) of this section, the environmental impacts of the action must be reviewed through the preparation of a Class I assessment, Form FmHA or its successor agency under Public Law 103–354 1940–21. Not all of the procedural requirements for a Class I assessment apply in this limited case, however. The following exemptions exists:

(1) No public notice provisions of this subpart apply.

(2) The applicant does not complete Form FmHA or its successor agency under Public Law 103–354 1940–20.

(3) The action does not require a Class II assessment should more than one important land resources be affected.

§1940.318 Completing environmental assessments for Class II actions.

(a) The first step for the preparer (as defined in §§1940.302(i) and 1940.316 of this subpart) is to examine Form FmHA or its successor agency under Public Law 103–354 1940–20 submitted by the applicant to determine if it is complete, consistent, fully responsive to the items, signed, and dated. If not, it will be returned to the applicant with a request for necessary clarifications or additional data.

(b) Once adequate data has been obtained, the assessment will be initiated in the format and manner described in exhibit H of this subpart. In completing the assessment, appropriate experts from State and Federal agencies, universities, local and private groups will be contacted as necessary for their views. In so doing, the preparer should communicate with these agencies or parties in the most appropriate and expeditious manner possible, depending upon the seriousness of the potential impacts and the need for formal documentation. Appropriate experts must be contacted whenever required by a specific provision of this subpart or whenever the preparer does not have sufficient data or expertise available within FmHA or its successor agency under Public Law 103–354 to adequately assess the degree of a potential impact or the need for avoidance or mitigation. Comments from an expert must be obtained in writing whenever required by a specific provision of this subpart or the potential environmental impact is either controversial, complex, major, or apparently major. When correspondence is exchanged, it will be appended to the assessment. Oral discussions should be documented in the

manner indicated in exhibit H of this subpart. On the other hand, there is no need for the preparer to seek expert views outside of the Agency when there is no specific requirement to do so and the preparer has sufficient expertise available within FmHA or its successor agency under Public Law 103–354 to assess the degree of the potential impact and the need for avoidance or mitigation.

(c) At the earliest possible stage in the assessment process, the preparer will identify the Federal, State, and local parties which are carrying out related activities, either planned or under way. Discussions with the applicant and FmHA or its successor agency under Public Law 103–354 staff familiar with the project area should assist in this identification effort. If there is a potential for cumulative impacts, the preparer will consult with the involved agencies to determine the nature, timing and results of their environmental analysis. These consultations will be documented in the assessment and considered or adopted when making the environmental impact determination. (See §1940.324 of this subpart concerning adoption of assessments.) If it is determined that the cumulative impacts are significant, the preparer will further contact the involved Federal agencies and attempt to determine the lead Federal Agency as discussed in §§1940.320(b) and 1940.326 of this subpart.

(d) Consultations similar to those discussed in paragraph (c) of this section will also be undertaken with those Federal and State agencies which are directly involved in the FmHA or its successor agency under Public Law 103–354 action, either through the provision of financial assistance or the review and approval of a necessary plan or permit. For example, a construction permit from the U.S. Army Corps of Engineers may be required for a project. In such an instance, the environmental assessment cannot be completed until the preparer has either reviewed the other Agency's completed environmental analysis or consulted with the other Agency and is reasonably sure of the scope, content, and expected environmental impact determination of the forthcoming analysis and has so documented for the FmHA or its successor agency under Public Law 103–354 assessment this understanding. If the other Agency believes that the project will have a significant impact, a joint or lead impact statement will be prepared. If the other Agency does not believe a significant impact will occur, the preparer will consider this finding and its supporting analysis in completing the FmHA or its successor agency under Public Law 103–354 environmental impact determination. Guidance in adopting an environmental assessment prepared by another Federal Agency is provided in §1940.324 of this subpart.

(e) For actions having a variety of complex or interrelated impacts that are difficult for the preparer to assess, consideration should be given to holding a public meeting in the manner described in §1940.331(c) of this subpart. Such meetings should not be assumed as being limited to projects for which EISs are being prepared. Such a meeting can serve a useful purpose in better defining and identifying complex impacts, as well as locating expertise with respect to them. The results of a public meeting and the follow-up from it can also serve as a valuable tool in reaching an early understanding on the potential need for an EIS. When identified impacts are difficult to quantify (such as odor and visual and community impacts) or controversial, a public information meeting should be held near the project site and the local area's concern about it. Whenever held, it should be announced and organized in the manner described in §1940.331(c). However, a transcript of the meeting need not be prepared, but the preparer will make detailed notes for incorporation in the assessment. (See §1940.331(c) of this subpart.)

(f) Throughout this assessment process, the preparer will keep in mind the criteria for determining a significant environmental impact. If at any time in this process it is determined that a significant impact would result, the preparer will so notify the approving official. Those actions specified in §1940.320 of this subpart will then be initiated, unless the approving official disagrees with the preparer's recommended determination, in which

case further review of the determination may be required as explained in §1940.316 (b), (d) and (e) of this subpart. As soon as possible after the need for an EIS is determined, the applicant will also be advised of this in writing, as well as reinformed of the limitations on its actions during the period that the EIS is being completed. (See §1940.309(e) of this subpart.) The applicant's failure to comply with these limitations will be considered as grounds for postponement of further consideration of the application until such problem is alleviated.

(g) Similarly, throughout the assessment process, consideration will be given to incorporating mechanisms into the proposed action for reducing, mitigating, or avoiding adverse impacts. Examples of such mechanisms which are commonly referred to as mitigation measures include the deletion, relocation, redesign or other modifications of the project elements; the dedication of environmentally sensitive areas which would otherwise be adversely affected by the action or its indirect impacts; soil erosion and sedimentation plans to control runoff during land-disturbing activities; the establishment of vegetative buffer zones between project sites and adjacent land uses; protective measures recommended by environmental and conservation agencies, including but not limited to interstate, international, Federal, State, area-wide, and local agencies having jurisdiction or special expertise regarding the action's impacts; and zoning. Mitigation measures must be tailored to fit the specific needs of the action, and they must also be practical and enforceable. Mitigation measures which will be taken must be documented in the assessment (Item XIX of exhibit H of this subpart), and include an analysis of their environmental impacts and potential effectiveness and placed in the offer of financial assistance as special conditions or in the implementation requirements when the action does not involve financial assistance. These measures will be consistent with the basic goal of the proposed action and developed in consultation with the appropriate program office.

(h) As part of the assessment process, the preparer will initiate the consultation and compliance requirements for the environmental laws, regulations, and Executive orders specified in the assessment format. The assessment cannot be completed until compliance with these laws and regulations is appropriately documented. The project's failure to meet the requirements specified in Item 10b of Form FmHA or its successor agency under Public Law 103–354 1940–21 for a Class I action and Item XXIb of exhibit H of this subpart for a Class II action will result in postponement of further consideration of the application until such problem is alleviated.

(i) When the preparer has completed the assessment, the related materials and correspondence utilized will be attached. The preparer will then either recommend to the approving official that the action has the potential for significantly affecting the quality of the human environment or will recommend that the action does not have this potential and, therefore, the preparation of an EIS is not necessary. (Item 10a of Form FmHA or its successor agency under Public Law 103–354 1940–21 for Class I action and item XXIa of exhibit H of this subpart for a Class II action.) The recommended environmental findings will also be completed. (Item 10b of Form FmHA or its successor agency under Public Law 103–354 1940–21 for a Class I action and Item XXIb of exhibit H of this subpart for a Class II action.) In those instances specified in §1940.316, the assessment will then be forwarded to the concurring official and, as required, to the SEC for review. The concurring official will coordinate, as necessary, with the preparer any questions, concerns or clarifications and complete and document the review prior to the assessment being submitted to the approving official or the SEC. The SEC will coordinate with the concurring official in a similar fashion whenever the latter's review is required.

(j) The approving official will review the environmental file and recommendations. The official will then

execute the environmental impact determination and findings. If the conclusions reached are that there is no significant impact and there is compliance with the listed requirements, the format contained in exhibit I of this subpart will be used. If a significant impact is determined, the steps specified in §1940.320 of this subpart will be initiated for the preparation of the EIS. If a determination is made that the proposed action does not comply with the environmental requirements that are explained in this subpart and listed in Item 10b of Form FmHA or its successor agency under Public Law 103–354 1940–21 for a Class I action or Item XXIb of exhibit H of this subpart for a Class II action and there are no feasible alternatives (practicable alternatives when required by specific provisions of this subpart), modifications, or mitigation measures which could comply, the action will be denied or disapproved. If the approving official's determination or findings differ from the recommendations of the preparer, concurring official or the SEC, this difference will be addressed in the manner specified in §1940.316 of this subpart.

(k) When there is no need for further review as discussed in paragraph (j) of this section and findings of compliance and a determination of no significant impact are reached, the assessment process is conditionally concluded. To conclude the assessment, the applicant will then be requested to provide public notification of these results as indicated in §1940.331(b)(3) of this subpart. The approving official will not approve the pending application for at least 15 days from the date the notification is last published. If comments are received as a result of the notification, they will be included in the environmental assessment and considered. Any necessary changes resulting from this consideration will be made in the assessment, impact determinations, and findings. If the changes require further implementation steps, such as the preparation of an EIS, they will be undertaken. If there are no changes in the findings and determination steps, such as the preparation of an EIS, they will be undertaken. If there are no changes in the findings and determinations, the approving official may continue to process the application. The environmental documents, i.e., the assessment, related correspondence, Form FmHA or its successor agency under Public Law 103–354 1940–20, and the finding of no significant impact will be included with the approval documents which are assembled for review and clearance within the approving office.

(l) Whenever changes are made to an action or comments or new or changed information relating to the action's potential environmental effects is received after the assessment is completed but prior to the action's approval, such change, comment, or information will be evaluated by the approving official to determine the impact on the completed assessment. Whenever the contents or findings of that assessment are affected, the assessment process for that action will be revised and any other related requirement of this subpart met. Changes to an action in terms of its location(s), design, purpose, or operation will normally require, at a minimum, modification of the original assessment to reflect such change(s) and the associated environmental impacts.

(m) When comments are received after the action has been approved, the approving official will consider the environmental importance of the comments and the necessity and ability to amend both the action, with respect to the issue raised and the action's stage of implementation. The National Office may be consulted to assist in determining whether there are any remaining environmental requirements which need to be met under the specific circumstances. A similar procedure will be followed when new or changed information is received after project approval. Amendments and revisions to actions will be handled as specified in §§1940.310 through 1940.313 of this subpart.

§1940.319 Completing environmental assessments for Class I actions.

(a) As stated in this subpart, a main purpose of Form FmHA or its successor agency under Public Law 103–354 1940–21, is to provide a mechanism for reviewing actions with normally minimal impacts and for documenting a finding of no significant impact, as

well as compliance determinations for other applicable environmental laws, regulations and policies. The second major purpose is to serve as a screening tool for identifying those Class I actions which have more than minimal impacts and which, therefore, require a more detailed environmental review.

(b) The approach to reviewing a Class I action under the assessment format of Form FmHA or its successor agency under Public Law 103–354 1940–21 is exactly the same as for a Class II action. The preparer (as defined in §§1940.302(i) and 1940.316 of this subpart) must become familiar with the elements of the action, the nature of the environment to be affected, the relationship to any other Federal actions or related nonfederal actions, and the applicable environmental laws and regulations.

(c) The data submission requirements placed on the applicant for a Class I action are not as extensive as for a Class II action. The requirements are limited to completing the face of Form FmHA or its successor agency under Public Law 103–354 1940–20, as well as categories (1), (2), (13), (15), (16), and (17) of Item 1b of the FMI, whenver a previously completed environmental analysis covering these categories is not available. Should it later be determined that the magnitude of the Class I action's impact warrants a more detailed assessment, the applicant will be required to submit the remaining items of the data request. Additionally, the circumstances under which FmHA or its successor agency under Public Law 103–354 does not require the submission of Form FmHA or its successor agency under Public Law 103–354 1940–20 by an applicant whose proposed action requires a Class I assessment are specified in §1940.317(f) of this subpart.

(d) The preparer must ensure that the data received from the applicant is complete, consistent, signed and dated before initiating the assessment. If it is not, the applicant will be required to make the necessary changes and clarifications. The reviewer must also ensure that the application properly meets the definition of a Class I action. Phased or segmented projects, as discussed in §1940.317(d) of this subpart, will be identified and the elements and the size of the entire project used to classify the action.

(e) An important element of this assessment is to determine if the action affects an environmental resource which is the subject of a special Federal consultation or coordination requirement. Such resources are listed in the assessment format, Form FmHA or its successor agency under Public Law 103–354 1940–21, and include wetlands, floodplains, and historic properties, for example. If one of the listed resources is to be affected, the preparer must demonstrate the required compliance by accomplishing the review and coordination requirements for that resource. Documentation of the steps taken and coordination achieved will be attached. However, if more than one listed resource is to be affected, this will be viewed as the action having more than minimal impacts and the environmental assessment format for a Class II action will be initiated except if the action under review is an application for a Housing Preservation Grant.

(f) Similarly in completing item 3, General Impacts of Form FmHA or its successor agency under Public Law 103–354 1940–21, the assessment format for a Class II action must be initiated if more than one category of impacts cannot be checked as minimal. If there is a single category which needs analysis, this can be accomplished by attaching an appropriate exhibit addressing the questions and issues for that impact, as specified in the environmental assessment format for a Class II action. See §1940.311(b)(1) of this subpart for when an attached discussion of water quality impacts is mandatory.

(g) The comments of State, regional, and local agencies obtained through applicable permit reviews or the implementation of Executive Order 12372, Intergovernmental Review of Federal Programs, will be incorported into the assessment, if this review applies to the action. The receipt of negative comments of an environmental nature will warrant the initiation of a more detailed assessment under the format for a Class II action (exhibit H of this subpart). Also, the issue of controversy must be addressed, and if the action is

controversial for environmental reasons, the environmental assessment format for a Class II action (exhibit H of this subpart) will be completed. However, if the action is the subject of isolated environmental complaints or any questions or concerns that focus on a single impact, air quality, for example, the analysis of such complaints or questions can be handled under the assessment format for a Class I action. This analysis will then be provided by the approving official to the party or parties which raised the matter with FmHA or its successor agency under Public Law 103–354. When several potential impacts are questioned, however, the more detailed assessment format will be accomplished to address these questions.

(h) The potential cumulative impacts of this action, particularly as it relates to other FmHA or its successor agency under Public Law 103–354 actions recently approved in the area or planned, will be analyzed. If the cumulative impact is not minimal and, for example, cumulatively exceeds the criteria and threshholds discussed in paragraphs (e), (f) and (g) of this section, the environmental assessment format for a Class II action will be completed. The actions of other Federal agencies and related nonfederal actions must also be assessed on this basis. When there is a Federal action involved, the environmental review conducted by that Agency will be requested and, if it sufficiently addresses the cumulative impact, can be utilized by the preparer as the FmHA or its successor agency under Public Law 103–354 assessment, assuming the impacts are not significant. (See § 1940.324 of this subpart.) If the other Agency is doing or planning an EIS, the preparer will inform that Agency of our action and request to be a cooperating agency.

(i) The preparer will have the responsibility of initiating the assessment format for a Class II action (exhibit H of this subpart) whenever the need is identified. This should be done as early as possible in the review process. The preparer should not complete the assessment for a Class I action when it is obvious that the assessment format for a Class II action will be needed. The preparer will simply start the more detailed assessment and inform the applicant of the additional data requirements.

(j) Exhibit I will be completed by the approval official in the same instances for a Class I assessment as for a Class II assessment. However, public notification of FmHA or its successor agency under Public Law 103–354's finding of no significant environmental impact will not be required for a Class I assessment. Also, special provisions for completing a Class I assessment for an action that is normally categorically excluded but loses its classification as an exclusion are contained in § 1940.317(g) of this subpart. With the exception of the two preceding sentences, all other procedural requirements of the assessment process, such as the timing of the assessment and the limitations on the applicant's actions, apply to a Class I assessment.

§ 1940.320 Preparing EISs.

(a) *Responsibility*. Whenever the District Director or County Supervisor determines there is a need to prepare an EIS, the State Director will be notified. The EIS will be prepared at the State Office and the State Director will assume the responsibility for preparing it. The State will in turn notify the Administrator of these EISs, as well as those needed EISs identified by a State Office review. EISs will be prepared according to this section. The State Director will be responsible for actions initiated within the State. However, in so doing, the State Director will consult with the National Office to determine that the document meets the requirements of NEPA. State Directors will be responsible for issuing such EISs. However, unless delegated authority by the Administrator, based upon a demonstrated capability and experience in preparing EISs, the State Director will not issue the EIS until reviewed and approved by the Administrator.

(b) *Organizing the EIS process.* Prior to initiating the scoping process outlined below, the preparer of the EIS will take several organizational steps to ensure that the EIS is properly coordinated and completed as efficiently as possible. To accomplish this, the

below-listed parties need to be identified in advance; the list should be expanded as familiarity with the project increases. Those parties falling within the first four groups should be formally requested to serve as cooperating agencies. If any of these agencies appear to be a more appropriate lead agency than FmHA or its successor agency under Public Law 103–354 (using the criteria contained in §1501.5(c) of the CEQ regulations), consultations should be initiated with that agency to determine the lead agency. If difficulties arise in completing this determination, the National Office will be consulted for assistance. All of the parties identified below will be sent a copy of the notice of intent to prepare the EIS and an invitation to the scoping meeting, as discussed in paragraph (c) of this section.

(1) All Federal and State agencies that are being requested to provide financial assistance for the project or related projects;

(2) All Federal agencies that must provide a permit for the project should it be approved;

(3) All Federal agencies that have a specific environmental expertise in major environmental issues identified to date;

(4) The Agency responsible for the implementation of the State's environmental impact analysis requirement, if one has been enacted or promulgated by the State;

(5) All Federal, State, and local agencies that will be requested to comment on the draft EIS;

(6) All individuals and organizations that have expressed an interest in the project; and

(7) National, regional, or local environmental organizations whose particular area of interest corresponds to the major impacts identified to date.

(c) *Scoping process.* As soon as possible after a decision has been made to prepare an EIS, the following process will be initiated by the preparer for identifying the major issues to be addressed in the EIS and for developing a coordinated government approach to the preparation and review of the EIS.

(1) The first step in this process will be the publication of a notice of intent to prepare the EIS. The notice will indicate that an EIS will be prepared and will briefly describe the proposed action and possible alternatives; state the name, address, and phone number of the preparer, indicating that this person can answer questions about the proposed action and the EIS; list any cooperating agencies, and include the date and time of the scoping meeting. If the latter information is not known at the time the notice of intent is prepared, it will be incorporated into a special notice, when available, and published and distributed in the same manner as the notice of intent. It will be the responsibility of the preparer of the EIS to inform the National Office of the need to publish a notice of intent which will coordinate the publication of the notice in the FEDERAL REGISTER. For requirements relating to the timing the publication of the notice of intent within the project area, as well as the applicant's responsibilities for the notice, see §1940.331(b) of this subpart.

(2) A scoping meeting will be held. To the extent possible, the scoping meeting should be integrated with any other early planning meetings of the Agency or other involved agencies. The scoping meeting will be chaired by the preparer of the EIS and will be organized to accomplish the following major purposes (as well as other purposes listed in §1501.7 of the CEQ regulations).

(i) Invite the participation of affected Federal, State, and local agencies, any affected Indian Tribe, the proponent of the action, and any interested parties including those who may disagree with the action for environmental reasons;

(ii) Determine the scope and the significant issues to be analyzed in depth in the EIS;

(iii) Identify and eliminate, from detailed study, the issues which are not significant or which have been covered by prior environmental review, narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere;

(iv) Allocate assignments for preparation of the EIS among the lead and cooperating agencies, with the lead Agency retaining responsibility for the statement;

(v) Indicate any public environmental assessments and other EISs which are being or will be prepared that are related to, but are not part of, the scope of the impact statement under consideration;

(vi) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement; and

(vii) Indicate the relationship between the timing of the preparation of environmental analyses and the Agency's tentative planning and decision-making schedule;

(3) Minutes of the scoping meeting, including the major points discussed and decisions made, will be prepared and retained by the preparer of the EIS as part of the environmental file. The preparer will offer, during the scoping meeting, to send copies of the minutes to any interested party upon written request.

(d) *Interdisciplinary approach.* The EIS will be prepared using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers will be appropriate to address the potential environmental impact associated with the project. This can be accomplished both in the information collection stage and the analysis stage by communication and coordination with environmental experts at local, State and Federal agencies (particularly cooperating agencies) and universities near the project site. When needed information or expertise is not readily available, these needs should be met through procurement contracts with qualified consulting firms. Consulting firms can be utilized to prepare the entire EIS or portions of it as specified in § 1940.336 of this subpart.

(e) *Content and format of EIS.* The EIS will be prepared in the format and manner described in part 1502 of the CEQ regulations. There is a great deal of specific guidance in that part which will not be repeated here.

(f) *Circulation of the EIS.* FmHA or its successor agency under Public Law 103–354 will circulate for review and comment the draft and final EIS as broadly as possible. Therefore, it will be necessary for the preparer to have sufficient copies printed or reproduced for this purpose. In identifying the parties to receive a draft EIS, the same process should be utilized as is employed for inviting participants to the scoping meeting. (See paragraph (b) of this section.) Special emphasis should be given to transmitting the draft to those agencies with jurisdiction or expertise on the proposed action's major impacts, as well as those parties who have expressed an interest in the action. The final EIS will be provided to all parties that commented on the draft EIS.

(g) *Filing of the EIS.* The Deputy Administrator for Program Operations or any State Director that has been delegated the authority to prepare an EIS must file the EIS with EPA in accordance with § 1506.9 of the CEQ regulations. The official filing date for an EIS is the day that it is received by EPA's Office of Federal Activities. Filing of the EIS cannot occur until copies of the EIS have been transmitted to commenting agencies and made available to the public. Transmittal of the EIS must, therefore, occur either prior to its being filed with EPA (received by EPA) or no later than close of business of the same day that it is filed.

(h) *Public information meetings.* A public information meeting, as specified in § 1940.331(c)(1) of this subpart, will be held near the project site to discuss and receive comments on the draft EIS.

(i) *Response to comments.* The preparer of the EIS will respond to comments on the draft EIS as required by § 1503.4 of the CEQ regulations. The major and most frequently raised issues during the public information meeting will also be identified and addressed.

(j) *Timing of review.* The preparer of the EIS will be responsible for ensuring that the timing requirements for FmHA or its successor agency under Public Law 103–354 actions and the review periods for draft and final EISs are fully met (§ 1506.10 of CEQ regulations). Prescribed review periods are calculated from the date that EPA's Office of Federal activities publishes in the FEDERAL REGISTER a notice of availability for the EIS. Any request to reduce a prescribed review period will

be made to EPA in accordance with §1506.10(d) of the CEQ regulations.

§ 1940.321 Use of completed EIS.

(a) The final EIS will be a major factor in the Agency's final decision. Agency staff making recommendations on the action and the approving official will be familiar with the contents of the EIS and its conclusions and will consider these in formulating their respective positions with respect to the action. The final EIS and all comments received on the draft will accompany the proposal through the FmHA or its successor agency under Public Law 103–354 final clearance process. The alternatives considered by the approving official will be those addressed in the final EIS.

(b) As part of this review process, the preparer of the EIS will complete the recommendations listed in Item XXIb and c of exhibit H of this subpart and provide them to the approving official prior to a final decision.

§ 1940.322 Record of decision.

Upon completion of the EIS and its review within FmHA or its successor agency under Public Law 103–354 and before any action is taken on the decision reached on the proposal, the approving official will prepare, in consultation with the preparer of the EIS, a concise record of the decision which will be available for public review. The record will:

(a) State the decision reached;

(b) Certify that the timing requirements for the EIS process have been fully met;

(c) Identify all alternatives considered in reaching the decision specifying the alternative or alternatives that were considered to be environmentally preferable and discuss the relevant factors (environmental, economic, technical, statuatory mission and, if applicable, national policy) that were considered in the decision;

(d) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why not; and

(e) If any mitigation measures have been adopted, specify the monitoring and enforcement program that will be utilized.

§ 1940.323 Preparing supplements to EIS's.

(a) Either the State Office or the National Office, as appropriate, will prepare supplements to either draft or final EIS's if:

(1) A substantial change or changes occur in the proposed action and such changes are relevant to the environmental impacts previously presented; and

(2) Significant new circumstances or information arise which are relevant to environmental concerns and bear on the proposed action or its impacts.

(b) If the preparer of the draft or final EIS determines that the changes or new circumstances referenced in paragraph (a) of this section do not require the preparation of a supplemental EIS, the preparer will complete an environmental assessment for a Class II action which will document the reasons for this determination.

(c) The preparer will be responsible for advising the approving official of the need for a supplement. The latter will make the Agency's formal determination in a manner consistent with §1940.316 of this subpart.

(d) All of the requirements of this subpart that apply to the completion of an initial EIS apply to the completion of a supplement with the exception of the scoping process, which is optional. Additionally, if the approving official believes that there is a need for expedited or special procedures in the completion of a supplement, the approval of CEQ must first be obtained by the Administrator for any alternative procedures. The final supplement will be included in the project file or docket and used in the Agency's decision-making process in the same manner as a final EIS. (See §1940.321 of this subpart and in particular subparagraphs (f), (g), and (j) of that section as well as §1502.9(c)(4) of the CEQ regulations for associated circulation, filing, and timing requirements.)

§ 1940.324 Adoption of EIS or environmental assessment prepared by another Federal Agency.

(a) FmHA or its successor agency under Public Law 103–354 may adopt an EIS or portion thereof prepared by another Federal Agency after completion if:

(1) An independent review of the document is conducted by the preparer of the FmHA or its successor agency under Public Law 103–354 environmental review and it is concluded that the document meets the requirements of this subpart; and

(2) If the actions covered in the EIS are substantially the same as those proposed by FmHA or its successor agency under Public Law 103–354 and the environmental conditions in the project area have not substantially changed since its publication, FmHA or its successor agency under Public Law 103–354 will recirculate the EIS as a ''final'' and so notify the public as specified in § 1940.331(b) of this subpart. The final EIS will contain an appropriate explanation of the FmHA or its successor agency under Public Law 103–354 involvement and will be sent to all parties who would typically receive a draft EIS published by FmHA or its successor agency under Public Law 103–354. If there are differences between the actions or the environmental conditions as discussed in the original EIS, that EIS will be updated to cover these differences and recirculated as a draft EIS with the public so notified. From that point, it will be reviewed and processed in the same manner as any other FmHA or its successor agency under Public Law 103–354 EIS. For circulation, filing, and timing requirements, see paragraphs (f), (g), and (j) of § 1940.320 of this subpart as well as §§ 1506.3(c), 1506.9, and 1506.10 of the CEQ regulations.

(b) If the adopted EIS is not final within the agency that prepared it, or if the action it assesses is the subject of a referral under part 1504 of the CEQ regulations, or if the statement's adequacy is the subject of a judicial action which is not final, FmHA or its successor agency under Public Law 103–354 must so specify and provide an explanation in the recirculated EIS.

(c) After recirculation (whether as a draft or final), the EIS will be reviewed and processed in the same manner as any other FmHA or its successor agency under Public Law 103–354 EIS.

(d) FmHA or its successor agency under Public Law 103–354 may also adopt all or part of environmental assessments or environmental reviews prepared by other Federal agencies. In this case, only paragraph (a)(1) of this section applies. If the requirements of that paragraph can be met except for the fact that the Federal agency whose assessment is to be adopted has no preliminary public notice requirements similar to FmHA or its successor agency under Public Law 103–354's (see § 1940.331(b)(4) of this subpart), the assessment can be adopted without FmHA or its successor agency under Public Law 103–354 publishing a preliminary public notice. Additionally, when all of another Federal agency's assessment is adopted, without supplementation, for a Class II action and a finding of no significant environmental impact (exhibit I of this subpart) is reached by the proper FmHA or its successor agency under Public Law 103–354 official, no public notification of FmHA or its successor agency under Public Law 103–354's finding of no significant environmental impact is required if:

(1) The other Federal agency or its designee published a similar finding in a newspaper of general circulation in the vicinity of the proposed action;

(2) The other Federal agency's or its designee's public notice clearly described the action subject to the FmHA or its successor agency under Public Law 103–354 environmental review; and

(3) The other Federal agency's or its designee's public notice was published less than eighteen months from the date FmHA or its successor agency under Public Law 103–354 adopted the assessment.

§ 1940.325 FmHA or its successor agency under Public Law 103–354 as a cooperating Agency.

(a) FmHA or its successor agency under Public Law 103–354 will serve as a cooperating Agency when requested to do so by the lead Agency for an action in which FmHA or its successor

agency under Public Law 103–354 is directly involved or for an action which is directly related to a proposed FmHA or its successor agency under Public Law 103–354 action. An example of the latter would be a request from EPA to participate in an EIS covering its sewage treatment plans for a community, as well as the community's water system plans pending before FmHA or its successor agency under Public Law 103–354. A memorandum of understanding or other written correspondence will be developed with the lead agency in order to define FmHA or its successor agency under Public Law 103–354's role as the cooperating agency. The State Director will coordinate FmHA or its successor agency under Public Law 103–354's participation as a cooperating Agency for an action at the State Office level. The Administrator will have the same responsibility at the National Office level.

(b) When requested to be a cooperating Agency on a basis other than that discussed above, the State Director will consider the expertise which FmHA or its successor agency under Public Law 103–354 could add to the particular EIS process in question and existing workload commitments. If a decision is made on either of these two bases not to participate as a cooperating Agency, a copy of the letter signed by the State Director or Administrator and so informing the lead Agency will be sent to CEQ.

(c) As a cooperating Agency, FmHA or its successor agency under Public Law 103–354 will participate in the development and implementation of the scoping process. If requested by the lead Agency, provide the lead Agency with staff support and descriptive materials with respect to the analyses of the FmHA or its successor agency under Public Law 103–354 portion of the action(s) to be covered, review and comment on all preliminary draft materials prior to their circulation for public review and comment, and attend and participate in public meetings called by the lead Agency concerning the EIS.

(d) The State Director will request the lead Agency to fully identify the Agency's involvement in all public documents and notifications.

(e) FmHA or its successor agency under Public Law 103–354 will use the EIS as its own as long as FmHA or its successor agency under Public Law 103–354's comments and concerns are adequately addressed by the lead Agency and the final EIS is considered to meet the requirements of this subpart. It will be the responsibility of the preparer of the FmHA or its successor agency under Public Law 103–354 environmental review document to formally advise the approving official on these two points. The failure of the lead Agency's EIS to meet either of these stipulations will require FmHA or its successor agency under Public Law 103–354 to follow the steps outlined in § 1940.324 of this subpart prior to the approving official's decision on the FmHA or its successor agency under Public Law 103–354 action.

§ 1940.326 FmHA or its successor agency under Public Law 103–354 as a lead Agency.

(a) When other Federal agencies are involved in an FmHA or its successor agency under Public Law 103–354 action or related actions that require the preparation of an EIS, the preparer will consult with these agencies to determine a lead Agency for preparing the EIS. The criteria for making this determination will be those contained in § 1505.5 of the CEQ regulations. If there is a failure to reach a determination within a reasonably short time after consultation is initiated, the National Office will be contacted. The assistance of CEQ will then be requested by the Administrator in order to conclude the determination of a lead Agency.

(b) When acting as lead Agency, the FmHA or its successor agency under Public Law 103–354 preparer will request other Federal and State agencies to serve as cooperating agencies on the basis of the guidance provided in § 1940.320(b) of this subpart. A memorandum of understanding or other written correspondence should be developed with a cooperating agency in order to define that agency's role in the preparation of the EIS.

§ 1940.327 Tiering.

To the extent possible, FmHA or its successor agency under Public Law 103–

354 may consider the concept of tiering in the preparation of environmental assessments and EISs. Tiering refers to the coverage of general matters in broader environmental impact statements, such as one done for a national program or regulation, with subsequent narrower statements or environmental analyses incorporating by reference the broader matters and concentrating on the issues specific to the action under consideration. Tiering can be used when the sequence of analysis is from the program level to site-specific actions taken under that program or from an initial EIS to a supplement which discusses the issues requiring supplementation.

§ 1940.328 State Environmental Policy Acts.

(a) Numerous States have enacted environmental policy acts or regulations similar to NEPA, hereafter referred to as State NEPA's. It is important that FmHA or its successor agency under Public Law 103–354 staff have an understanding of which States have such requirements and how they apply to applicant's proposals. It will be the responsibility of each State Director to determine the applicable State requirements and to establish a working relationship with the State personnel responsible for their implementation.

(b) In processing projects located within States having State NEPA's, the preparer of the FmHA or its successor agency under Public Law 103–354 assessment will determine as early as possible in the assessment process whether the project falls under the requirements of the State NEPA. If it does, one of the following cases will exist and the appropriate actions specified will be taken.

(1) The applicant has complied with the State's NEPA, and it was determined under the State's requirements that the proposed project would not result in sufficient potential impacts to warrant the preparation of an impact statement or other detailed environmental report required by the State NEPA. This finding or conclusion by the State will be considered in the FmHA or its successor agency under Public Law 103–354's review, and any supporting information used by the State will be requested. However, the State's finding can never be the total basis for FmHA or its successor agency under Public Law 103–354's environmental impact determination. An independent and thorough review in accordance with the requirements of this subpart must be conducted by the preparer.

(2) The applicant has complied with the State NEPA, and it was determined under its implementing guidelines that a significant impact will result. This fact will be given great weight in the Agency's environmental determination. However, the State's definition of significant environmental impact may encompass a much lower threshold of impacts compared to FmHA or its successor agency under Public Law 103–354's. In such a case, if the preparer does not believe that a significant impact will result under Agency guidelines for determining significant impacts, the environmental assessment will be prepared and include a detailed discussion with supporting information as to why the environmental reviewer's recommendation differs from that of the State's. However, the assessment cannot be completed until the State's impact statement requirements have been fulfilled by the applicant and the resulting impact statement has been reviewed by the preparer. An environmental impact determination will then be executed based upon the assessment and the statement.

(c) It should be emphasized that at no time does the completion of an impact statement under the requirements of a State NEPA obviate the requirement for FmHA or its successor agency under Public Law 103–354 to prepare an impact statement. Consequently, as soon as it is clear to the preparer that the Agency will have to prepare a statement, every attempt should be made to accomplish the statement simultaneously with the State's. Coordination with State personnel is necessary so that data and expertise can be shared. In this manner, duplication of effort and the review periods for the separate statements can be minimized. This process clearly requires a close working relationship with the appropriate State personnel.

§ 1940.329 Commenting on other Agencies' EIS's.

(a) State Directors are authorized to comment directly on EIS's prepared by other Federal agencies. In so doing, comments should be as specific as possible. Any recommendations for the development of additional information or analyses should indicate why there is a need for the material.

(b) Comments should concentrate on those matters of primary importance to FmHA or its successor agency under Public Law 103–354 and on areas of Agency expertise, such as rural planning and development. Any potential conflicts with FmHA or its successor agency under Public Law 103–354 programs, plans, or actions should be clearly identified. Special attention should be given to the relationship of the alternatives under study to the State Office's natural resource management guide and the objectives of the Department's land use regulation (exhibit A of this subpart). Copies of comments addressing land use questions will be provided to the appropriate chairman of the USDA State-level committee dealing with land use matters.

(c) Whenever a State Director has serious concerns over the acceptability of the anticipated environmental impacts, the State Director will notify the Administrator.

§ 1940.330 Monitoring.

(a) FmHA or its successor agency under Public Law 103–354 staff who normally have responsibility for the post-approval inspection and monitoring of approved projects will ensure that those measures which were identified in the preapproval stage and required to be undertaken in order to reduce adverse environmental impacts are effectively implemented.

(b) This staff, as identified in paragraph (a) of this section, will review the action's approval documents and consult with the preparer of the action's environmental review document prior to making site visits or requesting project status reports in order to determine if there are environmental requirements to be monitored.

(c) The preparer will directly monitor actions containing difficult or complex environmental special conditions.

(d) Before certifying that conditions contained within offers of financial assistance have been fully met, the responsible monitoring staff will obtain the position of the preparer for those conditions developed as a result of the environmental review.

(e) Whenever noncompliance with an environmental special condition is detected by FmHA or its successor agency under Public Law 103–354 staff, the preparer and the SEC will be immediately informed. The approving official will then take appropriate steps, in consultation with the responsible program office, the SEC and preparer, to bring the action into compliance.

§ 1940.331 Public involvement.

(a) *Objective.* The basic objective of FmHA or its successor agency under Public Law 103–354's public involvement process is threefold. It is to ensure that interested citizens can readily obtain knowledge of the environmental review status of FmHA or its successor agency under Public Law 103–354's funding applications, have the opportunity to input into this review process before decisions are made, and have access to the environmental documents supporting FmHA or its successor agency under Public Law 103–354 decisions.

(b) *Public notice requirements.* (1) For projects that undergo the preparation of an environmental impact statement, the first element of formal public participation in the EIS process involves the publication of the notice of intent to prepare an EIS. The content of the notice of intent and its publication by FmHA or its successor agency under Public Law 103–354 in the FEDERAL REGISTER are explained in § 1940.320 of this subpart. With respect to notification within the project area, the applicant will be requested to publish a copy of the notice of intent and the date of the scoping meeting in the newspaper of general circulation in the vicinity of the proposed action and in any local or community-oriented newspapers within the proposed action's area of environmental impact. The notice will be published in easily readable type in the nonlegal section of the newspaper(s). It

will also be bilingual if the affected area is largely non-English speaking or bilingual. Individual copies of the notice will be sent by the applicant to the appropriate regional EPA office, any State and regional review agencies established under Executive Order 12372; the State Historic Preservation Officer; local radio stations and other news media; any State or Federal agencies planning to provide financial assistance to this or related actions or required to review permit applications for this action, any potentially affected Indian Tribe; any individuals, groups, local, State, and Federal agencies known to be interested in the project; affected property owners; and to any other parties that FmHA or its successor agency under Public Law 103–354 has identified to be so notified. It will also be posted at a readable location on the project site. The applicant will provide FmHA or its successor agency under Public Law 103–354 with a copy of the notice as it appeared in the newspaper(s), the date(s) published, and a list of all parties receiving an individual notice. Publication and individual transmittal of the notice for the scoping meeting will be accomplished at least 14 days prior to the date of the meeting.

(2) Coincident with the distribution of either a draft or final EIS, a notice of the statement's availability will be published within the project area in the same manner as a notice of intent to prepare an EIS. FmHA or its successor agency under Public Law 103–354 will request EPA to publish in the FEDERAL REGISTER a notice of the statement's availability in accordance with EPA's requirements and pursuant to § 1506.10 of the CEQ regulations.

(3) For Class II actions that are determined not to have a significant environmental impact, the Agency will require the applicant to publish a notification of this determination. This notice will be published in the same manner as a notice of intent to prepare an EIS but will appear for at least 3 consecutive days if published in a daily newspaper or otherwise in two consecutive publications. Individual copies will be sent to the same parties that are required to be sent a notice of intent, as specified in paragraph (b)(1) of this section, with the exception of local radio stations and other news media. Also, there is no requirement to post this notice on the project site. The applicant will provide FmHA or its successor agency under Public Law 103–354 with a copy of this notice, the dates the notice was published, and a list of all parties receiving an individual notice. This notification procedure does not apply to actions reviewed solely on the basis of a Class I assessment.

(4) The public notice procedures for actions that will affect floodplains, wetlands, important farmlands, prime rangelands or prime forest lands are contained in exhibit C of this subpart. These procedures apply to actions that require either an EIS, Class II assessment or Class I assessment. However, whenever an action normally classified as a categorical exclusion requires a Class I assessment because of the potential impact to one of these important land resources, no public notice procedures apply in the course of completing the Class I assessment. When applicable to an action, as specified in exhibit C of this subpart, these public notice procedures can apply at two distinct stages. The first stage, a preliminary notice, applies to any of the five important land resources. The second stage, a final notice, is followed by a fifteen-day public review period and applies only to actions that will impact floodplains or wetlands. For Class II actions, this final notice procedure must be combined with any applicable finding of no significant environmental impact, which is described in paragraph (b)(3) of this section. Individual copies of the preliminary and final notices will be sent to the same parties that are required to be sent a notice of finding of no significant impact, as specified in paragraph (b)(3) of this section, with the following exception. Whenever property owners affected by proposed mitigation measures, such as proposed hook-up restrictions on portions of water or sewer lines that will traverse floodplains, are advised of these proposed measures in a preliminary notice, these property owners need not be sent copies of the final notice as long as the mitigation measures in the final notice are unchanged from the preliminary notice and no property

owners raised objections or concerns over the mitigation measures.

(5) The public notice requirements associated with holding a public information meeting are specified in paragraph (c) of this section.

(c) *Public information meetings.* (1) Public information meetings will be held for an action undergoing an EIS as specified in § 1940.320 of this subpart. As part of the EIS process, a public information meeting will be held near the project site to discuss and receive comments on the draft EIS. It will be scheduled no sooner than 15 days after the release of the draft EIS. It will be announced in the same manner as the scoping meeting, and the list of parties receiving an individual notification will also be developed in the same manner. The meeting will be chaired by the State Director or a designee and will be fully recorded so that a transcript can be produced. The applicant will be requested to assist in obtaining a facility for holding the meeting. To the extent possible, this meeting will be combined with public meetings required by other involved agencies.

(2) Whenever a public information meeting is held as part of the completion of an environmental assessment, it will be scheduled, announced, and held in generally the same manner as a public information meeting for an EIS. However, a minimum of 7 days advance notice of the meeting is sufficient, and a transcript of the meeting will not be required. Rather a summary of the meeting to include the major issues raised will be prepared by the FmHA or its successor agency under Public Law 103–354 official who chaired the meeting.

(d) *Distribution of environmental documents.* FmHA or its successor agency under Public Law 103–354 officials will promptly provide to interested parties, upon request, copies of environmental documents, including environmental assessments, draft and final environmental impact statements, and records of decision. Interested parties can request these materials from the appropriate State Director or approval official for project activities and from the Administrator on other activities subject to environmental review.

§ 1940.332 Emergencies.

(a) *Action Requiring EIS.* When an emergency circumstance makes it necessary to take an action with significant environmental impact without observing the provisions of this subpart or the CEQ regulations, the Administrator will consult with CEQ about alternative arrangements before the proposed action is taken. It must be recognized that CEQ's regulations limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review. For purposes of this subpart, an emergency circumstance is defined as one involving an immediate or imminent danger to public health or safety.

(b) *Action Not Requiring EIS.* When an emergency circumstance makes it necessary to take an action with apparent non-significant environmental impact without observing the provisions of this subpart or the CEQ regulations, the Administrator will be so notified. The Administrator reserves the authority to waive or amend all procedural aspects of this subpart relating to the preparation of environmental assessments including but not limited to the applicant's submission of Form FmHA or its successor agency under Public Law 103–354 1940–20, public notice requirements and/or their associated comment periods, the timing of the assessment process, and the content of environmental review documents. Alternative arrangements will be established on a case by case basis taking into account the nature of the emergency and the time reasonably available to respond to it. These alternative arrangements will, to the extent possible, attempt to achieve the substantive requirements of this subpart such as avoiding impacts to important land resources, when practicable, and minimizing potential adverse environmental impacts. In all cases, the environmental findings and determinations required for Class I and Class II assessments must be executed by the appropriate FmHA or its successor agency under Public Law 103–354 officials prior to approval of the action and be based upon the best information available under the circumstances and the prescribed alternative arrangements.

(Refer to paragraph (a) of this section should the approval official for the action determine that an EIS is necessary.) Additionally, all applicable consultation and coordination procedures required by law or regulation will be initiated with the appropriate Federal or State agency(s). Such procedures will be accomplished in the most expeditious manner possible and modified to the extent necessary and mutually agreeable between FmHA or its successor agency under Public Law 103–354 and the affected agency(s). The provisions of this paragraph are limited to the same emergency circumstances and scope of action as specified in paragraph (a) of this section.

§ 1940.333 Applicability to planning assistance.

The award of FmHA or its successor agency under Public Law 103–354 funds for the purpose of providing technical assistance or planning assistance will not be subject to any environmental review. However, applicants will be expected to consider in the development of their plans and to generally document within their plans:

(a) The existing environmental quality and the important environmental factors within the planning area, and

(b) The potential environmental impacts on the planning area of the plan as well as the alternative planning strategies that were reviewed.

§ 1940.334 Direct participation of State Agencies in the preparation of FmHA or its successor agency under Public Law 103–354 EISs.

FmHA or its successor agency under Public Law 103–354 may be assisted by a State Agency in the preparation of an EIS subject to the conditions indicated below. At no time, however, is FmHA or its successor agency under Public Law 103–354 relieved of its responsibilities for the scope, objectivity, and content of the entire statement of any other responsibility under NEPA.

(a) The FmHA or its successor agency under Public Law 103–354 applicant for financial assistance is a State Agency having statewide jurisdiction and responsibility for the proposed action;

(b) FmHA or its successor agency under Public Law 103–354 furnishes guidance to the State Agency as to the scope and content of the impact statement and participates in the preparation;

(c) FmHA or its successor agency under Public Law 103–354 independently evaluates the statement and rectifies any major deficiencies prior to its circulation by the Agency as an EIS;

(d) FmHA or its successor agency under Public Law 103–354 provides, early in the planning stages of the project, notification to and solicits the views of any land management entity (State or Federal Agency responsible for the management or control of public lands) concerning any portion of the project and its alternatives which may have significant impacts upon such land management entities; and

(e) If there is any disagreement on the impacts addressed by the review process outlined in paragraph (d) of this section, FmHA or its successor agency under Public Law 103–354 prepares a written assessment of these impacts and the views of the land management entities for incorporation into the draft impact statement.

§ 1940.335 Environmental review of FmHA or its successor agency under Public Law 103–354 proposals for legislation.

(a) As stated in § 1940.312(d)(4) of this subpart, all FmHA or its successor agency under Public Law 103–354 proposals for legislation will receive an environmental assessment. The definition of such a proposal is contained in § 1508.17 of the CEQ regulations.

(b) The environmental assessment and, when necessary, the EIS will be prepared by the responsible Agency staff that is developing the legislation.

(c) If an EIS is required, it will be prepared according to the requirements of § 1506.8 of the CEQ Regulations.

§ 1940.336 Contracting for professional services.

(a) Assistance from outside experts and professionals can be secured for the purpose of completing EIS, assessments, or portions of them. Such assistance will be secured according to

the Federal and Agriculture Procurement Regulations contained in chapters 1 and 4 of title 48 of the Code of Federal Regulations.

(b) The contractor will be selected by FmHA or its successor agency under Public Law 103–354 in consultation with any cooperating agencies. In order to avoid any conflict of interest, contractors competing for the work will be required to execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project.

(c) The Administrator will provide the State Director with a proposed scope of work for use in securing such professional services.

(d) Applicants will not be required to pay the costs of these professional services.

§§ 1940.337–1940.349 [Reserved]

§ 1940.350 Office of Management and Budget (OMB) control number.

The collection of information requirements in this regulation has been approved by the Office of Management and Budget and has been assigned OMB control number 0575–0094.

EXHIBIT A TO SUBPART G OF PART 1940—DEPARTMENTAL REGULATION

Number: 9500–3.
Subject: Land Use Policy.
Date: March 22, 1983.
OPI: Land Use Staff, Soil Conservation Service.

SECTION

1. Purpose
2. Cancellation
3. Policy
4. Abbreviations
5. Definitions
6. Responsibilities
7. Appendix A

1. PURPOSE

The Nation's farmlands, forest lands, rangelands, flood plains, and wetlands are unique natural resources providing food, fiber, wood, and water necessary for the continued welfare of the people of the United States and protection from floods. Each year, large amounts of these lands are converted to other uses. Continued conversion of the Nation's farmlands, forest lands, and rangelands may impair the ability of the United States to produce sufficient food, fiber, and wood to meet domestic needs and the demands of export markets. Continued conversion of the Nation's wetlands may reduce the availability of adequate supplies of suitable-quality water, indigenous wildlife species, and the productive capacity of the Nation's fisheries. Continued encroachments on flood plains decrease the natural flood-control capacity of these land areas, create needs for expensive manmade flood-control measures and disaster-relief activities, and endanger both lives and property.

Land use allocation decisions are matters of concern to USDA. Decisions concerning land use arise from needs to accommodate needed growth and development; prevent unwarranted and costly sprawl; avoid unwarranted conversion of farm, range, and forest lands and wetlands from existing uses and unwarranted encroachment on flood plains; maintain and enhance agricultural and forest production capabilities; maintain wildlife, fish, and seafood habitat; provide or improve community services and facilities; assure appropriate environmental quality; and assure adequate supplies of suitable-quality water. These needs are highly interdependent and often compete with each other for the limited supply of available land and water.

It is Departmental policy to promote land use objectives responsive to current and long-term economic, social, and environmental needs. This policy recognizes the rights and responsibilities of State and local governments for regulating the uses of land under their jurisdiction. It also reflects the Department's responsibility to (a) assure that the United States retains a farm, range, and forest land base sufficient to produce adequate supplies, at reasonable production costs of high-quality food, fiber, wood, and other agricultural products that may be needed; (b) assist individual landholders and State and local governments in defining and meeting needs for growth and development in such ways that the most productive farm, range, and forest lands are protected from unwarranted conversion to other uses; and (c) assure appropriate levels of environmental quality.

In accordance with the authority contained in 7 U.S.C. 1010 and 7 U.S.C. 2204 and consistent with 7 CFR 2.19(f) and provisions of the Farmland Protection Policy Act, Subtitle I, Title XV, Pub. L. 97–98, the Department sets forth this statement of policy on land use.

2. CANCELLATIONS

This regulation supersedes Secretary's Memorandum 9500–2 dated March 10, 1982.

3. POLICY

Federal agencies, in implementing programs, make decisions that affect current

and potential uses of land. The Department will:

a. Promote and support planning procedures that allow landholders, interest groups, and State and local governments to have input at all appropriate stages of the decisionmaking process for public projects, programs, or activities; that recognize the rights and responsibilities of landholders in making private land use decisions; and that recognize the responsibility of governments in influencing how land may be used to meet public needs.

b. Assure that programs of the agencies within the Department discourage the unwarranted conversion to other uses of prime and unique farmlands, farmlands of statewide or local importance, and prime rangelands, as defined in appendix A; the unwarranted alteration of wetlands or flood plains; or the unwarranted expansion of the peripheral boundaries of existing settlements.

c. Manage both its land use-related programs and USDA-administered land in such manner as to (1) demonstrate leadership in meeting short- and long-term needs for growth and development, while assuring adequate supplies of needed food, fiber, and forest products; (2) assure appropriate levels of environmental quality and adequate supplies of water; and (3) discourage unwarranted expansion of peripheral boundaries of existing settlements. Whenever practicable, management of USDA-administered lands shall be coordinated with the management of adjacent private and other public lands.

d. Conduct multidisciplinary land use research and education programs responsive to identified State, local, and national needs and, when requested, assist State and local governments, citizens groups, and individual landholders in determining a alternative land use values, thereby enabling local officials to make judicious choices to meet growth and development needs and to protect the community's farm- and forest-related economic base.

e. Assist landowners and State and Federal agencies in the reclamation of abandoned surface-mined lands. This reclamation will help eliminate safety, health, and environmental problems.

f. Assist in planning for the extraction of coal and other nonrenewable resources in such manner as to facilitate restoration. This restoration would reestablish or enhance food, fiber, or forest productivity or contribute to other beneficial uses of the land as mining is completed in defined areas as sites.

g. Advocate among Federal agencies:

(1) The retention of important farmlands, rangelands, forest lands, and wetlands, whenever proposed conversions to other uses (a) are caused or encouraged by actions or programs of a Federal agency or (b) require licensing or approval by a Federal agency, unless other needs clearly override the benefits derived from retention of such lands; and

(2) Actions that reduce the risk of flood loss and soil erosion; that minimize impacts of floods on human safety, health, and welfare; that preserve natural flood-control and other beneficial functions and values of wetlands and flood plains; and that reduce future need for expensive manmade flood-control systems, disaster-relief assistance, or Federal rehabilitation assistance in the event of flooding.

4. Abbreviations

USDA—U.S. Department of Agriculture.

NRE—Natural Resources and Environment Committee.

5. Definitions

Complete definitions for the terms *farmlands, forest lands, rangelands, wetlands,* and *flood plains* are found in appendix A.

6. Responsibilities

a. The Office of the Secretary is responsible for (1) encouraging, assisting, and coordinating efforts of other Federal departments and agencies to implement policies and procedures supportive of the objectives of this regulation; (2) resolving issues and acting on recommendations raised to the Secretary's Policy and Coordination Council by the Departmental committees; and (3) raising unresolved issues and recommending actions to the appropriate Cabinet Council.

b. The NRE Committee, created under the Secretary's memorandum dated July 22, 1981, will provide departmentwide leadership for the implementation of this policy statement. In implementing this policy, the NRE Committee will:

(1) Recommend Departmental guidelines to the Secretary and schedule reviews of each agency's procedures for implementation;

(2) Monitor implementation of this policy;

(3) Encourage, support, and provide guidance to State- and local-level USDA committees in implementing this policy;

(4) Coordinate the work of USDA agencies in carrying out the provisions of this regulation; and

(5) Advise the Secretary annually as to progress and problems encountered.

c. Each USDA agency will review and make the necessary administrative changes in existing and proposed rules, regulations, guides, practices, or policies and propose needed legislative changes to bring agency programs into compliance with the provisions of this regulation.

d. Each USDA agency having programs that will be affected by this regulation shall develop implementing procedures, consistent with the guidelines provided by the NRE Committee, and shall provide to all offices of the agency copies of this policy statement,

Departmental guidelines, and agency procedures to implement this policy.

e. USDA agencies will encourage State and local governments and individual landholders to retain important farmlands, rangelands, forest lands, and wetlands and to avoid encroachments on flood plains when practicable alternatives exist to meet developmental needs. Appropriate agencies will assist State and local governments, citizens groups, and individual landholders in identifying options and determining alternative land use values as the basis for making judicious choices in meeting growth and development needs.

f. USDA agencies will encourage other Federal, State, and local government agencies to exchange information on plans or projects that may impact on important farmlands, rangelands, forest lands, wetlalds, or flood plains and to involve appropriate USDA agencies early in the planning process. USDA agencies will participate in a timely manner at appropriate stages in the planning process on Federal or federally assisted projects or activities when requested. Where opportunity for such participation is not forthcoming, the Department may intercede, consistent with policy contained in this regulation, at appropriate stages in the decisionmaking process through review and comments on plans, as provided for in authorized administrative review procedures for such projects, activities, or actions.

g. When land held either in public or private ownership will be directly affected by USDA actions, the implementing agency will notify the affected landholders at the earliest time practicable of the proposed action and provide such landholders an opportunity to review the elements of the action and to comment on the action's feasibility and alternatives to it.

h. Agencies of USDA will assure that their actions, investments, and programs on non-Federal lands will conform, to the extent practicable, with the uses permitted under land use regulations adopted by State or local governments.

i. When land use regulations or decisions are inconsistent with USDA policies and procedures for the protection of important farmlands, rangelands, forest lands, wetlands, or flood plains, USDA agencies shall not assist in actions that would convert these lands to other uses or encroach upon flood plains, unless (1) there is a demonstrated, significant need for the project, program, or facility, and (2) there are no practicable alternative actions or sites that would avoid the conversion of these lands or, if conversion is unavoidable, reduce the number of acres to be converted or encroached upon directly and indirectly.

7. APPENDIX A—DEFINITIONS

The following definitions apply to this Departmental Regulation.

1. IMPORTANT FARMLANDS[1]

a. Prime Farmlands[1]

(1) *General Criteria.* Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to produce, economically, sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0- to 7-percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0- to 5-percent slopes.

(2) *Specific Criteria.* Prime farmlands must meet all the following criteria. Terms used in this section are defined in these USDA publications: ''Soil Taxonomy, Agriculture Handbook 436,'' ''Soil Survey Manual, Agriculture Handbook 18,'' ''Rainfall-Erosion Losses from Cropland, Agriculture Handbook 282,'' ''Wind Erosion Forces in the United States and Their Use in Predicting Soil Loss, Agriculture Handbook 346,'' and ''Saline and Alkali Soils, Agriculture Handbook 60.''

(a) The soils have:

1. Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches, or in the root zone (root zone is the part of the soil that is penetrated by plant roots) if the root zone is less than 40 inches deep, to produce the commonly grown cultivated crops (cultivated crops include but are not limited to grain, forage, fiber, oilseed, sugar beets, sugarcane, vegetables, tobacco, orchard, vineyard, and bush fruit crops) adapted to the region in 7 or more years out of 10; or

2. Xeric or ustic moisture regimes in which the available water capacity is limited, but the area has a developed irrigation water supply that is dependable (a dependable water supply is one in which enough water is

[1] 7 CFR 657.5.

available for irrigation in 8 out of 10 years for the crops commonly grown) and of adequate quality; or

3. Acidic or torric moisture regimes, and the area has a developed irrigation water supply that is dependable and of adequate quality; and

(b) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches, have a mean annual temperature higher than 32 degrees Fahrenheit. In addition, the mean summer temperature at this depth in soils with an 0 horizon is higher than 47 degrees Fahrenheit; in soils that have no 0 horizon, the mean summer temperature is higher than 59 degrees Fahrenheit; and

(c) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep; and

(d) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow cultivated crops common to the area to be grown; and

(e) The soils can be managed so that in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of the saturation extract is less than 4 mmhoc/cm and the exchangeable sodium percentage is less than 15; and

(f) The soils are not flooded frequently during the growing season (less often than once in 2 years); and

(g) The product of K (erodibility factor) times the percent slope is less than 2.0, and the product of I (soils erodibility) times C (climatic factor) does not exceed 60; and

(h) The soils have a permeability rate of at least 0.06 inch per hour in the upper 20 inches, and the mean annual soil temperature at a depth of 20 inches is less than 59 degrees Fahrenheit or higher; and

(i) Less that 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches.

b. Unique Farmland[1]

(1) *General Criteria.* Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to produce, economically, sustained high-quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables.

(2) *Specific Characteristics.* Unique farmland is used for a specific high-value food or fiber crop. It has a moisture supply that is adequate for the specific crop; the supply is from stored moisture, precipitation, or a developed irrigation system. It combines favorable factors of soil quality, growing season, temperature, humidity, air drainage, elevation, aspect, or other conditions, such as nearness to market, that favor the growth of a specific food or fiber crop.

c. Additional Farmland of Statewide Importance[1]

This is land, in addition to prime and unique farmlands, that is of statewide importance for the production of food, feed, fiber, forage, and oilseed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additional farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law.

d. Additional Farmland of Local Importance[1]

In some local areas, there is concern for certain additional farmlands for the production of food, feed, fiber, forage, and oilseed crops, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned.

2. PRIME FOREST LANDS[2]

Because of the multiple use of forested lands, several categories, e.g., timber, wildlife, and recreation, may be developed. For purposes of this regulation only, the following timberland definitions will apply.

a. Prime Timberland[2]

Prime timberland is land that has soil capable of growing wood at the rate of 85 cubic feet or more/acre/year (at culmination of mean annual increment) in natural stands and is not in urban or built-up land uses or water. Generally speaking, this is land currently in forest, but does not exclude qualifying lands that could realistically be returned to forest. Delineation of these lands will be in accordance with national criteria.

[1] See footnote 1 on previous page.

[2] Prime Forest Land Definition and Criteria, U.S. Forest Service, May 26, 1977.

b. Unique Timberland[2]

Unique timberlands are lands that do not qualify as prime timberland on the basis of producing less than 85 cubic feet/acre/year, but are growing sustained yields of specific high-value species or species capable of producing specialized wood products under a silvicultural system that maintains soil productivity and protects water quality. Delineation of these lands will be in accordance with national criteria.

c. Timberland of Statewide Importance[2]

This is land, in addition to prime and unique timberlands, that is of statewide importance for the growing of wood. Criteria for defining and delineating these lands are to be determined by State forestry planning committees or appropriate State organizations.

d. Timberlands of Local Importance[2]

In some local areas, there is concern for certain additional forest lands for the growing of wood, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by a local agency or agencies concerned.

3. WETLANDS[3]

Wetlands are those areas that are inundated by surface or ground water with a frequency sufficient to support and, under normal circumstances, do or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas, such as sloughs, potholes, wet meadows, river overflows, mudflats, and natural ponds.

4. FLOOD PLAINS[3]

The term *flood plain* means the lowland and relatively flat areas adjoining inland and coastal waters, including floodprone areas of offshore islands, including, at a minimum, those that are subject to a 1-percent or greater chance of flooding in any given year.

5. PRIME RANGELAND[4]

Prime rangeland is rangeland which, because of its soil, climate, topography, vegetation, and location, has the highest quality or value for grazing animals. The (potential) natural vegetation is palatable, nutritious, and available to the kinds of herbivores common to the area.

[3] Definitions contained in Executive Orders 11988 and 11990.

[4] USDA proposed definition for intradepartmental use only.

EXHIBIT B TO SUBPART G OF PART 1940—DEVELOPMENT AND IMPLEMENTATION OF NATURAL RESOURCE MANAGEMENT GUIDE

1. The State Director shall complete the natural resource management guide within 12 months from the effective date of this subpart and issue the guide as a State supplement after prior approval by the Administrator. A summary of the basic content, purposes, and uses of the guide is contained in §1940.305 of this subpart. The guide shall be prepared in draft form and be provided for review and comment to USDA agencies, appropriate Federal and State agencies, State and regional review agencies assigned the consulation requirements of Executive Order 12372, as well as interested localities, groups, and citizens. Also at least one public information meeting shall be held on the draft which shall be followed by a 30-day period for the submission of public comments. Public notification of this meeting shall be made in the same manner as the notification process for a scoping meeting. (See §1940.320(c) of this subpart). Additionally, the public shall be informed that copies of the draft guide will be made available from the State Office upon request. After completion of this public review, the draft will be revised as necessary in light of the comments received and provided as a final draft State Supplement to the Administrator for review and approval. Any concerns and comments of the Administrator will be addressed by the State Director and the guide completed. Upon the Administrator's approval and the fulfillment of the requirements of paragraph 4. of this exhibit, the natural resource management guide shall then become part of any program investment strategies developed by the State Director for the purpose of addressing the rural needs of the State. Although a 12-month period has been established for the completion of a natural resource management guide, this deadline is not to be construed as curtailing or postponing the implementation of existing environmental laws, regulations, Executive orders or the Departmental Regulation 9500–3, Land Use Policy, with respect to individual project reviews, nor giving anyone any rights or claims with respect to the completion or content of the guide.

2. The natural resource management guide needs to be developed in full recognition of its role as an internal Agency planning tool and with sensitivity to the Agency's mission.

3. After the Administrator approves the natural resource management guide, it will become effective 4 months from that date. This interim period shall be used to inform local, State, and Federal agencies, localities, organizations, and interested citizens of the content of the guide. In this manner, those

parties intending to seek FmHA or its successor agency under Public Law 103–354 assistance or to coordinate FmHA or its successor agency under Public Law 103–354 assistance programs with their own programs will be able to gain for their planning needs an understanding of our guide.

4. Completed natural resource management guides shall be reviewed every 2 years and updated by the State Director to reflect newly identified geographical areas of concern or policy revisions at the lational, State, regional or local level. They will also be revised, as necessary, through appropriate guidance from the Administrator. Revisions shall be transmitted to the Administrator for postapproval and shall be considered approved if either no comments are raised by the Administrator within 30 days of receipt of the State Director's transmittal letter or the administrator specifically approves them before the 30 days expire. Public review of a revision will not be required. However, if in the opinion of the State Director the proposed revision will substantially change the previously adopted natural resource management guide, a public review shall be conducted of the revision in the same manner as that described in paragraph 1 of this exhibit for the development of the original guide. Such review shall occur prior to the transmittal of the revision to the Administrator. If the State Director believes that at the expiration of any 2-year review period there is need to update the guide, a statement to this effect shall be filed with the Administrator.

5. The foundation for the natural resource management guide is the identification of the types of land uses or environmental factors deserving attention and their geographical location within the State. An inventory or listing shall be developed, therefore, of the important land uses within the State. This inventory will be accomplished by assembling existing data and information compiled by those Federal, State, and local agencies that have jurisdiction or expertise regarding the land uses or environmental factors. At a minimum, the inventory shall consist of available documents, listings, maps, or graphic materials describing the location of the following:

a. National Register of Historic Places to include monthly supplements as designated by the Department of the Interior (DOI), and the State Historic Preservation Plans. This list is issued as a State supplement to subpart F or part 1901 of this chapter;

b. Rivers designated as part of the Wild and Scenic Rivers System and rivers under study for inclusion in the system, as published by DOI;

c. Important farmlands;

d. Prime rangelands.

e. Prime forestlands;

f. Wetland inventory;

g. Floodplain inventory as issued by the Federal Emergency Management Administration;

h. Endangered Species and Critical Habitats as listed or proposed for listing by the Department of Commerce (DOC) and DOI;

i. Sole source aquifer recharge areas as designated by the Environmental Protection Agency (EPA);

j. Air Quality Control Regions as designated by EPA;

k. National Registry of Natural Landmarks at published by DOI;

l. Coastal Barrier Resources System;

m. State inventories or planning documents identifying important land uses, particularly those not covered by the above items, such as wildlife refuges, important habitats, and areas of high water quality, or scenic or recreational value;

n. Agricultural districts or other similar zoning classifications for agricultural land protection; and

o. Coastal Zone Management Areas.

6. The Administrator shall be responsible for assisting State Directors in obtaining listings and inventories of resources protected by Federal statutes and regulations. The State Director has the responsibility for assembling documents on important environmental resources or areas identified in State and substate laws, regulations, plans, and policies.

7. Development of the inventory by the State Director will require consultation and assistance from a variety of agencies and experts. This consultation should begin with Department agencies and be accomplished through appropriate, State-level USDA committees. The objective should be to determine the land classification data that has been compiled and that which is in the process of being compiled either by USDA agencies or their counterparts at the state level. The Memorandum of Understanding executed in May 1979 between the Soil Conservation Service (SCS) and FmHA or its successor agency under Public Law 103–354 should be utilized as the basis for seeking SCS's assistance in this data collection effort. (See FmHA Instruction 2000–D, exhibit A, which is available in any FmHA or its successor agency under Public Law 103–354 Office.) Direct contacts should then be made with State agencies, in particular with the appropriate office of State planning, to determine the availability of State inventories and State land use policies and priorities. Similar discussions should be held with substate regional planning agencies and clearinghouses with assistance being provided in this effort by District Directors. County Supervisors shall contact local officials and shall be responsible for being familiar with and for assembling similar inventories, land use policies, or protective requirements developed by the local government agencies

within the supervisor's territorial jurisdiction.

8. Another important element of the natural resource management guide shall be the examination of any major environmental impacts on the State or a substate area resulting from the cumulative effects of FmHA or its successor agency under Public Law 103–354-assisted project over the last several years. In this examination, particular emphasis should be given to the cumulative impacts of water resource projects such as irrigation systems. This should be done in consultation with experts within the appropriate State agencies and the U.S. Geological Survey. The housing programs should also be given a particular emphasis with respect to their cumulative impacts. More detailed guidance on the accomplishment of this cumulative impact section of the natural resource management guide, as well as the overall content of the guide, shall be provided by the Administrator. In preparing the State's natural resource management guide and in assembling inventories of critical resources, Agency staff should not lose sight of the basic purposes of this effort. The development of lengthy and complex guides and the amassing of huge inventories is not our goal. In the end, the material must be useable and serve as a tool for better decisionmaking. The basic purposes of this guide and inventory, then, are to provide a basis for developing comprehensive, statewide, rural development investment strategies that (i) do not conflict with Federal, State, and local mandates to preserve and protect important land and environmental resources, (ii) that do not create short- or long-term development pressures which would lead to the unnecessary conversion of these resources, and (iii) which effectively support and enhance Federal, State, and local plans to preserve these resources.

EXHIBIT C TO SUBPART G OF PART 1940—IMPLEMENTATION PROCEDURES FOR THE FARMLAND PROTECTION POLICY ACT; EXECUTIVE ORDER 11988, FLOODPLAIN MANAGEMENT; EXECUTIVE ORDER 11990, PROTECTION OF WETLANDS; AND DEPARTMENTAL REGULATION 9500–3, LAND USE POLICY

1. *Background.* The Subtitle I of the Agriculture and Food Act of 1981, Pub. L. 97–98, created the Farmland Protection Policy Act. The Act requires the consideration of alternatives when an applicant's proposal would result in the conversion of important farmland to nonagricultural uses. The Act also requires that Federal programs, to the extent practicable, be compatible with State, local government, and private programs and policies to protect farmland. The Soil Conservation Service (SCS), as required by the Act, has promulgated implementation procedures for the Act at 7 CFR part 658 which are hereafter referred to as the SCS rule. This rule applies to all federal agencies. The Departmental Regulation 9500–3, Land Use Policy (the Departmental Regulation), also requires the consideration of alternatives but is much broader than the Act in that it addresses the conversion of land resources other than farmland. The Departmental Regulation is included as exhibit A to this subpart and affects only USDA agencies. For additional requirements that apply to some Farmer Program loans and guarantees and loans to an Indian Tribe or Tribal Corporation and that cover the conservation of wetlands and highly erodible land, see exhibit M of this subpart.

2. *Implementation.* Each proposed lease or disposal of real property by FmHA or its successor agency under Public Law 103–354 and application for financial assistance or subdivision approval will be reviewed to determine if it would result in the conversion of a land resource addressed in the Act, Executive Orders, or Departmental Regulation and as further specified below. Those actions that are determined to result in the lease, disposal or financing of an existing farm, residential, commercial or industrial property with no reasonably foreseeable change in land use and those actions that solely involve the renovation of existing structures or facilities would require no further review.[1] Since these actions have no potential to convert land uses, this finding would simply be made by the preparer in completing the environmental assessment for the action. Also, actions that convert important farmland through the construction of on-farm structures necessary for farm operations are exempt from the farmland protection provisions of this exhibit. For other actions, the following implementation steps must be taken:

a. Determine whether important land resources are involved. The Act comes into play whenever there is a potential to affect important farmland. The Departmental Regulation covers important farmland as well as the following land resources: prime forest land, prime rangeland, wetlands and floodplains. Hereafter, these land resources are referred to collectively as important land resources. Definitions for these land resources are contained in the appendix to the Departmental Regulation. The SCS rule also defines important farmland for purposes of the Act. Since the SCS's definition of prime farmland differs from the Departmental Regulation's definition, both definitions must be

[1] See special procedures in item 3 of this exhibit if the existing structure or real property is located in a floodplain or wetland.

used and if either or both apply, the provisions of this exhibit must be implemented. It is important to note the definition of important farmland in both the SCS rule and the Departmental Regulation because it includes not only prime and unique farmland but additional farmland that has been designated by a unit of State or local government to be of statewide or local importance and such designation has been concurred in by the Secretary acting through SCS. In completing the environmental assessment or Form FmHA or its successor agency under Public Law 103–354 1940–22, ''Environmental Checklist For Categorical Exclusions,'' the preparer must determine if the project is either located in or will affect one or more of the land resources covered by the SCS rule or the Departmental Regulation. Methods for determining the location of important land resources on a project-by-project basis are discussed immediately below. As reflected several times in this discussion, SCS personnel can be of great assistance in making agricultural land and natural resource evaluation, particularly when there is no readily available documentation of important land resources within the project's area of environmental impact. It should be remembered that FmHA or its successor agency under Public Law 103–354 and SCS have executed a Memorandum of Understanding in order to facilitate site review assistance. (See FmHA Instruction 2000–D, exhibit A, available in any FmHA or its successor agency under Public Law 103–354 office.)

(1) *Important Farmland, Prime Forest Land, Prime Rangeland*—The preparer of the environmental review document will review available SCS important farmland maps to determine if the general area within which the project is located contains important farmland. Because of the large scale of the important farmland maps, the maps should be used for general review purposes only and not to determine if sites of 40 acres or less contain important farmland. If the general area contains important farmland or if no important farmland map exists for the project area, the preparer of the environmental review will request SCS's opinion on the presence of important farmland by completing Form AD–1006, ''Farmland Conversion Impact Rating,'' according to its instructions, and transmitting it to the SCS local field office having jurisdiction over the project area. This request will also indicate that SCS's opinion is needed regarding the application to the project site of both definitions of prime farmland, the one contained within its rule and the one contained within the Departmental Regulation. SCS's opinion is controlling with respect to the former definition and advisory with respect to the latter. No request need be sent to SCS for an action meeting one of the exemptions contained in item number 2 of this exhibit.

(2) *Floodplain*—Review the most current Flood Insurance Rate Map or Flood Insurance Study issued for the project area by the Federal Emergency Management Administration (FEMA). Information on the most current map available or how to obtain a map free of charge is available by calling FEMA's toll free number 800–638–6620. When more specific information is needed on the location of a floodplain, for example, the project site may be near the boundary of a floodplain; or for assistance in analyzing floodplain impacts, it is often helpful to contact FEMA's regional office staff. Exhibit J of this subpart contains a listing of these regional offices and the appropriate telephone numbers.

If a FEMA floodplain map has not been prepared for a project area, detailed assistance is normally available from the following agencies: The U.S. Fish and Wildlife Service (FWS), SCS, Corps of Engineers, U.S. Geological Survey (USGS), or appropriate regional or State agencies established for flood prevention purposes.

(3) *Wetlands*—FWS is presently preparing wetland maps for the nation. Each FWS regional office has a staff member called a Wetland Coordinator. These individuals can provide updated information concerning the status of wetland mapping by FWS and information on State and local wetland surveys. Exhibit K of this subpart contains a listing of Wetland Coordinators arranged by FWS regional office and geographical area of jurisdiction. If the proposed project area has not been inventoried, information can be obtained by using topographic and soils maps or aerial photographs. State-specific lists of wetland soils and wetland vegetation are also available from the FWS Regional Wetland coordinators. A site visit can disclose evidence of vegetation typically associated with wetland areas. Also, the assistance of FWS field staff in reviewing the site can often be the most effective means. Because of the unique wetland definition used in exhibit M of this subpart, SCS wetland determinations are required for implementing the wetland conservation requirements of that exhibit.

b. *Findings* (1) *Scope*—Although information on the location and the classification of important land resources should be gathered from appropriate expert sources, as well as their views on possible ways to avoid or reduce the adverse effects of a proposed conversion, it must be remembered that it is FmHA or its successor agency under Public Law 103–354's responsibility to weigh and judge the feasibility of alternatives and to determine whether any proposed land use change is in accordance with the implementation requirements of the Act and the Departmental Regulation. Consequently, after

reviewing as necessary, the project site, applicable land classification data, or the results of consultations with appropriate expert agenices, the FmHA or its successor agency under Public Law 103–354 preparer must determine, as the second implementation step, whether the applicant's proposal:

(a) Is compatible with State, unit or local government, and private programs and policies to protect farmland; and

(b) Either will have no effect on important land resources; or

(c) If there will be a direct or indirect conversion of such a resource, (i) whether practicable alternatives exist to avoid the conversion; and

(d) If there are no alternatives, whether there are practicable measures to reduce the amount of the conversion.

(2) *Determination of No Effect*— If the preparer determines that there is no potential for conversion and that the proposal is compatible, this determination must be so documented in the environmental assessment for a Class II action or the appropriate compliance blocks checked in the Class I assessment or Checklist for Categorical Exclusions based on whichever document is applicable to the action being reviewed.

(3) *Determination of Effect or Incompatibility*— Whenever the preparer determines that an applicant's proposal may result in the direct or indirect conversion of an important land resource or may be incompatible with State, unit of local government, or private programs and policies to protect farmland, the following further steps must be taken.

(a) *Search for Practicable Alternatives*[2]—In consultation with the applicant and the interested public, the preparer will carefully analyze the availability of practicable alternatives that avoid the conversion or incompatibility Possible alternatives include:

(i) The selection of an alternative site;

(ii) The selection of an alternative means to meet the applicant's objectives; or

(iii) The denial of the application, i.e., the no-action alternative.

When the resource that may be converted is important farmland, the preparer will follow the Land Evaluation and Site Assessment (LESA) point system contained within the SCS rule in order to evaluate the feasibility of alternatives. When the proposed site receives a total score of less than 160 points, no additional sites need to be evaluated. Rather than use the SCS LESA point system, the State Director has the authority to use State or local LESA systems that have been approved by the governing body of such jurisdiction and the SCS state conservationist. After this authority is exercised, it must be used for all applicable FmHA or its successor agency under Public Law 103–354 actions within the jurisdiction of that approved LESA system.

(b) *Inform the Public*—The Department Regulation requires us in section 6, Responsibilities, to notify the affected landholders at the earliest time practicable of the proposed action and to provide them an opportunity to review the elements of the action and to comment on the action's feasibility and alternatives to it. This notification requirement only applies to Class I and Class II actions and not to categorical exclusions that lose their status as an exclusion for any of the reasons stated in §1940.317(e) of this subpart. The notification will be published and documented in the manner specified in §1940.331 of this subpart and will contain the following information:

(i) A brief description of the application or proposal and its location;

(ii) The type(s) and amount of important land resources to be affected;

(iii) A statement that the application or proposal is available for review at an FmHA or its successor agency under Public Law 103–354 field office (specify the one having jurisdiction over the project area); and

(iv) A statement that any person interested in commenting on the application or proposal's feasibility and alternatives to it may do so by providing such comments to FmHA or its successor agency under Public Law 103–354 within 30 days following the date of publication. (Specify the FmHA or its successor agency under Public Law 103–354 office processing the application or proposal for receipt of comments.)

Further consideration of the application or proposal must be delayed until expiration of the public comment period. Consequently, publication of the notice as early as possible in the review process is both in the public's and the applicant's interest. Any comments received must be considered and addressed in the subsequent Agency analysis of alternatives and mitigation measures. It should be understood that scheduling a public information meeting is not required but may be helpful based on the number of comments received and types of issues raised.

(c) *Determine Whether Practicable Alternative Exists*—(i) Alternative exists—If the preparer concludes that a practicable alternative exists, the preparer will complete step 2b(3)(e)(ii) of this exhibit and transmit the assessment for the approving official's review in the manner specified in §1940.316 of this subpart. If the findings of this review are similar to the preparer's recommendation, FmHA or its successor agency under

[2] When the action involves the disposal of real property determined not suitable for disposition to persons eligible for FmHA or its successor agency under Public Law 103–354's financial assistance programs, the consideration of alternatives is limited to those that would result in the best price.

Public Law 103–354 will inform the applicant of such findings and processing of the application will be discontinued. Should the applicant still desire to pursue the proposal, the applicant is certainly free to do so but not with the further assistance of FmHA or its successor agency under Public Law 103–354. Should the applicant be interested in amending the application to reflect the results of the alternative analysis, the preparer will work closely with the applicant to this end. Upon receipt of the amended application, the preparer must reinstitute this implementation process at that point which avoids the duplication of analysis and data collection undertaken in the original review process.

If the results of the approving official(s) review differs from the preparer's recommendations, the former will ensure that the findings are appropriately documented in step 2b(3)(e)(ii) of this exhibit and any remaining consideration given to mitigation measures, step 2b(3)(d) of this exhibit.

(ii) No Practicable Alternative Exists—On the other hand, if the preparer concludes that there is no practicable alternative to the conversion, the preparer must then continue with step 2b(3)(d) of this exhibit, immediately below.

(d) *Search for Mitigation Measures*— Once the preparer determines that there is no practicable alternative to avoiding the conversion or incompatibility, including the no-action alternative, all practicable measures for reducing the direct and indirect amount of the conversion must be included in the application. Some examples of mitigation measures would include reducing the size of the project which thereby reduces the amount of the important land resource to be converted. This is a particularly effective mitigation measure when the resource is present in a small area, as is often the case with wetlands or floodplains. A corresponding method of mitigation would be to maintain the project size or number of units but decrease the amount of land affected by increasing the density of use. Finally, mitigation can go as far as the selection of an alternative site. For example, in a housing market area composed almost entirely of important farmland, any new proposed subdivision site would result in conversion. However, a proposed site within or contiguous to an existing community has much less conversion potential, especially indirect potential, than a site a mile or two from the community. The LESA system can also be used to identify mitigation measures when the conversion of important farmland cannot be avoided.

(e) *Document Findings*— Upon completion of the above steps, a written summary of the steps taken and the reasons for the recommendations reached shall be included in the environmental assessment along with either one of the following recommendations as applicable. The following example assumes that important farmland is the affected resource and that the inappropriate phrase within the brackets would be deleted.

(i) The application would result in the direct or indirect conversion of important farmland and (is/is not) compatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA or its successor agency under Public Law 103–354 determine, based upon the attached analysis, that there is no practicable alternative to this and that the application contains all practicable measures for reducing the amount of conversion (or limiting the extent of any identified incompatibility.)

(ii) The application would result in direct or indirect conversion of important farmland and (is/is not) incompatible with State, unit of local government, or private programs and policies to protect farmland. It is recommended that FmHA or its successor agency under Public Law 103–354 determine, based upon the attached analysis, that there is a practicable alternative to this action, and the processing of this application be discontinued.

(f) *Implement findings*—The completed environmental assessment and the Agency's determination of compliance with the Act, the Departmental Regulation and Executive orders will be processed and made according to §1940.316 of this subpart. Whenever this determination is as stated in step 2b(3)(e)(i) above, the action will be so structured as to ensure that any recommended mitigation measures are accomplished. See §1940.318(g) of this subpart. Whenever the determination is as stated in step 2b(3)(e)(ii) above, the applicant shall be so informed and processing of the application discontinued. Any further FmHA or its successor agency under Public Law 103–354 involvement will be as specified in Item 2b(3)(c)(i) of this exhibit.

3. *Special Procedures and Considerations When a Floodplain or Wetland Is the Affected Resource Under Executive Order 11988 and 11990.* a. *Scope.* (1) Geographical Area—The geographical area that must be considered when a floodplain is affected varies with the type of action under consideration. Normally the implementation procedures beginning in Item 2a of this exhibit are required when the action will impact, directly or indirectly, the 100-year floodplain. However, when the action is determined by the preparer to be a critical action, the minimum floodplain of concern is the 500-year floodplain. A critical action is an action which, if located or carried out within a floodplain, poses a greater than normal risk for flood-caused loss of life or property. Critical actions include but are not limited to actions which create or extend the useful life of the following facilities:

(a) Those facilities which produce, use, or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(b) Schools, hospitals, and nursing homes which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(c) Emergency operation centers or data storage centers which contain records or services that any become lost or inoperative during flood and storm events; and

(d) Multi-family housing facilities designed primarily (over 50 percent) for handicapped individuals.

(2) Threshold of Impact—The Executive orders differ from the Act and the Departmental Regulation in that the Executive orders' requirements apply not only to the conversion of floodplains or wetlands but to any impacts upon them. Impacts are defined as changes in the natural values and functions of a wetland or floodplain. Therefore, there would be an impact to a floodplain whenever either (a) the action or its related activities would be located within a floodplain, or (b) the action through its indirect impacts has the potential to result in development within a floodplain. The only exception to this statement is when the preparer determines that the locational impact is minor to the extent that the floodplain's or wetland's natural values and functions are not affected.

b. *Treatment of Existing Structures.* (1) Non-FmHA or its Successor Agency under Public Law 103–354-Owned Properties—The Executive orders can apply to actions that are already located in floodplains or wetlands; that is, where the conversion has already occurred. The implementation procedures beginning in item 2a of this exhibit must be accomplished for any action located in a floodplain or wetland and involving either (a) the purchase of an existing structure or facility or (b) the rehabilitation, renovation, or adaptive reuse of an existing structure or facility when the work to be done amounts to a substantial improvement. A substantial improvement means any repair, reconstruction, or improvement of a structure the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. The term does not include (a) any project for improvement of a structure to comply with existing State or local health sanitary or safety code specifications which are solely necessary to assure safe living conditions or (b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(2) FmHA or its Successor Agency under Public Law 103–354-Owned Real Property—The requirement in paragraph 3 b (1) immediately above also applies to any substantial improvements made to FmHA or its successor agency under Public Law 103–354-owned real property with the exception of the public notice requirements of this exhibit. Irrespective of any improvements, whenever FmHA or its successor agency under Public Law 103–354 real property located in a floodplain or wetland is proposed for lease or sale, the official responsible for the conveyance must determine if the property can be safely used. If not, the property should not be sold or leased. Otherwise, the conveyance must specify those uses that are restricted under identified Federal, State, and local floodplains or wetlands regulations as well as other appropriate restrictions, as determined by the FmHA or its successor agency under Public Law 103–354 official responsible for the conveyance, to the uses of the property by the leasee or purchaser and any successors, except where prohibited by law. Appropriate restrictions will be developed in consultation with the U.S. Fish and Wildlife Service (FWS) as specified in the Memorandum of Understanding with FWS contained in subpart LL of part 2000 of this chapter. Applicable restrictions will be incorporated into quitclaim deeds with the consent and approval of the Regional Attorney, Office of the General Counsel. Upon application by the owner of any property so affected and upon determination by the appropriate FmHA or its successor agency under Public Law 103–354 official that the condition for which a deed restriction was imposed no longer exists, the restriction clause may be released. A listing of any restrictions shall be included in any notices announcing the proposed sale or lease of the property. At the time of first inquiry, prospective purchasers must be informed of the property's location in a floodplain or wetland and the use restrictions that will apply. A written notification to this effect must be provided to the prospective purchaser who must acknowledge the receipt of the notice. See Item 3 d of this exhibit and subpart C of part 1955 of this chapter for guidance on the proper formats to be used with respect to notices and deed restrictions. The steps and analysis conducted to comply with the requirements of this paragraph must be documented in the environmental review document for the proposed lease or sale.

c. *Mitigation measures.* (1) Alternative Sites—As with the Act and the Departmental Regulation, the main focus of the review process must be to locate an alternative that avoids the impact to a floodplain or wetland. When this is not practicable, mitigation measures must be developed to reduce the impact which in the case of a floodplain or wetland can include finding another site, i.e., a safer site. The latter would be a site at a higher elevation within the floodplain and/or exposed to lower velocity floodflows.

(2) Nonstructural Mitigation Measures—Mitigation measures under the Executive orders are intended to serve the following three purposes: reduce the risks to human safety, reduce the possible damage to structures, and reduce the disruption to the natural values and functions of floodplains and wetlands. More traditional structural measures, such as filling in the floodplain, cannot accomplish these three purposes and, in fact, conflict with the third purpose. Nonstructural flood protection methods, consequently, must be given priority consideration. These methods are intended to preserve, restore, or imitate natural hydrologic conditions and, thereby, eliminate or reduce the need for structural alteration of water bodies or their associated floodplains and wetlands. Such methods may be either physical or managerial in character. Nonstructural flood protection methods are measures which:

(a) Control the uses and occupancy of floodplains and wetlands, e.g., floodplain zoning and subdivision regulations;

(b) Preserve floodplain and wetland values and functions through public ownership; e.g., fee title, easements and development rights;

(c) Delay or reduce the amount of runoff from paved surfaces and roofed structures discharged into a floodway, e.g., construction of detention basins and use of flow restricting barriers on roofs;

(d) Maintain natural rates of infiltration in developed or developing areas, e.g., construction of seepage or recharge basins and minimization of paved areas;

(e) Protect streambanks and shorelines with vegetative and other natural cover, e.g., use of aquatic and water-loving woody plants;

(f) Restore and preserve floodplain and wetland values and functions and protect life and property through regulation, e.g., floodproofing building codes which require all structures and installations to be elevated on stilts above the level of the base flood; and

(g) Control soil erosion and sedimentation, e.g., construction of sediment basins, stabilization of exposed soils with sod and minimization of exposed soil.

(3) Avoid Filling in Floodplains—As indicated above, the Executive orders place a major emphasis on not filling in floodplains in order to protect their natural values and functions. Executive Order 11988 states ''agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in the land.''

(d) *Additional Notification Requirement.* (1) Final Notice—Where it is not possible to avoid an impact to a floodplain or wetland and after all practicable mitigation measures have been identified and agreed to by the prospective applicant, a final notice of the proposed action must be published. This notice will either be part of the notice required for the completion of a Class II assessment or a separate notice if a Class I assessment or an EIS has been completed for the action. The notice will be published and distributed in the manner specified in §1940.331 of this subpart and contain the following information.

(a) A description of the proposd action, its location, and the surrounding area;

(b) A description of the floodplain or wetland impacts and the mechanisms to be used to mitigate them;

(c) A statement of why the proposed action must be located in a floodplain or a wetland;

(d) A description of all significant facts considered in making this determination;

(e) A statement indicating whether the actions conform to applicable State or local floodplain protection standards; and

(f) A statement listing other involved agencies and individuals.

(2) Private Party Notification—For all actions to be located in floodplains or wetlands in which a private party is participating as an applicant, purchaser, or financier, it shall be the responsibility of the approving official to inform in writing all such parties of the hazards associated with such locations.

4. *The Relationship of the Executive Orders to the National Flood Insurance Program.* The National Flood Insurance Program establishes the floodplain management criteria for participating communities as well as the performance standards for building in floodplains so that the structure is protected against flood risks. As such, flood insurance should be viewed only as a financial mitigation measure that must be utilized only after FmHA or its successor agency under Public Law 103–354 determines that there is no practicable alternative for avoiding construction in the floodplain and that all practicable mitigation measures have been included in the proposal. That is, for a proposal to be located in the floodplain, it is not sufficient simply to require insurance. The Agency's flood insurance requirements are explained in subpart B of part 1806 of this chapter (FmHA Instruction 426.2). It should be understood that an applicant proposing to build in the floodplain is not even eligible for FmHA or its successor agency under Public Law 103–354 financial assistance unless the project area is participating in the National Flood Insurance Program.

[53 FR 36262, Sept. 19, 1988]

EXHIBIT D TO SUBPART G OF PART 1940—IMPLEMENTATION PROCEDURES FOR THE ENDANGERED SPECIES ACT

1. FmHA or its successor agency under Public Law 103–354 shall implement the consultation procedures required under Section 7 of the Endangered Species Act as specified

in 50 CFR 402. It is important to note that these consultation procedures apply to the disposal of real property by FmHA or its successor agency under Public Law 103–354 and to all FmHA or its successor agency under Public Law 103–354 applications for financial assistance and subdivision approval, including those applications which are exempt from environmental assessments. (See §1940.310.) Unless repeated in this paragraph, the definitions for the terms utilized are found in 50 CFR 402.02.

2. State Directors shall ensure that State, District, and County Offices maintain current publications of listed and proposed species as well as critical habitats found in their respective jurisdictions.

3. When an application to FmHA or its successor agency under Public Law 103–354 involves financial assistance or permit approval from another Federal agency(s), the FmHA or its successor agency under Public Law 103–354 reviewer shall work with the other Agency to determine a lead Agency for the consultation process. When FmHA or its successor agency under Public Law 103–354 is not the lead Agency, the reviewer shall ensure that the lead Agency informs the approporiate Area Manager, U.S. Fish and Wildlife Service (FWS), or Regional Director, National Marine Fisheries Service (NMFS), of FmHA or its successor agency under Public Law 103–354's involvement.

4. Each disposal action, application for financial assistance or subdivision approval shall be reviewed by the FmHA or its successor agency under Public Law 103–354 official responsible for completing environmental assessments in order to determine if the proposal either may affect a listed species or critical habitat or is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a proposed critical habitat.

a. For applications subject to environmental assessments, this review shall be accomplished as part of the assessment.

b. For those applications that are excluded from an environmental assessment, this review shall be documented as part of Form FmHA or its successor agency under Public Law 103–354 1940–22, ''Environmental Checklist For Categorical Exclusions,'' and shall be accomplished as early as possible after receipt of the application and prior to approval of the application.

c. For applications subject to an environmental impact statement, FmHA or its successor agency under Public Law 103–354 shall request from the Area Manager, FWS, and the Regional Director, NMFS, a list of the proposed and listed species that may be in the area of the proposal. Within 30 days, the FWS and NMFS will respond to FmHA or its successor agency under Public Law 103–354 with this list. FmHA or its successor agency under Public Law 103–354 shall then conduct, as part of the process of preparing the draft environmental impact statement, a biological assessment of these species to determine which species are in the area of the proposal and how they may be affected. This biological assessment should be completed within 180 days or a time mutually agreed upon between FmHA or its successor agency under Public Law 103–354 and FWS or NMFS. Upon completion of the biological assessment, if FmHA or its successor agency under Public Law 103–354 determines either that the proposal may affect a listed species or critical habitat or is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat, the formal consultation procedures shall be initiated as specified in paragraph 7b below. To the extent practical, these procedures shall be concluded and their results reflected in the draft EIS. For all draft EISs in which FmHA or its successor agency under Public Law 103–354 determines there will be no effect upon a listed or proposed species or critical habitat and FWS or NMFS indicated the presence of such species upon the initial inquiry, a copy of the draft shall be provided to that agency for review and comment.

5. As indicated in paragraph 4 above, the focus of this review process is to determine if the proposal will affect a listed species or critical habitat or is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of a proposed critical habitat. Because this impact terminology is specific to the Act, it is important to understand its meaning.

a. To jeopardize the continued existence of a species means to engage in a project which reasonably would be expected to reduce the reproduction, numbers, or distribution of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild. The level of reduction necessary to constitute jeopardy would be expected to vary among listed species.

b. The destruction or adverse modification of a critical habitat means a direct or indirect alteration of critical habitat which appreciably diminishes the value of that habitat for survival and recovery of a listed species. Such alterations include but are not limited to those diminishing the following requirements for:

(i) Space for individual and population growth and for normal behavior;

(ii) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(iii) Cover or shelter;

(iv) Sites for breeding, reproduction, or rearing of offspring; and

(v) Habitats that are protected from disturbances or are representative of the geographical distribution of listed species.

6. It is also important to note that the consultation procedures differ when the subject of the consultation is a listed species or critical habitat as opposed to a proposed species or critical habitat. The latter are defined as those that the Secretary of Interior or Commerce are considering for listing and have so proposed through notification in the FEDERAL REGISTER. When listed species or critical habitats are invloved, FmHA or its successor agency under Public Law 103–354 shall initiate formal consultation procedures whenever it determines that a proposed project may affect them, either beneficially or adversely. For proposed species or critical habitats, FmHA or its successor agency under Public Law 103–354 shall first determine if the proposed project is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Whenever this determination is made, FmHA or its successor agency under Public Law 103–354 shall confer with the appropriate agency identified in paragraph 7 of this exhibit and, in so doing, shall focus on (i) determining the status of the listing process, and (ii) attempting to cooperatively develop alternatives or measures for inclusion in the project that avoid or mitigate the identified adverse impacts. The results of this process shall be documented in the environmental review being done for the proposed project and, if this review is an environmental assessment, shall be an important factor in determining the need for an environmental impact statement. No action shall be taken by the approving official on the application unitl the requirement to confer on proposed species or critical habitat has been completed. Paragraphs 7 through 9 of this exhibit outline the formal consultation procedure for listed species or critical habitats.

7. In initiating the review process for a project, the list of species and critical habitats, including proposed, shall be examined to determine the potential for impacts. Projects planned within established communities are less likely to affect listed or proposed species or their critical habitat. Projects to be located in remote areas, heavily forested areas and/or previously undisturbed areas are more likely to affect these species. For projects located in such areas, the reviewer shall, at a minimum, discuss the project's potential impact on listed or proposed species with officials of the appropriate State wildlife protection agency or the Area Manager, FWS, or the Regional Director, NMFS, as appropriate. The latter organization generally has responsibility for marine species. The specific list of species under NMFS's jurisdiction can be found at 50 CFR 222.23(a) and 227.4. Such discussions shall be considered as informal consultations and are not a substitute for the required consultation process outlined below.

a. Whenever the reviewer, after reviewing the list and contacting appropriate experts, formally determines that the proposal will have no effect on a listed or proposed species or its critical habitat, these review procedures are completed, unless new information comes to light as discussed in paragraph 9 of this exhibit, or consultation is requested by the appropriate Area Manager, FWS, or Regional Director, NMFS.

b. If the reviewer determines there may be an effect on a listed species or a critical habitat or is unable to make a clear determination, the reviewer shall so inform the SEC (assuming the reviewer is not the SEC). The latter shall either (i) convey a written request for consultation, along with available information to the appropriate Area Manager, FWS or Regional Director, NMFS, for the Federal region where the proposal will be carried out, or (ii) request Program Support Staff (PSS) to perform such consultation. FmHA or its successor agency under Public Law 103–354 shall initiate this formal consultation process and not the applicant. See paragraph 4.c. of this exhibit for initiating consultation where an environmental impact statement is being done for the application. Until the consultation process is completed, as outlined in 50 CFR 402.04, FmHA or its successor agency under Public Law 103–354 shall not approve the application. Should the need for consultation be identified after application approval, FmHA or its successor agency under Public Law 103–354 shall refrain from making any irreversible or irretrievable commitment of resources which would foreclose the consideration of modifications or alternatives to the identified activity or program.

8. Several possible responses may result from initiation of the formal consultation process with each requiring further specific actions.

a. Whenever the Area Manager, FWS, or Regional Director, NMFS, informs FmHA or its successor agency under Public Law 103–354 that insufficient information exists to conclude the consultation process, the SEC with assistance as feasible from the FWS or NMFS and State sources of expertise shall then obtain additional information and conduct, as needed, biological surveys or studies to determine how the proposal may affect listed species or their critical habitat. The cost and performance of such studies shall be handled in the same manner as in the preparation of an Environmental Impact Statement. (See §1940.336 of this subpart.)

b. Whenever the Area Manager, FWS, or Regional Director, NMFS, responds that the proposal will either promote the conservation of a listed species or is not likely to jeopardize the continued existence of a listed

or proposed species or result in the destruction or adverse modification of its critical habitat, the FmHA or its successor agency under Public Law 103–354 reviewer shall formally make a similar determination, attaching the response as documentation. This concludes the formal consultation process unless new information comes to light as discussed in paragraph 9 of this exhibit.

c. Whenever the results of the consultation process include recommendations by the Area Manager, FWS, or Regional Director, NMFS, for modifications to the project which would enhance the conservation and protection of a listed species or its critical habitat, the State Director shall review these recommendations and require that they be incorporated into the project as either design changes or special conditions to the offer of assistance. If the State Director does not believe the recommendations can be so adopted, the Administrator shall be requested to review the recommendations and to assist in the further resolution of the matter.

d. Whenever the appropriate Area Manager, FWS, or Regional Director, NMFS, determines that the proposal is likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of its critical habitat, the FmHA or its successor agency under Public Law 103–354 applicant shall be so informed and the project denied on this basis. However, if the State Director believes that funding or approval of the application is (i) of national, regional, or great local significance, and (ii) that there are no reasonable and prudent alternatives to avoiding the listed species impact, the State Director can request the Administrator, through PSS, to review the proposal and the results of the consultation process. Based upon this review, the Administrator shall either inform the State Director that a request for an exemption from section 7 of the Endangered Species Act is not warranted and the application shall be denied or, if the Administrator believes it is warranted, shall request an exemption from the Endangered Species Committee established by section 7(e) of the Act. No action shall be taken by the State Director on the application until the Administrator informs the State Director of the results of the exemption request.

9. Once completed, the consultation process shall be reinitiated by FmHA or its successor agency under Public Law 103–354 or upon request of the appropriate Area Manager, FWS, or Regional Director, NMFS, if:

a. New information or modification of the proposal reveals impacts that may affect listed or proposed species or their habitats; or

b. A new species is listed that may be affected by the proposal.

10. In completing the above compliance procedures, particularly when consulting with the referenced agencies, formally or informally, the preparer of the environmental review document will request information on whether any Category I or Category II species may be present within the project area. These are candidate species; they are presently under consideration for listing under section 4 of the Endangered Species Act. Category I species are those for which FWS currently has substantial date on hand to support the biological appropriateness of proposing to list the species as endangered or threatened. Currently data are being gathered concerning essential habitat needs and, for some species, data concerning the precise boundaries of critical habitat designations. Development and publication of proposed rules on such species is anticipated. Category II comprises species for which information now in the possession of the FWS indicates that proposing to list the species as endangered or threatened is possibly appropriate but for which conclusive data on biological vulnerability and threat(s) are not currently available to presently support proposed rules. Whenever a Category I or II species may be affected, the preparer of the environmental review document will determine if the proposed project is likely to jeopardize the continued existence of the species. Whenever this determination is made, the same compliance procedures specified in paragraph 6 of this exhibit for a proposed species will be followed. The purpose of the requirements of this paragraph is to comply with the National Environmental Policy Act as well as Departmental Regulation 9500–4, Fish and Wildlife Policy, which specifies that USDA agencies will avoid actions which may cause a species to become threatened or endangered.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 36266, Sept. 19, 1988]

EXHIBIT E TO SUBPART G OF PART 1940—IMPLEMENTATION PROCEDURES FOR THE WILD AND SCENIC RIVERS ACT

1. Each application for financial assistance or subdivision approval as well as the proposed disposal of real property by FmHA or its successor agency under Public Law 103–354 shall be reviewed to determine if it will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System, designated for potential addition to the system, or identified in the Nationwide Inventory prepared by the National Park Service (NPS) in the Department of the Interior. The Nationwide Inventory identifies those river segments that, after preliminary review, appear to qualify for inclusion in the system. (For purposes of this subpart, river segments in the Nationwide Inventory

shall be treated the same as segments within the system with the exception of paragraph 8.) For applications subject to environmental assessments, the review shall be accomplished as part of the assessment. For applications that are excluded from an environmental assessment, this review shall be documented as part of Form FmHA or its successor agency under Public Law 103–354 1940–22, ''Environmental Checklist For Categorical Exclusions,'' within the reviewing office and shall be accomplished as early as possible after receipt of the application and prior to approval of the application. The FmHA or its successor agency under Public Law 103–354 official responsible for completing the environmental assessment shall accomplish this review. (See §1940.316 of this subpart.)

2. In order to effectively implement this review, State Directors shall ensure that State, District and County Offices maintain current listings of rivers within their respective States that are included in or designated for potential addition to the system as well as those identified in the Nationwide Inventory prepared by NPS.

3. For applications for water resources projects, as defined in §1940.302(i) of this subpart, the purpose of this review shall be to determine whether the proposal would have a direct and adverse effect on the values which served as the basis for the river's inclusion in the system or designation for potential addition. For other applications, the purpose of the review shall be to determine if the proposal would invade the river area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area. To make these determinations, the reviewer shall consult with the appropriate regional office of NPS if the proposal (i) would be located within one-quarter mile of the banks of the river, (ii) involves withdrawing water from the river or discharging water to the river via a point source, or (iii) would be visible from the river. The appropriate regional office of the Forest Service (FS) shall be contacted under similar circumstances when the effected river is on FS lands. Consultation shall be initiated by a written request for comments on the potential impacts accompanied by a description of the project and its location. The reviewer shall consult in other instances when the likelihood of an impact on a river in the system is identified as part of the environmental review. When the reviewer determines there is no potential impact on such a river, the documentation of this determination concludes the review process, unless reinitiation is required under paragraph 10 of this exhibit. In all other cases, the review is completed as specified below in paragraphs 4 through 9 of this exhibit.

4. If the review is at the County or District Office level, the reviewer can request the State Director (see §1940.307 of this subpart) to perform the above consultation. The State Director can in turn make a similar request of the National Office. If not requested to perform the consultation for applications approvable at the County and District Office levels, the SEC shall be informed whenever NPS or FS advises that there is a potential for an adverse impact on a river within the system or that protective measures need to be included or designed into the proposal. In all cases, consultation shall be initiated by FmHA or its successor agency under Public Law 103–354 and not the applicant. Until consultation is complete, FmHA or its successor agency under Public Law 103–354 shall not approve the application. Should the need for consultation be identified after application approval, FmHA or its successor agency under Public Law 103–354 shall, if still within its power at the time of identification, refrain from making any irreversible or irretrievable commitments of resources which would foreclose the consideration of modifications or alternatives to the project.

5. If NPS or FS advises there is no potential for an adverse effect as described in paragraph 3 of this exhibit, this review process is concluded, unless the need to reinitiate arises. (See paragraph 10 of this exhibit.)

6. Whenever the results of the consultation process include recommendations by NPS or FS to modify the proposal in order to avoid an adverse effect, as described in paragraph 3 above, the State Director shall review these recommendations and require that they be incorporated into the project as either design changes or special conditions to the offer of assistance. If the State Director does not believe that the Regional Director's recommendations can be so adopted, the Administrator shall be requested to review the recommendations and to assist in the further resolution of the matter.

7. If NPS or FS advises that the proposal will have an unavoidable adverse effect, as described in paragraph 3 of this exhibit, on a river segment which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the system, the FmHA or its successor agency under Public Law 103–354 applicant will be informed by the reviewing office and the application denied on this basis. However, if the State Director disagrees with this determination, the State Director can request the Administrator to review the proposal and attempt to further resolve the matter. The specific reasons for disagreement along with supporting documentation must be included in such a request. Based upon a review of this request, the Administrator shall either inform the State Director that no further consultation is warranted and the application shall be denied or shall request the headquarters staff of NPS or FS to further review the matter. No action shall be taken

by the State Director on the application until the Administrator informs the State Director of the results of this further review and consultation.

8. If NPS or FS advises that the proposal will have an adverse effect, as described in paragraph 3 of this exhibit, on a river segment identified in the Nationwide Inventory, the reviewer shall further consult with NPS or FS in order to formulate adequate measures or modification to avoid or mitigate the potential adverse effect. The purposes of such measures or modifications is to ensure that the proposal does not effectively foreclose the designation of a wild, scenic, or recreational river segment. Once concurrence is reached and documented with NPS or FS regarding modifications, the State Director shall require that they be incorporated into the proposal as either design changes or special conditions to the offer of assistance. If the State Director is not able to reach an agreement with NPS or FS on appropriate modifications, the Administrator shall be requested to assist in the further resolution of the matter.

9. If an application involves financial assistance or permit approval from another Federal Agency, the FmHA or its successor agency under Public Law 103–354 reviewer shall work with the other agency(s) to determine a lead Agency for the consultation process. When FmHA or its successor agency under Public Law 103–354 is not the lead Agency, the reviewer shall ensure that the lead Agency informs NPS or FS of FmHA or its successor agency under Public Law 103–354's involvement.

10. Once completed, the consultation process shall be reinitiated by FmHA or its successor agency under Public Law 103–354 if new information or modification of the proposal reveals impacts to a river within the System or Nationwide Inventory.

EXHIBIT F TO SUBPART G OF PART 1940—IMPLEMENTATION PROCEDURES FOR THE COASTAL BARRIER RESOURCES ACT

1. The Act applies to barrier islands that Congress has designated for inclusion in the Coastal Barrier Resources System. Since coastal barriers are only found in East and Gulf Coast States, no other State Offices fall under the requirements of the Act and, therefore, need be concerned with these implementation procedures.

2. On coastal barriers that are included in the system, the Act prohibits any new expenditures or new financial assistance by the Federal Government. There are some limited exceptions that are contained in Section 6 of the Act and listed in exhibit L of this subpart. Consequently, all of the following actions must be reviewed by the environmental reviewer to determine if they would be located within the System: any application for financial assistance, any proposed direct expenditure of FmHA or its successor agency under Public Law 103–354 funds for construction or maintenance purposes, any request for subdivision approval, and any proposed disposal of real property that includes any form of financial assistance or subsidy to the purchaser. The boundaries of the system can be determined by reviewing a series of maps passed with the legislation and distributed by the Department of the Interior. Each State Director is responsible for ensuring that those field offices having components of the system within their jurisdictions are aware of the system's boundaries therein.

3. Exhibit L lists the six categories of exceptions, that is, those actions that may be taken within the system. No exception may be implemented, however, without first consulting with the Secretary of the Interior. It should also be noted that the sixth category is more limited than the first five. Besides meeting the consultation requirement for this sixth category, the sponsoring Agency must also determine whether the proposed exception is consistent with the purposes of the Act.

4. For those actions that are reviewed and determined not to be within the System, the environmental reviewer must document this result by checking the appropriate compliance blocks on either Form FmHA or its successor agency under Public Law 103–354 1940–22, ''Environmental Checklist for Categorical Exclusions,'' or Form FmHA or its successor agency under Public Law 103–354 1940–21, ''Environmental Assessment for Class I actions,'' or by so stating this result in the environmental assessment for Class II Actions (exhibit H), depending upon whichever format is applicable to the action under review.

5. For those actions that would be located within the system, one of the following two steps must be taken:

a. If the environmental reviewer concludes that the action does not meet the criteria for an exception, as listed in exhibit L, the reviewer shall so inform the approving official and a final determination made in the manner indicated in §1940.316 of this subpart. If this determination is consistent with the environmental reviewer's conclusion, the action must be denied by the approving official and the affected applicant or party informed of the reason for denial. If it is determined that the action may qualify for an exception, the steps identified in Item b immediately below must be implemented prior to a decision on this question.

b. If the environmental reviewer concludes that the proposed action may meet the exception criteria, the approving official must be so informed. Whenever the approving official agrees or makes a similar determination as a result of the review conducted in Item a immediately above, consultation shall be

initiated with the Secretary of the Interior by either the State Director or the Administrator for a National Office activity. FmHA or its successor agency under Public Law 103–354 shall request the Secretary's views as to whether the exception criteria are met and shall provide the Secretary with the following information:

(1) A detailed description of the action and its location;

(2) A description of the affected environment within the System and the impacts of the proposed action;

(3) The applicable exception criteria and FmHA or its successor agency under Public Law 103–354's reasons for believing they apply to this action; and

(4) If a Section 6(a)(6) exception is claimed, FmHA or its successor agency under Public Law 103–354's reasons for believing the action to be consistent with the purposes of the Act.

Should the Secretary concur in the exception criteria being met, that portion of the environmental assessment relating to compliance with the Act shall be completed and the corresponding documentation attached. Should the Secretary not concur, a final decision on the approval or denial of the action must be made by the Administrator.

EXHIBIT G TO SUBPART G OF PART 1940 [RESERVED]

EXHIBIT H TO SUBPART G OF PART 1940—ENVIRONMENTAL ASSESSMENT FOR CLASS II ACTIONS

In completing this assessment, it is important to understand the comprehensive nature of the impacts which must be analyzed. Consideration must be given to all potential impacts associated with the construction of the project, its operation and maintenance, the operation of all identified primary beneficiaries, and the attainment of the project's major objectives, whether they be an increased housing stock, community improvement, economic development, or greater agricultural productivity. This last category, the attainment of the project's major objectives, often induces or supports changes in population densities, land uses, community services, transportation systems and resource consumption. The scope of the assessment is broadened even further when there are related activities involved. The impacts of these activities must also be assessed.

The preparer will consult as indicated in §1940.318(b) of this subpart with appropriate experts from Federal, State, and local agencies, universities, and other organizations or groups whose views could be helpful in the assessment of potential impacts. In so doing, each discussion which is utilized in reaching a conclusion with respect to the degree of an impact will be summarized in the assessment as accurately as possible and include the name, title, phone number, and organization of the individual contacted, plus the date of contact. Related correspondence should be attached to the assessment.

The FmHA or its successor agency under Public Law 103–354 environmental assessment shall be prepared in the following format. It shall address the listed items and questions and contain as attachments the indicated descriptive materials, as well as the environmental information submitted by the applicant, Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information.''

The assessment has been designed to cover the wide variety of projects and environments with which the Agency deals. Consequently, not every issue or potential impact raised in the assessment may be relevant to each project. The purpose of the format is to give the preparer an understanding of a standard range of impacts, environmental factors, and issues which may be encountered. In preparing an assessment, each topic heading identified by a Roman numeral and each environmental factor listed under topic heading IV, such as air quality, for example, must be addressed.

The amount of analysis and material that must be provided will depend upon the type and size of the project, the environment in which it is located, and the range and complexity of the potential impacts. The amount of analysis and detail provided, therefore, must be commensurate with the magnitude of the expected impact. The analysis of each environmental factor (i.e., water quality) must be taken to the point that a conclusion can be reached and supported concerning the degree of the expected impact with respect to that factor.

For example, a small community center may not require detailed information on air emissions or solid waste management, but an industrial facility would. Similarly, an irrigation project for a farming operation would concentrate on such factors as water quality and fish and wildlife, rather than land use changes. The extension of a water or sewer system or the approval of a subdivision, on the other hand, would have to give close attention to all factors, with potential land use changes being a particularly important one.

I. PROJECT DESCRIPTION AND NEED

Identify the name, project number, location, and specific elements of the project along with their sizes, and, when applicable, their design capacities. Indicate the purpose of the project, FmHA or its successor agency under Public Law 103–354's position regarding the need for it, and the extent or area of land to be considered as the project site.

II. PRIMARY BENEFICIARIES AND RELATED ACTIVITIES

Identify any existing businesses or major developments that will benefit from the project and those which will expand or locate in the area because of the project. Specify by name, product, service, and operations involved.

Identify any related activities which are defined as interdependent parts of a FmHA or its successor agency under Public Law 103–354 action. Such undertakings are considered interdependent parts whenever they either make possible or support the FmHA or its successor agency under Public Law 103–354 action or are themselves induced or supported by the FmHA or its successor agency under Public Law 103–354 action or another related activity. These activities may have been completed in the very recent past and are now operational, or they may reasonably be expected to be accomplished in the near future. Related activities may or may not be federally permitted or assisted. When they are, identify the involved Federal Agency(s).

In completing the remainder of the assessment, it must be remembered that the impacts to be addressed are those which stem from the project, the primary beneficiaries, and the related activities.

III. DESCRIPTION OF PROJECT AREA

Describe the project site and its present use. Describe the surrounding land uses; indicate the directions and distances involved. The extent of the surrounding land to be considered depends on the extent of the impacts of the project, its related activities, and the primary beneficiaries. Unique or sensitive areas must be pointed out. These include residential, schools, hospitals, recreational, historical sites, beaches, lakes, rivers, parks, floodplains, wetlands, dunes, estuaries, barrier islands, natural landmarks, unstable soils, steep slopes, aquifer recharge areas, important farmlands and forestlands, prime rangelands, endangered species habitats or other delicate or rare ecosystems.

Attach adequate location maps of the project area, as well as (1) a U.S. Geological Survey ''15 minute'' (''7½ minute,'' if available,) topographic map which clearly delineates the area and the location of the project elements, (2) the Department of Housing and Urban Development's floodplain map(s) for the project area, (3) site photos, (4), if completed, a standard soil survey for the project, and (5), if available, an aerial photograph of the site. When necessary for descriptive purposes or environmental analysis, include land use maps or other graphic information. All graphic materials shall be of high quality resolution.

IV. ENVIRONMENTAL IMPACT

1. Air Quality. Discuss, in terms of the amounts and types of emissions to be produced, all aspects of the project including beneficiaries' operations and known indirect effects (such as increased motor vehicle traffic) which will affect air quality. Indicate the existing air quality in the area. Indicate if topographical or meteorological conditions hinder or affect the dispersal of air emissions. Evaluate the impact on air quality given the types and amounts of projected emissions, the existing air quality, and topographical and meterological conditions. Discuss the project's consistency with the State's air quality implementation plan for the area, the classification of the air quality control region within which the project is located, and the status of compliance with air quality standards within that region. Cite any contacts with appropriate experts and agencies which must issue necessary permits.

2. Water Quality. Discuss, in terms of amounts and types of effluents, all aspects of the project including primary beneficiaries' operations and known indirect effects which will affect water quality. Indicate the existing water quality of surface and/or underground water to be affected. Evalute the impacts of the project on this existing water quality. Indicate if an aquifer recharge area is to be adversely affected. If the project lies within or will affect a sole source aquifer recharge area as designated by EPA, contact the appropriate EPA regional office to determine if its review is necessary. If it is, attach the results of its review.

Indicate the source and available supply of raw water and the extent to which the additional demand will affect the raw water supply. Describe the wastewater treatment system(s) to be used and indicate their capacity and their adequacy in terms of the degree of treatment provided. Discuss the characteristics and uses of the receiving waters for any sources of discharge. If the treatment systems are or will be inadequate or overloaded, describe the steps being taken for necessary improvements and their completion dates. Compare such dates to the completion date of the FmHA or its successor agency under Public Law 103–354 project. Analyze the impacts on the receiving water during any estimated period of inadequate treatment.

Discuss the project's consistency with the water quality planning for the area, such as EPA's Section 208 area-wide waste treatment management plan. Discuss the project's consistency with applicable State water quality standards to include a discussion of whether or not the project would either impair any such standard or fail to meet antidegradation requirements for point or

nonpoint sources. Describe how surface runoff is to be handled and the effect of erosion on streams.

Evaluate the extent to which the project may create shortages for or otherwise adversely affect the withdrawal capabilities of other present users of the raw water supply, particularly in terms of possible human health, safety, or welfare problems.

For projects utilizing a groundwater supply, evaluate the potential for the project to exceed the safe pumping rate for the aquifer to the extent that it would (1) adversely affect the pumping capability of present users, (2) increase the likelihood of brackish or saltwater intrusion, thereby decreasing water quality, or (3) substantially increase surface subsidence risks.

For projects utilizing a surface water supply, evaluate the potential for the project to (1) reduce flows below the minimum required for the protection of fish and wildlife or (2) reduce water quality standards below those established for the stream classification at the point of withdrawal or the adjacent downstream section.

Cite contacts with appropriate experts and agencies that must issue necessary permits.

3. Solid Waste Management. Indicate all aspects of the project including primary beneficiaries' operations, and known indirect effects which will necessitate the disposal of solid wastes. Indicate the kinds and expected quantities of solid wastes involved and the disposal techniques to be used. Evaluate the adequacy of these techniques especially in relationship to air and water quality. Indicate if recycling or resource recovery programs are or will be used. Cite any contacts with appropriate experts and agencies that must issue necessary permits.

4. Land Use. Given the description of land uses as previously indicated, evaluate (a) the effect of changing the land use of the project site and (b) how this change in land use will affect the surrounding land uses and those within the project's area of environmental impact. Particularly address the potential impacts to those unique or sensitive areas discussed under Section III, Description of Project Area, which are not covered by the specific analyses required in Sections V–XI. Describe the existing land use plan and zoning restrictions for the project area. Evaluate the consistency of the project and its impacts on these plans. For all actions subject to the requirements of exhibit M of this subpart indicate (a) whether or not highly erodible land, wetland or converted wetland is present, (b) if any exemption(s) applies to the requirements of exhibit M, (c) the status of the applicant's eligibility for an FmHA or its successor agency under Public Law 103–354 loan under exhibit M and (d) any steps the applicant must take prior to loan approval to retain or retain its eligibility. Attach a completed copy of Form SCS-CPA-26, ''Highly Erodible Land and Wetland Conservation Determination,'' for the action.

5. Transportation. Describe available facilities such as highways and rail. Discuss whether the project will result in an increase in motor vehicle traffic and the existing roads' ability to safely accommodate this increase. Indicate if additional traffic control devices are to be installed. Describe new traffic patterns which will arise because of the project. Discuss how these new traffic patterns will affect the land uses described above, especially residential, hospitals, schools, and recreational. Describe the consistency of the project's transportation impacts with the transportation plans for the area and any air quality control plans. Cite any contact with appropriate experts.

6. Natural Environment. Indicate all aspects of the project including construction, beneficiaries' operations, and known indirect effects which will affect the natural environment including wildlife, their habitats, and unique natural features. Cite contacts with appropriate experts. If an area listed on the National Registry of Natural Landmarks may be affected, consult with the Department of Interior and document these consultations and any agreements reached regarding avoidance or mitigation of potential adverse impacts.

7. Human Population. Indicate the number of people to be relocated and arrangements being made for this relocation. Discuss how impacts resulting from the project such as changes in land use, transportation changes, air emissions, noise, odor, etc. will affect nearby residents and users of the project area and surrounding areas. Discuss whether the proposal will accommodate any population increases and, if so, describe the potential impacts of these increases on the area's public and community services such as schools, health care, social services, and fire protection. Cite contacts with appropriate experts.

8. Construction. Indicate the potential effects of construction of the project on air quality, water quality, noise levels, solid waste disposal, soil erosion and siltation. Describe the measures that will be employed to limit adverse effects. Give particular consideration to erosion, stream siltation, and clearing operations.

9. Energy Impacts. Indicate the project's and its primary beneficiaries' effects on the area's existing energy supplies. This discussion should address not only the direct energy utilization, but any major indirect utilization resulting from the siting of the project. Describe the availability of these supplies to the project site. Discuss whether the project will utilize a large share of the remaining capacity of an energy supply or will create a shortage of such supply. Discuss any steps to be taken to conserve energy.

10. Discuss any of the following areas which may be relevant: noise, vibrations, safety, seismic conditions, fire-prone locations, radiation, and aesthetic considerations. Cite any disucssion with appropriate experts.

V. COASTAL ZONE MANAGEMENT ACT*

Indicate if the project is within or will impact a coastal area defined as such by the State's approved Coastal Zone Management Program. If so, consult with the State agency responsible for the Program to determine the project's consistency with it. The results of this coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings (Item XXI below).

VI. COMPLIANCE WITH ADVISORY COUNCIL ON HISTORIC PRESERVATION'S REGULATIONS

In this Section, the environmental reviewer shall detail the steps taken to comply with the above regulations as specified in subpart F of part 1901 of this chapter. First, indicate that the National Register of Historic Places, including its monthly supplements, has been reviewed and whether there are any listed properties located within the area to be affected by the project. Second, indicate the steps taken such as historical/archeological surveys to determine if there are any properties eligible for listing located within the affected area. Summarize the results of the consultation with the State Historic Preservation Officer (SHPO) and attach appropriate documentation of the SHPO's views. Discuss the views of any other experts contacted. Based upon the above review process and the views of the SHPO, state whether or not an eligible or listed property will be affected.

If there will be an effect, discuss all of the steps and protective measures taken to complete the advisory Council's regulations. Describe the affected property and the nature of the effect. Attach to the assessment the results of the coordination process with the Advisory Council on Historic Preservation.

VII. COMPLIANCE WITH THE WILD AND SCENIC RIVERS ACT

Indicate whether the project will affect a river or portion of it which is either included in the National Wild and Scenic Rivers System or designated for potential addition to the system. This analysis shall be conducted through discussions with the appropriate regional office of the National Park Service or the Forest Service when its lands are involved, as well as the appropriate State agencies having implementation authorities. See exhibit E for specific implementation instructions for this Act. A summary of discussions held or any required formal coordination shall be included in the assessment and considered in completing the environmental impact determination and environmental findings (Item XXI below).

VIII. COMPLIANCE WITH THE ENDANGERED SPECIES ACT

Indicate whether the project will either (1) affect a listed endangered or threatened species or critical habitat or (2) adversely affect a proposed critical habitat for an endangered or threatened species or jeopardize the continued existence of a proposed endangered or threatened species. This analysis will be conducted in consultation with the Fish and Wildlife Service and the National Marine Fisheries Service, when appropriate. Any formal or informal consultations conducted with these agencies as well as any State wildlife protection agency will also address impacts to Category I and Category II species. See exhibit D of this subpart for specific implementation instructions.

The results of any required coordination shall be included in the assessment along with any completed biological opinion and mitigation measures to be required for the project. These factors shall be considered in completing the environmental impact determination.

IX. COMPLIANCE WITH FARMLAND PROTECTION POLICY ACT AND DEPARTMENTAL REGULATION 9500–3, LAND USE POLICY

Indicate whether the project will either directly or indirectly convert an important land resource(s) identified in the Act or Departmental Regulation, other than floodplains or wetlands which should be addressed below in Item X of this exhibit. If a conversion may result, determine if there is a practicable alternative to avoiding it. If there is no such alternative, determine whether all practicable mitigation measures are included in the project. Document as an attachment these determinations and the steps taken to inform the public, locate alternatives, and mitigate potential adverse impacts. See exhibit C of this subpart for specific implementation guidance.

X. COMPLIANCE WITH EXECUTIVE ORDER 11988, FLOODPLAIN MANAGEMENT, AND EXECUTIVE ORDER 11990, PROTECTION OF WETLANDS

Indicate whether the project is either located within a 100-year floodplain (500-year floodplain for a critical action) or a wetland or will impact a floodplain or wetland. If so, determine if there is a practicable alternative project or location. If there is no such alternative, determine whether all practicable mitigation measures are included in the project and document as an attachment these determinations and the steps taken to

*Complete only if coastal or Great Lakes State.

inform the public, locate alternatives, and mitigate potential adverse impacts. See the U.S. Water Resources Council's *Floodplain Management Guidelines* for more specific guidance as well as exhibit C of this subpart.

XI. COMPLIANCE WITH COASTAL BARRIER RESOURCES ACT

Indicate whether the project is located within the Coastal Barrier Resources System. If so, indicate whether or not the project meets an exception criteria under the Act and the results of any consultation with the Secretary of the Interior regarding its qualification as an exception. See exhibit F of this subpart for specific implementation instructions as well as exhibit L for a listing of the exception criteria. (Those States not having any components of the system within their jurisdiction need not reference this item in their assessments.)

XII. STATE ENVIRONMENTAL POLICY ACT

Indicate if the proposed project is subject to a State environmental policy act or similar regulation. Summarize the results of compliance with these requirements and attach available documentation. (See §1940.328 of this subpart for further guidance.)

XIII. CONSULTATION REQUIREMENTS OF EXECUTIVE ORDER 12372, INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

Attach the comments of State, regional, or local agencies (if this review process is required for the project) and respond to all comments that deal with the subject matters discussed in this assessment format or are otherwise of an environmental nature.

XIV. ENVIRONMENTAL ANALYSIS OF PARTICIPATING FEDERAL AGENCY

Indicate if another Federal Agency is participating in the project either through the provision of additional funds, a companion project, or a permit review authority. Summarize the results of the involved Agency's environmental impact analysis and attach available documentation. (See §1940.318(d) of this subpart for further guidance.)

XV. REACTION TO PROJECT

Discuss any negative comments or public views raised about the project and the consideration given to these comments. Indicate whether a public hearing or public information meeting has been held either by the applicant or FmHA or its successor agency under Public Law 103–354 to include a summary of the results and any objections raised. Indicate any other examples of the community's awareness of the project, such as newspaper articles or public notifications.

XVI. CUMULATIVE IMPACTS

Summarize the cumulative impacts of this project and the related activities. Give particular attention to land use changes and air and water quality impacts. Summarize the results of the environmental impact analysis done for any of these related activities and/or your discussion with the sponsoring agencies. Attach available documentation of the analysis.

XVII. ADVERSE IMPACT

Summarize the potential adverse impacts of the proposal as pointed out in the above analysis.

XVIII. ALTERNATIVES

Discuss the feasibility of alternatives to the project and their environmental impacts. These alternatives should include (a) alternative locations, (b) alternative designs, (c) alternative projects having similar benefits, and (d) no project. If alternatives have been fully discussed above in any of Items VI through X, simply reference that discussion.

XIX. MITIGATION MEASURES

Describe any measures which will be taken or required by FmHA or its successor agency under Public Law 103–354 to avoid or mitigate the identified adverse impacts. Analyze the environmental impacts and potential effectiveness of the mitigation measures. Such measures shall be included as special requirements or provisions to the offer of financial assistance or other appropriate approval document, if this action does not involve financial assistance.

XX. CONSISTENCY WITH FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 ENVIRONMENTAL POLICIES

Discuss the project's consistencies and inconsistencies with the Agency's environmental policies and the State Office's Natural Resource Management Guide. See §§1940.304 and 1940.305 for a discussion of these policies and exhibit B for a discussion of the guide.

XXI. ENVIRONMENTAL DETERMINATIONS

The following recommendations shall be completed:

a. Based on an examination and review of the foregoing information and such supplemental information attached hereto, I recommend that the approving official determine that this project will have (#) a significant effect on the quality of the human environment and an Environmental Impact Statement must be prepared; will not have (#) a significant effect on the quality of the human environment.

b. I recommend that the approving official make the following compliance determinations for the below-listed environmental requirements.

Not in compliance	In compliance	
.....	.....	Clean Air Act.
.....	.....	Federal Water Pollution Control Act.
.....	.....	Safe Drinking Water Act—Section 1424(e).
.....	.....	Endangered Species Act.
.....	.....	Coastal Barrier Resources Act.
.....	.....	Coastal Zone Management Act—Section 307(c) (1) and (2).
.....	.....	Wild and Scenic Rivers Act.
.....	.....	National Historic Preservation Act.
.....	.....	Archeological and Historic Preservation Act.
.....	.....	Subpart B, Highly Erodible Land Conservation
.....	.....	Subpart C, Wetland Conservation, of the Food Security Act.
.....	.....	Executive Order 11988, Floodplain Management.
.....	.....	Executive Order 11990, Protection of Wetlands.
.....	.....	Farmland Protection Policy Act.
.....	.....	Departmental Regulation 9500–3, Land Use Policy.
.....	.....	State Office Natural Resource Management Guide.

c. I have reviewed and considered the types and degrees of adverse environmental impacts identified by this assessment. I have also analyzed the proposal for its consistency with FmHA or its successor agency under Public Law 103–354 environmental policies, particularly those related to important farmland protection, and have considered the potential benefits of the proposal. Based upon a consideration and balancing of these factors, I recommend from an environmental standpoint that the project

_____ be approved.
_____ not be approved because of the attached reasons.

Signature of preparer* _____
Date _____
Title _____
State Environmental Coordinator's Review (When required by §1940.316 of this subpart)

*See §1940.316 of this subpart for listing of officials responsible for preparing assessment.

I have reviewed this environmental assessment and supporting documentation. Following are my positions regarding its adequacy and the recommendations reached by the preparer. For any matter in which I do not concur, my reasons are attached as exhibit ___.

Do not concur	Concur	
.....	.....	Adequate Assessment.
.....	.....	Environmental Impact Determination.
.....	.....	Compliance Determinations.
.....	.....	Project Recommendation.

Signature of State Environmental Coordinator _____
Date _____

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 36266, Sept. 19, 1988]

EXHIBIT I TO SUBPART G OF PART 1940—FINDING OF NO SIGNIFICANT ENVIRONMENTAL IMPACT

SUBJECT: Finding of No Significant Environmental Impact and Necessary Environmental Findings for (insert name, location, and any identification number of project).

TO: Project File.

The attached environmental assessment has been completed for the subject proposal by the FmHA or its successor agency under Public Law 103–354 environmental reviewer. After reviewing the assessment and the supporting materials attached to it, I find that the subject proposal will not significantly affect the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

I also find that the assessment properly documents the proposal's status of compliance with the environmental laws and requirements listed therein.

Insert signature and title of approving official as specified in §1940.316 of this subpart. _____(Date).

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 36266, Sept. 19, 1988]

EXHIBIT J TO SUBPART G OF PART 1940—LOCATIONS AND TELEPHONE NUMBERS OF FEDERAL EMERGENCY MANAGEMENT ADMINISTRATION'S REGIONAL OFFICES

Federal region	Location	FTS No.*	Commercial No.
I	Boston, MA	223–4741	(617) 223–4741
II	New York, NY	264–8980	(212) 264–8980
III	Philadelphia, PA	597–9416	(215) 597–9416

Federal region	Location	FTS No.*	Commercial No.
IV	Atlanta, GA	257–2400	(404) 881–2400
V	Chicago, IL	353–1500	(312) 353–1500
VI	Dallas, TX	749–9201	(817) 387–5811
VII	Kansas City, MO	758–5912	(816) 374–5912
VIII	Denver, CO	234–2553	(303) 234–2553
IX	San Francisco, CA	556–8794	(415) 556–8794
X	Seattle, WA	396–0284	(206) 481–8800

*This is the main number for the regional office. For floodplain information, ask for the Natural and Technological Hazards Division.

EXHIBIT K TO SUBPART G OF PART 1940—LOCATIONS AND TELEPHONE NUMBERS OF U.S. FISH AND WILDLIFE SERVICE'S WETLAND COORDINATORS

The U.S. Fish and Wildlife Service (FWS) is presently preparing the National Wetlands Inventory. Each regional office of the FWS has named a staff member as a Wetland Coordinator. These individuals can provide updated information concerning existing State and local wetland surveys and Federal inventories. Listed below are the FWS regional offices and their areas of responsibility.

Region I

Portland, OR—FTS 429–6154; Commercial (503) 231–6154.

Areas Covered: California, Hawaii, Idaho, Nevada, Oregon, Washington, U.S. Pacific Trust, Territories and Possessions.

Region II

Albuquerque, NM—FTS 474–3152; Commercial (505) 766–2914.

Areas Covered: Arizona, New Mexico, Oklahoma, Texas.

Region III

Twin Cities, MN—FTS 725–3593; Commercial (612) 725–3593.

Areas Covered: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region IV

Atlanta, GA—FTS 242–6343; Commercial (404) 221–6343.

Areas Covered: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Panama Canal Zone, Puerto Rico, South Carolina, Tennessee, Virgin Islands.

Region V

Newton Corner, MA—FTS 829–9379; Commercial (617) 965–5100, Ext. 379.

Areas Covered: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.

Region VI

Denver, CO—FTS 234–5586; Commercial (303) 234–5586.

Areas Covered: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming.

Alaska Area Office

Anchorage, AK—Commercial (907) 263–3403.

National Office

St. Petersburg, FL—FTS 826–3624; Commercial (813) 893–3624.

EXHIBIT L TO SUBPART G OF PART 1940—EXCEPTIONS TO RESTRICTIONS OF COASTAL BARRIER RESOURCES ACT

*Section 6 Exceptions**

(a) Notwithstanding section 5, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures or financial assistance available within the Coastal Barrier Resources System for—

(1) Any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body;

(2) The maintenance of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements;

(3) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;

(4) Military activities essential to national security;

(5) The construction, operation, maintenance, and rehabilitation of Coast Guard facilities and access thereto; and

(6) Any of the following actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act:

(A) Projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

(B) The establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

(C) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C.

*Quoted from section 6 of the Act, Pub. L. 97–348.

4601–4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1452 *et seq.*).

(D) Scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development and applications.

(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 (42 U.S.C. 5145 and 5146) and section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.

(F) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities.

(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

(b) For purposes of subsection (a)(2), a channel improvement or a related structure shall be treated as an existing improvement or an existing related structure only if all, or a portion, of the moneys for such improvement or structure was appropriated before the date of the enactment of this Act.

EXHIBIT M TO SUBPART G OF PART 1940—IMPLEMENTATION PROCEDURES FOR THE CONSERVATION OF WETLANDS AND HIGHLY ERODIBLE LAND AFFECTING FARMER PROGRAM LOANS AND LOANS TO INDIAN TRIBES AND TRIBAL CORPORATIONS

1. *Background.* This exhibit implements the requirements of Subtitle B, Highly Erodible Land Conservation, and Subtitle C, Wetland Conservation, of Title XII of the Food Security Act of 1985, Pub. L. 99–198. The purposes of these Subtitles are to: Reduce soil loss due to wind and water erosion; protect the Nation's long term capability to produce food and fiber; reduce sedimentation; improve water quality; assist in preserving the Nation's wetlands; create better habitat for fish and wildlife through improved food and cover; and curb production of surplus commodities by removing certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland.

2. *Applicability.* The provisions of this exhibit apply to insured and guaranteed Farmer Program loans and loans to Indian Tribes and Tribal Corporations, subordinations, transfers and assumptions of such loans and leases and credit sales of inventory property. For the purpose of this exhibit, ''Farmer Program loans'' means Farm Operating Loans, Farm Ownership Loans, Emergency Loans, and Soil and Water Loans. As used in this exhibit, the word loan is meant to include guarantee as well. Applicant means an applicant for either an insured or guaranteed loan and borrower means a recipient of either an insured or guaranteed loan.

3. *FmHA or its successor agency under Public Law 103–354 prohibited activities.* Unless otherwise exempted by the provisions of this exhibit, the proceeds of any Farmer Program loan or loan to an Indian Tribe or Tribal Corporation made or guaranteed by FmHA or its successor agency under Public Law 103–354 will not be used either (a) for a purpose that will contribute to excessive erosion of highly erodible land, or (b) for a purpose that will contribute to conversion of wetlands to produce an agricultural commodity. (See §12.2(a)(1) of subpart A of part 12 of subtitle A of title 7, which is attachment 1 of this exhibit and is available in any FmHA or its successor agency under Public Law 103–354 office, for the definition of an agricultural commodity.) Consequently, any applicant proposing to use loan proceeds for an activity contributing to either such purpose, will not be eligible for the requested loan. Any borrower that uses loan proceeds in a manner that contributes to either such purpose will be in default on the loan.

a. *U.S. Department of Agriculture (USDA) definitions.* In implementing this exhibit, FmHA or its successor agency under Public Law 103–354 will use the USDA's definitions of the terms found at §12.2 of subpart A of part 12 of subtitle A of title 7 (attachment 1 of this exhibit which is available in any FmHA or its successor agency under Public Law 103–354 office).

b. *Highly erodible land conservation.* FmHA or its successor agency under Public Law 103–354 will conclude that excessive erosion of highly erodible land results or would result whenever (1) a field on which highly erodible land is predominant, as determined by the Soil Conservation Service (SCS), is or would be used to produce an agricultural commodity without conformance to a conservation system approved either by SCS or the appropriate conservation district, as evidenced by a statement from SCS, and (2) such field is not exempt from the provisions of this exhibit.

c. *Wetland conservation.* FmHA or its successor agency under Public Law 103–354 will conclude that a conversion of wetlands to produce an agricultural commodity has occurred or will occur whenever, as determined by SCS, (1) a wetland has or will be drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) that makes possible the production of an agricultural commodity without further application of the manipulations described herein if (a) such production

would not have been possible but for such action and (b) before such action such land was wetland and was neither highly erodible land nor highly erodible cropland; and (2) neither the affected wetland nor the activity affecting the wetland is exempt from the provisions of this exhibit.

d. *Use of loan proceeds.* To use loan proceeds for a purpose that contributes to either the excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity means that loan proceeds will or have been used in a way that contributes to either excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity by paying the costs of any of the following:

(1) The purchase of the affected land;

(2) Necessary planning, feasibility, or design studies;

(3) Obtaining any necessary permits;

(4) The purchase, contract, lease or renting of any equipment or materials necessary to carry out the land modification or conversion to include all associated operational costs such as fuel and equipment maintenance costs;

(5) Any labor costs;

(6) The planting, cultivating, harvesting, or marketing of any agricultural commodity produced on nonexempt highly erodible land to include any associated operational or material costs such as fuel, seed, fertilizer, and pesticide costs;

(7) Within the crop year in which the wetland conversion was completed plus the next ten crop years thereafter, the planting, cultivating, harvesting, or marketing of any agricultural commodity produced on the affected land to include any associated operational or materials costs such as fuel, seed, fertilizer and pesticide costs; or

(8) For the same time period as in subparagraph 3d(7) above, any costs associated with using for on-farm purposes an agricultural commodity grown on the affected land.

(9) Additionally, if loan proceeds will be or have been substituted to pay other costs at anytime during the life of the loan so that non-loan funds can be used to pay any of the above costs, it is deemed that loan proceeds will be or have been used for a purpose that contributes to the prohibited activities described in this paragraph.

4. *Prohibited activities under other USDA financial assistance programs.* Unless otherwise exempted, a person becomes ineligible for a variety of USDA financial assistance programs if that person produces in any crop year an agricultural commodity on either a field on which highly erodible land is predominant or a converted wetland. This ineligibility extends to any commodity produced during the crop year that the prohibited action occurs. The programs for which the person would be ineligible include price support payments, farm storage facility loans, disaster payments, crop insurance, payments made for the storage of an agricultural commodity, and payments received under a Conservation Reserve Program Contract. Farmer Program applicants and borrowers and applicants for, and borrowers of, loans to Indian Tribes and Tribal Corporations, therefore, can be affected not only by the FmHA or its successor agency under Public Law 103–354 prohibited activities but also by the broad USDA sweep of the Subtitles B and C restrictions. Should such an applicant rely or plan to rely on any of these other USDA financial assistance programs as a source of funds to repay its FmHA or its successor agency under Public Law 103–354 loan(s) and then fail to meet the other program(s)' eligibility criteria related to wetland or highly erodible land conservation, repayment ability to FmHA or its successor agency under Public Law 103–354 or the lender of and FmHA or its successor agency under Public Law 103–354 guaranteed loan may be jeopardized. Consequently, those applicants who are applying for a loan and those borrowers who receive a loan after the effective date of Subtitles B and C, as designated in part 12 of subtitle A of title 7, and who include in their projected sources of repayment, potential funds from any USDA program subject to some form of Subtitle B or C restrictions will have to demonstrate as part of their applications, and for borrowers, as part of their farm plan of operation, their ability to meet the other program(s)' eligibility criteria. Failure to meet the criteria will require the applicant or borrower either to document an alternative, equivalent source of revenues or, if possible, agree to undertake any steps necessary to gain eligibility for the other program(s). See paragraph 6 of this exhibit for a discussion of such steps.

5. *Applicant's responsibilities.*

a. *Required information.* Every applicant for a Farmer Program loan or a loan to an Indian Tribe or Tribal Corporation will be required to provide the following information and, as applicable, certification as part of the application for financial assistance. An application will not be considered to be complete until this information and certification are provided to FmHA or its successor agency under Public Law 103–354. Once an applicant has provided FmHA or its successor agency under Public Law 103–354 with information from SCS on the presence of any highly erodible land, wetland, or converted wetland this information need not be provided again for a subsequent loan unless there is either a change in the property upon which FmHA or its successor agency under Public Law 103–354 loan proceeds will be applied or a change in the previous information, such as a change in the status of an exemption. There is a continuing responsibility

on FmHA or its successor agency under Public Law 103–354 borrowers using other USDA financial assistance programs for repayment purposes to provide the County Supervisor with an executed copy of any similar certification required by the other USDA agency at the time of each required certification.

(1) A statement from the SCS indicating whether or not the applicant's farm property or properties contain either highly erodible land, wetland, or converted wetland and, if so, whether or not the applicant qualifies for a particular exemption to the provisions of this exhibit and as further detailed in paragraph 11 below. The property or properties will be listed and described in accordance with the Agriculture Stabilization and Conservation Service's (ASCS) farm records system. SCS's execution of Form SCS-CPA-26, ''Highly Erodible Land and Wetland Conservation Determination,'' is necessary to meet this information requirement.

(2) If either highly erodible land, wetland, or converted wetland is present, the applicant's properly executed original or carbon copy of Form AD–1026, ''Highly Erodible Land and Wetland Conservation Certification.''

b. *Required actions.* If at any time during the application review process any of the information or basis for an applicant's certification changes, the applicant (or the lender in the case of a guaranteed loan) must immediately notify FmHA or its successor agency under Public Law 103–354. If an applicant intends to produce an agricultural commodity on a nonexempt field on which highly erodible land is predominant, the applicant must develop a conservation system approved by SCS or the appropriate conservation district, demonstrate that it is or will be in compliance with the system at the time the field is to be used, and provide SCS's concurrence with this position.

6. *FmHA or its successor agency under Public Law 103–354's application review.* The FmHA or its successor agency under Public Law 103–354 County Supervisor will review the information provided by the applicant from SCS regarding the presence of any highly erodible land, wetland, or converted wetland and any possible exemptions and take the actions warranted by the presence of one or more of the circumstances described below. In carrying out these actions, FmHA or its successor agency under Public Law 103–354 will consider the technical decisions rendered by the SCS and the ASCS, as assigned to these agencies by subparts A, B, and C of part 12 of subtitle A of title 7 and further explained in this exhibit, to be final and controlling in the remaining FmHA or its successor agency under Public Law 103–354 decisionmaking process for this exhibit. It must also be understood that the definition of a wetland used by SCS in implementing this exhibit applies only to this exhibit and not to other wetland protection provisions of subpart G of part 1940.

a. *No highly erodible land, wetland, or converted wetland present.* The requested loan can be approved under the provisions of this exhibit and, except for documenting this result in accordance with paragraph 8 of this exhibit, no further action is required.

b. *Converted wetland present.* The County Supervisor will consult with the applicant (and lender, in the case of a guaranteed loan) and the appropriate local office of the ASCS in order to determine if the converted wetland qualifies for the exemption specified in subparagraph c (1) of paragraph 11 of this exhibit. If so, no further action is necessary with respect to the converted wetland except for documenting the result. If the converted wetland does not qualify for an exemption, the County Supervisor will complete one or both of the following steps as the identified circumstances dictate.

(1) Step one. Review both the date that the wetland was converted and the proposed use of loan proceeds in order to determine if loan proceeds will be used for a prohibited activity as defined in subparagraph d of paragraph 3 of this exhibit. If not, the County Supervisor will so document this as specified in paragraph 8 of this exhibit; complete step two immediately below; and, if an insured loan will be approved, notify the applicant in writing, coincident with the transmittal of Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request For Obligation of Funds,'' and by using Form Letter 1940–G–1, ''Notification of The Requirements of exhibit M of FmHA Instruction 1940–G,'' that the loan approval instruments will contain compliance requirements affecting the applicant's converted wetland. If loan proceeds will be used for a prohibited activity, the applicant (and lender, in the case of a guaranteed loan) will be advised of the applicant's ineligibility for the FmHA or its successor agency under Public Law 103–354 loan being requested. The applicant (and lender, in the case of a guaranteed loan) will be advised of any modifications to the application that could cure the ineligibility. Not growing an agricultural commodity on the converted wetland would cure the ineligibility, but the substitution of non-FmHA or its successor agency under Public Law 103–354 funds to grow an agricultural commodity on the converted wetland would not.

(2) Step two. The County Supervisor will review the applicant's sources of loan repayment to determine if they include funds from a USDA financial assistance program(s) subject to wetland conservation restrictions. If so, the County Supervisor will implement the actions in subparagraph e of this paragraph.

c. *Highly erodible land or wetland present.* The County Supervisor will discuss with the

applicant (and lender, in the case of a guaranteed loan) and review the intended uses of the FmHA or its successor agency under Public Law 103–354 loan proceeds as evidenced in any relevant application materials.

(1) *Proceeds to be used for prohibited activity.* If proceeds would be used for a prohibited activity, the applicant (and lender, in the case of a guaranteed loan) will be advised of its ineligibility for the FmHA or its successor agency under Public Law 103–354 loan. The applicant (and lender, in the case of a guaranteed loan) will be informed of any modifications to its application that could cure the ineligibility, including financially feasible eligible loan purposes that could be helpful in implementing a conservation plan or installing a conservation system, should either be an appropriate cure. Substitution of non-FmHA or its successor agency under Public Law 103–354 monies to accomplish the prohibited activity would not cure the ineligibility, but actual elimination of the activity from the applicant's farm plan of operation would.

(2) *Proceeds not to be used for a prohibited activity.* If loan proceeds are not planned to be used for a prohibited activity, the County Supervisor will perform the following tasks:

(a) Document the above determination in the applicant's file as specified in paragraph 8 of this exhibit.

(b) If an insured loan will be approved and the requirements of subparagraph c (2)(c) of this paragraph do not apply, notify the applicant in writing, coincident with the transmittal of Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request For Obligation of Funds,'' and by using Form Letter 1940–G–1, ''Notification of The Requirements of Exhibit M of FmHA Instruction 1940–G,'' that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land and/or wetland.

(c) Review the term of the proposed loan and take the following actions, as applicable.

(i) *Loan term exceeds January 1, 1990, but not January 1, 1995.* If the term of the proposed loan expires within this period and the applicant intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of this exhibit until either 1990 or two years after the SCS has completed a soil survey for the borrower's land, whichever is later, the County Supervisor will determine if it is financially feasible for the applicant, prior to loss of the exemption, to actively apply a conservation plan approved by SCS or the appropriate conservation district. See §12.23 of subpart A of part 12 of subtitle A of title 7, which is attachment 1 of this exhibit and is available in any FmHA or its successor agency under Public Law 103–354 office, for a definition of actively applying a conservation plan. Prior to loan approval, the applicant, the lender, (if a guaranteed loan is involved), FmHA or its successor agency under Public Law 103–354 and SCS will resolve any doubts as to what extent production would be able to continue under application of a conservation plan and as to the financial implications on loan repayment ability from both the potential costs of actively applying the conservation plan and the potential loss of revenues from any reduced acreage production base. The loan approval official will determine the financial implications of actively applying a conservation plan to the applicant's highly erodible land by developing a projected farm plan of operation or other farm financial projections that reflect adequate repayment on the full scheduled installments for all debt obligations at the time the conservation plan is being actively applied. If in making this determination, loan repayment ability cannot be demonstrated, FmHA or its successor agency under Public Law 103–354 will deny the loan application. If loan repayament ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing, coincident with the transmittal of Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request For Obligation of Funds,'' and using Form Letter 1940–G–1, ''Notification of The Requirements of Exhibit M of FmHA Instruction 1940–G,'' that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from the SCS issued prior to either January 1, 1990, or two years after the SCS has completed a soil survey of the applicant's land (whichever is later) and stating that the applicant is actively applying an approved conservation plan will be considered adequate demonstration of compliance on the highly erodible land affected by the 1990 deadline.

(ii) *Loan term exceeds January 1, 1995.* If the term of the proposed loan would exceed this date and the borrower intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of the exhibit up until that date (see subparagraph b (4) of paragraph 11 of this exhibit) the County Supervisor will determine if it is financially feasible for the applicant, after January 1, 1985, to produce an agricultural commodity on the highly erodible land in compliance with a conservation system approved by SCS or the appropriate conservation district. Prior to loan approval, the applicant, the lender (if a guaranteed loan is involved), FmHA or its successor agency under Public Law 103–354 and SCS will resolve any doubts as to what extent production would be able to continue under a conservation system and as to the financial implications on loan repayment ability from both the potential costs of the conservation

system and the potential loss of revenues from any reduced acreage production base. The loan approval official will determine the financial implications of compliance with a conservation system using the financial projection method(s) indicated in subparagraph c (2)(c)(i) of this paragraph. If loan repayment ability cannot be demonstrated, the application will be denied. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing, coincident with the transmittal of Form 1940–1, ''Request for Obligation of Funds,'' and using Form Letter 1940–G–1, ''Notification of The Requirements of Exhibit M of FmHA Instruction 1940–G,'' that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from SCS issued prior to January 1, 1995, and stating that the applicant is in compliance with an approved conservation system will be considered adequate demonstration of compliance.

(d) Implement the actions in subparagraph e of this paragraph if the applicant plans to repay a portion of the loan with funds from a USDA financial assistance program subject to wetland or highly erodible land conservation restrictions.

d. *Highly erodible land present that was or is planted in alfalfa.* If the applicant plans to cultivate highly erodible land for the purpose of producing an agricultural commodity and that highly erodible land during each of the 1981 to 1985 crop years was planted in alfalfa in a crop rotation determined by SCS to be adequate for the protection of highly erodible land, the applicant is exempt until June 1, 1988, from the requirement to fully implement an approved conservation system on the highly erodible land. The County Supervisor, following procedures similar to those indicated in subparagraph c (2)(c)(i) of this paragraph, will determine if it is financially feasible for the applicant to apply a conservation system to the highly erodible land prior to the loss of the exemption on June 1, 1988. If loan repayment ability cannot be demonstrated, the application will be denied. If loan repayment ability can be demonstrated and an insured loan will be approved, the applicant will be advised in writing that the loan approval instruments will contain compliance requirements affecting the applicant's highly erodible land. The applicant will also be advised that a statement from SCS issued prior to June 1, 1988 and stating that the applicant is in compliance with an approved conservation system will be considered adequate demonstration of compliance with this requirement.

e. *Highly erodible land, wetland, or converted wetland present and applicant intends to use the USDA financial assistance program(s), including crop insurance, to repay FmHA or its successor agency under Public Law 103–354 loan.* The County Supervisor will consult with the applicant (and lender, in the case of a guaranteed loan) and the other USDA agency(s) to determine if the applicant is eligible for the latter's financial assistance. If not eligible, the applicant will have to demonstrate that an alternative source(s) of repayment will be available in order for further processing of the application to proceed.

7. *Required provisions in loan approval documents.*

a. *Insured loans.*

(1) *Promissory Notes.* For all loans to which this exhibit applies, all promissory notes must contain the provision indicated below: (Form FmHA or its successor agency under Public Law 103–354 1940–17, ''Promissory Note,'' has been revised so that the language will no longer be inserted as an addendum, but the following provision must be inserted as an addendum to Form FmHA or its successor agency under Public Law 103–354 440–22, ''Promissory Note (Association or Organization),'' if the loan is being made to an Indian Tribe or a Tribal Corporation.)

''ADDENDUM FOR HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION''

Addendum to promissory note dated _____ in the amount of $_____ at an annual interest rate of ___ percent. This agreement supplements and attaches to the above note.

Borrower recognizes that the loan described in this note will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR part 1940, subpart G, exhibit M. If (1) the term of the loan exceeds January 1, 1990, but not January 1, 1995, and (2) Borrower intends to produce an agricultural commodity on highly erodible land that is exempt from the restrictions of exhibit M until either January 1, 1990 or two years after the U.S. Soil Conservation Service (SCS) has completed a soil survey for the Borrower's land, whichever is later, the Borrower further agrees that, prior to the loss of the exemption from the highly erodible land conservation restrictions found in 7 CFR part 12, Borrower must demonstrate that Borrower is actively applying on that land which has been determined to be highly erodible a conservation plan approved by the SCS or the appropriate conservation district in accordance with SCS's requirements. Furthermore, if the term of the loan exceeds January 1, 1995, Borrower further agrees that Borrower must demonstrate prior to January 1, 1995, that any production after that date of an agricultural commodity on highly erodible land will be done in compliance with a conservation system approved by SCS or

the appropriate conservation district in accordance with SCS's requirements.

(Name of Borrower)

(Signature of Executive Official)

(Signature of Attesting Official)

(2) *Mortgages, deeds of trust and security agreements.* State Directors will consult with the Office of General Counsel and ensure that for all loans to which this exhibit applies a covenant is included in all mortgages, deeds of trust, and security agreements which reads as indicated below. Form FmHA or its successor agency under Public Law 103–354 440–15, ''Security Agreement (Insured Loans to Individuals),'' and Form FmHA or its successor agency under Public Law 103–354 440–4, ''Security Agreement (Chattels and Crops),'' have been revised accordingly. Equivalent forms required in State supplements must be similarly revised.

[FOR MORTGAGES OR DEEDS OF TRUST:]

''Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR part 1940, subpart G, exhibit M.''

[FOR SECURITY AGREEMENTS:]

''Default shall also exist if any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 CFR part 1940, subpart G, exhibit M.''

b. *Guaranteed loans.*

(1) *Form FmHA or its successor agency under Public Law 103–354 449–14, ''Conditional Commitment for Guarantee,'' and Form FmHA or its successor agency under Public Law 103–354 1980–15, ''Conditional Commitment for Contract of Guarantee (Line of Credit).''* These forms must contain a condition that includes the following provisions:

(a) Informs the lender that FmHA or its successor agency under Public Law 103–354's commitment is conditioned upon loan proceeds not being used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as explained in this exhibit;

(b) Informs the lender of the lender's monitoring responsibilities under paragraph 10 of this exhibit; and;

(c) Requires the lender, for all borrowers having highly erodible land, wetland, or converted on their farm properties, to include provisions in its loan instruments similar to those contained in subparagraphs a (1) and (2) of this paragraph.

(2) *Lender's loan and security instruments.* These instruments must be modified as specified in subparagraph b(1)(c) of this paragraph.

8. *Required FmHA or its successor agency under Public Law 103–354 documentation.* The actions taken and determinations made by FmHA or its successor agency under Public Law 103–354 to comply with the provisions of this exhibit will be documented as part of the environmental review of the application. All actions subject to this exhibit will undergo at a minimum the completion of Form FmHA or its successor agency under Public Law 103–354 1940–22, ''Environmental Checklist for Categorical Exclusions.'' On the reverse of this form, the preparer will document as applicable (a) whether or not highly erodible land, wetland, or converted wetland is present, (b) if any exemption(s) applies, (c) the status of the applicant's eligibility for an FmHA or its successor agency under Public Law 103–354 loan under this exhibit, and (d) any steps the applicant must take prior to loan approval to retain or regain its eligibility. If the application under review meets the definition of a Class I action as defined in §1940.311 of this subpart, the above documentation will be included as an exhibit to Form FmHA or its successor agency under Public Law 103–354 1940–21, ''Environmental Assessment for Class I Action.'' If the application meets the definition of a Class II action as defined in §1940.312 of this subpart, the required documentation will be included within the Class II assessment under the discussion of land use impacts. See paragraph IV.4. of exhibit H of this subpart. Once an applicant's farm property has undergone an environmental review covering the provisions of this exhibit, the County Supervisor reviewing a subsequent loan request need not require the applicant to obtain further site information from SCS as long as there is no change in the farm property to be affected or any applicable exemptions.

9. *Borrowers' responsibilities.* In addition to complying with any loan requirements resulting from FmHA or its successor agency under Public Law 103–354's implementation of this exhibit, a borrower must within ten days of receipt inform, in writing, the lender of a guaranteed loan and the County Supervisor for an insured loan of any ineligibility determinations received from other USDA agencies for violations of wetland or highly erodible land conservation restrictions. A borrower also has the responsibility to consult with the lender or County Supervisor, as applicable, if at any time the borrower is uncertain as to the borrower's duties and responsibility under the loan provisions.

10. *FmHA or its successor agency under Public Law 103–354 and lender monitoring.* As an element of insured loan servicing, to include development of a farm plan of operation for an upcoming crop year, scheduled farm visits, or other contracts with borrowers, FmHA or its successor agency under Public Law 103–354 staff will review and analyze the borrower's compliance with the provisions of this exhibit and any related loan requirements. If at anytime FmHA or its successor agency under Public Law 103–354 becomes aware of the borrower's violation of these provisions or related loan requirements, the borrower will be informed that the affected loan(s) is in default. In addition to directly monitoring borrowers, the County Supervisor will receive and review the monitoring results of other USDA agencies having restrictions on wetland and highly erodible land conservation. Whenever these results indicate that a borrower may have violated the loan conditions, the County Supervisor will further analyze the matter and respond, as indicated in this paragraph, should a violation be determined. Lenders of FmHA or its successor agency under Public Law 103–354 guaranteed loans must also monitor compliance as part of their servicing responsibilities.

11. *Exemptions and determining their applicability.* Following is a list of exemptions from the provisions of this exhibit as well a description of how FmHA or its successor agency under Public Law 103–354 will apply the exemptions to a proposed loan or activity under a loan. This list is intended to provide guidance on implementing the exemptions contained in subparts A, B, and C of part 12 of subtitle A of title 7 (attachment 1 of this exhibit which is available in any FmHA or its successor agency under Public Law 103–354 office) and does not modify or limit any of those exemptions.

a. *Exemption from wetland and highly erodible land conservation.* Any loan which was closed prior to December 23, 1985, or any loan for which either Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request for Obligation of Funds,'' Form FmHA or its successor agency under Public Law 103–354 449–14, ''Conditional Commitment for Guarantee,'' or Form FmHA or its successor agency under Public Law 103–354 1980–15, ''Conditional Commitment for Contract of Guarantee (Line of Credit),'' was executed prior to December 23, 1985, is exempt from the provisions of this exhibit.

b. *Exemptions from highly erodible land conservation.* The following exemptions exist from the restrictions on highly erodible land conservation. Whenever the County Supervisor is required to consult with another USDA agency in applying these exemptions, the County Supervisor's review of a properly completed Form SCS-CPA-26 will be considered adequate consultation if the needed information is presented on the form and no questions are raised by the FmHA or its successor agency under Public Law 103–354 review.

(1) Any land upon which an agricultural commodity was planted before December 23, 1985, is exempt for that particular planting. The County Supervisor will consult with the appropriate local ASCS office in applying this exemption and the ASCS determination is controlling for purposes of this exhibit.

(2) Any land planted with an agricultural commodity during a crop year beginning before December 23, 1985, is exempt for that particular planting. FmHA or its successor agency under Public Law 103–354 will consult with the ASCS State Executive Director and the latter's position will be controlling in determining the date that the crop year began.

(3) Any land that during any one of the crop years of 1981 through 1985 was either (a) cultivated to produce an agricultural commodity, or (b) set aside, diverted or otherwise not cropped under a program administered by USDA to reduce production of an agricultural commodity, is exempt until the later of January 1, 1990, or the date that is two years after the date that the SCS has completed a soil survey of the land. To apply this exemption, the County Supervisor will consult with ASCS to determine from the latter's records whether or not the land was cultivated or set aside during the required period. The ASCS determination will be controlling. However, the date of completion for any SCS soil survey will be determined by SCS and used by the County Supervisor.

(4) Beginning on January 1, 1990, or two years after SCS has completed a soil survey for the land, whichever is later, and extending to January 1, 1995, any land that qualified for the exemption in subparagraph b (3) of this paragraph is further exempt if a person is actively applying to it a conservation plan that is based on the local SCS technical guide and properly approved by the appropriate SCS conservation district or the SCS. To apply this exemption as well as the exemptions specified in subparagraphs b (5), (6), (7), and (8) of this paragraph, the County Supervisor will consult with the appropriate local SCS office and the SCS position will be controlling.

(5) Highly erodible land within a conservation district and under a conservation system that has been approved by a conservation district after the district has determined that the conservation system is in conformity with technical standards set forth in the SCS technical guide for such district is exempt.

(6) Highly erodible land not within a conservation district but under a conservation system determined by SCS to be adequate for the production of a specific agricultural commodity or commodities on any highly

erodible land is exempt for the production of that commodity or commodities.

(7) Highly erodible land that is planted in reliance on a SCS determination that such land was not highly erodible is exempt. The exemption is lost, however, for any agricultural commodity planted after SCS determines that such land is highly erodible land.

(8) Highly erodible land planted or to be planted in an agricultural commodity that was planted in alfalfa during each of the 1981 and 1985 crop years in a crop rotation determined by SCS to be adequate for the protection of highly erodible land is exempt until June 1, 1988, from the requirement that the highly erodible land be planted in compliance with an approved conservation system.

c. *Exemptions from wetland conservation.* The following exemptions exist from the restrictions on wetland conservation. Whenever the County Supervisor is required to consult with another USDA agency in applying these exemptions, the County Supervisor's review of a properly completed Form SCS-CPA-26 will be considered adequate consultation if the needed information is presented on the form and no questions are raised by the FmHA or its successor agency under Public Law 103–354 review.

(1) A converted wetland is exempt if the conversion of such wetland was completed or commenced before December 23, 1985. The County Supervisor will consult with ASCS whose determination as to when conversion of a wetland commenced will be final for FmHA or its successor agency under Public Law 103–354 purposes. Additionally, the County Supervisor will request evidence of ASCS's consultation with the U.S. Fish and Wildlife Service on each commenced determination reached for an FmHA or its successor agency under Public Law 103–354 applicant or borrower. SCS will determine if a wetland is a converted wetland using the criteria contained in §12.32 of subpart C of part 12 of subtitle A of title 7 (attachment 1 of this exhibit which is available in any FmHA or its successor agency under Public Law 103–354 office). Under these criteria, however, a converted wetland determined to be exempt may not always remain exempt. The criteria include the provision that if crop production is abandoned on a converted wetland and the land again meets the wetland criteria, that land has reverted to a wetland and is no longer exempt. For purposes of FmHA or its successor agency under Public Law 103–354 inventory farm properties, crop production will be considered to have been abandoned on a converted wetland either at the earlier of the time the former owner so abandoned crop production or at the time FmHA or its successor agency under Public Law 103–354 caused crop production to be abandoned after the property came into FmHA or its successor agency under Public Law 103–354's inventory. While in its inventory FmHA or its successor agency under Public Law 103–354 will not lease the converted wetland for the purpose of producing an agricultural commodity. Whether or not the wetland criteria are met on the abandoned land will be determined by SCS immediately before FmHA or its successor agency under Public Law 103–354's lease or sale of the property.

(2) The following are not considered to be a wetland under the provisions of this exhibit: (a) An artificial lake, pond, or wetland created by excavating or diking non-wetland to collect and retain water for purposes such as water for livestock, fish production, irrigation (including subsurface irrigation), a settling basin, colling, rice production, or flood control; (b) a wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation and (c) lands in Alaska identified by SCS as having a predominance of permafrost soils. The County Supervisor will consult with SCS regarding the application of this exemption as well as the remaining exemptions in this paragraph and the SCS position will be controlling.

(3) A wetland is exempt if the production of an agricultural commodity is possible (a) as a result of a natural condition, such as drought, and (b) without action by the producer that destroys a natural wetland characteristic. This exemption is lost whenever condition (a) or (b) no longer exists.

(4) Production of an agricultural commodity on a converted wetland is exempt is SCS determines that the effect of such action, individually and in connection with all other similar actions authorized in the area by USDA agencies, on the hydrological and biological aspect of wetland is minimal.

12. *Appeals.* Any applicant or borrower that is directly and adversely affected by an administrative decision made by FmHA or its successor agency under Public Law 103–354 under this exhibit may appeal that decision under the provisions of subpart B of part 1900 of this chapter (see especially §1900.55).

13. *Working with other USDA agencies.*

a. *Coordination.* FmHA or its successor agency under Public Law 103–354 State Directors will consult with SCS State Conservationists and ASCS State Executive Directors to assess and coordinate loan processing workloads in order to minimize delays in responding to FmHA or its successor agency under Public Law 103–354 requests for site information or for the application of the exemptions contained in paragraph 11 of this exhibit. State Directors will ensure that FmHA or its successor agency under Public Law 103–354 field staff understand and can use the ASCS farm records system and will request ASCS training as needed. Also, management systems for sharing the information discussed in subparagraph b of this paragraph will be established.

b. *Information exchange.* FmHA or its successor agency under Public Law 103–354 State Directors will develop with ASCS State Executive Directors a system for FmHA or its successor agency under Public Law 103–354 to routinely receive notification whenever a violation has occurred under ASCS's wetland and highly erodible land conservation restrictions. FmHA or its successor agency under Public Law 103–354 State Directors will in turn provide to any interested USDA agency the following information:

(1) Upon request, copies of site information or exemption decision made by SCS for FmHA or its successor agency under Public Law 103–354 application reviews;

(2) Upon request, copies of exemption decisions made by FmHA or its successor agency under Public Law 103–354; and

(3) Notice of any violations of the provisions of this exhibit identified by FmHA or its successor agency under Public Law 103–354 as a result of the monitoring activities identified in paragraph 10 of this exhibit.

14. *Relationship of the requirements of this exhibit to the wetland protection requirements of exhibit C of this subpart.* The provisions of this exhibit determine (a) whether or not an applicant for a Farmer Program insured or guaranteed loan or a loan to an Indian Tribe or Tribal Corporation is eligible to be considered for such a loan, and (b) whether or not a recipient of such a loan is properly using the loan proceeds with respect to the requirements of this exhibit. On the other hand, the requirements in exhibit C of this subpart regarding wetland protection cover all FmHA or its successor agency under Public Law 103–354 loan and grant programs and address not questions of eligibility but the potential environmental impacts of a proposed action on a wetland and alternatives to the action. Consequently, those applications covered by this exhibit and which may be approved under this exhibit must also meet the requirements of exhibit C of this subpart. For example, an application covered by this exhibit (M) that proposed to convert a wetland into a tree farm would be exempt from this exhibit (M) because trees are not an agricultural commodity, i.e., there is no conversion in order to produce an agricultural commodity. However, before FmHA or its successor agency under Public Law 103–354 could make the loan, the requirements of exhibit C of this subpart would have to be met to include an FmHA or its successor agency under Public Law 103–354 finding that no practicable alternative exists to the conversion of the wetland. In summary, any proposed wetland conversion that is not prohibited by this exhibit (M) must next meet the requirements of exhibit C of this subpart before FmHA or its successor agency under Public Law 103–354 approval of the requested financial assistance could be provided.

[53 FR 7333, Mar. 8, 1988, as amended at 53 FR 14778, April 26, 1988]

Subpart H [Reserved]

Subpart I—Truth in Lending—Real Estate Settlement Procedures

SOURCE: 48 FR 4, Jan. 3, 1983, unless otherwise noted.

§ 1940.401 Truth in lending.

(a) *General.* This section provides instructions for compliance with the Truth in Lending Act, as implemented by Regulation Z of the Federal Reserve System, to assure that individual Rural Housing (RH) applicants are informed of:

(1) The cost and terms of credit, and

(2) Their right to cancel certain credit transactions resulting in a lien or mortgage on their home.

(b) *Scope.* This section applies to all individuals who apply for loans, assumptions, or credit sales (hereafter described as transactions) for household purposes.

(1) Special rules for the right to cancel transactions not for purchase, acquisition or initial construction of a home broaden the scope of this section to include individuals who have an ownership interest in, and reside in as a principal dwelling, property which will be security for a mortgage, even though they may not execute the promissory note or assumption agreement. Such persons have the right to receive credit disclosures and the notice of the right to cancel and may cancel the transaction.

(2) This section does *not* apply to:

(i) Applicants who are corporations, associations, cooperatives, public bodies, partnerships, or other organizations;

(ii) Individual applicants for multiple family housing transactions (rural rental or labor housing), unless for a two-family dwelling in which the applicants will reside, and other business and commercial type loans; or

(iii) Applicants involved in credit transactions primarily for agricultural purposes.

(c) *Disclosure of the cost and terms of credit*—(1) *Form and content.* Form FmHA or its successor agency under Public Law 103–354 1940–41, ''Truth in Lending Disclosure Statement,'' will be used to provide the following required disclosures:

(i) Annual percentage rate;

(ii) Finance charge;

(iii) Amount financed;

(iv) Total of payments;

(v) Total sale price (required for credit sales only);

(vi) Payment schedule;

(vii) A separate itemization of the amount financed, if the applicant requests it. Normally this required disclosure will have been met in transactions subject to the Real Estate Settlement Procedures Act (RESPA) by providing the applicant with Form FmHA or its successor agency under Public Law 103–354 440–58, ''Estimate of Settlement Costs'';

(viii) The lender's identity;

(ix) Prepayment or late payment penalties;

(x) Security interest;

(xi) Insurance requirements;

(xii) Assumption policy; and

(xiii) Referral to other loan documents.

(2) *Timing, use of estimates and required redisclosure.* (i) In transactions for the purchase or construction of a home subject to RESPA, Form FmHA or its successor agency under Public Law 103–354 1940–41, completed using ''good faith'' estimates based on the best information available, will be delivered or placed in the mail to the applicant no later than three (3) business days after receipt of a written application in the County Office.

(ii) In transactions *not* subject to RESPA, such as RH Section 502 transactions for repairs or refinancing or RH Section 504 transactions, Form FmHA or its successor agency under Public Law 103–354 1940–41, completed using the actual terms of the transaction, will be delivered to each applicant (and in transactions which are subject to cancellation, each non-applicant with the right to cancel) at the time of loan approval.

(iii) In the event of a change in rates and terms between the time of initial disclosure and closing, whereby the annual percentage rate varies by more than one-eighth of one percent, redisclosure must be made. This may be done by entering the changes on all copies of the initial Form FmHA or its successor agency under Public Law 103–354 1940–41, or by preparing a new Form FmHA or its successor agency under Public Law 103–354 1940–41. When required, redisclosure may be made at the time the transaction is approved or at the time of the change, but the form must be delivered to the applicant before the signing of the promissory note or assumption agreement.

(3) *Special instructions for assumption, reamortization, refinancing and multiple transactions.* (i) Assumptions, within the scope of paragraph (b) of this section, at new rates and terms or of existing obligations which were for purchase, acquisition or initial construction of a residence, require new credit disclosure before the assumption occurs. Since assumptions are not subject to RESPA, early disclosure is not required.

(ii) Reamortization, as described in 7 CFR part 3550, when the borrower is in default or delinquent, does not require new credit disclosure. In all other cases reamortization requires new credit disclosure.

(iii) Refinancing of debts in accordance with 7 CFR part 3550, though not subject to RESPA or early disclosure, does require credit disclosure at the time the transaction is approved.

(iv) Multiple transactions.

(A) When a subsequent loan is financed along with another transaction and both transactions require credit disclosure, a separate Form FmHA or its successor agency under Public Law 103–354 1940–41 will be prepared for each transaction.

(B) Transactions with multiple advances will be treated as one transaction for the purpose of credit disclosure, in accordance with the Forms Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103–354 1940–41.

(d) *Notice of the right to cancel.* The right to cancel applies only to transactions within the scope of paragraph (b) of this section, which are *not* for purchase, acquisition or initial construction of *and* which result in a

mortgage on an individual's principal residence, such as RH Section 502 transactions for refinancing, repairs or rehabilitation or RH Section 504 transactions.

(1) *Form and Content.* Form FmHA or its successor agency under Public Law 103–354 1940–43, ''Notice of Right to Cancel'', will be used to notify individuals of their right to cancel those transactions, within the scope of paragraphs (b) and (d) of this section, which result in a mortgage on their principal residence *except* when the transaction is for its purchase or initial construction. This notice will identify the transaction and disclose the following:

(i) The acquisition of a security interest in the individual's principal residence.

(ii) The individual's right to cancel the transaction.

(iii) How to exercise the right to cancel the transaction, with a form for that purpose.

(iv) The effects of cancellation.

(v) The date the cancellation period expires.

(2) *Timing.* (i) Two copies of Form FmHA or its successor agency under Public Law 103–354 1940–43, and one copy of Form FmHA or its successor agency under Public Law 103–354 1940–41, in accordance with the FMI's, will be given to each individual entitled to cancel, not later than loan closing.

(ii) Any entitled individual may cancel the transaction until midnight of the third business day following whichever of the following events occurs last:

(A) The date the transaction is closed.

(B) The date Truth in Lending credit disclosures were made.

(C) The date notice of the right to cancel was received.

(3) *Disbursement of funds.* In a transaction subject to cancellation funds will not be disbursed, other than to a designated attorney or title insurance company preparatory to closing, until:

(i) Forms FmHA 1940–43 have been given to the appropriate individuals,

(ii) The three-day cancellation period has expired, and

(iii) The loan approval official is reasonably assured that the transaction has not been cancelled. This assurance may be obtained by:

(A) Waiting a reasonable period of time after the expiration of the cancellation period to allow for the delivery of a mailed notice, or

(B) Obtaining a written statement from each individual entitled to cancel that the right has not been exercised.

(iv) This delay in disbursing funds may be waived in cases of a bonafide personal financial emergency, which must be met within the cancellation period, when the individual submits a signed and dated statement describing the nature of the emergency and waiving the right to cancel. Such a statement must be signed by all individuals entitled to cancel.

(4) *Effects of cancellation.* (i) When an individual cancels a transaction, the mortgage securing the transaction becomes void and the borrower will not be liable for any amount, including any finance charge.

(ii) Within twenty (20) calendar days after receipt of a notice of cancellation the loan approval official will:

(A) Notify all interested parties of the cancellation;

(B) Return, and/or request the return of any money or property given to anyone in connection with the transaction; and

(C) Take the necessary action to terminate the mortgage.

(iii) Once evidence has been presented to the borrower that the mortgage has been terminated, the borrower must return any funds advanced by FmHA or its successor agency under Public Law 103–354 to the FmHA or its successor agency under Public Law 103–354 County Office or surrender any property at his/her residence within twenty (20) calendar days.

(e) *Advertisements.* An *advertisement* is defined as a commercial message in any medium that promotes, directly or indirectly, a credit transaction. Advertisements for credit sales of Government inventory property, within the scope of paragraph (b) of this section, are subject to the following requirements.

(1) If an advertisement states specific credit terms, it shall state only those terms that actually are or will be arranged or offered.

(2) If an advertisement states a rate of finance charge, it shall state the rate as an *annual percentage rate,* using that term.

(3) Terms requiring additional disclosures.

(i) If any of the following terms is set forth in an advertisement:

(A) The amount or percentage of any down payment,

(B) The number of payments or period of repayment,

(C) The amount of any payment, or

(D) The amount of any finance charge,

(ii) The advertisement must also state:

(A) The amount or percentage of down payment,

(B) The terms of repayment, and

(C) The *annual percentage rate,* using that term.

[48 FR 4, Jan. 3, 1983, as amended at 60 FR 55123, Oct. 27, 1995; 67 FR 78328, Dec. 24, 2002]

§§ 1940.402–1940.405 [Reserved]

§ 1940.406 Real estate settlement procedures.

(a) *General.* This section provides the instructions for compliance with the Real Estate Settlement Procedures Act (RESPA), as amended, and Regulation X of the Department of Housing and Urban Development.

(b) *Scope.* (1) This section applies to loans and credit sales, including Section 502 Rural Housing, 1–4 family Rural Rental Housing, 1–4 family Labor Housing, and Farm Ownership involving tracts of less than 25 acres, whether made to an individual, corporation, partnership, association or other entity, which meet the following requirements:

(i) The proceeds of the loan or the credit extended are used in whole or in part to finance the purchase and transfer of title of the property to be mortgaged by the borrower, and

(ii) The loan or credit sale is secured by a first lien covering real estate on which is located a structure designed principally for the occupancy of from 1–4 families, or on which a structure designed principally for the occupancy of from 1–4 families is to be constructed using proceeds of the loan.

(2) Exempt transactions include:

(i) Loans for repairs, improvements, or refinancing if the proceeds are not used to finance the purchase of the property.

(ii) Loans to finance the construction of a 1–4 family structure if the tract of land is already owned by the applicant/borrower.

(iii) Assumptions or transfers.

(c) *Action required.* (1) The information booklet entitled ''Settlement Costs'' will either be given to the applicant at the time the completed application is received, or mailed to the applicant no later than three (3) business days after receipt of the application in the County Office.

(i) Form FmHA or its successor agency under Public Law 103–354 440–58, ''Estimate of Settlement Costs,'' is to be used to provide a ''good faith'' statement of estimated closing costs. Form FmHA or its successor agency under Public Law 103–354 440–58 will be completed by the County Supervisor and mailed or delivered to the applicant with the Settlement Costs booklet. Costs will vary between geographic areas; therefore, information supplied on this form must be based upon (A) the County Supervisor's best estimate of charges the borrower will pay for each service in connection with the transaction, or (B) a range of charges at which such service is available to the borrower from all providers in the area.

(ii) Form FmHA or its successor agency under Public Law 103–354 440–58 does not replace Truth in Lending forms. Appropriate forms listed in § 1940.401 will be used for Truth in Lending purposes.

(2) Form FmHA or its successor agency under Public Law 103–354 1940–59, ''Settlement Statement,'' will be completed as indicated in the form and FMI by the designated attorney or title company for all transactions described in paragraph (b) of this section. The purpose of this form is to provide a uniform settlement statement prescribed by RESPA.

(i) During the business day immediately preceding the date of settlement, the closing agent, if requested by

the applicant, must permit the applicant to inspect the settlement statement, completed for those items which are then known to the closing agent.

(ii) A copy will be given to both the borrower and seller at the time of closing or settlement or will be mailed as soon as practicable if the borrower or seller are not present at closing.

Subparts J–K [Reserved]

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

SOURCE: 50 FR 24180, June 10, 1985, unless otherwise noted.

§ 1940.551 Purpose and general policy.

(a) The purpose of this subpart is to set forth the methodology and formulas by which the Administrator of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 allocates program funds to the States. (The term *State* means any of the States of the United States, the Commonwealth of Puerto Rico, any territory or possession of the United States, or the Western Pacific Areas.)

(b) The formulas in this subpart are used to allocate program loan and grant funds to State Offices so that the overall mission of the Agency can be carried out. Considerations used when developing the formulas include enabling legislation, congressional direction, and administration policies. Allocation formulas ensure that program resources are available on an equal basis to all eligible individuals and organizations.

(c) The actual amounts of funds, as computed by the methodology and formulas contained herein, allocated to a State for a funding period are distributed to each State Office by an exhibit to this subpart. The exhibit is available for review in any FmHA or its successor agency under Public Law 103–354 State Office. The exhibit also contains clarifications of allocation policies and provides further guidance to the State Directors on any suballocation within the State. FmHA or its successor agency under Public Law 103–354 will publish a Notice of Availability of Rural Housing funds in the FEDERAL REGISTER each year.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988; 55 FR 29560, July 20, 1990; 56 FR 66960, Dec. 27, 1991]

§ 1940.552 Definitions.

(a) *Amount available for allocation.* Funds appropriated or otherwise made availiable to the Agency for use in authorized programs. On occasion, the allocation of funds to States may not be practical for a particular program due to funding or administrative constraints. In these cases, funds will be controlled by the National Office.

(b) *Basic formula criteria, data source and weight.* Basic formulas are used to calculate a basic state factor as a part of the methodology for allocating funds to the States. The formulas take a number of criteria that reflect the funding needs for a particular program and through a normalization and weighting process for each of the criteria calculate the basic State Factor (SF). The data sources used for each criteria is believed to be the most current and reliable information that adequately quantifies the criterion. The weight, expressed as a percentage, gives a relative value to the importance of each of the criteria.

(c) *Basic formula allocation.* The result of multiplying the amount available for allocation less the total of any amounts held in reserve or distributed by base or administrative allocation times the basic State factor for each State. The basic formula allocation (BFA) for an individual State is equal to:

BFA=(Amount available for allocation−NO reserve−Total base and administrative allocations)×SF.

(d) *Transition formula.* A formula based on a proportional amount of previous year allocation used to maintain program continuity by preventing large fluctuations in individual State allocations. The transition formula limits allocation shifts to any particular State in the event of changes from year to year of the basic formula, the basic criteria, or the weights given the criteria. The transition formula first checks whether the current year's

basic formula allocation is within the transition range (+ or −percentage points of the proportional amount of the previous year's BFA).

$$\text{Transition range} = 1.0 \pm \frac{\text{Maximum 20\%}}{100} \times \frac{\text{Amount available for allocation this year}}{\text{Amount available for allocation previous year}} \times \text{State previous year BFA}$$

If the current year's State BFA is not within this transition range, the State formula allocation is changed to the amount of the transition range limit closest to the BFA amount. After having performed this transition adjustment for each State, the sum of the funds allocated to all States will differ from the amount of funds available for BFA. This difference, whether a positive or negative amount, is distributed to all States receiving a formula allocation by multiplying the difference by the SF. The end result is the transition formula allocation. The transition range will not exceed 40% (±20%), but when a smaller range is used it will be stated in the individual program section.

(e) *Base allocation.* An amount that may be allocated to each State dependent upon the particular program to provide the opportunity for funding at least one typical loan or grant in each FmHA or its successor agency under Public Law 103–354 State, District, or County Office. The amount of the base allocation may be determined by criteria other than that used in the basic formula allocation such as agency historic data.

(f) *Administrative allocations.* Allocations made by the Administrator in cases where basic formula criteria information is not available. This form of allocation may be used when the Administrator determines the program objectives cannot be adequately met with a formula allocation.

(g) *Reserve.* An amount retained under the National Office control for each loan and grant program to provide flexibility in meeting situations of unexpected or justifiable need occurring during the fiscal year. The Administrator may make distributions from this reserve to any State when it determined necessary to meet a program need or agency objective. The Administrator may retain additional amounts to fund authorized demonstration programs. When such demonstration programs exist, the information is outlined in exhibit A of this subpart (available in any FmFA State Office).

(h) *Pooling of funds.* A technique used to ensure that available funds are used in an effective, timely and efficient manner. At the time of pooling those funds within a State's allocation for the fiscal year or portion of the fiscal year, depending on the type of pooling, that have not been obligatedf by the State are placed in the National Office reserve. The Administrator will establish the pooling dates for each affected program.

(1) *Mid-year:* This pooling addresses the need to partially redistribute funds based on use/demand. Mid-year pooling occurs near the midpoint of the fiscal year.

(2) *Year-end:* This pooling is used to ensure maximum use of program funds on a national basis. Year-end pooling usually occurs near the first of August.

(3) *Emergency:* The Administrator may pool funds at any time that it is determined the conditions upon which the initial allocation was based have changed to such a degree that it is necessary to pool funds in order to efficiently carry out the Agency mission.

(i) *Availability of the allocation.* Program funds are made available to the Agency on a quarterly basis. In the high demand programs, it is necessary that specific instructions by given to the State Offices regarding the amount which is available for obligation during each quarter.

(j) *Suballocation by the State Director.* Dependent upon the individual program for which funds are being allocated, the State Director may be directed or given the option of suballocating the State allocation to District or County Offices. When suballocating the State Director may retain a portion of the funds in a State Office reserve to provide flexibility in situations of unexpected or justified need. When performing a suballocation the State Director will use the same formula, criteria and weights as used by the National Office.

(k) *Other documentation.* Additional instructions given to field offices regarding allocations.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988]

§§ 1940.553–1940.554 [Reserved]

§ 1940.555 Insured Farm Operating loan funds.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A = Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B = Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C = Tenant farm operators. Source: U.S. Census of Agriculture. 20%

(4) D = Three year average net farm income. Source: USDA Economic Research Service. 15% This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence on the allocation.

(5) E=Value of farm nonreal estate assets. Source: USDA Economic Research Service. 15%

The basic allocation formula is a two-step process. In step one, each criterion is converted to that State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa + Bb + Cc + Dd +Ee = STATE FACTOR where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent the Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Subobligation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other documentation.* See § 1940.552(k) of this subpart.

§ 1940.556 Guaranteed Farm Operating loan funds.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A = Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B = Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C = Tenant farm operators. Source: U.S. Census of Agriculture. 20%

(4) D = Three year average net farm income. Source: USDA Economic Research Service. 15%. This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence on the allocation.

(5) E = Value of farm nonreal estate assets. Source: USDA Economic Research Service. 15%

The basic allocation formula is a two-step process. In step one, each criterion is converted to the State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa + Bb + Cc + Dd + Ee = State Factor Where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other Documentation.* See § 1940.552(k) of this subpart.

§ 1940.557 Insured Farm Ownership loan funds.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A = Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B = Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C = Tenant farm operations. Source: U.S. Census of Agriculture. 25%

(4) D = Three-year average net farm income. Source: USDA Economic Research Service. 15%. This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence of the allocation.

(5) E = Value of farm real estate assets. Source: USDA Economic Research Service. 10%.

The basic allocation formula is a two-step process. In step one, each criterion is converted to that State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa + Bb + Cc + Dd +Ee = State Factor where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The transition range is plus or minus 15%.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.522(h) of this subpart.

(i) *Availability of the allocation.* A portion of the allocation will be targeted to the State's rural socially disadvantaged population. The amount of the targeted funds for each state is equal to the State's rural socially disadvantaged population divided by the State's total rural population multiplied by the State's total fiscal year Insured Farm Ownership allocation. Source of data is U.S. Census 1980.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other documentation.* See § 1940.552(k) of this subpart.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988]

§ 1940.558 Guaranteed Farm Ownership loan funds.

(a) *Amount available for allocation.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria, data source and weight are:

(1) A = Farm operators with sales of $2,500 to $39,999 and less than 200 days work off farm. Source: U.S. Census of Agriculture. 15%

(2) B = Farm operators with sales of $40,000 or more and less than 200 days work off farm. Source: U.S. Census of Agriculture. 35%

(3) C = Tenant farm operations. Source: U.S. Census of Agriculture. 25%

(4) D = Three year average net farm income. Source: USDA Economic Research Service. 15%. This criterion is the inverse of the division of the State mean net farm income by the National mean net farm income. This inverse is used because the need for assistance is inversely proportional to the level of net income. Limits of .5 and 1.5 are placed in this result to limit the influence on the allocation.

(5) E = Value of farm real estate assets. Source: USDA Economic Research Service. 10%

The basic allocation formula is a two-step process. In step one, each criterion is converted to that State's percentage of a National total, multiplied by the weighting factor and summed to arrive at a State Factor: Aa + Bb + Cc +Dd + Ee = State Factor where A, B, C, D, and E represent selected Criteria expressed as a State Percentage of the U.S. total and a, b, c, d, and e represent the Weight expressed as a percentage, given to the selected criterion. The weight assigned each criterion is constant for all States. The State Factor represents the percentage of the total allocation by basic formulas that a State is to receive and is the sum of the weighted criteria percentage for each State. The basic formula allocation is the final step.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. Not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations:* See § 1940.552(f) of this subpart. Jurisdictions participating in the formula allocation process do not have administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Suballocations by the State Director are optional.

(k) *Other documentation.* See § 1940.552(k) of this subpart.

§ 1940.559 Farmer Programs and Indian Land Acquisition appropriations not allocated by State.

(a) *Emergency Disaster.* State allocations are not made since it is impossible to predict occurrences. Obligating documents may be submitted to the Finance Office as loans are approved in designated areas. This type loan is available only in areas designated as disaster areas. Designations may be by a single county, multiple of counties or areas, depending upon scope and severity.

(b) *Soil and Water.* Funds are not allocated to States. Program size does not permit equitable distribution. Obligation of funds are on a first-come, first-served basis, subject to availability.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988]

§ 1940.560 Guarantee Rural Rental Housing Program.

When funding levels are under $100,000,000, all funds will be held in a National Office reserve and made available administratively in accordance with the Notice of Funding Availability (NOFA) and program regulations. When program levels are sufficient for a nationwide program, funds are allocated based upon the following criteria and weights.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart .

Each factor will receive a weight respectively of 40%, 40% and 20%. The criteria used in the basic formula are:

(1) State's percentage of National rural population,

(2) State's percentage of the National number of rural households between 50 and 115 percent of the area median income, and

(3) State's percentage of National average cost per unit. Data source for the first two of these criterion are based on the latest census data available. The third criterion is based on the cost per unit data using the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act, which can be obtained from the Department of Housing and Urban Development. The percentage representing each criterion is multiplied by the weight assigned and totaled to arrive at a State factor.

State Factor = (criterion No. 1 × weight of 40%)+ (criterion No. 1 × weight of 40%)+ (criterion No. 1 × weight of 20%)

(c) *Basic formula allocation.* See § 1940.552(c).

(d) *Transition formula.* See § 1940.552(d).

(e) *Base allocation.* See § 1940.552(e). Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f). Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g).

(h) *Pooling of funds.* See § 1940.552(h).

(i) *Availability of the allocation.* See § 1940.552(i).

(j) *Suballocation by the State Director.* See § 1940.552(j).

(k) *Other documentation.* Not applicable.

[63 FR 39458, July 22, 1998]

§§ 1940.561–1940.562 [Reserved]

§ 1940.563 Section 502 non-subsidized guaranteed Rural Housing (RH) loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552 (b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population in places of less than 2,500 population,

(3) State's percentage of the national number of rural households between 80 and 100 percent of the area median income, and

(4) State's percentage of the national number of rural renter households paying more than 35 percent of income for rent.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage

representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF) as follows:

SF = (criterion 1 × weight of 30%) + (criterion 2 × weight of 10%) + (criterion 3 × weight of 30%) + (criterion 4 × weight of 30%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for Section 502 guaranteed RH loans is plus or minus 15.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Annually, the Administrator will advise State Director's whether or not suballocation within the State Office jurisdiction will be required for the guaranteed Housing program.

(k) *Other documentation.* Not applicable.

[56 FR 10509, Mar. 13, 1991]

§ 1940.564 Section 502 subsidized guaranteed Rural Housing loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population in places of less than 2,500 population,

(3) State's percentage of the national number of rural households below 80 percent of the area median income, and

(4) State's percentage of the national number of rural renter households paying more than 35 percent of income for rent.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF) as follows:

SF = (criterion 1 × weight of 30%) + (criterion 2 × weight of 10%) + (criterion 3 × weight of 30%) + (criterion 4 × weight of 30%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 502 guaranteed RH loans is plus or minus 15.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administration allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Annually, the Administrator will advise

State Director's whether or not suballocation within the State Office jurisdiction will be required for the guaranteed Housing program.

(k) *Other documentation.* Not applicable.

[56 FR 10509, Mar. 13, 1991]

§ 1940.565 Section 502 subsidized Rural Housing loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population,

(3) State's percentage of the National rural population in places of less than 2,500 population,

(4) State's percentage of the National number of rural households between 50 and 80 percent of the area median income, and

(5) State's percentage of the National number of rural households below 50 percent of the area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF)

SF = (criterion 1 × weight of 25%) + (criterion 2 × weight of 10%) + (criterion 3 × weight of 15%) + (criterion 4 × weight of 30%) + (criterion 5 × weight of 20%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for Section 502 subsidized RH loans is plus or minus 15.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) *Mid-year:* If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) *Year-end:* Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. The State Director will suballocate funds to the District Offices and may, at his/her option, suballocate to the County Offices. The State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.565 (b) and (c) of this section. The suballocations to District or County Offices will not be reduced or restricted unless written approval is received from the National Office in response to a written request from the State Director. The State Director's request must include the reasons for the requested action (e.g., high housing inventory and/or high housing delinquency).

(k) *Other documentation.* The percentage distribution of funds to the States by income levels is based on prevailing legislation.

§ 1940.566 Section 504 Housing Repair loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b). The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units, and

(2) State's percentage of the National number of rural households below 50 percent of area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage

representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

SF = (criterion No. 1 × weight of 50%) + (criterion No. 2 × weight of 50%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 504 Housing Repair Loans is plus or minus 15.

(e) *Base allocation.* Not used.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, section 504 loan funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.566 (b) and (c) of this section.

(k) *Other documentation.* Not applicable.

§ 1940.567 Section 504 Housing Repair grants.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population 62 years and older, and

(3) State's percentage of the National number of rural households below 50 percent of area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

SF = (criterion No. 1 × weight of 33⅓%) + (criterion No. 2 × weight of 33⅓%) + (criterion No. 3 × weight of 33⅓%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 504 Housing Repair grants is plus or minus 15.

(e) *Base allocation.* Not used.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) *Mid-year:* If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) *Year-end:* Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, section 504 grant funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.567 (b) and (c) of this section.

(k) *Other documentation.* Not applicable.

§ 1940.568 Single Family Housing programs appropriations not allocated by State.

The following program funds are kept in a National Office reserve and are available as determined administratively:

(a) Section 523 Self-Help Technical Assistance Grants.

(b) Section 523 Land Development Fund.

(c) Section 524 Rural Housing Site Loans.

(d) Section 509 Compensation for Construction Defects.

(e) Section 502 Nonsubsidized Funds.

§ 1940.569–1940.574 [Reserved]

§ 1940.575 Section 515 Rural Rental Housing (RRH) loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

The criteria used in the basic formula area:

(1) State's percentage of National rural population,

(2) State's percentage of National number of rural occupied substandard units, and

(3) State's percentage of National rural families with incomes below the poverty level.

Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight assigned and summed to arrive at a State factor (SF).

SF = (criterion No. 1 × weight of 33⅓%) + (criterion No. 2 × weight of 33⅓%) + (criterion No. 3 × weight of 33⅓%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.522(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

[53 FR 26229, July 12, 1988]

§ 1940.576 Rental Assistance (RA) for new construction.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.575(b) of this subpart.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

[53 FR 26229, July 12, 1988]

§ 1940.577 Rental Assistance (RA) for existing projects.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart. RA appropriated for existing projects will first be used to replace contracts expiring each fiscal year and for the first few months of the following fiscal year. This is done to assure continued RA funding. RA units not needed for replacement purposes will be used for existing multiple family housing projects experiencing servicing problems.

(b) *Basic formula criteria, data source and weight.* No formula or weighted criteria is used to allocate replacement RA. The basic allocation for replacement RA will be made based on the following:

(1) *Criteria.* This allocation is based on the estimated need to replace RA contracts expiring from the depletion of funds.

(2) *Date source.* The most accurate and current information available from FmHA or its successor agency under Public Law 103–354 computerized data sources.

(c) *Basic formula allocation.* While no formula will be used, the basic allocation will be made to each State according to the need determined using the basic criteria.

(d) *Transition formula.* Not applicable.

(e) *Base allocation.* Not applicable.

(f) *Administrative allocation.* Not applicable.

(g) *Reserve.* See §1940.552(g) of this subpart. The National Office maintains a reserve adequate to compensate for the differences between actual and projected replacement activity. Units will be administratively distributed for existing housing to either satisfy previously unidentified replacement needs or address servicing situations. Units will be distributed to any State when the Administrator determines that additional allocations are necessary and appropriate.

(h) *Pooling of funds.* See §1940.552(h) of this subpart. Units will be pooled at the Administrator's discretion.

(i) *Obligation of the allocation.* See §1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See §1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988]

§1940.578 Housing Preservation Grant (HPG) program.

(a) *Amount available for allocations.* See §1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See §1940.575(b) of this subpart.

(c) *Basic formula allocation.* See §1940.552(c) of this subpart.

(d) *Transition formula.* See §1940.552(d) of this subpart.

(e) *Base allocation.* See §1940.552(e) of this subpart.

(f) *Administrative allocations.* See §1940.552(f) of this subpart.

(g) *Reserve.* See §1940.552(g) of this subpart.

(h) *Pooling of funds.* See §1940.552(h) of this subpart. Funds may be pooled after all HPG applications have been received and HPG fund demand by State has been determined. Pooled funds will be combined with the National Office reserve to fund eligible projects. Remaining HPG funds will be available for distribution for use under the Section 504 program.

(i) *Availability of the allocation.* See §1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* Not applicable.

(k) *Other documentation.* Funds for the HPG program will be available for a limited period each fiscal year. Due to the requirements by law to allocate funds on a formula basis to all States and to have a competitive selection process for HPG project selection, FmHA or its successor agency under Public Law 103–354 will announce opening and closing dates for receipt of HPG applications. After the closing date, FmHA or its successor agency under Public Law 103–354 will review and evaluate the proposals, adjust State allocations as necessary to comply with the law and program demand, and redistribute remaining unused HPG resources for use under Section 504 (as required by statute).

[53 FR 26229, July 12, 1988]

§1940.579 Multiple Family Housing appropriations not allocated by State.

Funds are not allocated to States. The following program funds are kept in a National Office reserve and are available as determined administratively:

(a) Section 514 Farm Labor Housing Loans.

(b) Section 516 Farm Labor Housing Grants.

[64 FR 24480, May 6, 1999]

§§ 1940.580–1940.584 [Reserved]

§ 1940.585 Community Facility loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition formula equals 30 percent (±15%).

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See § 1940.552(f) of this subpart. States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart. States may request funds by forwarding a completed copy of guide 26 of subpart A of part 1942 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the loan requested.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

[50 FR 24180, June 10, 1985, as amended at 58 FR 54485, Oct. 22, 1993]

§§ 1940.586–1940.587 [Reserved]

§ 1940.588 Business and Industry Guaranteed and Direct Loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* The transition formula is not used for B&I Guaranteed and Direct Loans.

(e) *Base allocations.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive initial administrative allocations.

(g) *Reserve. See* § 1940.552(g). States may request reserve funds from the B&I reserve when all of the state allocation has been obligated or will be obligated to the project for which the request is made.

(h) *Pooling of funds. See* § 1940.552(h). Funds are pooled near fiscal year-end. Pooled funds will be placed in a reserve and made available on a priority basis to all States.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. There is a 6-day waiting period from the time project funds are reserved to the time they are obligated.

(j) *Suballocation by the State Director.* Suballocation by the State Director is authorized for this program.

[50 FR 24180, June 10, 1985, as amended at 58 FR 54486, Oct. 22, 1993; 68 FR 14528, Mar. 26, 2003]

§ 1940.589 Rural Business Enterprise Grants.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range for the transition equals 30 percent (±15%).

(e) *Base allocation.* See § 1940.552(e) of this subpart.

(f) *Administrative allocation.* Not used.

(g) *Reserve. See* § 1940.552(g).

(h) *Pooling of funds. See* § 1940.552(h). Funds are pooled near fiscal year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions funds to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

[53 FR 26230, July 12, 1988, as amended at 57 FR 33099, July 27, 1992; 58 FR 54486, Oct. 22, 1993; 68 FR 14528, Mar. 26, 2003; 69 FR 5264, Feb. 4, 2004]

§ 1940.590 [Reserved]

§ 1940.591 Community Program Guaranteed loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion

is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* The transition formula for Community Program Guaranteed loans is not used.

(e) *Base allocation.* See § 1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See 1940.552(f) of this subpart. States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.522(g) of this subpart. States may request funds by forwarding a request following the format found in guide 26 of subpart A of part 1942 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds from the State's allocation to obligate the loan requested.

(h) *Pooling of funds.* See § 1940.522(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by State Director.* See § 1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

[55 FR 11134, Mar. 27, 1990, as amended at 58 FR 54486, Oct. 22, 1993]

§ 1940.592 Community facilities grants.

(a) *Amount available for allocations.* See § 1940.552(a).

(b) *Basic formula criteria, data source, and weight.* See § 1940.552(b).

(1) The criteria used in the basic formula are:

(i) State's percentage of National rural population—50 percent.

(ii) State's percentage of National rural population with income below the poverty level—50 percent.

(2) Data source for each of these criterion is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 50 percent)

(c) *Basic formula allocation.* See § 1940.552(c). States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* The transition formula for Community Facilities Grants is not used.

(e) *Base allocation.* See § 1940.552(e). States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See § 1940.552(f). States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g).

(h) *Pooling of funds.* See § 1940.522(h). Funds will be pooled at midyear and yearend. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See § 1940.552(i).

(j) *Suballocation by State Director.* See § 1940.552(j).

(k) *Other documentation.* Not applicable.

[62 FR 16468, Apr. 7, 1997]

§ 1940.593 Rural Business Opportunity Grants.

(a) *Amount available for allocations. See* § 1940.552(a).

(b) *Basic formula criteria, data source, and weight. See* § 1940.552(b).

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) The data source for each criterion is based on the latest census data available. The percentage representing each criterion is multiplied by the weight factor and added to arrive at a State Factor (SF). The SF cannot exceed .05.

SF = (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 25 percent) + (criterion (b)(1)(iii) × 25 percent)

(c) *Basic formula allocation. See* § 1940.552(c).

(d) *Transition formula.* The transition formula is not used for Rural Business Opportunity Grants (RBOG).

(e) *Base allocation. See* § 1940.552(e).

(f) *Administrative allocation.* The administrative allocation is not used for RBOG.

(g) *Reserve. See* § 1940.552(g).

(h) *Pooling of funds. See* § 1940.552(h). Funds are pooled near fiscal year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation. See* § 1940.552(i). The allocation of funds is made available to States on an annual basis.

(j) *Suballocation by the State Director.* Suballocation by the State Director is authorized for this program.

[68 FR 14528, Mar. 26, 2003; 68 FR 17153, Apr. 8, 2003]

§§ 1940.594–1940.600 [Reserved]

EXHIBIT A TO SUBPART L OF PART 1940 [RESERVED]

EXHIBIT B TO SUBPART L OF PART 1940—SECTION 515 NONPROFIT SET ASIDE (NPSA)

I. *Objective:* To provide eligible nonprofit entities with a reasonable opportunity to utilize section 515 funds.

II. *Background:* The Cranston-Gonzalez National Affordable Housing Act of 1990 established the statutory authority for the section 515 NPSA funds.

III. *Eligible entities.* Amounts set aside shall be available only for nonprofit entities in the State, which may not be wholly or partially owned or controlled by a for-profit entity. An eligible entity may include a partnership, including a limited partnership, that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. For the purposes of this exhibit, a nonprofit entity is an organization that:

A. Will own an interest in a project to be financed under this section and will materially participate in the development and the operations of the project; and

B. Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986; and

C. Has among its purposes the planning, development, or management of low-income housing or community development projects; and

D. Is not affiliated with or controlled by a for-profit organization; and

E. May be a consumer cooperative, Indian tribe or tribal housing authority.

IV. *Nondiscrimination.* FmHA or its successor agency under Public Law 103–354 reemphasizes the nondiscrimination in use and occupancy, and location requirements of § 1944.215 of subpart E of part 1944 of this chapter.

V. *Amount of Set Aside.* See Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office):

A. *Small State Allocation Set Aside (SSASA).* The allocation for small States has been reserved and combined to form the SSASA, as shown in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office). The definition of small State is included in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office).

B. *Large State Allocation Set Aside (LSASA).* The allocation for large States has been reserved in the amounts shown in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office). The definition of large State is included in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office).

C. *NPSA Rental Assistance (RA).* NPSA RA has been reserved in the National Office as shown in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office).

VI. *Access to NPSA funds and RA.* RA is available and may be requested, as needed, with eligible loan requests. NPSA funds and RA should be requested by the State Director using a format similar to Attachment 2 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office). Funds are available as follows:

A. *SSASA:* The SSASA is available to any SSASA State on a first-come-first-served basis until pooling. See Attachment 3 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office) for information regarding pooling.

B. *LSASA:* LSASA states may request LSASA funds up to the amount the state contributed to LSASA until pooling. See Attachment 3 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office) for information regarding pooling.

VII. *General Information on priority/processing of Preapplications.*

A. Preapplications/applications for assistance from eligible nonprofit entities under this subpart must continue to meet all loan making requirements of subpart E of part 1944 of this chapter.

B. A separate processing list will be maintained for NPSA loan requests.

C. The State Director may issue Form AD–622, ''Notice of Preapplication Review Action'', requesting a formal application to the highest ranking preapplication(s) from eligible nonprofit entities defined in paragraph III of this exhibit as follows:

1. *LSASA.* In LSASA States, AD–622s may not exceed 150 percent of the amount the State contributed to the LSASA. No single Form AD–622 may exceed the amount of funds the State contributed to LSASA.

2. *SSASA.* In SSASA States, AD–622s should not exceed the greater of $750,000 or 150 percent of the amount the State contributed to the SSASA; except that the State Director in a SSASA State may request authorization to issue a Form AD–622, in an amount in excess of $750,000 if additional funds are necessary to finance an average-size proposal based upon average construction costs in the state. For example, if the average size proposal currently being funded in the state is 24 units, and the average construction cost in the state is $35,000 per unit, the state may request authorization to issue an AD–622 for $840,000. The State Director will submit such requests to the National Office including data reflecting average size/cost projects in the State. No single Form AD–622 may exceed the amount of funds the State may receive from SSASA.

D. All AD–622s issued for proposals to be funded from NPSA will be subject to the availability of NPSA funds. Form AD–622 should contain the following or similar language: ''This Form AD–622 is issued subject to the availability of Nonprofit Set-Aside (NPSA) funds.''

E. If a preapplication requesting NPSA funds has sufficient priority points to compete with non-NPSA loan requests based upon the District or State allocation (as applicable), the preapplication will be maintained on both the NPSA and non-NPSA rating/ranking lists.

F. Provisions for providing preference to loan requests from nonprofits is contained in §1944.231 of subpart E of part 1944 of this chapter. Limited partnerships, with a nonprofit general partner, do not qualify for nonprofit preference.

VIII. *Exception authority.* The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements of this exhibit which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the intent of the authorizing statute and/or Rural Rental Housing program or result in an undue hardship by applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the Multi-Family Housing Processing Division. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves the right to change pooling dates, establish/change minimum and maximum fund usage from NPSA, or restrict participation in the set aside.

[58 FR 38950, July 21, 1993]

EFFECTIVE DATE NOTE: At 69 FR 69104, Nov. 26, 2004, Exhibit B to subpart L of part 1940 was amended by revising paragraphs IV., VII.A., and VII.F., effective Feb. 24, 2005. For the convenience of the user the revised text is set forth as follows:

EXHIBIT B TO SUBPART L OF PART 1940—SECTION 515 NONPROFIT SET ASIDE (NPSA)

* * * * *

IV. *Nondiscrimination.* Rural Development reemphasizes the nondiscrimination in use and occupancy and location requirements of 7 CFR 3560.104.

* * * * *

VII. * * *

A. Preapplications/applications for assistance from eligible nonprofit entities under this subpart must continue to meet all loan

making requirements of 7 CFR part 3560, subpart B.

* * * * *

F. Provisions for providing preference to loan requests from nonprofit organizations is contained in 7 CFR 3560.56. Limited partnerships, with a nonprofit general partner, do not qualify for nonprofit preference.

EXHIBIT C TO SUBPART L OF PART 1940—HOUSING IN UNDERSERVED AREAS

I. OBJECTIVE

A. To improve the quality of affordable housing by targeting funds under Rural Housing Targeting Set Aside (RHTSA) to designated areas that have extremely high concentrations of poverty and substandard housing and have severe, unmet rural housing needs.

B. To provide for the eligibility of certain colonias for rural housing funds.

II. BACKGROUND

The Cranston-Gonzalez National Affordable Housing Act of 1990 (herein referred to as the ''Act'') requires that Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 set aside section 502, 504, 514, 515, and 524 funds for assistance in targeted, underserved areas. An appropriate amount of section 521 new construction rental assistance (RA) is set aside for use with seciton 514 and 515 loan programs. Under the Act, certain colonias are now eligible for FmHA or its successor agency under Public Law 103–354 housing assistance.

III. COLONIAS

A. Colonia is defined as any identifiable community that:

1. Is in the State of Arizona, California, New Mexico or Texas;

2. Is in the area of the United States within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1 million;

3. Is designated by the State or county in which it is located as a colonia;

4. Is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and

5. Was in existence and generally recognized as a colonia before November 28, 1990.

B. Requests for housing assistance in colonias have priority as follows:

1. When the State did not obligate its allocation in one or more of its housing programs during the previous 2 fiscal years (FYs), priority will be given to requests for assistance, in the affected program(s), from regularly allocated funds, until an amount equal to 5 percent of the current FY program(s) allocation is obligated in colonias. This priority takes precedence over other processing priority methods.

2. When the State did obligate its allocation in one or more of its housing programs during the previous 2 FYs, priority will be given to requests for assistance, in the affected program(s), from RHTSA funds, until an amount equal to 5 percent of the current FY program(s) allocation is obligated in colonias. This priority takes precedence over other processing priority methods.

C. Colonias may access pooled RHTSA funds as provided in paragraph IV G of this exhibit.

IV. RHTSA

A. *Amount of Set Aside.* Set asides for RHTSA, from the current FY allocations, are established in attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office).

B. *Selection of Targeted Counties*—1. *Eligibility.* Eligible counties met the following criteria: (1) 20 percent or more of the county population is at, or below, poverty level; (2) 10 percent or more of the occupied housing units are substandard; and (3) the average funds received on a per capita basis in the county, during the previous 5 FYs, were more than 40 percent below the State per capita average during the same period. Data from the most recent available Census was used for all three criteria, with criteria (2) and (3) based on the FmHA or its successor agency under Public Law 103–354 rural area definition.

2. *Selection.* The Act requires that 100 of the most underserved counties be initially targeted for RHTSA funds. In establishing the 100 counties, those with 28 percent or more of their population at, or below, poverty level and 13 percent or more of their occupied housing units substandard, have preference. If less than 100 counties meet this criteria, the remaining counties meeting the criteria in paragraph IV B 1 of this exhibit will be ranked, based upon a total of their substandard housing and poverty level percentages. The highest-ranking counties are then selected until the list reaches 100. The remaining counties are eligible for pool funds only.

C. *State RHTSA Levels.* In the section 502, 504, and 515 programs, each State's RHTSA level will be based on its number of eligible counties, with each county receiving a pro rata share of the total funds available. In order to ensure that a meaningful amount of assistance is available to each State, minimum funding levels may be established. When minimum levels are established, they

are set forth on Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office).

D. *Use of Funds.* To maximize the assistance to targeted counties, allocated program funds should be used in addition to RHTSA funds, where possible. The State Director has the discretion to determine the most effective delivery of RHTSA funds among the targeted counties within his/her jurisdiction. The 100 counties listed in attachment 2 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office) are eligible for RHTSA funding consideration immediately. Colonias are also eligible for RHTSA funds as described in paragraph III of this exhibit.

E. *National Office RHTSA Reserve.* A limited National Office reserve is available on an individual case basis when the State is unable to fund a request from its regular or RHTSA allocation. The amount of the reserve, and the date it can be accessed and any conditions thereof, if applicable, are contained in attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office).

F. *Requests for Funds and RA.* All RHTSA funds are reserved in the National Office and requests for these funds and/or RA units must be submitted by the State Director, using the applicable format shown on attachment 4 or 5 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office). The State Director is responsible for notifying the Director of Single Family Housing Processing Division (SFHPD) or Multi-Family Housing Processing Division (MFHPD) of any RHTSA funds and RA units authorized, but not obligated, by RHTSA pooling date.

G. *Pooling.* Unused RHTSA funds and RA will be pooled. Pooling dates and any pertinent information thereof are available on attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office). Pooled funds will be available on a first-come, first-served basis to all eligible colonias and all counties listed on attachments 2 and 3 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office). Pooled RHTSA funds will remain available until the year-end pooling date.

H.–I. [Reserved]

J. *Requests for Assistance.* Requests for assistance in targeted counties must meet all loan making requirements of the applicable program Instructions, except as modified for colonias in paragraph III of this exhibit. For section 515, States may:

1. Issue Form AD–622, ''Notice of Preapplication Review Action,'' up to 150 percent of the amount shown in attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103–354 State Office).

2. All AD–622s issued for applicants in targeted counties will be annotated, in Item 7, under ''Other Remarks,'' with the following: ''Issuance of this AD–622 is contingent upon receiving funds from the Rural Housing Targeting Set Aside (RHTSA). Should RHTSA funds be unavailable, or the county in which this project will be located is no longer considered a targeted county, this AD–622 will no longer be valid. In these cases, the request for assistance will need to compete with other preapplications in non-targeted counties, based upon its priority point score.''

V. [RESERVED]

[57 FR 3924, Feb. 3, 1992]

Subparts M–S [Reserved]

Subpart T—System for Delivery of Certain Rural Development Programs

SOURCE: 57 FR 11559, Apr. 6, 1992, unless otherwise noted.

§ 1940.951 General.

This subpart sets forth Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 policies and procedures for the delivery of certain rural development programs under a rural economic development review panel established in eligible States authorized under sections 365, 366, 367, and 368 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), as amended.

(a) If a State desires to participate in this pilot program, the Governor of the State may submit an application to the Under Secretary for Small Community and Rural Development, U.S. Department of Agriculture, room 219–A, Administration Building, Washington, DC 20250 in accordance with § 1940.954 of this subpart.

(b) The Under Secretary shall designate not more than five States in which to make rural economic development review panels applicable during any established time period for the purpose of reviewing and ranking applications submitted for funding under certain rural development programs. The following time periods have been

established for participation in this pilot program:

First period—Balance of fiscal year (FY) 1992 to September 30, 1993;
Second period—October 1, 1993 to September 30, 1994;
Third period—October 1, 1994 to September 30, 1995; and
Fourth period—October 1, 1995 to September 30, 1996.

The State will be bound by the provisions of this pilot program only during the established time period(s) for which the State is designated. If a designated State does not remain an eligible State during the established time period(s) for which the State was designated, the State will not be eligible to participate in this program and cannot revert to the old ranking and applicant selection process.

(c) Assistance under each designated rural development program shall be provided to eligible designated States for qualified projects in accordance with this subpart.

(d) Federal statutes provide for extending FmHA or its successor agency under Public Law 103–354 financially supported programs without regard to race, color, religion, sex, national origin, marital status, age, familial status, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts.)

§ 1940.952 [Reserved]

§ 1940.953 Definitions.

For the purpose of this subpart:

Administrator. The Administrator of FmHA or its successor agency under Public Law 103–354.

Area plan. The long-range development plan developed for a local or regional area in a State.

Designated agency. An agency selected by the Governor of the State to provide the panel and the State Coordinator with support for the daily operation of the panel.

Designated rural development program. A program carried out under sections 304(b), 306(a), or subsections (a) through (f) and (h) of section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)), as amended, or under section 1323 of the Food Security Act of 1985, for which funds are available at any time during the FY under such section, including, but not limited to, the following:

(1) Water and Waste Disposal Insured or Guaranteed Loans;

(2) Development Grants for Community Domestic Water and Waste Disposal Systems;

(3) Technical Assistance and Training Grants;

(4) Emergency Community Water Assistance Grants;

(5) Community Facilities Insured and Guaranteed Loans;

(6) Business and Industry Guaranteed Loans;

(7) Industrial Development Grants;

(8) Intermediary Relending Program;

(9) Drought and Disaster Relief Guaranteed Loans;

(10) Disaster Assistance for Rural Business Enterprises;

(11) Nonprofit National Rural Development and Finance Corporations.

Designated State. A State selected by the Under Secretary, in accordance with § 1940.954 of this subpart, to participate in this program.

Eligible State. With respect to a FY, a State that has been determined eligible in accordance with § 1940.954 (e) of this subpart.

Nondesignated State. A State that has not been selected to participate in this pilot program.

Qualified project. Any project: (1) For which the designated agency has identified alternative Federal, State, local or private sources of assistance and has identified related activities in the State; and

(2) To which the Administrator is required to provide assistance.

State. Any of the fifty States.

State coordinator. The officer or employee of the State appointed by the Governor to carry out the activities described in § 1940.957 of this subpart.

State Director. The head of FmHA or its successor agency under Public Law 103–354 at the local level charged with administering designated rural development programs.

State rural economic development review panel or ''panel''. An advisory panel that meets the requirements of § 1940.956 of this subpart.

Under Secretary. In the U.S. Department of Agriculture, the Under Secretary for Small Community and Rural Development.

§ 1940.954 State participation.

(a) *Application*. If a State desires to participate in this pilot program, the Governor may submit an original and one copy of Standard Form (SF) 424.1, ''Application for Federal Assistance (For Non-construction),'' to the Under Secretary. The five States designated by the Under Secretary to participate in the first established time period will be selected from among applications received not later than 60 calendar days from the effective date of this subpart. If a designated State desires to participate in additional time periods, applications are not required to be resubmitted; however, the Governor must notify the Under Secretary, in writing, no later than July 31 of each FY, and the State must submit evidence of eligibility requirements each FY in accordance with § 1940.954 (e)(2) of this subpart. Beginning in FY 1993, applications must be submitted to the Under Secretary no later than July 31 if a State desires to be selected to fill vacancies that occur when designated States do not roll over into another established time period. States should include the following information with SF 424.1:

(1) A narrative signed by the Governor including reasons for State participation in this program and reasons why a project review and ranking process by a State panel will improve the economic and social conditions of rural areas in the State. The narrative will also include the time period(s) for which the State wishes to participate.

(2) A proposal outlining the method for meeting all the following eligibility requirements and the timeframes established for meeting each requirement:

(i) Establishing a rural economic development review panel in accordance with § 1940.956 of this subpart. When established, the name, title, and address of each proposed member should be included and the chairperson and vice chairperson should be identified.

(ii) Governor's proposed designation of a State agency to support the State coordinator and the panel. The name, address, and telephone number of the proposed agency's contact person should be included.

(iii) Governor's proposed selection of a State coordinator in accordance with § 1940.957 of this subpart, including the title, address, and telephone number.

(iv) Development of area development plans for all areas of the State that are eligible to receive assistance from designated rural development programs.

(v) The review and evaluation of area development plans by the panel in accordance with § 1940.956 of this subpart.

(vi) Development of written policy and criteria used by the panel to review and evaluate area plans in accordance with § 1940.956 of this subpart.

(vii) Development of written policy and criteria the panel will use to evaluate and rank applications in accordance with § 1940.956 of this subpart.

(3) Preparation of a proposed budget that includes 3 years projections of income and expenses associated with panel operations. If funds from other sources are anticipated, sources and amounts should be identified.

(4) Development of a financial management system that will provide for effective control and accountability of all funds and assets associated with the panel.

(5) A schedule to coordinate the submission, review, and ranking process of preapplications/applications in accordance with § 1940.956(a) of this subpart.

(6) Other information provided by the State in support of its application.

(b) *Selecting States.* The Under Secretary will review the application and other information submitted by the State and designate not more than five States to participate during any established time period.

(c) *Notification of selection*. (1) The Under Secretary will notify the Governor of each State whether or not the State has been selected for further consideration in this program. If a State has been selected, the notification will include the additional information that the Governor must submit to the Under Secretary in order for the State to meet eligibility requirements in accordance with paragraph (d) of this section.

(2) A copy of the notification to the Governor will be submitted to the Administrator along with a copy of the State's application and other material submitted in support of the application.

(d) *Determining State eligibility.* (1) The Governor will provide the Under Secretary with evidence that the State has complied with the eligibility requirements of paragraph (a)(2) of this section not later than September 1, 1992, for the first established time period and not later than September 1 for each of the remaining established time periods.

(2) The Under Secretary will review the material submitted by the Governor in sufficient detail to determine if a State has complied with all eligibility requirements of this subpart. The panel will not begin reviewing and ranking applications until the Governor has been notified in writing by the Under Secretary that the State has been determined eligible and is designated to participate in this program. A copy of the notification will be sent to the Administrator. The Under Secretary's decision is not appealable.

(e) *Eligibility requirements.* (1) With respect to this subpart, the Under Secretary may determine a State to be an eligible State provided all of the following apply not later than October 1 of each FY:

(i) The State has established a rural economic development review panel that meets the requirements of § 1940.956 of this subpart;

(ii) The Governor has appointed an officer or employee of the State government to serve as State coordinator to carry out the responsibilities set forth in § 1940.957 of this subpart; and

(iii) The Governor has designated an agency of the State government to provide the panel and State coordinator with support for the daily operation of the panel.

(2) If a State is determined eligible initially and desires to participate in additional time periods established for this program, the Governor will submit documents and information not later than September 1 of each subsequent FY in sufficient detail for the Under Secretary to determine, prior to the beginning of the additional time period, that the State is still in compliance with all eligibility requirements of this subpart.

§ 1940.955 Distribution of program funds to designated States.

(a) States selected to participate in the first established time period will receive funds from designated rural development programs according to applicable program regulations until the end of FY 1992, if necessary for States to have sufficient time to meet the eligibility requirements of this subpart, and to be designated to participate in this program. No funds will be administered under this subpart to an ineligible State.

(b) If a State becomes an eligible State any time prior to the end of FY 1992, any funds remaining unobligated from a State's FY 1992 allocation, may be administered under this subpart.

(c) Beginning in FY 1993 and for each established time period thereafter, all designated rural development program funds received by a designated State will be administered in accordance with §§ 1940.961 through 1940.965 of this subpart, provided the State is determined eligible prior to the beginning of each FY in accordance with § 1940.954 of this subpart. No assistance will be provided under any designated rural development program in any designated State that is not an eligible State.

§ 1940.956 State rural economic development review panel.

(a) *General.* In order for a State to become or remain an eligible State, the State must have a rural economic development panel that meets all requirements of this subpart. Each designated State will establish a schedule whereby the panel and FmHA or its successor agency under Public Law 103–354 will coordinate the submission, review, and ranking process of preapplications/applications. The schedule will be submitted to the Under Secretary for concurrence and should consider the following:

(1) Timeframes should assure that applications selected for funding from the current FY's allocation of funds can be processed by FmHA or its successor agency under Public Law 103–354 and funds obligated prior to the July 15

pooling established in § 1940.961(c) of this subpart;

(2) Initial submission of preapplications/applications from FmHA or its successor agency under Public Law 103–354 to the panel and any subsequent submissions during the first year;

(3) How often during each FY thereafter should FmHA or its successor agency under Public Law 103–354 submit preapplications/applications to the panel for review and ranking;

(4) Number of working days needed by the panel to review and rank preapplications/applications;

(5) Number of times during the FY the panel will submit a list of ranked preapplications/applications to FmHA or its successor agency under Public Law 103–354 for funding consideration;

(6) Consider the matching of available loan and grant funds to assure that all allocated funds will be used;

(7) How to consider ranked preapplications/applications at the end of the FY that have not been funded; and

(8) How to consider requests for additional funds needed by an applicant to complete a project that already has funds approved; i.e., construction bid cost overrun.

(b) *Duties and responsibilities.* The panel is required to advise the State Director on the desirability of funding applications from funds available to the State from designated rural development programs. In relation to this advice, the panel will have the following duties and responsibilities:

(1) *Establish policy and criteria to review and evaluate area plans and to review and rank preapplications/applications.* (i) *Area plan.* The panel will develop a written policy and criteria to use when evaluating area plans. The criteria to be used when evaluating area plans will assure that the plan includes, as a minimum, the technical information included in § 1940.959 of this subpart. The criteria will be in sufficient detail for the panel to determine that the plan is technically and economically adequate, feasible, and likely to succeed in meeting the stated goals of the plan. The panel will give weight to area-wide or regional plans and comments submitted by intergovernmental development councils or similar organizations made up of local elected officials charged with the responsibility for rural area or regional development. A copy of the policy and evaluating criteria will be provided to FmHA or its successor agency under Public Law 103–354.

(ii) *Applications.* The panel will annually review the policy and criteria used by the panel to evaluate and rank preapplications/applications in accordance with this subpart. The panel will assure that the policy and criteria are consistent with current rural development needs, and that the public has an opportunity to provide input during the development of the initial policy and criteria. The Governor will provide a copy of the initial policy and criteria established by the panel when submitting evidence of eligibility in accordance with § 1940.954 of this subpart. Annually, thereafter, and not later than September 1 of each FY, the State coordinator will send the Under Secretary evidence that the panel has reviewed the established policy and criteria. The State coordinator will also send the Under Secretary a copy of all revisions.

(A) The policy and criteria used to rank applications for business related projects will include the following, which are not necessarily in rank order:

(*1*) The extent to which a project stimulate rural development by creating new jobs of a permanent nature or retaining existing jobs by enabling new small businesses to be started, or existing businesses to be expanded by local or regional area residents who own and operate the businesses.

(*2*) The extent to which a project will contribute to the enhancement and the diversification of the local or regional area economy.

(*3*) The extent to which a project will generate or retain jobs for local or regional area residents.

(*4*) The extent to which a project will be carried out by persons with sufficient management capabilities.

(*5*) The extent to which a project is likely to become successful.

(*6*) The extent to which a project will assist a local or regional area overcome severe economic distress.

(*7*) The distribution of assistance to projects in as many areas as possible in the State with sensitivity to geographic distribution.

(*8*) The technical aspects of the project.

(*9*) The market potential and marketing arrangement for the projects.

(*10*) The potential of such project to promote the growth of a rural community by improving the ability of the community to increase the number of persons residing in the community and by improving the quality of life for these persons.

(B) The policy and criteria used to rank preapplications/applications for infrastructure and all other community facility-type projects will include the following which are not necessarily in rank order:

(*1*) The extent to which the project will have the potential to promote the growth of a rural community by improving the quality of life for local or regional residents.

(*2*) The extent to which the project will affect the health and safety of local or regional area residents.

(*3*) The extent to which the project will improve or enhance cultural activities, public service, education, or transportation.

(*4*) The extent to which the project will affect business productivity and efficiency.

(*5*) The extent to which the project will enhance commercial business activity.

(*6*) The extent to which the project will address a severe loss or lack of water quality or quantity.

(*7*) The extent to which the project will correct a waste collection or disposal problem.

(*8*) The extent to which the project will bring a community into compliance with Federal or State water or waste water standards.

(*9*) The extent to which the project will consolidate water and waste systems and utilize management efficiencies in the new system.

(2) *Review and evaluate area plans.* Each area plan submitted for a local or regional area will be reviewed and evaluated by the panel. After an area plan has been reviewed and evaluated in accordance with established policy and criteria:

(i) The panel will accept any area plan that meets established criteria unless the plan is incompatible with any other area plan for that area that has been accepted by the panel; or

(ii) The panel will return any area plan that is technically or economically inadequate, not feasible, is unlikely to be successful, or is not compatible with other panel-accepted area plans for that area. When an area plan is returned, the panel will include an explanation of the reasons for the return and suggest alternative proposals.

(iii) The State coordinator will notify the State Director, in writing, of the panel's decision on each area plan reviewed.

(3) *Review and rank preapplications/applications.* The panel will review, rank, and transmit a ranked list of preapplications/applications according to the schedule prepared in accordance with paragraph (a) of this section, and the following:

(i) *Review preapplications/applications.* The panel will review each preapplication/application for assistance to determine if the project to be carried out is compatible with the area plan in which the project described in the preapplication/application is proposed, and either:

(A) Accept any preapplication/application determined to be compatible with such area plan; or

(B) Return to the State Director any preapplication/application determined not to be compatible with such area plan. The panel will notify the applicant when preapplication/applications are returned to the State Director.

(ii) *Rank preapplications/applications.* The panel will rank only those preapplications/applications that have been accepted in accordance with paragraph (b)(3)(i)(A) of this section. The panel will consider the sources of assistance and related activities in the State identified by the designated agency. Applications will be ranked in accordance with the written policy and criteria established in accordance with paragraph (b)(1)(ii) of this section and the following:

(A) Priority ranking for projects addressing health emergencies. In addition to the criteria established in paragraph (b)(1)(ii) of this section, preapplications/applications for projects designed to address a health emergency declared so by the appropriate Federal or State agency, will be given priority by the panel.

(B) Priority based on need. If two or more preapplications/applications ranked in accordance with this subpart are determined to have comparable strengths in their feasibility and potential for growth, the panel will give priority to the applications for projects with the greatest need.

(C) If additional ranking criteria for use by a panel are required in any designated rural development program regulation, the panel will give consideration to the criteria when ranking preapplications/applications submitted under that program.

(iii) *Transmit list of ranked preapplications/applications.* After the preapplications/applications have been ranked, the panel will submit a list of all preapplications/applications received to the State coordinator. The list will clearly indicate each preapplication/application accepted for funding and will list preapplications/applications in the order established for funding according to priority ranking by the panel. The list will not include a preapplication/application that is to be returned to the applicant in accordance with paragraph (b)(3)(i)(B) of this section. The State coordinator will send a copy of the list to the State Director for further processing of the preapplication/application in accordance with §1940.965 of this subpart. Once the panel has ranked and submitted the list to FmHA or its successor agency under Public Law 103–354 and the State Director has selected a preapplication/application for funding, the preapplication/application selected will not be replaced with a preapplication/application received at a later date that may have a higher ranking.

(4) *Public availability of list.* If requested, the State coordinator will make the list of ranked preapplications/applications available to the public and will include a brief explanation and justification of why the project preapplications/applications received their priority ranking.

(c) *Membership.* (1) *Voting members.* The panel will be composed of not more than 16 voting members who are representatives of rural areas. The 16 voting members will include the following:

(i) One of whom is the Governor of the State or the person designated by the Governor to serve on the panel, on behalf of the Governor, for that year;

(ii) One of whom is the director of the State agency responsible for economic and community development or the person designated by the director to serve on the panel, on behalf of the director, for that year:

(iii) One of whom is appointed by a statewide association of banking organizations;

(iv) One of whom is appointed by a statewide association of investor-owned utilities;

(v) One of whom is appointed by a statewide association of rural telephone cooperatives;

(vi) One of whom is appointed by a statewide association of noncooperative telephone companies;

(vii) One of whom is appointed by a statewide association of rural electric cooperatives;

(viii) One of whom is appointed by a statewide association of health care organizations;

(ix) One of whom is appointed by a statewide association of existing local government-based planning and development organizations;

(x) One of whom is appointed by the Governor of the State from either a statewide rural development organization or a statewide association of publicly-owned electric utilities, neither of which is described in any of paragraphs (c)(1)(iii) through (ix);

(xi) One of whom is appointed by a statewide association of counties;

(xii) One of whom is appointed by a statewide association of towns and townships, or by a statewide association of municipal leagues, as determined by the Governor;

(xiii) One of whom is appointed by a statewide association of rural water districts;

(xiv) The State director of the Federal small business development center

or, if there is no small business development center in place with respect to the State, the director of the State office of the Small Business Administration;

(xv) The State representative of the Economic Development Administration of the Department of Commerce; and

(xvi) One of whom is appointed by the State Director from among the officers and employees of FmHA or its successor agency under Public Law 103–354.

(2) *Nonvoting members.* The panel will have not more than four nonvoting members who will serve in an advisory capacity and who are representatives of rural areas. The four nonvoting members will be appointed by the Governor and include:

(i) One from names submitted by the dean or the equivalent official of each school or college of business, from colleges and universities in the State;

(ii) One from names submitted by the dean or the equivalent official of each school or college of engineering, from colleges and universities in the State;

(iii) One from names submitted by the dean or the equivalent official, of each school or college of agriculture, from colleges and universities in the State; and

(iv) The director of the State agency responsible for extension services in the State.

(3) *Qualifications of panel members appointed by the Governor.* Each individual appointed to the panel by the Governor will be specially qualified to serve on the panel by virtue of the individual's technical expertise in business and community development.

(4) *Notification of selection.* Each statewide organization that selects an individual to represent the organization on the panel must notify the Governor of the selection.

(5) *Appointment of members representative of statewide organization in certain cases.* (i) If there is no statewide association or organization of the entities described in paragraph (c)(1) of this section, the Governor of the State will appoint an individual to fill the position or positions, as the case may be, from among nominations submitted by local groups of such entities.

(ii) If a State has more than one of any of the statewide associations or organizations of the entities described in paragraph (c)(1) of this section, the Governor will select one of the like organizations to name a member to serve during no more than one established time period. Thereafter, the Governor will rotate selection from among the remaining like organizations to name a member.

(d) *Failure to appoint panel members.* The failure of the Governor, a Federal agency, or an association or organization described in paragraph (c) of this section, to appoint a member to the panel as required under this subpart, shall not prevent a State from being determined an eligible State.

(e) *Panel vacancies.* A vacancy on the panel will be filled in the manner in which the original appointment was made. Vacancies should be filled prior to the third panel meeting held after the vacany occurred. The State coordinator will notify the State Director, in writing, when the vacancy is filled or if the vacancy will not be filled.

(f) *Chairperson and vice chairperson.* The panel will select two members of the panel who are not officers or employees of the United States to serve as the chairperson and vice chairperson of the panel. The term shall be for 1 year.

(g) *Compensation to panel members.* (1) *Federal members.* Except as provided in §1940.960 of this subpart, each member of the panel who is an officer or employee of the Federal Government may not receive any compensation or benefits by reason of service on the panel, in addition to that which is received for performance of such officer or employee's regular employment.

(2) *NonFederal members.* Each nonfederal member may be compensated by the State and/or from grant funds established in §1940.968 of this subpart.

(h) *Rules governing panel meetings.* (1) *Quorum.* A majority of voting members of the panel will constitute a quorum for the purpose of conducting business of the panel.

(2) *Frequency of meetings.* The panel will meet not less frequently than quarterly. Frequency of meetings should be often enough to assure that applications are reviewed and ranked for funding in a timely manner.

(3) *First meeting.* The State coordinator will schedule the first panel meeting and will notify all panel members of the location, date, and time at least seven days prior to the meeting. Subsequent meetings will be scheduled by vote of the panel.

(4) *Records of meetings.* The panel will keep records of the minutes of the meetings, deliberations, and evaluations of the panel in sufficient detail to enable the panel to provide interested agencies or persons the reasons for its actions.

(i) *Federal Advisory Committee Act.* The Federal Advisory Committee Act shall not apply to any State rural economic development review panel.

(j) *Liability of members.* The members of a State rural economic development review panel shall not be liable to any person with respect to any determination made by the panel.

§ 1940.957 State coordinator.

The Governor will appoint an officer or employee of State government as State coordinator in order for a State to become and remain an eligible State under this subpart. The State coordinator will have the following duties and responsibilities:

(a) Manage, operate, and carry out the instructions of the panel;

(b) Serve as liaison between the panel and the Federal and State agencies involved in rural development;

(c) Coordinate the efforts of interested rural residents with the panel and ensure that all rural residents in the State are informed about the manner in which assistance under designated rural development programs is provided to the State pursuant to this subpart, and if requested, provide information to State residents; and

(d) Coordinate panel activities with FmHA or its successor agency under Public Law 103–354.

§ 1940.958 Designated agency.

The Governor will appoint a State agency to provide the panel and the State coordinator with support for the daily operation of the panel. In addition to providing support, the designated agency is responsible for identifying:

(a) Alternative sources of financial assistance for project preapplications/applications reviewed and ranked by the panel, and

(b) Related activities within the State.

§ 1940.959 Area plan.

Each area plan submitted to the panel for review in accordance with § 1940.956 of this subpart shall identify the geographic boundaries of the area and shall include the following information:

(a) An overall development plan for the area with goals, including business development and infrastructure development goals, and time lines based on a realistic assessment of the area, including, but not limited to, the following:

(1) The number and types of businesses in the area that are growing or declining;

(2) A list of the types of businesses that the area could potentially support;

(3) The outstanding need for water and waste disposal and other public services or facilities in the area;

(4) The realistic possibilities for industrial recruitment in the area;

(5) The potential for development of tourism in the area;

(6) The potential to generate employment in the area through creation of small businesses and the expansion of existing businesses; and

(7) The potential to produce value-added agricultural products in the area.

(b) An inventory and assessment of the human resources of the area, including, but not limited to, the following:

(1) A current list of organizations in the area and their special interests;

(2) The current level of participation of area residents in rural development activities and the level of participation required for successful implementation of the plan;

(3) The availability of general and specialized job training in the area and the extent to which the training needs of the area are not being met;

(4) A list of area residents with special skills which could be useful in developing and implementing the plan; and

(5) An analysis of the human needs of the area, the resources in the area available to meet those needs, and the manner in which the plan, if implemented, would increase the resources available to meet those needs.

(c) The current degree of intergovernmental cooperation in the area and the degree of such cooperation needed for the successful implementation of the plan.

(d) The ability and willingness of governments and citizens in the area to become involved in developing and implementing the plan.

(e) A description of how the governments in the area apply budget and fiscal control processes to the plan. This process is directed toward costs associated with carrying out the planned development. When plans are developed, the financial condition of all areas covered under the plan should be fully recognized and planned development should realistically reflect the area's immediate and long-range financial capabilities.

(f) The extent to which public services and facilities need to be improved to achieve the economic development and quality of life goals of the plan. At a minimum, the following items will be considered:

(1) Law enforcement;

(2) Fire protection;

(3) Water, sewer, and solid waste management;

(4) Education;

(5) Health care;

(6) Transportation;

(7) Housing;

(8) Communications; and

(9) The availability of and capability to generate electric power.

(g) Existing area or regional plans are acceptable provided the plan includes statements that indicate the degree to which the plan has met or is meeting all the requirements in paragraphs (a) through (f) of this section.

§ 1940.960 Federal employee panel members.

(a) The State Director will appoint one FmHA or its successor agency under Public Law 103–354 employee to serve as a voting member of the panel established in § 1940.956(c)(1) of this subpart.

(b) The Administrator may appoint, temporarily and for specific purposes, personnel from any department or agency of the Federal Government as nonvoting panel members, with the consent of the head of such department or agency, to provide official information to the panel. The member(s) appointed shall have expertise to perform a duty described in § 1940.956(b) of this subpart that is not available among panel members.

(c) Federal panel members will be paid per diem or otherwise reimbursed by the Federal Government for expenses incurred each day the employee is engaged in the actual performance of a duty of the panel. Reimbursement will be in accordance with Federal travel regulations.

§ 1940.961 Allocation of appropriated funds.

(a) *Initial allocations.* (1) Each FY, from sums appropriated for direct loans, loan guarantees, or grants for any designated rural development program, funds will be allocated to designated States in accordance with FmHA Instruction subpart L of part 1940, exhibit A, attachment 4, of this chapter (available in any FmHA or its successor agency under Public Law 103–354 State or District Office).

(2) Each FY, and normally within 30 days after the date FmHA or its successor agency under Public Law 103–354 receives an appropriation of designated rural development program funds, the Governor of each designated State will be notified of the amounts allocated to the State under each designated program for such FY. The Governor will also be notified of the total amounts appropriated for the FY for each designated rural development program.

(3) The State Director will fund projects from a designated State's allocation of funds, according to appropriate program regulations giving great weight to the order in which the preapplications/applications for projects are ranked and listed by the panel in accordance with § 1940.956(b)(3) of this subpart.

(b) *Reserve.* A percentage of the National Office reserve established in subpart L of part 1940 of this chapter will be used to establish a reserve for designated States that is separate and apart from that of nondesignated States. The percent reserved will be based upon the same criteria used in subpart L of part 1940 of this chapter to allocate program funds.

(c) *Pooling.* (1) On July 15 of each FY, and from time to time thereafter during the FY, as determined appropriate, unobligated funds will be pooled from among the designated States. Pooled funds will be made a part of the reserve established for designated States and will revert to National Office control.

(2) Funds pooled from designated States can be requested by designated States, pursuant to subsection (d) of this section. The designated States' pool; however, will not be available to nondesignated States until September 1 of each year.

(d) *Request for funds.* (1) Designated States may request designated States' reserve funds, and funds for other designated rural development programs controlled by the National Office, as shown in FmHA Instruction subpart L of part 1940, exhibit A, attachment 4, of this chapter, in accordance with applicable program regulations.

(2) Designated States may request funds from the nondesignated reserve account when:

(i) All allocated and reserve funds to designated states have been used, or

(ii) Sufficient funds do not remain in any designated State allocation and in the designated States' reserve account to fund a project.

§ 1940.962 Authority to transfer direct loan amounts.

(a) *Transfer of funds.* If the amounts allocated to a designated State for direct Water and Waste Disposal or Community Facility loans for a FY are not sufficient to provide the full amount requested for a project in accordance with this subpart, the State Director may transfer part or all of the funds allocated to the State, from one program to another, subject to paragraphs (b) and (c) of this section.

(b) *Limitation on amounts transferred.* (1) Amounts transferred within a designated State. The amount of direct loan funds transferred from a program under this section shall not exceed the amount left unobligated after obligating the full amount of assistance requested for each project that ranked higher in priority on the panel's list.

(2) Amounts transferred on a National basis. The amount of direct loan funds transferred in a FY, among the designated States, from a program under this subpart (after accounting for any offsetting transfers into such program) shall not exceed $9 million, or an amount otherwise authorized by law.

(c) *National Office concurrence.* The State Director may transfer direct loan funds authorized in this section, after requesting and receiving concurrence from the National Office. If permitted by law, the National Office will concur in requests on a first-come-first-served basis.

§ 1940.963 Authority to transfer guaranteed loan amounts.

(a) *Transfer of funds.* If the amounts allocated to a designated State for guaranteed Water and Waste Disposal, Community Facility, or Business and Industry loans for a FY are not sufficient to provide the full amount requested for a project in accordance with this subpart, the State Director may transfer part or all of the funds allocated to the State, from one program to another, subject to paragraphs (b) and (c) of this section.

(b) *Limitation on amounts transferred.* The amount of guaranteed loan funds transferred from a program under this section shall not exceed the amount left unobligated after obligating the full amount of assistance requested for each project that ranked higher in priority on the panel's list.

(c) *National Office concurrence.* The State Director may transfer guaranteed loan funds authorized in this section, after requesting and receiving concurrence from the National Office. If permitted by law, the National Office will concur in requests on a first-come-first-served basis.

§ 1940.964 [Reserved]

§ 1940.965 Processing project preapplications/applications.

Except for the project review and ranking process established in this subpart, all requests for funds from designated rural development programs will be processed, closed, and serviced according to applicable FmHA or its successor agency under Public Law 103–354 regulations, available in any FmHA or its successor agency under Public Law 103–354 office.

(a) *Preapplications/applications.* All preapplications/applications on hand that have not been selected for further processing will be submitted initially to the panel for review and ranking. Preapplications/applications on hand that had been selected for further processing prior to the time a State was selected to participate in this program may be funded by FmHA or its successor agency under Public Law 103–354 without review by the panel. Preapplications/applications selected for further processing by FmHA or its successor agency under Public Law 103–354 will not exceed the State's previous year's funding level. The State Director will provide the State coordinator a list of preapplications/applications that are in process and will be considered for funding without review by the panel. This list will be provided at the same time preapplications/applications are initially submitted to the State coordinator in accordance with paragraph (d) of this section.

(b) *FmHA or its successor agency under Public Law 103–354 review.* Preapplications/applications will be reviewed in sufficient detail to determine eligibility and, if applicable, determine if the applicant is able to obtain credit from other sources at reasonable rates and terms. Normally, within 45 days after receiving a complete preapplication/application, FmHA or its successor agency under Public Law 103–354 will notify the applicant of the eligibility determination. A copy of all notifications will be sent to the State coordinator.

(c) *Applicant notification.* The notification to eligible applicants will contain the following statements:

Your application has been submitted to the State coordinator for review and ranking by the State rural economic development review panel. If you have questions regarding this review process, you should contact the State coordinator. The address and telephone number are: (insert).

You will be notified at a later date of the decision reached by the panel and whether or not you can proceed with the proposed project.

You are advised against incurring obligations which cannot be fulfilled without FmHA or its successor agency under Public Law 103–354 funds.

These statements should be included in notifications to applicants with preapplications/applications on hand that had not been selected for further processing prior to the time a State was selected to participate in this program.

(d) *Information to State coordinator.* FmHA or its successor agency under Public Law 103–354 will forward a copy of the preapplication/application and other information received from the applicant to the State coordinator according to a schedule prepared in accordance with § 1940.956(a) of this subpart. The State coordinator will be advised that no further action will be taken on preapplications/applications until they have been received and ranked by the panel, and a priority funding list has been received from the State. Applications forwarded to the State coordinator will be reviewed and ranked for funding in accordance with § 1940.956 of this subpart.

(e) *The FmHA or its successor agency under Public Law 103–354 review of priority funding list.* FmHA or its successor agency under Public Law 103–354 will review the list of ranked applications received from the State coordinator and determine if projects meet the requirements of the designated rural development program under which the applicant seeks assistance. Any project that does not meet program regulations will be removed from the list. Applicants will be notified of the decision reached by the panel and whether or not the applicant should proceed with the project. FmHA or its successor agency under Public Law 103–354 will provide a copy of all notifications to the State coordinator. The decisions of the panel are not appealable.

(f) *Obligation of funds.* FmHA or its successor agency under Public Law 103–354 will provide funds for projects whose application remains on the list, subject to available funds. Consideration will be given to the order in which the applications were ranked and prioritized by the panel. If FmHA or its successor agency under Public Law 103–354 proposes to provide assistance to any project without providing assistance to all projects ranked higher in priority by the panel than the project to be funded, 10 days prior to requesting an obligation of funds, the State Director will submit a report stating reasons for funding such lower ranked project to the following:

(1) *Panel.*

(2) *National Office.* The National Office will submit a copy of the notification to:

(i) Committee on Agriculture of the House of Representatives, Washington, DC.

(ii) Committee on Agriculture, Nutrition, and Forestry of the Senate, Washington, DC.

§§ 1940.966–1940.967 [Reserved]

§ 1940.968 Rural Economic Development Review Panel Grant (Panel Grant).

(a) *General.* Panel Grants awarded will be made from amounts appropriated for grants under any provision of section 306(a) of the CONACT (7 U.S.C 1926(a)), not to exceed $100,000 annually to each eligible State. This section outlines FmHA or its successor agency under Public Law 103–354's policies and authorizations and sets forth procedures for making grants to designated States for administrative costs associated with a State rural economic development review panel.

(b) *Objective.* The objective of the Panel Grant program is to make grant funds available annually to each designated State to use for administrative costs associated with the State rural economic development review panels meeting requirements of §1940.956 of this subpart.

(c) *Authorities, delegations, and redelegations.* The State Director is responsible for implementing the authorities in this section and to issue State supplements redelegating these authorities to appropriate FmHA or its successor agency under Public Law 103–354 employees. Grant approval authorities are contained in subpart A of part 1901 of this chapter.

(d) *Joint funds.* FmHA or its successor agency under Public Law 103–354 grant funds may be used jointly with funds furnished by the grantee or grants from other sources.

(e) *Eligibility.* A State designated by the Under Secretary to participate in this program is eligible to receive not more than $100,000 annually under this section. A State must become and remain an eligible State in order to receive funds under this section.

(f) *Purpose.* Panel Grant funds may be used to pay for reasonable administrative costs associated with the panel, including, but not limited to, the following:

(1) Travel and lodging expenses;

(2) Salaries for State coordinator and support staff;

(3) Reasonable fees and charges for professional services necessary for establishing or organizing the panel. Services must be provided by individuals licensed in accordance with appropriate State accreditation associations;

(4) Office supplies, and

(5) Other costs that may be necessary for panel operations.

(g) *Limitations.* Grant funds will not be used to:

(1) Pay costs incurred prior to the effective date of the grant authorized under this subpart;

(2) Recruit preapplications/applications for any designated rural development loan or grant program or any loan or grant program;

(3) Duplicate activities associated with normal execution of any panel member's occupation;

(4) Fund political activities;

(5) Pay costs associated with preparing area development plans;

(6) Pay for capital assets; purchase real estate, equipment or vehicles; rent, improve, or renovate office space; or repair and maintain State or privately owned property;

(7) Pay salaries to panel members; or

(8) Pay per diem or otherwise reimburse panel members unless distance traveled exceed 50 miles.

(h) *Other considerations.* (1) *Equal opportunity requirements.* Grants made under this subpart are subject to title VI of the Civil Rights Act of 1964 as outlined in subpart E of part 1901 of this chapter.

(2) *Environmental requirements.* The policies and regulations contained in subpart G of part 1940 of this chapter apply to grants made under this subpart.

(3) *Management assistance.* Grantees will be provided management assistance as necessary to assure that grant funds are used for eligible purposes for the successful operation of the panel. Grants made under this subpart will be administered under and are subject to the U.S. Department of Agriculture regulations, 7 CFR, parts 3016 and 3017, as appropriate.

(4) *Drug-free work place.* The State must provide for a drug-free workplace in accordance with the requirements of FmHA Instruction 1940–M (available in any FmHA or its successor agency under Public Law 103–354 office). Just prior to grant approval, the State must prepare and sign Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals.''

(i) *Application processing.* (1) The State Director shall assist the State in application assembly and processing. Processing requirements should be discussed during an application conference.

(2) After the Governor has been notified that the State has been designated to participate in this program and the State has met all eligibility requirements of this subpart, the State may file an original and one copy of SF 424.1 with the State Director. The following information will be included with the application:

(i) State's financial or in-kind resources, if applicable, that will maximize the use of Panel Grant funds;

(ii) Proposed budget. The financial budget that is part of SF 424.1 may be used, if sufficient, for all panel income and expense categories;

(iii) Estimated breakdown of costs, including costs to be funded by the grantee or from other sources;

(iv) Financial management system in place or proposed. The system will account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State must be sufficient to permit preparation of reports required by Federal regulations and permit the tracing of funds to a level of expenditures adequate to establish that grant funds are used solely for authorized purposes;

(v) Method to evaluate panel activities and determine if objectives are met;

(vi) Proposed Scope-of-Work detailing activities associated with the panel and time frames for completion of each task, and

(vii) Other information that may be needed by FmHA or its successor agency under Public Law 103–354 to make a grant award determination.

(3) The applicable provisions of § 1942.5 of subpart A of part 1942 of this chapter relating to preparation of loan dockets will be followed in preparing grant dockets. The docket will include at least the following:

(i) Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement;''

(ii) Scope-of-work prepared by the applicant and approved by FmHA or its successor agency under Public Law 103–354;

(iii) Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request for Obligation of Funds,'' with exhibit A, and

(iv) Certification regarding a drug-free workplace in accordance with FmHA Instruction 1940–M (available in any FmHA or its successor agency under Public Law 103–354 office).

(j) *Grant approval, obligation of funds, and grant closing.* (1) The State Director will review the application and other documents to determine whether the proposal complies with this subpart.

(2) Exhibit A (available from any FmHA or its successor agency under Public Law 103–354 State Office), shall be attached to and become a permanent part of Form FmHA or its successor agency under Public Law 103–354 1940–A and the following paragraphs

will appear in the comment section of that form:

> The Grantee understands the requirements for receipt of funds under the Panel Grant program. The Grantee assures and certifies that it is in compliance with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those set out in FmHA or its successor agency under Public Law 103–354 7 CFR, part 1940, subpart T, and 7 CFR, parts 3016 and 3017, including revisions through _____ (date of grant approval). The Grantee further agrees to use grant funds for the purposes outlined in the Scope-of-Work approved by FmHA or its successor agency under Public Law 103–354. Exhibit A is incorporated as a part hereof.

(3) Grants will be approved and obligated in accordance with the applicable parts of §1942.5(d) of subpart A of part 1942 of this chapter.

(4) An executed copy of the Scope-of-Work will be sent to the State coordinator on the obligation date, along with a copy of Form FmHA or its successor agency under Public Law 103–354 1940–1 and the required exhibit. FmHA or its successor agency under Public Law 103–354 will retain the original of Form FmHA or its successor agency under Public Law 103–354 1940–1 and the exhibit.

(5) Grants will be closed in accordance with the applicable parts of subpart A of part 1942 of this chapter, including §1942.7. The grant is considered closed on the obligation date.

(6) A copy of Form FmHA or its successor agency under Public Law 103–354 1940–1, with the required exhibit, and the Scope-of-Work will be submitted to the National Office when funds are obligated.

(7) If the grant is not approved, the State coordinator will be notified in writing of the reason(s) for rejection. The notification will state that a review of the decision by FmHA or its successor agency under Public Law 103–354 may be requested by the State under subpart B of part 1900 of this chapter.

(k) *Fund disbursement.* Grant funds will be disbursed on a reimbursement basis. Requests for funds should not exceed one advance every 30 days. The financial management system of the State shall provide for effective control and accountability of all funds, property, and assets.

(1) SF 270, ''Request for Advance or Reimbursement,'' will be completed by the State coordinator and submitted to the State Director not more frequently than monthly.

(2) Upon receipt of a properly completed SF 270, the State Director will request funds through the Automated Discrepancy Processing System. Ordinarily, payment will be made within 30 days after receipt of a properly prepared request for reimbursement.

(3) States are encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprises, Department of Commerce, Washington, DC 20230.

(l) *Title.* Title to supplies acquired under this grant will vest, upon acquisition, in the State. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the grant awarded, and if the supplies are not needed for any other federally sponsored programs, the State shall compensate FmHA or its successor agency under Public Law 103–354 for its share.

(m) *Costs.* Costs incurred under this grant program are subject to cost principles established in Office of Management and Budget Circular A–87.

(n) *Budget changes.* Rebudgeting within the approval direct cost categories to meet unanticipated requirements which do not exceed 10 percent of the current total approved budget shall be permitted. The State shall obtain prior approval from the State Director for any revisions which result in the need for additional funding.

(o) *Programmatic changes.* The State shall obtain prior written approval from the State Director for any change to the scope or objectives for which the grant was approved or for contracting out or otherwise obtaining services of a third party to perform activities which are central to the purposes of the grant. Failure to obtain prior approval of changes to the scope can result in

suspension or termination of grant funds.

(p) *Financial reporting.* SF 269, ''Financial Status Report,'' and a Project Performance Report are required on a quarterly basis. The reports will be submitted to the State Director not later than 30 days after the end of each quarter. A final SF 269 and Project Performance Report shall be due 90 days after the expiration or termination of grant support. The final report may serve as the last quarterly report. The State coordinator will constantly monitor performance to ensure that time schedules are met, projected work by time periods is accomplished, and other performance objectives are achieved. Program outlays and income will be reported on an accrual basis. Project Performance Reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why established objectives were not met;

(3) Problems, delays, or adverse conditions which will affect the ability to meet the objectives of the grant during established time periods. This disclosure must include a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

(q) *Audit requirements.* Audit reports will be prepared and submitted in accordance with §1942.17(q)(4) of subpart A of part 1942 of this chapter. The audit requirements only apply to the year(s) in which grant funds are received. Audits must be prepared in accordance with generally accepted government auditing standards using publication, ''Standards for Audits of Governmental Organizations, Programs, Activities and Functions.''

(r) *Grant cancellation.* Grants which have been approved and funds obligated may be cancelled by the grant approval official in accordance with §1942.12 of subpart A of part 1942 of this chapter. The State Director will notify the State coordinator that the grant has been cancelled.

(s) *Grant servicing.* Grants will be serviced in accordance with subparts E and O of part 1951 of this chapter.

(t) *Subsequent grants.* Subsequent grants will be processed in accordance with the requirements of this subpart for each additional time period a State is designated to participate in this program.

§1940.969 Forms, exhibits, and subparts.

Forms, exhibits, and subparts of this chapter (all available in any FmHA or its successor agency under Public Law 103–354 office) referenced in this subpart, are for use in establishing a State economic development review panel and for administering the Panel Grant program associated with the panel.

§1940.970 [Reserved]

§1940.971 Delegation of authority.

The authority authorized to the State Director in this subpart may be redelegated.

§§1940.972–1940.999 [Reserved]

§1940.1000 OMB control number.

The collection of information requirements contained in this regulation has been approved by the Office of Management and Budget and assigned OMB control number 0575–0145. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 48 hours per response with an average of 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART 1941—OPERATING LOANS

Subpart A—Operating Loan Policies, Procedures, and Authorizations

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AUTHORITY: 5 U.S.C. 301 and 7 U.S.C. 1989.

SOURCE: 43 FR 55883, Nov. 29, 1978, unless otherwise noted.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

SOURCE: 53 FR 35684, Sept. 14, 1988, unless otherwise notes.

EDITORIAL NOTE: Nomenclature changes to subpart A appear at 68 FR 7696, Feb. 18, 2003.

§ 1941.1 Introduction.

This subpart contains regulations for making initial and subsequent direct Operating (OL) and Youth (OL-Y) loans. OL loans may be made to eligible farmers and ranchers and entities that will manage and operate not larger than family farms. Youth loans may be made to rural youth to conduct modest projects in connection with their participation in 4–H, Future Farmers of America, and similar organizations. It is the policy of Farm Service Agency (FSA) or its successor agency under Public Law 103–354 to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency or its successor agency under Public Law 103–354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an Agency

or its successor agency under Public Law 103–354 employee. See exhibit A of subpart A of part 1943 of this chapter for making OL loans to entrymen on unpatented public lands. Agency or its successor agency under Public Law 103–354 forms are available in any Agency or its successor agency under Public Law 103–354 office.

[53 FR 35684, Sept. 14, 1988, as amended at 58 FR 226, Jan. 5, 1993; 58 FR 48282, Sept. 15, 1993; 61 FR 35925, July 9, 1996; 68 FR 7696, Feb. 18, 2003]

§ 1941.2 Objectives.

The basic objective of the OL loans program is to provide credit and management assistance to farmers and ranchers to become operators of family-sized farms or continue such operations when credit is not available elsewhere. FmHA or its successor agency under Public Law 103–354 assistance enables family-farm operators to use their land, labor and other resources and to improve their living and financial conditions so that they can obtain credit elsewhere. The objective of the OL loan program for rural youth is to provide credit for rural youths to establish and operate income-producing projects of modest size in connection with their participation in 4–H clubs, Future Farmers of America, and similar organizations.

§ 1941.3 Management assistance.

As provided in subpart B of part 1924 of this chapter, management assistance will be provided to all borrowers to the extent necessary to achieve the objectives of the loan.

§ 1941.4 Definitions.

As used in this subpart, the following definitions apply:

Additional security. Any security beyond that which is required to adequately secure the loan.

Agency. The Farm Service Agency, its county and State committees and their personnel, and any successor agency.

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitation contained in tables available in any FmHA or its successor agency under Public Law 103–354 office.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for OL loan assistance in accordance with §1941.12 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA or its successor agency under Public Law 103–354 regulations.

(e) Except for OL loan purposes, does not real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 30 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the

county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are eligible beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA or its successor agency under Public Law 103–354 under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA or its successor agency under Public Law 103–354 debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA or its successor agency under Public Law 103–354 debt.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

Corporation. For the purpose of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

Entity. Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

Family farm. A farm which:

(a) Produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Provides enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower when a loan is made to an individual.

(2) The members responsible for operating the farm when a loan is made to an entity.

(d) Has a substantial amount of the labor requirements for the farm enterprise provided by:

(1) The borrower and family members for a loan made to an individual.

(2) The members responsible for operating the farm, along with the families of these individuals, for a loan made to an entity.

(e) May use a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farm operation, along with any other reliable off farm income, will

provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period;

(b) Meet necessary payments on all debts; and

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of an entity borrower which is in accordance with the essential family needs. Family members include the individual borrower of farm operator in the case of an entity, and the immediate members of the family who reside in the same household.

Financially viable operation. A financially viable operation is one which, with FmHA or its successor agency under Public Law 103–354 assistance, is projected to improve its financial condition over a period of time to the point that the operator can obtain commercial credit without further FmHA or its successor agency under Public Law 103–354 direct or guaranteed assistance. Such an operation must generate sufficient income to: Meet annual operating expenses and debt payments as they become due, meet basic family living expenses to the extent they are not met by dependable nonfarm income, provide for replacement of capital items, and provide for long-term financial growth. This definition only applies when considering a term limit waiver under § 1941.12.

Fish. Any aquatic gilled animal commonly known as ''fish,'' as well as mollusks or crustaceans (or other invertebrates) produced under controlled conditions (that is, feeding, tending, harvesting, and such other activities as are necessary to properly raise and market the products) in ponds, lakes, streams, or similar holding areas.

Joint operation. Individuals who have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Limited resources applicant. An applicant who is a farmer or rancher and is an operator of a small or family farm (a small farm is a marginal family farm), including a new operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan but, due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited eduction, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and a low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

Majority interest. Any individual or combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation, or partnership.

Nonfarm enterprise. Any nonfarm business enterprise, including recreation, which is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, road stands, boarding horses and riding stables.

Partnership. An entity consisting of individuals who have agreed to operate a farm. This entity must be recognized as a partnership by the laws of the State(s) in which the partnership will operate a farm and must be authorized to own both real and personal property and to incur debt in its own name.

Presidentially-designated emergency. A major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

Primary security. Any real estate and/or chattel security which is required to adequately secure the loan. This is not to be confused with ''basic security,''

as defined in §1962.4 of subpart A of part 1962 of this chapter.

Related by blood or marriage. As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother, or sister.

Rural youth. A person who has reached the age of 10 but has not reached the age of 21 and does not reside in any city or town with a population of more than 10,000 inhabitants.

Rural youth projects. Modest projects initiated, developed, and carried out by rural youths participating in 4–H or Future Farmers of America, or similar organizations. Projects must produce enough income to meet expenses and debt repayment.

Security. Property of any kind subject to a real or personal property lien. Any references to collateral or security property shall be considered a reference to the term ''security.''

State or United States. The United States itself, any of the fifty States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[53 FR 35684, Sept. 14, 1988, as amended at 58 FR 26680, May 5, 1993; 58 FR 48283, Sept. 15, 1993; 61 FR 35925, July 9, 1996; 62 FR 9353, Mar. 3, 1997; 68 FR 7696, Feb. 18, 2003; 69 FR 5262, Feb. 4, 2004]

§ 1941.5 [Reserved]

§ 1941.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit is not available, with or without a guarantee or subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, this will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lender(s) contacted, but one or more of them has indicated they would provide credit with an FmHA or its successor agency under Public Law 103–354 guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed OL request can be processed by the lender(s) for consideration by FmHA or its successor agency under Public Law 103–354.

(c) Property and interest in property owned and income received by an individual applicant, or an entity applicant and all of its members as individuals will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement operating loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

[43 FR 55883, Nov. 29, 1978, as amended at 68 FR 7697, Feb. 18, 2003]

§§ 1941.7–1941.10 [Reserved]

§ 1941.11 Applications.

Applications will be received and processed as provided in subpart A of part 1910 of this chapter, with consideration given to the requirements in exhibit M of subpart G of part 1940 of this chapter.

§ 1941.12 Eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of this subpart and is available in any FmHA or its successor agency under Public Law 103–354 office, for the definition of ''controlled substance'') prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member of the entity was convicted and the four succeeding crop years. Applicants will attest on

Form FmHA or its successor agency under Public Law 103–354 410–1, ''Application for FmHA Services,'' that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. A decision to reject an application for this reason is not appealable. In addition, the following requirements must be met:

(a) An individual must:

(1) Be a citizen of the United States, a United States non-citizen national, or a qualified alien under applicable Federal immigration laws. United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Except for youth loans, have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(5) Except for youth loans, be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed. In the case of a limited resource applicant see §1941.4 of this subpart.

(6)(i) Have not executed a promissory note for a direct OL loan in more than 6 different calendar years prior to the calendar year that the requested direct OL loan will close. This eligibility restriction applies to anyone who signs the promissory note. Youth loans are not counted as direct OL loans for the purpose of this paragraph. This limitation does not apply to farmers or ranchers when their land is subject to the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of Indian tribe, and the test for credit requirement in §1941.6 is met. On a case-by-case basis, a one-time waiver to this eligibility restriction may also be granted for a period of two years if the following conditions are met:

(A) The applicant has a financially viable operation;

(B) The applicant applied for commercial credit from at least two commercial sources;

(C) The applicant was unable to obtain a commercial loan (including an Agency-guaranteed loan); and

(D) The applicant has successfully completed, or will complete within one year, borrower training.

(ii) This determination is not subject to administrative appeal.

(7) *Transition rule.* An applicant is eligible for new direct OL loans for 3 additional years if as of April 4, 1996, the applicant, or anyone who will execute the promissory note, had direct OL loans closed in 4 or more separate years prior to the year in which the new direct OL loan is closed. The 4 previous years' direct OL loans, as well as the 3 additional years of new direct OL loans, may be in non-consecutive years.

(8) *Agency loss.* (i) Except as provided in paragraph (a)(8)(ii) of this section, the applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.

(ii) The applicant may receive a direct OL loan to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

(A) Received a write-down under section 353 of the CONACT;

(B) Is current on payments under a confirmed reorganization plan under chapter 11, 12, or 13 of title 11 of the United States Code; or

(C) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for a county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

(9) Not be delinquent on any non-tax Federal debt or FSA guaranteed debt. This restriction will not apply if the Federal delinquency is cured on or before the loan closing date.

(b) *An entity must:*

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members, as individuals.

(2) Be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator or tenant-operator of not larger than a family farm after the loan is closed.

(4) Consist of members who are individuals and not entities.

(5) If the members holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) The majority interest of the entity must be held by members who are citizens of the United States, United States non-citizen nationals, or qualified aliens under applicable Federal immigration laws. United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

(ii) They must have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years) which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) At least one member must operate the family farm.

(iv) The entity must operate the farm and be authorized to do so in the State(s) in which the farm is located.

(6) If the members holding a majority interest are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section must be met.

(ii) They and the entity itself must operate the family farm.

(7) If applying as a limited resource applicant, as defined in § 1941.4 of this subpart:

(i) The requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section must be met by the entity and all its members.

(ii) The entity and *all* the members must own *or* operate a small or family farm and at least one member must operate the farm.

(8) If each member's ownership interest does *not* exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if:

(i) all of the members of the entity are related by blood or marriage,

(ii) all of the members are or will be operators of the entity, and

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(5)(i), (ii) and (iv) of this section.

(9)(i) Have no member of the entity who has executed a promissory note for direct OL loans closed in more than 6 different calendar years prior to the calendar year that the requested direct OL loan will close. This eligibility restriction applies to anyone who signs the promissory note. Youth loans are not counted as direct OL loans for the purpose of this paragraph. This limitation does not apply to farmers or ranchers when their land is subject to

the jurisdiction of an Indian tribe, the loan is secured by one or more security instruments subject to the jurisdiction of an Indian tribe, and the test for credit requirement in § 1941.6 is met. On a case-by-case basis, a one-time waiver to this eligibility restriction may also be granted for a period of two years if the following conditions are met:

(A) The applicant has a financially viable operation;

(B) The applicant applied for commercial credit from at least two commercial sources;

(C) The applicant was unable to obtain a commercial loan (including an Agency-guaranteed loan); and

(D) The applicant has successfully completed, or will complete within one year, borrower training.

(ii) This determination is not subject to administrative appeal.

(10) *Transition rule.* An applicant is eligible for new direct OL loans for 3 additional years if as of April 4, 1996, the applicant, or anyone who will execute the promissory note, had direct OL loans closed in 4 or more separate years prior to the year in which the new direct OL is closed. The 4 previous years' OL loans, as well as the 3 additional years of new direct OL loans, may be in non-consecutive years.

(11) *Agency loss.* (i) Except as provided in paragraph (b)(11)(ii) of this section, the applicant, and anyone who will execute the promissory note, has not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the CONACT by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.

(ii) The applicant may receive a direct OL loan to pay annual farm and ranch operating and family living expenses, provided the applicant meets all other requirements for the loan, if the applicant and anyone who will execute the promissory note:

(A) Received a write-down under section 353 of the CONACT;

(B) Is current on payments under a confirmed reorganization plan under chapter 11, 12, or 13 of title 11 of the United States Code; or

(C) Received debt forgiveness on not more than one occasion after April 4, 1996, resulting directly and primarily from a Presidentially-designated emergency for a county or contiguous county in which the applicant operates. Only applicants who were current on all existing direct and guaranteed FSA loans prior to the beginning date of the incidence period of a Presidentially-designated emergency and received debt forgiveness on that debt within three years after the designation of such emergency meet this exception.

(12) Not be delinquent on any non-tax Federal debt or FSA guaranteed debt. This restriction will not apply if the Federal delinquency is cured on or before the loan closing date. This eligibility restriction applies to the entity and all of its members.

(c) *Borrower training.* Except for applicants for youth loans, all applicants must agree to meet the training requirements of § 1924.74 of subpart B of part 1924 of this chapter unless a waiver is granted in accordance with that section. In the case of an entity, any individual member holding a majority interest in the operation or who is operating the farm must agree to complete the training or qualify for the waiver on behalf of the entity. However, if one entity member is solely responsible for financial or production management, then only that entity member will be required to complete the training in that area for the entity or qualify for a partial waiver. If the financial and production functions of the farming operation are shared, the knowledge and skills of the individual(s) with the responsibility of production and/or financial management of the operation will be considered in the aggregate for granting a waiver or requiring that training be completed. If a waiver is not granted, these individuals will be required to complete the training in accordance with their responsibilities. If the applicant has previously been required to obtain training, the applicant must be enrolled in

and attending, or have satisfactorily completed, the training required.

[53 FR 35684, Sept. 14, 1988, as amended at 55 FR 21527, May 25, 1990; 56 FR 3971, Feb. 1, 1991; 58 FR 69199, Dec. 30, 1993; 62 FR 9354, Mar. 3, 1997; 62 FR 28618, May 27, 1997; 68 FR 7697, Feb. 18, 2003; 68 FR 62223, Nov. 3, 2003; 69 FR 5262, Feb. 4, 2004]

§ 1941.13 Rural youth.

If otherwise eligible, a rural youth who applies for an OL loan must be recommended by a project advisor such as a 4–H club advisor, vocational teacher, home economics teacher, county extension agent, or other organizational sponsor or advisor. In addition, a youth who has not reached the age of majority under State law must obtain a written recommendation from a parent or guardian. All recommendations will be filed with the application in the borrower's case file.

§§ 1941.14–1941.15 [Reserved]

§ 1941.16 Loan purposes.

An applicant who obtained a write-down under direct or guaranteed loan authorities is restricted to the purposes listed under paragraphs (c), (g), and (h) of this section. An applicant who qualifies for a Low-Documentation operating loan under § 1910.4(c)(1)(iii)(A) of subpart A of part 1910 may use loan funds for all authorized loan purposes except paragraph (i) of this section. An applicant who qualifies for a Lo-Doc loan under § 1910.4(c)(1)(iii)(B) 7 CFR may only use the loan funds for purposes listed under paragraphs (c) and (h) of this section. All other eligible applicants may request OL funds for any of the following purposes:

(a) Payment of costs associated with reorganizing a farm or ranch to improve its profitability.

(b) Purchase of livestock, including poultry, and farm or ranch equipment, including quotas and bases, and cooperative stock for credit, production, processing or marketing purposes.

(c) Payment of annual operating expenses, examples of which include, but are not exclusively limited to feed, seed, fertilizer, pesticides, farm or ranch supplies, cooperative stock, and cash rent.

(d) Payment of costs associated with land and water development for conservation or use purposes.

(e) Payment of loan closing costs.

(f) Payment of costs associated with complying with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667). This purpose is limited to applicants who demonstrate that compliance with the standards will cause them substantial economic injury.

(g) Payment of training costs required or recommended by the Agency.

(h) Payment of farm, ranch, or home needs, including family subsistence. A portion of the loan is available to the borrower for use outside of a supervised bank account. This portion is the lesser of:

(1) 10 percent of the OL loan;

(2) $5,000; or

(3) The amount needed to meet the subsistence needs of the family for a 3-month period.

(i) Refinancing debts if the applicant has had direct or guaranteed OL loans refinanced (refinanced does not mean restructured) 4 times or less and one of the following conditions is met:

(1) The need for refinancing was caused by a qualifying disaster declared by the President or designated by the Secretary; or

(2) The debts to be refinanced are owed to a non-USDA creditor.

[62 FR 9354, Mar. 3, 1997; 62 FR 28618, May 27, 1997, as amended 66 FR 1573, Jan. 9, 2001]

§ 1941.17 Loan limitations.

An OL loan will not be approved:

(a) If the total outstanding insured OL principal balance, including the new loan, owed by the applicant will exceed $200,000 at loan closing.

(b) If the total outstanding youth loan principal balance will exceed $5,000 at loan closing.

(c) For the purchase of real estate, making principal payments on real estate, or refinancing of any debts incurred for the purchase of real estate.

(d) For any purpose that will contribute to excessive erosion of highly erodible land or to convert wetlands to produce an agricultural commodity as further explained in exhibit M of subpart G of part 1940 of this chapter.

Refer to subpart LL of part 2000 of this chapter, ''Memorandum of Understanding Between FmHA or its successor agency under Public Law 103–354 and the U.S. Fish and Wildlife Service,'' for assistance in implementation.

(e) If the purpose of the loan is to finance a nonfarm enterprise.

[53 FR 35684, Sept. 14, 1988, as amended at 58 FR 48286, Sept. 15, 1993; 62 FR 9354, Mar. 3, 1997; 68 FR 62224, Nov. 3, 2003]

§ 1941.18 Rates and terms.

(a) *Rates.* Upon request of the applicant, the interest rate charged by the Agency or its successor agency under Public Law 103–354 will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in exhibit B of the Agency Instruction 440.1 (available in the Agency or its successor agency under Public Law 103–354 office) for the type of assistance involved. A lower rate may be established for a limited resource applicant subject to the following:

(1) An applicant will receive the lower rate provided:

(i) The applicant meets the conditions of the definition for a limited resource applicant set forth in §1941.4 of this subpart.

(ii) The Farm and Home Plan and/or Nonagricultural Enterprise Analysis, when appropriate, indicates that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(2) A borrower with Limited Resource interest rates will be reviewed each year at the time the analysis is conducted (see §1924.55 of subpart B of part 1924 of this chapter) and at any time a servicing action such as consolidation, rescheduling or deferral is taken to determine what interest rate should be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See §1951.25 of subpart A of part 1951 of this chapter.)

(b) *Terms.* (1) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note. The first installment must be scheduled for payment within 18 months of loan closing.

(2) Loan funds used to pay annual operating expenses or bills incurred for such purposes for the crop year being financed will normally be scheduled for payment within 12 months, but no later than 18 months, from the date the loan is closed when marketing plans extend beyond 12 months. When an OL loan for annual production purposes is scheduled for repayment in one installment, the installment must fall due no later than 18 months from the date of loan closing. Individual marketing circumstance may warrant repayment schedules which are longer than 18 months. Such factors as establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established, marketing plans, or during recovery from a disaster or economic reverses, can be considered as reasons for a longer repayment period on loans for annual operating purposes. When longer than normal repayment terms are used for annual operating purposes, crops and/or livestock produced for sale will not be considered sufficient security. The County Supervisor may use Form FmHA or its successor agency under Public Law 103–354 440–9, ''Supplementary Payment Agreement,'' for borrowers who receive substantial income from which payment is to be made before their installment due date.

(3) Advances for purposes other than annual operating expenses will be scheduled for payment over the minimum period necessary considering the applicant's ability to pay and the useful life of the security, but not in excess of 7 years.

(4) When conditions warrant, installment scheduled in accordance with paragraph (b)(3) of this section may include equal, unequal, or balloon installments. In each case warranting balloon installments, there must be adequate collateral for the loan at the time the balloon payment is due. Circumstances which warrant balloon installments are factors such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established or during recovery from a disaster, or economic reverses.

In *no case* will annual crops be used as the sole collateral securing a balloon installment. A loan with a balloon installment must be adequately secured by hard security, which may include foundation stock, farm equipment and/or real estate. The amount of the balloon installment should not exceed that which the borrower could reasonably expect to pay during a maximum additional 7-year period.

[53 FR 35684, Sept. 14, 1988, as amended at 55 FR 21527, May 25, 1990; 57 FR 18676, Apr. 30, 1992; 57 FR 37400, Aug. 19, 1992; 61 FR 35925, July 9, 1996; 68 FR 62224, Nov. 3, 2003]

§ 1941.19 Security.

Primary security must be available for the loan. Any additional security available up to and including 150 percent of the loan amount also will be taken. Security in excess of 150 percent of the loan amount will only be taken when it is not practical to separate the property, i.e., same type of livestock (dairy cows, brood sows). In cases when a loan is being made in conjunction with a servicing action, the security requirements as stated in subpart S of part 1951 of this chapter will prevail. In unusual cases, the loan approval official may require a cosigner in accordance with §1910.3 (d) of subpart A of part 1910 of this chapter or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(a) *Chattels.* (1) The loan must be secured by a first lien on all property or products acquired, produced, or refinanced with loan funds.

(2) If the security for the loan under paragraph (a)(1) of this section is not at least equal to 150 percent of the loan amount, the best lien obtainable will be taken on other chattel security owned by the applicant, if available, up to the point that security for the loan at least equals 150 percent of the loan amount.

(i) When there are several alternatives available (cattle, machinery), any one of which will meet the security requirements of this section, the approval official generally has the discretion to select the best alternative for obtaining security.

(ii) When alternatives exist and the applicant has a preference as to the property to be taken for security, however, the approval official will honor the preference so long as the requirements of paragraphs (a)(1) and (2) of this section are met.

(3) To comply with the 150 percent requirement, security values will be established as follows:

(i) For the purposes of loan making only, the security value of the crop and/or livestock production is presumed to be 100 percent of the amount loaned for annual operating and family living expenses listed on Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan,'' or other acceptable plan of operation.

(ii) The specific livestock and/or equipment to be taken as security, along with the value of the security, will be documented in the case file. This information will be obtained from values established in accordance with §1941.25 of this subpart.

(b) *Real estate.* The loan approval official will require a lien on all or part of the applicant's real estate as security when chattel security alone is not at least equal to 150 percent of the amount of the loan. Different lien positions on real estate are considered separate and identifiable collateral. Real estate taken as security, along with its value established in accordance with §1941.25 of this subpart, will be documented in the case file. If the applicant disagrees with the values established, FmHA or its successor agency under Public Law 103–354 will accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FmHA or its successor agency under Public Law 103–354 requirements.

(1) Security may also include assignments of leases or leasehold interests having mortgageable value, revenues, royalties from mineral rights, patents and copyrights, and pledges of security by third parties.

(2) Advice on obtaining security will be received from OGC when necessary.

(c) *Exceptions.* The County Supervisor will clearly document in the file when security is not taken for any of the following reasons:

(1) A lien will not be taken on property when it will prevent the applicant, or members of an entity applicant,

from obtaining operating credit from other sources.

(2) A lien will not be taken on property that could have significant environmental problems/costs (e.g., known or suspected underground storage tanks or hazardous wastes, contingent liabilities, wetlands, endangered species, historic properties). Guidance is provided in part II, item H of exhibit A of FmHA Instruction 1922–E (available in any FmHA or its successor agency under Public Law 103–354 office) as to the action to be taken when the appraiser indicates that the property is subject to any hazards, detriments or limiting conditions.

(3) A lien will not be taken on property that cannot be made subject to a valid lien.

(4) A lien will not be taken on the applicant's personal residence and appurtenances, when the residence is located on a separate parcel and the farm tract(s) being used for collateral, in addition to any crops or chattels, meet the security requirement of at least equal to 150 percent of the loan.

(5) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary living expenses; all types of retirement accounts; personal vehicles necessary for family living or farm operating purposes; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(6) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease or share agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(7) A lien will not be taken on timber or the marginal land for a loan for planting softwood timber trees on marginal land in conjunction with a softwood timber (ST) loan.

(d) *Assignment on income in Uniform Commercial Code (UCC) States.* The County Supervisor will determine whether or not such an assignment will be taken. In UCC States, an assignment of livestock or crop income constitutes a security agreement on income. The share lease, share agreement, or contract will be described specifically as ''Contract Rights'' or ''Contract Rights in Livestock or Crops,'' (or as ''Accounts'' or ''Accounts in Livestock or Crops,'' if required by a State supplement), and so forth, in paragraph 1(b) of the financing statement.

(e) *Insurance.* See §1941.88 of subpart B of this part for insurance requirements.

(f) *Special security requirements.* When OL loans are made to eligible entities that consist of members who are presently indebted for an OL loan(s) as individual(s), or when OL loans are made to eligible individuals who are members of an entity which is presently indebted for an OL loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to the Agency for any other farm credit programs direct or guaranteed loan(s).

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

[53 FR 35684, Sept. 14, 1988, as amended at 54 FR 47959, Nov. 20, 1989; 56 FR 67480, Dec. 31, 1991; 57 FR 18676, Apr. 30, 1992; 59 FR 22961, May 4, 1994; 59 FR 25799, May 18, 1994; 61 FR 35925, July 9, 1996]

§§ 1941.20–1941.22 [Reserved]

§ 1941.23 General provisions.

(a) *Compliance requirements.* The following will apply as appropriate:

(1) Environmental assessments and statements. Subpart G of part 1940 of this chapter should be referred to for these requirements. The State Environmental Coordinator should be consulted for assistance in preparing any required statements.

(2) Equal opportunity and nondiscrimination requirements. In accordance with title V of Pub. Law 93–495, the Equal Credit Opportunity Act, FmHA or its successor agency under Public Law 103–354 will not discriminate against any applicant on the basis

of race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract, with respect to any aspect of a credit transaction.

(3) National Historic Preservation Act of 1966. If a loan will affect any district, site, building, structure, or object that has been included in the National Register of Historic Places as maintained by the Department of Interior in accordance with the National Historic Preservation Act of 1966, or if the undertaking may affect properties having scientific, prehistorical, historical, or archaeological significance, the provisions of subpart F of part 1901 of this chapter will apply.

(b) *Other considerations.* (1) FmHA or its successor agency under Public Law 103–354 employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA or its successor agency under Public Law 103–354.

(2) An applicant will be advised that compliance with all applicable special laws and regulations is required.

(3) An applicant must have acceptable tenure arrangements. Unless the loan approval official determines otherwise, each applicant will obtain a satisfactory written lease. A copy of the lease will be filed in the County Office case file.

[53 FR 35684, Sept. 14, 1988, as amended at 68 FR 62224, Nov. 3, 2003]

§ 1941.24 [Reserved]

§ 1941.25 Appraisals.

(a) Except as provided in paragraph (a)(5) of this section, real estate appraisals will be completed by an FmHA or its successor agency under Public Law 103–354 employee, or a contractor authorized to make farm appraisals. Chattel and real estate appraisals will be made on forms in accordance with § 761.7 of this title and, in the case of an appraisal of mineral rights' the appropriate Agency form (available in each Agency State Office) or other format that contains the same information, to determine market value and borrower equity in the following instances:

(1) When an initial loan is made, a chattel appraisal is required on all chattel property owned by the applicant, and on chattel property to be acquired when the item can be specifically identified.

(2) When a subsequent loan is made, a chattel appraisal is required when:

(i) Refinancing chattel debt.

(ii) The existing chattel appraisal is more than 2 years old.

(3) A real estate appraisal is not required when real estate is taken as additional security, as defined in § 1941.4 of this subpart. However, the County Supervisor will document in the running record the estimated market value of the additional security and the basis for the estimate.

(4) A real estate appraisal is required when real estate is taken as primary security, as defined in § 1941.4, and the amount of the loan to be secured by the real estate exceeds $50,000.

(5) Other real estate appraisals completed by other State-certified general appraisers may be used providing such appraisals meet the ethics, competency, departure provisions, etc., and Sections I and II of the Uniform Standards of Professional Appraisal Practices, and contain a mineral rights appraisal as set out in paragraph (a) of this section. Prior to acceptance, the appraisal must have an acceptable desk review (technical) completed by an FmHA or its successor agency under Public Law 103–354 designated review appraiser.

(6) A new real estate appraisal is not required if the latest appraisal report available is not over 1 year old, unless the approval official requests a new appraisal, or unless significant changes in the market value of real estate have occurred in the area within the 1-year period.

(b) *Real estate appraiser qualifications.* The contractor, when he/she is not the appraiser, is responsible for substantiating the appraiser's qualifications. The contractor will obtain FmHA or its successor agency under Public Law 103–354's concurrence that the appraiser has the necessary qualifications and experience before the contractor will utilize the appraiser in any appraisal work. The contractor/appraiser

completing the report must be State-certified general.

[53 FR 35684, Sept. 14, 1988, as amended at 57 FR 18676, Apr. 30, 1992; 58 FR 26680, May 5, 1993; 58 FR 48286, Sept. 15, 1993; 59 FR 16772, Apr. 8, 1994; 59 FR 25800, May 18, 1994; 64 FR 62568, Nov. 17, 1999; 69 FR 30999, June 2, 2004]

§§ 1941.26–1941.28 [Reserved]

§ 1941.29 Relationship between FSA loans, direct and guaranteed.

(a) An eligible emergency loan (EM) applicant's total credit needs will be satisfied under the EM loan authorities, to the extent possible, before OL loan assistance is considered.

(b) A direct OL may be made to a guaranteed loan borrower provided the requirements of 7 CFR 761.8 and all other loan requirements are met.

(c) An direct OL loan may be made to refinance a guaranteed OL loan when the following conditions are met:

(1) The circumstances resulting in the need to refinance were beyond the borrower's control.

(2) Refinancing is in the best interest of the Government and the borrower.

(3) The guaranteed OL loan must be completely paid off at the time the direct OL loan is closed.

[53 FR 36240, Sept. 19, 1988, as amended at 55 FR 21527, May 25, 1990; 58 FR 44747, Aug. 25, 1993; 66 FR 7568, Jan. 24, 2001]

§§ 1941.30–1941.31 [Reserved]

§ 1941.32 Catastrophic Risk Protection (CAT) insurance requirement.

Applicants must comply with the CAT insurance requirement no later than loan closing by either:

(1) Obtaining at least the CAT level of coverage, if available, for each crop of economic significance as defined by the Federal Crop Insurance Corporation, or,

(2) By waiving eligibility of emergency crop loss assistance in connection with the uninsured crop. FSA emergency (EM) loss loan assistance is not considered emergency crop loss assistance for the purpose of the crop insurance waiver on the uninsured crop.

[62 FR 9355, Mar. 3, 1997]

§ 1941.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by subpart A of part 1901 of this chapter, provided the total direct operating loan principal balance at loan closing does not exceed $200,000.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in §1910.4 of subpart A of part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket and before approving the loan, the loan approval official will determine that:

(i) The Agency has certified the applicant eligible,

(ii) Funds are requested for authorized purposes,

(iii) The proposed loan is based on a feasible farm operating plan.

(iv) The security is adequate,

(v) Necessary supervision is planned, and

(vi) All other pertinent requirements have been met or will be met.

(2) When approving the loan, the approval official will:

(i) Indicate on all copies of Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request for Obligation of Funds,'' any conditions required by Agency or its successor agency under Public Law 103–354 regulations that must be met for loan closing;

(ii) Specify all security requirements;

(iii) Indicate special conditions or agreements needed with prior lienholders when appropriate;

(iv) Indicate that approval is subject to satisfactory title evidence when required, if such evidence has not been obtained; and

(v) Send a signed copy of Form FmHA or its successor agency under Public Law 103–354 1940–1 to the borrower on the date of loan approval.

(c) *Loan disapproval.* The loan approval official must approve or disapprove applications within 60 days after receiving a complete application, as set out in §1910.4 of subpart A of part 1910 of this chapter. The following

actions will be taken when a loan is disapproved:

(1) The reasons for disapproval will be indicated on Form FmHA or its successor agency under Public Law 103–354 1940–1 by the loan approval official. The reasons may be in a letter or the running record if this form has not been completed. Suggestions of how to remedy the disapprovals should be included.

(2) The County Supervisor will notify the applicant in writing of the action taken, and include any suggestions that could result in favorable action. The applicant will be notified, in writing, of the opportunity to appeal.

(3) Items furnished by the applicant during docket processing will be returned.

(4) The County Supervisor will notify any other interested parties of the disapproval.

[53 FR 35664, Sept. 14, 1988, as amended at 54 FR 11366, Mar. 20, 1989; 57 FR 18676, Apr. 30, 1992; 58 FR 48282, Sept. 15, 1993; 61 FR 35925, July 9, 1996; 68 FR 62224, Nov. 3, 2003]

§ 1941.34 [Reserved]

§ 1941.35 Actions after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the State Office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the County Office computer terminal system. Each advance will be limited to an amount which can be used promptly, usually within 60 days from the date of the check. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant(s) agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(b) *Cancellation of loan check and/or obligation.* If, for any reason, a loan check or obligation will be canceled, the County Supervisor will notify the State Office and the Finance Office of loan cancellation by using Form 1940–10, ''Cancellation of U.S. Treasury Check and/or Obligation.'' If a check received in the County Office is to be canceled, the check will be returned as prescribed in FmHA Instruction 2018–D (available in any FmHA or its successor agency under Public Law 103–354 office).

(c) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA or its successor agency under Public Law 103–354 1940–10.

(2) When necessary, prepare and excute a subsitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not necessary to obtain a substitute promissory note, the County Supervisor will show on Form FmHA or its successor agency under Public Law 103–354 440–57 the revised amount of the loan and the revised repayment schedule.

(d) *Increase or decrease in loan amount.* If it becomes necessary to increase or decrease the amount of the loan prior to closing, the County Supervisor will request that all distributed docket forms be returned to the County Office for reprocessing unless the change is minor and replacement forms can be promptly completed and submitted.

[53 FR 35684, Sept. 14, 1988, as amended at 54 FR 39727, Sept. 28, 1989; 59 FR 54788, Nov. 2, 1994]

§§ 1941.36–1941.37 [Reserved]

§ 1941.38 Loan closing.

Operating loans will be closed in accordance with subpart B of part 1941 of this chapter.

§§ 1941.39–1941.41 [Reserved]

§ 1941.42 Loan servicing.

Loans will be serviced in accordance with subpart A of part 1962 of this chapter and/or subpart S of part 1951 of this chapter.

§§ 1941.43–1941.49 [Reserved]

§ 1941.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

EXHIBIT A TO SUBPART A OF PART 1941—PROCESSING GUIDE—INSURED OPERATING LOANS

This exhibit outlines the basic steps involved in processing a loan application and identifies the FmHA or its successor agency under Public Law 103–354 forms which should be considered for use at each step.

Consult the appropriate Forms Manual Insert (FMI) for instructions for completion, distribution, and procedural references for each form.

APPLICATION PROCESSING

A. APPLICANT INTERVIEW

Review applicant's proposed plan of operation in view of authorized loan purposes and limitations on loans.

Begin running case record.

Provide applicant with FmHA or its successor agency under Public Law 103–354 forms to be completed and returned which are needed to determine eligibility. Be sure applicant understands the purposes of the forms and knows who must complete them.

Advise applicant of other information that must be given to FmHA or its successor agency under Public Law 103–354.

When appropriate, have applicant contact other creditors as possible credit sources for financing, or participating in the financing, of the proposed operation.

The following FmHA or its successor agency under Public Law 103–354 forms will be made available to the applicant or will be used by the County Supervisor. Forms designated with an ''x'' are always required and those designated with an ''*'' are to be used when appropriate.

Form No	Name	
410–1	Application for FHA Services	(x)
1910–5	Request for Verification of Employment.	(*)
410–9	Statement Required by the Privacy Act.	(*)
410–10	Privacy Act Statement to References	(*)
1910–11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	(x)
431–1	Long-Time Farm and Home Plan	(*)
431–2	Farm and Home Plan	(x)
431–4	Business Analysis—Nonagricultural Enterprise.	(*)
440–32	Request for Statement of Debts and Collateral.	(*)
1940–51	Crop-Share-Cash Farm Lease	(*)
1940–53	Cash Farm Lease	(*)
1940–55	Livestock-Share-Farm Lease	(*)
1940–56	Annual Supplement to Farm Lease	(*)

B. FIELD VISIT

Notify applicant of planned visit and its purpose.

Evaluate the resources available to the applicant and determine whether or not they adequately fulfill the requirements of the proposed plan of operation.

Obtain information needed to complete required appraisals (chattel and real estate).

Hold landlord-tenant meeting, if necessary, to reach an agreement on the terms of the lease, resolve any problems, etc.; record in running case record.

Determine security requirements and record in running case record.

The following FmHA or its successor agency under Public Law 103–354 forms will be used as appropriate:

Form No.	Name	
440–13	Report of lien search	*
440–21	Appraisal of chattel property	*
1922–1	Appraisal report-farm tract	*
1922–2	Supplemental report-irrigation, drainage, levee, and minerals.	*
1922–3	Map of property	*
1922–10	Appraiser's worksheet-farm tract	*
2006–9	Notice of visit or meeting	*

C. ELIGIBILITY DETERMINATION

Obtain all needed application forms, and other information from the applicant; assist the applicant in completing these forms and in obtaining needed information, as necessary.

Request copy of deed or other evidence of title, when needed.

Schedule meeting with county committee, review application and determine eligibility.

Inform applicant of the results of committee action.

The following FmHA or its successor agency under Public Law 103–354 forms will be used as appropriate in accomplishing the above actions:

Form No.	Name	
403–1	Debt Adjustment Agreement	(*)
440–2	County Committee Certification or Recommendation.	(x)

DOCKET PREPARATION

Obtain all information from the applicant, prior lienholder(s), landlord(s), etc., needed for the loan docket to be prepared.

Check to make sure all security requirements have been met or will be met by loan closing.

Prepare a loan narrative, for running record.

The following FmHA or its successor agency under Public Law 103–354 forms will be completed and utilized as necessary in preparing the loan docket for approval:

Form No.	Name	
400–4	Assurance Agreement	(*)
1927–8	Agreement with Prior Lienholder	(*)
1940–1	Request for Obligation of Funds	(*)
440–4	Security Agreement (Chattels and Crops).	(*)
440–9	Supplementary Payment Agreement	(*)
1940–20	Request For Environmental Information.	(*)
440–25/ 440A25.	Financing Statement	(*)
440–26	Consent and Subordination Agreement.	(*)
1940–21, 1940–22, or Exhibit H, Subpart G of Part 1940.	Environmental Review	(*)
441–5	Subordination Agreement	(*)
441–8	Assignment of Proceeds from the Sale of Products.	(*)
441–10	Nondisturbance Agreement	(*)
441–12	Agreement for Disposition of Jointly Owned Property.	(*)
441–13	Division of Income and Nondisturbance Agreement.	(*)
441–17	Certification of Obligation to Landlord	(*)
441–18	Consent to Payment of Proceeds from Sale of Farm Products.	(*)
441–25	Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest.	(*)

LOAN APPROVAL AND CLOSING

A. LOAN APPROVAL

File financing statement or chattel mortgage, and obtain a lien search.

Request preliminary title opinion when appropriate.

Record loan closing conditions in the running record.

Execute and distribute all forms necessary for loan approval.

B. LOAN CLOSING

Request needed legal services.

Arrange for loan closing by county office, escrow agent, designated attorney, or other authorized loan closing agent; furnish loan closing agent with appropriate instructions, forms, and other needed information for loan closing.

The following FmHA or its successor agency under Public Law 103–354 forms will be used by the County Office in addition to those forms listed under docket preparation which must be executed by the borrower or other party:

Form No.	Name	
400–6	Compliance Statement	(*)
402–1	Deposit Agreement	(*)
402–2	Statement of Deposits and Withdrawals.	(*)
427–1 (State)	Real Estate Mortgage or Deed of Trust for _____.	(*)
1927–9	Preliminary Title Opinion	(*)
1940–17	Promissory Note	(x)

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10, Pub. L. 93–357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70)

[43 FR 55883, Nov. 29, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting exhibit A to subpart A of part 1941, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EXHIBIT B TO SUBPART A OF PART 1941 [RESERVED]

EXHIBIT C TO SUBPART A OF PART 1941—CONTROLLED SUBSTANCE

(NOTE: Exhibit C referenced in this subpart is available in any FmHA or its successor agency under Public Law 103–354 office.)

[53 FR 35684, Sept. 14, 1988]

Subpart B—Closing Loans Secured by Chattels

§ 1941.51 Purpose.

This subpart prescribes Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 policies, procedures, and authorizations for closing direct loans secured by chattels. These loans are considered closed on the date the promissory note is executed.

[43 FR 55883, Nov. 29, 1978, as amended at 58 FR 48282, Sept. 15, 1993]

§§ 1941.52–1941.53 [Reserved]

§ 1941.54 Promissory note.

(a) *Executing the note.* Form FmHA or its successor agency under Public Law 103–354 1940–17, ''Promissory Note,'' will be executed and dated following receipt of the loan check in the county office and prior to the first withdrawal of loan funds from the supervised bank account or delivery of the loan check to the borrower.

(b) *Signatures*—(1) *Individuals.* Only the applicant is required to sign the promissory note. Any other signatures

needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the repayment requirements for the loan request. Persons who are minors (except a youth obtaining a youth loan), mental incompetents, or noncitizens will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA or its successor agency under Public Law 103–354 is to incur individual personal liability regardless of any State law to the contrary. A youth executing a promissory note shall incur full personal liability for the indebtedness evidenced by such note.

(2) *Entities.* The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all members of the entity.

[43 FR 55883, Nov. 29, 1978, as amended at 51 FR 13448, Apr. 21, 1986; 53 FR 35691, Sept. 14, 1988; 58 FR 48286, Sept. 15, 1993; 68 FR 7697, Feb. 18, 2003]

§§ 1941.55–1941.56 [Reserved]

§ 1941.57 Security instruments.

Security instruments referred to in this subpart are financing statements, security agreements, chattel mortgages, and similar lien instruments. To obtain a security interest in chattels and crops in States which have adopted the Uniform Commercial Code (UCC), both a financing statement and a security agreement are required, although only the financing statement must be filed or recorded in public records. See paragraph (g) of this section for filing or recording instructions. In Louisiana a Chattel Mortgage and Crop Pledge or Crop Pledge, as appropriate, is required to obtain a security interest in chattels and crops.

(a) *Executing security instruments by borrowers.* State supplements will be issued, as necessary, to carry out the provisions of this paragraph. In order to close the loan and obtain the desired lien, security instruments will be executed by appropriate entity officials, on behalf of an entity borrower. Any other signatures needed to assure the required security will be obtained as provided in State supplements. A cosigner will be required only when it has been determined that the applicant cannot possibly meet the security requirements for the loan request.

(b) *Undivided interests.* An applicant obtaining a loan to finance an undivided interest in security or to refinance debts on an undivided interest in such property will secure the loan with a lien on the undivided interest in the property. All individuals having an undivided interest in the security will execute Form FmHA or its successor agency under Public Law 103–354 441–12, ''Agreement for Disposition of Jointly-Owned Property'', unless a written agreement to the same affect as this form has already been signed.

(c) *Security instrument forms.* (1) Form FmHA or its successor agency under Public Law 103–354 440–25, ''Financing Statement,'' or Form FmHA or its successor agency under Public Law 103–354 440A–25, ''Financing Statement (Carbon-Interleaved)''; and Form FmHA or its successor agency under Public Law 103–354 440–4, ''Security Agreement (Chattels and Crops),'' will be used to obtain security interests in chattel property in States which have adopted the Uniform Commercial Code (UCC), unless a State supplement requires the use of other forms.

(2) Form FmHA or its successor agency under Public Law 103–354 440–4 LA, ''Chattel Mortgage and Crop Pledge (Louisiana),'' or Form FmHA or its successor agency under Public Law 103–354 440–4A LA, ''Crop Pledge (Louisiana),'' will be used in the State of Louisiana.

(3) Other forms will be used as provided in State supplements in Puerto Rico, Guam, American Samoa and the Northern Mariana Islands.

(d) *Taking security instruments*—(1) *Financing statement.* A financing statement is effective for 5 years from the date of filing and as long thereafter as it is continued by filing a continuation statement.

(i) *Initial loan.* A financing statement will be required for every initial loan except when a filed financing statement covering the applicants property

is still effective, covers all types of chattel property that will serve as security for the initial loan, and describes the land on which crops and fixtures are or will be located.

(ii) *Subsequent loan.* A financing statement will not be required unless the filed financing statement is not effective, does not cover all types of chattel property that will serve as security for the subsequent loan, or does not describe the land on which crops or fixtures are or will be located. If the loan debt is being secured for the first time, however, the procedure for securing initial loans stated in paragraph (d)(1)(i) of this section will be followed.

(2) *Security Agreements*—(i) *Initial loan.* When an initial loan is made to an applicant, including to a paid-in-full borrower, a new security agreement will be required in all cases. The security agreement will be executed not later than the first withdrawal of loan funds from the supervised bank account or delivery of the loan check to the borrower.

(ii) *Subsequent loan.* An additional security agreement will be required if property which is to serve as security for the debt is not described either specifically or in the printed form of the previous security agreement, or if an additional agreement it is needed to obtain or maintain a security interest in crops.

(A) An additional security agreement may also be executed to reflect significant changes in security.

(B) An additional security agreement is not necessary if the existing security agreement covers all types of chattels that will serve as security for the subsequent loan, describes the land on which the crops or fixtures are or will be located, and was executed within 1 year before the crops which are offered as security became growing crops.

When determined necessary by OGC, a State supplement will be issued to further explain when a security agreement covering crops will be required.

(e) *Describing collateral in security instruments.* (1) Financing statements describe certain types of collateral. If items of collateral not covered in the printed form of the financing statement are to serve as security, they should be described by type or specifically identified.

(2) Generally, animals, birds, fish, etc., should be described by groups in the security agreement. The serial or other identification numbers of major items of equipment should be listed in the security agreement. If a security interest is to be taken in property such as inventory, supplies, recreation or other nonfarm equipment, or fixtures which cannot be readily described under the column headings of items 2 or 3 of Form FmHA or its successor agency under Public Law 103–354 440–4, an appropriate description of such property will be inserted in item 2 or 3 below the other property, without regard to the column headings.

(3) The advice of the Office of the General Counsel (OGC) will be obtained as to how to describe in financing statements and security agreements items such as grazing permits, milk bases, and membership or stock in cooperative associations. The property to be described in security instruments should be reconciled with any existing security instruments and with Form FmHA or its successor agency under Public Law 103–354 462–1, ''Record of the Disposition of Security Property.''

(4) After the initial security agreement is executed, and after the borrower obtains all the property which FmHA or its successor agency under Public Law 103–354 wants specifically described, by item, in the security agreement, a new security agreement will be executed.

(f) *Executing security instruments by County Office employees.* The County Supervisor and any County Office employee authorized by the County Supervisor may execute on behalf of the Government any legal instruments necessary to obtain or preserve security for loans. This includes financing statements, security agreements, chattel mortgages and similar lien instruments, as well as severance agreements, consent and subordination agreements, affidavits and acknowledgments.

(g) *Filing or recording security instruments.* (1) Ordinarily, in States which have adopted the UCC, financing statements may be delivered by hand or mailed to the filing officers for filing

or recording when the loan is approved. However, when this is not practical, the financing statement may be filed at a later date, but not later than the first withdrawal of loan funds from the supervised bank account or delivery of the loan check to the borrower. If crops or other property of the borrower are located or will be located in a State other than that of the borrower's residence, the County Office servicing the loan will contact the County Office in the other State for information as to the security instruments to be used and the place(s) of filing or recording in the other State. The financing statement will be filed or recorded as required by State supplements.

(2) Security agreements will not be filed or recorded unless required by State supplements. Form FmHA or its successor agency under Public Law 103–354 440–4 LA or Form FmHA or its successor agency under Public Law 103–354 440–4A LA will be filed or recorded in Louisiana as provided by State supplements.

[43 FR 55883, Nov. 29, 1978, as amended at 50 FR 27415, July 3, 1985; 51 FR 13448, Apr. 21, 1986; 53 FR 35691, Sept. 14, 1988; 68 FR 7697, Feb. 18, 2003]

§§ 1941.58–1941.59 [Reserved]

§ 1941.60 Purchase money security interest.

A purchase money security interest will take priority over an earlier perfected security interest if a security agreement is taken and a financing statement is filed before the purchaser receives possession of the property or within 10 days thereafter, subject to the following limitations:

(a) *Motor vehicles.* For motor vehicles required to be licensed, any action necessary to obtain perfection in the particular State, such as having the security interest noted on the certificate of title, must be taken before the purchaser receives possession or within 10 days. In some States, it is not necessary to file a financing statement to perfect a security interest in such motor vehicles; however, FmHA or its successor agency under Public Law 103–354 will always require both a security agreement and a financing statement. A State supplement will be issued, if necessary to set out the procedure for obtaining a lien on a motor vehicle, motorboat, or any special type of security.

(b) *Farm equipment.* A purchase money security interest in farm equipment costing $2,500 or less (other than fixtures or motor vehicles required to be licensed), will take priority over an earlier perfected security interest if a security agreement is obtained, even though a financing statement is not executed or filed. FmHA or its successor agency under Public Law 103–354, however, will always file a financing statement. State supplements will be issued, as necessary, to further explain the requirements for complying with this section.

(c) *Inventory.* A purchase money security interest in inventory will take priority over an earlier perfected security interest, provided:

(1) A security agreement is taken and a financing statement is filed not later than the time the purchaser receives possession of the property, and

(2) Before the purchaser takes possession of the property, written notice is given to the party holding the earlier perfected interest that the purchase money creditor has acquired or expects to acquire a purchase money security interest in the inventory, which must by described by item or type. When determined necessary by OGC, a State supplement will be issued to further explain the requirements for perfecting a purchase money security interest in inventory.

(d) *Fixtures.* A security interest taken in goods before they become fixtures has priority over a security interest in the real estate to which they are attached. A security interest taken in goods after they become fixtures is valid against all persons later acquiring an interest in the real estate. It is not valid against persons who had an interest in the real estate when the goods become fixtures, unless they execute a consent disclaimer or Form FmHA or its successor agency under Public Law 103–354 440–26, ''Consent and Subordination Agreement''.

(e) *Crops.* A security interest taken in crops not more than 3 months before the crops are planted or otherwise become growing crops, has priority over

an earlier perfected security interest, if the obligation underlying the earlier interest was due more than 6 months before the crops became growing crops.

[43 FR 55883, Nov. 29, 1978, as amended at 54 FR 47959, Nov. 20, 1989]

§§ 1941.61–1941.62 [Reserved]

§ 1941.63 Lien search.

(a) *Required lien searches.* (1) A lien search will be obtained at a time that assures that the security instruments give the Government the required security, usually at the time the financing statement (mortgage or crop pledge in Louisiana) is filed or recorded. Lien searches may be obtained after the financing statement is filed, but never after the delivery of the loan check or the first withdrawal of loan funds from the supervised bank account. Form FmHA or its successor agency under Public Law 103–354 440–13, ''Report of Lien Search,'' or other lien search forms will be used.

(2) Under the UCC, lien searches are necessary in making subsequent loans if an additional financing statement is required; i.e., when crops or fixtures to be taken as security are or will be located on land not described in the existing financing statement, or when property not covered by the financing statement is to be taken as security for the loan.

(3) Lien searches also may be obtained in connection with processing applications when the County Supervisor determines such searches are necessary on an individual case basis.

(4) Although a lien search is not always required for youths who are minors (as defined in State supplements), the County Supervisor may determine that a search is necessary to assure the Government obtains the required security interest.

(b) *Responsibility for obtaining lien searches.* (1) Applicants should obtain and pay for lien searches. FmHA or its successor agency under Public Law 103–354 County Office employees may make lien searches (at no cost to the applicant) in exceptional cases, such as when no other person is available to provide such a service, or when experience has shown that using the service available would lead to an undue delay in closing the loan and the delay would cause undue hardship to the borrower.

(2) The State Director will issue a State supplement setting forth the requirements for lien searches, including the records to be searched and the periods to be covered.

(3) The applicant should be informed of County Clerks, local attorneys or other persons who will conduct lien searches at a reasonable cost. The applicant will select the lien searcher. The cost of a lien search can be paid from the proceeds of loan checks.

§§ 1941.64–1941.66 [Reserved]

§ 1941.67 Additional requirements for perfecting security interests.

If necessary because of provisions in State statutes, leases, land purchase contracts, or real estate mortgages commonly in use, State Directors will issue State supplements which tell how to obtain a subordination agreement, certification of obligation to landlord, disclaimer, and consent and subordination agreement to perfect security interest.

(a) *Form FmHA or its successor agency under Public Law 103–354 441–5, ''Subordination Agreement.''* This form will be used if a subordination agreement is required by FmHA or its successor agency under Public Law 103–354 on crops, livestock, farm equipment, or other chattels. If Form FmHA or its successor agency under Public Law 103–354 441–5 is not legally sufficient, a form recommended by OGC will be used. The time to be covered by the subordination agreement generally will be equal to the repayment period of the loan or for the unexpired period of the lease if the borrower is a tenant, but as a minimum will be for the year for which the loan is made.

(b) *Form FmHA or its successor agency under Public Law 103–354 441–17, ''Certification of Obligation To Landlord.''* This form may be used instead of obtaining a subordination agreement if:

(1) It appears that the applicant is not financially obligated to the landlord except for rent for the lease year and will not incur other obligations to the landlord during that year, and

(2) A State supplement authorizing the use of Form FmHA or its successor

agency under Public Law 103–354 441–17 in such cases has been issued.

(c) *Form FmHA or its successor agency under Public Law 103–354 440–26, ''Consent and Subordination Agreement.''* Unless otherwise provided by a State supplement, this form rather than a severance agreement will be used in UCC States when a security interest is taken in property after it has become a fixture.

(1) If a debt on an item which has already become a fixture is being refinanced, consent and subordination agreements will be signed before releasing loan funds to the creditor. In all other cases in which a security interest is being taken on an item that already has become a fixture, consent and subordination agreements will be signed no later than the time of loan closing.

(2) Consent and subordination agreements will be taken only in those cases in which the fixture is placed on the real estate before the financing statement and security agreement covering the fixture have been executed, or before the financing statement is filed, or before the request for obligation of funds is signed by the loan approving official.

[43 FR 55883, Nov. 29, 1978, as amended at 54 FR 47959, Nov. 20, 1989]

§§ 1941.68–1941.70 [Reserved]

§ 1941.71 Fees.

The borrower will pay all fees for filing or recording financing statements, mortgages, or other legal instruments and will pay all notary and lien search fees incident to loan transactions. Payment will be made from personal funds or from the proceeds of the loan. Whenever FmHA or its successor agency under Public Law 103–354 employees accept cash to pay for filing or recording fees or for the cost of making a lien search, Form FmHA or its successor agency under Public Law 103–354 440–12, ''Acknowledgment of Payment for Recording, Lien Search, and Releasing Fees,'' will be executed. FmHA or its successor agency under Public Law 103–354 employees will make it clear to the borrower that any fee so accepted is not received by the Government as a payment on the borrower's debt, but is accepted only for paying the recording, filing, or lien search fees on behalf of the borrower.

§§ 1941.72–1941.74 [Reserved]

§ 1941.75 Retention and use of security agreements.

Original executed security agreements will not be altered or destroyed, and will remain in the case file when new security agreements are taken. Changes in security property will be noted *only* on the work copy. When an additional security agreement covering all collateral for the debt is taken, the work copy of the previous security agreement may be destroyed.

§§ 1941.76–1941.78 [Reserved]

§ 1941.79 Future advance and after-acquired property clauses.

The future advance and after-acquired property clauses of security agreements will be considered valid in all respects in UCC States unless otherwise provided in a State supplement.

(a) *Future advance clause.* A properly prepared, executed, and filed or recorded FmHA or its successor agency under Public Law 103–354 financing statement and a properly prepared and executed FmHA or its successor agency under Public Law 103–354 security agreement give FmHA or its successor agency under Public Law 103–354 a security interest in the property described. This security interest covers future loans, advances, and expenditures, as well as any other FmHA or its successor agency under Public Law 103–354 debts evidenced by notes and any advances or expenditures for debts evidenced by such notes. However, when a borrower's indebtedness is paid in full, a new security agreement must be taken in all cases to secure an initial loan made following the payment in full.

(b) *After-acquired property clause.* After a security interest is acquired in certain property, any property (except fixtures) acquired which is of the same type as that described in the financing statement and security agreement will also serve as security for the debt. The after-acquired property clause in the security agreement will encumber crops grown on the land described in

the security agreement and financing statement, provided the crops are planted or otherwise become growing crops within 1 year of the execution date of the security agreement, or within such other period as provided in a State supplement. FmHA or its successor agency under Public Law 103–354 after-acquired security interests take priority over other security interests perfected after the FmHA or its successor agency under Public Law 103–354 financing statement is filed, except as stated in § 1941.60.

(c) *State supplements.* A State supplement concerning future advance and after-acquired property clauses will set forth requirements for filing or recording security instruments in that State. This will assist County Supervisors in other States who request such information in accordance with § 1941.57(g). A State supplement will also be issued when OGC determines that it is needed to reflect any amendments made to a State's UCC.

§§ 1941.80–1941.83 [Reserved]

§ 1941.84 Title clearance and closing requirements.

(a) For loans over $10,000, title clearance is required when real estate is taken as primary security.

(b) For loans of $10,000 or less, and loans for which real estate is taken as primary security, a certification of ownership and verification of equity in real estate is required. Certification of ownership may be in the form of a notarized affidavit which is signed by the applicant, names the record owner of the real estate in question and lists the balances due on all known debts against the real estate. Whenever the County Supervisor is uncertain of the record owner or debts against the estate security, a title search will be required.

(c) Title clearance is not required when real estate is taken as additional security, as defined in § 1941.4 of this subpart.

(d) When real estate is taken as primary security, as defined in § 1941.4 of this subpart, title clearance and loan closing requirements will be carried out in accordance with subpart B of part 1927 of this chapter.

(e) If any prior liens against the real estate offered as security contain provisions (such as future advance clauses not limited to a specific amount) that could jeopardize either the security position of the Government or the applicant's ability to meet the obligations of the prior liens and FmHA or its successor agency under Public Law 103–354 loan, the prior lienholders involved must agree in writing, before the loan is closed, to modify, waive, or subordinate such objectionable provisions.

(f) If a lien is to be taken on real estate which is already subject to a lien, and if State law allows a prior lienholder to foreclose on a loan (under power of sale or otherwise) without notifying a junior lienholder of the foreclosure proceedings, the prior lienholders must agree, in writing, to give FmHA or its successor agency under Public Law 103–354 advance notice of all foreclosure proceedings and of any assignment of the mortgage.

(g) Each real estate lien will be taken on Form FmHA or its successor agency under Public Law 103–354 1927–1 (State), ''Real Estate Mortgage or Deed of Trust for _____,'' unless a state supplement requires the use of another form.

(h) If the real estate offered as security is held under a purchase contract, the following conditions must exist:

(1) The applicant must be able to provide a mortgageable interest in the real estate.

(2) The applicant and the purchase contract holder must agree, in writing, that any insurance proceeds received to compensate for real estate losses will be used only to replace or repair the damaged real estate. If necessary, the applicant will negotiate with the purchase contract holder to arrive at a new contract without any provisions objectionable to either FmHA or its successor agency under Public Law 103–354 or the lender.

(3) If a satisfactory contract of sale cannot be negotiated or if the purchase contract holder refuses to agree to apply the insurance proceeds toward the repair or replacement of the real estate and wants to retain some of the proceeds as an extra payment on the balance owned, the applicant will make

every effort to refinance the existing purchase contract.

(4) The purchase contract must not be subject to summary cancellation on default and must not contain any other provisions which might jeopardize either the Government's security position or the borrower's ability to repay the loan.

(5) The contract holder must agree, in writing, to give the Government notice of any breach by the purchaser, and must also agree to give the Government the option to rectify the conditions which amount to a breach within 30 days. The 30 days begin to run on the day the Government receives the written notice of the breach.

[51 FR 13448, Apr. 21, 1986, as amended at 56 FR 67480, Dec. 31, 1991; 58 FR 26680, May 5, 1993]

§§ 1941.85–1941.87 [Reserved]

§ 1941.88 Insurance.

(a) *Catastrophic Risk Protection (CAT) insurance requirement.* Applicants must obtain at least the CAT level of crop insurance of coverage for each crop of economic significance, as defined by the Federal Crop Insurance Corporation, if such coverage is offered. The applicant can meet this requirement by either:

(1) Obtaining at least the CAT level of coverage or,

(2) Waiving eligibility for emergency crop loss assistance in connection with the uninsured crop. EM loss loan assistance is not considered emergency crop loss assistance for purposes of this waiver.

(b) *Crops.* Crop insurance is a good management tool. Loan approval officials will, therefore, during the loan making process, encourage all borrowers who grow crops to obtain and maintain Federal Crop Insurance Corporation (FCIC) crop insurance or multi-peril crop insurance, if it is available.

(1) When OL loan funds are to be used as the primary source of financing for the ensuing year's crop production expenses, and such crop(s) will serve as security for the loan, and crop insurance is purchased by the borrower, FmHA or its successor agency under Public Law 103–354 requires and ''Assignment of Indemnity'' on the borrower's crop insurance policy(ies).

(2) When FmHA or its successor agency under Public Law 103–354 is not the primary lender for annual crop production expenses, but has or will have a security interest in the crop(s), and the applicant has purchased or will purchase crop insurance, an ''Assignment of Indemnity'' is taken by FmHA or its successor agency under Public Law 103–354, if the primary lender chooses not to do so.

(3) When the payment of crop insurance premiums is not required until after harvest, the premiums may be paid by releasing insured crop(s) sale proceeds, but not withstanding the limits in §§ 1962.17 and 1962.29(b) of subpart A of part 1962 of this chapter. If the borrower's crop losses are sufficient to warrant an indemnity payment, the premium due will be deducted by the insurance carrier from such payment.

(c) *Chattels and real estate.* Chattel property that secures OL loans must be covered by hazard insurance unless the Agency determines that coverage is not readily available or the benefit of the coverage is less than its cost. When insured, chattel property must at least be covered at its tax or cost depreciated value, whichever is less. Real property must be covered by general hazard and flood insurance in accordance with subparts A and B of part 1806 of this chapter.

(d) *Public liability and property damage.* Borrowers should be advised of the possibilities of incurring liability and encouraged to obtain public liability and property damage insurance, including insurance on a customer's property in the custody of the borrower.

(e) *Mortgage clause.* When insurance is required on property serving as security, Form FmHA or its successor agency under Public Law 103–354 426–2, ''Property Insurance Mortgage Clause (Without Contribution),'' or a standard mortgage clause in general use in the area will be attached to or printed in the policy and will show the United States of America (Farmers Home Administration or its successor agency

under Public Law 103–354) as mortgagee or secured party.

[43 FR 55883, Nov. 29, 1978, as amended at 47 FR 33486, Aug. 3, 1982; 53 FR 35691, Sept. 14, 1988; 58 FR 26680, May 5, 1993; 62 FR 9355, Mar. 3, 1997; 62 FR 28618, May 27, 1997]

§§ 1941.89–1941.91 [Reserved]

§ 1941.92 Check delivery.

The County Supervisor will receive and deliver loan checks. On receipt of a loan check, and after arrangements have been completed for loan closing, the applicant will be promptly notified on Form FmHA or its successor agency under Public Law 103–354 440–8, ''Notice of Check Delivery.'' Loan funds will be disbursed in accordance with subpart A of part 1902 of this chapter.

[43 FR 55883, Nov. 29, 1978, as amended at 58 FR 26681, May 5, 1993]

§ 1941.93 [Reserved]

§ 1941.94 Supervised bank accounts.

If a supervised bank account is required, loan funds will be deposited following loan closing. Supervised bank accounts will be established in accordance with subpart A of part 1902 of this chapter.

[53 FR 35692, Sept. 14, 1988]

§ 1941.95 [Reserved]

§ 1941.96 Changes in use of loan funds.

(a) *Approval of changes.* County Supervisors, or their delegates, are authorized to approve changes in the purposes for which loan funds are to be used provided:

(1) The change is consistent with authorities, policies and limitations for making loans, and

(2) The change will not adversely affect either the workings of an on-going operation or the Government's interest.

(b) *Recording changes.* When changes are made in the use of loan funds, the installments on Form FmHA or its successor agency under Public Law 103–354 1940–17, ''Promissory Note,'' will not be revised. When funds loaned for the purchase of capital goods are to be used for annual recurring production expenses, the funds will be repaid in accordance with the terms for such uses in subpart A of this part. Appropriate changes with respect to the repayments will be made in table K of Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan,'' also on Form FmHA or its successor agency under Public Law 103–354 1962–1, ''Agreement for the Use of Proceeds/Release of Chattel Security,'' and initialed by the borrower. Appropriate notations will be made in the ''Supervisory and Servicing Actions'' section of the Management System Card.

[43 FR 55883, Nov. 29, 1978, as amended at 45 FR 16166, Mar. 13, 1980; 53 FR 35692, Sept. 14, 1988; 54 FR 47959, Nov. 20, 1989]

PART 1942—ASSOCIATIONS

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—Community Facility Loans

SOURCE: 50 FR 7296, Feb. 22, 1985, unless otherwise noted.

§ 1942.1 General.

(a) This subpart outlines the policies and procedures for making and processing insured loans for Community Facilities except fire and rescue and other small essential community facility loans and water and waste disposal facilities. This subpart applies to Community Facilities loans for fire and rescue and other small essential community facility loans only as specifically provided for in subpart C of this part. Water and waste loans are provided for in part 1780 of this title. The Agency shall cooperate fully with State and local agencies in making loans to assure maximum support to the State strategy for rural development. State Directors and their staffs shall maintain coordination and liaison with State agency and substate planning districts. Funds allocated for use under this subpart are also for the use of Indian tribes within the State, regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity to participate in the benefits of these programs as compared with other residents of the State. Federal statues provide for extending Agency financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State

and local statutes. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an Agency employee.

(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this subpart that affect applicant eligibility, the adequacy of FmHA or its successor agency under Public Law 103–354's security or the adequacy of service to users of the facility and all other requirements of this subpart must be met.

(c) Loans sold without insurance by FmHA or its successor agency under Public Law 103–354 to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

(d) The District Office will normally be the entry point for preapplications and serve as a local point. Applications will be filed with the District Office and loans will be processed to the maxium extent possible by the District Office staff. The applicant's governing body should designate one person to coordinate the activities of its engineer, architect, attorney, and any other professional employees and to act as contact person during loan processing. FmHA or its successor agency under Public Law 103–354 personnel should make every effort to involve the applicant's contact person when meeting with the applicant's professional consultants and/or agents. The State Office staff will monitor community programs loanmaklng and servicing, and will provide assistance to District Office personnel to the extent necessary to assure that the activities are being accomplished in an orderly manner consistent with FmHA or its successor agency under Public Law 103–354 regulations.

[50 FR 7296, Feb. 22, 1985, as amended at 52 FR 38908, Oct. 20, 1987; 52 FR 43725, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987; 57 FR 21193, May 19, 1992; 58 FR 226, Jan. 5, 1993; 62 FR 33510, June 19, 1997; 68 FR 65830, Nov. 24, 2003]

§ 1942.2 Processing applications.

(a) *Preapplications.* (1) The District Office may handle initial inquiries and provide basic information about the program. They are to provide the preappllcation, SF 424.2, ''Application for Federal Assistance (For Construction).'' The District Director will assist applicants as needed in completing SF 424.2, and in filing written notice of intent and priority recommendation with the appropriate clearinghouse. The District Director will inform the applicant that it may be necessary to apply for credit from commercial sources. It will be explained that if credit for the project is available from commercial sources at reasonable rates and terms the applicant is not eligible for FmHA or its successor agency under Public Law 103–354 financing. The District Director will meet with the applicant, whenever appropriate to discuss FmHA or its successor agency under Public Law 103–354 preapplication processing. Guidance and assistance will be provided by the State Director, as needed, for orderly application processing. The District Director will determine that the preapplication is property completed and fully reviewed. The District Director will then forward to the State Director:

(i) Eligibility determination and recommendations.

(ii) One copy of SF 424.2.

(iii) State intergovernmental review comments and recommendations (clearinghouse comments).

(iv) Priority recommendations.

(v) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, or copies of organizational documents or existing debt instruments. The District Director will advise applicants on what documents are necessary. Applicants should not be required to expend significant amounts

of money or time developing supporting documentation at the preapplication stage.

(2) The State Director will review each SF 424.2 along with other information that is deemed necessary to determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated, the State Director will instruct the District Director to so inform the applicant and recommend the applicant apply to commercial sources for financing. Projects may be funded jointly with other lenders provided the requirements of §1942.17 (g) of this subpart are met. Joint financing occurs when two or more lenders make separate loans to supply the funds required by one applicant for a project.

(i) In order to provide a basis for referral of preapplications of only those applicants who may be able to finance projects through commercial sources, State Directors should maintain liaison with representatives of banks, investment bankers, financial advisors, and other lender representatives in the State. State Directors with their assistance, should maintain criteria for determining preapplications which should be referred to commercial lenders. A list of lender representatives interested in receiving such referrals should be maintained.

(ii) The State Director shall maintain a working relationship with the State Office or official that has been designated as the single point of contact for the intergovernmental review process and give full consideration to their comments when selecting preapplications to be processed.

(iii) The State Director will review the District Director's eligibility determination and recommendations in sufficient time for the District Director's use in preparing and issuing Form AD–622.

(iv) Form AD–622 will be prepared by the District Director within forty-five (45) calendar days from receipt of the preapplication by FmHA or its successor agency under Public Law 103–354, stating the results of the review action. The original will be signed and delivered to the applicant with a copy to the State Director.

(3) For preapplications eligible for FmHA or its successor agency under Public Law 103–354 funding which have the necessary priority to compete with similar preapplications, FmHA or its successor agency under Public Law 103–354 will issue Form AD–622 inviting an application containing the following statement:

> You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered, or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process must occur prior to the issuance of the letter of conditions.

(4) The following statement must be added to Form AD–622 when notifying preapplicants who are eligible, but do not have the priority necessary for further consideration at this time:

> You are advised against incurring obligations which would limit the range of alternatives to be considered, or which cannot be fulfilled without FmHA or its successor agency under Public Law 103–354 funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work, taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications, or inviting construction bids until notified by Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 to proceed.

(b) *Environmental review.* Environmental requirements will be documented in accordance with subpart G of part 1940 of this chapter and submitted to the State Director. Starting with the earliest discussions with prospective applicants or review of preapplications and continuing throughout application processing, environmental issues must be considered. This should provide flexibility to consider alternatives to the project and develop methods to mitigate identified adverse environmental impacts. Documentation of the appropriate environmental review should be completed as soon as possible; however, the State Director will ensure that the appropriate environmental review is completed prior to issuing the letter of conditions.

(c) *Applications.* The District Director should assist the applicant in application assembly and processing.

(1) State Directors should have applications in process representing approximately 150 percent of the current State allocation.

(2) The application docket will include SF 424.2, and related forms, materials, and information. The application will be assembled in accordance with guide 15 of this subpart or State guides developed under § 1942.16 of this subpart.

(3) When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant to provide copies of appropriate appendices and forms; furnish guidance necessary for orderly application processing; and to initiate a processing checklist for establishing a time schedule for completing items using Form FmHA or its successor agency under Public Law 103–354 1942–39, ''Processing Check List (Other Than Public Bodies),'' or Form FmHA or its successor agency under Public Law 103–354 1942–40, ''Processing Check List (Public Bodies),'' or other checklist adopted for use in the State. The District Director will confirm decisions made at this conference by letter to the applicant and by a copy of the processing checklist. The original and a copy of the processing checklist will be retained in the District Office and a copy will be forwarded to the State Office. The original and copy of the checklist retained in the District Office will be kept current as application processing actions are taken. The copy will be sent to the State Office to use in updating its copy of this form. The State Office will then return the District Office's copy. As the application is being processed, and the need develops for additional conferences, the District Director will arrange with the applicant for such conference to extend and update the processing checklist.

(d) *Review of decision.* If at any time prior to loan approval it is decided that favorable action will not be taken on a preapplication or application, the District Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA or its successor agency under Public Law 103–354 may be requested by the applicant under subpart B of part 1900 of this chapter. The following statement will also be made on all notifications of adverse action.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(e) *Joint funding.* FmHA or its successor agency under Public Law 103–354 may finance projects jointly with funds from other sources, such as, commercial/private lenders, Federal agencies, State and local Governments, etc. Other departments, agencies, and executive establishments of the Federal Government may participate and provide financial and technical assistance jointly with FmHA or its successor agency under Public Law 103–354 to any applicant to whom FmHA or its successor agency under Public Law 103–354 is providing assistance. The amount of participation by the other department, agency, or executive establishment shall only be limited by its authorities except that any limitation on joint participation itself is superseded by section 125 of Pub. L. 95–334 (Section 347, Consolidated Farm and Rural Development Act, as amended).

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6786, Mar. 3, 1988; 54 FR 47197, Nov. 13, 1989; 55 FR 13503 and 15304, Apr. 11, 1990; 57 FR 21194, May 19, 1992; 61 FR 6309, Feb. 20, 1996]

§ 1942.3 Preparation of appraisal reports.

When the loan approval official requires an appraisal, Form FmHA or its successor agency under Public Law 103–354 422–10, ''Appraisal Report—Water and Waste Disposal Systems,'' may be used with appropriate supplements. Form FmHA or its successor agency

under Public Law 103–354 442–10 may be modified as appropriate or other appropriate format may be used for facilities other than water and waste disposal. Appraisal reports prepared for use in connection with the purchase of existing essential community facilities or when required by §1942.17 (g)(2)(iii)(B)(*2*), (g)(3)(iii)(B)(*2*), and (j)(4) of this subpart, may be prepared by the FmHA or its successor agency under Public Law 103–354 engineer/architect or, if desired by the State Director, some other qualified appraiser. The loan approval official may require an applicant to provide an appraisal prepared by an independent qualified appraiser; however, the loan approval official must determine that the appraised value shown in such reports reflects the present market value.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6786, Mar. 3, 1988]

§1942.4 Borrower contracts.

The State Director will, with assistance as necessary by the Office of the General Counsel (OGC), concur in agreements between borrowers and third parties such as contracts for professional and technical services and contracts for the purchase of water or treatment of waste. State Directors are expected to work closely with representatives of engineering and architectural societies, bar associations, commercial lenders, accountant associations, and others in developing standard forms of agreements, where needed, and other such matters in order to expedite application processing, minimize referrals to OGC, and resolve problems which may arise.

§1942.5 Application review and approval.

(a) *Procedures for review.* Ordinarily FmHA or its successor agency under Public Law 103–354 staff review will proceed as applications are being developed. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the staff and approval officials. The engineering/architect reports and associated data are to be reviewed by the FmHA or its successor agency under Public Law 103–354 staff engineer or architect, as appropriate, as soon as available but prior to the District Director's completion of the project summary. During the review the District Director in all cases will make certain that no low income or minority community within the service area has been omitted or discouraged from participating in the proposed project. The District Director will also determine how the service area was defined to assure that gerrymandering of specific communities or areas has not occurred. The findings should be documented in the running record. Prior to presenting the assembled application to the approval official, the assembled application ordinarily will be processed in the following sequence:

(1) The Rural Development manager will complete the project summary, including written analysis and recommendations, and will prepare a draft letter of conditions listing all the requirements that the applicant must agree to meet within a specific time.

(i) Requirements listed in letters of conditions will include the following unless inappropriate due to the particular type of funding or entity involved: Maximum amount of loan and/or grant which may be considered, scheduling of payments, term of loan and any deferment of principal which may be allowed, reserve requirements, compliance with section 504 of the Rehabilitation Act of 1973, number of users (members) and verification required, contributions rates and charges, interim financing, disbursement of funds, security requirements, graduation requirements, debt collection policies execution of Form FmHA or its successor agency under Public Law 103–354 1910–11, ''Application Certification, Federal Collection Policies for Consumer or Commercial Debts,'' organization, business operations, insurance and bonding (including applicant/borrower and contractor), construction contract documents and bidding, accounts, records, and audit reports required (including requirements of OMB Circulars A–128 and A–110), adoption of Form FmHA or its successor agency under Public Law 103–354 1942–47, ''Loan Resolution (Public Resolution),'' for public bodies or Form FmHA or its successor agency under

Public Law 103–354 1942–9, ''Loan Resolution (Security Agreement),'' for other than public bodies, closing instructions, and other requirements.

(ii) Each letter of conditions will contain the following paragraphs:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in the project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by FmHA or its successor agency under Public Law 103–354 by written amendment to this letter. Any changes not approved by FmHA or its successor agency under Public Law 103–354 shall be cause for discontinuing processing of the application.

This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed $_____.

If FmHA or its successor agency under Public Law 103–354 makes the loan, you may make a written request that the interest rate be the lower of the rate in effect at the time of loan approval or the time of loan closing. If you do not request the lower of the two interest rates, the interest rate charged will be the rate in effect at the time of loan approval. The loan will be considered approved on the date a signed copy of Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request for Obligation of Funds,'' is mailed to you. If you want the lower of the two rates, your written request should be submitted to FmHA or its successor agency under Public Law 103–354 as soon as practical. In order to avoid possible delays in loan closing such a request should ordinarily be submitted at least 30 calendar days before loan closing.

Please complete and return the attached Form FmHA or its successor agency under Public Law 103–354 1942–46, ''Letter of Intent to Meet Conditions,'' if you desire that further consideration be given your application.

(iii) Rural Development Managers may add the following:

If the conditions set forth in this letter are not met within _____ days from the date hereof, FmHA or its successor agency under Public Law 103–354 reserves the right to discontinue the processing of the application.

(2) The State staff engineer or architect, as appropriate, will include a written analysis and recommendations on the project summary.

(3) The Chief, Community Programs or Community and Business Programs, will review the assembled application and include in the project summary a written analysis and recommendations, including the availability of other credit and other eligibility determinations. The draft letter of conditions will be reviewed and any necessary modifications made.

(b) *Project requiring National Office review.* Prior National Office review is required for certain proposals (See subpart A of part 1901 of this chapter).

(1) The Rural Development Manager should assemble applications for the National Office review in the following order from top to bottom and forward them to the State Director for review and recommedation prior to submission to the National Office:

(i) Transmittal memorandum including:

(A) Recommendation.

(B) Date of expected obligation.

(C) Any unusual circumstances.

(ii) Copies of the following:

(A) Proposed letter of conditions.

(B) Applicable State Intergovernmental review comments (FmHA Instruction 1940–J, available in any FmHA or its successor agency under Public Law 103–354 office).

(C) Community Facilities Project Summary.

(D) Preliminary architectural or engineering report.

(E) Form FmHA or its successor agency under Public Law 103–354 442–3, ''Balance Sheet,'' or a financial statement or audit that includes a balance sheet.

(F) For other essential community facility loan applicants whose proposals do not meet the assured income or tax based security requirements of §1942.17 (g)(2)(iii) and (g)(3)(iii) of this subpart, financial information for the last five years of operation will be submitted if available. The type of financial information to be submitted should be determined based on what is available and the following order of preference:

(*1*) Complete audits;

(*2*) Unaudited financial statements including balance sheets and statements of income and expenses;

(*3*) Lists of income and expenses.

(G) For other essential community facility loans secured under paragraph

(b)(1)(ii)(F) of this section, submit a detailed explanation of the proposed security; evidence that the application cannot be processed and the loan secured under paragraph (b)(1)(ii)(F) of this section; evidence supporting the efforts by the applicant in persuading appropriate public bodies to provide the proposed facility and services and the results, and comments of the Regional Attorney concurring in the applicants' legal authority to give the proposed security.

(H) Financial Feasibility Report when required by §1942.17 (h)(1).

(I) Proposed lease agreements, management agreements, or other agreements when facility management will be provided by other than the applicant.

(J) Other forms and documents on which there are specific questions.

(K) Environmental impact analysis and documentation.

(2) For applications to be reviewed in the State or field, at least those items in paragraph (b)(1)(ii) of this section, should be available.

(c) *For all applications.* All letters of conditions will be addressed to the applicant, signed by the Rural Development Manager or other Agency representative designated by the State Director, and delivered to the applicant. Upon signing the letter of conditions, the Rural Development Manager will send two copies of the letter of conditions and two copies of the project summary to the State Director. The State Director will immediately send one copy of the project summary and a copy of the letter of conditions to the National Office, Attention: Community Programs. The Rural Development Manager, with assistance as needed from the State Office, will discuss the requirements of the letter of conditions with the applicant's representatives and afford them an opportunity to execute Form RD 1942–46.

(1) The letter of conditions should not ordinarily be issued unless the State Director expects to have adequate funds in the State allocation to fund the project within the next 12 months based on historic allocations or other reliable projections.

(2) If the applicant declines to execute Form FmHA or its successor agency under Public Law 103–354 1942–46, the Rural Development Manager will immediately notify the State Director and provide complete information as to the reasons for such declination.

(3) If the applicant accepts the letter of conditions, the Rural Development Manager will forward the executed Form RD 1942–46 and a signed and an unsigned copy of Form RD 1940–1 to the State Director.

(d) *Loan approval and obligating funds.* Loans will be approved under this subpart and subpart A of part 1901 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office). The loan will be considered approved on the date the signed copy of Form FmHA or its successor agency under Public Law 103–354 1940–1 is mailed to the applicant. The State Director or designee may request an obligation of funds when available within their State allocation and according to the following:

(1) Form FmHA or its successor agency under Public Law 103–354 1940–1, authorizing funds to be reserved, may be executed by the loan approval official providing the applicant has the legal authority to contract for a loan and to enter into required agreements and has signed Form FmHA or its successor agency under Public Law 103–354 1940–1.

(2) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of Form FmHA or its successor agency under Public Law 103–354 1940–1.

(3) The State Director or designee will request an obligation of loan and/or grant funds via the FmHA or its successor agency under Public Law 103–354 Field Office terminal system after signing Form FmHA or its successor agency under Public Law 103–354 1940–1. The requesting official will furnish security identification as necessary. The requesting official will record the date, time of request, and their initials on the original Form FmHA or its successor agency under Public Law 103–354 1940–1.

(4) The obligation date and date the applicant is notified of loan and/or grant approval is six working days from the date funds are reserved unless

an exception is granted by the National Office.

(5) Immediately after verifying that funds have been reserved, utilizing the FmHA or its successor agency under Public Law 103–354 Field Office terminal system status inquiry function, the State Director or designee will notify by telephone, the Legislative Affairs and Public Information Staff in the National Office as required by FmHA Instruction 2015–C, ''Announcement of Approval of Loans, Grants, or Guaranteed Loans for Rural Project,'' (available in any FmHA or its successor agency under Public Law 103–354 State Office).

(6) Loan approval and applicant notification will be accomplished by the State Director or designee by mailing to the applicant on the obligation date a copy of Form FmHA or its successor agency under Public Law 103–354 1940–1 which has been previously signed by the applicant and loan approval official. The date the applicant is notified is also the date the interest rate at loan approval is established. The State Director or designee will record the date of applicant notification and the interest rate in effect at that time on the original of Form FmHA or its successor agency under Public Law 103–354 1940–1 and include it as a permanent part of the District Director project file with a copy placed in the State Office file.

(7) If a transfer of obligation of funds is necessary, complete Form FmHA or its successor agency under Public Law 103–354 450–10, ''Advice of Borrower's Change of Address, Name, Case Number, or Loan Number,'' and process via the FmHA or its successor agency under Public Law 103–354 Field Office terminal system. An obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

(i) The substituted applicant is eligible to receive the assistance approved for the original applicant; and

(ii) The substituted applicant bears a close and genuine relationship to the original applicant (such as two organizations that are controlled by the same individuals); and

(iii) The need for and scope of the project and the purpose(s) for which FmHA or its successor agency under Public Law 103–354 funds will be used remain substantially unchanged.

[50 FR 7296, Feb. 22, 1985, as amended at 50 FR 33332, Aug. 19, 1985; 50 FR 43378, Oct. 25, 1985; 53 FR 6787, Mar. 3, 1988; 54 FR 47196–47197, Nov. 13, 1989; 63 FR 16089, Apr. 2, 1998; 67 FR 60584, Sept. 27, 2002; 67 FR 63019, Oct. 9, 2002]

§ 1942.6 Preparation for loan closing.

(a) *Obtaining closing instructions.* Completed dockets will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(b) *Verification of users and other funds.* (1) In connection with a loan for a utility type project to be secured by a pledge of user fees or revenues, the District Director will authenticate the number of users prior to loan closing or the commencement of construction, whichever occurs first. Such individual will review each signed user agreement and check evidence of cash contributions. If during the review any indication is received that all signed users may not connect to the system, there will be such additional investigation made as deemed necessary to determine the number of users who will connect to the system. The District Director will record the determination in a memorandum to the State Director.

(2) In all cases the availability and amounts of other funds to be used in the project will be verified by FmHA or its successor agency under Public Law 103–354.

(c) *Initial compliance review.* An initial compliance review should be completed under subpart E of part 1901 of this chapter.

(d) *Ordering loan checks.* Checks will not be ordered until:

(1) The applicant has complied with approval conditions and closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto; and

(2) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(e) *Multiple advances of FmHA or its successor agency under Public Law 103–354 funds.* When FmHA or its successor agency under Public Law 103–354 provides loan funds during the construction period using interim (temporary) instruments described in §1942.19(g) of this subpart, the following action will be taken prior to the issuance of the permanent instruments:

(1) The Finance Office will be notified of the anticipated date for retirement of the interim instruments and issuance of permanent instruments of debt.

(2) The Finance Office will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the District Director.

(3) The District Director will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be forwarded to the Finance Office immediately, except that for promissory notes and single instrument bonds fully registered as to principal and interest, the original will be retained in the District Office and a copy will be forwarded to the Finance Office. In developing the permanent instruments, the sequence of preference set out in §1942.19(e) of this subpart will be followed.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988; 53 FR 26589, July 14, 1988]

§1942.7 Loan closing.

Loans will be closed in accordance with the closing instructions issued by the OGC and §1942.17(o) of this subpart and as soon as possible after receiving the check.

(a) *Authority to execute, file, and record legal instruments.* District Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans. This includes, as appropriate, mortgages and other lien instruments, as well as affidavits, acknowledgments, and other certificates.

(b) *Preparation of mortgages.* Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument.

(c) *Source of funds for insured loans.* All loans will be made from the Rural Development Insurance Fund (RDIF).

(d) *Unused funds.* Obligated funds planned for project development which remain after all authorized costs have been provided for will be disposed of in accordance with §1942.17(p)(6) of this subpart.

(e) *Loan checks.* Whenever a loan check is received, lost, or destroyed, the District Director will take appropriate actions outlined in FmHA Instruction 2018–D (available in any FmHA or its successor agency under Public Law 103–354 office). Checks which cannot be delivered within a reasonable amount of time (no more than 20 calendar days) will be handled in accordance with FmHA Instruction 2018–D.

(f) *Supervised bank accounts.* Supervised bank accounts will be handled under subpart A of part 1902 of this chapter.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988; 59 FR 54788, Nov. 2, 1994; 68 FR 61331, Oct. 28, 2003]

§1942.8 Actions subsequent to loan closing.

(a) *Mortgages.* Real estate or chattel mortages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will be retained in the borrower's case folder.

(b) *Notes and bonds.* When the debt instrument is a promissory note or single instrument bond fully registered as to

principal and interest, a conformed copy will be sent to the Finance Office immediately after loan closing and the original instrument will be stored in the District Office. When other types of bonds are used, the original bond(s) will be forwarded to the Finance Office immediately after loan closing.

(c) *Multiple advances—bond(s).* When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper righthand corner of such paper by the District Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made except that for promissory notes and single instrument bonds fully registered as to principal and interest, the original will be retained in the District Office and a copy will be forwarded to the Finance Office.

(d) *Bond registration record.* Form FmHA or its successor agency under Public Law 103–354 442–28, ''Bond Registration Book,'' may be used as a guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(e) *Disposition of title evidence.* All title evidence other than the opinion of title, mortgage title insurance policy, and water stock certificates will be returned to the borrower when the loan has been closed.

(f) *Material for State Office.* When the loan has been closed, the District Director will submit to the State Director:

(1) The complete docket; and

(2) A statement covering information other than the completion of legal documents showing what was done in carrying out loan closing instructions.

(g) *State Office review of loan closing.* The State Director will review the District Director's statement concerning loan closing, the security instruments, and other documents used in closing to determine whether the transaction was closed properly. All material submitted by the District Director, including the executed contract documents (if required by OGC) with the certification of the borrower's attorney, along with a statement by the State Director that all administrative requirements have been met, will be referred to OGC for post-closing review. OGC will review the submitted material to determine whether all legal requirements have been met. OGC's review of FmHA or its successor agency under Public Law 103–354's standard forms will be only for proper execution thereof, unless the State Director brings specific questions or deviations to the attention of OGC. It is not expected that facility development including construction will be held up pending receipt of the opinion from OGC. When the opinion from OGC is received, the State Director will advise the District Director of any deficiencies that must be corrected and return all material that was submitted for review.

(h) *Safeguarding bond shipments.* FmHA or its successor agency under Public Law 103–354 personnel will follow the procedures for safeguarding mailings and deliveries of bonds and coupons outlined in FmHA Instruction 2018–E (available in any FmHA or its successor agency under Public Law 103–354 office), whenever they mail or deliver these items.

(i) *Water stock certificates.* Water stock certificates will be filed in the loan docket in the District Office.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988]

§ 1942.9 Planning, bidding, contracting, and constructing. [See §§ 1942.17(p) and 1942.18]

(a) *Review of construction plans and specifications.* All plans and specifications will be submitted as soon as available to the State Office for review and comments.

(b) *Contract approval.* The State Director or designee is responsible for approving all construction contracts using legal advice and guidance of OGC as necessary. The use of a contracting method under § 1942.18(l) of this subpart exceeding $100,000 must be concurred in by the National Office. Procurement under § 1942.18(l) of this subpart will

not be considered when an FmHA or its successor agency under Public Law 103–354 grant is involved. When an applicant requests such concurrence, the State Director will submit the following to the National Office:

(1) State Director's and FmHA or its successor agency under Public Law 103–354 engineer/architect's comments and recommendations, and when noncompetitive negotiation is proposed, submit an evaluation of previous work of the proposed construction firm.

(2) Regional attorney's opinion and comments regarding the legal adequacy of the proposed procurement method and proposed contract documents.

(3) Copy of owner's written request and description of the procurement method proposed.

(4) Copy of the proposed contract.

(c) *Bid irregularities.* Any irregularities in the bids received or other matters pertaining to the contract award having legal implications will be cleared with OGC before the State Director consents to the contract award.

(d) *Noncompliance.* State Directors, upon receipt of information indicating borrowers or their officers, employees, or agents are not performing in compliance with §1942.18(j)(1) of this subpart, may request the Regional Office of the Inspector General (OIG) to investigate the matter and provide a report. The State Director is responsible for resolving the issue.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988]

§§ 1942.10–1942.11 [Reserved]

§ 1942.12 Loan cancellation.

Loans which have been approved and obligations which have been established may be canceled before closing as follows:

(a) Form FmHA or its successor agency under Public Law 103–354 1940–10, ''Cancellation of U.S. Treasury Check and/or Obligation.'' The District Director or State Director may prepare and execute Form FmHA or its successor agency under Public Law 103–354 1940–10 in accordance with the Forms Manual Insert (FMI). If the check has been received or is subsequently received in the District Office, the District Director will return it as prescribed in FmHA Instruction 2018–D (available in any FmHA or its successor agency under Public Law 103–354 office).

(b) *Notice of cancellation.* If the docket has been forwarded to OGC, that office will be notified of the cancellation by a copy of Form FmHA or its successor agency under Public Law 103–354 1940–10. Any application for title insurance, if ordered, will be canceled. The borrower's attorney and engineer/architect, if any, should be notified of the cancellation. The District Director may provide the borrower's attorney and engineer/architect with a copy of the notification to the applicant. The State Director will notify the Director of Legislative Affairs and Public Information by telephone or electronic mail and give the reasons for such cancellation.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 26589, July 14, 1988; 54 FR 39727, Sept. 28, 1989; 59 FR 54788, Nov. 2, 1994]

§ 1942.13 Loan servicing.

Loans will be serviced under subpart E of part 1951 of this chapter.

§ 1942.14 Subsequent loans.

Subsequent loans will be processed under this subpart.

§ 1942.15 Delegation and redelegation of authority.

The State Director is responsible for implementing the authorities in this subpart and for issuing State supplements redelegating authorities. Loan and grant approval authority is in subpart A of part 1901 of this chapter. Except for loan and grant approval authority, District Directors may redelegate their duties to qualified staff members.

§ 1942.16 State supplements and guides.

State Directors will obtain National Office clearance for all State supplements and guides under FmHA Instruction 2006–B (available in any FmHA or its successor agency under Public Law 103–354 office).

(a) *State supplements.* State Directors may supplement this subpart to meet State and local laws and regulations

and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to bids, contract awards, and materials more restrictive than those in § 1942.18 of this subpart.

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this subpart are not adequate. State Directors may prepare guides for items needed for the application; items necessary for the docket; and items required prior to loan closing or start of construction.

§ 1942.17 Community facilities.

(a) *General.* This section includes information and procedures specifically designed for use by applicants, including their professional consultants and/or agents who provide such assistance and services as architectural, engineering, financial, legal, or other services related to application processing and facility planning and development. This section is made available as needed for such use. It includes FmHA or its successor agency under Public Law 103–354 policies and requirements pertaining to loans for community facilities. It provides applicants with guidance for use in proceeding with their application. FmHA or its successor agency under Public Law 103–354 shall cooperate fully with appropriate State agencies to give maximum support of the State's strategies for development of rural areas.

(b) *Eligibility.* Financial assistance to areas or communities adjacent to, or closely associated with, nonrural areas is limited by § 1942.17(c) of this subpart.

(1) *Applicant.* (i) A public body, such as a municipality, county, district, authority, or other political subdivision of a state.

(A) Loans for water or waste disposal facilities will not be made to a city or town with a population in excess of 10,000 inhabitants, according to the latest decennial Census of the United States.

(B) Loans for essential community facilities will not be made to a city or town with a population in excess of 20,000 inhabitants according to the latest decennial Census of the United States.

(ii) An organization operated on a not-for-profit basis, such as an association, cooperative, and private corporation. Applicants organized under the general profit corporation laws may be eligible if they actually will be operated on a not-for-profit basis under their charter, bylaws, mortgage, or supplemental agreement provisions as may be required as a condition of loan approval. Essential community facility applicants other than utility-type must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(A) Association with or controlled by a local public body or bodies, or broadly based ownership and controlled by members of the community.

(B) Substantial public funding through taxes, revenue bonds, or other local Government sources, and/or substantial voluntary community funding, such as would be obtained through a community-wide funding campaign.

(iii) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes.

(2) *Facility.* (i) Facilities must be located in rural areas, except for utility-type services such as water, sewer, natural gas, or hydroelectric, serving both rural and non-rural areas. In such cases, FmHA or its successor agency under Public Law 103–354 funds may be used to finance only that portion serving rural areas, regardless of facility location.

(ii) Essential community facilities must primarily serve rural areas.

(iii) For water or waste disposal facilities, the terms *rural* and *rural area* will not include any area in any city or town with a population in excess of 10,000 inhabitants, according to the latest decennial Census of the United States.

(iv) For essential community facilities, the terms *rural* and *rural area* will not include any area in any city or town with a population in excess of 20,000 inhabitants, according to the latest decennial Census of the United States.

(3) *Credit elsewhere.* Applicants must certify in writing and FmHA or its successor agency under Public Law 103–354 shall determine and document that the applicant is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms.

(4) *Legal authority and responsibility.* Each applicant must have or will obtain the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The applicant shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be exercised by the applicant even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease. Leases may be used when this is the only feasible way to provide the service and is the customary practice. Management agreements should provide for at least those items listed in guide 24 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office). Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

(5) *Refinancing FmHA or its successor agency under Public Law 103–354 debt.* FmHA or its successor agency under Public Law 103–354 shall require an agreement that if at any time it shall appear to the Government that the borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

(6) Expanded eligibility for timber-dependent communities in Pacific Northwest. In the Pacific Northwest, defined as an area containing national forest covered by the Federal document entitled, ''Forest Plan for a Sustainable Economy and a Sustainable Environment,'' dated July 1, 1993; the population limits contained §1942.17(b) are expanded to include communities with not more than 25,000 inhabitants until September 30, 1998, if:

(i) Part or all of the community lies within 100 miles of the boundary of a national forest covered by the Federal document entitled, ''Forest Plan for a Sustainable Economy and a Sustainable Environment,'' dated July 1, 1993; and

(ii) The community is located in a county in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, or forest-related industries such as recreation and tourism.

(c) *Priorities*—(1) *Truly rural areas.* FmHA or its successor agency under Public Law 103–354 program assistance will be directed toward truly rural areas and rural communities. Normally, priority will not be given to preapplications for projects that will serve other than truly rural areas. Truly rural areas are areas other than densely settled areas or communities adjacent to, or closely associated with, a city or town with a population exceeding 10,000 residents for water or waste disposal assistance, or 20,000 residents for essential community facility assistance. When determining whether a rural area or rural community is adjacent to, or closely associated with, a city or town with a population exceeding 10,000 residents for water and waste disposal, or 20,000 residents for essential community facility assistance, minor open spaces such as those created by physical or legal barriers, commercial or industrial development, parks, areas reserved for convenience or appearance, or narrow strips of cultivated land, will be disregarded. An area or community shall be considered adjacent to or closely related with a nonrural area when it constitutes for general, social, and economic purposes a single community having a contiguous boundary.

(2) *Project selection process.* The following paragraphs indicate items and conditions which must be considered in

selecting preapplications for further development. When ranking eligible preapplications for consideration for limited funds, FmHA or its successor agency under Public Law 103–354 officials must consider the priority items met by each preapplication and the degree to which those priorities are met, and apply good judgement.

(i) *Preapplications.* The preapplication and supporting information submitted with it will be used to determine the proposed project's priority for available funds.

(ii) *State Office review.* All preapplications will be reviewed and scored and Form AD–622, ''Notice of Preapplication Review Action,'' issued within the time limits in § 1942.2(a)(2)(iv) of this subpart. When considering authorizing the development of an application for funding, the State Director should consider the remaining funds in the State allocation, and the anticipated allocation of funds for the next fiscal year as well as the amount of time necessary to complete that application. Applicants whose preapplications are found to be ineligible will be so advised. These applicants will be given adverse notice through Form AD–622 and advised of their appeal rights under subpart B of part 1900 of this chapter. Those applicants with eligible lower scoring preapplications which obviously cannot be funded within an eighteen month period of time, and are not within 150 percent of the State's allocation, should be notified that funds are not available; and requested to advise whether they wish to have their preapplication maintained in an active file for future consideration. The State Director may request an additional allocation of funds from the National Office for such preapplications. Such requests will be considered along with all others on hand.

(iii) *Selection priorities.* The priorities described below will be used by the State Director to rate preapplications. The priorities should be applied to water and waste disposal or community facilities preapplications as directed. The format found in part I of guide 26 of this subpart should be followed in scoring each preapplication. A copy of the score sheet should be placed in the case file for future reference.

(A) *Population priorities.* The following priorities apply to both Water and Waste Disposal and Community Facilities preapplications. Points will be distributed as indicated.

(*1*) The proposed project is located in a rural community having a population not in excess of 2,500—25 points.

(*2*) The proposed project is located in a rural community having a population not in excess of 5,500—20 points. (Points under this priority should not be assigned to a preapplication if points were assigned under paragraph (c)(2)(iii) (A)(*1*) of this section.)

(B) *Health priorities.* Points will be distributed as indicated.

(*1*) Water and Waste Disposal preapplications only. The proposed project is:

(*i*) Needed to alleviate the sudden unexpected diminution or deterioration of a water supply, or to meet health or sanitary standards which pertain to a community's water supply—25 points.

(*ii*) Required to correct an inadequate waste disposal system due to unexpected occurrences, or to meet health or sanitary standards which pertain to a community's waste disposal system—25 points.

(*2*) Community Facility preapplication only. The proposed project is required either to correct a health or sanitary problem, or to meet a health or sanitary standard—25 points.

(C) *Income priorities.* The following priorities apply to both Water and Waste Disposal and Community Facilities preapplications. Points will be distributed as indicated. The median income of the population to be served by the proposed facility is:

(*1*) Less than the poverty line for a family of four, as defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or less than 80 percent of the statewide nonmetropolitan median household income—25 points.

(*2*) Equal to or more than the poverty line and between 80% and 100%, inclusive, of the State's nonmetropolitan median household income—20 points.

(D) *Other factors.* Points will be distributed as indicated.

(*1*) Water and Waste Disposal preapplications only. The proposed project will: merge ownership, management, and operation of smaller facilities providing for more efficient management and economical service; and/or enlarge, extend, or otherwise modify existing facilities to provide service to additional rural residents—10 points.

(*2*) Community Facilities preapplications only. The purpose of the proposed project is to construct, enlarge, extend or otherwise improve the following types of facilities. (Select only the factor most applicable to the proposed project.)

(*i*) Public safety—10 points. (Examples include police services and fire, rescue and ambulance services as authorized by subpart C of this part 1942.)

(*ii*) Health care—5 points. (Examples include clinics, nursing homes, convalescent facilities, and hospital projects designed to make the facility conform with life/safety codes, medicare and medicaid requirements, and minor expansions needed to meet the immediate requirements of the community. Points under this authority should not be awarded to a preapplication if points were awarded under §1942.17(c)(2)(iii)(B)(*2*) of this subpart.)

(*3*) Water and Waste Disposal and Community Facilities preapplications.

(*i*) Applicant is a public body or Indian tribe—5 points.

(*ii*) Project is located in a ''truly rural area'' as described in §1942.17(c)(1) of this subpart—10 points.

(*iii*) Amount of joint financing committed to the project is:

(*a*) 20% or more private, local or state funds except federal funds channeled through a state agency—10 points.

(*b*) 5%–19% private, local or state funds except federal funds channeled through a state agency—5 points.

(E) In certain cases the State Director may assign up to 15 points to a preapplication, in addition to those that may be scored under paragraphs (c)(2)(iii) (A) through (D), of this section. These points are primarily intended to address an unforeseen exigency or emergency, such as the loss of a community facility due to accident or natural disaster or the loss of joint financing if FmHA or its successor agency under Public Law 103–354 funds are not committed in a timely fashion. However, the points may also be awarded to projects in order to improve compatibility/coordination between FmHA or its successor agency under Public Law 103–354's and other agencies' selection systems and to assist those projects that are the most cost effective. A written justification must be prepared and placed in the project file each time the State Director assigns these points.

(iv) *Results of State Office review.* After completing the review, the State Director will normally select the eligible preapplications with the highest scores for further processing. In cases where preliminary cost estimates indicate that an eligible, high scoring preapplication is unfeasible or would require an amount of funding from FmHA or its successor agency under Public Law 103–354 that exceeds either 25 percent of a State's current annual allocation or an amount greater than that remaining in the State's allocation, the State Director may instead select the next lower scoring preapplication(s) for futher processing provided the high scoring applicant is notified of this action and given an opportunity to revise the proposal and resubmit it. If it is found that there is no effective way to reduce costs, the State Director, after consultation with applicant, may submit a request for an additional allocation of funds for the proposed project to the National Office. The request should be submitted during the fiscal year in which obligation is anticipated. Such request will be considered along with all others on hand. A written justification must be prepared and placed in the project file when an eligible preapplication with a higher rating is not selected for further processing. The State Director will notify the District Director of the results of the review action. The State Director will return the preapplication information with an authorization for the District Director to prepare and issue Form AD–622 in accordance with §1942.2(a)(2)(iv) of this subpart. Priority will be given to those preapplications and applications for funding which meet criteria in

§ 1942.17(c)(2)(iii)(A) (*1*) or (*2*); and the criteria in § 1942.17(c) (2)(iii)(B)(*1*) (*i*) or (*ii*) or (B)(*2*) of this subpart.

(v) *Application development.* Applications should be developed expeditiously following good management practices. Applications that are not developed in a reasonable period of time taking into account the size and complexity of the proposed project may be removed from the State's active file. Applicants will be consulted prior to taking such action.

(vi) *Project obligations.* To ensure efficient use of resources, obligations should occur in a timely fashion throughout the fiscal year. Projects may be obligated as their applications are completed and approved.

(vii) *Requests for additional funding.* All requests for additional allocations of funds submitted to the National Office must follow the formats found in parts I and II of guide 26. In selecting projects for funding at the National Office level, additional points may be scored based on the priority assigned to the project by the State Office. These points will be scored in the manner shown below. Only the three highest priority projects can score points. In addition, the Administrator may assign up to 15 additional points to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters.

Priority	Points
1	5
2	3
3	1

(viii) *Cost overruns.* A preapplication may receive consideration for funding before others at the State Office level or at the National Office level, if funds are not available in the State Office, when it is a subsequent request for a previously approved project which has encountered cost overruns due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding or other means.

(d) *Eligible loan purposes.* (1) Funds may be used:

(i) To construct, enlarge, extend, or otherwise improve water or waste disposal and other essential community facilities providing essential service primarily to rural residents and rural businesses. Rural businesses would include facilities such as educational and other publicly owned facilities.

(A) *Water or waste disposal facilities* include water, sanitary sewerage, solid waste disposal, and storm waste-water facilities.

(B) *Essential community facilities* are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including but not limited to:

(*1*) Health services;

(*2*) Community, social, or cultural services;

(*3*) Transportation facilities, such as streets, roads, and bridges;

(*4*) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for Rural Electrification Administration (REA) financing;

(*5*) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for Rural Electrification Administration financing;

(*6*) Natural gas distribution systems; and

(*7*) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(C) *Otherwise improve* includes but is not limited to the following:

(*1*) The purchase of major equipment, such as solid waste collection trucks and X-ray machines, which will in themselves provide an essential service to rural residents;

(*2*) The purchase of existing facilities when it is necessary either to improve or to prevent loss of service;

(*3*) Payment of tap fees and other utility connection charges as provided in utility purchase contracts prepared under § 1942.18(f) of this subpart.

(ii) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (d)(1)(i) of this section.

(iii) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (d)(1)(i) of this section.

(iv) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraphs (d)(1)(i), (d)(1)(ii) and (d)(1)(iii) of this section.

(A) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(B) Interest on loans until the facility is self-supporting, but not for more than three years unless a longer period is approved by the National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than two years unless a longer period is approved by the National Office; and interest on interim financing, including interest charges on interim financing from sources other than FmHA or its successor agency under Public Law 103–354.

(C) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control necessary for development of the facility.

(D) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(E) Initial operating expenses for a period ordinarily not exceeding one year when the borrower is unable to pay such expenses.

(F) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(*1*) The debts being refinanced are a secondary part of the total loan;

(*2*) The debts are incurred for the facility or service being financed or any part thereof;

(*3*) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(G) Prepay costs for which FmHA or its successor agency under Public Law 103–354 grant funds were obligated provided there is:

(*1*) No conflict with the loan resolution, State statutes, or any other loan requirements; and

(*2*) Full documentation showing that:

(*i*) Loan funds will only be utilized on a temporary basis; and

(*ii*) All FmHA or its successor agency under Public Law 103–354 loan funds are restored at a later date for purpose(s) for which they were obligated.

(v) To pay obligations for construction incurred before loan approval. Construction work should not be started and obligations for such work or materials should not be incurred before the loan is approved. However, if there are compelling reasons for proceeding with construction before loan approval, applicants may request FmHA or its successor agency under Public Law 103–354 approval to pay such obligations. Such requests may be approved if FmHA or its successor agency under Public Law 103–354 determines that:

(A) Compelling reasons exist for incurring obligations before loan approval; and

(B) The obligations will be incurred for authorized loan purposes; and

(C) Contract documents have been approved by FmHA or its successor agency under Public Law 103–354; and

(D) All environmental requirements applicable to FmHA or its successor agency under Public Law 103–354 and the applicant have been met; and

(E) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic, material, or other liens that may attach to the security property. FmHA or its successor agency under Public Law 103–354 may authorize payment of such obligations at the time of loan closing. FmHA or its successor agency under Public Law 103–354's authorization to pay such obligations,

however, is on the condition that it is not committed to make the loan; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan approval requirements. The applicant's request and FmHA or its successor agency under Public Law 103–354 authorization for paying such obligations shall be in writing. If construction is started without FmHA or its successor agency under Public Law 103–354 approval, post approval in accordance with this section may be considered.

(2) Funds may not be used to finance:

(i) On-site utility systems or business and industrial buildings in connection with industrial parks.

(ii) Facilities to be used primarily for recreation purposes.

(iii) Community antenna television services or facilities.

(iv) Electric generation or transmission facilities or telephone systems, except as provided in paragraph (d)(1)(i)(B)(*4*), or (d)(1)(i)(B)(*5*) of this section; or extensions to serve a particular essential community facility as provided in paragraph (d)(1)(ii) or (d)(1)(iii) of this section.

(v) Facilities which are not modest in size, design, and cost.

(vi) Loan or grant finder's fees.

(vii) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, Pub. L. 97–348.

(viii) New combined sanitary and storm water sewer facilities.

(ix) That portion of a water and/or waste disposal facility normally provided by a business or industrial user.

(e) *Facilities for public use.* All facilities financed under the provisions of this subpart shall be for public use.

(1) Utility-type service facilities will be installed so as to serve any user within the service area who desires service and can be feasibly and legally served. Applicants and borrowers must obtain written concurrence of the FmHA or its successor agency under Public Law 103–354 prior to refusing service to such user. Upon failure to provide service which is reasonable and legal, such user shall have direct right of action against the applicant/borrower. A notice of the availability of this service should be given by the applicant/borrower to all persons living within the area who can feasibly and legally be served by the phase of the project being financed.

(i) If a mandatory hookup ordinance will be adopted, the required bond ordinance or resolution advertisement will be considered adequate notification.

(ii) When any portion of the income will be derived from user fees and a mandatory hookup ordinance will not be adopted, each potent user will be afforded an opportunity to request service by signing a Users Agreement.

Those declining service will be afforded an opportunity to sign a statement to such effect. FmHA or its successor agency under Public Law 103–354 has guides available for these purposes in all FmHA or its successor agency under Public Law 103–354 offices.

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, handicap, or national origin.

(3) This does not preclude:

(i) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time; and

(ii) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system and not by considering the cost of separate extensions to or parts thereof; the applicant publicly announces a plan for extending service to areas not initially receiving service from the system; and potential users located in the areas not to be initially served receive written notice from the applicant that service will not be provided until such time as it is economically feasible to do so, and

(iii) Extending services to industrial areas when service is made available to users located along the extensions.

(4) The State Director will determine that, when feasibly and legally possible, inequities within the proposed project's service area for the same type service proposed (i.e., water or waste disposal) will be remedied by the owner on or before completion of the project

that includes FmHA or its successor agency under Public Law 103–354 funding. Inequities are defined as flagrant variations in availability, adequacy or quality of service. User rate schedules for portions of existing systems that were developed under different financing, rates, terms or conditions, as determined by the State Director, do not necessarily constitute inequities.

(5) Before a loan is made to an applicant other than a public body, for other than utility type projects, the articles of incorporation or loan agreement will include a condition similar to the following:

> In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more nonprofit corporations or public bodies as may be selected by the board of directors of this corporation and approved by at least 75 percent of the users or members to be used for, and devoted to, the purpose of a community facility project or other purpose to serve the public welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, directors, stockholders, or others having financial or managerial interest in the corporation either for the reimbursement of any sum subscribed, donated or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

(f) *Rates and terms*—(1) *General.* Each loan will bear interest at the rate prescribed in RD Instruction 440.1, exhibit B (available in any Rural Development office). The interest rates will be set by Rural Development at least for each quarter of the fiscal year. All rates will be adjusted to the nearest one-eighth of 1 percent. The applicant may submit a written request prior to loan closing that the interest rate charged on the loan be the lower of the rate in effect at the time of loan approval or the rate in effect at the time of loan closing. If the interest rate is to be that in effect at loan closing, the interest rate charged on a loan involving multiple advances of Rural Development funds, using temporary debt instruments, shall be that in effect on the date when the first temporary debt instrument is issued. If no written request is received from the applicant prior to loan closing, the interest rate charged on the loan will be the rate in effect at the time of loan approval.

(2) *Poverty line rate.* The poverty line interest rate will not exceed 5 per centum per annum. The provisions of paragraph (f)(2)(i) of this section do not apply to health care and related facilities that provide direct health care to the public. Otherwise, all loans must comply with the following conditions:

(i) The primary purpose of the loan is to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards. Documentation will be obtained from the appropriate regulatory agency with jurisdiction to establish the standard, to verify that a bonafide standard exists, what that standard is, and that the proposed improvements are needed and required to meet the standard; and

(ii) The median household income of the service area is below the poverty line for a family of four, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or below 80 percent of the Statewide nonmetropolitan median household income.

(3) *Intermediate rate.* The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate, not to exceed 7 percent per annum. It will apply to loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is below the poverty line or not more than 100 percent of the nonmetropolitan median household income of the State.

(4) *Market rate.* The market interest rate will be set using as guidance the average of the Bond Buyer Index for the four weeks prior to the first Friday of the last month before the beginning of the quarter. The market rate will apply to all loans that do not qualify for a different rate under paragraph (f)(2) or (f)(3) of this section. It may be adjusted as provided in paragraph (f)(5) of this section.

(5) *Prime farmland.* For essential community facilities loans, the rate indicated by paragraphs (f)(2), (f)(3) or (f)(4) of this section will be increased by two

per centum per annum if the project being financed will involve the use of, or construction on, prime or unique farmland in accordance with FmHA Instruction 440.1, exhibits B and J (available in any FmHA or its successor agency under Public Law 103–354 office).

(6) *Income determination.* The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by FmHA or its successor agency under Public Law 103–354. The median household income of the service area and the nonmetropolitan median household income of the State will be determined from income data from the most recent decennial census of the U.S. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or FmHA or its successor agency under Public Law 103–354 may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may only be updated on a national basis by the FmHA or its successor agency under Public Law 103–354 National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census or other reliable sources. Bureau of the Census areas would include areas such as: Counties, County Subdivisions, Cities, Towns, Townships, Boroughs, and other places.

(7) *Repayment terms.* The loan repayment period shall not exceed the useful life of the facility, State statute or 40 years from the date of the note(s) or bond(s), whichever is less. Where FmHA or its successor agency under Public Law 103–354 grant funds are used in connection with an FmHA or its successor agency under Public Law 103–354 loan, the loan will be for the maximum term permitted by this subpart, State statute, or the useful life of the facility, whichever is less, unless there is an exceptional case where circumstances justify making an FmHA or its successor agency under Public Law 103–354 loan for less than the maximum term permitted. In such cases, the reasons must be fully documented. In all cases, including those in which the FmHA or its successor agency under Public Law 103–354 is jointly financing with another lender, the FmHA or its successor agency under Public Law 103–354 payments of principal and interest should approximate amortized installments.

(i) Principal payments may be deferred in whole or in part for a period not to exceed 36 months following the date the first interest installment is due. If for any reason it appears necessary to permit a longer period of deferment, the State Director may authorize such deferment with the prior approval of the National Office. Deferments of principal will not be used to:

(A) Postpone the levying of taxes or assessments.

(B) Delay collection of the full rates which the borrower has agreed to charge users for its services as soon as major benefits or the improvements are available to those users.

(C) Create reserves for normal operation and maintenance.

(D) Make any capital improvements except those approved by FmHA or its successor agency under Public Law 103–354 determined to be essential to the repayment of the loan or to the obtaining of adequate security thereof.

(E) Accelerate the payment of other debts.

(ii) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law. If consistent with the foregoing, monthly payments will be required and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be

scheduled six or twelve full months, respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

(g) *Security.* Loans will be secured by the best security position practicable in a manner which will adequately protect the interest of FmHA or its successor agency under Public Law 103–354 during the repayment period of the loan. Specific requirements for security for each loan will be included in a letter of conditions.

(1) *Joint financing security.* For projects utilizing joint financing, when adequate security of more than one type is available, the other lender may take one type of security with FmHA or its successor agency under Public Law 103–354 taking another type. For projects utilizing joint financing with the same security to be shared by FmHA or its successor agency under Public Law 103–354 and another lender, FmHA or its successor agency under Public Law 103–354 will obtain at least a parity position with the other lender. A parity position is to ensure that with joint security, in the event of default, each lender will be affected on a proportionate basis. A parity position will conform with the following unless an exception is granted by the National Office:

(i) *Terms.* It is not necessary for loans to have the same repayment terms to meet the parity requirements. Loans made by other lenders involved in joint financing with FmHA or its successor agency under Public Law 103–354 for facilities should be scheduled for repayment on terms similar to those customarily used in the State for financing such facilities.

(ii) *Use of trustee or other similar paying agent.* The use of a trustee or other similar paying agent by the other lender in a joint financing arrangement is acceptable to FmHA or its successor agency under Public Law 103–354. A trustee or other similar paying agent will not normally be used for the FmHA or its successor agency under Public Law 103–354 portion of the funding unless required to comply with State law. The responsibilities and authorities of any trustee or other similar paying agent on projects that include FmHA or its successor agency under Public Law 103–354 funds must be clearly specified by written agreement and approved by the FmHA or its successor agency under Public Law 103–354 State Director and Regional Attorney. FmHA or its successor agency under Public Law 103–354 must be able to deal directly with the borrower to enforce the provisions of loan and grant agreements and perform necessary servicing actions.

(iii) *Regular payments.* In the event adequate funds are not available to meet regular installments on parity loans, the funds available will be apportioned to the lenders based on the respective current installments of principal and interest due.

(iv) *Disposition of Property.* Funds obtained from the sale or liquidation of secured property or fixed assets will be apportioned to the lenders on the basis of the pro rata amount loaned, but not to exceed their respective outstanding balances; provided, however, funds obtained from such sale or liquidation for a project that included FmHA or its successor agency under Public Law 103–354 grant funds will be apportioned as may be required by the grant agreement.

(v) *Protective advances.* Protective advances are payments made by a lender for items such as insurance or taxes, to protect the financial interest of the lender, and charged to the borrower's loan account. To the extent consistent with State law and customary lending practices in the area, repayment of protective advances made by either lender, for the mutual protection of both lenders, should receive first priority in apportionment of funds between the lenders. To ensure agreement between lenders, efforts should be made to obtain the concurrence of both lenders before one lender makes a protective advance.

(2) *Public bodies.* Loans to such borrowers will be evidenced by notes, bonds, warrants, or other contractual obligations as may be authorized by relevant State statutes and by borrower's documents, resolutions, and ordinances.

(i) Utility-type facilities such as water and sewer systems, natural gas

distribution systems, electric systems, etc., will be secured by:

(A) The full faith and credit of the borrower when the debt is evidenced by general obligation bonds; and/or

(B) Pledges of taxes or assessments; and/or

(C) Pledges of facility revenue and, when it is the customary financial practice in the State, liens will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts, and similar property rights, including leasehold interest, used or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds; and/or

(D) In those cases involving water and waste disposal projects where there is a substantial number of other than full-time users and facility costs result in a higher than reasonable rate for such full-time users, the loan will be secured by the full faith and credit of the borrower or by an assignment or pledge of taxes or assessments from public bodies or other organizations having the authority to issue bonds or pledge such taxes or assessments.

(ii) *Solid waste systems.* The type of security required will be based on State law and what is determined adequate to protect the interest of the United States during the repayment period of the loan.

(iii) *Other essential community facilities* other than utility type, such as those for public health and safety, social, and cultural needs and the like will meet the following security requirements:

(A) Such loans will be secured by one or a combination of the following and in the following order of preference:

(*1*) General obligation bonds.

(*2*) Assessments.

(*3*) Bonds which pledge other taxes.

(*4*) Bonds pledging revenues of the facility being financed when such bonds provide for the mandatory levy and collection of taxes in the event revenues later become insufficient to properly operate and maintain the facility and to retire the loan.

(*5*) Assignment of assured income which will be available for the life of the loan, from such sources as insurance premium rebates, income from endowments, irrevocable trusts, or commitments from industries, public bodies, or other reliable sources.

(*6*) Liens on real and chattel property when legally permissible and an assignment of the borrowers income from applicants who have been in existence and are able to present evidence of a financially successful operation of a similar facility for a period of time sufficient to indicate project success. National Office concurrence is required when the applicant has been in existence for less than five years or has not operated on a financially successful basis for five years immediately prior to loan application.

(*7*) Liens on real and chattel property when legally permissible and an assignment of income from an organization receiving Health and Human Services (HHS) operating grants under the ''Memorandum of Understanding Between Health Resources and Services Administration, U.S. Department of Health and Human Services and Farmers Home Administration or its successor agency under Public Law 103–354, U.S. Department of Agriculture'' (see FmHA Instruction 2000–T, available in any FmHA or its successor agency under Public Law 103–354 office.)

(*8*) Liens on real and chattel property when legally permissible and an assignment of income from an organization proposing a facility whose users receive reliable income from programs such as social security, supplemental security income (SSI), retirement plans, long-term insurance annuities, medicare or medicaid. Examples are homes for the handicapped or institutions whose clientele receive State or local government assistance.

(*9*) When the applicant cannot meet the criteria in paragraph (g)(2)(iii)(A)(*1*) through (*8*) of this section, such proposals may be considered when all the following are met:

(*i*) The applicant is a new organization or one that has not operated the type of facility being proposed.

(*ii*) There is a demonstration of exceptional community support such as substantial financial contributions, and aggressive leadership in the formation of the organization and proposed

project which indicates a commitment of the entire community.

(*iii*) The State Director has determined that adequate and dependable revenues will be available to meet all operation expenses, debt repayment, and the required reserve.

(*iv*) Prior National Office review and concurrence is obtained.

(B) Real estate and chattel property taken as security in accordance with paragraphs (g)(2)(iii)(A) (*6*) through (*9*) of this section:

(*1*) Ordinarily will include the property that is used in connection with the facility being financed; and

(*2*) Will have an as-developed present market value determined by a qualified appraiser equal to or exceeding the amount of the loan to be obtained plus any other indebtedness against the proposed security; and

(*3*) May have one of the lien requirements deleted when the loan approval official determines that the loan will be adequately secured with a lien on either the real estate or chattel property.

(C) When security is not available in accordance with paragraphs (g)(2)(iii)(A) (*1*) through (*5*) of this section and State law precludes securing the loan with liens on real or chattel property, the loan will be secured in the best manner consistent with State law and customary security taken by private lenders in the State, such as revenue bonds, and any other security the loan approval official determines necessary for a sound loan. Such loans will otherwise meet the requirements of (g)(2)(iii)(A) (*6*) through (*9*) of this section as appropriate.

(3) *Other-than-public bodies.* Loans to other-than-public body applicants will be secured as follows:

(i) Utility-type facilities eligible for FmHA or its successor agency under Public Law 103–354 assistance under paragraph (d) of this section such as water and sewer systems, natural gas distribution systems, electric systems, etc., will be secured as follows:

(A) Assignments of borrower income will be taken and perfected by filing, if legally permissable; and

(B) A lien will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts and similar property rights, including leasehold interest, used, or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds. In unusual circumstances where it is not feasible to obtain a lien on such land (such as land rights obtained from Federal or local government agencies, and from railroads) and the loan approval official determines that the interest of FmHA or its successor agency under Public Law 103–354 otherwise is secured adequately, the lien requirement may be omitted as to such land rights.

(C) When the loan is approved or the acquisition of real property is subject to an outstanding lien indebtedness, the next highest priority lien obtainable will be taken if the loan approval official determines that the loan is adequately secured.

(D) Other security. Promissory notes from individuals, stock or membership subscription agreements, individuals member's liability agreements, or other evidences of debt, as well as mortgages or other security instruments encumbering the private property of members of the association may be pledged or assigned to FmHA or its successor agency under Public Law 103–354 as additional security in any case in which the interest of FmHA or its successor agency under Public Law 103–354 will not be otherwise adequately protected.

(E) In those cases where there is a substantial number of other than full-time users and facility costs result in a higher than reasonable rate for such full-time users, the loan will be secured by an assignment or pledge of general obligation bonds, taxes, or assessments from public bodies or other organizations having the authority to issue bonds or pledge such taxes, or assessments.

(ii) *Solid waste systems.* The type of security required will be based on State law and what is determined adequate to protect the interest of the United States during the repayment period of the loan.

(iii) *Essential community facilities* other than utility type such as those for public health and safety, social, and

cultural needs and the like will meet the following security requirements:

(A) Such loans will be secured by one or a combination of the following and in the following order of preference:

(*1*) An assignment of assured income that will be available for the life of the loan, from sources such as insurance premium rebates, income from endowments, irrevocable trusts, or commitments from industries, public bodies, or other reliable sources.

(*2*) Liens on real and chattel property with an assignment of income from applicants who have been in existence and are able to present evidence of a financially successful operation of a similar facility for a period of time sufficient to indicate project success. National Office concurrence is required when the applicant has been in existence for less than five years or has not operated on a financially successful basis for at least the five years immediately prior to loan application.

(*3*) Liens on real and chattel property and an assignment of income from an organization receiving HHS operating grants under the ''Memorandum of Understanding Between Health Resources and Services Administration, U.S. Department of Health and Human Services and Farmers Home Administration or its successor agency under Public Law 103–354, U.S. Department of Agriculture'' (see FmHA Instruction 2000–T, available in any FmHA or its successor agency under Public Law 103–354 office).

(*4*) Liens on real and chattel property when legally permissible and an assignment of income from an organization proposing a facility whose users receive reliable income from programs such as social security, supplemental security income (SSI), retirement plans, long-term insurance annuities, medicare or medicaid. Examples are homes for the handicapped or institutions whose clientele receive State or local government assistance.

(*5*) When the applicant cannot meet the criteria in paragraphs (g)(3)(iii)(A)(*1*) through (*4*) of this section, such proposals may be considered when all the following are met:

(*i*) The applicant is a new organization or one that has not operated the type of facility being proposed.

(*ii*) There is a demonstration of exceptional community support such as substantial financial contributions, and aggressive leadership in the formation of the organization and proposed project which indicates a commitment of the entire community.

(*iii*) The State Director has determined that adequate and dependable revenues will be available to meet all operation expenses, debt repayment, and the required reserve.

(*iv*) Prior National Office review and concurrence is obtained.

(*6*) Additional security may be taken as determined necessary by the loan approval official.

(B) Real estate and chattel property taken as security:

(*1*) Ordinarily will include the property that is used in connection with the facility being financed; and

(*2*) Will have an as-developed present market value determined by a qualified appraiser equal to or exceeding the amount of the loan to be obtained plus any other indebtedness against the proposed security; and

(*3*) May have one of the lien requirements deleted when the loan approval official determines that the loan will be adequately secured with a lien on either the real estate or the chattel property.

(h) *Economic feasibility requirements.* All projects financed under the provisions of this section must be based on taxes, assessments, revenues, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the FmHA or its successor agency under Public Law 103–354 staff and approval official. If the primary use of the facility is by business and the success or failure of the facility is dependent on the business, then the economic viability of that business must be assessed. The number of users for a rural business will be based on equivalent dwelling units, which is the level of service provided to a typical rural residential dwelling.

(1) *Financial feasibility reports.* All applicants will be expected to provide a financial feasibility report prepared by a qualified firm or individual. These financial feasibility reports will normally be:

(i) Included as part of the preliminary engineer/architectural report using guides 6 through 10 as applicable; or

(ii) Prepared by a qualified firm or individual not having a direct interest in the management or construction of the facility using guide 5 when:

(A) The project will significantly affect the applicant's financial operations and is not a utility-type facility but is dependent on revenues from the facility to repay the loan; or

(B) It is specifically requested by FmHA or its successor agency under Public Law 103–354.

(2) *Applicants for loans for utility-type facilities* dependent on users fees for debt payment shall base their income and expense forecast on realistic user estimates in accordance with the following:

(i) In estimating the number of users and establishing rates or fees on which the loan will be based for new systems and for extensions or improvements to existing systems, consideration should be given to the following:

(A) An estimated number of maximum initial users should not be used when setting user fees and rates since it may be several years before all residents in the community will need the services provided by the system. In establishing rates a realistic number of initial users should be employed.

(B) User agreements from individual vacant property owners will not be considered when determining project feasibility unless:

(*1*) The owner has plans to develop the property in a reasonable period of time and become a user of the facility; and

(*2*) The owner agrees in writing to make a monthly payment at least equal to the proportionate share of debt service attributable to the vacant property until the property is developed and the facility is utilized on a regular basis. A bond or escrowed security deposit must be provided to guarantee this monthly payment and to guarantee an amount at least equal to the owner's proportionate share of construction costs. If a bond is provided, it must be executed by a surety company that appears on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State where the project is located. The guarantee shall be payable jointly to the borrower and the Farmers Home Administration or its successor agency under Public Law 103–354; and

(*3*) Such guarantee will mature not later than 4 years from the date of execution and will be finally due and payable upon default of a monthly payment or at maturity, unless the property covered by the guarantee has been developed and the facility is being utilized on a regular basis.

(C) Income from other vacant property owners will be considered only as extra income.

(ii) Realistic user estimates will be established as follows:

(A) Meaningful potential user cash contributions. Potential user cash contributions are required except:

(*1*) For users presently receiving service, or

(*2*) Where FmHA or its successor agency under Public Law 103–354 determines that the potential users as a whole in the applicant's service area cannot make cash contributions, or

(*3*) Where State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes, or ordinances.

(B) The amount of cash contributions required in paragraph (h)(2)(ii)(A) of this section will be set by the applicant and concurred in by FmHA or its successor agency under Public Law 103–354. Contribtions should be an amount high enough to indicate sincere interest on the part of the potential user, but not so high as to preclude service to low income families. Contributions ordinarily should be an amount approximating one year's minimum user fee, and shall be paid in full before loan closing or commencement of construction, whichever occurs first. Once economic feasibility is ascertained based

on a demonstration of meaningful potential user cash contributions, the contribution, membership fee or other fees that may be imposed are not a requirement of FmHA or its successor agency under Public Law 103–354 under this section. However, borrowers do have an additional responsibility relating to generating sufficient revenues as set forth in paragraph (n)(2)(iii) of this section.

(C) Enforceable user agreement. Except for users presently receiving service, an enforceable user agreement with a penalty clause is required unless State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes or ordinances.

(iii) In those cases where all or part of the borrower's debt payment revenues will come from user fees, applicants must provide a positive program to encourage connection by all users as soon as service is available. The program will be available for review and approval by FmHA or its successor agency under Public Law 103–354 before loan closing or commencement of construction, whichever occurs first. Such a program shall include:

(A) An aggressive information program to be carried out during the construction period. The borrower should send written notification to all signed users at least three weeks in advance of the date service will be available, stating the date users will be expected to have their connections completed, and the date user charges will begin.

(B) Positive steps to assure that installation services will be available. These may be provided by the contractor installing the system, local plumbing companies, or local contractors.

(C) Aggressive action to see that all signed users can finance their connections. This might require collection of sufficient user contributions to finance connections. Extreme cases might necessitate additional loan funds for this purpose; however, loan funds should be used only when absolutely necessary and when approved by FmHA or its successor agency under Public Law 103–354 prior to loan closing.

(3) *Utility-type facilities for new developing communities or areas.* Developers are normally expected to provide utility-type facilities in new or developing areas and such facilities shall be installed in compliance with appropriate State statutes and regulations. FmHA or its successor agency under Public Law 103–354 financing will be considered to an eligible applicant in such cases when failure to complete development would result in an adverse economic condition for the rural area (not the community being developed); the proposal is necessary to the success of an area development plan; and loan repayment can be assured by:

(i) The applicant already having sufficient assured revenues to repay the loan; or

(ii) Developers providing a bond or escrowed security deposit as a guarantee sufficient to meet expenses attributable to the area in question until a sufficient number of the building sites are occupied and connected to the facility to provide enough revenues to meet operating, maintenance, debt service, and reserve requirements. Such guarantees from developers will meet the requirements in paragraph (h)(2)(i)(B) of this section; or

(iii) Developers paying cash for the increased capital cost and any increased operating expenses until the developing area will support the increased costs; or

(iv) The full faith and credit of a public body where the debt is evidenced by general obligation bonds; or

(v) The loan is to a public body evidenced by a pledge of tax assessments; or

(vi) The user charges can become a tax lien upon the property being served and income from such lien can be collected in sufficient time to be used for its intended purposes.

(i) *Reserve requirements.* Provision for the accumulation of necessary reserves over a reasonable period of time will be included in the loan documents and in assessments, tax levies, or rates charged for services. In those cases where statutes providing for extinguishing assessment liens of public bodies when properties subject to such liens are sold for delinquent State or

local taxes, special reserves will be established and maintained for the protection of the borrower's assessment lien.

(1) *General obligation or special assessment bonds.* Ordinarily, the requirements for reserves will be considered to have been met if general obligation or other bonds which pledge the full faith and credit of the political subdivision are used, or special assessment bonds are used, and if such bonds provide for the annual collection of sufficient taxes or assessments to cover debt service, operation and maintenance, and a reasonable amount for emergencies and to offset the possible nonpayment of taxes or assessments by a percentage of the property owners, or a statutory method is provided to prevent the incurrence of a deficiency.

(2) *Other than general obligation or special assessment bonds.* Each borrower will be required to establish and maintain reserves sufficient to assure that loan installments will be paid on time, for emergency maintenance, for extensions to facilities, and for replacement of short-lived assets which have a useful life significantly less than the repayment period of the loan. It is expected that borrowers issuing bonds or other evidences of debt pledging facility revenues as security will ordinarily plan their reserve to provide for a total reserve in an amount at least equal to one average loan installment. It is also expected the ordinarily such reserve will be accumulated at the rate of at least one-tenth of the total each year until the desired level is reached.

(j) *General requirements*—(1) *Membership authorization.* For organizations other than public bodies, the membership will authorize the project and its financing except that the State Director may, with the concurrence of OGC, accept the loan resolution without such membership authorization when State statutes and the organization's charter and bylaws do not require such authorization; and

(i) The organization is well established and is operating with a sound financial base; or

(ii) For utility-type projects the members of the organization have all signed an enforceable user agreement with a penalty clause and have made the required meaningful user cash contribution, except for members presently receiving service or when State statutes or local ordinances require mandatory use of the facility.

(2) *Planning, bidding, contracting, constructing.* (See § 1942.18).

(3) *Insurance and fidelity bonds.* The purpose of FmHA or its successor agency under Public Law 103–354's insurance and fidelity bond requirements is to protect the government's financial interest based on the facility financed. The requirements below apply to all types of coverage determined necessary. The National Office may grant exceptions to normal requirements when appropriate justification is provided establishing that it is in the best interest of the applicant/borrower and will not adversely affect the government's interest.

(i) *General.* (A) Applicants must provide evidence of adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage in accordance with this section must then be maintained for the life of the loan. It is the responsibility of the applicant/borrower and not that of FmHA or its successor agency under Public Law 103–354 to assure that adequate insurance and fidelity bond coverage is maintained.

(B) Insurance and fidelity bond requirements by FmHA or its successor agency under Public Law 103–354 shall normally not exceed those proposed by the applicant/borrower if the FmHA or its successor agency under Public Law 103–354 loan approval or servicing official determines that proposed coverage is adequate to protect the government's financial interest. Applicants/borrowers are encouraged to have their attorney, consulting engineer/architect, and/or insurance provider(s) review proposed types and amounts of coverage, including any deductible provisions. If the FmHA or its successor agency under Public Law 103–354 official and the applicant/borrower cannot agree on the acceptability of coverage proposed, a decision will be made by the State Director.

(C) The use of deductibles, i.e., an initial amount of each claim to be paid by the applicant/borrower, may be allowed

by FmHA or its successor agency under Public Law 103–354 providing the applicant/borrower has financial resources which would likely be adequate to cover potential claims requiring payment of the deductible.

(D) Borrowers must provide evidence to FmHA or its successor agency under Public Law 103–354 that adequate insurance and fidelity bond coverage is being maintained. This may consist of a listing of policies and coverage amounts in yearend reports submitted with management reports required under §1942.17(q)(2) or other documentation. The borrower is responsible for updating and/or renewing policies or coverage which expire between submissions to FmHA or its successor agency under Public Law 103–354. Any monitoring of insurance and fidelity bond coverage by FmHA or its successor agency under Public Law 103–354 is solely for the benefit of FmHA or its successor agency under Public Law 103–354, and does not relieve the applicant/borrower of its obligation under the loan resolution to maintain such coverage.

(ii) *Fidelity bond.* Applicants/borrowers will provide fidelity bond coverage for all persons who have access to funds. Coverage may be provided either for all individual positions or persons, or through ''blanket'' coverage providing protection for all appropriate employees and/or officials. An exception may be granted by the State Director when funds relating to the facility financed are handled by another entity and it is determined that the entity has adequate coverage or the government's interest would otherwise be adequately protected.

(A) The amount of coverage required by FmHA or its successor agency under Public Law 103–354 will normally approximate the total annual debt service requirements for the FmHA or its successor agency under Public Law 103–354 loans.

(B) Form FmHA or its successor agency under Public Law 103–354 440–24, ''Position Fidelity Schedule Bond'' may be used. Similar forms may be used if determined acceptable to FmHA or its successor agency under Public Law 103–354. Other types of coverage may be considered acceptable if it is determined by FmHA or its successor agency under Public Law 103–354 that they fulfill essentially the same purpose as a fidelity bond.

(iii) *Insurance.* The following types of coverage must be maintained in connection with the project if appropriate for the type of project and entity involved:

(A) Property insurance. Fire and extended coverage will normally be maintained on all structures except as noted in paragraphs (j)(3)(iii)(A) (*1*) and (*2*) below. Ordinarily, FmHA or its successor agency under Public Law 103–354 should be listed as mortgagee on the policy when FmHA or its successor agency under Public Law 103–354 has a lien on the property. Normally, major items of equipment or machinery located in the insured structures must also be covered. Exceptions:

(*1*) Reservoirs, standpipes, elevated tanks, and other structures built entirely of noncombustible materials if such structures are not normally insured.

(*2*) Subsurface lift stations except for the value of electrical and pumping equipment therein.

(B) Liability and property damage insurance, including vehicular coverage.

(C) Malpractice insurance. The need and requirements for malpractice insurance will be carefully and thoroughly considered in connection with each health care facility financed.

(D) Flood insurance. Facilities located in special flood- and mudslide-prone areas must comply with the eligibility and insurance requirements of subpart B of part 1806 of this chapter (FmHA Instruction 426.2).

(E) Worker's compensation. The borrower will carry worker's compensation insurance for employees in accordance with State laws.

(4) *Acquisition of land, easements, water rights, and existing facilities.* Applicants are responsible for acquisition of all property rights necessary for the project and will determine that prices paid are reasonable and fair. FmHA or its successor agency under Public Law 103–354 may require an appraisal by an independent appraiser or FmHA or its successor agency under Public Law 103–354 employee.

(i) *Title for land, rights-of-way, easements, or existing facilities.* The applicant must certify and provide a legal opinion relative to the title to rights-of-way and easements. Form FmHA or its successor agency under Public Law 103–354 442–21, ''Rights-of-Way Certificate,'' and Form FmHA or its successor agency under Public Law 103–354 442–22, ''Opinion of Counsel Relative to Rights-of-Way,'' may be used.

(A) *Rights-of-way and easements.* Applicants are responsible for and will obtain valid, continuous and adequate rights-of-way and easements needed for the construction, operation, and maintenance of the facility. Form FmHA or its successor agency under Public Law 103–354 442–20, ''Right-of-Way Easement,'' may be used. When a site is for major structures for utility-type facilities such as a reservoir or pumping station and the applicant is able to obtain only a right-of-way or easement on such a site rather than a fee simple title, the applicant will furnish a title report thereon by the applicant's attorney showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the applicant to obtain and record such releases, consents or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and give FmHA or its successor agency under Public Law 103–354 the required security.

(B) *Title for land or existing facilities.* Title to land essential to the successful operation of facilities or title to facilities being purchased, must not contain any restrictions that will adversely affect the suitability, successful operation, security value, or transferability of the facility. Title opinions must be provided by the applicant's attorney. The opinions must be in sufficient detail to assess marketability of the property. Form FmHA or its successor agency under Public Law 103–354 1927–9, ''Preliminary Title Opinion,'' and Form FmHA or its successor agency under Public Law 103–354 1927–10, ''Final Title Opinion,'' may be used to provide the required title opinions. If other forms are used they must be reviewed and approved by FmHA or its successor agency under Public Law 103–354 and OGC.

(*1*) In lieu of receiving title opinions from the applicant's attorney, the applicant may use a title insurance company. If a title insurance company is used, the company must provide FmHA or its successor agency under Public Law 103–354 a title insurance binder, disclosing all title defects or restrictions, and include a commitment to issue a title insurance policy. The policy should be in an amount at least equal to the market value of the property as improved. The title insurance binder and commitment should be provided to FmHA or its successor agency under Public Law 103–354 prior to requesting closing instructions. FmHA or its successor agency under Public Law 103–354 will be provided a title insurance policy which will insure FmHA or its successor agency under Public Law 103–354's interest in the property without any title defects or restrictions which have not been waived by FmHA or its successor agency under Public Law 103–354.

(*2*) The loan approval official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. If the District Director is the loan approval official and is unable to waive the defect or restriction, the title opinion or title insurance binder will be forwarded to the State Director. If the State Director, with the advice of the OGC, determines that the defect or restriction cannot be waived, the defect or restriction must be removed.

(ii) *Water rights.* When legally permissible, an assignment will be taken on water rights owned or to be acquired by the applicant. The following will be furnished as applicable:

(A) A statement by the applicant's attorney regarding the nature of the water rights owned or to be acquired by the applicant (such as conveyance of title, appropriation and decree, application and permit, public notice and appropriation and use).

(B) A copy of a contract with another company or municipality to supply water; or stock certificates in another

company which represents the right to receive water.

(iii) *Land purchase contract:* (A) A land purchase contract (known in some areas as a contract for deed) is an agreement between two or more parties which obligates the purchaser to pay the purchase price, gives the purchaser the rights of immediate possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specified part of the purchase price.

(B) Applicants may obtain land through land purchase contracts when all of the following conditions are met:

(*1*) The applicant has exhausted all reasonable means of obtaining outright fee simple title to the necessary land.

(*2*) The applicant cannot obtain the land through condemnation.

(*3*) There are not other suitable sites available.

(*4*) National Office concurrence is obtained in accordance with paragraph (j)(4)(iii)(D)(*2*) of this section.

(C) The land purchase contract must provide for the transfer of ownership by the seller without any restrictions, liens or other title defects. The contract must not contain provisions for future advances (except for taxes, insurance, or other costs needed to protect the security), summary cancellations, summary forfeiture, or other clauses that may jeopardize the Government's interest or the purchaser's ability to pay the FmHA or its successor agency under Public Law 103–354 loan. The contract must provide that if the purchaser fails to make payment that FmHA or its successor agency under Public Law 103–354 will be given at least 90 days written notice with an option to cure the default before the contract can be cancelled, terminated or foreclosed. Then FmHA or its successor agency under Public Law 103–354 must have the option of making the payment and charging it to the purchaser's account, making the payment and taking over the ownership of the purchase contract, or taking any other action necessary to protect the Government's interest.

(D) Prior to loan closing or the beginning of construction, whichever occurs first, the following actions must be taken in the order listed below:

(*1*) The land purchase contract and any appropriate title opinions must be reviewed by the Regional Attorney to determine if they are legally sufficient to protect the interest of the Government.

(*2*) The land purchase contract, the Regional Attorney's comments, and the State Director's recommendations must be submitted to the National Office for concurrence.

(*3*) The land purchase contract must be recorded.

(5) *Lease agreements.* Where the right of use or control of real property not owned by the applicant/borrower is essential to the successful operation of the facility during the life of the loan, such right will be evidenced by written agreements or contracts between the owner(s) of the property and the applicant/borrower. Lease agreements shall not contain provisions for restricted use of the site of facility, forfeiture or summary cancellation clauses and shall provide for the right to transfer and lease without restriction. Lease agreements will ordinarily be written for a term at least equal to the term of the loan. Such lease contracts or agreements will be approved by the FmHA or its successor agency under Public Law 103–354 loan approval official with the advice and counsel of the Regional Attorney, OGC, as to the legal sufficiency of such documents. A copy of the lease contract or agreement will be included in the loan docket.

(6) *Notes and bonds.* Notes and bonds will be completed on the date of loan closing except for the entry of subsequent multiple advances where applicable. The amount of each note will be in multiples of not less than $100. The amount of each bond will ordinarily be in multiples of not less than $1,000.

(i) Form FmHA or its successor agency under Public Law 103–354 440–22, ''Promissory Note (Association or Organization),'' will ordinarily be used for loans to nonpublic bodies.

(ii) Section 1942.19 contains instructions for preparation of notes and bonds evidencing indebtedness of public bodies.

(7) *Environmental requirements.* Environmental requirements will be documented by FmHA or its successor agency under Public Law 103–354 in accordance with subpart G part 1940 of this chapter. The applicant will provide any information required.

(8) *Health care facilities.* The applicant will be responsible for obtaining the following documents:

(i) A statement from the responsible State agency certifying that the proposed health care facility is not inconsistent with the State Medical Facilities Plan.

(ii) A statement from the responsible State agency or regional office of the Department of Health and Services certifying that the proposed facility meets the standards in §1942.18(d)(4).

(9) *Public information.* Applicants should inform the general public regarding the development of any proposed project. Any applicant not required to obtain authorization by vote of its membership or by public referendum, to incur the obligations of the proposed loan or grant, will hold at least one public information meeting. The public meeting must be held after the preapplication is filed and not later than loan approval. The meeting must give the citizenry an opportunity to become acquainted with the proposed project and to comment on such items as economic and environmental impacts, service area, alternatives to the project, or any other issue identified by FmHA or its successor agency under Public Law 103–354. The applicant will be required, at least 10 days prior to the meeting, to publish a notice of the meeting in a newspaper of general circulation in the service area, to post a public notice at the applicant's principal office, and to notify FmHA or its successor agency under Public Law 103–354. The applicant will provide FmHA or its successor agency under Public Law 103–354 a copy of the published notice and minutes of the public meeting. A public meeting is not normally required for subsequent loans which are needed to complete the financing of the project.

(10) *Service through individual installation.* Community owned water or waste disposal systems may provide service through individual installations or small clusters of users within the applicant's service area. When individual installations or small clusters are proposed, the loan approval official should consider items such as: quantity and quality of the individual installations that may be developed; cost effectiveness of the individual facility compared with the initial and long term user cost on a central system; health and pollution problems attributable to individual facilities; operational or management problems peculiar to individual installations; and permit and regulatory agency requirements.

(i) Applicants providing service through individual facilities must meet the eligibility requirements in §1942.17(b).

(ii) FmHA or its successor agency under Public Law 103–354 must approve the form of agreement between the owner and individual users for the installation, operation and payment for individual facilities.

(iii) If taxes or assessments are not pledged as security, owners providing service through individual facilities must obtain security as necessary to assure collection of any sum the individual user is obligated to pay the owner.

(iv) Notes representing indebtedness owed the owner by a user for an individual facility will be scheduled for payment over a period not to exceed the useful life of the individual facility or the loan, whichever is shorter. The interest rate will not exceed the interest rate charged the owner on the FmHA or its successor agency under Public Law 103–354 indebtedness.

(v) Owners providing service through individual or cluster facilities must obtain:

(A) Easements for the installation and ingress to and egress from the facility; and

(B) An adequate method for denying service in the event of nonpayment of user fees.

(11) *Funds from other sources.* FmHA or its successor agency under Public Law 103–354 loan funds may be used along with or in connection with funds provided by the applicant or from other sources. Since ''matching funds'' is not a requirement for FmHA or its successor agency under Public Law 103–354

loans, shared revenues may be used with FmHA or its successor agency under Public Law 103–354 funds for project construction.

(k) *Other Federal, State, and local requirements.* Each application shall contain the comments, necessary certifications and recommendations of appropriate regulatory or other agency or institution having expertise in the planning, operation, and management of similar facilities. Proposals for facilities financed in whole or in part with FmHA or its successor agency under Public Law 103–354 funds will be coordinated with appropriate Federal, State, and local agencies in accordance with the following:

(1) *Compliance with special laws and regulations.* Except as provided in paragraph (k)(2) of this section applicants will be required to comply with Federal, State, and local laws and any regulatory commission rules and regulations pertaining to:

(i) Organization of the applicant and its authority to construct, operate, and maintain the proposed facilities;

(ii) Borrowing money, giving security therefore, and raising revenues for the repayment thereof;

(iii) Land use zoning; and

(iv) Health and sanitation standards and design and installation standards unless an exception is granted by FmHA or its successor agency under Public Law 103–354.

(2) *Compliance exceptions.* If there are conflicts between this subpart and state or local laws or regulatory commission regulations, the provisions of this subpart will control.

(3) *State Pollution Control or Environmental Protection Agency Standards.* Water and waste disposal facilities will be designed, installed, and operated in such a manner that they will not result in the pollution of water in the State in excess of established standards and that any effluent will conform with appropriate State and Federal Water Pollution Control Standards. A certification from the appropriate State and Federal agencies for water pollution control standards will be obtained showing that established standards are met.

(4) *Consistency with other development plans.* FmHA or its successor agency under Public Law 103–354 financed facilities will not be inconsistent with any development plans of State, multijurisdictional areas, counties, or municipalities in which the proposed project is located.

(5) *State agency regulating water rights.* Each FmHA or its successor agency under Public Law 103–354 financed facility will be in compliance with appropriate State agency regulations which have control of the appropriation, diversion, storage and use of water and disposal of excess water. All of the rights of any landowners, appropriators, or users of water from any source will be fully honored in all respects as they may be affected by facilities to be installed.

(6) *Civil Rights Act of 1964.* All borrowers are subject to, and facilities must be operated in accordance with, title VI of the Civil Rights Act of 1964 and subpart E of part 1901 of this chapter, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by § 1901.202(e) of subpart E of part 1901 of this chapter.

(7) *Title IX of the Education Amendments of 1972.* No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or education activity receiving FmHA or its successor agency under Public Law 103–354 financial assistance except as otherwise provided for in the Education Amendments of title IX. The FmHA or its successor agency under Public Law 103–354 State Director will provide guidance and technical assistance to carry out the intent of this paragraph.

(8) *Section 504 of the Rehabilitation Act of 1973.* Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving FmHA or its successor agency under Public Law 103–354 financial assistance.

(9) *Age Discrimination Act of 1975.* This Act provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. This Act also applies to programs or activities funded under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et. seq.). This Act does not apply to: (i) age distinctions contained in Federal, State or local statutes or ordinances adopted by an elected, general purpose legislative body which provide benefits or assistance based on age; (ii) establish criteria for participation in age-related terms; (iii) describe intended beneficiaries or target groups in age-related terms; and, (iv) any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA) (29 U.S.C. 801 *et. seq.*).

(l) *Professional services and contracts related to the facility*—(1) *Professional services.* Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Professional services of the following may be necessary: Engineer, architect, attorney, bond counsel, accountant, auditor, appraiser, and financial advisory or fiscal agent (if desired by applicant). Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to FmHA or its successor agency under Public Law 103–354 concurrence. Form FmHA or its successor agency under Public Law 103–354 1942–19, ''Agreement for Engineering Services,'' may be used when appropriate. Guide 20, ''Agreement for Engineering Services (FmHA or its successor agency under Public Law 103–354/EPA—Jointly Funded Projects)'' may be used on projects jointly funded by FmHA or its successor agency under Public Law 103–354 and EPA. Guide 14 may be used in the preparation of the legal services agreement.

(2) *Bond counsel.* Unless otherwise provided by §1942.19(b), public bodies are required to obtain the service of recognized bond counsel in the preparation of evidence of indebtedness.

(3) *Contracts for other services.* Contracts or other forms of agreements for other services including management, operation, and maintenance will be developed by the applicant and presented to FmHA or its successor agency under Public Law 103–354 for review and approval. Management agreements should provide at least those items in guide 24.

(4) *Fees.* Fees provided for in contracts or agreements shall be reasonable. They shall be considered to be reasonable if not in excess of those ordinarily charged by the profession for similar work when FmHA or its successor agency under Public Law 103–354 financing is not involved.

(m) *Applying for FmHA or its successor agency under Public Law 103–354 loans*—(1) *Preapplication.* Applicants desiring loans will file SF 424.2 and comments from the appropriate A–95 clearinghouse agency normally with the appropriate FmHA or its successor agency under Public Law 103–354 County Office. The County Supervisor will immediately forward all documents to the District Office. The District Director has prime responsibility for all community program loan making and servicing activities within the District.

(2) *Preapplication review.* Upon receipt of the preapplication, FmHA or its successor agency under Public Law 103–354 will tentatively determine eligibility including the likelihood of credit elsewhere at reasonable rates and terms and availability of FmHA or its successor agency under Public Law 103–354 loan funds. The determination as to availability of other credit will be made after considering present rates and terms available for similar proposals (not necessarily based upon rates and terms available from FmHA or its successor agency under Public Law 103–354); the repayment potential of the applicant; long-term cost to the applicant; and average user or other

charges. In those cases where FmHA or its successor agency under Public Law 103–354 determines that loans at reasonable rates and terms should be available from commercial sources, FmHA or its successor agency under Public Law 103–354 will notify the applicant so that it may apply for such financial assistance. Such applicants may be reconsidered for FmHA or its successor agency under Public Law 103–354 loans upon their presenting satisfactory evidence of inability to obtain commercial financing at reasonable rates and terms.

(3) *Incurring obligations.* Applicants should not proceed with planning nor obligate themselves for expenditures until authorized by FmHA or its successor agency under Public Law 103–354.

(4) *Results of preapplication review.* After FmHA or its successor agency under Public Law 103–354 has reviewed the preapplication material and any additional material that may be requested, Form AD–622 will be sent to the applicant. Ordinarily the review will not exceed 45 days.

(5) *Application conference.* Before starting to assemble the application and after the applicant selects its professional and technical representatives, it should arrange with FmHA or its successor agency under Public Law 103–354 for an application conference to provide a basis for orderly application assembly. FmHA or its successor agency under Public Law 103–354 will provide applicants with a list of documents necessary to complete the application. Guide 15 may be used for this purpose. Applications will be filed with the District Office.

(6) *Application completion and assembling.* This is the responsibility of the applicant with guidance from FmHA or its successor agency under Public Law 103–354. The applicant may utilize their professional and technical representatives or other competent sources.

(7) *Review of decision.* If an application is rejected, the applicant may request a review of this decision under subpart B of part 1900 of this chapter.

(n) *Actions prior to loan closing and start of construction*—(1) *Excess FmHA or its successor agency under Public Law 103–354 loan and grant funds.* If there is a significant reduction in project cost, the applicant's funding needs will be reassessed before loan closing or the start of construction, whichever occurs first. In such cases applicable FmHA or its successor agency under Public Law 103–354 forms, the letter of conditions, and other items will be revised. Decreases in FmHA or its successor agency under Public Law 103–354 funds will be based on revised project costs and current number of users, however, other factors including FmHA or its successor agency under Public Law 103–354 regulations used at the time of loan/grant approval will remain the same. Obligated loan or grant funds not needed to complete the proposed project will be deobligated.

(2) *Loan resolutions.* Loan resolutions will be adopted by both public and other-than-public bodies using Form FmHA or its successor agency under Public Law 103–354 1942–47, ''Loan Resolution (Public Bodies),'' or Form FmHA or its successor agency under Public Law 103–354 1942–9, ''Loan Resolution (Security Agreement).'' These resolutions supplement other provisions in this subpart. The applicant will agree:

(i) To indemnify the Government for any payments made or losses suffered by the Government on behalf of the association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.

(ii) To comply with applicable local, State and Federal laws, regulations, and ordinances.

(iii) To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, establishment of adequate reserves, and to continually operate and maintain the facility in good condition. Except for utility-type facilities, free service use may be permitted. If free services are extended no distinctions will be made in the extension of those services because of race, color, religion, sex, national origin, marital status, or physical or mental handicap.

(iv) To acquire and maintain such insurance coverage including fidelity bonds, as may be required by the Government.

(v) To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof in such a manner as may be required by the Government and to provide the Government without its request, a copy of each such audit and to make and forward to the Government such additional information and reports as it may, from time to time, require.

(vi) To provide the Government at all reasonable times, access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.

(vii) To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain FmHA or its successor agency under Public Law 103–354's concurrence prior to refusing new or adequate services to such persons. Upon failure of the applicant to provide services which are feasible and legal, such person shall have a direct right of action against the applicant organization.

(viii) To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds or notes or other debt instruments or other such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.

(ix) To refinance the unpaid balance, in whole or in part, of its debt upon the request of the Government if at any time it should appear to the Government that the association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms.

(x) To provide for, execute, and comply with Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement,'' and Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement,'' including an ''Equal Opportunity Clause,'' which is to be incorporated in or attached as a rider to each construction contract and subcontract in excess of $10,000.

(xi) To place the proceeds of the loan on deposit in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government as invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.

(xii) Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof or interest therein, and not to permit others to do so, without the prior written consent of the Government.

(xiii) Not to borrow any money from any source, enter into any contract or agreement, or incur any other liabilities in connection with making enlargements, improvements or extensions to, or for any other purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to repay the debt to FmHA or its successor agency under Public Law 103–354.

(xiv) That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government, at its option, may:

(A) Declare the entire principal amount then outstanding and accrued interest, due and payable;

(B) For the account of the association (payable from the source of funds pledged to pay the bonds or notes or any other legally permissiable source), incur and pay reasonable expenses for repair, maintenance and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default; and/or

(C) Take possession of the facility, repair, maintain and operate, or otherwise dispose of the facility. Default under the provisions of the resolution

or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the association and default under any such instrument may be construed by the Government to constitute default hereunder.

(3) *Interim financing.* In all loans exceeding $50,000, where funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA or its successor agency under Public Law 103–354 funds. Guide 1 or guide 1a, as appropriate, may be used to inform the private lender of FmHA or its successor agency under Public Law 103–354's commitment. When interim commercial financing is used, the application will be processed, including obtaining construction bids, to the stage where the FmHA or its successor agency under Public Law 103–354 loan would normally be closed, that is immediately prior to the start of construction. The FmHA or its successor agency under Public Law 103–354 loan should be closed as soon as possible after the disbursal of all interim funds. Interim financing may be for a fixed term provided the fixed term does not extend beyond the time projected for completion of construction. For this purpose, a fixed term is when the interim lender cannot be repaid prior to the end of the stipulated term of the interim instruments. When an FmHA or its successor agency under Public Law 103–354 Water and Waste Disposal grant is included, any interim financing involving a fixed term must be for the total FmHA or its successor agency under Public Law 103–354 loan amount. Multiple advances may be used in conjunction with interim commercial financing when the applicant is unable to obtain sufficient funds through interim commercial financing in an amount equal to the loan. The FmHA or its successor agency under Public Law 103–354 loan proceeds (including advances) will be used to retire the interim commercial indebtedness. Before the FmHA or its successor agency under Public Law 103–354 loan is closed, the applicant will be required to provide FmHA or its successor agency under Public Law 103–354 with statements from the contractor, engineer, architect, and attorney that they have been paid to date in accordance with their contracts or other agreements and, in the case of the contractor, that any suppliers and subcontractors have been paid. If such statements cannot be obtained, the loan may be closed provided:

(i) Statements to the extent possible are obtained;

(ii) The interest of FmHA or its successor agency under Public Law 103–354 can be adequately protected and its security position is not impaired; and

(iii) Adequate provisions are made for handling the unpaid accounts by withholding or escrowing sufficient funds to pay such claims.

(4) *Obtaining closing instructions.* After loan approval, the completed docket will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(5) *Applicant contribution.* An applicant contributing funds toward the project cost shall deposit these funds in its construction account on or before loan closing or start of construction, whichever occurs first. Project costs paid prior to the required deposit time with applicant funds shall be appropriately accounted for.

(6) *Evidence of and disbursement of other funds.* Applicants expecting funds from other sources for use in completing projects being partially financed with FmHA or its successor agency under Public Law 103–354 funds will present evidence of the commitment of these funds from such other sources. This evidence will be available

before loan closing, or the start of construction, whichever occurs first. Ordinarily, the funds provided by the applicant or from other sources will be disbursed prior to the use of FmHA or its successor agency under Public Law 103–354 loan funds. If this is not possible, funds will be disbursed on a pro rata basis. FmHA or its successor agency under Public Law 103–354 funds will not be used to pre-finance funds committed to the project from other sources.

(o) *Loan closing*—(1) *Closing instructions.* Loans will be closed in accordance with the closing instructions issued by OGC.

(2) *Obtaining insurance and fidelity bonds.* Required property insurance policies, liability insurance policies, and fidelity bonds will be obtained by the time of loan closing or start of construction, whichever occurs first.

(3) *Distribution of recorded documents.* The originals of the recorded deeds, easements, permits, certificates of water rights, leases, or other contracts and similar documents which are not to be held by FmHA or its successor agency under Public Law 103–354 will be returned to the borrower. The original mortgage(s) and water stock certificates, if any, if not required by the recorder's office will be retained by FmHA or its successor agency under Public Law 103–354.

(4) *Review of loan closing.* In order to determine that the loan has been properly closed the loan docket will be reviewed by the State Director and OGC.

(p) *Project monitoring and fund delivery during construction*—(1) *Coordination of funding sources.* When a project is jointly financed, the State Director will reach any needed agreement or understanding with the representatives of the other source of funds on distribution of responsibilities for handling various aspects of the project. These responsibilities will include supervision of construction, inspections and determinations of compliance with appropriate regulations concerning equal employment opportunities, wage rates, nondiscrimination in making services or benefits available, and environmental compliance. If any problems develop which cannot be resolved locally, complete information should be sent to the National Office for advice.

(2) *Multiple advances.* In the event interim commercial financing is not legally permissible or not available, multiple advances of FmHA or its successor agency under Public Law 103–354 loan funds are required. An exception to this requirement may be granted by the National Office when a single advance is necessitated by State law or public exigency. Multiple advances will be used only for loans in excess of $50,000. Advances will be made only as needed to cover disbursements required by the borrower over a 30-day period. Advances should not exceed 24 in number nor extend longer than two years beyond loan closing. Normally, the retained percentage withheld from the contractor to assure construction completion will be included in the last advance.

(i) Section 1942.19 contains instructions for making multiple advances to public bodies.

(ii) Advances will be requested by the borrower in writing. The request should be in sufficient amounts to pay cost of construction, rights-of-way and land, legal, engineering, interest, and other expenses as needed. The applicant may use Form FmHA or its successor agency under Public Law 103–354 440–11, ''Estimate of Funds Needed for 30 Day Period Commencing _____,'' to show the amount of funds needed during the 30-day period.

(iii) FmHA or its successor agency under Public Law 103–354 loan funds obligated for a specific purpose, such as the paying of interest, but not needed at the time of loan closing will remain in the Finance Office until needed unless State statutes require all funds to be delivered to the borrower at the time of closing. Loan funds may be advanced to prepay costs under paragraph (d)(1)(iv)(G) of this section. If all funds must be delivered to the borrower at the time of closing to comply with State statutes, funds not needed at loan closing will be handled as follows:

(A) Deposited in an appropriate borrower account, such as the debt service account, or

(B) Deposited in a supervised bank account under paragraph (p)(3)(i) of this section.

(3) *Use and accountability of funds*—(i) *Supervised bank account.* FmHA or its successor agency under Public Law 103–354 loan funds and any funds furnished by the applicant/borrower to supplement the loan including contributions to purchase major items of equipment, machinery, and furnishings may be deposited in a supervised bank account if determined necessary as provided in subpart A of part 1902 of this chapter. When FmHA or its successor agency under Public Law 103–354 has a Memorandum of Understanding with another agency that provides for the use of supervised bank accounts, or when FmHA or its successor agency under Public Law 103–354 is the primary source of funds for a project and has determined that the use of a supervised bank account is necessary, project funds from other sources may also be deposited in the supervised bank account. FmHA or its successor agency under Public Law 103–354 shall not be accountable to the source of the other funds nor shall FmHA or its successor agency under Public Law 103–354 undertake responsibility to administer the funding program of the other entity. Supervised bank accounts should not be used for funds advanced by an interim lender.

(ii) *Other than supervised bank account.* If a supervised bank account is not used, arrangements will be agreed upon for the prior concurrence by FmHA or its successor agency under Public Law 103–354 of the bills or vouchers upon which warrants will be drawn, so that the payments from loan funds can be controlled and FmHA or its successor agency under Public Law 103–354 records kept current. If a supervised bank account is not used, use Form FmHA or its successor agency under Public Law 103–354 402–2, ''Statement of Deposits and Withdrawals,'' or similar form to monitor funds. Periodic reviews of nonsupervised accounts shall be made by FmHA or its successor agency under Public Law 103–354 at the times and in the manner as FmHA or its successor agency under Public Law 103–354 prescribes in the conditions of loan approval. State laws regulating the depositories to be used shall be complied with.

(iii) *Use of minority owned banks.* Applicants are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, DC 20230 and is also available in all FmHA or its successor agency under Public Law 103–354 offices.

(4) *Development inspections.* The District Director will be responsible for monitoring the construction of all projects being financed, wholly or in part, with FmHA or its successor agency under Public Law 103–354 funds. Technical assistance will be provided by the State Director's staff. Project monitoring will include construction inspections and a review of each project inspection report, each change order and each partial payment estimate and other invoices such as payment for engineering/architectural and legal fees and other materials determined necessary to effectively monitor each project. These activities will not be performed on behalf of the applicant/borrower, but are solely for the benefit of FmHA or its successor agency under Public Law 103–354 and in no way are intended to relieve the applicant/borrower of corresponding obligations to conduct similar monitoring and inspection activities. Project monitoring will include periodic inspections to review partial payment estimates prior to their approval and to review project development in accordance with plans and specifications. Each inspection will be recorded using Form FmHA or its successor agency under Public Law 103–354 1924–12, ''Inspection Report.'' The original Form FmHA or its successor agency under Public Law 103–354 1924–12 will be filed in the project case folder and a copy furnished to the State Director. The State Director will review inspection reports and will determine that the project is being effectively monitored. The District Director is authorized to review and accept partial payment estimates prepared by the contractor and approved by the borrower, provided the consulting engineer or architect, if one is being utilized for the project, has approved the estimate and certified that

all material purchased or work performed is in accordance with the plans and specifications, or if a consulting engineer or architect is not being utilized, the District Director has determined that the funds requested are for authorized purposes. If there is any indication that construction is not being completed in accordance with the plans and specifications or that any other problems exist, the District Director should notify the State Director immediately and withhold all payments on the contract.

(5) *Payment for construction.* Each payment for project costs must be approved by the borrower's governing body. Payment for construction must be for amounts shown on payment estimate forms. Form FmHA or its successor agency under Public Law 103–354 1924–18, ''Partial Payment Estimate,'' may be used for this purpose or other similar forms may be used with the prior approval of the State Director or designee. However, the State Director or designee cannot require a greater reporting burden than is required by Form FmHA or its successor agency under Public Law 103–354 1924–18. Advances for contract retainage will not be made until such retainage is due and payable under the terms of the contract. The review and acceptance of project costs, including construction partial payment estimates by FmHA or its successor agency under Public Law 103–354, does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(6) *Use of remaining funds.* Funds remaining after all costs incident to the basic project have been paid or provided for will not include applicant contributions. Applicant contributions will be considered as funds initially expended for the project. Funds remaining, with exception of applicant contributions, may be considered in direct proportion to the amount obtained from each source. Remaining funds will be handled as follows:

(i) *Agency loan and/or grant funds.* Remaining funds may be used for purposes authorized by paragraph (d) of this section, provided the use will not result in major changes to the facility design or project and that the purposes of the loan and/or grant remains the same.

(A) On projects that only involve an FmHA or its successor agency under Public Law 103–354 loan and no FmHA or its successor agency under Public Law 103–354 grant, funds that are not needed will be applied as an extra payment on the FmHA or its successor agency under Public Law 103–354 indebtedness unless other disposition is required by the bond ordinance, resolution, or State statute.

(B) On projects that involve an FmHA or its successor agency under Public Law 103–354 grant, all remaining FmHA or its successor agency under Public Law 103–354 funds will be considered to be grant funds up to the full amount of the grant. Grant funds not expended under paragraph (p)(6)(i) of this section will be deobligated.

(ii) *Funds from other sources.* Funds remaining from other sources will be handled according to rules, regulations and/or the agreement governing their participation in the project.

(q) *Borrower accounting methods, management reporting and audits*—(1) *Accounting methods and records*—(i) *Method of accounting and financial statements.* Financial statements must be prepared on the accrual basis of accounting unless State statutes or regulatory agencies provide otherwise, or an exception is made by FmHA or its successor agency under Public Law 103–354. This requirement is for accrual basis financial statements and not for accrual basis accounting systems. Organizations may keep their books on an accounting basis other than accrual and then make adjustments so that the financial statements are presented on the accrual basis.

(ii) *Approval requirement.* Before loan closing or start of construction, whichever is first, each borrower shall provide to, and obtain approval from the FmHA or its successor agency under Public Law 103–354 loan approval official for its accounting and financial reporting system, including the agreement with its auditor, if an auditor is required.

(iii) *Records.* Form FmHA or its successor agency under Public Law 103–354 1930–5, ''Bookkeeping System—Small

Borrower,'' may be used by small organizations as a method of recording and maintaining accounting transactions.

(iv) *Record retention.* Each borrower shall retain all records, books, and supporting material for 3 years after the issuance of the audit reports and financial statements. Upon request, this material will be made available to FmHA or its successor agency under Public Law 103–354, the Comptroller General, or to their representatives.

(2) *Management reports.* These reports will furnish the management with a means of evaluating prior decisions and serve as a basis for planning future operations and financial conditions. In those cases where revenues from multiple sources are pledged as security for an FmHA or its successor agency under Public Law 103–354 loan, two reports will be required; one for the project being financed by FmHA or its successor agency under Public Law 103–354 and one combining the entire operation of the borrower. In those cases where FmHA or its successor agency under Public Law 103–354 loans are secured by general obligation bonds or assessments and the borrower combines revenues from all sources, one management report combining all such revenues will suffice. The following management data will be submitted by the borrower to the FmHA or its successor agency under Public Law 103–354 District Director.

(i) *Financial information.* (A) Form FmHA or its successor agency under Public Law 103–354 442–2, ''Statement of Budget, Income and Equity,'' which includes Schedule 1, ''Statement of Budget, Income and Equity'' and Schedule 2, ''Projected Cash Flow.''

(B) Prior to the beginning of each fiscal year, two copies, with data entered in column three only of Schedule 1, page one, ''Annual Budget'' and all of Schedule 2, will be submitted to the District Director. Twenty (20) days after the end of each of the first three quarters of each year, two copies with all information furnished on Schedule 1 will be submitted. For the fourth quarter of each year, submit together with the year-end financial requirements of paragraphs (q) (4) and (5) of this section. More frequent submissions may be required by FmHA or its successor agency under Public Law 103–354 when necessary. The submission dates to the District Director will be 90 days following year-end for audited statements and 60 days following year-end for unaudited statements. The fourth quarter submission may serve the dual purpose of management report and year-end financial requirement for Statement of Income.

(ii) *Additional information.* (A) A list of the names and addresses of all members of the governing body as appropriate, also indicating the officers and their terms of office, will be included with the other information required at the end of the year.

(B) Borrowers delinquent on payment to FmHA or its successor agency under Public Law 103–354 or experiencing financial problems, will develop a positive action plan to resolve financial problems. The plan will be reviewed with FmHA or its successor agency under Public Law 103–354 and updated at least quarterly. Guide 22 may be used for developing a positive action plan.

(3) *Substitute for management reports.* When FmHA or its successor agency under Public Law 103–354 loans are secured by the general obligation of the public body or tax assessments which total 100 percent of the debt service requirements, the State Director may authorize an annual audit to substitute for other management reports if the audit is received within 90 days following the period covered by the audit.

(4) *Audits.* All audits are to be performed in accordance with generally accepted government auditing standards (GAGAS), using the publication, ''Standards for Audit of Governmental Organizations, Programs, Activities and Functions,'' developed by the Comptroller General of the United States in 1981, and any subsequent revisions. In addition, the audits are also to be performed in accordance with various Office of Management and Budget (OMB) Circulars and FmHA or its successor agency under Public Law 103–354 requirements as specified in the separate sections of this subpart.

(i) *Audits based upon Federal financial assistance received.* The following requirements shall apply to audits of the

years in which funds are received by the borrower.

(A) *Local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart and OMB Circular A–128, with copies of the audits being forwarded by the borrower to the FmHA or its successor agency under Public Law 103–354 District Director and the appropriate Federal cognizant agency. The Circular is available in any FmHA or its successor agency under Public Law 103–354 office. For years in which an audit is not required by OMB Circular A–128, see paragraph (q)(4)(ii) of this section.

(*1*) *Cognizant agency.* (*i*) ''Cognizant agency'' means the Federal agency assigned by OMB to carry out the responsibilities described in OMB Circular A–128. Within the Department of Agriculture (USDA), OIG is designated as the cognizant agency.

(*ii*) *Cognizant agency assignments.* Smaller borrowers not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA or its successor agency under Public Law 103–354 provided the major portion of Federal financial assistance, the appropriate USDA OIG Regional Inspector General shall be contacted. FmHA or its successor agency under Public Law 103–354 and the borrower shall coordinate all proposed audit plans with appropriate USDA OIG. A list of OIG contact persons is attached to FmHA Instruction 1942–A as exhibit B (available in any FmHA or its successor agency under Public Law 103–354 office).

(*2*) *Audit requirements.* It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits.

(*i*) Local governments and Indian tribes that receive $100,000 or more a year in Federal financial assistance shall have an audit for that year in accordance with OMB Circular A–128.

(*ii*) Local governments and Indian tribes that receive between $25,000 and $100,000 a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–128 or in accordance with FmHA or its successor agency under Public Law 103–354 audit requirements. This is an option of the local government or Indian tribe. If the election is made to have an audit performed in accordance with FmHA or its successor agency under Public Law 103–354 requirements, the audit shall be in accordance with paragraph (q)(4)(i)(B) of this section.

(*iii*) Local governments and Indian tribes that receive less then $25,000 a year in Federal financial assistance shall be exempt from both OMB Circular A–128 audits and FmHA or its successor agency under Public Law 103–354 audit requirements, except for those based upon annual gross income which may apply in paragraph (q)(4)(ii) of this section. However, any audits performed shall be governed by the requirements prescribed by State or local law or regulation.

(*iv*) Public hospitals and public colleges and universities may be excluded from OMB Circular A–128 audit requirements. However, in this case audits shall be made in accordance with paragraph (q)(4)(i)(B) of this section.

(*3*) *Fraud, abuse, and illegal acts.* If the auditor becomes aware of any indication of fraud, abuse, or illegal acts in FmHA or its successor agency under Public Law 103–354 financed projects, prompt written notice shall be given to the appropriate USDA OIG Regional Inspector General and the District Director.

(B) *Nonprofit organizations and others.* These organizations are to be audited in accordance with FmHA or its successor agency under Public Law 103–354 requirements and OMB Circular A–110, ''Uniform Requirements for Grants to Universities, Hospitals, and Other Nonprofit Organizations.'' These requirements also apply to public hospitals and public colleges and universities if they are excluded from the audits of paragraph (q)(4)(i)(A) of this section.

(*1*) Audits shall be annual unless otherwise prohibited and supplied to the FmHA or its successor agency under Public Law 103–354 District Director as soon as possible but in no case later than 150 days following the period covered by the audit.

(*2*) *Audit requirements.* (*i*) Borrowers which receive $25,000 or more a year in Federal financial assistance shall have an audit. Also, refer to paragraph (q)(4)(ii) of this section for additional audit requirements.

(*ii*) Borrowers which receive less than $25,000 a year in Federal financial assistance shall be exempt from audits except for the audits based upon annual gross income which may apply in paragraph (q)(4)(ii) of this section.

(*iii*) Indications of fraud, abuse and illegal acts shall be processed in accordance with paragraph (q)(4)(i)(A)(*3*) of this section.

(ii) *Audits based upon annual gross income.* The following annual gross income audit reguirements shall apply to all borrowers (local government, Indian tribes, and nonprofit organizations) for all years except the ones in which there is an audit requirement based upon the amount of Federal assistance received as required by paragraphs (q)(4)(i)(A) and (q)(4)(i)(B) of this section. Audits shall be on an annual basis unless otherwise prohibited and shall be supplied to FmHA or its successor agency under Public Law 103–354 as soon as possible but in no case later than 150 days following the period covered by the audit.

(A) *Gross annual income of $500,000 or more and an unpaid loan balance exceeding $100,000.* (*1*) Local governments and Indian tribes shall have audits made in accordance with State or local law or regulation or regulatory agency requirements. If no such requirements exist, audits shall be made in accordance with OMB Circular A–110 and paragraphs (q)(4)(i)(B)(*1*) and (*2*)(*iii*) of this section.

(*2*) All other organizations shall have audits in accordance with OMB Circular A–110 and paragraph (q)(4)(i)(B)(*1*) and (*2*)(*iii*) of this section.

(B) *Gross annual income of less than $500,000.* For borrowers that have a gross annual income of less than $500,000, the requirements for audits shall be at the discretion of the State Director. However, when audits are required, they shall be in accordance with paragraph (q)(4)(ii)(A) of this section.

(5) *Borrowers exempt from audits.* All borrowers who are exempt from audits, will, within 60 days following the end of each fiscal year, furnish the FmHA or its successor agency under Public Law 103–354 with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense by an appropriate official of the organization. Forms FmHA 442–2 and 442–3 may be used. For borrowers using Form FmHA or its successor agency under Public Law 103–354 442–2, the dual purpose of fourth quarter management reports, when required, and annual statements of income will be met with this one submission.

(r) *FmHA or its successor agency under Public Law 103–354 actions for borrower supervision and servicing*—(1) *Management assistance and management reports.* Management assistance will be based on such factors as observation of borrower operations and review of the periodic financial reports. The amount and type of assistance provided will be that needed to assure borrower success and compliance with its agreements with FmHA or its successor agency under Public Law 103–354.

(i) *The District Director* is responsible for obtaining all management report data from the borrower, promptly reviewing it and making any necessary recommendations to the borrower within 40 calendar days. However, after receiving management reports for borrowers whose FmHA or its successor agency under Public Law 103–354 indebtedness exceeds $1,000,000 and for delinquent and problem case borrowers, the District Director will forward them with comments to the State Director for review.

(ii) *District Director reviews of borrower operations.* (A) A review of the borrower's total operational and management practices, including records and accounts to be maintained, will be made between the beginning of the ninth and the end of the eleventh full month of the first year of operation. A report will be made to the State Director by sending a copy of Form FmHA or its successor agency under Public Law 103–354 442–4, ''District Director Report.'' Earlier reviews will be made when needed to resolve operational and management problems that may arise.

(B) Subsequent reviews will be made for all delinquent and other borrowers having financial problems and reported to the State Director by a copy of Form FmHA or its successor agency under Public Law 103–354 442–4. These borrowers will adopt a positive action plan (see guide 22). The plan will be reviewed quarterly by the District Director until the delinquency is eliminated or other servicing actions are recommended.

(C) The District Director may, after the end of the borrower's third fiscal year of operation, exempt it from submitting management reports provided it:

(*1*) Is current on its loan payments.

(*2*) Is meeting the conditions of its agreements with FmHA or its successor agency under Public Law 103–354.

(*3*) Has demonstrated its ability to successfully operate and manage the organization and has not obtained subsequent loans in the last 3 years which have significantly altered the scope of the project.

(*4*) Has the State Director's written concurrence for all borrowers whose FmHA or its successor agency under Public Law 103–354 indebtedness exceeds $1,000,000.

(D) Borrowers qualifying for this exemption will still be required to submit a copy of their audits or annual financial statements.

(E) Ordinarily and exception will not be made to the requirement for the borrower to submit a copy of its annual budget.

(F) The District Director or State Director may reinstate the requirements for submission of periodic management reports for those borrowers who became delinquent or otherwise are not carrying out their agreements with FmHA or its successor agency under Public Law 103–354 or require more frequent submission of management reports. This requirement will be reinstated for borrowers receiving a subsequent loan which will significantly alter the scope of the project.

(G) The District Director may accept management reports which are not prepared on page 1 of Form FmHA or its successor agency under Public Law 103–354 442–2 Schedule 1 but contain like information. However, page 2 of this form must be used by all borrowers required to furnish management reports.

(iii) *The State Director* is responsible for:

(A) The review of the District Director's submission for all borrowers whose indebtedness exceeds $1,000,000. The State Director will forward comments to the District Director in order that a response, if necessary, can be sent to the borrower within 40 calendar days after the borrower's submission of its management reports.

(B) The review of all delinquent and problem case borrower management reports. Ordinarily, review findings and instructions regarding further management assistance will be determined, and provided to the District Office within 20 calendar days of submission for delinquent and problem borrowers.

(C) Forwarding to the National Office copies of review findings, instructions for further assistance, and positive action plans on delinquent borrowers and borrowers experiencing financial problems, at same time the findings and instructions are provided to the District Office.

(2) *Audits and financial statements*—(i) *The District Director* is responsible for obtaining all audit reports and financial statements from the borrower. Those received from borrowers whose FmHA or its successor agency under Public Law 103–354 indebtedness exceeds $1,000,000 and from delinquent and problem case borrowers will be promptly reviewed and forwarded to the State Director with appropriate comments.

(ii) *The District Director* is responsible for the review of audits and financial statements and for recommendations and instructions for borrower assistance. For borrowers required to have audits, in accordance with paragraph (q)(4)(i)(A) of this section, the District Director is also responsible for any necessary follow up required because of audit resolution items received from the cognizant agencies.

(iii) *The State Director* is responsible for the review of audits of borrowers whose indebtedness exceeds $1,000,000

and delinquent and problem case borrowers. The State Director may recommend to the District Director any necessary actions to be taken.

(3) *Security inspections.* A representative of the borrower will ordinarily accompany the District Director during each inspection.

(i) *Post construction inspection.* The District Director will inspect each facility between the beginning of the ninth and the end of the eleventh full month of the first year of operation. This will normally coincide with the District Director's review of the borrower's total operational and management practices described in paragraph (r)(1)(ii)(A) of this section. The results of this inspection will be reported to the State Director on Form FmHA or its successor agency under Public Law 103–354 1924–12. Earlier inspections will be made when operational or other problems indicate a need. The State Director will provide guidance to the District Director to assure that action will be taken to correct project deficiencies.

(ii) *Subsequent inspections.* The District Director will make subsequent inspections of borrower security property and facilities during each third year after the post construction inspection. The results of this inspection will be reported to the State Director on Form FmHA or its successor agency under Public Law 103–354 1924–12.

(iii) *Special inspections.* The District Director may request, or the State Director may determine, the need for a member of the State staff to make certain security inspections. In such cases, the State Director will detail a staff member to make such inspections.

(iv) *Follow-up inspections.* If any inspection discloses deficiencies or exceptions, or otherwise indicates a need for subsequent inspections prior to the third year, the State Director will prescribe the type and frequency of follow-up inspections. These inspections will be made until all deficiencies and exceptions have been corrected.

(4) *Civil rights compliance reviews* will be performed under subpart E of part 1901 of this chapter for the life of the loan.

(5) Other loan servicing actions will be in accordance with subparts E and O of part 1951 of this chapter.

[50 FR 7296, Feb. 22, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1942.17, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTE: At 69 FR 69104, Nov. 26, 2004, § 1942.17 was amended by removing paragraph (q)(1)(iii), and redesignating paragraph (q)(1)(iv) as (q)(1)(iii), effective Feb. 24, 2005.

§ 1942.18 Community facilities—Planning, bidding, contracting, constructing.

(a) *General.* This section is specifically designed for use by owners including the professional or technical consultants and/or agents who provide assistance and services such as architectural, engineering, inspection, financial, legal or other services related to planning, bidding, contracting, and constructing community facilities. These procedures do not relieve the owner of the contractual obligations that arise from the procurement of these services. For this section, an owner is defined as an applicant, borrower, or grantee.

(b) *Technical services.* Owners are responsible for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the owner's ''in house'' engineer or architect or through contract, subject to FmHA or its successor agency under Public Law 103–354 concurrence. Architects and engineers must be licensed in the State where the facility is to be constructed.

(c) *Preliminary reports.* Preliminary architectural and engineering reports must conform with customary professional standards. Preliminary report guidelines for water, sanitary sewer, solid waste, storm sewer, and other essential community facilities are available from FmHA or its successor agency under Public Law 103–354.

(d) *Design policies.* Facilities financed by FmHA or its successor agency under Public Law 103–354 will be designed and constructed in accordance with sound

engineering and architectural practices, and must meet the requirements of Federal, State and local agencies.

(1) *Natural resources.* Facility planning should be responsive to the owner's needs and should consider the long-term economic, social and environmental needs as set forth in this section. FmHA or its successor agency under Public Law 103–354's environmental considerations are under subpart G of part 1940 of this chapter.

(i) *Floodplains and wetlands.* Facilities must avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and wetlands, and avoid direct or indirect support of floodplain and wetland development whenever there is a practicable alternative. This subject is more fully discussed in Executive Order 11988, Executive Order 11990, and Water Resources Council's Floodplain Management Guidelines (43 FR 6030) which is available in all FmHA or its successor agency under Public Law 103–354 offices. Facilities located in special flood and mudslide prone areas must comply with FmHA or its successor agency under Public Law 103–354's eligibility and insurance requirements in subpart B of part 1806 of this chapter (FmHA Instruction 426.2).

(ii) *Coastal Zone Management.* Facilities shall be designed and constructed in a manner consistent with approved State management programs, under the Coastal Zone Management Act of 1972 (Pub. L. 92–583 section 307 (c)(1) and (2)) as supplemented by the Department of Commerce regulations 15 CFR part 930.

(iii) *Wild and Scenic Rivers.* Facilities shall be designed and constructed in order that designated wild and scenic rivers be preserved in free-flowing condition and that they and their immediate environments be protected for the benefit and enjoyment of present and future generations under the Wild and Scenic Rivers Act of 1978 (Pub. L. 95–625).

(iv) *Endangered species.* Facilities shall be designed and constructed in a manner to conserve, to the extent practicable, the various endangered and threatened species of fish or wildlife and plants, and will not jeopardize their continued existence and will not result in destruction or modification of the habitat of species in the Endangered Species Act of 1973 (Pub. L. 93–205).

(2) *Historic preservation.* Facilities should be designed and constructed in a manner which will contribute to the preservation and enhancement of sites, structures, and objects of historical, architectural, and archaeological significance. All facilities must comply with the National Historic Preservation Act of 1966 (16 U.S.C 470) as supplemented by 36 CFR part 800 and Executive Order 11593, ''Protection and Enhancement of the Cultural Environment.'' subpart F of part 1901 of this chapter sets forth procedures for the protection of Historic and Archaeological Properties.

(3) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90–480) as implemented by the General Services Administration regulations 41 CFR 101–19.6 and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112) as implemented by 7 CFR parts 15 and 15b.

(4) *Health Care Facilities.* The proposed facility must meet the minimum standards for design and construction contained in the American Institute of Architects Press Publication No. ISBN 0–913962–96–1, ''Guidelines for Construction and Equipment of Hospital and Medical Facilities,'' 1987 Edition. The facility must also meet the life/safety aspects of the *1985* edition of the National Fire Protection Association (NFPA) 101 Life Safety Code, or any subsequent code that may be designated by the Secretary of HHS. All publications referenced in this section are available in all FmHA or its successor agency under Public Law 103–354 State Offices. Under §1942.17(j)(8)(ii) of this subpart, a statement by the responsible regulatory agency that the facility meets the above standards will be required. Any exceptions must have prior National Office concurrence.

(5) *Energy conservation.* Facility design should consider cost effective energy saving measures or devices.

(6) *Lead base paints.* Lead base paints shall not be used in facilities designed for human habitation. Owners must comply with the Lead Base Paints Poisoning and Prevention Act of 1971 (42 U.S.C. 4801) and the National Consumer Health Information and Health Promotion Act of 1976 (Pub. L. 94–317) with reference to paint specifications used according to exhibit H of subpart A of part 1924 of this chapter.

(7) *Fire protection.* Water facilities must have sufficient capacity to provide reasonable fire protection to the extent practicable.

(8) *Growth capacity.* Facilities must have sufficient capacity to provide for reasonable growth to the extent practicable.

(9) *Water conservation.* Owners are encouraged, when economically feasible, to incorporate water conservation practices into a facility's design. For existing water systems, evidence must be provided showing that the distribution system water losses do not exceed reasonable levels.

(10) *Water quality.* All water facilities must meet the requirements of the Safe Drinking Water Act (Pub. L. 93–523) and provide water of a quality that meets the current Interim Primary Drinking Water Regulations (40 CFR part 141).

(11) *Combined sewers.* New combined sanitary and storm water sewer facilities will not be financed by FmHA or its successor agency under Public Law 103–354. Extensions to existing combined systems can only be financed when separate systems are impractical.

(12) *Compliance.* All facilities must meet the requirements of Federal, State, and local agencies having the appropriate jurisdiction.

(13) *Dam safety.* Projects involving any artificial barrier which impounds or diverts water, or the rehabilitation or improvement of such a barrier, should comply with the provisions for dam safety as discussed in the Federal Guidelines for Dam Safety (Government Printing Office stock No. 041–001–00187–5) as prepared by the Federal Coordinating Council for Science, Engineering and Technology.

(14) *Pipe.* All pipe used shall meet current American Society for Testing Materials (ASTM) or American Water Works Association (AWWA) standards.

(15) *Water system testing.* For new water systems or extensions to existing water systems, leakage shall not exceed 10 gallons per inch of pipe diameter per mile of pipe per 24 hours when tested at 1½ times the working pressure or rated pressure of the pipe, whichever is greater.

(16) *Metering devices.* Water facilities financed by FmHA or its successor agency under Public Law 103–354 will have metering devices for each connection. An exception to this requirement may be granted by the FmHA or its successor agency under Public Law 103–354 State Director when the owner demonstrates that installation of metering devices would be a significant economic detriment and that environmental consideration would not be adversely affected by not installing such devices.

(17) *Seismic safety.* (i) All new building construction shall be designed and constructed in accordance with the seismic provisions of one of the following model building codes or the latest edition of that code providing an equivalent level of safety to that contained in latest edition of the National Earthquake Hazard Reduction Program's (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions):

(A) 1991 International Conference of Building Officials (ICBO) Uniform Building Code;

(B) 1993 Building Officials and Code Administrators International, Inc. (BOCA) National Building Code; or

(C) 1992 Amendments to the Southern Building Code Congress International (SBCCI) Standard Building Code.

(ii) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications will be evidence of compliance with the seismic requirements of the appropriate building code.

(e) *Construction contracts.* Contract documents must be sufficiently descriptive and legally binding in order to accomplish the work as economically and expeditiously as possible.

(1) *Standard construction contract documents* are available from FmHA or its successor agency under Public Law 103–354. When FmHA or its successor agency under Public Law 103–354's standard construction contract documents are used, it will normally not be necessary for the Office of the General Counsel (OGC) to perform a detailed legal review. If the construction contract documents utilized are not in the format of guide forms previously approved by FmHA or its successor agency under Public Law 103–354, OGC's review of the construction contract documents will be obtained prior to their use.

(2) *Contract review and approval.* The owner's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are adequate, and that the persons executing these documents have been properly authorized to do so. The contract documents, bids bonds, and bid tabulation sheets will be forwarded to FmHA or its successor agency under Public Law 103–354 for approval prior to awarding. All contracts will contain a provision that they are not in full force and effect until they have been approved by FmHA or its successor agency under Public Law 103–354. The FmHA or its successor agency under Public Law 103–354 State Director or designee is responsible for approving construction contracts with the legal advice and guidance of the OGC when necessary.

(3) *Separate contracts.* Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting and multiplicity of small contracts on the same job), should be avoided whenever it is practical to do so. Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the job site in a finished or semifinished state such as perfabricated buildings and lift stations. Contracts may also be awarded for material delivered to the job site and installed by a patented process or method.

(f) *Utility purchase contracts.* Applicants proposing to purchase water or other utility service from private or public sources shall have written contracts for supply or service which are reviewed and approved by the FmHA or its successor agency under Public Law 103–354 State Director or designee. To the extent practical, FmHA or its successor agency under Public Law 103–354 review and approval of such contracts should take place prior to their execution by the owner. Form FmHA or its successor agency under Public Law 103–354 442–30, ''Water Purchase Contract,'' may be used when appropriate. If the FmHA or its successor agency under Public Law 103–354 loan will be repaid from system revenues, the contract will be pledged to FmHA or its successor agency under Public Law 103–354 as part of the security for the loan. Such contracts will:

(1) Include a commitment by the supplier to furnish, at a specified point, an adequate quantity of water or other service and provide that, in case of shortages, all of the supplier's users will proportionately share shortages. If it is impossible to obtain a firm commitment for either an adequate quantity or sharing shortages proportionately, a contract may be executed and approved provided adequate evidence is furnished to enable FmHA or its successor agency under Public Law 103–354 to make a determination that the supplier has adequate supply and/or treatment facilities to furnish its other users and the applicant for the foreseeable future; and

(i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(ii) A suitable alternative supply could be arranged within the repayment ability of the borrower if it should become necessary; or

(iii) Prior approval is obtained from the National Office. The following information should be submitted to the National Office:

(A) Transmittal memorandum including:

(*1*) Alternative supplies considered; and

(*2*) Recommendations and comments; and

(*3*) Any other necessary supporting information.

(B) Copies of the following:

(*1*) Proposed letter of conditions; and

(*2*) Form FmHA or its successor agency under Public Law 103–354 442–7, ''Operating Budget''; and

(*3*) Form FmHA or its successor agency under Public Law 103–354 442–3, ''Balance Sheet''; and

(*4*) Preliminary Engineering Report; and

(*5*) Proposed Contract.

(C) Owner and FmHA or its successor agency under Public Law 103–354 engineer's comments and recommendations.

(D) Documentation and statement from the supplier that it has an adequate supply and treatment facilities available to meet the needs of its users and the owner for the foreseeable future.

(2) Set out the ownership and maintenance responsibilities of the respective parties including the master meter if a meter is installed at the point of delivery.

(3) Specify the initial rates and provide some kind of escalator clause which will permit rates for the association to be raised or lowered proportionately as certain specified rates for the supplier's regular customers are raised or lowered. Provisions may be made for altering rates in accordance with the decisions of the appropriate State agency which may have regulatory authority.

(4) Run for a period of time which is at least equal to the repayment period of the loan. State Directors may approve contracts for shorter periods of time if the supplier cannot legally contract for such period, or if the owner and supplier find it impossible or impractical to negotiate a contract for the maximum period permissible under State law, provided:

(i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(ii) The contract contains adequate provisions for renewal; or

(iii) A determination is made that in the event the contract is terminated, there are or will be other adequate sources available to the owner that can feasibly be developed or purchased.

(5) Set out in detail the amount of connection or demand charges, if any, to be made by the supplier as a condition to making the service available to the owner. However, the payment of such charges from loan funds shall not be approved unless FmHA or its successor agency under Public Law 103–354 determines that it is more feasible and economical for the owner to pay such a connection charge than it is for the owner to provide the necessary supply by other means.

(6) Provide for a pledge of the contract to FmHA or its successor agency under Public Law 103–354 as part of the security for the loan.

(7) Not contain provisions for:

(i) Construction of facilities which will be owned by the supplier. This does not preclude the use of money paid as a connection charge for construction to be done by the supplier.

(ii) Options for the future sale or transfer. This does not preclude an agreement recognizing that the supplier and owner may at some future date agree to a sale of all or a portion of the facility.

(g) *Sewage treatment and bulk water sales contracts.* Owners entering into agreements with private or public parties to treat sewage or supply bulk water shall have written contracts for such service and all such contracts shall be subject to FmHA or its successor agency under Public Law 103–354 concurrence. Paragraph (f) of this section should be used as a guide to prepare such contracts.

(h) *Performing construction.* Owners are encouraged to accomplish construction through contracts with recognized contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer or architect prepares design drawings and specifications and inspects construction and furnishes inspection reports as required by paragraph (o) of this section. For other than utility-type facilities, inspection services may be provided by individuals as approved by the FmHA or its successor agency

under Public Law 103–354 State Director. In either case, the requirements of paragraph (j) of this section apply. Payments for construction will be handled under § 1942.17(p)(5) of this part.

(i) *Owner's contractual responsibility.* This subpart does not relieve the owner of any contractual responsibilities under its contract. The owner is responsible for the settlement of all contractural and administrative issues arising out of procurements entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the local, State, or Federal authority as may have jurisdiction.

(j) *Owner's procurement regulations.* Owner's procurement regulations must comply with the following standards:

(1) *Code of conduct.* Owners shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by FmHA or its successor agency under Public Law 103–354 funds. No employee, officer or agent of the owner shall participate in the selection, award, or administration of a contract supported by FmHA or its successor agency under Public Law 103–354 funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

(i) The owner's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.

(ii) To the extent permitted by State or local law or regulations, the owner's standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the owner's officers, employees, agents, or by contractors or their agents.

(2) *Maximum open and free competition.* All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: Placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying material(s), the owner and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. For a water or waste disposal facility, FmHA or its successor agency under Public Law 103–354 shall consider fully any recommendation made by the loan applicant or borrower concerning the technical design and choice of materials to be used for such a facility. If FmHA or its successor agency under Public Law 103–354 determines that a design or material, other than those that were recommended should be considered by including them in the procurement process as an acceptable design or material in the water or waste disposal facility, FmHA or its successor agency under Public Law 103–354 shall provide such applicant or borrower with a comprehensive justification for such a determination. The justification will be documented in writing.

(3) *Owner's review.* Proposed procurement actions shall be reviewed by the owner's officials to avoid the purchase of unnecessary or duplicate items. Consideration should be given to consolidation or separation of procurement items to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, owners are encouraged to enter into State and local intergovernmental

agreements for procurement or use of common goods and services.

(4) *Solicitation of offers,* whether by competitive sealed bids or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors shall be clearly stated.

(ii) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(5) *Small, minority, and women's businesses and labor surplus area firms.* (i) affirmative steps should be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(A) Include qualified small and minority businesses on solicitation lists.

(B) Assure that small and minority businesses are solicited whenever they are potential sources.

(C) When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(D) Where the requirement permits, establish delivery schedules which will encourage participation by small and minority businesses.

(E) Use the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the Department of Commerce.

(F) If any subcontracts are to be let, require the prime contractor to take the affirmative steps in paragraphs (j)(5)(i) (A) through (E) of this section.

(ii) Owners shall take similar appropriate affirmative action in support of women's businesses.

(iii) Owners are encouraged to procure goods and services from labor surplus areas.

(iv) Owners shall submit a written statement or other evidence to FmHA or its successor agency under Public Law 103–354 of the steps taken to comply with paragraphs (j)(5)(i) (A) through (F), (j)(5)(ii), and (j)(5)(iii) of this section.

(6) *Contract pricing.* Cost plus a percentage of cost method of contracting shall not be used.

(7) *Unacceptable bidders.* The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(i) An engineer or architect as an individual or firm who has prepared plans and specifications or who will be responsible for monitoring the construction;

(ii) Any firm or corporation in which the owner's architect or engineer is an officer, employee, or holds or controls a substantial interest;

(iii) The governing body's officers, employees, or agents;

(iv) Any member of the immediate family or partners in paragraphs (j)(7)(i), (j)(7)(ii), or (j)(7)(iii) of this section; or

(v) An organization which employs, or is about to employ, any person in paragraph (j)(7)(i), (j)(7)(ii), (j)(7)(iii) or (j)(7)(iv) of this section.

(8) *Contract award.* Contracts shall be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall include but not be limited to matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts shall not be made with parties who are suspended or debarred.

(k) *Procurement methods.* Procurement shall be made by one of the following methods: small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method for construction contracts.

(1) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than $10,000. If small purchase procedures are used for a procurement, written price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) *Competitive sealed bids.* In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method the following shall apply:

(i) At a sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of qualified sources. In addition, the invitation shall be publicly advertised.

(ii) The invitation for bids, including specifications and perinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (j)(4) of this section.

(iii) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs shall be considered in determining which bid is lowest.

(v) Any or all bids may be rejected by the owner when it is in their best interest.

(3) *Competitive negotiation.* In competitive negotiations, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner, price and other factors considered. Unsuccessful offerors should be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation.

(4) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive sealed bids (formal advertising) or

competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(i) The item is available only from a single source; or

(ii) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or

(iii) After solicitation of a number of sources, competition is determined inadequate; or

(iv) No acceptable bids have been received after formal advertising; or

(v) The procurement of architectural/engineering and other professional services.

(vi) The aggregate amount does not exceed $50,000.

(5) *Additional procurement methods.* Additional innovative procurement methods may be used by the owner with prior written approval of the FmHA or its successor agency under Public Law 103–354 National Office.

(l) *Contracting methods.* The services of the consulting engineer or architect and the general construction contractor shall normally be procured from unrelated sources in accordance with paragraph (j)(7) of this section. Procurement methods which combine or rearrange design, inspection or construction services (such as design/build or construction management) may be used with FmHA or its successor agency under Public Law 103–354 written approval. If the contract amount exceeds $100,000, National Office prior concurrence must be obtained under § 1942.9(b) of this subpart. This method cannot be used when an FmHA or its successor agency under Public Law 103–354 grant is involved. The owner should request FmHA or its successor agency under Public Law 103–354 approval by providing at least the following information to FmHA or its successor agency under Public Law 103–354:

(1) The owner's written request to use an unconventional contracting method with a description of the proposed method.

(2) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It should include items such as:

(i) A nontechnical statement summarizing the work to be performed by the contractor and the results expected.

(ii) The sequence in which the work is to be performed and a proposed construction schedule.

(3) A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be responsible for:

(i) Any extra cost which may result from errors or omissions in the services provided under the contract.

(ii) Compliance with all Federal, State, and local requirements effective on the contract execution date.

(4) Where noncompetitive negotiation is proposed, an evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

(5) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.

(6) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.

(7) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by FmHA or its successor agency under Public Law 103–354 prior to the start of construction.

(8) The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.

(m) *Contracts awarded prior to preapplications.* Owners awarding construction or other procurement contracts prior to filing a pre-application with FmHA or its successor agency under Public Law 103–354 must comply with the following:

(1) *Evidence.* Provide conclusive evidence that the contract was entered into without intent to circumvent the requirements of FmHA or its successor agency under Public Law 103–354 regulations. The evidence will consist of at least the following:

(i) The lapse of a reasonable period of time between the date of contract award and the date of filing the preapplication which clearly indicates

an irreconcilable failure of previous financial arrangements; or

(ii) A written statement explaining initial plans for financing the project and reasons for failure to obtain the planned credit.

(2) *Modifications.* Modify the outstanding contract to conform with the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the FmHA or its successor agency under Public Law 103–354 financing. When all construction is complete and it is impracticable to modify the contracts, the owner must provide the certification required by paragraph (m)(4) of this section.

(3) *Consultant's certification.* Provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications.

(4) *Owner's certification.* Provide a certification by the owner that the contractor has complied with all statutory and executive requirements related to FmHA or its successor agency under Public Law 103–354 financing for construction already performed even though the requirements may not have been included in the contract documents.

(n) *Contract provisions.* In addition to provisions defining a sound and complete contract, any recipient of FmHA or its successor agency under Public Law 103–354 funds shall include the following contract provisions or conditions in all contracts:

(1) *Remedies.* Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should also be included.

(2) *Termination.* All contracts exceeding $10,000, shall contain provisions for termination by the owner including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions when the contract may be terminated because of circumstances beyond the control of the contractor.

(3) *Surety.* In all contracts for construction or facility improvements awarded exceeding $100,000, the owner shall require bonds, a bank letter of credit or cash deposit in escrow assuring performance and payment, each in the amount of 100 percent of the contract cost. The surety will normally be in the form of performance bonds and payment bonds; however, when other methods of surety may be necessary, bid documents must contain provisions for such alternative types of surety. The use of surety other than performance bonds and payment bonds requires concurrence by the National Office after submission of a justification by the State Director together with the proposed form of escrow agreement or letter of credit. For contracts of lesser amounts, the owner may require surety. When a surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Form FmHA or its successor agency under Public Law 103–354 1924–10, ''Release by Claimants,'' and Form FmHA or its successor agency under Public Law 103–354 1924–9, ''Certificate of Contractor's Release,'' may be obtained at the local FmHA or its successor agency under Public Law 103–354 office and used for this purpose. The United States, acting through the Farmers Home Administration or its successor agency under Public Law 103–354, will be named as co-obligee on all surety unless prohibited by State law. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the facility is located.

(4) *Equal Employment Opportunity.* All contracts awarded in excess of $10,000 by owners shall contain a provision requiring compliance with Executive

Order 11246, entitled, ''Equal Employment Opportunity,'' as amended by Executive Order 11375, and as supplemented by Department of Labor regulations 41 CFR part 60.

(5) *Anti-kickback.* All contracts for construction shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874). This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report all suspected or reported violations to FmHA or its successor agency under Public Law 103–354.

(6) *Records.* All negotiated contracts (except those of $2,500 or less) awarded by owners shall include a provision to the effect that the owner, FmHA or its successor agency under Public Law 103–354, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan program for the purpose of making audits, examinations, excerpts, and transcriptions. Owners shall require contractors to maintain all required records for three years after owners make final payments and all other pending matters are closed.

(7) *State Energy Conservation Plan.* Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

(8) *Change orders.* The construction contract shall require that all contract change orders be approved in writing by FmHA or its successor agency under Public Law 103–354.

(9) *FmHA or its successor agency under Public Law 103–354 concurrence.* All contracts must contain a provision that they shall not be effective unless and until the FmHA or its successor agency under Public Law 103–354 State Director or designee concurs in writing.

(10) *Retainage.* All construction contracts shall contain adequate provisions for retainage. No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the contractor. The retainage shall not be less than an amount equal to 10 percent of an approved partial payment estimate until 50 percent of the work has been completed. If the job is proceeding satisfactory at 50 percent completion, further partial payments may be made in full, however, previously retained amounts shall not be paid until construction is substantially complete. Additional amounts may be retained if the job is not proceeding satisfactorily, but in no event shall the total retainage be more than 10 percent of the value of the work completed.

(11) *Other compliance requirements.* Contracts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to FmHA or its successor agency under Public Law 103–354 and to the U.S. Environmental Protection Agency, Assistant Administrator for Enforcement. Solicitations and contract provisions shall include the requirements of 40 CFR part 15.4(c) as set forth in guide 18 of this subpart which is available in all FmHA or its successor agency under Public Law 103–354 offices.

(o) *Contract administration.* Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(1) *Preconstruction conference.* Prior to beginning construction, the owner will schedule a preconstruction conference where FmHA or its successor agency under Public Law 103–354 will review the planned development with the

owner, its architect or engineer, resident inspector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form FmHA or its successor agency under Public Law 103–354 1924–16, ''Record of Preconstruction Conference,'' and the discussion and agreements will be documented. Form FmHA or its successor agency under Public Law 103–354 1924–16 may be used for this purpose.

(2) *Monitoring reports.* Each owner will be required to monitor and provide reports to FmHA or its successor agency under Public Law 103–354 on actual performance during construction for each project financed, or to be financed, in whole or in part with FmHA or its successor agency under Public Law 103–354 funds to include:

(i) A comparison of actual accomplishments with the construction schedule established for the period. The partial payment estimate may be used for this purpose.

(ii) A narrative statement giving full explanation of the following:

(A) Reasons why established goals were not met.

(B) Analysis and explanation of cost overruns or high unit costs and how payment is to be made for the same.

(iii) If events occur between reports which have a significant impact upon the project, the owner will notify FmHA or its successor agency under Public Law 103–354 as soon as any of the following conditions are met:

(A) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives or prevent the meeting of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(B) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected or which will result in cost underruns or lower unit costs than originally planned and which may result in less FmHA or its successor agency under Public Law 103–354 assistance.

(3) *Inspection.* Full-time resident inspection is required for all construction unless a written exception is made by FmHA or its successor agency under Public Law 103–354 upon written request of the owner. Unless otherwise agreed, the resident inspector will be provided by the consulting architect/engineer. Prior to the preconstruction conference, the architect/engineer will submit a resume of qualifications of the resident inspector to the owner and to FmHA or its successor agency under Public Law 103–354 for acceptance in writing. If the owner provides the resident inspector, it must submit a resume of the inspector's qualifications to the project architect/engineer and FmHA or its successor agency under Public Law 103–354 for acceptance in writing prior to the preconstruction conference. The resident inspector will work under the general supervision of the project architect/engineer. A guide format for preparing daily inspection reports (Guide 11 of this subpart) and Form FmHA or its successor agency under Public Law 103–354 1924–18, ''Partial Payment Estimate,'' are available on request from FmHA or its successor agency under Public Law 103–354.

(4) *Inspector's daily diary.* The resident inspector will maintain a record of the daily construction progress in the form of a daily diary and daily inspection reports as follows:

(i) A complete set of all daily construction records will be maintained and the original set furnished to the owner upon completion of construction.

(ii) All entries shall be legible and shall be made in ink.

(iii) Daily entries shall include but not be limited to the date, weather conditions, number and classification of personnel working on the site, equipment being used to perform the work, persons visiting the site, accounts of substantive discussions, instructions given to the contractors, directions received, all significant or unusual happenings involving the work, any delays, and daily work accomplished.

(iv) The daily entries shall be made available to FmHA or its successor agency under Public Law 103–354 personnel and will be reviewed during project inspections.

(5) *Prefinal inspections.* A prefinal inspection will be made by the owner, resident inspector, project architect or engineer, representatives of other agencies involved, the District Director and a FmHA or its successor agency under Public Law 103–354 State Office staff representative, preferably the State Staff architect or engineer. Prefinal inspections may be made without FmHA or its successor agency under Public Law 103–354 State Office staff participation if the State Director or a designee determines that the facility does not utilize complicated construction techniques, materials or equipment for facilities such as small fire stations, storage buildings or minor utility extensions, and that an experienced District Office staff representative will be present. The inspection results will be recorded on Form FmHA or its successor agency under Public Law 103–354 1924–12, ''Inspection Report,'' and a copy provided to all appropriate parties.

(6) *Final inspection.* A final inspection will be made by FmHA or its successor agency under Public Law 103–354 before final payment is made.

(7) *Change is development plans.* (i) Changes in development plans may be approved by FmHA or its successor agency under Public Law 103–354 when requested by owners, provided:

(A) Funds are available to cover any additional costs; and

(B) The change is for an authorized loan purpose; and

(C) It will not adversely affect the soundness of the facility operation or FmHA or its successor agency under Public Law 103–354's security; and

(D) The change is within the scope of the contract.

(ii) Changes will be recorded on Form FmHA or its successor agency under Public Law 103–354 1924–7, ''Contract Change Order,'' or, other similar forms may be used with the prior approval of the State Director or designee. Regardless of the form, change orders must be approved by the FmHA or its successor agency under Public Law 103–354 State Director or a designated representative.

(iii) Changes should be accomplished only after FmHA or its successor agency under Public Law 103–354 approval on all changes which affect the work and shall be authorized only by means of contract change order. The change order will include items such as:

(A) Any changes in labor and material and their respective cost.

(B) Changes in facility design.

(C) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule.

(D) Any increase or decrease in the time to complete the project.

(iv) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

[50 FR 7296, Feb. 22, 1985, as amended at 52 FR 8035, Mar. 13, 1987; 53 FR 6791, Mar. 3, 1988; 54 FR 14334, Apr. 11, 1989; 54 FR 18883, May 3, 1989; 61 FR 65156, Dec. 11, 1996]

§ 1942.19 Information pertaining to preparation of notes or bonds and bond transcript documents for public body applicants.

(a) *General.* This section includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, herein referred to as bonds). This section is made available to applicants as appropriate for application processing and loan docket preparation.

(b) *Policies related to use of bond counsel.* Preparation of the bonds and the bond transcript documents will be the responsibility of the applicant. Public body applicants will obtain the services and opinion of recognized bond counsel with respect to the validity of a bond issue, except as provided in (b) (1) through (3) below. The applicant normally will be represented by a local attorney who will obtain the assistance of a recognized bond counsel firm which has experience in municipal financing with such investors as investment dealers, banks, and insurance companies.

(1) *Issues of $250,000 or less.* At the option of the applicant for issues of $250,000 or less, bond counsel may be used for the issuance of a final opinion only and not for the preparation of the bond transcript and other documents

when the applicant, FmHA or its successor agency under Public Law 103–354, and bond counsel have agreed in advance as to the method of preparation of the bond transcript documents. Under such circumstances the applicant will be responsible for the preparation of the bond transcript documents.

(2) *Issues of $50,000 or less.* At the option of the applicant and with the prior approval of the FmHA or its successor agency under Public Law 103–354 State Director, the applicant need not use bond counsel if:

(i) The amount of the issue does not exceed $50,000 and the applicant recognizes and accepts the fact that processing the application may require additional legal and administrative time.

(ii) There is a significant cost saving to the applicant particularly with reference to total legal fees after determining what bond counsel would charge as compared with what the local attorney will charge without bond counsel.

(iii) The local attorney is able and experienced in handling this type of legal work.

(iv) The applicant understands that, if it is required by FmHA or its successor agency under Public Law 103–354 to refinance its loan pursuant to the statutory refinancing requirements, it will probably have to obtain at its expense a bond counsel's opinion at that time.

(v) All bonds will be prepared in accordance with this regulation and will conform as nearly as possible to the preferred methods of preparation stated in paragraph (e) of this section but still be consistent with State law.

(vi) Many matters necessary to comply with FmHA or its successor agency under Public Law 103–354 requirements such as land rights, easements, and organizational documents will be handled by the applicant's local attorney. Specific closing instructions will be issued by the Office of the General Counsel of the U.S. Department of Agriculture for the guidance of FmHA or its successor agency under Public Law 103–354.

(3) *For loans of less than $500,000.* The applicant shall not be required to use bond counsel in a straight mortgage-note situation where competitive bidding is not required for the sale of the debt instrument, unless a complicated financial situation exists with the applicant. In addition, if there is a known backlog in a particular OGC regional office the applicant will be advised of such backlog and it will be suggested to the applicant that the appointment of bond counsel may be more expeditious. However, it will be the decision of the applicant whether or not to appoint bond counsel. The applicant must comply with (b)(2) (iii) through (vi) of this section.

(c) *Bond transcript documents.* Any questions with respect to FmHA or its successor agency under Public Law 103–354 requirements should be discusesd with the FmHA or its successor agency under Public Law 103–354 representatives. The bond counsel (or local counsel where no bond counsel is involved) is required to furnish at least two complete sets of the following to the applicant, who will furnish one complete set to FmHA or its successor agency under Public Law 103–354:

(1) Copies of all organizational documents.

(2) Copies of general incumbency certificate.

(3) Certified copies of minutes or excerpts therefrom of all meetings of the applicant's governing body at which action was taken in connection with the authorization and issuance of the bonds.

(4) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding of a favorable bond election, if such an election is necessary in connection with bond issuance.

(5) Certified copies of the resolution or ordinances or other documents, such as the bond authorizing resolutions or ordinance and any resolution establishing rates and regulating the use of the improvement, if such documents are not included in the minutes furnished.

(6) Copies of official Notice of Sale and affidavit of publication of Notice of Sale where a public sale is required by State statute.

(7) Specimen bond, with any attached coupons.

(8) Attorney's no-litigation certificate.

(9) Certified copies of resolutions or other documents pertaining to the bond award.

(10) Any additional or supporting documents required by bond counsel.

(11) For loans involving multiple advances of FmHA or its successor agency under Public Law 103–354 loan funds a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered on or before the first advance of loan funds and state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan subject only to changes during the advance of funds such as litigation resulting from the failure to advance loan funds, and receipt of closing certrificates.

(12) Preliminary approving opinion, if any, and final unqualified approving opinion of recognized bond counsel (or local counsel if no bond counsel is involved) including opinion regarding interest on bonds being exempt from Federal and any State income taxes. On approval of the Administrator, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinions to contain language referring to the last sentence of section 306(a)(1) or to section 309A(h) of the Consolidated Farm and Rural Development Act [7 U.S.C. 1926(a)(1) or 1929a(h)], and providing that if the bonds evidencing the indebtedness in question are required by the Federal Government and sold on an insured basis from the Agriculture Credit Insurance Fund, or the Rural Development Insurance Fund, the interest on such bonds will be included in gross income for the purpose of the Federal income tax statutes.

(d) *Interim financing from commercial sources during construction period for loans of $50,000 or more.* In all cases where it is possible for funds to be borrowed at current market interest rates on an interim basis from commercial sources, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA or its successor agency under Public Law 103–354 funds.

(e) *Permanent instruments for FmHA or its successor agency under Public Law 103–354 loans to repay interim commercial financing.* FmHA or its successor agency under Public Law 103–354 loans will be evidenced by the following types of instruments chosen in accordance with the following order of preference:

(1) *First preference—Form FmHA or its successor agency under Public Law 103–354 440–22, ''Promissory Note (Association or Organization)''.* If legally permissible use Form FmHA or its successor agency under Public Law 103–354 440–22 for insured loans.

(2) *Second preference—single instruments with amortized installments.* If Form FmHA or its successor agency under Public Law 103–354 440.22 is not legally permissible, use a single instrument providing for amortized installments. Show the full amount of the loan on the face of the document and provide for entering the date and amount of each FmHA or its successor agency under Public Law 103–354 advance on the reverse thereof or on an attachment to the instrument. Form FmHA or its successor agency under Public Law 103–354 440–22 should be followed to the extent possible. When principal payment is deferred, no attempt should be made to compute in dollar terms the amount of interest due on these installment dates. Rather the instrument should provide that ''interest only'' is due on these dates. The appropriate amortized installment computed as follows will be shown due on the installment date thereafter.

(i) Annual payments—Subtract the due date of the *last annual interest only* installment from the due date of the final installment to determine the number of annual payments applicable. When there are no interest only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA or its successor agency under

Public Law 103–354 Amortization Tables and round to the next higher dollar. Example of Computation of Annual Payment:

Date of Loan Closing: 7–5–1976
Amount of Loan: $100,000.00
Interest Rate: 5%
Amortization Period: 40 years
Interest Only Installments: 7–5–1977 and 7–5–1978
First Regular Installment: 7–5–1979
Final Installment: 7–5–2016
Computation:
2016 − 1978 = 38 annual payments
$100,000.00 × .05929 = $5,929.00 annual payment due

(ii) Semiannual payments—Multiply by two the number of years between the due date of the *last annual interest only* installment and the due date of the final installment to determine the correct number of semiannual periods applicable. When there are no interest only installments, multiply by two the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA or its successor agency under Public Law 103–354 Amortization Tables and round to the next higher dollar. Example of Computation of Semiannual Payment:

Date of Loan Closing: 7–5–1976
Amount of Loan: $100,000.00
Interest Rate: 5%
Amortization Period: 40 years
Interest Only Installments: 7–5–1977 and 7–5–1978
First Regular Installment: 7–5–1979
Final Installment: 7–5–2016
Computation:
2016 − 1978 = 38 × 2 = 76 semiannual periods
$100,000.00 × .02952 = $2,952.00 semiannual payment due

(iii) Monthly payments—Multiply by twelve the number of years between the due date of the *last annual interest only* installment and the final installment to determine the number of monthly payments applicable. When there are no interest only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in FmHA or its successor agency under Public Law 103–354 Amortization Tables and round to the next higher dollar. Example of Computation of Monthly Payment:

Date of Loan Closing: 7–5–1976
Amount of Loan: $100,000.00
Interest Rate: 5%
Amortization Period: 40 years
Interest Only Installments: 7–5–1977 and 7–5–1978
First Regular Installment: 7–5–1979
Final Installment: 7–5–2016
Computation:
2016 − 1978 = 38 × 12 = 456 monthly payments
$100,000.00 × .00491 = $491.00 monthly payment due

(3) *Third preference—single instrument with installments of principal plus interest.* If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the unmatured principal balance. The principal should be in an amount best adapted to making principal retirement and interest payments which closely approximate equal installments of combined interest and principal as required by the first two preferences.

(i) The repayment terms concerning interest only installments described in paragraph (e)(2) of this section, ''Second perference'' applies.

(ii) The instrument shall contain in substance the following provisions:

(A) A statement of principal maturities and due dates.

(B) Payments made on indebtedness evidenced by this instrument shall be applied to the interest due through the next installment due date and the balance to principal in accordance with the terms of the bond. Payments on delinquent accounts will be applied in the following sequence:

(*1*) Billed delinquent interest,
(*2*) Past due interest installments,
(*3*) Past due principal installments,
(*4*) Interest installment due, and
(*5*) Principal installment due.

Extra payments and payments made from security depleting sources shall be applied to the principal last to come due or as specified in the bond instrument.

(4) *Fourth preference—serial bonds with installments of principal plus interest.* If instruments described under the first, second, and third preferences are not legally permissible, *use serial bonds*

with a bond or bonds delivered in the amount of each advance. Bonds will be delivered in the order of their numbers. Such bonds will conform with the minimum requirements of paragraph (h) of this section. Rules for application of payments on serial bonds will be the same as those for principal installment single bonds as set out in the preceding paragraph (e)(3) of this section.

(f) *Multiple advances of FmHA or its successor agency under Public Law 103–354 funds using permanent instruments.* Where interim financing from commercial sources is not available, FmHA or its successor agency under Public Law 103–354 loan proceeds will be disbursed on an ''as needed by borrower'' basis in amounts not to exceed the amount needed during 30-day periods.

(g) *Multiple advances of FmHA or its successor agency under Public Law 103–354 funds using temporary debt instrument.* When none of the instruments described in paragraph (e) of this section are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advance of FmHA or its successor agency under Public Law 103–354 loan funds and will be for the full amount of the FmHA or its successor agency under Public Law 103–354 loan. The instrument will be prepared by bond counsel (or local counsel if bond counsel is not involved) and approved by the State Director and OGC. At the same time FmHA or its successor agency under Public Law 103–354 delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

(1) The date from which each advance will bear interest.

(2) The interest rate.

(3) A payment schedule providing for interest on outstanding principal at least annually.

(4) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instrument(s).

(h) *Minimum bond specifications.* The provisions of this paragraph are minimum specifications only, and must be followed to the extent legally permissible.

(1) *Type and denominations.* Bond resolutions or ordinances will provide that the instrument(s) be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than $1000). Single bonds may provide for repayment of principal plus interest or amortized installments; amortized installments are preferable from the standpoint of FmHA or its successor agency under Public Law 103–354. Coupon bonds will not be used unless required by State statute.

(i) To compute the value of each coupon when the bond denomination is consistent:

(A) Multiply the amount of the loan or advance by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment date.

(C) Divide the interest computed in (B) by the number of bonds securing the advance; this is the individual coupon amount.

(ii) to compute the value of each coupon when the bond denomination varies:

(A) Multiply the denomination of the bond by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment due date; this is the individual coupon amount.

(2) *Bond registration.* Bonds will contain provisions permitting registration as to both principal and interest. Bonds purchased by FmHA or its successor agency under Public Law 103–354 will be registered in the name of ''United States of America, Farmers Home Administration or its successor agency under Public Law 103–354,'' and will remain so registered at all times while the bonds are held or insured by the United States. The address of FmHA or its successor agency under Public Law 103–354 for registration purposes will be

that of the appropriate FmHA or its successor agency under Public Law 103–354 State Office.

(3) *Size and quality.* Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(4) *Date of bond.* Bonds will preferably be dated as of the day of delivery, however, may be dated another date at the option of the borrower and subject to approval by FmHA or its successor agency under Public Law 103–354. If the date of delivery is other than the date of the bond, the date of delivery will be stated in the bond. In all cases, interest will accrue from the date of delivery of the funds.

(5) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law. If consistent with the foregoing, monthly payments will be required and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual P&I bonds will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months, respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

(6) [Reserved]

(7) *Redemptions.* Bonds should contain customary redemption provisions, subject, however, to unlimited right of redemption without premium of any bonds held by FmHA or its successor agency under Public Law 103–354 except to the extent limited by the provisions under the ''Third Preference'' and ''Fourth Preference'' in paragraph (e) of this section.

(8) *Additional revenue bonds.* Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless the net revenues (that is, unless otherwise defined by the State statute, gross revenues less essential operation and maintenance expense) for the fiscal year preceding the year in which such parity bonds are to be issued, were 120 percent of the average annual debt service requirements on all bonds then outstanding and those to be issued; provided, that this limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan agreement.

(9) *Scheduling of FmHA or its successor agency under Public Law 103–354 payments when joint financing is involved.* In all cases in which FmHA or its successor agency under Public Law 103–354 is participating with another lender in the joint financing of the project to supply funds required by one applicant, the FmHA or its successor agency under Public Law 103–354 payments of principal and interest should approximate amortized installments.

(10) *Precautions.* The following types of provisions in debt instruments should be avoided.

(i) Provisions for the holder to manually post each payment to the instrument.

(ii) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than FmHA or its successor agency under Public Law 103–354, may post the date and amount of each advance or repayment on the instrument.

(iii) Defeasance provisions in loan or bond resolutions. When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes FmHA or its successor agency under Public Law 103–354 from requiring graduation before the final maturity date, it represents a violation of the statutory refinancing requirement, therefore it is disallowed.

(iv) Provisions that amend convenants contained in Forms FmHA 1942–47, ''Loan Resolution (Public Bodies),'' or FmHA 1942–9, ''Loan Resolution Security Agreement.''

(11) *Multiple Loan Instruments.* The following will be adhered to when preparing debt instruments:

(i) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments.

(ii) Loan funds obligated in different fiscal years and those obligated with different interest rates or terms in the same fiscal year will be evidenced by separate debt instruments.

(iii) Loan funds obligated for the same loan type in the same fiscal year at the same interest rate and term may be combined in the same debt instrument; provided the borrower has been notified on Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request for Obligation of Funds'', of the action.

(i) *Bidding by FmHA or its successor agency under Public Law 103–354.* Bonds offered for public sale shall be offered in accordance with State law, in such a manner to encourage public bidding. FmHA or its successor agency under Public Law 103–354 will not submit a bid at the advertised sale unless required by State law, nor will reference to FmHA or its successor agency under Public Law 103–354's rates and terms be included. If no acceptable bid is received, FmHA or its successor agency under Public Law 103–354 will negotiate the purchase of the bonds.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6791, Mar. 3, 1988; 54 FR 18883, May 3, 1989; 56 FR 29168, June 26, 1991; 68 FR 61331, Oct. 28, 2003]

§ 1942.20 Community Facility Guides.

(a) The following documents are attached and made part of this subpart and may be used by FmHA or its successor agency under Public Law 103–354 officials in administering this program.

(1) Guide 1 and 1a—Guide Letter for Use in Informing Private Lender of FmHA or its successor agency under Public Law 103–354's Commitment.

(2) Guide 2—Water Users Agreement.

(3) Guide 3—Service Declination Statement.

(4) Guide 4—Bylaws.

(5) Guide 5—Financial Feasibility Report.

(6) Guide 6—Preliminary Architectural Feasibility Report.

(7) Guide 7—Preliminary Engineering Report Water Facility.

(8) Guide 8—Preliminary Engineering Report Sewerage Systems.

(9) Guide 9—Preliminary Engineering Report Solid Waste Disposal Systems.

(10) Guide 10—Preliminary Engineering Report Storm Waste-Water Disposal.

(11) Guide 11—Daily Inspection Report.

(12) Guide 12—Memorandum of Understanding Between the Economic Development Administration—Department of Commerce and the Farmers Home Administration or its successor agency under Public Law 103–354—Department of Agriculture Pertaining to EDA Public Works Projects Assisted by an FmHA or its successor agency under Public Law 103–354 Loan.

(13) Guide 13—Memorandum of Understanding Between the Economic Development Administration—Department of Commerce and the Farmers Home Administration or its successor agency under Public Law 103–354—Department of Agriculture Regarding Supplementary Grant Assistance for the Construction of Public Works and Development Facilities.

(14) Guide 14—Legal Services Agreement.

(15) Guide 15—Community Facility Borrower's Application.

(16) Guide 16—Community Facility Loan Docket.

(17) Guide 17—Construction Contract Documents—Short Form.

(18) Guide 18—FmHA or its successor agency under Public Law 103–354 Supplemental General Conditions.

(19) Guide 19—Construction Contract Documents.

(20) Guide 20—Agreement for Engineering Services (FmHA or its successor agency under Public Law 103–354/EPA Jointly Funded Projects).

(21) Guide 21—Review of Audit Reports.

(22) Guide 22—Delinquent Accounts Positive Action Plan.

(23) Guide 23—Agreement for Joint Use of Electric System Poles.

(24) Guide 24—Minimum Suggested Contents of Management Agreements.

(25) Guide 25—Joint Policy Statement Between EPA and FmHA or its successor agency under Public Law 103–354.

(26) Guide 26—Community Programs Project Selection Criteria.

(27) Exhibit A—Circular No. A–128.

(28) Exhibit B—Department of Agriculture Regional Inspector General (OIG).

(b) These guides and exhibits are for use by FmHA or its successor agency under Public Law 103–354 officials, applicants and applicant's officials and/or agents on certain matters related to the planning, development, and operation of essential community facilities which involve the use of loans and/or grants from FmHA or its successor agency under Public Law 103–354. This includes activities related to applying for and obtaining such financial assistance. These guides and exhibits are not published in the FEDERAL REGISTER, however, they are available in any FmHA or its successor agency under Public Law 103–354 office.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988]

§ 1942.21 Statewide nonmetropolitan median household income.

Statewide nonmetropolitan median household income means the median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places, of 50,000 or more population.

[69 FR 65519, Nov. 15, 2004]

§§ 1942.22–1942.49 [Reserved]

§ 1942.50 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0015. Public reporting burden for this collection of information is estimated to vary from five minutes to 15 hours per response, with an average of 2.7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0015), Washington, DC 20503.

[60 FR 11019, Mar. 1, 1995]

Subpart B [Reserved]

Subpart C—Fire and Rescue and Other Small Community Facilities Projects

SOURCE: 52 FR 43726, Nov. 16, 1987, unless otherwise noted.

§ 1942.101 General.

This subpart provides the policies and procedures for making and processing insured Community Facilities (CF) loans for facilities that will primarily provide fire or rescue services and other small essential community facility projects and applies to fire and rescue and other Community Facilities loans for projects costing $300,000 and under. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Rural Development employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with a Rural Development employee. Community Facilities loans for other types of facilities, and those costing in excess of $300,000, are defined in subpart A of this part.

[68 FR 65830, Nov. 24, 2003]

§ 1942.102 Nondiscrimination.

(a) Federal statutes provide for extending Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes.

(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply

for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this subpart that affect applicant eligibility, the adequacy of FmHA or its successor agency under Public Law 103–354's security or the adequacy of service to users of the facility and all other requirements of this subpart must be met.

§ 1942.103 Definitions.

Agency. The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture.

Approval official. An official who has been delegated loan or grant approval authorities within applicable programs, subject to certain dollar limitations.

Construction. The act of building or putting together a facility that is a part of, or physically attached to, real estate. This does not include procurement of major equipment even though the equipment may be custom built to meet the owner's requirements.

Owner. An applicant or borrower.

Processing office. The office designated by the State program official to accept and process applications for Community Facilities projects.

Regional Attorney or OGC. The head of a Regional Office of the General Counsel (OGC).

Small Community Facilities projects. Community Facilities loans costing $300,000 and under.

[68 FR 65830, Nov. 24, 2003]

§ 1942.104 Application processing.

(a) *General.* Prospective applicants should request assistance by filing SF 424.2, ''Application for Federal Assistance (For Construction),'' with the Local or Area Rural Development Office. When practical, approval officials should meet with prospective applicants before an application is filed to discuss eligibility and Rural Development requirements and processing procedures. Throughout loan processing, Rural Development should confer with applicant officials as needed to ensure that applicant officials understand the current status of the processing of their application, what steps and determinations are necessary, and what is required from them. Rural Development should assist the applicant as needed and generally try to develop and maintain a cooperative working relationship with the applicant.

(b) *Unfavorable decision.* If, at any time prior to loan approval, it is decided that favorable action will not be taken on an application, the approval official will notify the applicant, in writing, of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by Rural Development may be requested by the applicant in accordance with subpart B of part 1900 of this chapter. The following statement will also be made on all notifications of adverse action:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

[52 FR 43726, Nov. 16, 1987, as amended at 54 FR 47197, Nov. 13, 1989; 55 FR 13504, Apr. 11, 1990; 68 FR 65830, Nov. 24, 2003; 68 FR 69001, Dec. 11, 2003]

§ 1942.105 Environmental review.

FmHA or its successor agency under Public Law 103–354 must conduct and document an environmental review for each proposed project in accordance with subpart G of part 1940 of this chapter. The review should be completed as soon as possible after receipt of an application. The loan approving official must determine an adequate environmental review has been completed before requesting an obligation of funds.

§ 1942.106 Intergovernmental review.

(a) Loans under this subpart are subject to intergovernmental review in accordance with subpart J of part 1940 of this chapter.

(b) State intergovernmental review agencies that have selected community

facility loans as a program they want to review may not be interested in reviewing proposed loans for fire and rescue facilities. In such cases, the State Director should obtain a letter from the State single point of contact exempting fire and rescue loans from intergovernmental consultation review. A copy of the letter should be placed in the case file for each fire and rescue facility application in lieu of completing the intergovernmental review process.

(c) When an application is filed and adverse comments are not expected, the District Director should proceed with application processing pending intergovernmental review. The loan should not be obligated until any required review process has been completed.

(d) Funds allocated for use under this subpart are also for the use of eligible Indian tribes within the State, regardless of whether State development strategies include Indian reservations. Eligible Indian tribes must have equal opportunity to participate in the program as compared with other residents of the State.

[52 FR 43726, Nov. 16, 1987, as amended at 61 FR 6309, Feb. 20, 1996]

§ 1942.107 Priorities.

(a) Eligible applications must be selected for processing in accordance with § 1942.17(c) of subpart A of this part 1942.

(b) The District Director must score each eligible application in accordance with § 1942.17(c)(2)(iii) of subpart A of this part 1942. The District Director must then notify the State Director of the score, proposed loan amount, and other pertinent data. The State Director should determine as soon as possible if the project has sufficient priority for further processing and notify the District Director. Normally, this consultation should be handled by telephone and documented in the running record.

(c) Applicants who appear eligible but do not have the priority necessary for further consideration at this time should be notified that funds are not available, requested to advise whether they wish to have their application maintained for future consideration and given the following notice:

You are advised against incurring obligations which would limit the range of alternatives to be considered, or which cannot be fulfilled without FmHA or its successor agency under Public Law 103–354 funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work, taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications, or inviting construction bids until notified by Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 to proceed.

§ 1942.108 Application docket preparation and review.

(a) *Guides.* Application dockets should be developed in accordance with § 1942.2(c) of subpart A of this part 1942.

(b) [Reserved]

(c) *Budgets.* All applicants must complete Form FmHA or its successor agency under Public Law 103–354 442–7, ''Operating Budget,'' except as provided in this paragraph. Applicants with annual incomes not exceeding $100,000 may, with concurrence of the District Director, use Form FmHA or its successor agency under Public Law 103–354 1942–52, ''Cash Flow Projection,'' instead of Form FmHA or its successor agency under Public Law 103–354 442–7. Projections should be provided for the current year and each year thereafter until the facility is expected to have been in operation for a full year and a full annual installment paid on the loan.

(d) *Letter of conditions.* The District Director should prepare and issue a letter of conditions in accordance with § 1942.5 (a)(1) and (c) of subpart A of this part 1942.

(e) *Organizational review.* As early in the application process as practical, the approval official should obtain copies of organization documents from each applicant and forward them through the State Office to the Regional Attorney for review and comments. The Regional Attorney's comments should be received and considered before obligation of funds.

(f) *National Office review.* Applications that require National Office review will

be submitted in accordance with § 1942.5(b) of subpart A of this part 1942.

(g) *State Office review.* The State Office must monitor fire and rescue and other small community facility project loanmaking and servicing and provide guidance, assistance, and training as necessary to ensure the activities are accomplished in an orderly manner consistent with the Agency's regulations. The processing office should request advice and assistance from the State Office as needed. The State Director may require all or part of a specific application docket to be submitted to the State Office for review at any time. The State Director may determine that one or more of the processing office staffs do not have adequate training and expertise to routinely complete application dockets without State Office review. In such cases, the State Director should establish guidelines by memorandum or by State supplement to the subpart for the necessary State Office reviews.

(h) *Loan approval and fund obligation.* Loans must be approved and obligated in accordance with § 1942.5(d) of subpart A of this part 1942 and subpart A of part 1901 of this chapter.

[52 FR 43726, Nov. 16, 1987, as amended at 54 FR 47197, Nov. 13, 1989; 67 FR 60854, Sept. 27, 2002; 68 FR 65830, Nov. 24, 2003]

§§ 1942.109–1942.110 [Reserved]

§ 1942.111 Applicant eligibility.

(a) *General.* Loans under this subpart are subject to the provisions of § 1942.17(b) of subpart A of this part 1942.

(b) *Credit elsewhere determinations.* The approval official must determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated, the approval official should inform the applicant and recommend the applicant apply to commercial sources for financing. To provide a basis for referral of only those applicants who may be able to finance projects through commercial sources, approval officials should maintain liaison with representatives of lenders in the area. The State Director should keep approval officials informed regarding lenders outside the area who might make loans in the area. Approval officials should maintain criteria for determining applications that should be referred to commercial lenders and maintain a list of lender representatives interested in receiving such referrals.

(c) *Public use.* Loans under this subpart are subject to the provisions of § 1942.17(e) of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987, as amended at 68 FR 65830, Nov. 24, 2003]

§ 1942.112 Eligible loan purposes.

(a) Funds may be used:

(1) To construct, enlarge, extend, or otherwise improve essential community facilities primarily providing fire or rescue services primarily to rural residents and rural business. Rural businesses would include facilities such as educational and other publicly owned facilities. ''Otherwise improve'' includes but is not limited to the following:

(i) The purchase of major equipment, such as fire trucks and ambulances, which will, in themselves, provide an essential service to rural residents.

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

(iii) The construction or development of an essential community facility requisite to the beneficial and orderly development of a community operated on a nonprofit basis in accordance with § 1942.17(d) of this subpart. This subpart includes those projects meeting the definition of a small community facility project.

(2) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraph (a)(1) of this section:

(i) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting but not for more than 3 years unless a longer period is

approved by the National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than 2 years unless a longer period is approved by the National Office; and interest on interim financing, including interest charges on interim financing from sources other than FmHA or its successor agency under Public Law 103–354.

(iii) Costs of acquiring interest in land, rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding 1 year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are a secondary part of the total loan;

(B) The debts are incurred for the facility or service being financed or any part thereof; and

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(3) To pay obligations for construction or procurement incurred before loan approval. Construction work or procurement actions should not be started and obligations for such work or materials should not be incurred before the loan is approved. However, if there are compelling reasons for proceeding with construction or procurement before loan approval, applicants may request FmHA or its successor agency under Public Law 103–354 approval to pay such obligations. Such requests may be approved if FmHA or its successor agency under Public Law 103–354 determines that:

(i) Compelling reasons exist for incurring obligations before loan approval; and

(ii) The obligations will be incurred for authorized loan purposes; and

(iii) Contract documents have been approved by FmHA or its successor agency under Public Law 103–354; and

(iv) All environmental requirements applicable to FmHA or its successor agency under Public Law 103–354 and the applicant have been met; and

(v) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic, material or other liens that may attach to the security property. FmHA or its successor agency under Public Law 103–354 may authorize payment of such obligations at the time of loan closing. FmHA or its successor agency under Public Law 103–354's authorization to pay such obligations, however, is on the condition that it is not committed to make the loan; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan approval requirements. The applicant's request and FmHA or its successor agency under Public Law 103–354 authorization for paying such obligations shall be in writing. If construction or procurement is started without FmHA or its successor agency under Public Law 103–354 approval, post approval in accordance with this section may be considered.

(b) Funds may not be used to finance:

(1) Facilities which are not modest in size, design, and cost.

(2) Loan finder's fees.

(3) Projects located within the Coastal Barriers Resource system that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, Pub. L. 97–348.

[52 FR 43726, Nov. 16, 1987, as amended at 57 FR 21195, May 19, 1992; 68 FR 65831, Nov. 24, 2003]

§ 1942.113 Rates and terms.

Rates and terms for loans under this subpart are as set out in § 1942.17(f) of subpart A of this part 1942.

§ 1942.114 Security.

Specific requirements for security for each loan will be included in the letter of conditions. Loans must be secured by the best security position practicable, in a manner which will adequately protect the interest of FmHA

or its successor agency under Public Law 103–354 during the repayment period of the loan, and in accordance with the following;

(a) Security must include one of the following:

(1) A pledge of revenue and a lien on all real estate and major equipment purchased or developed with the FmHA or its successor agency under Public Law 103–354 loan; or

(2) General obligation bonds or bonds pledging other taxes.

(b) Additional security may be required as determined necessary by the loan approval official. In determining the need for additional security the loan approval official should carefully consider:

(1) The estimated market value of real estate and equipment security.

(2) The adequacy and dependability of the applicant's revenues, based on the applicant's financial records, the project financial feasibility report, and the project budgets.

(3) The degree of community commitment to the project, as evidenced by items such as active broad based membership, aggressive leadership, broad based fund drives, or contributions by local public bodies.

(c) Additional security may include, but is not limited to, the following:

(1) Liens on additional real estate or equipment.

(2) A pledge of revenues from additional sources.

(3) An assignment of assured income in accordance with § 1942.17(g)(3)(iii)(A)(*1*) of subpart A of this part 1942.

(d) Review and approval or concurrence in the State Office is required if the security will not include a pledge of taxes and the applicant cannot provide evidence of the financially successful operation of a similar facility for the 5 years immediately prior to loan application.

(e) Review and concurrence in the National Office is required if the security will not include a pledge of taxes, the applicant cannot provide evidence of the financially successful operation of a similar facility for the 5 years immediately prior to loan application, and the amount of the loan will exceed $250,000.

(f) Loans under this subpart are subject to the provisions of § 1942.17(g)(1) of subpart A of this part 1942, regarding security for projects utilizing joint financing.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

§ 1942.115 Reasonable project costs.

Applicants are responsible for determining that prices paid for property rights, construction, equipment, and other project development are reasonable and fair. FmHA or its successor agency under Public Law 103–354 may require an appraisal by an independent appraiser or FmHA or its successor agency under Public Law 103–354 employee.

§ 1942.116 Economic feasibility requirements.

All projects financed under this section must be based on taxes, assessments, revenues, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the FmHA or its successor agency under Public Law 103–354 staff and approval official. All applicants will be expected to provide a financial feasibility report. These financial feasibility reports will normally be:

(a) Included as part of the preliminary engineer/architectural report using guide 6 to subpart A of this part 1942 (available in any FmHA or its successor agency under Public Law 103–354 Office), or

(b) Prepared by the applicant using Form FmHA or its successor agency under Public Law 103–354 1942–54, ''Applicant's Feasibility Report.''

§ 1942.117 General requirements.

(a) *Reserve requirements.* Loans under this subpart are subject to the provisions of § 1942.17 (i) of subpart A of this part 1942.

(b) *Membership authorization.* The membership of organizations other than public bodies must authorize the project and its financing except the

District Director may, with the concurrence of the State Director (with advice of OGC as needed), accept the loan resolution without such membership authorization when State statutes and the organization charter and bylaws do not require such authorization.

(c) *Insurance and bonding.* Loans under this subpart are subject to the provisions of §1942.17(j)(3) of subpart A of this part 1942.

(d) *Acquisition of land and rights.* Loans under this subpart are subject to the provisions of §1942.17(j)(4) of subpart A of this part 1942.

(e) *Lease agreements.* Loans under this subpart are subject to the provisions of §1942.17(j)(5) of subpart A of this part 1942.

(f) *Notes and bonds.* Loans under this subpart are subject to the provisions of §§1942.17(j)(6) and 1942.19 of subpart A of this part 1942.

(g) *Public Information.* Loans under this subpart are subject to the provisions of §1942.17 (j)(9) of subpart A of this part 1942.

(h) *Joint funding.* Loans under this subpart are subject to the provisions of §§1942.2 (e) and 1942.17 (j)(11) of subpart A of this part 1942.

§1942.118 Other Federal, State, and local requirements.

(a) Loans under this subpart are subject to the provisions of §1942.17 (k) of subpart A of this part 1942.

(b) An initial compliance review should be completed under subpart E of part 1901 of this chapter.

§1942.119 Professional services and borrower contracts.

(a) Loans under this subpart are subject to the provisions of §1942.17 (l) of subpart A of this part 1942.

(b) The District Director will, with assistance as necessary by the State Director and OGC, concur in agreements between borrowers and third parties such as contracts for professional and technical services. The State Director may require State Office review of such documents in accordance with §1942.108 (g) of this subpart. State Directors are expected to work closely with representatives of engineering and architectural societies, bar associations, commercial lenders, accountant associations, and others in developing standard forms of agreements, where needed, and other matters to expedite application processing, minimize referrals to OGC, and resolve problems which may arise. Standard forms should be reviewed by and approved by OGC.

§§1942.120–1942.121 [Reserved]

§1942.122 Actions prior to loan closing and start of construction.

(a) *Excess FmHA or its successor agency under Public Law 103–354 loan funds.* Loans under this subpart are subject to the provisions of §1942.17 (n)(1) of subpart A of this part 1942.

(b) *Loan resolutions.* Loans under this subpart are subject to the provisions of §1942.17 (n)(2) of subpart A of this part 1942.

(c) *Interim financing.* Loans under this subpart are subject to the provisions of §1942.17 (n)(3) of subpart A of this part 1942.

(d) *Applicant contribution.* Loans under this subpart are subject to the provisions of §1942.17 (n)(5) of subpart A of this part 1942 this chapter.

(e) *Evidence of and disbursement of other funds.* Loans under this subpart are subject to the provisions of §1942.17 (n)(6) of subpart A of this part 1942.

(f) *Assurance agreement.* All applicants must execute Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement,'' at or before loan closing.

§1942.123 Loan closing.

(a) *Ordering loan checks.* Checks will not be ordered until:

(1) Form FmHA or its successor agency under Public Law 103–354 440–57, ''Acknowledgement of Obligated Funds/Check Request,'' has been received from the Finance Office.

(2) The applicant has complied with approval conditions and any closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto.

(3) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(b) *Public bodies and Indian tribes.* (1) After loan approval the completed docket will be reviewed by the State

Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(2) Loans will be closed in accordance with the closing instructions issued by OGC and § 1942.19 of subpart A of this part 1942.

(c) *Organizations other than public bodies and Indian tribes.* District Directors are authorized to close loans to organizations other than public bodies and Indian tribes without closing instructions from OGC. State Directors, in consultation with OGC, should develop standard closing procedures and forms as needed. Assistance with loan closing and a certification regarding the validity of the note and mortgage or other debt instruments should be provided by the applicant's attorney. Appropriate title opinion or title insurance is required as provided in § 1942.17 (j)(4)(i)(B) of subpart A of this part 1942.

(d) *Authority to execute, file, and record legal instruments.* District Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans. This includes, as appropriate, mortgages and other lien instruments, as well as affidavits, acknowledgements, and other certificates.

(e) *Mortgages.* Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument. The real estate or chattel mortgages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will be retained in the borrower's case folder.

(f) *Notes and bonds.* When the debt instrument is a note or single instrument bond fully registered as to principal and interest a conformed copy will be sent to the Finance Office immediately after loan closing and the original instrument will be stored in the District Office. When other types of bonds are used, the original bond(s) will be forwarded to the Finance Office immediately after loan closing.

(g) *Disposition of title evidence.* All title evidence other than the opinion of title and mortgage title insurance policy, will be returned to the borrower when the loan has been closed.

(h) *Multiple advances.* When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper right-hand corner of such paper by the Distict Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the District Office and a copy will be forwarded to the Finance Office. The following actions will be taken prior to issuance of the permanent instruments:

(1) The Finance Office will be notified of the anticipated date for the retirement of the interim instruments and the issuance of permanent instruments of debt.

(2) The Finance Office will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the District Director.

(3) The District Director will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash

collection will be forwarded to the Finance Office immediately, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the District Office and a copy will be forwarded to the Finance Office. In developing the permanent instruments, the sequence of preference set out §1942.19(e) of subpart A of this part 1942 will be followed.

(i) *Bond registration record.* Form FmHA or its successor agency under Public Law 103–354 442–28, ''Bond Registration Book,'' may be used as a guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(j) *Loan checks.* Whenever a loan check is received, lost, or destroyed, the District Director will take the appropriate actions outlined in FmHA Instruction 2018–D (available in any FmHA or its successor agency under Public Law 103–354 office). Checks which cannot be delivered within a reasonable amount of time (no more than 20 calendar days) will be handled in accordance with FmHA Instruction 2018–D (available in any FmHA or its successor agency under Public Law 103–354 office.)

(k) *Safeguarding bond shipments.* FmHA or its successor agency under Public Law 103–354 personnel will follow the procedures for safeguarding mailings and deliveries of bonds and coupons outlined in FmHA Instruction 2018–E (available in any FmHA or its successor agency under Public Law 103–354 office), whenever they mail or deliver these items.

(l) *Review of loan closing.* When the loan has been closed, the District Director will submit the completed loan closing documents and a statement showing what was done in closing the loan to the State Director. The State Director will review the documents and the District Director's statement to determine whether the transaction was closed properly. For loans to public bodies or Indian tribes the State Director will forward all documents, along with a statement that all administrative requirements have been met, to the Regional Attorney. The Regional Attorney will review the submitted material to determine whether all legal requirements have been met. The Regional Attorney should review FmHA or its successor agency under Public Law 103–354 standard forms only for proper execution, unless the State Director brings attention to specific questions. Facility development should not be held up pending receipt of the Regional Attorney opinion. When the review of the State Director has been completed, and for public bodies and Indian tribes the Regional Attorney's opinion has been received, the State Director must advise the District Director of any deficiencies that must be corrected and return all material that was submitted for review.

(m) *Loan cancellation.* Loans under this subpart are subject to the provisions of §1942.12 of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987, as amended at 59 FR 54788, Nov. 2, 1994]

§§ 1942.124–1942.125 [Reserved]

§ 1942.126 Planning, bidding, contracting, constructing, procuring.

(a) *General.* This section provides procedures and requirements for planning, bidding, contracting, constructing and procuring facilities financed under this subpart. These procedures do not relieve the owner of contractual obligations that arise from procurement of services.

(b) *Technical services.* Owners are responsible for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting and constructing their facilities. Services may be provided by the owner's ''in-house'' engineer or architect or through contract, subject to FmHA or its successor agency under Public Law 103–354 concurrence. Architects and engineers must be licensed in the State where the facility is to be located.

(1) *Preliminary reports.* A preliminary architectural or engineering report conforming with customary professional standards is required for all construction, except that FmHA or its successor agency under Public Law 103–354 may waive the requirement for a

preliminary architectural/engineering report or accept a brief report if the cost of the construction does not exceed $100,000. Guide 6 to subpart A of this part 1942 (available in any FmHA or its successor agency under Public Law 103–354 office) may be used.

(2) *Final reports.* Detailed final plans and specifications are required for all construction and must receive FmHA or its successor agency under Public Law 103–354 concurrence. When negotiated procurement is used for construction costing not more than $100,000 the final plans and specifications may be provided by the contractor who submits the successful proposal. The plans and specifications must be prepared by or under the supervision of an architect or engineer who is licensed in the State where the facility is to be located and should include all materials and work to be provided under the contract. Some work and material may be omitted from the contract provided the owner furnishes detailed cost estimates for whatever is needed to fully complete the facility and will complete the facility in accordance with paragraph (e) of this section and the small purchase procedures set out in §1942.18(k)(1) of subpart A of this part 1942. In such cases, FmHA or its successor agency under Public Law 103–354 may determine that it is not necessary to require the applicant to hire a consulting architect/engineer; however, if a second contract that does not qualify for small purchase procedures is needed to complete the facility, the owner must provide for an architect/engineer to design the entire facility. When the contractor provides the plans and specifications, the contract will be considered a design/build procurement method under §1942.18(1) of subpart A of this part 1942.

(3) *Major equipment.* An architect/engineer is not required for major equipment if FmHA or its successor agency under Public Law 103–354 determines the owner has the ability to develop an adequate request for proposal and evaluate the proposals received or can obtain adequate assistance from other sources, such as State or Federal agencies or trade associations.

(c) *Design policies.* Facilities financed by FmHA or its successor agency under Public Law 103–354 must be designed and constructed in accordance with sound engineering and architectural practices, and must meet the requirements of Federal, State and local agencies. All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90–480) as implemented by the General Services Administration regulations 41 CFR 101–19.6 and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112) as implemented by 7 CFR parts 15 and 15b.

(d) *Construction contracts.* Contract documents must be sufficiently descriptive and legally binding to accomplish the work as economically and expeditiously as possible.

(1) *Standard construction contract documents.* When standard construction contract documents available from FmHA or its successor agency under Public Law 103–354 are used, or when the amount of the contract does not exceed $100,000, it will normally not be necessary for the Regional Attorney to perform a detailed legal review. If construction contract documents used are not in the format of guide forms approved by FmHA or its successor agency under Public Law 103–354, and the contract amount exceeds $100,000, the Regonal Attorney must review the documents before their use.

(2) *Contract review and approval.* The owner's attorney will review executed contract documents, including performance and payment bonds, and certify that they are adequate, legal and binding, and that the persons executing the documents have been authorized to do so. The contract documents, bid bonds, and bid tabulation sheets will be forwarded to FmHA or its successor agency under Public Law 103–354 for approval prior to awarding. All contracts will contain a provision that they are not in full force and effect until they have been approved by FmHA or its successor agency under Public Law 103–354. The FmHA or its successor agency under Public Law 103–354 District Director is responsible for approving construction contracts with advice and guidance of the State Director and Regional Attorney when necessary.

(3) *Separate contracts.* Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting and multiplicity of small contracts on the same job) should be avoided whenever it is practical to do so. Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the job site in a finished or semifinished state such as prefabricated buildings. Contracts may also be awarded for material delivered to the job site and installed by a patented process or method.

(e) *Performing construction.* Owners are encouraged to accomplish construction through contracts with recognized contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer or architect prepares design drawings and specifications and inspection is provided in accordance with paragraph (l)(3) of this section.

(f) *Owner's contractual responsibility.* Loans under this subpart are subject to the provisions of §1942.18(i) of subpart A of this part 1942.

(g) *Owner's procurement regulations.* Loans under this subpart are subject to the provisions of §1942.18(j) of subpart A of this part 1942.

(h) *Procurement methods.* Unless the FmHA or its successor agency under Public Law 103–354 National Office gives prior written approval of another method, procurement must be made by one of the following methods:

(1) Small purchase procedures as provided in §1942.18(k)(1) of subpart A of this part 1942.

(2) Competitive sealed bids as provided in §1942.18(k)(2) of subpart A of this part 1942. Competitive sealed bids is the preferred procurement method of construction projects, except for buildings costing $100,000 or less when the owner desires to use a ''preengineered'' or ''packaged'' building.

(3) Competitive negotiation as provided in §1942.18(k)(3) of subpart A of this part 1942. Competitive negotiation is the preferred procurement method of buildings not exceeding $100,000 in cost when the owner desires to use a ''preengineered'' or ''packaged'' building and for major equipment.

(4) Noncompetitive negotiation as provided in §1942.18(k)(4) of subpart A of this part 1942.

(i) *Contracting methods.* Loans under this subpart are subject to the provisions of §1942.18(1) of subpart A of this part 1942.

(j) *Contracts awarded prior to preapplications.* Loans under this subpart are subject to the provisions of §1942.18(m) of subpart A of this part 1942.

(k) *Construction Contract provisions.* Construction contracts for loans under this subpart are subject to the provisions of §1942.18(n) of subpart A of this part 1942. Construction contracts for loans under this subpart are also subject to the provisions of §1901.205 of subpart E of part 1901 of this chapter, regarding nondiscrimination in construction, except that guides 18 and 17 or 19 to subpart A of this part 1942 of this chapter will normally be used instead of Form FmHA or its successor agency under Public Law 103–354 1924–5, ''Invitation for Bid (Construction Contract),'' and Form FmHA or its successor agency under Public Law 103–354 1924–6, ''Construction Contract.'' When guide 18 is used with a design/build type contract, section 4, ''Conflict of Interest,'' may need revision.

(l) *Construction contract administration.* Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(1) *Preconstruction conference.* Prior to beginning construction the owner will schedule a preconstruction conference where FmHA or its successor agency under Public Law 103–354 will review the planned development with the owner, its architect or engineer, project inspector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form FmHA or its successor agency under Public Law 103–354 1924–16, ''Record of Preconstruction Conference,'' and the

discussions and agreements will be documented. Form FmHA or its successor agency under Public Law 103–354 1924–16 may be used for this purpose.

(2) *Monitoring reports.* Each owner will be required to monitor and provide reports to FmHA or its successor agency under Public Law 103–354 on actual performance during construction for each project financed, or to be financed, in whole or in part with FmHA or its successor agency under Public Law 103–354 funds. The reports are to include:

(i) A comparison of actual accomplishments with the construction schedule established for the period. The partial payment estimate may be used for this purpose.

(ii) A narrative statement giving full explanation of the following:

(A) Reasons why established goals were not met.

(B) Analysis and explanation of cost overruns or high unit costs and how payment is to be made for the same.

(iii) If events occur between reports which have a significant impact upon the project, the owner will notify FmHA or its successor agency under Public Law 103–354 as soon as any of the following conditions are known:

(A) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives or prevent the meeting of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(B) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected or which will result in cost underruns or lower unit costs than originally planned and which may result in less FmHA or its successor agency under Public Law 103–354 assistance.

(3) *Inspection.* The borrower must provide for inspection of all construction. When the borrower enters into an agreement for technical services with an engineer/architect, the agreement should provide for general engineering/architectural inspection of the construction work. When no such agreement exists, or FmHA or its successor agency under Public Law 103–354 or the borrower determines the inspection services of the engineer/architect may not be sufficient, the owner must provide a project inspector. Prior to the preconstruction conference, the borrower must submit a résumé of qualifications of the project inspector to FmHA or its successor agency under Public Law 103–354 for acceptance in writing. The project inspector will be responsible for making inspections necessary to protect the borrower's interest and for providing written inspection reports to the borrower with copies to the FmHA or its successor agency under Public Law 103–354 District Director. guide 11 of subpart A of this part 1942 (available in any FmHA or its successor agency under Public Law 103–354 office) may be used as a guide format for inspection reports. For new buildings, additions to existing buildings, and rehabilitation of existing buildings, the project inspector should make inspections at the following stages of construction and at other stages of construction as determined by the District Director and the borrower. Inspections by FmHA or its successor agency under Public Law 103–354 are solely for its benefit as lender.

(i) An initial inspection should be made just prior to or during the placement of concrete footings or monolithic footings and floor slabs. At this point, foundation excavations are complete, forms or trenches and steel are ready for concrete placement and the subsurface installation is roughed in. If the building design does not include concrete footings the initial inspection should be made just after or during the placement of poles or other foundation materials.

(ii) An inspection should be made when the building is enclosed, structural members are still exposed, roughing in for heating, plumbing and electrical work is in place and visible, and wall insulation and vapor barriers are installed.

(iii) A final inspection should be made when all development of the structure has been completed and the structrure is ready for its intended use.

(4) *Prefinal inspections.* A prefinal inspection will be made by the owner,

project inspector, owner's architect or engineer, representatives of other agencies involved, and the District Director. The inspection results will be recorded on Form FmHA or its successor agency under Public Law 103–354 1924–12, ''Inspection Report,'' and a copy provided to all interested parties, including the FmHA or its successor agency under Public Law 103–354 State Director.

(5) *Final inspection.* A final inspection will be made by FmHA or its successor agency under Public Law 103–354 before final payment is made.

(6) *Changes in development plans.* (i) Changes in development plans may be approved by FmHA or its successor agency under Public Law 103–354 when requested by owners, provided:

(A) Funds are available to cover any additional costs; and

(B) The change is for an authorized loan purpose; and

(C) It will not adversely affect the soundness of the facility operation or FmHA or its successor agency under Public Law 103–354's security; and

(D) The change is within the scope of the contract; and

(E) Any applicable requirements of subpart G of part 1940 of this chapter have been met.

(ii) Changes will be recorded on Form FmHA or its successor agency under Public Law 103–354 1924–7, ''Contract Change Order,'' or other similar forms may be used with the prior approval of the District Director. Regardless of the form, change orders must be approved by the FmHA or its successor agency under Public Law 103–354 District Director.

(iii) Changes should be accomplished only after FmHA or its successor agency under Public Law 103–354 approval on all changes which affect the work and shall be authorized only by means of contract change order. The change order will include items such as:

(A) Any changes in labor and material and their respective cost.

(B) Changes in facility design.

(C) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule.

(D) Any increase or decrease in the time to complete the project.

(iv) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

§ 1942.127 Project monitoring and fund delivery.

(a) *Coordination of funding sources.* When a project is jointly financed, the District Director will reach any needed agreement or understanding with the representatives of the other source of funds on distribution of responsibilities for handling various aspects of the project. These responsibilities will include supervision of construction, inspections and determination of compliance with appropriate regulations concerning equal employment opportunities, wage rates, nondiscrimination in making services or benefits available, and environmental compliance. If any problems develop which cannot be resolved locally, complete information should be sent to the State Office for advice.

(b) *Multiple advances.* Loans under this subpart are subject to the provisions of § 1942.17 (p)(2) of subpart A of this part 1942.

(c) *Use and accountability of funds.* Loans under this subpart are subject to the provisions of § 1942.17 (p)(3) of subpart A of this part 1942.

(d) *Development inspections.* Loans under this subpart are subject to the provisions of § 1942.17(p)(4) of subpart A of this part 1942.

(e) *Payment for project costs.* Each payment for project costs must be approved by the borrower's governing body.

(1) *Construction.* Payment for construction must be for amounts shown on payment estimate forms. Form FmHA or its successor agency under Public Law 103–354 1924–18, ''Partial Payment Estimate,'' may be used for this purpose or other similar forms may be used with the prior approval of the District Director. However, the District Director cannot require more reporting burden than is required by Form FmHA or its successor agency under Public Law 103–354 1924–18. Advances for contract retainage will not

be made until such retainage is due and payable under the terms of the contract. The review and acceptance of project cost, including construction partial payment estimates, by FmHA or its successor agency under Public Law 103–354 does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(2) *Major equipment.* Payment for major equipment should generally coincide with delivery of the usable equipment, along with any necessary title or certifications, to the borrower. Borrowers may not use FmHA or its successor agency under Public Law 103–354 loan funds to make deposits on equipment not ready for delivery. If a borrower purchases a truck chassis from one supplier and another supplier will complete the development of a fire or rescue vehicle, FmHA or its successor agency under Public Law 103–354 may release funds to pay for the chassis when title to the chassis is transferred to the borrower.

(f) *Use of remaining funds.* Loans under this subpart are subject to the provisions of § 1942.17 (p)(6) of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

§ 1942.128 Borrower accounting methods, management reports and audits.

(a) Loans under this subpart are subject to the provisions of § 1942.17(q) of subpart A of this part 1942 except as provided in this section.

(b) Borrowers with annual incomes not exceeding $100,000 may, with concurrence of the District Director, use Form FmHA or its successor agency under Public Law 103–354 1942–53, ''Cash Flow Report,'' instead of page one of schedule one and schedule two of Form FmHA or its successor agency under Public Law 103–354 442–2, ''Statement of Budget, Income, and Equity.'' When used for budgeting, the cash statement should be projected for the upcoming fiscal year. When used for quarterly or annual reports, the cash flow report should include current year projections and actual data for the prior year, the quarter just ended, and the current year to date.

§ 1942.129 Borrower supervision and servicing.

Loans under this subpart are subject to the provisions of § 1942.17(r) of subpart A of this part 1942 and subpart E of part 1951 of this chapter.

§§ 1942.130–1942.131 [Reserved]

§ 1942.132 Subsequent loans.

Subsequent loans will be processed under this subpart.

§ 1942.133 Delegation and redelegation of authority.

Loan approval authority is in subpart A of part 1901 of this chapter. State Directors may delegate approval authority to District Directors to approve fire and rescue loans regardless of whether authority to approve other community facility loans is delegated. Except for loan approval authority, District Directors may redelegate their duties to qualified staff members.

§ 1942.134 State supplements and guides.

State Directors will obtain National Office clearance for all State supplements and guides under FmHA Instruction 2006–B (available in any FmHA or its successor agency under Public Law 103–354 Office).

(a) *State supplements.* State Directors may supplement this subpart to meet State and local laws and regulations and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to bids, contract awards, and materials more restrictive than those in this subpart.

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this subpart and subpart A of part 1942 are not adequate. State Directors may prepare guides for items needed for the application; items necessary for the docket; and items required prior to loan closing or construction starts.

§§ 1942.135–1942.149 [Reserved]

§ 1942.150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0120.

Subparts D–F [Reserved]

Subpart G—Rural Business Enterprise Grants and Television Demonstration Grants

AUTHORITY: 7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; 5 U.S.C. 301.

SOURCE: 45 FR 73637, Nov. 6, 1980, unless otherwise noted.

§ 1942.301 Purpose.

This subpart outlines Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 policies and authorizations and sets forth procedures for making grants to finance and facilitate development of private business enterprises. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA or its successor agency under Public Law 103–354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA or its successor agency under Public Law 103–354 employee.

[53 FR 30247, Aug. 11, 1988, as amended at 58 FR 226, Jan. 5, 1993]

§ 1942.302 Policy.

(a) The grant program will be used to support the development of small and emerging private business enterprises in rural areas.

(b) FmHA or its successor agency under Public Law 103–354 officials will maintain liaison with officials of other federal, state, regional and local development agencies to coordinate related programs to achieve rural development objectives.

(c) FmHA or its successor agency under Public Law 103–354 officials shall cooperate with appropriate State agencies in making grants that support State strategies for rural area development.

(d) Funds allocated for use in accordance with this subpart are also to be considered for use of Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity along with other rural residents to participate in the benefits of these programs. This includes equal application of outreach activities of FmHA or its successor agency under Public Law 103–354 County and District Offices.

[53 FR 30247, Aug. 11, 1988]

§ 1942.303 Authorities, delegation, and redelegation.

The State Director is responsible for implementing the authorities contained in this subpart and to issue State supplements redelegating these authorities to appropriate FmHA or its successor agency under Public Law 103–354 employees. Grant approval authorities are contained in subpart A of part 1901 of this chapter.

§ 1942.304 Definitions.

Project. For rural business enterprise grants, the result of the use of program funds, i.e., a facility whether constructed by the applicant or a third party from a loan made with grant funds, technical assistance, startup operating costs, or working capital. A revolving fund established in whole or in part with grant funds will also be considered a project for the purpose of Intergovernmental and Environmental Review under § 1942.310 (b) and (c), of this subpart as well as the specific uses of the revolving funds. For television demonstration grants, television programming developed on issues of importance to farmers and rural residents.

Regional Commission grants. Grants made from funds made available to FmHA or its successor agency under Public Law 103–354 by the Appalachian

Regional Commission (ARC) or other Federal Regional Commissions designated under title V of the Public Works and Economic Development Act of 1965.

Rural and Rural Area. Any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town according to the latest decennial census of the United States.

Rural Business Enterprise (RBE) grants. Grants made to finance and facilitate development of small and emerging private business enterprises in rural areas. Grants are made from FmHA or its successor agency under Public Law 103–354 funds under authority of the Consolidated Farm and Rural Development Act, as amended, sec. 310B(c) (7 U.S.C. 1932).

Small and emerging private business enterprise. Any private business which will employ 50 or fewer new employees and has less than $1 million in projected gross revenues.

Technical Assistance. A function performed for the benefit of a private business enterprise and which is a problem solving activity, such as market research, product and/or service improvement, feasibility study, etc.

Television demonstration program. Grants made for television programming developed to demonstrate the effectiveness of providing information on agriculture and other issues of importance to farmers and other rural residents. Grants are made from FmHA or its successor agency under Public Law 103–354 funds under authority of the Consolidated Farm and Rural Development Act, as amended, sec. 310B(j) (7 U.S.C. 1932).

[57 FR 33099, July 27, 1992, as amended at 66 FR 27014, May 16, 2001; 67 FR 77908, Dec. 20, 2002]

§ 1942.305 Eligibility and priority.

(a) *Eligibility.* (1) RBE grants may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include States, counties, cities, townships, and incorporated town and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations and other Federally recognized Indian Tribal groups in rural areas.

(2) The end result of the project must finance or develop a small and emerging private business enterprise. The small business receiving assistance must meet the definition contained in § 1942.304. However, if the small and emerging private business enterprise is an eligible nonprofit entity or other tax-exempt organization located in a city, town or unincorporated area with a population of 5,000 or less and has a principal office on land of an existing or former Native American reservation, the small and emerging private business enterprise is exempt from meeting the definition contained in § 1942.304.

(3) Regional Commission Grant applicants must meet eligibility requirements of the Regional Commission and also of the Agency, in accordance with paragraph (a)(1) of this section, for the Agency to administer the Regional Commission Grant under this subpart.

(4) Television demonstration grants may be made to statewide, private, nonprofit, public television systems whose coverage is predominantly rural. An eligible applicant must be organized as a private, nonprofit, public television system, licensed by the Federal Communications Commission, and operated statewide and within a coverage area that is predominantly rural.

(b) *Project selection process.* The following paragraphs indicate items and conditions which must be considered in selecting RBE applications for further development. When ranking eligible RBE applications for consideration for limited funds, FmHA or its successor agency under Public Law 103–354 officials must consider the priority items met by each RBE application and the degree to which those priorities are met, and apply good judgment. Due to the small number of applicants eligible for television demonstration grants, such applicants will not compete for priority points against RBE applicants.

(1) *Applications.* The application and supporting information submitted with it will be considered in determining the proposed project's priority for available funds.

(2) *State Office review.* All applications will be reviewed and scored for

funding priority. Eligible applicants that cannot be funded should be advised by the State Director that funds are not available, and requested to advise whether they wish to have their application maintained in an active file for future consideration.

(3) *Selection priorities.* The priorities described below will be used by the State Director to rate applications. Points will be distributed as indicated in paragraphs (b)(3) (i) through (iv) of this section. A copy of the score sheet should be placed in the case file for future reference.

(i) *Population.* Proposed project(s) will primarily be located in a community of (1) between 15,000 and 25,000 population—5 points, (2) between 5,000 and 15,000 population—10 points, (3) under 5,000 population—15 points.

(ii) *Economic conditions.* (A) Proposed project(s) will primarily be located in areas where the unemployment rate (*1*) exceeds the State rate by 25% or more—20 points, (*2*) exceeds the State rate by less than 25%—10 points, (*3*) is equal to or less than the State rate—0 points.

(B) Proposed project(s) will primarily be located in areas where Median Household Income (MHI) as prescribed by section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) for a family of 4 for the State is: (*1*) Less than poverty line—25 points, (*2*) more than poverty line but less than 85% of State MHI—15 points, (*3*) between 85% and 100% of State MHI—10 points, (*4*) equal or greater than State MHI—0 points.

(iii) *Experience.* Applicant has evidence of at least 5 years of successful experience in the type of activity proposed in the application for funds under this subpart. Evidence of successful experience may be (1) a description of experience supplied and certified by the applicant, or (2) a letter of support from appropriate local elected officials explaining the applicant's experience. Experience—10 points

(iv) *Other.* (A) Applicant has evidence that small business development will occur by startup or expansion as a result of the activities to be carried out under the grant. Written evidence of commitment by small business must be provided to FmHA or its successor agency under Public Law 103–354—25 points.

(B) Applicant has evidence of substantial commitment of funds from nonfederal sources for proposed project. An authorized representative of the source organization of the nonfederal funds must provide evidence that the funds are available and will be used for the proposed project. More than 50 percent of the project costs from nonfederal sources—15 points; more than 25 percent, but less than 50 percent of project costs from nonfederal sources—10 points; between 5 percent and 25 percent of project costs from nonfederal sources—5 points.

(C) For a grant to establish a revolving fund, the applicant provides evidence to FmHA or its successor agency under Public Law 103–354 through loan applications or letters from businesses that the loans are needed by small emerging businesses in the proposed project area—25 points.

(D) The anticipated development, expansion, or furtherance of business enterprises as a result of the proposed project will create and/or save jobs associated with the affected businesses. The number of jobs must be evidenced by a written commitment from the business to be assisted. One job per each $10,000 or less in grant funds expended—10 points. One job per each $25,000 to $10,000 in grant funds expended—5 points.

(E) The proposed grant project is consistent with, and does not duplicate, economic development activities for the project area under an existing community or economic development plan covering the project area. If no local plan is in existence for the project area, an areawide plan may be used. The plan used must be adopted by the appropriate governmental officials/entities as the area's community or economic development plan. Appropriate plan references and copies of appropriate sections of the plan, as well as evidence of plan adoption by appropriate governmental officials, should be provided to FmHA or its successor agency under Public Law 103–354. Project is reflected in a plan—5 points.

(F) Grant projects utilizing funds available under this subpart of less than $100,000—25 points, $100,000 to

$200,000—15 points, more than $200,000 but not more than $500,000—10 points.

(G) The project will assist a small and emerging private business enterprise as described in § 1942.305 (a)(2) of this subpart—10 points.

(v) *Discretionary*. In certain cases, when a grant is an initial grant for funding under this subpart and is not more than $500,000, FmHA or its successor agency under Public Law 103–354 may assign up to 50 points in addition to those that may be assigned in paragraphs (b)(3)(i) through (iv) of this section. Use of these points must include a written justification, such as geographic distribution of funds, criteria which will result in substantial employment improvement, mitigation of economic distress of a community through the creation or saving of jobs, or emergency situations. For grants of less than $100,000—50 points; $100,000 to $200,000—30 points; more than $200,000, but not more than $500,000—20 points.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 30247, Aug. 11, 1988; 55 FR 134, Jan. 3, 1990; 57 FR 33099, July 27, 1992; 57 FR 35627, Aug. 10, 1992; 67 FR 77908, Dec. 20, 2002]

§ 1942.306 Purposes of grants.

(a) Grant funds may be used to finance and/or develop small and emerging private business enterprises in rural areas including, but not limited to, the following:

(1) Acquisition and development of land, easements and rights-of-way.

(2) Construction, conversion, enlargement, repairs or modernization of buildings, plants, machinery, equipment, access streets and roads, parking areas, utilities, and pollution control and abatement facilities.

(3) Loans for startup operating cost and working capital.

(4) Technical assistance for private business enterprises.

(5) Reasonable fees and charges for professional services necessary for the planning and development of the project including packaging. Services must be provided by individuals licensed in accordance with appropriate State accreditation associations.

(6) Refinancing of debts exclusive of interest incurred by or on behalf of an association before an application for a grant when all of the following exist:

(i) The debts were incurred for the facility or part thereof or service to be installed or improved with the grant, and

(ii) Arrangements cannot be made with the creditors to extend or modify the terms of the existing debt.

(7) Providing financial assistance to third parties through a loan.

(8) Training, when necessary, in connection with technical assistance.

(9) Production of television programs to provide information on issues of importance to farmers and rural residents.

(10) Create, expand, and operate rural distance learning networks or rural learning programs, that provide educational instruction or job training instruction related to potential employment or job advancement for adult students.

(b) Grants, except grants for television demonstration programs, may be made only when there is a reasonable prospect that they will result in development of small and emerging private business enterprises.

(c) FmHA or its successor agency under Public Law 103–354 grant funds may be used jointly with funds furnished by the grantee or from other sources including FmHA or its successor agency under Public Law 103–354 loan funds. Pursuant to Pub. L. 95–334, other departments, agencies, and executive establishments of the Federal Government may participate and provide financial and technical assistance jointly with FmHA or its successor agency under Public Law 103–354. The amount of participation by the other department, agency, or executive establishment shall only be limited by its authorities other than authorities which impose restrictions on joint financing.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 30248, Aug. 11, 1988; 57 FR 33100, July 27, 1992; 59 FR 26587, May 23, 1994]

§ 1942.307 Limitations on use of grant funds.

(a) Funds will not be used:

(1) To produce agriculture products through growing, cultivation and harvesting either directly or through horizontally integrated livestock operations except for commercial nurseries,

timber operations or limited agricultural production related to technical assistance projects.

(2) To finance comprehensive areawide type planning. This does not preclude the use of grant funds for planning for a given project.

(3) For loans by grantees when the rates, terms and charges for those loans are not reasonable or would be for purposes not eligible under § 1942.306 of this subpart.

(4) For programs operated by cable television systems.

(5) To fund a part of a project which is dependent on other funding unless there is a firm commitment of the other funding to ensure completion of the project.

(6) To pay for technical assistance as defined in this subpart which duplicates assistance provided to implement an action plan funded by the Forest Service (FS) under the National Forest-Dependent Rural Communities Economic Diversification Act for 5 continuous years from the date of grant approval by the FS. To avoid duplicate assistance, the grantee shall coordinate with FS and Rural Business-Cooperative Service (RBS) to ascertain if a grant has been made in a substantially similar geographical or defined local area in a State for technical assistance under the above program. The grantee will provide documentation to FS and RBS regarding the contact with each agency. Under its program, the FS assists rural communities dependent upon national forest resources by establishing rural forestry and economic diversification action teams which prepare action plans. Action plans are intended to provide opportunities to promote economic diversification and enhance local economies dependent upon national forest resources.

(b) At least 51 percent of the outstanding interest in the project has membership or is owned by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence.

[53 FR 30248, Aug. 11, 1988, as amended at 55 FR 135, Jan. 3, 1990; 57 FR 33100, July 27, 1992; 60 FR 52839, Oct. 11, 1995]

§ 1942.308 Regional Commission grants.

(a) Grants are sometimes made by Federal Regional Commissions for projects eligible for FmHA or its successor agency under Public Law 103–354 assistance. FmHA or its successor agency under Public Law 103–354 has agreed to administer such funds in accordance with FmHA or its successor agency under Public Law 103–354 regulations and the requirements of the commission.

(b) The transfer of funds from a Regional Commission to FmHA or its successor agency under Public Law 103–354 will be based on specific applications determined to be eligible for an authorized purpose in accordance with the requirements of FmHA or its successor agency under Public Law 103–354 and the Regional Commission.

(c) ARC is authorized under the Appalachian Regional Development Act of 1965 (40 U.S.C. 1–405), as amended, to serve the Appalachian region. ARC grants are handled in accordance with the ARC Agreement which applies to all ARC grants administered by the Agency. Therefore, a separate Project Management Agreement between the Agency and ARC is not needed for each ARC grant.

(d) Other Federal Regional Commissions are those authorized under title V of the Public Works and Economic Development Act of 1965. Grants by these commissions are handled in accordance with a separate Project Management Agreement between the respective Regional Commission and FmHA or its successor agency under Public Law 103–354 for each Commission grant administered by FmHA or its successor agency under Public Law 103–354 (Guide 1 of this subpart). The agreement should be prepared by the FmHA or its successor agency under Public Law 103–354 State Director and the appropriate Commission official when the State Director receives a notice from the Commission of the amount of the grant to be made.

[45 FR 73637, Nov. 6, 1980, as amended at 62 FR 33510, June 19, 1997]

§ 1942.309 [Reserved]

§ 1942.310 Other considerations.

(a) Civil rights compliance requirements. All grants made under this subpart are subject to the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the bases of race, color, and national origin as outlined in subpart E of part 1901 of this chapter. In addition, the grants made under this subpart are subject to the requirements of section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap, the requirements of the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age and title III of the Americans with Disabilities Act, Public Law 101–336, which prohibits discrimination on the basis of disability by private entities in places of public accommodations. When FmHA or its successor agency under Public Law 103–354 is administering a Federal Regional Commission grant and no FmHA or its successor agency under Public Law 103–354 RBE/television demonstration grant funds are involved, the Federal Regional Commission may make its own determination of compliance with the above Acts, unless FmHA or its successor agency under Public Law 103–354 is designated compliance review responsibilities. FmHA or its successor agency under Public Law 103–354 shall in all cases be made aware of any findings of discrimination or noncompliance with the requirements of the above Acts.

(b) *Environmental requirements*—(1) *General applicability*. Unless specifically modified by this section, the requirements of subpart G of part 1940 of this chapter apply to this subpart. FmHA or its successor agency under Public Law 103–354 will give particular emphasis to ensuring compliance with the environmental policies contained in §§ 1940.303 and 1940.304 in subpart G of part 1940 of this chapter. Although the purpose of the grant program established by this subpart is to improve business, industry and employment in rural areas, this purpose is to be achieved, to the extent practicable, without adversely affecting important environmental resources of rural areas such as important farmlands and forest lands, prime rangelands, wetlands and floodplains. Prospective recipients of grants, therefore, must consider the potential environmental impacts of their applications at the earliest planning stages and develop plans, grants and projects that minimize the potential to adversely impact the environment.

(2) *Technical assistance.* The application for a technical assistance project is generally excluded from FmHA or its successor agency under Public Law 103–354's environmental review process by § 1940.310(e)(1) of subpart G of part 1940 of this chapter. However, as further specified in § 1940.330 of subpart G of part 1940 of this chapter, the grantee for a technical assistance grant, in the process of providing technical assistance, must consider the potential environmental impacts of the recommendations provided to the recipient of the technical assistance.

(3) *Applications for Direct Construction Project.* The application by a potential grantee who intends to directly use grant funds for a nontechnical assistance project, such as a construction project, shall be reviewed and processed under the applicable requirements of subpart G of part 1940 of this chapter.

(4) *Applications for Grants to Provide Financial Assistance to Third Party Recipients.* As part of the preapplication, the applicant must provide a complete Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information,'' for each project specifically identified in its plan to provide financial assistance to third parties who will undertake eligible projects with such assistance. FmHA or its successor agency under Public Law 103–354 will review the preapplication, supporting materials and any required Forms FmHA 1940–20 and initiate a Class II assessment for the preapplication. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects and that can be identified at this time from the information submitted. Because FmHA or its successor agency under Public Law 103–

354's approval of this type of grant application does not constitute FmHA or its successor agency under Public Law 103–354's commitment to the use of grant funds for any identified third party projects (see § 1942.316 of this subpart), no public notification requirements for a Class II assessment will apply to the preapplication. After the grant is approved, each third party project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in subpart G of part 1940 of this chapter, prior to FmHA or its successor agency under Public Law 103–354 providing its consent to the grantee to assist the third party project. If the preapplication reflects only one specific project which is specifically identified as the third party recipient for financial assistance, FmHA or its successor agency under Public Law 103–354 may perform the appropriate environmental assessment in accordance with the requirements of subpart G of part 1940 of this chapter, and forego initiating a Class II assessment with no public notification. However, the applicant must be advised that if the recipient or project changes after the grant is approved, the project to be assisted under the grant will undergo the applicable environmental review and public notification requirements in subpart G of part 1940 of this chapter.

(5) *Combined Applications.* Whenever an applicant files a preapplication that includes a direct construction project and a plan to provide financial assistance to third parties who will undertake eligible projects, the following environmental requirements will apply.

(i) The proposed direct construction project(s) will be reviewed under the requirements of paragraph (b)(3) of this section prior to authorization of the application.

(ii) The plan to provide financial assistance to thrid parties will be reviewed and processed under the requirements of paragraph (b)(4) of this section. Additionally, the Class II assessment required for the plan shall address and analyze the cumulative impacts of all proposed projects, direct or third party, identified within the preapplication.

(c) *Excess capacity or transfer of employment.* (1) If a proposed grant is for more than $1 million and will increase direct employment by more than 50 employees, the applicant will be requested to provide a written indication to FmHA or its successor agency under Public Law 103–354 which will enable FmHA or its successor agency under Public Law 103–354 to determine that the proposal will not result in a project which is calculated to, or likely to, result in:

(i) The transfer of any employment or business activity from one area to another (this limitation shall not prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the expansion will not result in an increase in the unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such expansion is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations), or

(ii) An increase in the production of goods, materials, or commodities or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area. The applicant's written indication will consist of a resolution from the applicant and Form FmHA or its successor agency under Public Law 103–354 449–22, ''Certificate of Non-Relocation and Market and Capacity Information Report,'' from each existing and future occupant of the site. The applicant may use guide 2 of this subpart as an example in preparing the resolution. Future occupants of the site must be certified by Department of Labor (DOL) as outlined in paragraph (c)(3) of this section for a period of 3 years after the initial certification by DOL.

(2) The State Director will check each document for completeness and accuracy and, submit nine copies of each to the National Office for forwarding to DOL. The submittal to the National Office should be accompanied by a cover memorandum giving the amount and purpose of the grant. Information should *not* be submitted directly to DOL from the applicant or the State Office.

(3) Grants shall not be made if the Secretary of Labor certifies within 30 days after the matter has been submitted by the Secretary of Agriculture that the provisions of § 1942.310(c)(1) of this subpart have not been complied with. Information for obtaining this certification will be submitted in writing by the applicant to FmHA or its successor agency under Public Law 103–354. The information will be submitted to DOL by the FmHA or its successor agency under Public Law 103–354 National Office. Grant approval may be given and funds may be obligated subject to the DOL certification being received provided FmHA or its successor agency under Public Law 103–354 has made its own separate determinations of (c)(1)(i) and (ii) of this section when the project is in excess of $1 million and affects over 50 employees.

(4) When a grant is being administered for a Federal Regional Commission and no FmHA or its successor agency under Public Law 103–354 grant funds are being used, the requirements for DOL determinations may be waived upon written request from the Commission. If the Commission so desires, the request will be included in the letter from the Commission to FmHA or its successor agency under Public Law 103–354 that gives notice of transfer of funds and conditions under which the funds are to be made available to the grantee. In such cases the letter of conditions from FmHA or its successor agency under Public Law 103–354 to the grantee will not include the requirement for DOL determinations.

(d) *Management assistance.* Grant recipients will be supervised as necessary to assure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this subpart will be administered under and are subject to 7 CFR part 3015, 7 CFR part 3016, and 7 CFR part 3017, as appropriate, and established FmHA or its successor agency under Public Law 103–354 guidelines.

(e) *National Historic Preservation Act of 1966.* All projects will be in compliance with the National Historic Preservation Act of 1966 in accordance with subpart F of part 1901 of this chapter.

(f) *Uniform Relocation and Real Property Acquisition Policies Act.* All projects must comply with the requirements set forth in title 7, subtitle A, part 21 of the Code of Federal Regulation.

(g) *Floodplains and wetlands.* All projects must comply with Executive Order 11988 ''Floodplain Management'' and Executive Order 119900 ''Protection of Wetlands.''

(h) *Flood or mudslide hazard area precautions.* If the grantee financed project is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(i) *Termination of Federal requirements.* Once the grantee has provided assistance to projects from a revolving fund, in an amount equal to the grant provided by FmHA or its successor agency under Public Law 103–354, the requirements imposed on the grantee shall not be applicable to any new projects thereafter financed from the revolving fund. Such new projects shall not be considered as being derived from Federal funds.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10, Pub. L. 93–357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70)

[45 FR 73637, Nov. 6, 1980, as amended at 47 FR 54423, Dec. 3, 1982; 49 FR 3760, Jan. 30, 1984; 53 FR 30248, Aug. 11, 1988; 55 FR 135, Jan. 3, 1990; 57 FR 33100, 33101, July 27, 1992]

§ 1942.311 Application processing.

(a) *Preapplications and applications.* (1) The application review and approval procedures outlined in § 1942.2 of subpart A of part 1942 of this chapter will be followed as appropriate. The State Director should assist the applicant in application assembly and processing. The applicant shall use SF 424.1, ''Application for Federal Assistance (For Non-Construction),'' or SF 424.2, ''Application for Federal Assistance (For

Construction),'' as applicable, when requesting financial assistance under this program.

(2) Each application for assistance will be carefully reviewed in accordance with the priorities established in §1942.305(b)(3) of this subpart. A priority rating will be assigned to each application. Applications selected for funding will be based on the priority rating assigned each application and the total funds available. All applications submitted for funding should contain sufficient information to permit FmHA or its successor agency under Public Law 103–354 to complete a thorough priority rating.

(b) *Review of decision.* When the District Director is informed that favorable action will not be taken on a preapplication or application, the applicant will be notified in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA or its successor agency under Public Law 103–354 may be requested by the applicant in accordance with subpart B of part 1900 of this chapter.

[45 FR 73637, Nov. 6, 1980, as amended at 50 FR 33332, Aug. 19, 1985; 53 FR 30249, Aug. 11, 1988; 55 FR 135, Jan. 3, 1990; 57 FR 33101, July 27, 1992]

§1942.312 [Reserved]

§1942.313 Plan to provide financial assistance to third parties.

(a) For applications involving establishment of a revolving fund to provide financial assistance to third parties the applicant shall develop a plan which outlines the purpose and administration of the fund. The plan will include:

(1) Planned projects to be financed.

(2) Sources of all non RBE funds.

(3) Amount of technical assistance (if any).

(4) Purpose of the loans.

(5) Number of jobs to be created/saved with each project.

(6) Project priority and length of time involved in completion of each project.

(7) Other information required by the State Office.

(b) Each third party project receiving funds will be reviewed for eligibility. When the applicant does not have a list of projects to be completed, the applicant should advise the FmHA or its successor agency under Public Law 103–354 at the time a preapplication is submitted.

[55 FR 135, Jan. 3, 1990, as amended at 57 FR 33101, July 27, 1992]

§1942.314 Grants to provide financial assistance to third parties, television demonstration projects, and technical assistance programs.

For applications involving a purpose other than a construction project to be owned by the applicant, the applicant shall develop a Scope of Work. The Scope of Work will be used to measure the performance of the grantee. As a minimum, the Scope of Work should contain the following:

(a) The specific purposes for which grant funds will be utilized, i.e., Technical Assistance, Revolving Fund, etc.

(b) Timeframes or dates by which action surrounding the use of funds will be accomplished.

(c) Who will be carrying out the purpose for which the grant is made (key personnel should be identified).

(d) How the grant purposes will be accomplished.

(e) Documentation regarding the availability and amount of other funds to be used in conjunction with the funds from the RBE/television demonstration program.

(f) For grants involving a revolving fund the scope of work should include those items listed in paragraphs (a) through (e) of this section as well as the following:

(1) Information which will establish/identify the need for the revolving loan fund.

(2) Financial statements which will demonstrate the financial ability of the applicant to administer the revolving loan fund. As a minimum the financial statements will include:

(i) Balance sheet

(ii) Income statement

(3) Detail on the applicants experience in operating a revolving loan fund.

(g) For technical assistance and television demonstration program projects, the scope of work should include a budget based on the budget contained

in the application, modified or revised as appropriate, which includes salaries, fringe benefits, consultant costs, indirect costs, and other appropriate direct costs for the project.

[55 FR 135, Jan. 3, 1990, as amended at 57 FR 33101, July 27, 1992]

§ 1942.315 Docket preparation and Letter of Conditions.

(a) The applicable provisions of § 1942.5 of subpart A of part 1942 of this chapter relating to preparation of loan dockets will be followed in preparing grant dockets.

(b) The State Director or the State Director's designated representative will prepare a Letter of Conditions outlining the conditions under which the grant will be made. It will include those matters necessary to assure that the proposed development is completed in accordance with approved plans and specifications, that grant funds are expended for authorized purposes, and that the terms of the Scope of Work and requirements as prescribed in parts 3015 and 3016 of 7 CFR are complied with. The Letter of Conditions will be addressed to the applicant, signed by the State Director or other designated FmHA or its successor agency under Public Law 103–354 representative, and mailed or handed to appropriate applicant officials. Each Letter of Conditions will contain the following paragraphs.

''This letter established conditions which must be understood and agreed to by you before further consideration may be given to the application.''

''This letter is not to be considered as grant approval nor as a representation as to the availability of funds. The docket may be completed on the basis of a grant not to exceed $_____.''

''Please complete and return the attached Form FmHA or its successor agency under Public Law 103–354 1942–46, 'Letter of Intent to Meet Conditions,' if you desire further consideration be given your application.''

Other items in the Letter of Conditions should include those relative to: Maximum amount of grant, contributions, final plans and specifications, construction contract documents and bidding, required project audit, evidence of compliance with all applicable Federal, State, and local requirements, closing instructions, DOL certifications, compliance with any required environmental mitigation measures, and other requirements including those of Regional Commissions when a grant is being made by a Regional Commission.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 30249, Aug. 11, 1988; 57 FR 33101, July 27, 1992]

§ 1942.316 Grant approval, fund obligation and third party financial assistance.

(a) *Grant approval.* FmHA or its successor agency under Public Law 103–354 State Directors are authorized to approve grants made in accordance with this subpart and subpart A of part 1901 of this chapter.

(b) *Fund obligation and approval announcement.* Funds will be obligated and approval announcement made in accordance with the provisions of § 1942.5(d) of subpart A of part 1942 of this chapter.

(c) *Third party financial assistance.* Approval of a grant to an applicant who will use grant funds to provide financial assistance to a third party does not constitute approval of the projects financed by the grantee. The review, approval and disbursement of funds for specific projects financed by grantees will be completed in accordance with applicable sections of this subpart.

[45 FR 73637, Nov. 6, 1980, as amended at 47 FR 36413, Aug. 20, 1982; 53 FR 30250, Aug. 11, 1988]

§§ 1942.317–1942.320 [Reserved]

§ 1942.321 Subsequent grants.

Subsequent grants will be processed in accordance with this subpart.

§§ 1942.322–1942.347 [Reserved]

§ 1942.348 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute, an applicable law or decision of the Comptroller General, if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest and show how the

adverse impact will be eliminated or minimized if the exception is made.

[55 FR 135, Jan. 3, 1990]

§ 1942.349 Forms, guides, and attachments.

Guides 1 and 2 of this subpart, Attachment 1 and Forms referenced (all available in any Rural Development office) are for use in administering RBE/television demonstration grants.

[62 FR 33510, June 19, 1997]

§ 1942.350 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0132. Public reporting burden for this collection of information is estimated to vary from one-half to 40 hours per response, with an average of 1.8 hours per response including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

[57 FR 33101, July 27, 1992]

GUIDE 1 TO SUBPART G OF PART 1942—PROJECT MANAGEMENT AGREEMENT BETWEEN THE _____ REGIONAL COMMISSION AND THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354, DEPARTMENT OF AGRICULTURE

(Grantee) _____
County, _____
Page No. _____

I. Introduction

A. The _____ Regional Commission is providing a (basic or supplemental) grant for (purpose) _____ to (grantee) _____, and the U.S. Department of Agriculture, Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 has approved and will administer that grant. The FmHA or its successor agency under Public Law 103–354 has determined that funds (can or cannot) be made available under its funding program for this fiscal year for the project. The project does meet all the requisites for assistance under section 310(B) of the Consolidated Farm and Rural Development Act, as amended (7 USC 1926). In order to accomplish these purposes, the _____ Regional Commission's Federal Cochairman and the FmHA or its successor agency under Public Law 103–354 State Director hereby enter into this Memorandum of Understanding which is in accordance with the 31 USC 686.

B. This agreement is intended to cover the application phase, construction phase, and final audit.

II. General

A. *Project Cost*

The project costs for the purposes of this agreement shall include the costs of construction, technical services, legal services, land acquisition, permits and rights-of-way, interest during construction and contingencies.

B. *Grant*

The _____ Regional Commission shall make a (basic or supplemental) grant of $_____ up to but not exceeding ___% of the total cost of the project. These funds will be transferred to the Treasury Account of the Farmers Home Administration or its successor agency under Public Law 103–354 by Standard Form 1151, ''Nonexpenditure Transfer Authorization.''

C. The undersigned FmHA or its successor agency under Public Law 103–354 State Director on behalf of FmHA or its successor agency under Public Law 103–354, in concurring to this Project Management Agreement, hereby assures the Federal Cochairman that:

1. The estimated cost of the project is reasonable and the (basic or supplemental) grant, with the funds to be supplied by the applicant, are, in its judgment, sufficient to complete the project.
2. The funds to be supplied by the applicant are available or FmHA or its successor agency under Public Law 103–354 is reasonably satisfied that the applicant has the capability of supplying such funds.
3. FmHA or its successor agency under Public Law 103–354 is reasonably satisfied that the facility will be properly and efficiently administered, operated, and maintained and that the applicant will provide sufficient funds to assure the successful and continuing operation of the facility.

D. The (grantee) _____ is subject to Executive Order 11246 and will be required

to evidence compliance by execution of the following:

1. Equal Opportunity Agreement—Form FmHA or its successor agency under Public Law 103–354 400–1
2. Nondiscrimination Agreement—Form FmHA or its successor agency under Public Law 103–354 400–4

E. The (grantee) _____ shall execute assurances of nonrelocation. (If applicable.)

III. Construction Management

A. The forms and format for the documents shall conform to the requirements in subpart A of part 1942 of this chapter. Generally, the following items shall be included:

1. Contract Documents
2. Specifications
3. Plans

B. FmHA or its successor agency under Public Law 103–354 will approve the plans and specifications.

C. FmHA or its successor agency under Public Law 103–354 will obtain a certification of adequacy from the Federal Environmental Protection Agency (include only when applicable).

D. FmHA or its successor agency under Public Law 103–354 will obtain a non-pollution certificate from the (state) _____ (agency) _____ (include only when applicable).

E. FmHA or its successor agency under Public Law 103–354 will make monthly inspections.

F. Contract change orders will not become effective until approved by FmHA or its successor agency under Public Law 103–354.

G. Final inspection will be conducted by FmHA or its successor agency under Public Law 103–354.

IV. Financial Management

A. Financial management of the project shall be according to subpart A of part 1942 of this chapter.

B. FmHA or its successor agency under Public Law 103–354 will provide the _____ Regional Commission with a copy of the audit report.

C. If actual costs fall below the costs on which the grant was calculated, the Federal and non-Federal shares will be reduced proportionately.

D. FmHA or its successor agency under Public Law 103–354 will conform to the financial reporting requirements for transferred funds as required by the attached copy of ''Reporting of Funds Transfer by Participating Agencies.''

V. Compensation

Services rendered by FmHA or its successor agency under Public Law 103–354 for the processing and administration of Commission grants in cases where neither FmHA or its successor agency under Public Law 103–354 loan nor grant funds are involved shall be on a reimbursable basis. Reimbursement will be based on five percent of the amount of the grant up to $50,000 and an additional one percent of any amount over the first $50,000 of the Commission grant. The full amount of the reimbursement will be transferred to FmHA or its successor agency under Public Law 103–354 at the time the grant funds are transferred to FmHA or its successor agency under Public Law 103–354.

VI. No provision in this agreement shall abrogate the legal requirements of administrative responsibilities as set forth in the Consolidated Farm and Rural Development Act or section 509 of the Public Works and Economic Development Act of 1965, as amended.

For the _____ Regional Commission

(name) _____

Federal Cochairman _____

_____, 197__

For the Farmers Home Administration or its successor agency under Public Law 103–354, USDA

(name) _____

State Director _____

_____, 197__

GUIDE 2 TO SUBPART G OF PART 1942—RESOLUTION

Whereas the _____ (hereinafter called public body) desires to obtain financial assistance from the Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture, pursuant to section 310 B of the Consolidated Farm and Rural Development Act, for the purpose of providing _____ (describe briefly the nature of the project) _____ (herein referred to as the facility) and as a condition to and in consideration of receiving financial assistance from the Farmers Home Administration or its successor agency under Public Law 103–354 this resolution is being adopted.

Therefore, in consideration of the premises the public body agrees as follows:

1. No private business enterprises shall be allowed to use or occupy the facility if such use or occupancy would be calculated to, or is likely to, result in the transfer from one area to another of any employment or business activity provided by operations of the private business enterprises. This limitation shall not be construed to prohibit use and enjoyment of the facility by such private business entity through the establishment of a new branch, affiliate, or subsidiary if the establishment of such branch, affiliate, or subsidiary will not result in the increase in unemployment in the area of original location (or in any other area where such entity conducts business operations), unless there

is reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location (or in any other area where it conducts such operation).

2. No private business enterprises shall be allowed to use or occupy the facilities if such use or occupancy would be calculated to, or is likely to, result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, where there is not sufficient demand for such goods, materials, commodities, services or facilities to employ the sufficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse affect upon existing competitive enterprises in the area.

3. Prior to allowing the use or occupancy of the facilities by any private business enterprise, the public body shall clear such use or occupancy with the Manpower Administration, Department of Labor, Washington, DC, by submitting information required by the Department of Labor for certification under the Act. This information shall be submitted to Farmers Home Administration or its successor agency under Public Law 103–354 for transmittal to the Department of Labor. The public body agrees to make no final commitment with any private business enterprise regarding such use or occupancy if the Department of Labor issues a negative certification under the Act. The public body shall obtain prior clearance in this matter for a period of three years after the date of an affirmative certification by the Department of Labor on the application for financial assistance now pending before the Farmers Home Administration or its successor agency under Public Law 103–354.

This resolution shall be in force and effect immediately.

The voting was yeas ___, nays ___, absent ___.

(Name of public body) _____

by (Name and Title) _____

Certification

I the undersigned as (Secretary) (Town Clerk) of the _____ do hereby certify that the foregoing resolution was duly adopted at a meeting of _____ duly called and held on the ___ day of _____ 19__, and that such resolution has not been rescinded or amended in any way. Dated this ___ day of _____, 19__.

(Seal)

(Town Clerk) (Secretary) of

Subpart H [Reserved]

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

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AUTHORITY: 5 U.S.C. 301; and 7 U.S.C. 1989.

SOURCE: 43 FR 55895, Nov. 29, 1978, unless otherwise noted.

Subpart A—Direct Farm Ownership Loan Policies, Procedures, and Authorizations

SOURCE: 53 FR 35692, Sept. 15, 1988, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to subpart A appear at 68 FR 7697, Feb. 18, 2003.

§ 1943.1 Introduction.

This subpart contains regulations for making initial and subsequent direct Farm Ownership (FO) loans. FO loans may be made to eligible farmers and ranchers, and entities that will manage and operate not larger than family farms. It is the policy of Farm Service Agency (FSA) or its successor agency under Public Law 103–354 to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA or its successor agency under Public Law 103–354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA or its successor agency under Public Law 103–354 employee. See exhibit A of this subpart for making FP loans to entrymen on unpatented public lands.

[53 FR 35692, Sept. 15, 1988, as amended at 58 FR 227, Jan. 5, 1993; 58 FR 48282, Sept. 15, 1993; 61 FR 35925, July 9, 1996; 68 FR 7697, Feb. 18, 2003]

§ 1943.2 Objectives.

The basic objective of the FO loan program is to provide credit and management assistance to eligible farmers and ranchers to become owners-operators of family-sized farms or to continue such operations when credit is not available elsewhere. Agency or its successor agency under Public Law 103–354 assistance enables family-farm operators to use their land, labor and other resources, and to improve their living and financial conditions so that they can obtain credit elsewhere.

[53 FR 35692, Sept. 15, 1988, as amended at 61 FR 35925, July 9, 1996]

§ 1943.3 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with subpart B of part 1924 of this chapter. Such assistance consists of farm, home and nonfarm planning, recordkeeping; analyzing the farm and any nonfarm business; and giving management advice.

§ 1943.4 Definitions.

As used in this subpart, the following definitions apply:

Additional security. Any security beyond that which is required to adequately secure the loan.

Agency. The Farm Service Agency, its country and State committees and their personnel, and any successor agency.

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA or its successor agency under Public Law 103–354 office.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for FO loan assistance in accordance with § 1943.12 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA or its successor agency under Public Law 103–354 regulations.

(e) Except for OL loan purposes, does not own real farm or ranch property or who, directly or through interests in family farm entities, owns real farm or ranch property, the aggregate acreage of which does not exceed 30 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the

applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA or its successor agency under Public Law 103–354 under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA or its successor agency under Public Law 103–354 debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA or its successor agency under Public Law 103–354 debt.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of State(s) in which the entity will operate a farm.

Corporation. For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note. In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

Entity. Cooperative, corporation, partnership, joint operation, trust, or limited liability company.

Family farm. A farm which:

(a) Will produce agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence.

(b) Will provide enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the borrower to:

(1) Pay necessary family and operating expenses;

(2) Maintain essential chattel and real property; and

(3) Pay debts.

(c) Is managed by:

(1) The borrower, when a loan is made to an individual.

(2) The members responsible for operating the farm when a loan is made to a cooperative, corporation, partnership, or joint operation.

(d) Has a substantial amount of the labor requirements for the farm enterprise provided by:

(1) The borrower and any family member for a loan made to an individual.

(2) The members responsible for operating the farm, along with the families of these individuals, for a loan made to an entity.

(e) May require a reasonable amount of full-time hired labor and seasonal labor during peakload periods.

Farm. A tract or tracts of land, improvements and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expoenses. These records will be used along with realistic anticipated prices, including farm program payments when available, to determine that the income from the farming operation, along with any other reliable off farm income, will provide the income necessary for an applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments of all debts.

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower which is in accordance with the essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household.

Fish farming. The production of fish, mollusks or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Limited resource applicant. An applicant who is a farmer or rancher and is an owner or operator of a small or family farm (a small farm is a marginal family farm), including a new owner or operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a farm ownership or operating loan, but due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant will not have nor expect to obtain, without the special help and low-interest loan, the income needed to have a reasonable standard of living when compared to other residents of the community.

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, joint operation or partnership.

Market value. The amount which a willing buyer would pay a willing but not forced seller in a completely voluntary sale.

Mortgage. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term *mortgage* also refers to any security interest in chattel property.

Nonfarm enterprise. Any nonfarm business enterprise, including recreation, which is closely associated with the farm operations and located on or adjacent to the farm and provides income to supplement farm income. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

Participated in the business operations of a farm or ranch. An applicant has participated in the business operations of a farm or ranch if the applicant has:

(1) Been the owner, manager or operator of a farm business for the year's complete production and marketing cycle as evidenced by tax returns, FSA farm records or similar documentation;

(2) Been employed as a farm manager or farm management consultant for the year's complete production and marketing cycle; or

(3) Participated in the operation of a farm by virtue of being raised on a farm or having worked on a farm with significant responsibility for the day-to-day decisions for the year's complete production and marketing cycle, which may include selection of seed varieties, weed control programs, input suppliers, or livestock feeding programs or decisions to replace or repair equipment.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and the entity must be authorized to own both real and personal property and to incur debts in its own name.

Primary security. Any real estate and chattel security which is required to adequately secure the loan. This is not to be confused with *basic security,* as defined in §1962.4 of subpart A of part 1962 of this chapter.

Related by blood or marriage. As used in this subpart, individuals who are connected to one another as husband, wife, parent, child, brother or sister.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

Socially disadvantaged applicant (SDA). An applicant who is a member of a socially disadvantaged group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as a member of a group, without regard to their individual qualities. For entity SDA applicants, the majority interest in the entity must be held by socially disadvantaged individuals. The Agency has identified socially disadvantaged groups as Women, Blacks, American Indians, Alaskan Natives, Hispanics, Asians, and Pacific Islanders.

State Beginning Farmer program. Any program that is carried out by or under contract with a State and designed to assist persons in obtaining the financial assistance necessary to establish and/or maintain viable farming or ranching operations.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Undivided right. An undivided right of title, or a title to an undivided portion of an estate, that is owned by one of two or more tenants in common or joint tenants before division.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 19524, May 7, 1992; 58 FR 26681, May 5, 1993; 58 FR 48287, Sept. 15, 1993; 58 FR 58648, Nov. 3, 1993; 61 FR 35925, July 9, 1996; 62 FR 9355, Mar. 3, 1997; 62 FR 28619, May 27, 1997; 68 FR 7698, Feb. 18, 2003; 68 FR 62224, Nov. 3, 2003; 69 FR 5263, Feb. 4, 2004]

§1943.5 [Reserved]

§1943.6 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit elsewhere is not available, with or without a guarantee or a subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA or its successor agency under Public Law 103–354 guarantee or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed FO loan request can be processed by the lender for consideration by FmHA or its successor agency under Public Law 103–354.

(c) Property and interests in property owned and income received by an individual applicant, or an entity applicant and all of its members as individuals, will be considered and used by an applicant in obtaining credit from other sources.

(d) Applicants and borrowers will be encouraged to supplement farm ownership loans with credit from other credit sources to the extent economically feasible and in accordance with sound financial management practices.

[53 FR 35692, Sept. 15, 1988, as amended at 68 FR 7698, Feb. 18, 2003]

§1943.7 For the State of Hawaii—FO loans on leasehold interest on real property.

The term owner-operator as used in this subpart shall include in the State of Hawaii the lessee-operator of real property in any case in which the

County Supervisor determines that such real property cannot be acquired in fee simple by the lessee-operator. The leasehold must provide adequate security for the loan. A leasehold is the right to use property for a specific period of time under conditions provided in a lease agreement. The determination of value will be made by an appraisal of the present market value of the leasehold by an FmHA or its successor agency under Public Law 103–354 employee designated to appraise farm real estate. The terms and conditions of the lease must be such as to allow the lessee-operator to have a reasonable probability of accomplishing the objectives and repayment of the loan. The FmHA or its successor agency under Public Law 103–354 Hawaii State Office will issue an amendment to its State supplement for this subpart providing the necessary requirements (including forms) for obtaining the required security. The amendment to the State supplement and forms, and any revisions to them, but have prior National Office approval before being issued.

§§ 1943.8–1943.9 [Reserved]

§ 1943.10 Preference.

(a) In addition to the preference established in subpart A of part 1910 of this chapter, an application for a loan for land purchase from an applicant who (1) has a dependent family, or (2) is an owner of livestock and farm implements necessary to successfully carry on farming operations, or (3) is able to make down payments will be given preference over one from an applicant who does not meet any of these criteria.

(b) The portion of a State's farm ownership (FO) loan fund allocation designated for applicants who are members of socially disadvantaged groups will be used exclusively to assist them in purchasing farmland. However, this requirement does not preclude the use of the State's regular allocation of FO funds for loans for other authorized FO loan purposes to applicants who are members of socially disadvantaged groups. (See exhibit B of this subpart, ''Target Participation Rates for Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 Direct Farm Ownership (FO) Loans and Acquired Property Outreach Program for Members of Socially Disadvantaged Groups''.)

[53 FR 35692, Sept. 15, 1988, as amended at 55 FR 21527, May 25, 1990]

§ 1943.11 Receiving and processing applications.

Applications for FO loans will be received and processed as provided in subpart A of part 1910 of this chapter, with consideration given to the requirements in exhibit M of subpart G of part 1940 of this chapter. Socially disadvantaged individuals will be provided the technical assistance necessary when applying for FO loans or other assistance to acquire inventory farmland. Such assistance shall include, but not be limited to, completion of application and farm and home planning.

[55 FR 21528, May 25, 1990]

§ 1943.12 Farm ownership loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR part 1308, which is exhibit C to subpart A of part 1941 of this chapter and is available in any FmHA or its successor agency under Public Law 103–354 office, for the definition of *controlled substance*) prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA or its successor agency under Public Law 103–354 410–1, ''Applications for FmHA or its successor agency under Public Law 103–354 Services,'' that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(a) *An individual must:*

(1) Be a citizen of the United States, a United States non-citizen national, or a qualified alien under applicable Federal immigration laws. United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have sufficient applicable educational and/or on the job training or farming experience in managing a farm or ranch which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(4) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rate and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar purposes and periods of time.

(5) Be the owner-operator of not larger than a family farm after the loan is closed (in the case of a limited resource applicant see § 1943.4 of this subpart).

(6) Have participated in the business operations of a farm or ranch for at least 3 years out of the 10 years prior to the date the application is submitted and satisfy at least one of the following conditions:

(i) Meet the definition of a beginning farmer or rancher.

(ii) The applicant, or anyone who will execute the promissory note, has not had direct FO loans outstanding for more than a total of 10 years prior to the date that the new FO loan is closed.

(iii) Have never received a direct FO loan.

(7) *Transition rule.* This applies to applicants with direct FO loans outstanding on April 4, 1996.

(i) If the applicant, or anyone who executed the promissory note, had direct FO loans outstanding for less than 5 years, the applicant is eligible for new direct FO loans through April 4, 2006.

(ii) If the applicant, or anyone who executed the promissory note, had direct FO loans outstanding for 5 years or more, those parties are eligible for new direct FO loans through April 4, 2001.

(8) Have not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Consolidated Farm and Rural Development Act (CONACT) by debt-write down, write-off, compromise provisions of section 331 of the CONACT, adjustment, reduction, charge-off or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances.

(9) Not be delinquent on any non-tax Federal debt or FSA guaranteed debt. This restriction will not apply if the Federal delinquency is cured on or before the loan closing date.

(b) *A cooperative, corporation, partnership, or joint operation must:*

(1) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar purposes and periods of time. This applies to the entity and *all* of its members as individuals.

(2) Be controlled by farmers or ranchers engaged *primarily* and *directly* in farming or ranching in the United States, after the loan is made.

(3) Be the owner-operator of not larger than a family farm after the loan is closed (except for limited resource applicants and as provided for in paragraph (b)(7) of this section) and consist of members who are *individuals* and *not* cooperative(s), corporations(s), partnership(s) or joint operation(s).

(4) If the members holding a *majority interest* are related by blood or marriage, they must meet the following requirements:

(i) For an entity applicant, the majority interest of the entity must be held by members who are United States citizens, United States non-citizen nationals, or qualified aliens under applicable Federal immigration laws. United States non-citizen nationals and qualified aliens must provide the appropriate documentation as to their

permanent immigration status as required by the United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

(ii) They must have sufficient applicable educational and/or on the job training or farming experience in managing a farm or ranch which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation.

(iii) At least one member must operate the family farm.

(iv) The entity must own *and* operate the farm and be authorized to do so in the State(s) in which the farm is located.

(5) If the members holding a *majority interest* are *not* related by blood or marriage:

(i) The requirements of paragraphs (b)(4)(i), (ii) and (iv) of this section must be met.

(ii) They and the entity itself must own *and* operate the family farm.

(6) If applying as a limited resource applicant, as defined in §1943.4 of this subpart:

(i) The requirements of paragraphs (b)(4)(i), (ii) and (iv) of this section must be met by the entity applicant and all its members.

(ii) The entity and *all* the members must own *or* operate a small or family farm; and at least one member must operate the farm.

(7) If each member's ownership interest does not exceed the family farm definition limits, their collective interests can exceed the family farm definition limits only if:

(i) All of the members of the entity are related by blood or marriage,

(ii) All of the members are or will be operators of the entity, and

(iii) The majority interest holders of the entity meet the requirements of paragraphs (b)(4)(i), (ii) and (iv) of this section.

(8) Have one or more members, constituting a majority interest in the business entity, who have participated in the business operations of a farm or ranch for at least 3 years out of the 10 years prior to the date the application is submitted and satisfy at least one of the following conditions:

(i) Meet the definition of a beginning farmer or rancher.

(ii) The applicant, or anyone who will execute the promissory note, has not had direct FO loans outstanding for more than a total of 10 years prior to the date that the new FO loan is closed.

(iii) Have never received a direct FO loan.

(9) *Transition rule.* This applies to business entity applicants with direct FO loans outstanding on April 4, 1996.

(i) If the applicant, or anyone who executed the promissory note, had direct FO loans outstanding for less than 5 years, the applicant is eligible for new direct FO loans through April 4, 2006.

(ii) If the applicant, or anyone who executed the promissory note, had direct FO loans outstanding for 5 years or more, those parties are eligible for new direct FO loans through April 4, 2001.

(10) Have not caused the Agency a loss by receiving debt forgiveness on all or a portion of any direct or guaranteed loan made under the authority of the Consolidated Farm and Rural Development Act (CONACT) by debt-write down, write-off, compromise provisions of section 331 of the CONACT, adjustment, reduction, charge-off or discharge in bankruptcy or through any payment of a guaranteed loss claim under the same circumstances.

(11) Not be delinquent on any non-tax Federal debt or FSA guaranteed debt. This restriction will not apply if the Federal delinquency is cured on or before the loan closing date. This eligibility restriction applies to the entity and all of its members.

(c) *Borrower training.* The applicant must agree to meet the training requirements of §1924.74 of subpart B of part 1924 of this chapter unless a waiver is granted in accordance with that section. In the case of a cooperative, corporation, partnership, or joint operation, any individual member holding a majority interest in the operation or who is operating the farm must agree to complete the training or qualify for the waiver on behalf of the entity. However, if one entity member is solely responsible for financial or production management, then only that entity member will be required to complete the training in that area for the entity

or qualify for a partial waiver. If the financial and production functions of the farming operation are shared, the knowledge and skills of the individual(s) with the responsibility of production and/or financial management of the operation will be considered in the aggregate for granting a waiver or requiring that training be completed. If a waiver is not granted, these individuals will be required to complete the training in accordance with their responsibilities. If the applicant has previously been required to obtain training, the applicant must be enrolled in and attending, or have satisfactorily completed, the training required.

[53 FR 35692, Sept. 15, 1988, as amended at 55 FR 21528, May 25, 1990; 56 FR 3972, Feb. 1, 1991; 58 FR 69199, Dec. 30, 1993; 62 FR 9355, Mar. 3, 1997; 62 FR 28619, May 27, 1997; 68 FR 7698, Feb. 18, 2003; 68 FR 62224, Nov. 3, 2003; 69 FR 5263, Feb. 4, 2004]

§ 1943.13 Outreach program for applicants/borrowers who are members of socially disadvantaged groups.

The purpose of this section is to establish procedures and responsibilities for carrying out the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to Applicants/ Borrowers who are members of socially disadvantaged groups.

(a) *Policy*. The FmHA or its successor agency under Public Law 103–354 FO Loan Outreach Program is a concerted effort to:

(1) Surface and correct problems and obstacles that prevent the participation of members of socially disadvantaged groups in the FO loan program.

(2) Target direct FO loan funds to members of socially disadvantaged groups to ensure they are provided access to FO loan funds, as outlined in exhibit B of this subpart.

(3) Provide pamphlets, publications and general information on the direct FO loan program to members of socially disadvantaged groups.

(4) Provide assistance to members of socially disadvantaged groups to assure that the application process is expedient and complete. Assistance will be provided to borrowers of socially disadvantaged groups through special farm initiatives to assure that sound operating procedures are implemented to enhance the borrower's chances for successfully achieving the objectives of the direct FO loan program.

(b) *Field action*. The State Director shall designate the Farmer Programs Chief to coordinate the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 Farm Ownership (FO) Loan Outreach Program to members of socially disadvantaged groups. The State's Civil Rights Coordinator will act as a resource person for this program. The Farmer Programs Chief will:

(1) Maintain close liaison with local, State and national organizations serving social disadvantaged groups to ascertain the reasons for the lack of participation of members of socially disadvantaged groups in FmHA or its successor agency under Public Law 103–354 direct FO loan program.

(2) Work closely with County Supervisors, District Directors, and National Office officials to remove obstacles and solve problems relating to the making of direct FO loans and credit sales to members of socially disadvantaged groups.

(3) Attend meetings of local, State, and Federal Governments and private organizations concerned with the economic and social development of members of socially disadvantaged groups.

(4) Train members of socially disadvantaged groups, interested individuals and groups involved with socially disadvantaged activities, in the packaging of applications and distribution of materials for use in the direct FO loan and credit sale programs.

(5) Provide pamphlets and publications on the direct FO loan and credit sale program.

(6) Initiate special media outreach activities to inform members of socially disadvantaged groups of the availability of acquired farmland and of targeted and non-targeted direct FO loan funds.

(i) Information must be provided to community and farm oriented organizations, agriculture colleges, other USDA agencies and community leaders who are active in the farming area.

(ii) Newspaper articles, radio announcements and public television

broadcasts will be used to publicize the FmHA or its successor agency under Public Law 103–354 Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to members of socially disadvantaged groups. *State Directors and required to publicize the program at least twice annually in a newspaper most used by members of socially disadvantaged groups.* This effort will be monitored by the National Office through Coordinated Assessment Reviews (CARs) and special planned visits to selected States.

(c) *Reports.* (1) State Directors will keep the Assistant Administrator, Farmer Programs, advised of any problems encountered in carrying out the FmHA or its successor agency under Public Law 103–354 Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to Members of Socially Disadvantaged Groups which prevent their participation in this program.

(2) *Each State Director will make a semi-annual memorandum report to the Assistant Administrator, Farmer Programs, on May 1 and September 30 of each fiscal year on the Farm Ownership (FO) Direct Loan and Acquired Property Outreach Program to members of Socially Disadvantaged Groups.* The report will summarize accomplishments on the items set forth in §1943.13(b) of this subpart. The following should also be included in the report:

(i) The State and County of each direct FO loan and credit sale made to applicant/borrowers who are members of socially disadvantaged groups.

(ii) Number of applications for direct initial and subsequent FO loans and credit sales received during the period.

(iii) Number of direct initial and subsequent FO loans and credit sales approved during the period.

(iv) Number of applications on hand for direct initial and subsequent FO loans and credit sales at the end of the reporting periods.

(v) Number of announcements placed in local newspapers, on radio and public television.

(vi) Amount of each initial and subsequent direct FO loans and credit sales approved during the reporting periods.

(vii) Total dollar value of direct initial and subsequent FO loans and credit sales approved during the reporting periods.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 19524, May 7, 1992; 62 FR 28619, May 27, 1997]

§ 1943.14 Downpayment FO loan program for beginning farmers or ranchers.

(a) *Objectives.* The basic objective of the downpayment FO loan program is to provide credit and assistance to eligible beginning farmers or ranchers to become owner-operators of family-size farms, including inventory farm property. Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government in accordance with subpart B of part 1924 of this chapter.

(b) *Eligibility requirements.* Applicants must meet the ''beginning farmer or rancher'' definition in §1943.4 of this subpart to qualify for a downpayment loan.

(c) *Loan purposes.* Loans may be made to provide an amount equal to 40 percent of the purchase price or appraised value, whichever is lower, of the farm or ranch to be acquired, unless the applicant requests a lesser amount. The remaining balance of the purchase price or appraised value, whichever is lower, not to exceed 50 percent, may be guaranteed by the Agency.

(d) *Loan limitations.* In addition to the loan limitations stated in §1943.17 of this subpart, the loan will not be approved if:

(1) The applicant cannot provide at least 10 percent of the purchase price of the farm or ranch.

(2) The purchase price or appraised value, whichever is lower, exceeds $250,000.

(3) Financing provided by FmHA or its successor agency under Public Law 103–354 and other credit exceeds 90 percent of the purchase price or appraised value, whichever is lower.

(4) The other financing for the balance of the purchase price is amortized for less than 30 years and/or a balloon payment is scheduled within the 15 years of the Agency loan.

(e) *Rates and terms*—(1) *Interest rate.* Interest rates are specified in exhibit B of FmHA Instruction 440.1 (available in

any FmHA or its successor agency under Public Law 103–354 office). The interest rate for beginning farmer or rancher downpayment loans shall be 4 percent.

(2) *Terms of loans.* (i) Each loan made under this section shall be amortized over a period of 15 years or less, at the option of the borrower.

(ii) Loans under this section shall be repaid in equal annual installments.

(f) *Security.* (1) Each loan will be secured by a lien on the property being acquired with loan funds. Security requirements under §1943.19 of this subpart do not apply under this section.

(2) FmHA or its successor agency under Public Law 103–354's secured interest in the farm or ranch being acquired will be junior only to the party providing the financing for the balance of the purchase price to the applicant.

(3) The borrower must agree to obtain permission from the County Supervisor prior to granting any additional security interest in the farm or ranch as stated in §1965.16 of subpart A of part 1965 of this chapter.

(g) *Relationship between FmHA or its successor agency under Public Law 103–354 and a State Beginning Farmer program.* State Directors are delegated authority to execute a Memorandum of Understanding (MOU) with any State expressing an interest in coordinating financial assistance to beginning farmers or ranchers. The MOU must be executed within 60 days of the State notifying the State Director in writing of such interest, and will be developed in accordance with FmHA Guide Letter 1943–A–1 (available in any FmHA or its successor agency under Public Law 103–354 office). Under the MOU, FmHA or its successor agency under Public Law 103–354 will agree to provide qualified beginning farmers or ranchers with a downpayment loan under this section and/or a guarantee of the balance of the purchase price provided by the State program. This agreement will be subject to applicable law, loan approval requirements, and the availability of funds. FmHA or its successor agency under Public Law 103–354 will not charge a fee to obtain or retain a guarantee in connection with any joint funding under the MOU. If any changes are made to the MOU, the Regional Office of the General Counsel (OGC) will be consulted prior to signing the MOU. States will send copies of signed MOUs to the attention: Director, Farmer Programs Loan Making Division, National Office.

(h) *Program outreach.* The State Director shall be responsible for publicizing the Downpayment FO Loan program, with special emphasis on Socially Disadvantaged Individuals, and facilitating the transfer of retirees farms or ranchers to eligible FO applicants within the respective State. Program outreach will include:

(1) Maintaining close liaison and attending meetings with local, State and national organizations serving the agricultural community.

(2) Providing information to community and farm oriented organizations, agriculture colleges, other USDA Agencies and community leaders who are active in the farming area.

(3) Use of newspaper articles, radio announcements, and/or public television announcements.

[58 FR 48287, Sept. 15, 1993, as amended at 68 FR 7698, Feb. 18, 2003]

§1943.15 [Reserved]

§1943.16 Loan purposes.

Loan funds may only be used to:

(a) Acquire or enlarge a farm or ranch. Examples of items that the Agency may authorize the use of FO funds for include, but are not limited to, the purchase of easements, the applicant's portion of land being subdivided, purchase of cooperative stock, appraisal and survey fees, and participation in special FO loan programs of this subpart. Down payments are authorized as a loan purpose subject to the following:

(1) A deed is obtained and the transaction is properly documented by debt and security instruments.

(2) Any prior liens meet the FO security requirements for the Agency's junior lien position.

(3) For contract purchases, purchase contracts must properly obligate the buyer and seller to fulfill the terms of the contract, provide the buyer with possession, control and beneficial use of the property, and entitle the buyer to marketable title upon fulfillment of

the contract terms. The deed must be held in trust by a bonded agent until transferred to the buyer. Upon buyer's default, the seller must give the Agency written notice of the default and a reasonable opportunity to cure the default. Any sums advanced by the Agency must be repaid by the borrower.

(b) Make capital improvements. Examples of items that the Agency may authorize the use of FO funds for include, but are not limited to, the construction, purchase and improvement of farm dwellings, service buildings, and facilities that can be made fixtures to the real estate. In the case of leased property, the borrower must have a lease to ensure use of the improvement over its useful life or to ensure that the borrower receives compensation for any remaining economic life upon termination of the lease.

(c) Promote soil and water conservation and protection. Examples include the correction of well-defined, hazardous environmental conditions, and the construction or installation of tiles, terraces, and waterways.

(d) Pay closing costs.

(e) Refinance a bridge loan if the following conditions are met:

(1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;

(2) Direct FO funds were not available to fund the loan at the time of approval;

(3) The loan to be refinanced is temporary financing; and

(4) The loan was made by a commercial or cooperative lender.

[62 FR 9356, Mar. 3, 1997, as amended at 62 FR 28619, May 27, 1997; 68 FR 7698, Feb. 18, 2003]

§ 1943.17 Loan limitations.

(a) An FO loan will not be approved if:

(1) The total outstanding direct FO, Soil and Water (SW) or Recreation (RL) loan principal balance including the new loan owed by the applicant will exceed the lesser of $200,000 or the market value of the farm or other security.

(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public roads between tracts.

(3) The limitation found in § 1943.29 (b) of this subpart is exceeded.

(b) Loans my not be made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in exhibit M to subpart G of part 1940 of this chapter. Refer to FmHA Instruction 2000–LL, ''Memorandum of Understanding Between FmHA or its successor agency under Public Law 103–354 and U.S. Fish and Wildlife Service,'' for assistance in implementation.

(c) The purpose of the loan is to finance a nonfarm enterprise.

[53 FR 35692, Sept. 15, 1988, as amended at 58 FR 48282, 48288, Sept. 15, 1993; 59 FR 25800, May 18, 1994; 62 FR 9356, Mar. 3, 1997; 68 FR 62224, Nov. 3, 2003]

§ 1943.18 Rates and terms.

(a) *Terms of loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan,'' or other similar plan of operation acceptable to FmHA or its successor agency under Public Law 103–354, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA or its successor agency under Public Law 103–354 1940–17, ''Promissory Note.'' Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA or its successor agency under Public Law 103–354 will be the lower of the interest rates in effect at the time of loan approval or loan closing. If the applicant does not indicate a choice, the loan will be closed at the interest

rate in effect at the time of loan approval. Interest rates are specified in exhibit B of FmHA Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103–354 office) for the type of assistance involved. A lower rate is established in this exhibit for a limited resource applicant subject to the following:

(1) The applicant meets the conditions of the definition for a limited resource applicant set forth in § 1943.4 of this subpart.

(2) The farm business plan shows that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(3) A borrower with limited resource interest rates will be reviewed each year at the time the analysis is conducted (see § 1924.55 of subpart B of part 1924 of this chapter) and at any time a servicing action such as reamortization or deferral is taken to determine what interest rate should be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See § 1951.25 subpart A of part 1951 of this chapter.)

(c) *Interest rate with joint financing.* When the applicant obtains financing from a private lender equivalent to 50 percent or more of the total funds needed, the interest rate on the direct FO loan will be fixed at a rate determined by the Agency Administrator but at not less than 4 percent for the term of the loan. The current rate is available in FSA offices.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 18677, Apr. 30, 1992; 61 FR 35925, July 9, 1996; 62 FR 9356, Mar. 3, 1997]

§ 1943.19 Security.

Each FO loan will be secured by real estate. Chattels and/or other security will only be taken as security as set forth in paragraphs (b) and (c) of this section. The total amount of security required will be the lesser of either 150 percent of the loan amount, or all real estate owned by the applicant. A loan will be considered adequately secured when the real estate security for the loan is at least equal to the loan amount. Security in excess of 150 percent of the loan amount will only be taken when it is not practical to separate the property, i.e., a tract of land. All security taken, along with the value of the security, will be documented in the case file. This information will be obtained from values established in accordance with § 1943.25 of this subpart. If the applicant disagrees with the real estate values established, FmHA or its successor agency under Public Law 103–354 will accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FmHA or its successor agency under Public Law 103–354 requirements. In cases when a loan is being made in conjunction with a servicing action, the security requirements as stated in subpart S of part 1951 of this chapter will prevail. In unusual cases, the loan approval official may require a cosigner in accordance with § 1910.3(d) of subpart A of part 1910 of this chapter or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(a) *Real estate security.* (1) A mortgage will be taken on all real estate acquired, or improved with FO funds, and by any additional real estate security needed to meet the requirements of this section.

(2) Security will also include items which are considered part of the farm and ordinarily pass with the title to the farm such as, but not limited to, assignments of leases or leasehold interests having mortgageable value, water rights, easements, rights-of-way, revenues, and royalties from mineral rights.

(3) A first lien is required on real estate, when available. In addition, loans will be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA or its successor agency under Public Law 103–354 whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in subpart B of part 1927 of this chapter, except as modified by the ''Memorandum of Understanding-FCA-FmHA or its successor agency under Public Law 103–354,'' FmHA Instruction 2000-R (available in any FmHA or its successor agency under Public Law 103–354 office).

(4) Advice on obtaining security will be received from OGC when necessary.

(5) The designated attorney, title insurance company, or the OGC will furnish advice on obtaining security when a life estate is involved.

(6) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal service as required in subpart B of part 1927 of this chapter provided the County Supervisor believes from a search of the County records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) Land is to be purchased.

(iii) This provision conflicts with program regulations of any other FmHA or its successor agency under Public Law 103–354 loan being made simultaneously with the FO loan.

(7) The Departments of Agriculture and Interior have agreed that FmHA or its successor agency under Public Law 103–354 loans may be made to Native Americans and secured by real estate when title is held in trust or restricted status. When security is so taken on real estate held in trust or restricted status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor; and

(ii) The BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(b) *Chattel security.* Ordinarily, FO loans will not be secured by chattels. However, loans will be secured by chattels as follows:

(1) A first lien will be taken on equipment or fixtures purchased with loan funds whenever such property cannot be included in the real estate lien and the best lien obtainable on all real estate does not provide primary security for the loan.

(2) Chattel security will be obtained when the best lien obtainable on all real estate does not provide primary security for the loan.

(3) The same collateral may be used to secure two or more loans made, direct or guaranteed, to the same borrower. Therefore, junior liens on chattels may be taken when there is enough equity in the property. However, when possible, a first lien on selected chattel items should be obtained.

(4) Chattel security liens will be obtained and kept effective, as provided in subpart A of part 1962 of this chapter.

(c) *Other security.* (1) A pledge of real estate by a third party may be taken as security when the best lien obtainable on all real estate does not provide primary security for the loan.

(2) Other property may be taken as security when the best lien obtainable on all real estate does not provide primary security for the loan. Examples of such security include but are not limited to cash surrender value of life insurance, securities, patents and copyrights, and membership or stock in cooperatives and associations.

(d) *Exceptions.* The County Supervisor will clearly document in the file when security is not taken for any of the following reasons:

(1) A lien will not be taken on property that could have significant environmental problems/costs (e.g., known or suspected underground storage tanks or hazardous wastes, contingent liabilities, wetlands, endangered species, historic properties). Guidance is provided in part II, item H of exhibit A of FmHA Instruction 1922–E (available in any FmHA or its successor agency under Public Law 103–354 office) as to the action to be taken when the appraiser indicates that the property is subject to any hazards, detriments or limiting conditions.

(2) A lien will not be taken on property that cannot be made subject to a valid lien.

(3) A lien will not be taken on the applicant's personal residence and appurtenances, when the residence is located on a separate parcel and the farm tract being financed, improved, or otherwise used for collateral provides primary security for the loan(s).

(4) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary family living expenses; all types of retirement accounts; personal vehicles necessary for family living or farm operating purposes; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(5) A lien will not be taken on marginal land, including timber, when a softwood timber (ST) loan is secured by such land.

(e) *State supplements.* Each State will supplement this section to provide instructions on forms and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA or its successor agency under Public Law 103–354 and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(f) *Special security requirements.* When FO loans are made to eligible *entities* that consist of members who are presently indebted for an FO loan(s) as individual(s) *or* when FO loans are made to eligible *individuals* who are members of an entity which is presently indebted for an FO loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA or its successor agency under Public Law 103–354 for any other farmer program direct or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(g) *Same security.* Except as provided in paragraph (f) of this section, when an FO loan (direct or guaranteed) is made to a borrower who has other FmHA or its successor agency under Public Law 103–354 loans, the same real estate collateral may secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 18677, Apr. 30, 1992; 59 FR 22961, May 4, 1994; 59 FR 25800, May 18, 1994; 62 FR 9356, Mar. 3, 1997]

§§ 1943.20–1943.22 [Reserved]

§ 1943.23 General provisions.

(a) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Subpart B of part 1806 of this chapter (FmHA Instruction 426.2) as well as subpart G of part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. However, buildings will need to meet the standards set out in § 1943.24 of this subpart. The flood or mudslide hazard will be recognized in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendation on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA or its successor agency under Public Law 103–354 representatives will evaluate the proposal and record the decision in the loan docket

in accordance with subpart G of part 1940 of this chapter.

(b) *Civil rights.* The provisions of subpart E of part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA or its successor agency under Public Law 103–354 400–4, ''Nondiscrimination Agreement,'' in these cases.

(2) Any development financed by FmHA or its successor agency under Public Law 103–354 that will be performed by a contract or subcontract of more than $10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of subpart F of part 1901 of this chapter apply.

(d) *Environmental requirements.* See subpart G of part 1940 of this chapter for applicable environmental requirements including subpart LL of part 2000 of this chapter for assistance in implementation.

(e) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of subpart I of part 1940 apply when FO funds are used involving tracts of less than 25 acres, if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(f) *Equal Credit Opportunity Act.* In accordance with title V of Pub. L. 93–495, the Equal Credit Opportunity Act, the FmHA or its successor agency under Public Law 103–354 will not discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

(g) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing building construction, diverting, appropriating, and using water, including use for domestic purposes; installing facilities for draining land; and making changes in the use of the land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

[53 FR 35692, Sept. 15, 1988, as amended at 62 FR 9356, Mar. 3, 1997]

§ 1943.24 Special requirements.

(a) *Determining whether a farm will permit a feasible plan.* The County Supervisor is responsible for making a preliminary determination as to whether a loan should be made on the farm. This determination will be based on a personal inspection of the farm and an evaluation of such factors as productivity of the land; location, conditions, and adequacy of the buildings; approximate value of the farm, roads, schools, markets, or other community facilities; tax rates; and adequacy of the water supply. A decision also will be made on the suitability of the farm for a specialized farm operation, and development needed to make it acceptable for the planned operation of the farm.

(b) *Dwellings and other essential buildings.* (1) Buildings adequate for the planned operation of the farm must be available for the applicant's use after the loan is made. The necessary buildings will be located on the applicant's farm. Exceptions of this requirement are when:

(i) The applicant already owns an adequate, decent, safe, and sanitary dwelling, suitable for the family's needs, and located close enough to the farm so the farm may be operated successfully, it will not be necessary to provide a dwelling on the farm.

(ii) The applicant has a long-term lease on acceptable rented buildings that are adjacent to or near the farm, or the applicant occupies suitable

buildings which the applicant will eventually inherit or be permitted to purchase from a relative.

(iii) The farm does not have an adequate dwelling and the applicant owns a suitable mobile home which will be used as the applicant's home, the applicant will not be required to build a dwelling. A mobile home will not be considered to add value to the farm but FO funds may be used to finance anchoring the home.

(2) When loan funds are needed for a dwelling and an applicant is eligible for a Rural Housing (RH) loan, it will be processed simultaneously with the FO loan. However, in such cases if a small amount is needed for dwelling improvements, FO funds may be used. Dwellings financed with RH funds will meet the requirements for such loans as provided in subpart A of part 1944 of this chapter.

(c) *Land and facility development.* Development needed to make the farm ready for a successful operation will be planned during loan processing. The plans should provide for completing the development at the earliest practicable date. Recommendations of representatives of the Forest Service, Soil Conservation Service, State Agricultural Extension Service, and State Planning and Development Agency or local planning groups should be included in the development plan and the Farm and Home Plan. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) programs.

(d) *Insurance.* (1) Insurance must be obtained on any property acquired with, or serving as primary security on an FO loan in accordance with subpart A of part 1806 of this chapter.

(2) Applicants must comply with the catastrophic risk protection insurance (CAT) requirement by either:

(i) Obtaining at least the available CAT level of coverage for each crop of economic significance, as defined by the Federal Crop Insurance Corporation, or

(ii) Waiving eligibility for emergency crop loss assistance in connection with the uninsured crop. FSA emergency (EM) loss loan assistance is not considered emergency crop loss assistance for the purpose of the crop insurance waiver on the uninsured crop.

(3) See § 1943.23(a) of this subpart for information about flood or mudslide hazard areas.

(e) *Income from other than owned acreage.* When loan soundness depends on income from other sources in addition to income from owned land, it will be necessary to determine that:

(1) There is reasonable assurance that any rented land which the applicant depends on will be available; and/or

(2) Any off-farm employment the applicant depends on is likely to continue.

(f) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm;

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage.

(2) To the remainderman only, provided;

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(g) *Farm or residence situated in different counties.* If a farm is situated in more than one State, county or parish, the loan will be processed and serviced in the State, county or parish in which the borrower's residence on the farm is located. However, if the borrower's residence is not situated on the farm, the FO loan will be serviced by the County Office serving the county in which the farm or a major portion of the farm is

located unless otherwise approved by the State Director.

(h) *Subdivision of large tracts of farmland, other than FmHA or its successor agency under Public Law 103–354 inventory farms, into family farm units.* County Supervisors should investigate any large tract that is offered for sale to determine the feasibility of making FO loans to enable several applicants to acquire the tract. In considering the feasibility of a tract for subdivision into family farms, the following are some of the factors that must be considered:

(1) Productivity of the land and its suitability for operation as a family farm;

(2) Cost of the land and improvements;

(3) Accessibility to roads, markets, schools, right-of-way, easements, and other services.

(4) Disposition or omission of any part of the tract that is not suitable; and

(5) The number of eligible applicants in the area.

(i) *Liens junior to the FmHA or its successor agency under Public Law 103–354 lien.* A loan will not be approved if a lien junior to the FmHA or its successor agency under Public Law 103–354 lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the FO loan, such as for a portion of the purchase price of the farm or money borrowed from others for payments on debts abainst the farm, unless the total debt against the security would be within its market value.

(j) *Graduation of FO borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area, the borrower will, upon request, apply for and accept such financing. A borrower paying a rate of interest less than the market rate wil be expected to pay the current rate when able to do so.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 18678, Apr. 30, 1992; 58 FR 26681, May 5, 1993; 59 FR 25801, May 18, 1994; 62 FR 9356, Mar. 3, 1997]

§ 1943.25 Options, planning, and appraisals.

(a) *Optioning land.* an applicant is responsible for obtaining options on real property bought. Form FmHA or its successor agency under Public Law 103–354 440–34, ''Option to Purchase Real Property,'' should be used if possible. Other forms may be used if acceptable to all parties concerned and to FmHA or its successor agency under Public Law 103–354. When an FmHA or its successor agency under Public Law 103–354 form is not used, a provision should be included which makes the option contingent upon the FmHA or its successor agency under Public Law 103–354 making a loan to the buyer.

(1) The County Supervisor should advise the applicant to have an understanding with the seller on such items as:

(i) Land description and number of acres;

(ii) Buildings and fixtures included in the transaction. The applicant should determine the condition of property attached to the land and the working condition of any fixtures with movable parts;

(iii) Minerals and the effect any mineral reservation has on the land value and operating it as a farm;

(iv) Access to the land or any part of it;

(v) The party responsible for taxes and insurance; and

(vi) The party who will receive the income from the land during the crop year of the transaction.

(2) The applicant shoud decide if the applicant wants the option recorded and is responsible for paying any recording fees.

(b) Farm business plans will be completed as provided in subpart B of part 1924.

(c) *Appraisals.* (1) Except as provided in paragraph (c)(2) of this section, real estate appraisals will be completed on forms in accordance with §761.7 of this title, and in the case of an appraisal of

residential real estate, the appropriate Agency form (available in each Agency State Office) or other format that contains the same information, by a designated FmHA or its successor agency under Public Law 103–354 real property appraiser, or FmHA or its successor agency under Public Law 103–354 State-certified general contract real property appraiser. Appraisals are necessary when real estate is taken as primary security, as defined in §1943.4 of this subpart, and when loans are serviced in accordance with subpart S of part 1951 of this chapter. Real estate appraisals are not required when real estate is taken as additional security, as defined in §1943.4 of this subpart. However, the County Supervisor will document in the running record the estimated market value of the additional security and the basis for the estimate.

(2) Other real estate appraisals completed by other State-certified general appraisers may be used providing such appraisals meet the ethics, competency, departure provisions, etc., and sections I and II of the Uniform Standards of Professional Appraisal Practices, and contain a mineral rights appraisal as set out in paragraph (c)(4) of this section. Prior to acceptance, the appraisal must have an acceptable desk review (technical) completed by an FmHA or its successor agency under Public Law 103–354 designated review appraiser.

(3) Real estate appraisals will be completed as provided in §761.7 of this title. The rights to mining products, gravel, oil, gas, coal, or other minerals will be considered a portion of the security for Farmer Programs loans and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA or its successor agency under Public Law 103–354 1922–11, ''Appraisal for Mineral Rights'' or other format that contains the same information.

(4) The value of stock required to be purchased by Federal Land Bank (FLB) borrowers may be added to the recommended market value of the real estate, provided:

(i) An assignment is obtained on the stock, or

(ii) An agreement is obtained which provides that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA or its successor agency under Public Law 103–354, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(5) In the case of nonreal estate security the following items apply:

(i) Form FmHA or its successor agency under Public Law 103–354 440–21, ''Appraisal of Chattel Property,'' will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) Its current market value, or if appropriate, the current cash value will be determined.

[53 FR 35692, Sept. 15, 1988, as amended at 54 FR 47959, Nov. 20, 1989; 58 FR 26681, May 5, 1993; 59 FR 16773, Apr. 8, 1994; 62 FR 9356, Mar. 3, 1997; 64 FR 62568, Nov. 17, 1999]

§ 1943.26 Planning and performing farm development.

The development work will be planned and completed in accordance with subpart A of part 1924 of this chapter. The provisions of subpart E of part 1901 of this chapter will be met in connection with FO loans involving recreational enterprises and the construction of buildings.

§ 1943.27 Relationship with other lenders.

An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an FO loan, consideration will be given to a participation loan. FmHA or its successor agency under Public Law 103–354 employees may not guarantee, personally or for FmHA or its successor agency under Public Law 103–354, repayment of advances made from other credit sources. However, lenders

may be assured that lien priorities will be recognized.

§ 1943.28 FmHA or its successor agency under Public Law 103–354 loans simultaneous with other lenders.

(a) FmHA Guide Letter 1943–A–1 (available in any FmHA or its successor agency under Public Law 103–354 office), will serve as a guide in executing MOUs with State Beginning Farmer programs by which FO loans will be made simultaneously with loans by any State Beginning Farmer program. Subpart R of part 2000 of this chapter, ''Memorandum of Understanding FHA or its successor agency under Public Law 103–354–FCA,'' (available in any FmHA or its successor agency under Public Law 103–354 office) will serve as a guide in processing FO loans to be made simultaneously with loans by FLB to a common applicant. State Directors may work out agreements for simultaneous loans with long-term lenders other than FLBs for eligible loan purposes. Such an agreement should prohibit future advances by the first mortgage holder except for taxes, property insurance, reasonable maintenance expenditures, and reasonable foreclosure costs, but should not prohibit subsequent FmHA or its successor agency under Public Law 103–354 loans. It should also cover items such as appraisal methods, title clearances, loan closing, the disbursement of funds and, when appropriate, advance notice of foreclosure. It may also cover other items considered necessary or advisable for a sound FmHA or its successor agency under Public Law 103–354 junior lien loan.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship in processing loans to a mutual applicant or borrower. When an FO loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA or its successor agency under Public Law 103–354 lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

[53 FR 35692, Sept. 15, 1988, as amended at 58 FR 48288, Sept. 15, 1993]

§ 1943.29 Relationship between FSA loans, direct and guaranteed.

(a) Direct FO loans may be made simultaneously with other FmHA or its successor agency under Public Law 103–354 loans, and to borrowers presently indebted to FmHA or its successor agency under Public Law 103–354, when the loan limits will *not* be exceeded and all requirements of the loans involved will be met.

(b) A direct FO may be made to a guaranteed loan borrower provided the requirements of 7 CFR 761.8 and all other loan requirements are met.

(c) A borrower may use the same collateral to secure two or more loans, direct or guaranteed, under this subpart except that the outstanding amount of such loans may not exceed the total value of the collateral so used.

[53 FR 35692, Sept. 15, 1988, as amended at 55 FR 21528, May 25, 1990; 58 FR 44747, Aug. 25, 1993; 58 FR 48282, 48288, Sept. 15, 1993; 61 FR 35925, July 9, 1996; 66 FR 7568, Jan. 24, 2001]

§§ 1943.30–1943.32 [Reserved]

§ 1943.33 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by subpart A of part 1901 of this chapter provided:

(1) The total debt including the loan(s) being made (unpaid principal and past due interest) against the security will not exceed the market value of the security.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in § 1910.4 of subpart A of part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the

loan approval official will determine that:

(i) The Agency has certified the applicant eligible.

(ii) Funds are requested for authorized purposes.

(iii) The proposed loan is based on a feasible plan. Planning forms other than Form FmHA or its successor agency under Public Law 103–354 431–2 may be used when they provide the necessary information.

(iv) The security is adequate.

(v) Necessary supervision is planned, and

(vi) All other pertinent requirements have been met or will be met.

(2) [Reserved]

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 18678, Apr. 30, 1992; 61 FR 35926, July 9, 1996]

§ 1943.34 Requesting title service.

(a) Title clearance will be obtained as provided in subpart B of part 1927 of this chapter, when required by the Agency.

(b) When the loan is approved, the applicant will arrange with the seller to take possession of the land that is being acquired.

[53 FR 35692, Sept. 15, 1988, as amended at 54 FR 47959, Nov. 20, 1989; 56 FR 67481, Dec. 31, 1991; 68 FR 62224, Nov. 3, 2003]

§ 1943.35 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the field office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the field office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agree upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after, loan closing of if the amount of funds that cannot be disbursed does not exceed $5,000, the total amount of the loan will be requested in a single advance.

(2) When loans funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the field office terminal system. The amount of each advance should meet the needs of borrowers as much as possible, so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA or its successor agency under Public Law 103–354 440–57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with subpart A of part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 2018–D, a copy of which may be obtained from any FmHA or its successor agency under Public Law 103–354 office. The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 2018–D.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled:

(1) The County Supervisor will notify the State Office of loan cancellation by using Form FmHA or its successor agency under Public Law 103–354 1940–10, ''Cancellation of U.S. Treasury Check and/or Obligation.'' The County Office will send a copy of Form FmHA or its successor agency under Public Law 103–354 1940–10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate that the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned as prescribed in FmHA Instruction 2018–D (available in any FmHA or its successor agency under Public Law 103–354 office).

(2) Interested parties will be notified of the cancellation as provided in subpart B of part 1927 of this chapter.

(d) *Cancellation of advances.* When an advance is to be cancelled, the County Supervisor must take the following actions;

(1) Complete and distribute Form FmHA or its successor agency under Public Law 103–354 1940–10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA or its successor agency under Public Law 103–354 440–57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum will be attached to the revised forms and sent to the State Office.

[53 FR 35692, Sept. 15, 1988, as amended at 54 FR 39727, Sept. 28, 1989; 56 FR 67481, Dec. 31, 1991; 59 FR 54788, 54789, Nov. 2, 1994]

§§ 1943.36–1943.37 [Reserved]

§ 1943.38 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower and the seller, if any, of the loan closing date. The following appropriate actions will be taken in connection with, and after, loan closing.

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of subpart B of part 1927 of this chapter except as modified for loans of $10,000 or less in § 1943.19 (a)(6).

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in subpart B of part 1941 of this chapter for operating loans. The following forms will be used for chattel security:

(1) Form FmHA or its successor agency under Public Law 103–354 440–15, ''Security Agreement (Insured Loans to Individuals).''

(2) Form FmHA or its successor agency under Public Law 103–354 440–25, ''Financing Statement'' or, when authorized, Form FmHA or its successor agency under Public Law 103–354 440–A25, ''Financing Statement.''

(3) State forms may be used if national forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears that the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirments or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so, and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out, and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with subpart A of part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with subpart A of part 1965 of this chapter.

(1) For assignment of income, Form FmHA or its successor agency under Public Law 103–354 443–16, ''Assignment of Income from Real Estate Security,'' will be used, except if it is legally inadequate in a State it may be adapted to that State with the approval of the OGC or an authorized State Form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA or its successor agency under Public Law 103–354 443–16 is executed, appropriate notations will be made on Form FmHA or its successor agency under Public Law 103–354 1905–1, ''Management System Card—Individual,'' to insure that the proceeds, or the specified portions of the proceeds assigned to FmHA or its successor agency under Public Law 103–354 from the transactions, are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA or its successor agency under Public Law 103–354 1940–17, ''Promissory Note,'' will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA or its successor agency under Public Law 103–354 loan made simultaneously with the FO loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA or its successor agency under Public Law 103–354 notes to be secured by real estate can be described in the same mortgage.

(3) The promissory note will be signed as follows:

(i) *Individuals.* Only the applicant(s) will sign the note as a borrower. If the co-signer is needed (see § 1910.3(e) of subpart A of part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA or its successor agency under Public Law 103–354 is to incur individual personal liability regardless of any State law to the contrary.

(ii) *Entities.* The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

(h) *Supplementary payment agreement.* Form FmHA or its successor agency under Public Law 103–354 440–9, ''Supplementary Payment Agreement,'' should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in §1943.24(d) of this subpart.

(j) *Effective time of loan closing.* An FO loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgage.

(i) When the original recorded instrument is returned to County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds.

(i) Give the original to borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies.

(i) File the mortgage title policy in the County Office file, and

(ii) Give the Owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the County Office file.

(5) Abstracts of title.

(i) Return to the borrower, except that when they were obtained from a third party with understanding they will be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA or its successor agency under Public Law 103–354 140–4, ''Transmittal of Documents'' will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

[53 FR 35692, Sept. 15, 1988, as amended at 56 FR 67481, Dec. 31, 1991; 57 FR 18678, Apr. 30, 1992; 58 FR 48288, Sept. 15, 1993; 59 FR 25801, May 18, 1994; 68 FR 7698, Feb. 18, 2003]

§§ 1943.39–1943.41 [Reserved]

§ 1943.42 Servicing.

FO loans will be serviced in accordance with subpart A of part 1965 of this chapter and/or subpart S of part 1951 of this chapter. Chattel security for FO loans will be serviced in accordance with subpart A of part 1962 of this chapter and/or subpart S of part 1951 of this chapter.

§ 1943.43 Subsequent FO loans.

A subsequent FO loan is a loan made to a borrower who is currently in debt for an FO loan.

(a) A subsequent loan may be made for the same purpose and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan.

(c) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage and

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause and

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.44 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with subpart A of part 1965 of this chapter.

§§1943.45–1943.49 [Reserved]

§ 1943.50 State supplements.

State supplements will be issued as necessary to implement this subpart.

EXHIBIT A TO SUBPART A OF PART 1943—FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 LOANS TO ENTRYMEN ON UNPATENTED PUBLIC LANDS

I. *GENERAL:* This exhibit provides additional policies and procedures applicable to (1) insured Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 loans to homestead and desertland entrymen which are to be secured by real estate, and (2) taking of real estate mortgages on entries to secure Farm Ownership, Soil and Water, Individual Recreation, Operating, Emergency, Single Family Housing, and Farm Labor Housing loans in connection with loan making and servicing.

A. *Authority.* The authorizations contained in this exhibit clarify security and servicing for loans to entrymen and are based on Public Law 361. Attachment 1 is a Memorandum of Understanding between the Department of the Interior and the Department of Agriculture and outlines the general procedures to be followed when loans are made to entrymen. Reference to Guaranteed Loans in the Memorandum of Understanding is not applicable.

B. *Cooperation Between the Department of Agriculture and the Department of the Interior.* The extension of financial assistance and taking of real estate mortgages authorized in paragraph I A will be facilitated through the cooperation of the FmHA or its successor agency under Public Law 103–354, the Bureau of Land Management (BLM), and the Bureau of Reclamation (BR), as provided in the Memorandum of Understanding.

C. *Special Policies Applicable to Dwellings, Land Improvement and Ownership.* An FmHA or its successor agency under Public Law 103–354 loan will not be made to an applicant who lacks the capital or who cannot obtain credit to provide (1) any required habitable dwellings within the statutory period specified in pargraph I D for the establishment of residence, and (2) land development sufficient for success but in no case less than that necessary to meet the entry requirements. The Notice of Allowance of Entry is adequate to meet the ownership requirement until the patent is issued.

D. *Patent Requirements.* All entrymen will be expected to keep in contact with appropriate officials of the BLM, and BR and comply with pertinent laws and regulations of these Agencies relating to the issuance of patents for homestead or desertland entries. When applicable, reclamation proof must be filed by the borrower at the earliest possible date. Likewise, FmHA or its successor agency under Public Law 103–354 personnel concerned with making and securing FmHA or its successor agency under Public Law 103–354 loans to entrymen should acquaint themselves with BLM and BR representatives and keep informed of their regulations relating to the issuance of patents for homestead or desertland entries, including but not limited to the following:

1. RESIDENCE AND DEVELOPMENT REQUIREMENTS. A homestead entryman must established residence upon the tract entered within 6 months after date of the entry unless an extension of time is allowed and must maintain a residence there for 3 years. The entryman should notify the authorized officer of the BLM upon establishing residence. When an FmHA or its successor agency under Public Law 103–354 loan is made for any purpose, the requirements of the applicable FmHA or its successor agency under Public Law 103–354 regulations must be met. Likewise any residence or development requirements of BLM or BR will be met.

2. FINAL PROOF. Specific requirements for final proof for homestead entrymen is found in 43 CFR 2515.7 and final proof for desertland entrymen is found in 43 CFR 2521.6.

a. Homestead Entryman: Final proof must be filed within 5 years from the date of allowance of entry. A patent will not be issued until the entryman has submitted final proof. Final proof must show that (1) a habitable dwelling is on the land at the time proof is submitted, (2) residence requirements have been met, (3) the improvements are of such character as to show good faith, and (4) the entryman is a citizen of the United States. When the entryman is ready to submit final proof the entryman should notify the BR and request instructions regarding the procedure to be followed.

b. Desertland Entryman: Final proof must be made within 4 years from the date of entry. General requirements of the BLM that must be met include: (1) Filing a map at the initiation of the entry showing the method of irrigation and the proposed source of water supply, (2) an annual expenditure for 3 years of not less than $1 for each acre in the necessary development of the land, (3) filing a map at the end of the third year showing the character and extent of improvements, and (4) yearly proof of expenditures containing statements of two or more credible witnesses who have knowledge that the expenditures were made.

The County Supervisor should consult the BLM official for any additional requirements of the entryman such as preparing a notice of intention to make final proof, publication of final proof and submission of final proof.

3. RECLAMATION PROOF. Reclamation proof for homestead entryman may be submitted with, or at any time after, the submission of homestead proof. In additon to the final homestead proof mentioned in paragraph I D 2, the filing of reclamation proof is required as a condition for obtaining a patent to any entry within a reclamation

project. Reclamation proof must show reclamation and cultivation of at least one-half of the irrigable area in the entry for 2 years immediately preceding the date of submission of proof and the payment of all reclamation charges due at that time. Reclamation proof, in proper form, must be submitted to the official in charge of the project accompanied by the payment of final homestead commissions.

II. *LOAN PROCESSING:* When making an FmHA or its successor agency under Public Law 103–354 loan to be secured by the entryman's land, existing FmHA or its successor agency under Public Law 103–354 policies, procedures, and loan authorities applicable to the particular type of loan will be met, except as follows:

A. *Applications.* 1. APPLICATIONS FROM ENTRYMEN NOT IN A FEDERAL RECLAMATION PROJECT. An application for an FmHA or its successor agency under Public Law 103–354 loan from an entryman with respect to public land not within a Federal reclamation project will be considered only after the entryman has selected a farm and received the Notice of Allowance of Entry from BLM. The original or a copy of the document showing allowance of entry must be attached to Form FmHA or its successor agency under Public Law 103–354 410–1, ''Application for FmHA or its successor agency under Public Law 103–354 Services.''

2. APPLICATIONS FROM ENTRYMEN IN A FEDERAL RECLAMATION PROJECT. An application for an FmHA or its successor agency under Public Law 103–354 loan from an entryman with respect to public land within a Federal reclamation project will not be considered until after the entryman has received a Certificate of Eligibility from BR and has selected a farm. If at the time of making application the entryman has received the Notice of Allowance of Entry from BLM, he will attach the original or a copy of such document to Form FmHA or its successor agency under Public Law 103–354 410–1. If the entryman has not received the Notice of Allowance of Entry, a copy of the Certificate of Eligibility must be attached to the FmHA or its successor agency under Public Law 103–354 application. However, the docket will not be approved until the original or a copy of the document showing Notice of Allowance of Entry has been received from the applicant and placed in the loan docket.

3. SUPPLEMENTAL INFORMATION ON APPLICANT. At the time of making application for an FmHA or its successor agency under Public Law 103–354 loan to be secured by real estate, the entryman may be requested to authorize the FmHA or its successor agency under Public Law 103–354 to obtain from BLM or BR any available information concerning the entryman's application for homestead, desertland, or reclamation entry for use by the FmHA or its successor agency under Public Law 103–354 in determining the entryman's eligibility for the loan as provided in the Memorandum of Understanding.

B. *Special Items in Development of Loan Dockets for Loans to be Secured by the Entryman's Land.* Loan dockets for loans to entrymen will be prepared and distributed in accordance with the applicable FmHA or its successor agency under Public Law 103–354 regulations, except as modified by this paragraph.

1. DEVELOPMENT PLAN. An extra copy of Form FmHA or its successor agency under Public Law 103–354 1924–1, ''Farm Development Plan'' will be prepared and sent to BLM in each case. When the entryman's farm is located in a Federal reclamation project, any development items listed on Form FmHA or its successor agency under Public Law 103–354 1924–1 must be consistent with the overall plans for development of the reclamation project. Consequently, when Form FmHA or its successor agency under Public Law 103–354 1924–1 provides for the leveling of land or the installation of farm distribution and surface drainage systems another extra copy will be prepared and sent to the Reclamation Project Officer as soon as the County Supervisor determines that there is a reasonable likelihood that the loan will be made. If Form FmHA or its successor agency under Public Law 103–354 1924–1 conflicts with the overall BR plans for the development of the Federal reclamation project, officials of the BR will so advise the County Supervisor. The processing of the loan will not be delayed while awaiting such advice from BR but the FmHA or its successor agency under Public Law 103–354 loan will not be closed until Form FmHA or its successor agency under Public Law 103–354 1924–1 is revised to make it consistent with the BR plans. The County Supervisor will advise the Project Officer or Authorized Officer in writing whenever changes are made in the plans approved by the FmHA or its successor agency under Public Law 103–354.

C. *Title Clearance.* 1. The entryman applicant will be required to furnish and pay for a certified statement prepared by a qualified title examiner or abstractor or as otherwise required by a State supplement which will include finding with respect to any outstanding land leveling contracts and any other claims of any kind on record against the entry. This certified statement will be included in the loan docket. Where there is an outstanding land leveling contract, the applicant's copy of such contract also will be included in the loan docket and returned to the borrower when the loan is closed.

2. The State Director, upon advice from the Office of the General Counsel, will inform the County Supervisor regarding the

acceptable form of certified statement required in paragraph II C 1.

D. *Loan Closing.* Except as provided by this exhibit, FmHA or its successor agency under Public Law 103–354 loans will be closed in accordance with the applicable FmHA or its successor agency under Public Law 103–354 regulation.

1. REAL ESTATE MORTGAGE FORMS. Whenever the entry is located within a Federal reclamation project two extra copies of Form FmHA or its successor agency under Public Law 103–354 1927–1, ''Real Estate Mortgage,'' will be prepared. If the entry is not within a Federal reclamation project, one extra copy of the real estate mortgage will be prepared. After the loan has been closed, a conformed copy of the real estate mortgage will be sent to BLM and, if the entry is located in a Federal reclamation project, a conformed copy of the mortgage also will be sent to the BR. The entryman's serial number which appears on the original document showing Notice of Allowance of Entry will be typed on the original, and the conformed copies of the Mortgage for BLM and BR will indicate the date and place of recordation and the book and page numbers.

2. COUNTY OFFICE RECORD OF ALLOWANCE OF ENTRY. When the loan is closed a copy will be made of the original document showing Notice of Allowance of Entry for the borrower's county office case folder, unless a copy was funished. The County Supervisor will sign the following certification which will be typed on this copy:

''I hereby certify that this is an exact copy of the Notice of Allowance of Entry issued by the BLM to _____ (Entryman's Name) residing at _____ (Entryman's Address)''

_____
County Supervisor

When the original document showing allowance of entry is furnished, it will be returned to the borrower.

3. ENTRIES REQUIRED ON MANAGEMENT SYSTEM CARDS. Upon closing the loan, the County Supervisor will enter a notation on the borrower's Management System Card (Form FmHA or its successor agency under Public Law 103–354 405–1) as to the date when the borrower must submit final proof to the BLM in fulfillment of the requirements to obtain a patent. If residence has not been established, a notation also will be made on the Management System Card of the date such residence must be commenced. It will be the responsibility of the County Supervisor to follow through to see that the borrower completes these actions.

III. *MORTGAGE ON REAL ESTATE FOR ADDITIONAL SECURITY.* When it is deemed advisable to take a mortgage on the homestead or desertland entry as additional security or to otherwise protect the interests of the FmHA or its successor agency under Public Law 103–354, a real estate mortgage will be taken on such entry. The mortgage will be taken as authorized in subpart A of part 1965 of this chapter (FmHA Instruction 465.1). In such a case, a copy of the real estate mortgage will be sent to BLM and, if the farm is located in a Federal reclamation project, a copy of the mortgage also will be sent to the BR.

IV. *DEFAULT AND DISPOSAL OF UNITS:* The County Supervisor will coordinate with the local BLM and BR representatives and keep the State Director currently advised on any cases in default or where default is anticipated. The State Director will be guided by Attachment I and advice of the Office of the General Counsel in fulfilling FmHA or its successor agency under Public Law 103–354's responsibilities for disposal of any units on which a patent has not been issued. Units on which a patent has been issued will be serviced by applicable FmHA or its successor agency under Public Law 103–354 procedures.

ATTACHMENT I

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF AGRICULTURE AND THE DEPARTMENT OF THE INTERIOR RELATING TO FINANCIAL ASSISTANCE BY THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 TO ENTRYMEN ON PUBLIC LANDS

PART I—PURPOSE AND DEFINITIONS

A. *Purpose.* The purpose of this memorandum is to outline the general procedure to be followed by the Farmers Home Administration (FHA) or its successor agency under Public Law 103–354, the Bureau of Land Management (BLM), and the Bureau of Reclamation (BR), when FHA or its successor agency under Public Law 103–354 extends financial assistance to entrymen on unpatented public lands, including public land in reclamation projects.

B. *Definitions.* Unless otherwise indicated in this memorandum:

(1) The term *unit* will be used to describe an adequate family farm, less than adequate family farm, a portion of a farm or any other tract of land.

(2) The term *FHA* also includes its insured lenders and guaranteed lenders.

(3) The term *outstanding balance* includes (a) the unpaid indebtedness under the FHA or its successor agency under Public Law 103–354 mortgage, (b) any unpaid costs owed to BR for construction by it of a special distribution system to serve a unit where such costs have been allocated to the unit as a separate item, and (c) any portion of an SW association loan made by FHA or its successor agency under Public Law 103–354 for construction of a domestic water system to serve the unit and secured by a lien on the unit. It does not include any portion of an

SW association loan made by the FHA or its successor agency under Public Law 103–354 for construction of a domestic water system to serve the unit and not secured by a lien on the unit, nor project construction costs charged to the unit.

(4) Pub. L. 361, 81st Congress (7 U.S.C. 1006a and 1006b), is referred to as ''Pub. L. 361.'' It applies to Farm Ownership (FO), Operating (OL), Soil and Water Conservation (SW) loans made to individuals and Recreation (RL) loans to individuals under the Consolidated Farm and Rural Development Act of 1972 (7 U.S.C. 1921) and prior laws. It does not apply to Emergency (EM) loans made under that act or prior laws, nor to Housing (RH) loans made under Title V of the Housing Act of 1949 (42 U.S.C. 1471), or to any other loans made or administered by FHA or its successor agency under Public Law 103–354.

(5) Pub. L. 419 (86 Stat. 675) amended Pub. L. 361 to add desertland entrymen as eligible for the same loans as indicated in (4) above.

(6) The term *Project Officer* refers to the BR Officer who may properly hold the requisite responsibility for the project or area in question.

(7) The term *authorized officer* refers to the BLM Officer to whom has been delegated the required responsibility for the area in question.

(8) The term *County Supervisor* means County Supervisor for FHA or its successor agency under Public Law 103–354.

(9) The term *State Director* means State Director for FHA or its successor agency under Public Law 103–354.

PART II—GENERAL PROVISIONS

A. FHA or its successor agency under Public Law 103–354 regulations will govern making and servicing FHA or its successor agency under Public Law 103–354 loans, including the taking of mortgages as additional security for existing FHA or its successor agency under Public Law 103–354 loans.

B. In connection with applications for FHA or its successor agency under Public Law 103–354 loans or credit sales to eligible applicants, the Project Officer of BR or the authorized officer of BLM, upon written request of the County Supervisor, will furnish the following:

1. Written consent to make the applicant an FHA or its successor agency under Public Law 103–354 loan or to secure an existing FHA or its successor agency under Public Law 103–354 loan.

2. Any information which BR or BLM has concerning the applicant, provided, in the case of BR information, the request has the following authorizations attached to it:

Date_____, 19__

I hereby authorize the Bureau of Reclamation to make available to the Farmers Home Administration or its successor agency under Public Law 103–354 any information the Bureau may have concerning my transactions with it. This information may be used by the Farmers Home Administration or its successor agency under Public Law 103–354 in determining my eligibility and qualifications for a loan, and is to be treated as confidential.

(Type name of applicant below signature)

signed _____
(applicant)

signed _____
(spouse)

3. A statement of account, showing the applicant's outstanding balance if there is a debt owed to BR (principal balance, accrued unpaid interest, and daily interest accrual rate, any other charges and any unpaid special distribution system costs, and the amount, delinquent).

4. A report on any development and residence requirements which have not been completed and on eligibility of the unit for water, including full information on the status of any excess land.

5. Advice as to whether the applicant is in default because of failure to pay water charges, or because of breach of any other agreements with the Bureau of Reclamation.

C. A homestead or desertland entryman on public land not in a reclamation project may apply to the County Supervisor for an FHA or its successor agency under Public Law 103–354 loan when his entry has been allowed. The original or a copy of the Notice of Allowance of Entry from BLM must be attached to the application for a loan from FHA or its successor agency under Public Law 103–354. Upon request of the County Supervisor, the authorized officer of the BLM, to the extent applicable will furnish any information that office has with respect to the applicant entryman.

An applicant for a homestead on a reclamation project likewise may apply to the County Supervisor for an FHA or its successor agency under Public Law 103–354 loan when he has received from the BR a Certificate of Eligibility and has selected a unit. A copy of the Certificate of Eligibility must be attached to the application for a loan from the FHA or its successor agency under Public Law 103–354 unless the unit has been entered, in which case the Notice of Allowance of Entry will be attached to the application for a loan. Each application for such a loan filed by an entryman will be processed in substantially the same manner as other application of a similar character, including the preparation of the loan docket, certifications by the FHA or its successor agency under Public Law 103–354 County Committee, and approval by the duly authorized loan approving official. If any conflict exists between the development plans of FHA or its successor agency under Public Law 103–354

and BR or BLM, the difference must be reconciled prior to loan closing. A copy of the Notice of Allowance of the Entry will be required in the loan docket before a loan is closed.

D. Upon closing of a loan to an entryman, when real estate security is taken, the County Supervisor will send copies of the real estate mortgage to the authorized officer of BLM, and to BR if appropriate. The County Supervisor will indicate on the mortgage the date such instrument was filed for record and the entryman's homestead or desertland entry serial number. Copies of these instruments will serve as notification to BLM or BR that a loan has been made by FHA or its successor agency under Public Law 103–354 and may be used in connection with the servicing of such loans as indicated herein.

PART III—LOAN SERVICING

A. If the entryman-borrower repays his indebtedness in full to FHA or its successor agency under Public Law 103–354 before a patent is issued to him by BLM, the County Supervisor will promptly notify the BLM authorized officer of the release of the mortgage lien.

B. When final homestead or desertland entry proof or homestead proof and reclamation proof submitted by an entryman-borrower is accepted by the BLM and a patent is issued before BLM is notified of the full repayment of the indebtedness to FHA or its successor agency under Public Law 103–354, the patent issued will make reference to the FHA or its successor agency under Public Law 103–354 mortgage as follows:

''This patent is issued subject to the rights of the United States under a certain mortgage or deed of trust executed by _____ and _____ under date of _____, 19 ___, recorded in Book _____, Page _____ of the records of the Recorder of Deeds for _____.''

In such cases, if the patent is issued to a person other than the mortgager or the purchaser at foreclosure of the mortgage, there shall also be inserted after the recital of recordation of the mortgage the following words: ''Which the patentee assumes and agrees to pay.''

C. Upon issuance of the patent to the entryman-borrower, the authorized officer of BLM will notify the State Director that the patent has been issued and mailed to the entryman-borrower. Upon such notification, the County Supervisor will advise the entryman-borrower to record the patent promptly in the real estate records in the county in which his unit is located, and will check the records to determine that the recordation has been accomplished. The issuance of the patent will terminate any further relationship between BLM and FHA or its successor agency under Public Law 103–354 insofar as the entryman-borrower is concerned.

D. In the event that an entryman-borrower has not submitted Final Proof within the statutory period from the date of allowance of his entry, BLM will send to the County Supervisor a copy of the Notice of Expiration of the statutory period of entry when it is mailed to the entryman-borrower. The copy of the notice will be used by the County Supervisor in urging the entryman-borrower to submit final proof with appropriate explanation of his failure to do so before the expiration of the statutory period.

PART IV—DEFAULTS

When an entryman-borrower is in default in the terms of his mortgage to FHA or its successor agency under Public Law 103–354, in complying with requirements to obtain a patent, or in meeting the requirements to make reclamation proof, the following procedures will apply:

A. *Default on Mortgage.* BLM will issue a decision canceling any entry upon which there is an FHA or its successor agency under Public Law 103–354 mortgage when so requested in writing by the State Director. FHA or its successor agency under Public Law 103–354 may request a cancellation whenever any default occurs in the terms, conditions, covenants, and obligations contained in the mortgage. Included among the terms, conditions, covenants, and obligations in the mortgage taken by FHA or its successor agency under Public Law 103–354 will be the provision that the entryman-borrower must comply with the legal and administrative regulations for the issuance of a patent and, if the entry is located in a reclamation project, with the legal and administrative regulations for making reclamation proof.

1. The State Director will furnish the authorized officer of BLM with an explanation of the need for cancellation. When the entry is located in a reclamation project, the State Director also will notify the BR Regional Director and furnish him with an explanation of the need for cancellation.

2. The BR Regional Director may request the State Director to reconsider the necessity for cancellation of the entry when (a) BR can furnish information which may not have been considered by FHA or its successor agency under Public Law 103–354, (b) there is an outstanding contract between BR and the entryman borrower for the repayment of charges for land leveling, or (c) the entryman-borrower has not made reclamation proof. If such a request is made, a copy will be furnished to the BLM which shall suspend action on the FHA or its successor agency under Public Law 103–354 request

until further notified by the FHA or its successor agency under Public Law 103–354. Ordinarily, BR will not request a reconsideration of the necessity for cancellation unless there appears to be a reasonable basis upon which a solution can be worked out so that the entryman-borrower may retain possession of his unit.

3. If BR does not ask the State Director to reconsider his request to cancel within 30 days, BLM will issue a decision cancelling the entry.

4. If BR asks for a reconsideration of the request to cancel, it will furnish the State Director immediately new information which it believes should be considered by FHA or its successor agency under Public Law 103–354 in reaching a decision. When FHA or its successor agency under Public Law 103–354 has reached a final decision, it will notify the BLM and the BR of the decision reached. Within 30 days after receiving notice of the final decision of the State Director that the entry should be canceled, BLM will notify the entryman-borrower of the cancellation of his entry in accordance with the usual procedure. A copy of the notice of the cancellation will be mailed to the State Director at the same time.

B. *Default in Meeting Entry Requirements.* If BLM proposes to take any action toward cancellation of an entryman-borrower's entry, it will notify the State Director and the BR Regional Director if the unit is located in a reclamation project, in writing at least 30 days before any action is commenced. The notification will be accompanied by an explanation as to why cancellation will be made. Within the 30-day period either or both FHA or its successor agency under Public Law 103–354 and BR may present any new information for the consideration of the BLM in reaching a decision to, or not to, cancel the entry. When BLM has reached a final decision, it will inform the State Director and the BR Regional Director.

C. *Default in Meeting Reclamation Requirements.* In the event BR intends to recommend cancellation of an entryman-borrower's entry, the Superintendent of the Reclamation Project will notify the State Director in writing at least 30 days before such recommendation is to be submitted to BLM for cancellation. The notification will be accompanied by an explanation as to why cancellation of entry is to be requested. FHA or its successor agency under Public Law 103–354 may request a reconsideration of BR's intended recommendation to cancel within the 30-day period and will furnish any new information which it believes should be considered by BR when reaching a final decision. When BR has reached a final decision, it will notify the State Director.

PART V—DISPOSAL OF UNITS AFTER CANCELLATION OR RELINQUISHMENT

After cancellation or relinquishment of an entry upon land on which FHA or its successor agency under Public Law 103–354 holds a mortgage, such land shall be opened to reentry only to persons eligible for an original entry, and eligible for an FHA or its successor agency under Public Law 103–354 loan unless the FHA or its successor agency under Public Law 103–354 Loan is paid in full. Any unit disposed of hereunder shall be subject to the outstanding balance owed to FHA or its successor agency under Public Law 103–354 and BR, or to that portion of the outstanding balance as agreed upon by the FHA or its successor agency under Public Law 103–354 and BR or BLM, as appropriate, if the entryman is eligible for an FHA or its successor agency under Public Law 103–354 loan.

A. *One Year Limit.* Under Pub. L. 361, BLM or BR can permit a new entry only during one year after cancellation or relinquishment of the old entry where the FHA or its successor agency under Public Law 103–354 mortgage is subject to Pub. L. 361 (FO, OL, and SW). In other cases such as RH and EM, the one-year limitation does not apply, but BLM or BR will nevertheless arrange for a new entry within the one-year period if it is practicable to do so.

B. *Custody and Expenses.* While BLM or BR has disposal authority it will assume custodial responsibility for the unit, but the County Supervisor and the Project Officer will determine the actions necessary to protect the interests of both FHA or its successor agency under Public Law 103–354 and BLM or BR. Any expenses incurred for protection of FHA or its successor agency under Public Law 103–354's interest will be paid by FHA or its successor agency under Public Law 103–354 and added to the mortgage debt.

C. *Disposal of Units*—1. *Within a Reclamation Project.* As soon as possible, after cancellation or relinquishment, FHA or its successor agency under Public Law 103–354 will make an appraisal to determine the value of the property and will report its findings to BR on appropriate FHA or its successor agency under Public Law 103–354 appraisal forms. The State Director and the BR Regional Director after receipt of the report by BR will jointly participate in determining the amount of indebtedness owed to the United States which shall be required in accordance with the existing law to be paid and the terms under which repayment will be made.

a. BR will, thereafter, for that particular unit, proceed to inform the public of the availability of the unit in accordance with its established procedures. However, before BR issues a Certificate of Eligibility to any applicant for re-entry it will submit to the County Supervisor (a) a list of the names of

the applicants who can qualify for a Certificate of Eligibility and the order in which such applicants shall be considered, and (b) the information submitted by each of the qualified applicants in support of his application for the entry.

b. The County Supervisor and the County Committee will examine the list and the information to determine which of the applicants are eligible for an FHA or its successor agency under Public Law 103–354 loan. The list of any documentary information furnished will be returned to BR with a written statement setting forth the names in the list which are eligible for FHA or its successor agency under Public Law 103–354 assistance. Upon receiving such information from FHA or its successor agency under Public Law 103–354, BR will proceed to select, in accordance with established procedures, from among the applicants determined to be eligible for a Certificate of Eligibility and an FHA or its successor agency under Public Law 103–354 loan, one applicant but not to exceed two alternate applicants, to whom the unit may be awarded upon qualifying to assume the indebtedness.

c. BR will issue a Certificate of Eligibility to the selected applicant. The Certificate of Eligibility will be sent to the FHA or its successor agency under Public Law 103–354 County Supervisor who will instruct the applicant to file his Certificate of Eligibility and application for entry with BLM which will issue a Notice of Allowance of Entry if the applicant is qualified to make entry. The applicant will be allowed to occupy the unit when he has received the Notice of Allowance of Entry and has completed arrangements to assume the required amount of indebtedness owed to FHA or its successor agency under Public Law 103–354 or to refinance such indebtedness. FHA or its successor agency under Public Law 103–354 will send a copy of the assumption agreement or note and mortgage, if any, executed by the new occupant to BR and BLM.

d. FHA or its successor agency under Public Law 103–354 may permit an eligible person to whom the unit is awarded to assume that part of the indebtedness determined to be within the value of the property.

2. *Units Not Within a Reclamation Project.* As soon as possible, after cancellation or relinquishment, FHA or its successor agency under Public Law 103–354 will make an appraisal to determine the value of the property and to determine the amount of indebtedness owed on FHA or its successor agency under Public Law 103–354 loans that is to be paid by the new entryman. The FHA or its successor agency under Public Law 103–354 will report the amount of the FHA or its successor agency under Public Law 103–354 debt to be assumed to the BLM.

a. The BLM will, thereafter, for that particular entry, proceed to inform the public of the availability of the land in accordance with its established procedures. BLM will, following the opening of the land to application, submit to the County Supervisor (a) a list of the names of the applicants who can qualify for the allowance and the order in which such applicants shall be considered, and (b) the information submitted by each of the applicants in support of his application.

b. Thereafter the FHA or its successor agency under Public Law 103–354 will select from the list the first applicant for the entry who can qualify for an FHA or its successor agency under Public Law 103–354 loan.

c. FHA or its successor agency under Public Law 103–354 will then notify BLM of the applicant selected. The authorized Officer will, as soon as possible after notification, issue the Notice of Allowance. The Allowance of Entry or an attachment thereto will show that entry is conditioned upon payment or assumption of the FHA or its successor agency under Public Law 103–354 debt. A copy of appropriate notice will be mailed to the State Director.

d. Upon receipt of the Notice of Allowance of Entry by the applicant, FHA or its successor agency under Public Law 103–354 will instruct him to occupy the unit and will complete arrangements for him to assume or refinance the indebtedness or the part thereof determined to be within the value of the property. FHA or its successor agency under Public Law 103–354 will send a copy of the assumption agreement or note and the mortgage, if any, executed by the new occupant to BLM.

e. FHA or its successor agency under Public Law 103–354 may permit an eligible person to whom the unit is awarded to assume that part of the indebtedness determined to be within the value of the property.

D. *Disposal of Units By Farmers Home Administration or its successor agency under Public Law 103–354.* 1. If no entry is allowed within one year after cancellation or relinquishment of a prior entry on which FHA or its successor agency under Public Law 103–354 holds a mortgage and the property was security for an FHA or its successor agency under Public Law 103–354 loan subject to Pub. L. 361 even though it also was security for a loan not subject to that law, FHA or its successor agency under Public Law 103–354 will dispose of the unit in accordance with the FHA or its successor agency under Public Law 103–354 regulations. If the unit is located on a reclamation project, such disposition shall be subject, however, to outstanding reclamation charges on the land due the United States.

2. If the property cannot be sold immediately, the FHA or its successor agency under Public Law 103–354 will arrange for a lease or caretaker agreement as necessary to protect the Government's interests.

3. When FHA or its successor agency under Public Law 103–354 prepares to sell a unit, it will also advise BLM or BR, as appropriate, of the name of the purchaser and will request issuance of a patent to the purchaser. If the unit is in a reclamation project. BR will furnish, as soon as possible to FHA or its successor agency under Public Law 103–354, information concerning any outstanding reclamation charges on the land due the United States.

4. The sale may be for cash or on credit. In the event the sale is on credit, FHA or its successor agency under Public Law 103–354 will furnish a copy of the mortgage to BLM or BR, as appropriate, which shall make reference, in any patent issued thereafter, to the outstanding mortgage of FHA or its successor agency under Public Law 103–354.

This memorandum of understanding supersedes the earlier memorandum of understanding signed on February 17, 1950, and March 25, 1950, respectively, by the Secretaries of Agriculture and Interior.

Approved:

JACK O. HORTON,
Assistant Secretary of the Interior.

Date: October 22, 1974.

Approved:

WILLIAM ERWIN,
Assistant Secretary of Agriculture.

Date: December 16, 1974.

[43 FR 55895, Nov. 29, 1978, as amended at 51 FR 4136, Feb. 3, 1986; 52 FR 8035, Mar. 13, 1987; 56 FR 67481, Dec. 31, 1991]

EXHIBIT B TO SUBPART A OF PART 1943—TARGET PARTICIPATION RATES FOR FARMERS HOME ADMINISTRATION (FMHA) OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 DIRECT FARM OWNERSHIP (FO) LOANS TO MEMBERS OF SOCIALLY DISADVANTAGED GROUPS

I. General

The Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 is statutorily required to establish target participation rates for providing direct Farm Ownership (FO) loan funds to members of socially disadvantaged groups. These rates are established to ensure that members of socially disadvantaged groups are provided access to direct FO loan funds to purchase suitable farmland. The target participation rate established for each state, and each county within the state, is based on the proportion of minority rural population to the total rural population in the state, and for each county within the state.

II. Implementation Responsibilities

States will meet their target participation rates in use of direct FO loan funds as provided in this exhibit. The targeted portion of a state's fiscal year direct FO allocation, as outlined in exhibit A of subpart L of part 1940 of this chapter, will be used exclusively to enable members of socially disadvantaged groups to purchase suitable farmland. Additional funds will be available from the National Office Reserve to enable States to obligate loans for socially disadvantaged applicants should their targeted allocation be insufficient. This requirement does not prohibit States from using their allocation of regular direct FO funds for making loans to members of socially disadvantaged groups.

III. Other Information

The National Office will provide each State Director with a list of the target participation rates for each county by October 1 of each year. State Directors shall make available to each County and District Office the county(ies) target participation rates. State Directors will make every effort to provide the greater amount of direct FO loan funds to counties having the larger socially disadvantaged population.

TOTAL U.S. PARTICIPATION RATE

State	Target Participation rate (percent)
Alabama	21
Alaska	34
Arizona	39
Arkansas	13
California	20
Colorado	11
Connecticut	3
Delaware	17
Florida	14
Georgia	20
Hawaii	68
Idaho	6
Illinois	2
Indiana	1
Iowa	1
Kansas	3
Kentucky	3
Louisiana	25
Maine	1
Maryland	14
Massachusetts	2
Michigan	3
Minnesota	2
Mississippi	37
Missouri	2
Montana	8
Nebraska	2
Nevada	12
New Hampshire	1
New Jersey	8
New Mexico	57
New York	3
North Carolina	21
North Dakota	5
Ohio	2

TOTAL U.S. PARTICIPATION RATE—Continued

State	Target Participation rate (percent)
Oklahoma	12
Oregon	5
Pennsylvania	2
Rhode Island	2
South Carolina	34
South Dakota	9
Tennessee	6
Texas	22
Utah	7
Vermont	1
Virginia	2
Washington	7
West Virginia	3
Wisconsin	2
Wyoming	7
U.S. Total	10

[57 FR 19524, May 7, 1992]

Subpart B—Direct Soil and Water Loan Policies, Procedures, and Authorizations

SOURCE: 53 FR 35706, Sept. 15, 1988, unless otherwise noted.

§ 1943.51 Introduction.

This subpart contains regulations for making initial and subsequent direct Soil and Water (SW) loans. It is the policy of Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 to make loans to any qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physicial/mental handicap provided the applicant can execute a legal contract. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA or its successor agency under Public Law 103–354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA or its successor agency under Public Law 103–354 employee. See exhibit A of subpart A of this part for making SW loans to entrymen on unpatented public lands. See subpart R of part 2000 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office) for the Memorandum of Understanding between the Farm Credit Administration (FCA) and the FmHA or its successor agency under Public Law 103–354.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 227, Jan. 5, 1993; 58 FR 48282, Sept. 15, 1993]

§ 1943.52 Objectives.

The basic objective of the SW loan program is to provide credit and management assistance to eligible farmers and ranchers when credit is not available elsewhere. FmHA or its successor agency under Public Law 103–354 assistance enables farm and ranch operators to use their land resources to improve their financial conditions so that they can obtain credit elsewhere.

§ 1943.53 Management assistance.

Supervision will be provided borrowers to the extent necessary to achieve loan objectives and protect the Government's interest, in accordance with subpart B of part 1924 of this chapter.

§ 1943.54 Definitions.

Additional security. Any security beyond that which is required to adequately secure the loan.

Approval official. A field official who has been delegated loan and grant approval authorities within applicable loan programs, subject to the dollar limitations contained in tables available in any FmHA or its successor agency under Public Law 103–354 office.

Beginning farmer or rancher. A beginning farmer or rancher is an individual or entity who:

(a) Meets the loan eligibility requirements for SW loan assistance in accordance with § 1943.62 of this subpart.

(b) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years. This requirement applies to all members of an entity.

(c) Will materially and substantially participate in the operation of the farm or ranch.

(1) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day

labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(2) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the individual provides some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm or ranch would be seriously impaired.

(d) Agrees to participate in any loan assessment, borrower training, and financial management programs required by FmHA or its successor agency under Public Law 103–354 regulations.

(e) Does not own real farm or ranch property or who, directly or through interests in family farm entities owns real farm or ranch property, the aggregate acreage of which does not exceed 15 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture developed by the U.S. Department of Commerce, Bureau of the Census. State Directors will publish State supplements containing the average farm or ranch acreage by county.

(f) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming or ranching on a viable scale.

(g) In the case of an entity:

(1) All the members are related by blood or marriage.

(2) All the stockholders in a corporation are qualified beginning farmers or ranchers.

Borrower. An individual or entity which has outstanding obligations to the FmHA or its successor agency under Public Law 103–354 under any Farmer Programs loan(s), without regard to whether the loan has been accelerated. A borrower includes all parties liable for the FmHA or its successor agency under Public Law 103–354 debt, including collection-only borrowers, except for debtors whose total loans and accounts have been voluntarily or involuntarily foreclosed or liquidated, or who have been discharged of all FmHA or its successor agency under Public Law 103–354 debt.

Cooperative. An entity which has farming as its purpose and whose members have agreed to share the profits of the farming enterprise. The entity must be recognized as a farm cooperative by the laws of the State(s) in which the entity will operate a farm.

Corporation. For the purposes of this regulation, a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate a farm.

Cosigner. A party who joins in the execution of a promissory note to assure its repayment. The cosigner becomes jointly and severally liable to comply with the terms of the note.In the case of an entity applicant, the cosigner cannot be a member, partner, joint operator, or stockholder of the entity.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantitites so that the property is recognized as a farm rather than a rural residence. The term *farm* also includes any such land and improvements and facilities used in a nonfarm enterprise. It may also include a residence which, although physicially separate from the farm acreage, is ordinarily treated as a part of the farm in the local community.

Feasible plan. A feasible plan is a plan based upon the applicant/borrower's records that show the farming operation's actual production and expenses. These records will be used along with realistic anticipated prices, including

farm program payments when available, to determine that the income from the farming operation, along with any other reliable off-farm income, will provide the income necessary for the applicant/borrower to at least be able to:

(a) Pay all operating expenses and all taxes which are due during the projected farm budget period.

(b) Meet necessary payments on all debts, except as provided in § 1941.14 of subpart A of part 1941 of this chapter, for annual production loans or subordinations made to delinquent borrowers.

(c) Provide living expenses for the family members of an individual borrower or a wage for the farm operator in the case of a cooperative, corporation, partnership or joint operation borrower which is in accordance with essential family needs. Family members include the individual borrower or farm operator in the case of an entity, and the immediate members of the family which resides in the same household.

Fish farming. The production of fish, mollusks, or crustaceans (or other invertebrates) under controlled conditions in ponds, lakes, streams, or similar holding areas. This involves feeding, tending, harvesting and other activities as are necessary to properly raise and market the products.

Indefinite parole. To verify that applicants other than citizens are legally admitted to the U.S. on the indefinite parole, such applicants must provide their Form I–94, ''Immigration on Indefinite Parole'' card.

Joint operation. Individuals that have agreed to operate a farm or farms together as a business unit. The real and personal property is owned separately or jointly by the individuals. A husband and wife who want to apply for a loan together will be considered a joint operation.

Leasehold. A right to use farm property for a specific period of time under conditions provided for in a lease agreement.

Limited resource applicant. An applicant who is a farmer or rancher and is an owner or operator of a farm, including a new owner or operator, with a low income who demonstrates a need to maximize farm or ranch income. A limited resource applicant must meet the eligibility requirements for a soil and water loan, but due to low income, cannot pay the regular interest rate on such loans. Due to the complex nature of the problems facing this applicant, special help will be needed and more supervisory assistance will be required to assure reasonable prospects for success. The applicant may face such problems as underdeveloped managerial ability, limited education, low-producing farm due to lack of development or improved production practices and other related factors. The applicant cannot develop a feasible plan at regular interest rates and at the maximum loan terms. The use of limited resource interest rates is restricted to those loan purposes denoted in § 1943.66 (a)(1) through (a)(5) of this subpart.

Majority interest. Any individual or a combination of individuals owning more than a 50 percent interest in a cooperative, corporation, partnership or joint operation.

Mortgage. Any form of security interest or lien upon any rights or interest in real property of any kind. In Louisiana and Puerto Rico the term *mortgage* also refers to any security interest in chattel property.

Partnership. An entity consisting of individuals who have agreed to operate a farm. The entity must be recognized as a partnership by the laws of the State(s) in which the entity will operate a farm and must be authorized to own both real and personal property and to incur debts in its own name.

Primary security. Any real estate and/or chattel security which is required to adequately secure the loan. This is not to be confused with *basic security,* as defined in § 1962.4 of subpart A of part 1962 of this chapter.

Security. Property of any kind subject to a real or personal property lien. Any reference to collateral or security property shall be considered a reference to the term security.

State or United States. The United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and

the Commonwealth of the Northern Mariana Islands.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 15072, Mar. 19, 1993; 58 FR 26681, May 5, 1993; 58 FR 48288, Sept. 15, 1993; 62 FR 9356, Mar. 3, 1997]

§ 1943.55 [Reserved]

§ 1943.56 Credit elsewhere.

The applicant shall certify in writing on the appropriate forms, and the County Supervisor shall verify and document, that adequate credit elsewhere is not available, with or without a guarantee or subordination, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the applicant resides for loans for similar purposes and periods of time.

(a) If the County Supervisor receives letters or other written evidence from a lender(s) indicating the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(b) If the applicant cannot qualify for the needed credit from the lenders contacted, but one or more of them has indicated they would provide credit with an FmHA or its successor agency under Public Law 103–354 guarantee, or the County Supervisor determines that the applicant can obtain a guaranteed loan, the applicant will be advised to file an application with that lender(s) so that a guaranteed SW loan request can be processed by the lender for consideration by FmHA or its successor agency under Public Law 103–354.

(c) Property and interest in property owned and income received by an individual applicant; and cooperative and its members, as individuals; a corporation and its stockholders, as individuals; a partnership and it partners, as individuals; and a joint operation and its joint operators, as individuals; will be considered and used by an applicant in obtaining credit from other sources.

§ 1943.57 Preference.

Priority will be given to otherwise qualified applicants requesting assistance for soil and water conservation and protection purposes denoted in § 1943.66(a) of this subpart who use loan funds to build conservation structures or establish conservation practices on highly erodible land to comply with part 12 of this title (see attachment 1 of exhibit M of subpart G of part 1940 of this chapter which is available in any FmHA or its successor agency under Public Law 103–354 office).

[58 FR 15072, Mar. 19, 1993]

§§ 1943.58–1943.60 [Reserved]

§ 1943.61 Receiving and processing applications.

Applications will be received and processed as provided in subpart A of part 1910 of this chapter, with consideration given to the requirements in exhibit M of subpart G of part 1940 of this chapter.

§ 1943.62 Soil and water loan eligibility requirements.

In accordance with the Food Security Act of 1985 (Pub. L. 99–198), after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C of subpart A of part 1941 of this chapter and is available in any FmHA or its successor agency under Public Law 103–354 office, for the definition of *controlled substance*) prior to loan approval in any crop year, the individual or entity shall be ineligible for a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA or its successor agency under Public Law 103–354 410–1, ''Application for FmHA or its successor agency under Public Law 103–354 Services,'' that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

(a) An individual must:

(1) Be a citizen of the United States (see § 1943.54 of this subpart for the definition of *United States*) or an alien lawfully admitted to the United States for

permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551, ''Alien Registration Receipt Card.'' Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, ''Application for Verification of Information from Immigration and Naturalization Records,'' obtainable from the nearest INS District. (See exhibit B of subpart A of part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA or its successor agency under Public Law 103–354 to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: ''INTERAGENCY LAW ENFORCEMENT REQUEST.'' There is no U.S. citizenship restriction on loans made for waste pollution abatement and control facilities under § 1943.66(b) of this subpart.

(2) Possess the legal capacity to incur the obligations of the loan.

(3) Have sufficient applicable educational and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years), which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation. There is no education or experience restriction on loans made for waste pollution abatement and control facilities under § 1943.66(b) of this subpart.

(4) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payments.

(5) Honestly endeavor to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance and making every reasonable effort to meet the conditions and terms of the proposed loan.

(6) Be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near which the applicant resides for loans for similar proposes and periods of time.

(7) Be the owner or operator of not larger than a family farm after the loan is closed, when loan funds are used for soil and water conservation and protection purposes as defined in § 1943.66 (a)(1) through (a)(5) of this subpart. There is no farm size restriction on loans made for waste pollution abatement and control facilities under § 1943.66(b) of this subpart.

(8) If a tenant, has a satisfactory written lease for a sufficient period of time and under terms that will enable the operator to obtain reasonable returns on the improvements to be made with the SW loan. In addition, the lease or separate agreement should provide for compensating the tenant for any remaining value of the improvements upon termination of the lease.

(b) A cooperative, corporation, partnership or joint operation must:

(1) Have the character (emphasizing credit history, past record of debt repayment and reliability), and industry necessary to carry out the proposed operation. This requirement also must be met by the individual members, stockholders, partners or joint operators, Past record of debt repayment will not be cause for a determination that the applicant/borrower is not eligible if an honest attempt has been made to make the payments.

(2) Honestly try to carry out the applicant's/borrower's undertakings and obligations. This would include, but is not limited to, providing current, complete and truthful information when applying for assistance, and making every reasonable effort to carry out the conditions and terms of the proposed loan. This requirement also must be met by the individual members, stockholders, partners, or joint operators.

(3) Consist of members, stockholders, partners, or joint operators holding a majority interest who are citizens of the United States (see §143.54 of this subpart for the definition of *United States*), or aliens lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act. Aliens must provide Forms I–151 or I–551. Indefinite parolees are not eligible. If the authenticity of the information shown on the alien's identification document is questioned, the County Supervisor may request the Immigration and Naturalization Service (INS) to verify the information appearing on the alien's identification card by completing INS Form G–641, obtainable from the nearest INS District. (See exhibit B of subpart A of part 1944 of this chapter.) Mail the completed form to INS. The payment of a service fee by FmHA or its successor agency under Public Law 103–354 to INS is waived by inserting in the upper right hand corner of INS Form G–641, the following: ''INTERAGENCY LAW ENFORCEMENT REQUEST.'' There is no U.S. citizenship restriction on loans made for waste pollution abatement and control facilities under §1943.66(b) of this subpart.

(4) Have sufficient applicable education and/or on the job training or farming experience in managing and operating a farm or ranch (1 year's complete production and marketing cycle within the last 5 years), which indicates the managerial ability necessary to assure reasonable prospects of success in the proposed plan of operation. There is no education or experience restriction on loans made for waste pollution abatement and control facilities under §1943.66(b) of this subpart.

(5) Be authorized to own and/or operate a farm in the State(s) in which the farm is located.

(6) Be unable to obtain sufficient credit elsewhere, either as an entity or as individual members, stockholders, partners, or joint operators, to finance actual needs at reasonable rates and terms taking into account prevailing private and cooperative rates and terms in or near the community for loans for similar proposes and periods of time.

(7) Be controlled by individuals engaged primarily and directly in farming or ranching in the United States after the loan is made.

(8) Be the owner or operator of not larger than a family farm after the loan is closed, when loan funds are used for soil and water conservation and protection purposes as defined in §1943.66 (a)(1) through (a)(5) of this subpart. There is no farm size restriction on loans made for waste pollution abatement and control facilities under §1943.66(b) of this subpart.

(9) If a tenant, has a satisfactory written lease for a sufficient period of time, and under terms that will enable the applicant to obtain reasonable returns on the improvements made with the loan. In addition, the lease or separate agreement should provide for compensating the tenant for any remaining value of the improvements upon termination of the lease.

(10) Consist of members, stockholders, partners, or joint operators, who are *individuals* and *not* corporation(s), partnership(s), cooperative(s) or joint operation(s).

(11) When loan funds will be used for soil and water conservation and protection purposes (§1943.66 (a)(1) through (a)(5) of this subpart), and the members, stockholders, partners, or joint operators holding a majority interest are related by blood or marriage, the requirements of §1943.12(b)(5), (b)(7) (if limited resource applicant), and (b)(8) of subpart A of part 1943 of this chapter will apply.

(12) When loan funds will be used for soil and water conservation and protection purposes, and the members, stockholders, partners, or joint operators holding a majority interest are not related by blood or marriage, the requirements of §1943.12(b)(6) of subpart A of part 1943 of this chapter will apply.

(c) *Borrower training.* The applicant must agree to meet the training requirements of §1924.74 of subpart B of part 1924 of this chapter unless a waiver is granted in accordance with that section. In the case of a cooperative, corporation, partnership, or joint operation, any individual member, stockholder, partner, or joint operator holding a majority interest in the operation or who is operating the farm

must agree to complete the training or qualify for the waiver on behalf of the entity. However, if one entity member is solely responsible for financial or production management, then only that entity member will be required to complete the training in that area for the entity or qualify for a partial waiver. If the financial and production functions of the farming operation are shared, the knowledge and skills of the individual(s) with the responsibility of production and/or financial management of the operation will be considered in the aggregate for granting a waiver or requiring that training be completed. If a waiver is not granted, these individuals will be required to complete the training in accordance with their responsibilities. If the applicant has previously been required to obtain training, the applicant must be enrolled in and attending, or have satisfactorily completed, the training required.

[53 FR 35706, Sept. 15, 1988, as amended at 56 FR 3972, Feb. 1, 1991; 58 FR 15072, Mar. 19, 1993; 58 FR 69199, Dec. 30, 1993]

§§ 1943.63–1943.65 [Reserved]

§ 1943.66 Loan purposes.

Loans that are consistent with all Federal, State, and local environmental quality standards may be made to:

(a) Pay costs for construction, materials, supplies, equipment, and services related to, soil and water conservation and protection purposes, such as:

(1) Installation of conservation structures, including terraces, sod waterways, permanently vegetated stream borders and filter strips, windbreaks (tree or grass), shelterbelts, and living snow fences.

(2) Establishment of forest cover for sustained yield timber management, erosion control, or shelter belt purposes.

(3) Establishment or improvement of permanent pasture.

(4) The conversion to and maintenance of sustainable agriculture production systems, as described by Department technical guides and handbooks.

(5) Payment of costs to build conservation structures or establish conservation practices on highly erodible land to comply with a conservation plan in accordance with part 12 of this title (see attachment 1 of exhibit M of subpart G of part 1940 of this chapter which is available in any FmHA or its successor agency under Public Law 103–354 office).

(6) Other purposes consistent which plans for soil and water conservation, integrated farm management, water quality protection and enhancement, and wildlife habitat improvement.

(7) The following items/purposes related to conservation and protection purposes and water quality are authorized:

(i) Sodding, subsoiling, land leveling, liming, and fencing.

(ii) Fertilizer and seed used in connection with a soil conservation practice or to establish or improve permanent vegetation.

(iii) Gasoline, oil, and equipment rental or hire connected with establishing or completing the development.

(iv) Reasonable expenses incidental to obtaining, planning, closing, and making the loan, such as fees for legal, engineering or other technical services and first year insurance premiums which are required to be paid by the borrower and which cannot be paid from other funds. Loan funds may also be used to pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making any planned improvements.

(v) Purchase or repair of special-purpose equipment, such as terracing, land leveling, and ditching equipment, provided:

(A) Such equipment is needed and will facilitate the completion or maintenance of the planned improvement, and

(B) The cost of the equipment plus the other costs related to improvement will not be more than if performed by a contractor or by another method.

(vi) Acquire a source of water to be used on land the applicant owns, will acquire, or operates including:

(A) The purchase of water stock or membership in an incorporated water users association.

(B) The acquisition of a water right through appropriation, agreement, permit, or decree.

(C) The acquisition of water supply or right, and the land on which it is presently being used, when the water supply or right cannot be purchased without the land, provided:

(*1*) The value of the land without the water supply or right is only an incidental part of the title price, and

(*2*) The water supply will be transferred to, and used more effectively on, other land owned or operated by the applicant.

(vii) Purchase land or an interest therein for sites or rights-of-way and easements upon which a water or drainage facility will be located.

(viii) Pay that part of the cost of facilities, improvements, and ''practices'' which will be paid for in connection with participation in programs administered by agencies such as the Agricultural Stabilization and Conservation Service (ASCS) or the Soil Conservation Service (SCS) only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed $1,000, the applicant will assign the payment to the FmHA or its successor agency under Public Law 103–354.

(ix) Provide water supply facilities for dwellings and farm buildings, including such facilities as wells, pumps, farmstead distribution systems, and home plumbing.

(x) Pay costs of land and water development, use, and conservation essential to the applicant's farm, subject to the following:

(A) Such a loan may be made on land with defective title owned by the applicant or on land in which the applicant owns an undivided interest providing:

(*1*) The amount of funds used on such land is limited to $25,000,

(*2*) There is adequate security for the loan, and

(*3*) The tract is not included in the appraisal report.

(B) Such a loan may be made on land leased by the applicant providing:

(*1*) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life,

(*2*) A written lease provides for payment to the tenant or assignee for any remaining value of the improvement if the lease is terminated, and

(*3*) There is adequate security for the loan.

(b) Pay the costs of meeting Federal, State, or local requirements for agricultural, animal, or poultry waste pollution abatement and control facilities, including construction, modification, or relocation of the farm or farm structures, if necessary, to comply with such pollution abatement requirements.

[58 FR 15073, Mar. 19, 1993]

§1943.67 Loan limitations.

An SW loan will not be approved if:

(a) The loan being made exceeds the lesser of the value of the farm or other security for the loan, or $50,000.

(b) The total outstanding insured SW, Farm Ownership (FO) or Recreation (RL) loan principal balance including the new loan owned by the applicant will exceed the lesser of $200,000, or the market value of the farm or other security.

(c) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public records between tracts.

(d) The limitation found in §1943.79 (c) of this subpart is exceeded.

(e) The loan is made for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in exhibit M of subpart G of part 1940 of this chapter. Refer to FmHA Instruction 2000–LL (available in any FmHA or its successor agency under Public Law 103–354 Office) for assistance in implementation.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 15074, Mar. 19, 1993]

§1943.68 Rates and terms.

(a) *Terms of loan.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be

adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA or its successor agency under Public Law 103–354 431–2, ''Farm and Home Plan,'' or other similar plan of operation acceptable to FmHA or its successor agency under Public Law 103–354 when setting the terms. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for FmHA 1940–17, ''Promissory Note.'' Loans may have reduced annual installments scheduled, of least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any SW loan, the loan approval official may take such action under subpart S of part 1951 of this chapter.

(c) *Interest rate.* Upon request of the applicant, the interest rate charged by FmFA will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in exhibit B of FmHA Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103–354 office) for the type of assistance involved. A lower rate may be established in this exhibit for a limited resource applicant when loan funds are being used for soil and water conservation and protection purposes denoted in §1943.66 (a)(1) through (a)(5) of this subpart, subject to the following;

(1) The applicant meets the conditions of the definition for a limited resource applicant set forth in §1943.54 of this subpart.

(2) The Farm and Home Plan and Business Analysis—Nonagricultural Enterprise form, when appropriate, indicates that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 15074, Mar. 19, 1993]

§1943.69 Security.

Each SW loan will be secured by real estate, chattels, leaseholds, or a combination of these. Chattels and/or leaseholds, however, will only be taken as security as set forth in paragraphs (c) and (d) of this section. The total amount of security required will be the lesser of either 150 percent of the loan amount, or all real estate owned by the applicant. A loan will be considered adequately secured when the real estate security for the loan is at least equal to the loan amount. Security in excess of 150 percent of the loan amount will only be taken when it is not practical to separate the property, i.e., a tract of land. The specific items of security, along with the value of the security, will be documented in the case file. This information will be obtained from values established in accordance with §1943.75 of this subpart. If the applicant disagrees with the values established, FmHA or its successor agency under Public Law 103–354 will accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FmHA or its successor agency under Public Law 103–354 requirements. In cases, when a loan is being made in conjunction with a servicing action, the security requirements as stated in subpart S of part 1951 of this chapter will prevail. In unusual cases, the loan approval official may require a cosigner in accordance with §1910.3 (d) of subpart A of part 1910 of this chapter or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(a) *Real estate security.* (1) A mortgage will be taken on all real estate refinanced or improved with SW funds, and by any additional real estate security needed to meet the requirements of this section.

(2) Security will also include items which are considered part of the farm and ordinarily pass with the title to the farm such as, but not limited to, assignments of leases or leasehold interests having mortgageable value, water rights, easements, rights-of-way, revenues, and royalties from mineral rights.

(3) A first lien is required on real estate, when available. In addition, loans

will be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the SW loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.

(ii) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA or its successor agency under Public Law 103–354 whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in subpart B of part 1927 of this chapter, except as modified by the ''Memorandum of Understanding-FCA-FmHA or its successor agency under Public Law 103–354,'' FmHA Instruction 2000–R (available in any FmHA or its successor agency under Public Law 103–354 office).

(4) Advice on obtaining security will be received from OGC when necessary.

(5) The designated attorney, title insurance company, or OGC will furnish advice on obtaining security when a life estate is involved.

(6) Any loan of $10,000 or less may be secured by the best lien obtainable without title clearance or legal services as required in subpart B of part 1927 of this chapter, provided the County Supervisor believes from a search of the County records that the applicant can give a mortgage on the farm. This exception to title clearance will not apply when:

(i) The loan is made simultaneously with that of another lender.

(ii) This provision conflicts with program regulations of any other FmHA or its successor agency under Public Law 103–354 loan being made simultaneously with the SW loan.

(7) The Departments of Agriculture and Interior have agreed that FmHA or its successor agency under Public Law 103–354 loans may be made to Native Americans and secured by real estate when title is held in trust or restricted status. When security is so taken on real estate held in trust or restrictive status:

(i) The applicant will request the Bureau of Indian Affairs (BIA) to furnish Title Status Reports to the County Supervisor; and

(ii) The BIA approval will be obtained on the mortgage after it has been signed by the applicant and any other party whose signature is required.

(b) *Exceptions.* The County Supervisor will clearly document in the file when security is not taken for any of the following reasons:

(1) A lien will not be taken on property that could have significant environmental problems/costs (e.g., known or suspected underground storage tanks or hazardous wastes, contingent liabilities, wetlands, endangered species, historic properties). Guidance is provided in part II, item H of exhibit A of FmHA Instruction 1922–E (available in any FmHA or its successor agency under Public Law 103–354 office) as to the action to be taken when the appraiser indicates that the property is subject to any hazards, detriments or limiting conditions.

(2) A lien will not be taken on property that cannot be made subject to a valid lien.

(3) A lien will not be taken on the applicant's personal residence and appurtenances, when the residence is located on a separate parcel and the farm tract being financed, refinanced, improved, or otherwise used for collateral provides primary security for the loan(s).

(4) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary family living expenses; all types of retirement accounts; personal vehicles necessary for family living and farm operating purposes; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(5) A lien will not be taken on marginal land, including timber, when a softwood timber (ST) loan is secured by such land.

(c) *Chattel security.* Ordinarily, SW loans will not be secured by chattels.

However, loans will be secured by chattels as follows:

(1) A first lien will be taken on equipment or fixtures bought with loan funds whenever such property cannot be included in the real estate lien and the best lien obtainable on all real estate will be taken and does not provide primary security for the loan.

(2) Chattel security will be obtained when real estate will not provide primary security for the loan and the best lien obtainable has been taken on all real estate.

(3) When a loan is made only for the purchase of shares of water stock, such stock will be pledged or assigned as security for the loan.

(4) If there is no real estate security available and a lien is taken on chattels only, the loan cannot be over $100,000 and must be scheduled for repayment within 20 years or the useful life of the security, whichever is less.

(5) Chattel security will be obtained and kept effective as notice to third parties as provided in subpart B of part 1941 and subpart A of part 1962 of this chapter.

(d) *Loans secured by leaseholds.* A loan will be secured by a mortgage on the leasehold if it has negotiable value and is able to be mortgaged, subject to the following:

(1) The unexpired term of the lease should extend beyond the repayment period of the loan for a period sufficient to ensure the objectives of the loan will be achieved. If the loan repayment period is equal to or greater than the period covered by the lease, the borrower must provide other security to secure the loan or the lessor must agree in writing to compensate the borrower for any unexhausted value of the improvements when the lease expires or is terminated.

(2) The lessor must have good and marketable title to the real estate, which may be subject to a prior lien, or the lessor must have signed a contract to purchase the real estate. The contract to sell and the lien instruments must not contain covenants, such as short redemption periods or rights to cancel, which may jeopardize the Government's security. Any provisions which may jeopardize the Government's security must be limited, modified, waived or subordinated in favor of the Government.

(3) With respect to achieving the purpose of the loan, obtaining adequate security and being able to service the loan and enforce its rights, the Government, as holder of a mortgage upon a lease or leasehold interest, must be in a position substantially as good as if it held a second mortgage on the real estate. Besides the lessor's consent to the SW mortgage on the leasehold interest, FmHA or its successor agency under Public Law 103–354 should consider whether or not:

(i) There is reasonable security of tenure. The borrower's interest should not be subject to summary forfeiture or cancellation.

(ii) The right to foreclose the SW mortgage and sell without restrictions would adversely affect the salability or market value of the security.

(iii) FmHA or its successor agency under Public Law 103–354 has a right to bid at a foreclosure sale or to accept voluntary conveyance in lieu of foreclosure.

(iv) FmHA or its successor agency under Public Law 103–354 has the right, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell it for cash or credit. In case of a credit sale, the FmHA or its successor agency under Public Law 103–354 should take a vendor's mortgage with rights similar to those under the original SW mortgage.

(v) The borrower has the right, in the event of default or inability to continue with the lease and the SW loan, to transfer the leasehold, subject to the SW mortgage, to an eligible transferee who will assume the SW debt.

(vi) Advance notice will be given to FmHA or its successor agency under Public Law 103–354 of the lessor's intention to cancel, terminate or foreclose upon the lease. Such advance notice should be long enough to permit FmHA or its successor agency under Public Law 103–354 to ascertain the amount of delinquencies, the total amount of the lessor's and any other prior interest, the market value of the leasehold interest and, if litigation is involved, to

refer the case with a report of the facts to the United States Attorney for appropriate action.

(vii) There are express provisions covering the question of FmHA or its successor agency under Public Law 103–354's obligation to pay unpaid rental or other charges accrued at the time it acquires possession of the property or title to the leasehold, and those which become due during FmHA or its successor agency under Public Law 103–354's occupancy or ownership, pending further servicing or liquidation.

(viii) There are any necessary provisions to assure fair compensation to the lessee for any part of the premises taken by condemnation.

(ix) Any other provisions are necessary to obtain an interest which can be mortgaged.

(4) A State supplement will be issued in any State in which real estate or chattel liens may be taken on leasehold interests in farmland and recorded so as to protect the mortgagee.

(5) The following language or similar language which, in the opinion of OGC or the designated attorney, is legally adequate, will be inserted on the lien instrument:

''All Borrower's right, title, and interest in and to the leasehold estate for a term of _____ years beginning on ____, 19__, created and established by a certain Lease dated _____, 19__, executed by _____ as lessor(s), recorded on ____, 19__, in Book ____, page ____ of the ____ Records of said County and State, and any renewals and extensions thereof, and all Borrower's right, title, and interest in and to said Lease, covering the following real estate:'' (To be inserted just before the legal description.)

This additional covenant will be inserted in the mortgage:

Borrower will pay when due all rents and any and all other charges required by said Lease, will comply with all other requirements of said Lease, and will not surrender or relinquish without the Government's written consent, any of the Borrower's right, title or interest in or to said leasehold estate or under said Lease while this instrument remains in effect.

(e) *State supplements.* Each State will supplement this section to provide instructions on forms to be completed and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA or its successor agency under Public Law 103–354 and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(f) *Special security requirements.* When SW loans are made to eligible entities that consist of members, stockholders, partners or joint operators who are presently indebted for an SW loan(s) as individual(s) or when SW loans are made to eligible individuals, who are members, stockholders, partners or joint operators of an entity which is presently indebted for an SW loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA or its successor agency under Public Law 103–354 for any other farmer program insured or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(g) *Same security.* Except as provided in paragraph (f) of this section, when an SW loan (insured or guaranteed) is made to a borrower who has other FmHA or its successor agency under Public Law 103–354 loans, the same real estate collateral may secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

[53 FR 35706, Sept. 15, 1988, as amended at 57 FR 18678, 18679, Apr. 30, 1992; 59 FR 22962, May 4, 1994; 59 FR 25801, May 18, 1994]

§§ 1943.70–1943.72 [Reserved]

§ 1943.73 General provisions.

(a) *Flood and mudslide hazard areas.* Flood and mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration (FEMA). Subpart B of part 1806 of this chapter (FmHA instruction 426.2) as well as subpart G of part 1940 of this chapter will be complied with when loan funds are used to

construct, modify, or relocate buildings in such areas. This will not prevent making loans on farms when the farmstead is located in a flood or mudslide prone area and if funds are not included in the loan for building improvements. However, the hazard will need to be noted in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendations on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA or its successor agency under Public Law 103–354 representatives will evaluate the proposal and record the decision in the loan docket in accordance with subpart G of part 1940 of this chapter.

(b) *Civil rights.* The provisions of subpart E of part 1901 of this chapter will be complied with on all loans made which involve any development financed by FmHA or its successor agency under Public Law 103–354 that will be performed by a contract or subcontract of more than $10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of subpart F of part 1901 of this chapter apply.

(d) *Environmental requirements.* See subpart G of part 1940 of this chapter for applicable environmental requirements. Refer to FmHA Instruction 2000–LL (available in any FmHA or its successor agency under Public Law 103–354 office) for assistance in implementation.

(e) *Equal Credit Opportunity Act.* In accordance with title V of Pub. L 93–495, the Equal Credit Opportunity Act, the FmHA or its successor agency under Public Law 103–354 will not discriminate against any applicant on the basis of sex or marital status, with respect to any aspect of a credit transaction.

(f) *Compliance with Special Laws and Regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing construction; diverting, appropriating, and using water including use for domestic purposes; and making changes in the use of land affected by zoning regulations.

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use and restrictions for water development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(3) Applicants will comply with all local laws and regulations, and will obtain any special licenses or permits needed for nonfarm, recreation, specialized or fish farming enterprises.

[53 FR 35706, Sept. 15, 1988, as amended at 57 FR 18679, Apr. 30, 1992; 58 FR 15074, Mar. 19, 1993]

§ 1943.74 Special requirements.

(a) *Land development.* When possible, recommendations for land development will be obtained from the Forest Service, State Agricultural Extension Service, and the Soil Conservation Service and included in the development plan, and in the farm and home plans. In planning such development with the applicant, the County Supervisor will encourage the applicant to use any cost-sharing assistance that may be available through any source such as the Agricultural Stabilization and Conservation Service (ASCS) program.

(b) *Technical assistance.* Applicants are responsible for obtaining all the technical assistance required in connection with an SW loan, such as that needed to plan, construct, or establish the improvement or facility to be financed.

(c) *Loans for irrigation purposes.* Evidence or documentation of the following should be obtained when loan funds are to be used for irrigation purposes:

(1) The land to be irrigated is suitable for irrigation.

(2) The applicant has a right to use water for irrigation.

(3) The water is suitable to use for irrigation and is available in sufficient quantities to irrigate a specified amount of land.

(4) If irrigation specialists have prepared any feasibility studies, copies of these studies have been submitted to FmHA or its successor agency under Public Law 103–354.

(d) *Insurance.* (1) Insurance will be obtained on buildings and other property as provided in subpart A of part 1806 of this chapter (FmHA Instruction 426.1) on real estate taken as primary security, as defined in §1943.54 of this subpart. Property insurance will not be required when real estate is taken as additional security, as defined in §1943.54 of this subpart.

(2) See §1943.73(a) of this subpart for information about flood and mudslide hazard areas.

(3) Chattel security should be insured against hazards customarily insured against in the area if the loss of such security would jeopardize the interests of the Government.

(e) *Life estates.* When life estates are involved, loans may be made:

(1) To both the life estate holder and the remainderman, provided:

(i) Both have a legal right to occupy and operate the farm; and

(ii) Both are eligible for the loan; and

(iii) Both parties sign the note and mortgage

(2) To the remainderman only, provided:

(i) The remainderman has a legal right to occupy and operate the farm; and

(ii) The lien instrument is signed by the remainderman, life estate holder, and any other party having any interest in the security.

(3) To the life estate holder only, provided:

(i) There is no legal restriction placed on a life estate holder who occupies and operates a farm; and

(ii) The lien instrument is signed by the life estate holder, remainderman, and any other party having any interest in the security.

(f) *Liens junior to the FmHA or its successor agency under Public Law 103–354 lien.* A loan will not be approved if a lien junior to the FmHA or its successor agency under Public Law 103–354 lien is likely to be taken simultaneously with or immediately subsequent to the loan closing to secure any debt the borrower may have at the time of loan closing or any debt that may be incurred in connection with the SW loan, unless the total debt against the security would be within its market value.

(g) *Graduation of SW borrowers.* If, at any time, it appears that the borrower may be able to obtain a refinancing loan from a cooperative or private credit source at reasonable rates and terms, comparable to those for loans for similar purposes and periods of time prevailing in the area the borrower will, upon request, apply for and accept such financing.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 26681, May 5, 1993]

§1943.75 Options, planning, and appraisals.

(a) *Options.* An applicant is responsible for obtaining options on real property. Form FmHA or its successor agency under Public Law 103–354 440–34, ''Option to Purchase Real Property,'' may be used. Other forms may be used if acceptable to all parties concerned and to FmHA or its successor agency under Public Law 103–354. When an FmHA or its successor agency under Public Law 103–354 form is not used, a provision should be included which makes the option contingent upon FmHA or its successor agency under Public Law 103–354 making a loan to the buyer.

(b) *Planning.* Farm and Home Plans and nonagricultural enterprise plans, when appropriate, will be completed as provided in subpart B of part 1924 of this chapter.

(c) *Appraisals.* (1) Except as provided in paragraph (c)(2) of this section, real estate appraisals will be completed on forms in accordance with §761.7 of this title, and in the case of an appraisal of residential real estate, the appropriate Agency form (available in each Agency

State Office) or other format that contains the same information, by a designated FmHA or its successor agency under Public Law 103–354 real property appraiser, or FmHA or its successor agency under Public Law 103–354 State-certified general contract real property appraiser. Appraisals are necessary when real estate is taken as primary security, as defined in §1943.4 of this subpart, and when loans are serviced in accordance with subpart S of part 1951 of this chapter. Real estate appraisals are not required when real estate is taken as additional security, as defined in §1943.4 of this subpart. However, the County Supervisor will document in the running record the estimated market value of the additional security and the basis for the estimate.

(2) Other real estate appraisals completed by other State-certified general appraisers may be used providing such appraisals meet the ethics, competency, departure provisions, etc., and sections I and II of the Uniform Standards of Professional Appraisal Practices, and contain a mineral rights appraisal as set out in paragraph (c)(4) of this section. Prior to acceptance, the appraisal must have an acceptable desk review (technical) completed by an FmHA or its successor agency under Public Law 103–354 designated review appraiser.

(3) Real estate appraisals will be completed as provided in §761.7 of this title. The rights to mining products, gravel, oil, gas, coal, or other minerals will be considered a portion of the security for Farmer Programs loans and will be specifically included as a part of the appraised value of the real estate securing the loans using Form FmHA or its successor agency under Public Law 103–354 1922–11, ''Appraisal for Mineral Rights'' or other format that contains the same information.

(4) The value of stock required to be purchased by Federal land Bank (FLB) borrowers may be added to the recommended market value of the security, provided:

(i) An assignment is obtained on the stock, or

(ii) An assignment is obtained which provided that:

(A) The value of the stock at the time the FLB loan is satisfied will be applied on the FLB loan, or

(B) The stock refund check is made payable to the borrower and FmHA or its successor agency under Public Law 103–354, or

(C) The stock refund check is made payable to the borrower and mailed to the County Supervisor.

(iii) The total of the stock value and the recommended market value of real estate is indicated in the comments section of the appraisal report.

(5) In the case of nonreal estate security, the following items apply:

(i) Form FmHA or its successor agency under Public Law 103–354 440–21, ''Appraisal of Chattel Property,'' will be used.

(ii) The property which will serve as security will be described in sufficient detail so it can be identified.

(iii) The current market value or, if appropriate, the current cash value will be determined.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 48289, Sept. 15, 1993; 59 FR 16773, Apr. 8, 1994; 64 FR 62568, Nov. 17, 1999]

§ 1943.76 Planning and performing development.

The development work will be planned and completed in accordance with part 1924, subpart A of this chapter.

§ 1943.77 Relationship with other lenders.

(a) An applicant will be requested to obtain credit from another source when information indicates such credit is available. When another lender will not make a loan for the total needs of the applicant but is willing to participate with an SW loan, consideration will be given to a participation loan. FmHA or its successor agency under Public Law 103–354 employees may not guarantee, personally or for FmHA or its successor agency under Public Law 103–354, repayment of advances made from other credit sources. However, lenders may be assured that lien priorities will be recognized.

(b) The County Supervisor and the other lender's representative should maintain a close working relationship

in processing loans to a mutual applicant or borrower. When an SW loan is made at the same time as a loan from another lender, that lender's lien will have priority over the FmHA or its successor agency under Public Law 103–354 lien unless otherwise agreed upon. The lender's lien priority can cover the following in addition to principal and interest: Advances for payment of taxes, property insurance, reasonable maintenance to protect the security, and reasonable foreclosure costs including attorney's fees.

§§ 1943.78–1943.82 [Reserved]

§ 1943.83 Loan approval or disapproval.

(a) *Loan approval authority.* Initial and subsequent loans may be approved as authorized by subpart A of part 1901 of this chapter, provided:

(1) Section 1943.67 of this subpart, containing loan limitations, is not violated.

(2) No significant changes have been made in the development plan considered by the appraiser when real estate will be taken as security.

(b) *Loan approval action.* (1) The loan approval official must approve or disapprove applications within the deadlines set out in §1910.4 of subpart A of part 1910 of this chapter. The loan approval official is responsible for reviewing the docket to determine whether the proposed loan complies with established policies and all pertinent regulations. When reviewing the docket, the loan approval official will determine that:

(i) The Agency has certified the applicant eligible;

(ii) Funds are requested for authorized purposes;

(iii) The proposed loan is based upon a feasible plan. Planning forms other than Form FmHA or its successor agency under Public Law 103–354 432–2, ''Farm and Home Plan'' may be used when they provide the necessary information.

(iv) The security is adequate;

(v) Necessary supervision is planned; and

(vi) All other pertinent requirements have been met or will be met.

(2) [Reserved]

[53 FR 35706, Sept. 15, 1988, as amended at 55 FR 21530, May 25, 1990; 57 FR 18679, Apr. 30, 1992; 61 FR 35926, July 9, 1996]

§ 1943.84 Requesting title service.

When the loan is approved and real estate will serve as security, the County Supervisor will request the applicant to obtain title clearance as provided in subpart B of part 1927 of this chapter, when required if this has not been done. If an option is involved, the applicant will sign and send to the seller Form FmHA or its successor agency under Public Law 103–354 440–35, ''Acceptance of Option,'' or other suitable forms.

[53 FR 35706, Sept. 15, 1988, as amended at 56 FR 67481, Dec. 31, 1991]

§ 1943.85 Action after loan approval.

(a) *Requesting check.* If the County Supervisor is reasonably certain that the loan can be closed within 20 working days from the date of the check, loan funds may be requested at the time of loan approval through the field office terminal system. If funds are not requested when the loan is approved, advances in the amount needed will be requested through the field office terminal system. Loan funds must be provided to the applicant(s) within 15 days after loan approval, unless the applicant(s) agrees to a longer period. If no funds are available within 15 days of loan approval, funds will be provided to the applicant as soon as possible and within 15 days after funds become available, unless the applicant agrees to a longer period. If a longer period is agreed upon by the applicant(s), the same will be documented in the case file by the County Supervisor.

(1) When all loan funds can be disbursed at, or within 30 days after loan closing or if the amount of funds that cannot be disbursed does not exceed $5,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in paragraph (a)(1) of this section, the amount needed to meet the immediate needs of the borrower will be requested through the field office terminal system. The amount of each advance should meet

the needs of the borrower as much as is possible, so the amount in the supervised bank account will be kept to a minimum. The Finance Office will continue to supply Form FmHA or its successor agency under Public Law 103–354 440–57 until the entire loan has been disbursed. The County Supervisor should tell the borrower to notify the County Office of amounts needed on a timely basis to avoid delays in receiving loan checks.

(b) *Handling loan checks.* (1) When the loan check or the borrower's personal funds are to be deposited in the designated loan closing agent's escrow account, this will be done no later than the date of loan closing. If loan funds or the borrower's personal funds are to be deposited in a supervised bank account, this will be done in accordance with subpart A of part 1902 of this chapter as soon as possible, but in no case later than the first banking day following the date of loan closing.

(2) If a loan check is received and the loan cannot be closed within 20 working days from the date of the check, the County Supervisor will take appropriate action in accordance with FmHA Instruction 2018–D, (available in any FmHA or its successor agency under Public Law 103–354 office). The applicant must agree to a delayed loan closing and the same will be documented in the case file by the County Supervisor.

(3) When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with FmHA Instruction 2018–D, a copy of which may be obtained as stated in paragraph (b)(2) of this section.

(c) *Cancellation of loan.* If, for any reason a loan check or obligation will be cancelled, the County Supervisor will take the following actions:

(1) The County Supervisor will notify the State Office of loan cancellation by using Form FmHA or its successor agency under Public Law 103–354 1940–10, ''Cancellation of U.S. Treasury Check and/or Obligation.'' The County Office will send a copy of Form FmHA or its successor agency under Public Law 103–354 1940–10 to the designated attorney, Regional Attorney, or the title insurance company representative providing loan closing instructions to indicate the loan has been canceled. If a check received in the County Office is to be canceled, the check will be returned as prescribed in FmHA Instruction 2018–D (available in any FmHA or its successor agency under Public Law 103–354 office).

(2) Interested parties will be notified of the cancellation as provided in subpart B of part 1927 of this chapter.

(d) *Cancellation of advances.* When an advance is to be cancelled the County Supervisor must take the following actions:

(1) Complete and distribute Form FmHA or its successor agency under Public Law 103–354 194–10 in accordance with the FMI.

(2) When necessary, prepare and execute a substitute promissory note reflecting the revised total of the loan and the revised repayment schedule. When it is not possible to obtain a substitute promissory note, the County Supervisor will show on Form FmHA or its successor agency under Public Law 103–354 440–57 the revised amount of the loan and the revised repayment schedule.

(e) *Increase or decrease in amount of loan.* If it becomes necessary to increase or decrease the amount of the loan prior to loan closing, the County Supervisor will request that all distributed docket forms be returned to the County Office and reprocessed unless the change is minor and replacement forms can readily be completed and submitted. In the latter case, a memorandum explaining the change will be attached to the revised forms and sent to the Finance Office.

[53 FR 35706, Sept. 15, 1988, as amended at 54 FR 39727, Sept. 28, 1989; 56 FR 67481, Dec. 31, 1991; 59 FR 54788, Nov. 2, 1994]

§§ 1943.86–1943.87 [Reserved]

§ 1943.88 Loan closing actions.

When a loan closing date has been agreed upon, the County Supervisor will notify the borrower of the loan closing date. The following appropriate actions will be taken in connection with, and after loan closing:

(a) *Real estate mortgage loans.* When a loan is to be secured by a real estate mortgage, it will be closed in accordance with the applicable provisions of

subpart B of part 1927 of this chapter except as modified for loans of $10,000 or less in paragraph 1943.69(a)(6).

(b) *Loans involving chattel or other nonreal estate security.* All chattel security instruments will be signed and filed as prescribed in subpart B of part 1941 of this chapter for Operating loans. The following forms will be used for chattel security:

(1) Form FmHA or its successor agency under Public Law 103–354 440–15, ''Security Agreement (Insured Loans to Individuals).''

(2) Form FmHA or its successor agency under Public Law 103–354 440–25, ''Financing Statement,'' or, when authorized, Form FmHA or its successor agency under Public Law 103–354 440–A25, ''Financing Statement.''

(3) State forms may be used if National forms are not legally acceptable. Such forms will require OGC and National Office clearance.

(c) *Applicant's financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in the applicant's financial condition, the financial statement will be revised and initialed by the applicant and the County Supervisor. When an applicant's financial condition has changed to the extent that it appears the loan would be unsound or improper, the loan will not be closed. If a revised loan docket is needed to meet loan requirements or determine loan soundness, it will be developed and submitted to the appropriate loan approval official.

(d) *Loan approval conditions.* The County Supervisor will inform the applicant of any loan approval conditions that need to be met. These conditions will usually be included in the notice informing the applicant of the loan closing date. The loan will not be closed if the applicant is unable to meet loan approval conditions.

(e) *Change in the use of funds planned for refinancing.* (1) County Supervisors are authorized to:

(i) Transfer funds planned to be used for refinancing specific debts to other debts when there is a need to do so; and

(ii) Transfer funds planned to be used for other purposes to pay small deficiencies in estimates for refinancing debts, providing there are sufficient remaining funds to complete any land purchase and planned development.

(2) A revised docket will be developed when:

(i) The total amount of debts to be refinanced has increased in such an amount that planned loan purposes cannot be carried out; and

(ii) The applicant is unable to make up any deficiencies from other resources.

(f) *Assignment of income from real estate to be mortgaged.* Income to be received by the borrower from royalties, leases, or other existing agreements under which the value of the real estate security will be reduced will be assigned and disposed of in accordance with subpart A of part 1965 of this chapter, including provisions for written consent of any prior lienholder. When the County Supervisor deems it advisable, assignments also may be taken on all or a portion of income to be derived from nondepleting sources such as income from bonus payments or annual delay rentals. Such income will be assigned and disposed of in accordance with subpart A of part 1965 of this chapter.

(1) For assignment of income, Form FmHA or its successor agency under Public Law 103–354 443–16, ''Assignment of Income from Real Estate Security,'' will be used, except, if it is legally inadequate in a State, it may be adapted to that State with the approval of the OGC or an authorized State form may be used instead.

(2) The County Supervisor, upon the advice of the designated attorney, escrow agent, title insurance company, or the OGC, as appropriate, may require acknowledgment and recordation of the assignment. Any cost incident thereto will be paid by the borrower.

(3) At the time Form FmHA or its successor agency under Public Law 103–354 443–16 is executed, appropriate notations will be made on Form FmHA or its successor agency under Public Law 103–354 1905–1, ''Management System Card—Individual,'' to insure the proceeds, or the specified portion of the proceeds assigned to FmHA or its successor agency under Public Law 103–354

from the transactions are remitted at the proper time.

(g) *Preparation of the note.* Form FmHA or its successor agency under Public Law 103–354 1940–17, ''Promissory Note,'' will be used and completed in accordance with the FMI.

(1) Separate notes will be prepared for any other FmHA or its successor agency under Public Law 103–354 Loan made simultaneously with the SW loan. The notes will be completed as provided in the appropriate loan regulation and FMI.

(2) All FmHA or its successor agency under Public Law 103–354 notes to be secured by real estate can be described in the same mortgage.

(3) The promissory note will be signed as follows:

(i) *Individuals.* Only the applicant(s) will sign the note as a borrower. If a co-signer is needed (see §1910.3(e) of subpart A of part 1910 of this chapter), the co-signer will also sign the note. Any other signatures needed to assure the required security will be obtained as provided in State supplements. Persons who are minors or mental incompetents will not execute a promissory note. Except when a person has pledged only property as security for a loan, the purpose and effect of signing a promissory note or other evidence of indebtedness for a loan made or insured by FmHA or its successor agency under Public Law 103–354 is to incur individual personal liability regardless of any State law to the contrary.

(ii) Cooperatives or corporations. The promissory note(s) will be executed so as to evidence liability of the entity as well as individual liability of all member(s) or stockholder(s) in the entity.

(iii) *Partnerships or joint operations.* The note will be executed by the partner or joint operator authorized to sign for the entity, and all partners in a partnership or joint operators in the joint operation, as individuals.

(h) *Supplementary payment agreement.* Form FmHA or its successor agency under Public Law 103–354 440–9, ''Supplementary Payment Agreement,'' should be used for each applicant who regularly (such as weekly, monthly, or quarterly) receives substantial income from an off-farm source, a nonfarm enterprise, or from farming.

(i) *Obtaining insurance.* The applicant will be informed of the insurance requirements set forth in §1943.74(d) of this subpart.

(j) *Effective time of loan closing.* An SW loan is considered closed when the mortgage is filed for record.

(k) *Distribution of documents after loan closing.* The County Supervisor should review the forms and closing actions. Corrective action should be taken when necessary.

(1) Real estate mortgages:

(i) When the original recorded instrument is returned to the County Office:

(A) File the original in the County Office file, and

(B) Give a copy to the borrower.

(ii) When the original is retained by recorder:

(A) File a conformed copy in County Office file, and

(B) Give a conformed copy to the borrower.

(iii) The County Supervisor will provide copies that may be needed in some cases for interested third parties.

(2) Deeds:

(i) Give the original to the borrower, and

(ii) Retain one copy to file.

(3) Title insurance policies:

(i) File the Mortgagee title policy in the County Office file, and

(ii) Give the owner's title policy, if one is obtained, to the borrower.

(4) Water stock certificates or similar collateral will be retained in the County Office file.

(5) Abstracts of title:

(i) Return to the borrower, except when they were obtained from a third party with the understanding they would be returned, the abstracts will be sent to the third party. A memorandum receipt will be obtained when abstracts are delivered to the third party.

(ii) Form FmHA or its successor agency under Public Law 103–354 140–4, ''Transmittal of Documents,'' will be used and a receipted copy kept in the County Office. The FMI should be followed for preparing this form.

[53 FR 35706, Sept. 15, 1988, as amended at 56 FR 67481, Dec. 31, 1991; 57 FR 18679, Apr. 30, 1992; 58 FR 48289, Sept. 15, 1993; 59 FR 25801, May 18, 1994]

§§ 1943.89–1943.91 [Reserved]

§ 1943.92 Servicing.

SW loans will be serviced in accordance with subpart A of part 1965 of this chapter. Chattel security for SW loans will be serviced in accordance with subpart A of part 1962 of this chapter. Bureau of Reclamation (BR) loans made during the period August 19, 1977, through September 30, 1977, will be serviced in the same manner as Soil and Water loans. See exhibit A of this subpart, ''Memorandum of Understanding Between the Bureau of Reclamation, Department of the Interior, and the Farmers Home Administration or its successor agency under Public Law 103–354, Department of Agriculture,'' for additional information on these loans.

§ 1943.93 Subsequent SW loans.

A subsequent SW loan is a loan made to a borrower who is currently in debt for an SW loan.

(a) Subsequent loan may be made for the same purposes and under the same conditions as an initial loan.

(b) The subsequent loan will be processed in the same manner as an initial loan.

(c) A new real estate mortgage will not be necessary provided:

(1) All the land which will serve as security for the loan is described on the present real estate mortgage; or

(2) The real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause; or

(3) The required lien priority is obtained with the existing mortgage and future advance clause.

§ 1943.94 Subordinations.

Subordinations in favor of other lenders will be processed in accordance with subpart A of part 1965 of this chapter.

§§ 1943.95–1943.99 [Reserved]

§ 1943.100 State supplements.

State supplements will be issued as necessary to implement this subpart.

EXHIBIT A TO SUBPART B OF PART 1943—MEMORANDUM OF UNDERSTANDING BETWEEN THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR AND THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354, DEPARTMENT OF AGRICULTURE

Whereas, under section 8 of the 1977 Drought Emergency Act (P.L. 95–18), hereafter referred to as ''the Act,'' the Bureau of Reclamation (BR) is authorized to make loans to irrigators for the purpose of undertaking construction, management, conservation activities, or the acquisition and transportation of water, which can be expected to have an effect in mitigating losses and damages resulting from the 1976–1977 drought period;

Whereas, the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 has an existing soil and water program (SW) authorized by section 304 of the Consolidated Farm and Rural Development Act for loans to individuals that accomplish purposes similar to those in the Act;

Whereas, it is more efficient and in the best interests of the United States, and in accordance with section 6 of the Act, for BR to procure the services of FmHA or its successor agency under Public Law 103–354 pursuant to the terms of the Economy Act of 1932 (31 U.S.C. 686) to make and service loans to individual irrigators as authorized by the Act.

Now therefore the parties agree:

1. For purposes of this Memorandum the term *irrigators* shall mean any person or legal entity who holds a valid existing water right for irrigation purposes within the Federal reclamation projects. Federal reclamation projects means any project constructed or funded under Federal reclamation law and specifically including projects having approved loans under the Small Reclamation Projects Act of 1956, as amended.

2. FmHA or its successor agency under Public Law 103–354 shall make and service loans to individual irrigators as authorized by the Act pursuant to its SW program and applicable FmHA or its successor agency under Public Law 103–354 regulations except as modified hereby.

3. The loans shall be only for the purposes relating specifically to irrigation and set forth in FmHA Instruction 443.2, IVA1, A8, B1, B2, and C. The loans shall be interest free. Loans for water acquisition and transportation shall be repaid over a period not to exceed 5 years. Other loans shall be repaid over a period not to exceed 5 years except such loans which generate benefits which are usable beyond 1977 shall be repaid within a

period which shall be the shorter of the estimated useful life of the facilities or the reasonable payment capacity of the irrigator but in no event to exceed 40 years. All loans shall be obligated not later than September 30, 1977, and any construction related to any loan must be completed by November 30, 1977.

4. Services rendered by FmHA or its successor agency under Public Law 103–354 pursuant to this Memorandum of Understanding shall be on a nonreimbursable basis to the irrigator. For services rendered, BR shall pay to FmHA or its successor agency under Public Law 103–354 a charge of 5 percent of principal of each loan. BR directs that FmHA or its successor agency under Public Law 103–354 disburse such service charge to itself directly upon the closing of each loan.

5. Three million dollars shall be transferred to FmHA or its successor agency under Public Law 103–354 by Standard Form 1151, which amount shall be available for construction, management, and conservation activities. An additional sum of $5 million may be made available upon request of FmHA or its successor agency under Public Law 103–354 for the acquisition and transportation of water.

6. *Monthly Report:* FmHA or its successor agency under Public Law 103–354 shall submit a Standard Form 133, ''Report on Budget Execution'', in accordance with OMB Circular A–34, to the Bureau of Reclamation, Washington, D.C. 20240, attention code 370.

7. *Accomplishment:* FmHA or its successor agency under Public Law 103–354 shall submit to the Bureau of Reclamation, Washington, D.C. 20240, attention code 400, a complete report on expenditures and accomplishments under this Memorandum on January 16, 1978.

Date of June 29, 1977.

Bureau of Reclamation, Department of the Interior,

R. KEITH HIGGINSON,
Commissioner.

Dated: July 15, 1977.

Farmers Home Administration or its successor agency under Public Law 103–354, Department of Agriculture,

MARTY HOLLERAN,
for Gordon Cavanaugh,
Administrator.

ATTACHMENT

AMENDATORY-MEMORANDUM OF UNDERSTANDING BETWEEN THE BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR AND THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354, DEPARTMENT OF AGRICULTURE

WHEREAS, the Bureau of Reclamation (BR) and the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 consummated a Memorandum of Understanding on July 15, 1977, whereby BR would procure the services of FmHA or its successor agency under Public Law 103–354 pursuant to the terms of the Economy Act of 1932 (31 U.S.C. 686) to make and service loans to individual irrigators as authorized by section 8 of the 1977 Drought Emergency Act (Pub. L. 95–18); and

WHEREAS, item 3 of that Memorandum of Understanding provides in part that all loans shall be obligated not later than September 30, 1977, and any construction related to any loan must be completed by November 30, 1977; and

WHEREAS, Pub. L. 95–107, enacted on August 17, 1977, amends Pub. L. 95–18 to accomplish, among other things, an extension of the time for completing construction activities under the authorities of Pub. L. 95–18 from November 30, 1977, to January 31, 1978.

NOW THEREFORE the parties agree that the date November 30, 1977, in the last sentence of item 3 of the Memorandum of Understanding executed by BR on June 29, 1977, and FmHA or its successor agency under Public Law 103–354 on July 15 1977, be revised to January 31, 1978, so that the sentence will read, ''All loans shall be obligated not later than September 30, 1977, and any construction related to any loan must be completed by January 31, 1978.''

Date of September 6, 1977.

Bureau of Reclamation, Department of the Interior,

R. KEITH HIGGINSON,
Commissioner.

Farmers Home Administration or its successor agency under Public Law 103–354, Department of Agriculture,

GORDON CAVANAUGH,
Administrator.

SEPTEMBER 7, 1977.

Subpart C—Small Farmer Outreach Training and Technical Assistance Program

SOURCE: 59 FR 66443, Dec. 27, 1994, unless otherwise noted.

§ 1943.101 General.

This subpart provides procedures for administration of the Small Farmer Outreach Training and Technical Assistance Program whereby an 1890 or other eligible educational institution or community-based organization as referenced in § 1943.105 of this subpart, also referred to as the recipient, enters into a grant, cooperative, or other

agreement with the Farm Service Agency (FSA)to provide outreach, training, and technical assistance to members of socially disadvantaged groups to own and operate farms and ranches and to participate in agricultural programs.

§ 1943.102 Objectives.

To meet the objectives of the program referenced in paragraphs (a) and (b) of this section, FSA will fund grant agreements, cooperative agreements, or enter into Memorandums of Understanding (MOU) with recipients as referenced in § 1943.105 of this subpart, for Small Farmer Outreach Training and Technical Assistance Projects which are determined to meet the objectives of the program:

(a) The long-term objective of the Small Farmer Outreach Training and Technical Assistance Program is to keep small farmers, especially those who are members of socially disadvantaged groups, on the farm and strengthen the rural economy.

(b) An immediate objective of the Small Farmer Outreach Training and Technical Assistance Program is to encourage and assist members of socially disadvantaged groups to own and operate farms and ranches and to participate in agricultural programs.

§ 1943.103 Project period.

A cooperative agreement or other agreement will specify a project for a period generally of 5 years, with an option for renewal up to the 5-year period, subject to the availability of funds or termination of the project by mutual agreement or for cause.

§ 1943.104 Definitions.

For the purpose of the Small Farmer Outreach Training and Technical Assistance Program, the following definitions are applicable:

Agricultural programs. Eligible programs shall include, but are not limited to, one or more of the following programs: Agricultural conservation program, programs comprising the environmental conservation acreage reserve program (ECARP), conservation technical assistance program, emergency conservation program, forestry incentives program, Great Plains Conservation Program, integrated farm management option program, price support and production adjustment programs, rural environmental conservation program, soil survey program, and water bank program; also the farm loan programs (farm ownership, operating, soil and water, and emergency loans) of the FSA.

Awarding official. The Administrator of the FSA or designee.

Community-based organization. Those nonprofit, nongovernment organizations with a well defined constituency that includes all or part of a particular community, e.g., communities consisting of socially disadvantaged farmers and ranchers. Socially disadvantaged farmers and ranchers must play a role in the development and implementation of any program or project undertaken by the organization.

Cooperative agreement. The same meaning as *grant,* except that, at the time a cooperative agreement is awarded, substantial involvement is anticipated between FSA, acting for the Federal Government, and the recipient during performance under the agreement. (Refer to exhibit A of FmHA Instruction 1943–C (available in any State office).)

Grant. For purposes of this regulation, an award by FSA, acting for the Federal Government, of money to the recipient with the following characteristics:

(1) The principal purpose of the award is to accomplish a public purpose authorized by statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) At the time an award is made, no substantial involvement is anticipated between FSA, acting for the Federal Government, and the recipient.

Memorandum of Understanding (MOU). For purposes of this regulation, a documented plan between FSA and the recipient or recipients for carrying out their separate activities in a project of mutual interest. When an understanding is reached as to the area of operations and duties to be performed by the parties concerned, each party directs its own activities and utilizes its own resources. An MOU is not a

fund obligation document since it does not directly involve a financial assistance transaction.

Project. The total activities within the scope of the program as identified in the MOU, grant, cooperative or other agreement.

Project Director. The individual who is responsible for the project, as designated by the recipient in the project proposal and approved by the awarding official. The project director will devote full time to the administration of the project.

Project period. The total time approved by the awarding official for conducting the proposed project as outlined in an approved project proposal or the approved portions thereof and as specified in the cooperative or other agreement.

Recipient. For purposes of this subpart, an entity as defined in § 1943.105 of this subpart that has entered into an MOU, grant, or cooperative or other agreement with FSA.

Socially disadvantaged farmer or rancher. A farmer or rancher who is a member of a socially disadvantaged group. (For entity applicants, the majority interest has to be held by socially disadvantaged individuals.)

Socially disadvantaged group. A group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. Socially disadvantaged groups consist of Women, African-Americans, Native Americans, Alaskan Natives, Hispanics, Asians, and Pacific Islanders.

§ 1943.105 Eligible entities.

(a) FSA will consider proposals only from:

(1) 1890 Land-Grant Colleges, including Tuskegee University.

(2) Indian tribal community colleges.

(3) Alaska native cooperative colleges.

(4) Hispanic-serving post-secondary educational institutions.

(5) Other post-secondary educational institutions with demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged farmers or ranchers in their region.

(6) Any community-based organization that:

(i) Has demonstrated experience in providing agricultural education or other agriculturally-related services to socially disadvantaged farmers and ranchers;

(ii) Provides documentary evidence of its past experience in working with socially disadvantaged farmers and ranchers during the 2 years preceding its application for assistance; and

(iii) Does not engage in activities prohibited under Section 501(c)(3) of the Internal Revenue Code of 1986.

(b) In addition to those entities referenced in paragraph (a) of this section, an applicant must:

(1) Have adequate financial resources for performance and the necessary experience, organizational and technical qualifications, and facilities or a firm commitment, arrangement, or ability to obtain same (including any to be obtained through subagreement(s));

(2) Have the ability to comply with the proposed or required completion schedule for the project;

(3) Have an adequate financial management system and audit procedures that provide efficient and effective accountability and control of all funds, property, and other assets;

(4) Have a satisfactory record of performance, including, in particular, any prior performance under grants, contracts, or cooperative agreements from the Federal Government; and

(5) Otherwise be qualified and eligible to receive funding for a grant agreement, cooperative agreement, or other agreement under the applicable laws and regulations.

§§ 1943.106–1943.110 [Reserved]

§ 1943.111 Process for consideration.

(a) A program solicitation will be published in the FEDERAL REGISTER and such other publication(s) as deemed appropriate, as early as practicable every 5 years that funds will be available for new project use and at other appropriate times.

(b) The project proposal must contain the following information:

(1) *Background and need for the project.* Explain the circumstances

which necessitate a Small Farmer Outreach Training and Technical Assistance Project within the State to serve small farmers, especially members of socially disadvantaged groups.

(2) *Objectives and goals proposed to meet the objectives.* Clearly state the objectives of the project, which should be in line with the objectives of the program stated in §1943.102 of this subpart, and explain the goals proposed to meet the objectives.

(3) *Statement of Work, including staffing.* Describe the plan of action for meeting the objective of the Small Farmer Outreach Training and Technical Assistance Program and the necessary staffing.

(4) *Proposed budget.* (i) Submit a proposed budget for each of the 5 years, showing line-by-line cost items for the proposed project. Include any in-kind contributions to be provided.

(ii) Show all funding sources and itemize costs by the following line items: personnel costs, equipment, material and supplies, travel, and all other costs.

(iii) Salaries of project personnel who will be working on the project may be requested in proportion to the effort that they will devote to the project.

(iv) Funds may be requested under any of the line items listed above provided that the item or source for which support is requested is identified as necessary for successful conduct of the project, is allowable under the authorizing legislation and applicable Federal cost principles, and is not prohibited under any applicable Federal statute.

(5) *Identification of personnel.* Incorporate into the proposal the resumes of all anticipated personnel, including the Project Director. Also discuss the experience, qualifications, and availability of all personnel, including the Project Director, to direct and carry out the project.

(c) The State Office will review the proposal and forward the proposal to the National Office Project Manager, within 15 days of receipt, with the State Office's recommendations.

(d) The National Office will make a preliminary review of the proposal and reserves the right to return it to the State Office with any questions or comments to be clarified by the 1890 or other eligible educational institution or community-based organization. A time period for resubmission will be specified.

(e) All proposals from entities eligible for funding under §1943.105 of this subpart shall be evaluated for funding consideration. To assist in the evaluation and obtain the best possible balance of viewpoints for funding consideration, a proposal review panel will be used. The proposal review panel will be selected and organized to provide maximum expertise and objective judgment in the evaluation of proposals. The proposal review panel will use Form FmHA or its successor agency under Public Law 103–354 1943–2, ''EVALUATION—Small Farmer Outreach Training and Technical Assistance Program,'' to evaluate each proposal. The proposal review panel will evaluate each proposal against the five criteria using the following scale: Highly Responsive (5); Fully Responsive (3); Marginally Responsive (1); and Not Responsive (0). The criteria used by the proposal review panel and the criteria weights are:

(1) *Feasibility and Policy Consistency (3.5).* Degree to which the proposal clearly describes its objective and evidences a high level of feasibility and consistency with United States Department of Agriculture (USDA) policy and FSA mission.

(2) *Institutional Commitment (3.5).* Degree to which the institution or organization is committed to the project, as shown by funds, in-kind services, or historical success in meeting the objectives of the program.

(3) *Number of Counties and Farmers Served (3.5).* Degree to which the proposal reflects collaborative approaches in meeting with other agencies or organizations to enhance the objectives of the program. Also, the areas and number of farmers who would benefit from the services offered.

(4) *Socially Disadvantaged Applicants—Outreach (3.5).* Degree to which the proposal contains efforts to reach persons identified as socially disadvantaged farmers and ranchers in designated counties.

(5) *Preparatory Features—Statement of Work (6.0).* Degree to which the proposal reflects special innovative features to attract, interest, and improve the economical and social conditions of socially disadvantaged farmers and ranchers.

(f) The final decision to award is at the discretion of the awarding official. The awarding official shall consider the ranking, comments, and recommendations from the proposal review panel and any pertinent information before deciding which applications to approve and the order of approval. The awarding official will notify in writing entities whose proposals are rejected. In accordance with §1900.55 of subpart B of part 1900 of this chapter, appeal rights will be provided only to those entities identified as eligible under §1943.105 of this subpart.

(g) After a decision regarding funding is made, FSA and the recipient which is selected will enter into a grant or cooperative agreement. The awarding official will notify the recipient of approval and inform them of the necessary documents needed to execute the agreement. If no funding is involved, FSA and the recipient will enter into an MOU.

§§ 1943.112–1943.114 [Reserved]

§ 1943.115 Authorized use of funds.

Any funds authorized under this subpart will be used solely for the operation and administration of the Small Farmer Outreach Training and Technical Assistance Program specifically for the project under the cooperative or other agreement. There is no other authorized use of the funds. Eligible costs are limited to those line items specified in §1943.111 (b)(4) of this subpart.

§§ 1943.116–1943.125 [Reserved]

§ 1943.126 Other applicable Federal statutes and regulations that apply.

Several other Federal statutes and regulations apply to proposals considered for review or cooperative and other agreements awarded under the program. These include, but are not limited to the following:

(a) 7 CFR part 1b—USDA Implementation of the National Environmental Policy Act;

(b) 7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

(c) 7 CFR part 1.1—USDA implementation of the Freedom of Information Act;

(d) 7 CFR part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

(e) 7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB Directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Public Law No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

(f) 7 CFR part 3016—USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(g) 7 CFR part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(h) 7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

(i) 29 U.S.C. 794, Section 504—Rehabilitation Act of 1973, and 7 CFR part 15B (USDA implementation of the statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

(j) 35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained 37 CFR part 401).

§ 1943.127 Fund disbursement.

The method of payment will be by reimbursement by Treasury check, and payment will be requested on Standard Form (SF) 1034, ''Public Voucher for Purchases and Services Other Than

Personal,'' or SF–270, ''Request for Advance or Reimbursement,'' whichever is applicable. Payments will be processed in accordance with 7 CFR parts 3015 and 3016.

§ 1943.128 Financial management systems and reporting requirements.

(a) Recipients must comply with standards for the financial management and reporting and program performance reporting found in 7 CFR parts 3015 and 3016.

(b) Recipients must provide to the State Office quarterly financial and program performance reports. The reports are due 30 days after the reporting period, and an original and two copies of each report will be submitted. The financial report will be presented on SF–269A, ''Financial Status Report,'' and the financial and program performance reports will be prepared in accordance with 7 CFR parts 3015 and 3016.

(c) The program performance report should also address progress on the activities under each of the areas of Outreach, Training, and Technical Assistance, as stipulated in the cooperative agreement or other agreement.

(d) Within 30 days after receipt, the State Office will forward the reports to the National Office Project Manager, with the State Office's comments and recommendations.

§§ 1943.129–1943.135 [Reserved]

§ 1943.136 Standards of conduct for employees of recipient.

(a) Recipients must establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private financial gain for themselves or others such as those with whom they have family, business, or other ties. Therefore, recipients receiving financial support must have written policy guidelines on conflict of interest and the avoidance thereof. These guidelines should reflect State and local laws and must cover financial interests, gifts, gratuities and favors, nepotism, and other areas such as political participation and bribery. These rules must also indicate the conditions under which outside activities, relationships, or financial interests are proper or improper, and provide for notification of these kinds of activities, relationships, or financial interests to a responsible and objective recipient official. For the requirements of a code of conduct applicable to procurements under grants and cooperative agreements, see the procurement standards prescribed by 7 CFR 3015.181.

(b) The rules of conduct must contain a provision for prompt notification of violations to a responsible and objective recipient official and must specify the type of administrative action that may be taken against an individual for violations.

(c) A copy of the rules of conduct must be given to each officer, employee, board member, and consultant of the recipient who is working on the FSA financed project, and the rules must be enforced to the extent permissible under State and local law or to the extent to which the recipient determines it has legal and practical enforcement capacity. The rules need not be formally submitted and approved by the awarding official; however, they must be made available for review upon request, for example, during a site visit.

§ 1943.137 Monitoring compliance and penalty for noncompliance.

(a) *FSA monitoring.* FSA will monitor compliance of the Small Farmer Outreach Training and Technical Assistance projects through the reports received in accordance with § 1943.128 of this subpart, through information received from field offices and the public, and may include on-site visits to observe the operation and administration of the program.

(b) *Audits.* Recipients are subject to the audit requirements of 7 CFR parts 3015 and 3016. An audit report will be submitted to the State Office annually in accordance with OMB Circular A–128, A–110, or A–133, whichever is applicable. The State Office will forward the audit to the National Office Project Manager, within 30 days after receipt, with the State Office's comments and recommendations.

(c) *Penalty for noncompliance.* If the Administrator determines that a Small Farmer Outreach Training and Technical Assistance project does not meet or no longer meets the objective of the program, that there has been a violation of the cooperative or other agreement, that reporting requirements are not being met, or that funds are not being used only for the operation and administration of the Small Farmer Outreach Training and Technical Assistance Program, the awarding official is authorized to impose any penalties or sanctions established in 7 CFR parts 3015 and 3016. Penalties may include withholding payments, suspension of the cooperative agreement or other agreement, or termination for cause. If a penalty for noncompliance is enforced, the reason(s) will be stated in a letter to the recipient along with appeal rights pursuant to subpart B of part 1900 of this chapter.

§§ 1943.138–1943.140 [Reserved]

§ 1943.141 Nondiscrimination.

The policies and regulations contained in subpart E of part 1901 of this chapter apply to grants and other agreements made under this subpart.

§ 1943.142 Environmental requirements.

The policies and regulations contained in subpart G of part 1940 of this chapter apply to grants and other agreements made under this subpart.

§§ 1943.143–1943.150 [Reserved]

PART 1944—HOUSING

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AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart A [Reserved]

Subpart B—Housing Application Packaging Grants

SOURCE: 58 FR 58643, Nov. 3, 1993, unless otherwise noted.

§ 1944.51 Objective.

This subpart states the policies and procedures for making grants under section 509 of the Housing Act of 1949, as amended (42 U.S.C. 1479). Grants reimburse eligible organizations for part or all of the costs of conducting, administering, and coordinating an effective housing application packaging program in colonias and designated counties. Eligible organizations will aid very low- and low-income individuals and families in obtaining benefits from Federal, State, and local housing programs. The targeted groups are very low- and low-income families without adequate housing who will receive priority for recruitment and participation and nonprofit organizations able to propose rental or housing rehabilitation assistance benefitting such families. These funds are available only in the areas defined in exhibit D of this subpart. Participants will assist very low- and low-income families in solving their housing needs. One way of assisting is to package single family housing applications for families wishing to buy, build, or repair houses for their own use. Another way is to package applications for organizations wishing to develop rental units for lower income families. The intent is to make Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 housing assistance programs available to very low- and low-income rural residents in colonias and designated counties. FmHA or its successor agency under Public Law 103–354 will reimburse eligible organizations packaging loan/grant applications without discrimination because of race, color, religion, sex, national origin, age, familial status, or handicap if such an organization has authority to contract.

§ 1944.52 Definitions.

References in this subpart to County, District, State, National and Finance Offices, and to County Supervisor, District Director, State Director, and Administrator refer to FmHA or its successor agency under Public Law 103–354 offices and officials and should be read as prefaced by FmHA or its successor agency under Public Law 103–354. Terms used in this subpart have the following meanings:

Colonias. As defined in exhibit C of subpart L of part 1940 of this chapter.

Complete application package (hereafter called package). The package submitted to the appropriate FmHA or its successor agency under Public Law 103–354 office which is considered acceptable in accordance with exhibit C of this subpart.

Cost reimbursement. Amount determined by the Administrator that equals the customary and reasonable costs incurred in preparing a package for a loan or grant. These amounts are included in exhibit B of this subpart.

Designated counties. These counties are listed in exhibit D of this subpart. Using the most recent published census data, the counties meet the following criteria:

(1) Twenty percent or more of the county population is at or below the poverty level; and

(2) Ten percent or more of the occupied housing units are substandard.

Organization. Any of the following entities which are legally authorized to

work in designated counties and/or colonias and are:

(1) A State, State agency, or unit of general local government or;

(2) A private nonprofit organization or corporation that is owned and controlled by private persons or interests, is organized and operated for purposes other than making gains or profits for the corporation, and is legally precluded from distributing any gains or profits to its members.

Packager. Any eligible organization which is reimbursed with Housing Application Packaging Grants (HAPG) funds.

Technical assistance. Any assistance necessary to carry out housing efforts by or for very low- and low-income individuals/families to improve the quality and/or quantity of housing available to meet their needs. Such assistance must include, but is not limited to:

(1) Contacting and assisting very low- and low-income families in need of adequate housing by:

(i) Implementing an organized outreach program using available media and personal contacts;

(ii) Explaining available housing programs and alternatives to increase the awareness of very low- and low-income families and to educate the community as to the benefits from improved housing;

(iii) Assisting very low- and low-income families in locating adequate housing; and

(iv) Developing and packaging loan/grant applications for new construction and/or rehabilitation, or repair of existing housing.

(2) Contacting and assisting eligible applicants to develop multi-family housing loan/grant applications for new construction, rehabilitation, or repair to serve very low- and low-income families.

§ 1944.53 Grantee eligibility.

An eligible grantee is an organization as defined in § 1944.52 of this subpart and has received a current ''Certificate of Training'' pertaining to the type of application being packaged. In addition, the grantee must:

(a) Have the financial, legal, and administrative capacity to carry out the responsibilities of packaging housing applications for very low- and low-income applicants. To meet this requirement it must have the necessary background and experience with proven ability to perform responsibly in the field of housing application packaging, low-income housing development, or other business or administrative ventures which indicate an ability to perform responsibly in this field of housing application packaging.

(b) Legally obligate itself to administer grant funds, provide adequate accounting of the expenditure of such funds, and comply with FmHA or its successor agency under Public Law 103–354 regulations.

(c) If the organization is a private nonprofit corporation, be a corporation that:

(1) Is organized under State and local laws.

(2) Is qualified under section 501(c)(3) of the Internal Revenue Code of 1986.

(3) Has as one of its purposes assisting very low- and low-income families to obtain affordable housing.

§§ 1944.54–1944.61 [Reserved]

§ 1944.62 Authorized representative of the applicant.

RHS or its successor agency under Public Law 103–354 will deal only with authorized representatives designated by the applicant. The authorized representatives must have no pecuniary interest in the award of the architectural or construction contracts, the purchase of equipment, or the purchase of the land for the housing site.

[58 FR 58643, Nov. 3, 1993, as amended at 61 FR 39851, July 31, 1996]

§ 1944.63 Authorized use of grant funds.

Grant funds may only be used to reimburse a packager for delivered packages. Payment will be made for each complete package received and accepted in accordance with exhibit C of this subpart.

§§ 1944.64–1944.65 [Reserved]

§ 1944.66 Administrative requirements.

The following policies and regulations apply to grants made under this subpart:

(a) Grantees must comply with all provisions of the Fair Housing Act of 1988 and subpart E of part 1901 of this chapter which states in part, that no person in the United States shall, on the grounds of race, color, national origin, sex, religion, familial status, handicap, or age, be excluded from participating in, be denied the benefits of, or be subject to discrimination in connection with the use of grant funds.

(b) The policies and regulations contained in FmHA Instruction 1940–Q (available in any Agency Office), Departmental Regulation 2400–5, and 7 CFR part 3018 apply to grantees under this subpart.

(c) Grantees should be aware of the policies and regulations contained in subpart G of part 1940 of this chapter. They will supply needed information requested by the local Agency Office in connection with the loan/grant application.

(d) The grantee will retain records for three years from the date Standard Form (SF)–269A, ''Financial Status Report (Short Form),'' is submitted. These records will be accessible to RHS and other Federal officials in accordance with 7 CFR part 3015.

(e) Annual audits will be completed if the grantee has received more than $25,000 of Federal assistance in the year in which HAPG funds were received. These audits will be due 13 months after the end of the fiscal year in which funds were received.

(1) States, State agencies, or units of general local government will complete an audit in accordance with 7 CFR parts 3015 and 3016 and OMB Circular A–128.

(2) Nonprofit organizations will complete an audit in accordance with 7 CFR part 3015 and OMB Circular A–133.

(f) Performance reports, as required, will be submitted in accordance with 7 CFR part 3015.

[58 FR 58643, Nov. 3, 1993, as amended at 61 FR 39851, July 31, 1996]

§ 1944.67 Ineligible activities.

The packager may not charge fees or accept compensation or gratuities directly or indirectly from the very low- and low-income families being assisted under this program. The packager may not represent or be associated with anyone else, other than the applicant, who may benefit in any way in the proposed transaction. If the packager is compensated for this service from other sources, then the packager is not eligible for compensation from this source except as permitted by Agency. Grantees who are funded to do Self-Help Housing, may not be reimbursed for packaging applications for participation in the Self-Help Housing effort.

[58 FR 58643, Nov. 3, 1993, as amended at 61 FR 39851, July 31, 1996]

§ 1944.68 [Reserved]

§ 1944.69 Agency point of contact.

Grantees must submit packages to the appropriate Agency office serving the designated county and/or colonias. Packages for Single Family Housing loans/grants are submitted to the appropriate County Office. All other packages are submitted to the appropriate District Office. The applicable forms required to develop a package can be obtained in any District or County Office. Packagers should coordinate their packaging activity with the appropriate District and County Offices.

[58 FR 58643, Nov. 3, 1993, as amended at 61 FR 39851, July 31, 1996]

§ 1944.70 Targeting of HAPG funds to States.

(a) HAPG funds will be distributed administratively by the Administrator to achieve the success of the program. Allocations will be distributed to States as set forth in Attachment 2 of exhibit A of subpart L of part 1940 of this chapter.

(b) The State Director will determine based on the housing funds available and the personnel available, how many applications can be processed for each program during the fiscal year in each Agency office serving a designated county and/or colonias. The number of applications will be published in the

advertisement required under § 1944.72 of this subpart.

[58 FR 58643, Nov. 3, 1993, as amended at 61 FR 39851, July 31, 1996]

§ 1944.71 Term of grant.

(a) For Single Family Housing loans/grants, HAPG funds will be specifically available for designated counties. Packages may be submitted after the annual housing application packaging orientation and training is held. The grant period will end when sufficient packages are received for each designated county or colonia or on September 30, of the fiscal year, whichever is earlier. The State Director must send notification, in the form of a letter, to all packagers who attended the packaging orientation and training that the number of applications specified in the advertisement required under § 1944.72 of this subpart have been received. Any packages submitted after this date will be paid for only if the grantee can demonstrate the package was prepared in good faith and prior to receipt of the above notification.

(b) For Multi-Family Housing loans/grants, HAPG funds will be available for designated areas or colonias to the extent specified in FmHA or its successor agency under Public Law 103–354's advertisement. Preapplications approved in one fiscal year, for which grant funds were obligated, may have the balance disbursed in a later fiscal year when the application is submitted and approved.

§ 1944.72 Application packaging orientation and training.

Agency approval officials will orient and train organizations on how to package. A newspaper advertisement will be published by Agency offices serving designated counties and/or colonias after October 1. The advertisement will announce that application packaging services are being requested and specify the date of the certification training. All eligible organizations may attend this training. This date will be no more than 30 days after the advertisement appears in the newspaper and no later than December 31 of any year. The advertisement will include the estimated number of packages needed by loan type, i.e., Single Family, Multi-Family, etc. Exhibit A of this subpart (available in any Agency office) is an example of an appropriate advertisement. ''Certificates of Training'' as required under § 1944.53 of this subpart will be signed by the State Director and given after completion of the training. Efforts will be made by the appropriate Agency office to complete this training process and certify packagers as quickly as possible. Grantees must attend this training each year in order to qualify for assistance.

[58 FR 58643, Nov. 3, 1993, as amended at 61 FR 39851, July 31, 1996]

§ 1944.73 Package submission.

(a) When submitting its first package to an FmHA or its successor agency under Public Law 103–354 office, in addition to the item in paragraph (b) of this section and the information set forth in exhibit C of this subpart, the organization must submit the following. A file of these documents will be established in the FmHA or its successor agency under Public Law 103–354 office and retained in accordance with FmHA Instruction 2033–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(1) Proof of their nonprofit status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986 or of their existence as a state agency or unit of general local government legally authorized to work in the designated county and/or colonias. If the FmHA or its successor agency under Public Law 103–354 approval official is in doubt about the legal status of the organization, the evidence will be sent to the State Director. The State Director may, if needed, submit the above documents with any comments or questions to the Office of General Counsel (OGC) for an opinion as to whether the applicant is a legal organization of the type required by these regulations.

(2) An original and copy of Forms FmHA 400–1, ''Equal Opportunity Agreement,'' and FmHA 400–4, ''Assurance Agreement.''

(3) A copy of a current ''Certificate of Training'' pertaining to the type of application package submitted.

(b) All packages must contain a signed statement which states, ''Neither the organization nor any of its employees have charged, received or accepted compensation from any source other than FmHA or its successor agency under Public Law 103–354 for packaging this application and are not associated with or represent anyone other than the applicant in this transaction.''

(c) Form SF–270, ''Request for Advance or Reimbursement'' will be submitted with each application package for the amount authorized for the specific loan type in exhibit B of this subpart.

(d) The FmHA or its successor agency under Public Law 103–354 approval official will review each package for completeness, accuracy, and conformance to program policy and regulations. Cost reimbursement will be made in accordance with exhibit B of this subpart. Packagers that submit ''incomplete'' packages for sections 502 and 504 loans/grants will be sent a letter within 5 working days after submission of the ''incomplete'' package advising of additional information needed. Payment will be held until all the information is received. Packagers for sections 502 loans and 504 loans/grants will not be paid for packages submitted on applicants who are obviously ineligible for the programs. For example, a grantee would not be reimbursed for submitting a package for a section 502 loan applicant with an adjusted income exceeding the limits of Appendix 9 of HB–1–3550 (available in any Rural Development office) or who already owns adequate housing. Likewise, a grantee would not be reimbursed for submitting an package for a section 504 loan/grant when the adjusted family income exceeds the very low-income limits of Appendix 9 of HB–1–3550 (available in any Rural Development office) or when the applicant does not own and occupy his/her property, or for a section 504 grant when the applicant is not 62 years of age or older.

(e) Submissions for sections 514/516, 515, and 524 loans/grants will be reviewed and, if incomplete, a letter sent within 15 working days advising of additional information required.

(f) Form SF–269A, will be submitted within 15 days of the end of the fiscal year.

[58 FR 58643, Nov. 3, 1993, as amended at 67 FR 78328, Dec. 24, 2002]

§ 1944.74 Debarment or suspension.

Certified packagers whose actions or acts warrant they not be allowed to participate in the program are to be investigated in accordance with § 1940.606 (c) or FmHA Instruction 1940–M (available in any FmHA or its successor agency under Public Law 103–354 office).

§ 1944.75 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected. The Administrator will exercise this authority only at the request of the State Director and recommendation of the Deputy Administrator, Single Family Housing. Requests for exceptions must be in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest and/or impact on the applicant, borrower, or community, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

[58 FR 58643, Nov. 3, 1993, as amended at 67 FR 78328, Dec. 24, 2002]

§§ 1944.76–1944.99 [Reserved]

§ 1944.100 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0157. Public reporting burden for this collection of information is estimated to vary from 30 minutes to five hours per response, with an average of 3 hours per response including time for

reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0157), Washington, DC 20503.

EXHIBIT A TO SUBPART B OF PART 1944 [RESERVED]

EXHIBIT B TO SUBPART B OF PART 1944—HOUSING APPLICATION PACKAGING GRANT (HAPG) FEE PROCESSING

The Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 approval official will execute and distribute Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request for Obligation of Funds,'' in accordance with the Forms Manual Insert (FMI). HAPG funds will be used for the fees except as otherwise noted in paragraphs II (A) and (B) of this exhibit. Funds for all loan and/or grant application packages will be paid as follows.

I. For all Single Family Housing loans (Sections 502, 504, and 514 (''on'' farm labor housing only) of the Housing Act of 1949, checks will be ordered when complete application packages as defined in §1944.73 of this subpart and exhibit C of this subpart are received. The fees are as follows:

(A) Section 502 Single Family Housing Loans—$500

(B) Section 504 Rural Housing Loans and Grants—$500

(C) Section 514 ''On'' Farm Labor Housing Loans—$500

II. For all Multi-Family Housing loans and grants (sections 514/516, 515, 524, and 533 of the Housing Act of 1949), the entire amount of the fee coming from HAPG funds will be obligated when the packager has met all the requirements of the preapplication stage, however, payments will be made in accordance with the following schedules:

(A) Sections 514/516 Farm Labor Housing Loans and Grants

''Off'' farm labor housing loans/grants—fees paid in accordance with the schedule for section 515 Rural Rental Housing loans.

(B) Section 515 Rural Rental Housing Loans.

(1) The scale for packaging fees is based on the percentage of the total development cost as follows:

Up to $400,000—1.6 percent

For additional amounts between:

$400,001 and $800,000—add 1.2 percent
$800,001 and $1,200,000—add 1.0 percent
$1,200,001 and $1,600,000—add .7 percent
$1,600,001 and $2,000,000—add .5 percent
Over $2,000,001—No additional amount

(2) Twenty-five percent paid from HAPG funds when Form AD–622, ''Notification of Preapplication Review Action,'' is sent inviting submission of a complete application.

(3) Twenty percent paid from HAPG funds when a complete application is filed including plans and specifications.

(4) The 55 percent balance paid when the loan is approved. Funds for this 55 percent will be drawn from loan funds in accordance with §1944.212(j) of subpart E of 1944 of this chapter for Section 515 loans and §1944.158(i) of subpart D of part 1944 of this chapter for Section 514 loans.

(C) Section 524 Rural Housing Site Loans—total fee is 1 percent of the loan amount payable in two installments.

(1) Thirty percent paid after FmHA or its successor agency under Public Law 103–354's review of the preapplication under §1822.271(a) of subpart G of part 1822 of this chapter (paragraph XI A of FmHA Instruction 444.8).

(2) Seventy percent paid upon the completion of the docket in accordance with §1822.271(c) of subpart G of part 1822 of this chapter (paragraph XI C of FmHA Instruction 444.8).

(D) Section 533 Housing Preservation Grants—total fee is 2 percent of the grant amount paid in two installments.

(1) Forty percent will be paid when the Form AD–622, inviting submission of a complete application, is sent.

(2) Sixty percent will be paid after grant closes.

EFFECTIVE DATE NOTE: At 69 FR 69104, Nov. 26, 2004, Exhibit B to subpart B of part 1944 was amended by revising paragraph II.(B)(4), effective Feb. 24, 2005. For the convenience of the user the revised text is set forth as follows:

EXHIBIT B TO SUBPART B OF PART 1944—HOUSING APPLICATION PACKAGING GRANT (HAPG) FEE PROCESSING

* * * * *

II. * * *

(B) * * *

(4) The 55 percent balance paid when the loan is approved. Funds for this 55 percent will be drawn from loan funds in accordance with 7 CFR 3560.53 (o).

EXHIBIT C TO SUBPART B OF PART 1944—REQUIREMENTS FOR HOUSING APPLICATION PACKAGES

A package will consist of the following requirements for the respective program.

A. Section 502—Complete applications packages will be submitted in accordance with the requirements of 7 CFR part 3550. The package must also include the following:

Form FmHA or its successor agency under Public Law 103–354 410–9—''Statement Required by the Privacy Act.''

Form FmHA or its successor agency under Public Law 103–354 1910–11—''Applicant Certification Federal Collection Policies for Consumer or Commercial Debts.''

Form FmHA or its successor agency under Public Law 103–354 1944–3—''Budget and/or Financial Statement.''

B. Section 504—Complete application packages will be submitted in accordance with 7 CFR part 3550. The package must include the forms listed in paragraph A of this exhibit and the following:

The appropriate Agency application form for Rural Housing assistance (non-farm tract) (available in any Rural Development office).

The appropriate Agency form to request verification of employment (available in any Rural Development office).

The appropriate Agency Rural Housing Loan application package (available in any Rural Development office).

Evidence of ownership in accordance with 7 CFR part 3550.

Cost estimates or bid prices for removal of health or safety hazards in accordance with 7 CFR part 3550.

C. Section 514/516—Complete application packages will be submitted in accordance with exhibit A–1 of subpart D of part 1944 of this chapter.

D. Section 515—Complete application packages will be submitted in accordance with the requirements of exhibit A–7 of subpart E of part 1944 of this chapter.

E. Section 524—Complete application packages will be submitted in accordance with §1822.271(a) of subpart G of part 1822 of this chapter (paragraph XI A of FmHA Instruction 444.8). After Farmers Home Administration or its successor agency under Public Law 103–354's review and as instructed, the application should be completed in accordance with §1822.271(c) of subpart G of part 1822 of this chapter (paragraph XI C of FmHA Instruction 444.8).

F. Section 533—Complete application packages will be submitted in accordance with the requirements of subpart N of part 1944 of this chapter.

[58 FR 58643, Nov. 3, 1993, as amended at 67 FR 78328, Dec. 24, 2002]

EFFECTIVE DATE NOTE: At 69 FR 69104, Nov. 26, 2004, Exhibit C to subpart B of part 1944 was revised, effective Feb. 24, 2005. For the convenience of the user the revised text is set forth as follows:

EXHIBIT C TO SUBPART B OF PART 1944—REQUIREMENTS FOR HOUSING APPLICATION PACKAGES

A package will consist of the following requirements for the respective program.

A. Section 502—Complete application packages will be submitted in accordance with the requirements of 7 CFR part 3550. The package must also include the following:

Form RD 410–9—''Statement Required by the Privacy Act''

Form RD 1910–11—''Applicant Certification Federal Collection Policies for Consumer or Commercial Debts''

Form RD 1944–3—''Budget and/or Financial Statement''

B. Section 504—Complete application packages will be submitted in accordance with 7 CFR part 3550. The package must include the forms listed in paragraph A. of this exhibit and the following:

The appropriate Agency application form for Rural Housing assistance (non-farm tract) (available in any Rural Development office).

The appropriate Agency form to request verification of employment (available in any Rural Development office).

The appropriate Agency Rural Housing Loan application package (available in any Rural Development office).

Evidence of ownership in accordance with 7 CFR part 3550.

Cost estimates or bid prices for removal of health or safety hazards in accordance with 7 CFR part 3550.

C. Section 514/516—Complete application packages will be submitted in accordance with the Notice of Funding Availability that will be published in the FEDERAL REGISTER each Fiscal Year.

D. Section 515—Complete application packages will be submitted in accordance with the Notice of Funding Availability that will be published in the FEDERAL REGISTER each Fiscal Year.

E. Section 524—Complete application packages will be submitted in accordance with §1822.271(a) of subpart G of part 1822 of this chapter (paragraph XI.A. of RD Instruction 444.8). After Rural Development's review and as instructed, the application should be completed in accordance with §1822.271(c) of subpart G of part 1822 of this chapter (paragraph XI.C. of RD Instruction 444.8).

F. Section 533—Complete application packages will be submitted in accordance with the requirements of subpart N of part 1944 of this chapter.

EXHIBIT D TO SUBPART B OF PART 1944—DESIGNATED COUNTIES FOR HOUSING APPLICATION PACKAGING GRANTS

Alabama (13): Barbour County, Bibb County, Choctaw County, Clarke County, Conecuh County, Dallas County, Greene County, Hale County, Lowndes County, Marengo County, Perry County, Sumter County, and Wilcox County.

Alaska (5): Bethel Census Area, Dillingham Census Area, Nome Census Area, Wade Hampton Census Area, and Yukon-Koyukuk Census Area.

Arizona (8): Apache County, Coconino County, Graham County, La Paz County, Navajo County, Pinal County, Santa Cruz County, and Yuma County.

Arkansas (5): Crittenden County, Lee County, Newton County, St. Francis County, and Searcy County.

California (3): Fresno County, Imperial County, and Tulare County.

Colorado (1): Conejos County.

Florida (2): Gadsden County and Jefferson County.

Georgia (22): Baker County, Burke County, Calhoun County, Clay County, Dooly County, Early County, Greene County, Hancock County, Jenkins County, Marion County, Meriwether County, Mitchell County, Quitman County, Randolph County, Stewart County, Talbot County, Taliaferro County, Terrell County, Twiggs County, Warren County, Washington County, and Webster County.

Idaho (1): Madison County.

Kentucky (25): Breathitt County, Casey County, Clay County, Clinton County, Clinton County, Elliott County, Estill County, Fleming County, Jackson County, Knott County, Knox County, Lawrence County, Lee County, Leslie County, Lewis County, Lincoln County, McCreary County, Magoffin County, Morgan County, Owsley County, Perry County, Powell County, Robertson County, Rockcastle County, Wayne County, and Wolfe County.

Louisiana (10): East Carroll Parish, East Feliciana Parish, Plaquemines Parish, Red River Parish, St. Helena Parish, St. James Parish, St. Martin Parish, St. Mary Parish, Terrebonne Parish, and West Feliciana Parish.

Mississippi (27): Attala County, Benton County, Bolivar County, Claiborne County, Coahoma County, Greene County, Holmes County, Humphreys County, Issaquena County, Jasper County, Jefferson County, Jefferson Davis County, Kemper County, Leflore County, Madison County, Marshall County, Noxubee County, Panola County, Quitman County, Sharkey County, Sunflower County, Tallahatchie County, Tate County, Tunica County, Walthall County, Washington County, and Yazoo County.

Montana (2): Big Horn County and Glacier County.

New Mexico (11): Catron County, Chaves County, Cibola County, Dona Ana County, Luna County, McKinley County, Mora County, Rio Arriba County, Sandoval County, San Juan County, and San Miguel County.

North Carolina (4): Bertie County, Halifax County, Hyde County, and Warren County.

North Dakota (3): Benson County, Rolette County, and Sioux County.

Ohio (1): Vinton County.

South Carolina (6): Clarendon County, Dillon County, Fairfield County, Lee County, Marlboro County, and Williamsburg County.

South Dakota (9): Bennett County, Buffalo County, Corson County, Dewey County, Jackson County, Mellette County, Shannon County, Todd County, and Ziebach County.

Tennessee (2): Fayette County and Hancock County.

Texas (45): Atascosa County, Brooks County, Caldwell County, Cameron County, Castro County, Cochran County, Crosby County, Culberson County, Dawson County, Deaf Smith County, Dimmit County, Duval County, Ector County, Edwards County, El Paso County, Frio County, Gaines County, Grimes County, Hale County, Hidalgo County, Hudspeth County, Jim Hogg County, Jim Wells County, Karnes County, Kinney County, Kleberg County, La Salle County, Marion County, Matagorda County, Maverick County, Medina County, Nueces County, Pecos County, Presidio County, Reeves County, San Jacinto County, San Patricio County, Starr County, Terry County, Uvalde County, Val Verde County, Webb County, Willacy County, Zapata County, and Zavala County.

Utah (1): San Juan County.

Virginia (4): Brunswick County, Lee County, Northampton County, and Scott County.

Washington (2): Ferry County and Yakima County.

West Virginia (4): Calhoun County, Clay County, Webster County, and Wirt County.

Wisconsin (1): Menominee County.

Puerto Rico (77): Adjuntas, Aguada, Aguadilla, Aguas Buenas, Aibonito, Anasco, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Florida, Guanica, Guayama, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Isabela, Jayuya, Juana Diaz, Juncos, Lajas, Lares, Las Marias, Las Piedras, Loiza, Luquillo, Manati, Maricao, Maunabo, Mayaguez, Moca, Morovis, Naguabo, Noranjito, Orocovis, Patillas, Penuelas, Ponce, Quebradillas, Rincon, Rio Grande, Sabana

Grande, Salinas, San German, San Juan, San Lorenzo, San Sebastian, Santa Isabel, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, Villalba, Yabucoa, and Yauco.

Virgin Islands (2): St. Croix Island and St. Thomas Island.

Western Pacific Territories (5): American Samoa, Federated States of Micronesia, Marshall Islands, Northern Marianas, and Palau.

Subpart C [Reserved]

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

SOURCE: 45 FR 47655, July 16, 1980, unless otherwise noted.

EFFECTIVE DATE NOTE: At 69 FR 69105, Nov. 26, 2004, Subpart D was removed and reserved, effective Feb. 24, 2005.

§ 1944.151 Purpose.

This subpart contains the policies and procedures and delegates authority for making initial and subsequent insured loans under section 514 and grants under section 516 of the Housing Act of 1949, to provide housing and related facilities for domestic farm labor. This subpart also contains the policies and procedures for making grants under section 516 to encourage the development of farm labor housing. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Rural Housing Service (RHS) employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an RHS employee.

[67 FR 66310, Oct. 31, 2002]

§ 1944.152 Objective.

The basic objective of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 in making domestic Farm Labor Housing (LH) loans is to provide decent, safe, and sanitary housing for domestic farm labor to be located in areas where a need for farm labor exists and in making LH grants where there is a pressing need for such facilities in the area for farm laborers and there is a reasonable doubt that the housing can be provided without the grant assistance.

[56 FR 28472, June 21, 1991]

§ 1944.153 Definitions.

Agency. The Rural Housing Service, an agency of the U.S. Department of Agriculture which administers section 514 loans and section 516 grants.

Applicant. The applicant for or the recipient of an LH loan or grant.

Association of farmers. Two or more farmers acting as a single legal entity. Association members may include the individual members of farming partnerships or corporations.

Board and directors. Includes the governing body and members of the governing body of an organization.

Construct or repair. To construct new structures or facilities, or to acquire, relocate, or repair or improve existing structures or facilities.

Development cost. Includes the cost of constructing, purchasing, improving, altering, or repairing new or existing housing and related facilities, buying household furnishings, and purchasing or improving the necessary land. It includes necessary architectural, engineering, legal fees and charges, and other appropriate technical and professional fees and charges. It does not include fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitations of loans. For all types of LH applicants, other than the individual farmowners, family farm corporation and partnerships, and associations of farmers, the development cost may include initial operating expenses of up to 2 percent of the permitted costs.

Domestic farm laborer. A person who receives a ''substantial portion of his or her income'' performing farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence. This definition may include the immediate family

members residing with such a person. (See the definition for Self-employed in this section and/or exhibit L of this subpart which is available in any Rural Housing Service office.)

Familial status. (See subpart E of part 1944 of this chapter or exhibit B of subpart C of part 1930 of this chapter.)

Family farm corporation or partnership. A private corporation or partnership in which at least 90 percent of the stock or interest is owned and controlled by members of the same family. These family members must be related by blood or law. If more than three separate households are supported by the farming operation, the family farm corporation or partnership must be:

(1) Legally organized and authorized to own and operate a farm business within the State,

(2) Legally able to carry out the purposes of the loan, and

(3) Prohibited from the sale or transfer of 90 percent of the stock or interest to other than family members by either the articles of incorporation, bylaws or by agreement between the stockholders or partners and the corporation or partnership.

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

Farm labor. For purposes of this subpart, farm labor includes services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity.

Farm Labor Contractor. Any person—other than an agriculture employer, an agricultural association, or an employee of an agriculture employer or agriculture association—who, for any money or other valuable consideration paid or promised to be paid, recruits, solicits, hires, employs, furnishes, or transports any year round or migrant farm laborer.

Farm owner. A natural person or persons who are the owners of a ''farm'' as this term is further defined in this section.

Farmer. A person who is actually involved in day to day on-site operations of a farm and who devotes a substantial amount of time to personal participation in the conduct of the operation of a ''farm''.

Home base. A home base State is a State which the farm laborer claims as his/her domicile.

Household furnishings. Such basic durable items as stoves, refrigerators, drapes, drapery rods, tables, chairs, dressers, and beds. Items such as bedding, linens, dishes, silverware, and cooking utensils are not included in this definition.

Housing. New or existing structures which are or will be suitable for decent, safe and sanitary dwelling use by domestic farm labor. ''Housing'' may include household furnishings and related facilities where appropriate.

HUD. The U.S. Department of Housing and Urban Development.

Individual. A natural person. It may include the spouse.

Individual with handicap. (See exhibit B of subpart C of part 1930 of this chapter.)

LH. Farm Labor Housing.

LH fund(s). May include either loan or grant monies or both in this subpart.

Local broad-based nonprofit organization. An organization, public or private, that operates in one employment area and which:

(1) Is incorporated with the State, Puerto Rico, or Virgin Islands, or a federally recognized Indian Tribe;

(2) Is organized and operated on a nonprofit basis;

(3) Is legally precluded from distributing any profits or dividends to its members or any private individual during its corporate lifetime;

(4) Is not grower oriented (majority of board must be nonfarmers);

(5) Pledges to administer the housing as a community service in the interest of the whole community, regardless of race, color, national origin, sex, religion, age, handicap, and marital or familial status;

(6) Has at least 25 members for projects with a total development cost of up to $100,000 and additional members for projects costing more than $100,000; and

(7) Has a membership reflecting a variety of interests of the area where the housing will be located.

Members and membership. Includes stockholders and stock when appropriate.

MFH. Multi-Family Housing.

Migrant agricultural laborers. Agricultural laborers and family dependents who establish a temporary residence while performing agriculture work at one or more locations away from the place he/she calls home or home base. (This does not include day-haul agricultural workers whose travels are limited to work areas within one day of their work locations.)

Mortgage. May include any appropriate form of security instrument.

NOFA. Notice of Funds Availability.

Nonprofit organization of farmworkers. A nonprofit organization which is incorporated with the State, Puerto Rico, or the Virgin Islands, which has local representation in the membership, and whose membership is composed of at least 51 percent farmworkers.

Off-Farm Labor Housing. Housing for farm laborers regardless of the farm where they work.

On-Farm Labor Housing. Housing for farm laborers specific to the farm where they work.

Organization. A broad-based nonprofit organization, a nonprofit organization of farmworkers, federally recognized Indian Tribe, or an agency or Political subdivision of State or local government.

Promissory note. May include a bond or other evidence of indebtedness.

Regional or statewide broad-based nonprofit organization. Any organization that operates or plans to operate in more than one employment area, that provides or is planning to provide labor housing to those areas and that meets the following criteria in addition to those in paragraphs (1) through (6) under the definition for ''local broad-based nonprofit organization:''

(1) The membership of the organization must be broadly representative of the region or state by having representation from either the counties or employment areas in which it provides or is planning to provide labor housing; and

(2) The membership must include at least eight (8) members from the employment area to be served by the project who represent a variety of interests of the employment area. If the project is located in a community or dependent upon a community for essential services, at least four of the eight members must be residents of that community.

Related facilities. Includes community rooms or buildings, cafeterias, dining halls, infirmaries, child care facilities, assembly halls, and other essential service facilities such as central heating, sewerage, lighting systems, clothes washing facilities, trash disposal and safe domestic water supply. All related facilities must be reasonably necessary for proper use of the housing as dwellings for domestic farm labor occupants.

Retired or disabled domestic farm laborer. A ''retired domestic farm laborer'' is a person who is at least 55 years of age and who has spent the last 5 years prior to retirement as a domestic farm laborer or spent the majority of the last 10 years prior to retirement as a domestic farm laborer (self-certification and employer affidavits may be used as a last resort). A ''disabled domestic farm laborer'' is a person who is determined to have an impairment which is expected to be of long-continued, indefinite duration, and substantially impedes the person's ability to earn a livelihood from farm labor (as certified by a licensed physician) and who is a domestic farm laborer prior to disability.

RHS. Rural Housing Service.

Seasonal housing. Described in exhibit I of subpart A of part 1924 of this chapter.

Self-employed. The determination of self-employed farm laborers is in accordance with the Common Law test used by the Internal Revenue Service to determine an employer-employee relationship. The Common Law Rules Factors are included in exhibit L of this subpart and are available for review in any Rural Housing Service Office. Exhibit L of this subpart is provided for situations when it is not clear an employer-employee relationship exists for eligible farm labor. The eligibility determination and use of the Common Law Rules Factors may be referred to the Loan Official or State Director for resolution.

Subsequent LH loan or grant. A loan or grant to an applicant or borrower to complete the units planned with the initial loan or grant.

Substantial portion of income. That portion of income received which has been derived from farm labor performed by a farm laborer as defined in this section.

(1) To determine if income is considered substantial, the measure to be used will be:

(i) For housing rented to farm laborers and owned by public bodies and public or private nonprofit organizations when charging rent:

(A) Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the Standard Federal regions, as stated in Appendix 9 of HB–1–3550 (which is available in any Rural Development office). For migrant farmworkers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual limits as shown in exhibit J of this subpart.

(B) An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm as a domestic farm worker during the preceding 12 months. In order to be considered as substantial the farm laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of at least 7 hours. When using a period of more than one year, a yearly average amounting to at least 110 days per year must be computed.

(ii) For housing owned by a farmer, family farm partnership, family farm corporation, or an association of farmers which was initially provided on a nonrental basis, substantial portion of income is earned down housing is provided by the owner as part of employment compensation for farm labor.

(2) When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the last full year of work will be used to determine substantial portion of income under paragraph (1) of this definition.

(3) The tenant who qualifies as a domestic farm laborer in order to reside or continue to reside in any project with a nonrestrictive farm labor clause in the mortgage covenants (see § 1944.176(d) (5) of this subpart) must not have adjusted annual income which exceeds the moderate income limit as shown in exhibit C of subpart A of part 1944 of this chapter (which is available in any FmHA or its successor agency under Public Law 103–354 office), for the appropriate household size and appropriate geographical area. Tenants residing in housing which was initially rent free without the non-restrictive labor clause in the mortgage covenants (i.e. on-farm site projects where the tenant must work for the farm owner) need not certify income (see paragraph (1)(ii) of this definition), and need not be low or moderate income tenants in order to be eligible to occupy a unit.

(i) Income for purposes of this subpart is defined under the terms annual income (describing inclusive and exempted income), adjusted annual income, and adjusted monthly income in paragraph II of exhibit B of subpart C of part 1930 of this chapter.

(ii) For servicing purposes, an exception to the moderate income rule is permitted in accordance with paragraph VI of exhibit B of subpart C of part 1930 of this chapter.

Technical assistance. The provision of services by an entity with farm labor housing and real estate development capacity to an applicant entity who lacks such a capacity. Such assistance may include, but is not limited to:

(1) Performing outreach efforts to inform and recruit potential LH applicants.

(2) Conducting site searches, negotiating and executing property acquisitions, and resolving planning and zoning issues.

(3) Preparing market analyses, feasibility analyses, and financial proformas.

(4) Packaging LH loan and grant applications, as well as applications from other funding sources.

(5) Estimating construction costs and providing oversight during construction periods.

Variety of interests. To meet the representation of a variety of interests in a broad-based nonprofit organization, members should be actively affiliated with or participating in civic, business, agricultural, or service organizations in their community; members' previous and current occupations may be considered in this determination. Individual members may represent multiple interests as well.

[56 FR 28472, June 21, 1991, as amended at 57 FR 59903, Dec. 17, 1992; 58 FR 40951, July 30, 1993; 64 FR 24480, May 6, 1999; 67 FR 66310, Oct. 31, 2002; 67 FR 78328, Dec. 24, 2002]

§ 1944.154 Priorities for tenants' occupancy.

(a) Tenant occupancy in labor housing is prioritized in the following order:

(1) First priority is to be given to eligible farm laborer households based upon percent of total earnings from farm labor in the following ranked categories: 71 to 100 percent; 51 to 70 percent; 26 to 50 percent; and less than 25 percent.

(i) For LH units without Rental Assistance, occupancy priority within each ranking category is according to the household's income, very-low, low-, then moderate.

(ii) For LH units with Rental Assistance, tenant occupancy priority is given to all eligible very-low income farm worker households by ranked category, then to low income farm worker households by ranked category. Moderate income may be served when there are no very-low or low-income eligible farm workers on the waiting lists, again by ranked category.

(2) Second priority is given to retired or disabled farm laborer households who were in the local farm market area at the time of retirement or becoming disabled. Occupancy priority will be by paragraph (a)(1) (i) or (ii) of this section without the farm income ranking category.

(3) Third priority is to be given to other retired or disabled farm laborer households. Occupancy priority will be by paragraph (a)(1) (i) or (ii) of this section without the farm income ranking category.

(b) When there is a diminished need for housing by persons or families in the above categories, such units may be made available to persons or families eligible for occupancy under the section 515, Rural Rental Housing program. Section 515 tenants may occupy the labor housing until such time the units are again needed by persons or families eligible under paragraph (a) of this section. As the basis for FmHA or its successor agency under Public Law 103–354's approval or disapproval of a borrower's determination of diminished need, the borrower must submit to FmHA or its successor agency under Public Law 103–354 a current analysis of need and demand, identical to the market survey required of applicants in exhibit A-I of this subpart. The borrower's determination and the State Director's recommendation should be forwarded to the National Office for concurrence.

(c) For additional guidance on occupancy and rental assistance, refer to FmHA Instruction 1930–C, exhibit B VI of this subpart, Renting Procedures, and exhibit E of this subpart, Rental Assistance Program. The Agency is required by statute to provide affordable housing to eligible farm workers and their families as a first program priority and to provide Rental Assistance as a second program priority. If it appears there is conflict in FmHA Instructions concerning the housing of an eligible Domestic or Migrant Farm Worker, document the problem and consult the District Director. If necessary, the problem may be referred to the State Office and/or the National Office for resolution.

(d) *Tenant Occupancy records.* (1) For tenants of housing owned by farm borrowers, rent is not charged and employment related occupancy restrictions do apply (reference §1944.164(h) for additional guidance). The borrower shall have each tenant execute a verification of occupancy and farm labor on exhibit K–1, Verification of Domestic Farm Labor and Occupancy in Rent Free Housing, on initial occupancy of the dwelling unit. The borrower shall retain the properly completed forms and make them available for FmHA or its successor agency under Public Law 103–354 Inspection only for the current tenant(s) and to supplement the annual reporting requirements required in the loan agreement. If the housing is not occupied on a year-round basis, then the report should list the names of the migrants or seasonal farmworkers attached to exhibit K–1.

(2) For tenants of housing when rent is charged and employment restrictions do not apply (reference §1944.164(h) for additional guidance). The borrower shall be guided by the procedures referenced in paragraph (c) of this section.

(e) *Ineligible occupants.* (1) For housing owned by farm borrowers. Ineligible occupants are immediate relatives of the borrower(s) and anyone who is not employed in domestic farm labor, as defined in §1944.153 of this subpart. Normally, occupancy of labor housing owned by farm borrowers is restricted to employees of the farmer or is governed by an employment contract with the farmer. Occupancy of housing owned by farm borrowers, regardless of the site (on-farm or in town), may be occupied by ineligibles with the permission of the State Director.

(2) *For housing owned by organizations.* Ineligible occupants are defined in exhibit B of subpart C of part 1930 of this chapter.

[56 FR 28473, June 21, 1991, as amended at 57 FR 59904, Dec. 17, 1992]

§ 1944.155 Responsibility for LH processing and servicing.

All LH loan and/or LH grant application processing and servicing is the responsibility of the FmHA or its successor agency under Public Law 103–354 District Director with redelegation authority for on-farm labor housing loans.

[57 FR 59904, Dec. 17, 1992]

§ 1944.156 General loan/grant processing requirements.

(a) *Timeliness.* All applicants will be informed of a decision regarding their request for assistance within a reasonable timeframe established by RHS. If RHS cannot provide an eligibility determination within a reasonable timeframe, the applicant will be notified when the determination will be made. A request for assistance may be withdrawn at any time by the applicant. RHS may return a request for assistance for failure of the applicant to provide the necessary underwriting information within a reasonable time period established by RHS.

(b) *Unlawful determination.* The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants based on race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), or because all or part of the applicant's income derives from any public assistance program. Department of Agriculture regulations provide that no agency, officer, or employee of the United States Department of Agriculture shall exclude from participation in, deny the benefits of, or subject to discrimination any person based on race, color, religion, sex, age, handicap, or national origin under any program or activity administered by such agency, officer, or employee. The Fair Housing Act prohibits discrimination in real estate-related transactions, or in the terms and conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin. If an applicant or borrower believes he or she has been discriminated against for any of these reasons, that person can write the Secretary of Agriculture, Washington, DC 20250. Applicants also cannot be denied a loan because the applicant has in good faith exercised his or her rights under the Consumer Credit Protection Act. If an applicant believes he or she was denied a loan for

this reason, the applicant should contact the Federal Trade Commission, Washington, DC 20580.

(c) *Taxpayer identification.* All applicants must provide their taxpayer identification number. The taxpayer identification number for individuals who are not businesses is their Social Security Number.

[61 FR 59777, Nov. 22, 1996]

§ 1944.157 Eligibility requirements.

(a) *Eligibility of applicant for an LH loan.* To be eligible for an LH loan the applicant must:

(1) Be a farmowner, family farm partnership, family farm corporation, or an association of farmers whose farming operations demonstrate a need for farm labor housing, or an organization, as these terms are defined in § 1944.153, which will own the housing and operate it on a nonprofit basis; or a nonprofit limited partnership in which the general partner is a nonprofit entity.

(2) Except for State and local public agencies, or a political subdivision thereof, be unable to provide the necessary housing from their own resources and be unable to obtain the necessary credit from any other source upon terms and conditions they could reasonably be expected to fulfill. If an association of farmers or family farm corporation or partnership, the individual members, individually and jointly, must be unable to provide the necessary housing by utilizing their own resources and be unable, by pledging their personal liability, to obtain other credit that would enable them to provide housing for farm workers at rental rates they can afford to pay. The individual resources of family farm corporation or partnership members with *less* than a ten percent corporate or partnership interest need not be considered.

The State Director may make an exception to the requirement that an individual farmowner, family farm corporation, family farm partnership or an association be unable to obtain the necessary credit elsewhere when *all* of the following conditions exist:

(i) There is a need in the area for housing for domestic farmworkers *who are migrants* and that applicant will provide such housing;

(ii) There are no qualified State or political subdivisions or public or private nonprofit organizations currently available or likely to become available within a reasonable period of time that are willing and able to provide the housing; and

(iii) The interest rate for such loans is in accordance with subpart A of part 1810 of this chapter (FmHA Instruction 440.1).

(3) Provide from its own resources the borrower contribution required by § 1944.160 and have sufficient initial operating capital to pay costs such as property and liability insurance premiums, fidelity bond premiums if required, utility hookup deposits, maintenance equipment, movable furnishings and equipment, printing lease forms, and other initial expenses. LH loans made to nonprofit organizations and to State or local public agencies or political subdivisions thereof may include up to 2 percent of the development cost for initial operating expenses.

(4) After the loan is made, have income sufficient to pay operating expenses, make necessary capital replacements, make the payments on the loan and other authorized debts, and accumulate reasonable reserves as required.

(5) Possess the legal and actual capacity, character, ability, and experience to carry out the undertakings and obligations required for the loan, including the obligation to maintain and operate the housing and related facilities for the purpose for which the loan is made. Organizations operating in more than one local area will be required to indicate their ability to provide local management and supervision of the day-to-day operation of the housing project.

(6) Intend to use the housing for labor to be used in the farming operations of the applicant or farming operations of its members if an individual farmowner, family farm corporation or partnership, or an association of farmers.

(7) Own the housing and related land or become the owner when the loan is

closed. An owner may include, in addition to the owner of full marketable title, a lessee of a tract of land owned by a State, political subdivision, public body or public agency, or Indian tribal lands which are not available for purchase. It may also include a lease of land when the State Director determines that long-term leasing of sites by nonpublic bodies is a well established practice and such leaseholds are fully marketable in the area, provided:

(i) The applicant is unable to obtain fee title to the property.

(ii) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security.

(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 E, or subparts B and C of part 1922 of this chapter, as appropriate.

(iv) The unexpired term of the lease on the date of loan approval is at least 25 percent longer than the repayment period of the loan and rental charged for the lease should not exceed the rate charged for similar leases in the area.

(v) The borrower's interest may not be subject to summary foreclosure or cancellation.

(vi) The lease must:

(A) Not restrict the right to foreclose the LH mortgage or to transfer the lease.

(B) Permit FmHA or its successor agency under Public Law 103–354 to bid at foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(C) Permit FmHA or its successor agency under Public Law 103–354 after acquiring the leasehold through foreclosure, or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property, or to sublet the property and to sell the leasehold for cash or credit.

(D) Permit the borrower, in the event of default or inability to continue with the lease and the LH loan, to transfer the leasehold, subject to the LH mortgage, to a transferee with assumption of the LH debt and grant obligation.

(vii) The advice of the Office of the General Counsel (OGC) will be obtained as to legal sufficiency of the lease. When the State Director is uncertain as to whether a loan can be made on a leasehold, the request should be submitted to the National Office for evaluation and instructions.

(8) If it is a private broad-based nonprofit organization or a nonprofit organization of farmworkers, meet the following additional requirements:

(i) In the event of its dissolution, be legally bound to transfer its net assets to a nonprofit organization of a similar type or a public body for use for domestic farm labor housing or other public purposes if the need for farm labor housing no longer exists.

(ii) Responsibility for management of the housing must be vested in the applicant's board of directors.

(A) A broad-based nonprofit organization must be governed by a board of directors of not less than five members who are experienced in such fields as real estate management, finance, or related businesses and who will not be users of the farm workers housed in the project.

(B) A nonprofit organization of farmworkers must have representation on the board from the area where the housing is located. Directors may be elected who are not members of the organization but are experienced in such fields as real estate management, finance, or related businesses provided member directors represent a majority of the board.

(iii) Be prohibited from requiring or preventing employment on any particular farm or farms as a condition of occupancy.

(iv) Except for an organization of farmworkers, be certified as exempt from Federal income taxation.

(9) Be an individual farmowner who is a citizen of the United States, the Commonwealth of Puerto Rico, the Virgin Islands, the territories and possessions of the United States, or the trust territory of the Pacific Islands or residents in one of the foregoing areas after being legally admitted for permanent residence or an indefinite parole. If the applicant is an organization, other than a State or political subdivision, the majority of the members and

controlling interests must be individuals who meet the citizenship requirements for individual farmowners as stated above.

(b) *Eligibility of applicant for an LH grant.* To be eligible for an LH grant the applicant must meet the applicable requirements in § 1944.157 (a) and:

(1) Be an organization, as defined in § 1944.153 with an assured life over a period of years sufficient to carry out the purpose of providing low-rent housing for domestic farm labor. This should not be less than the anticipated useful life of the project as suitable housing for domestic farm labor, assuming proper maintenance and repair of the property. Ordinarily, this should not be less than 50 years.

(2) When the grant is closed, be the owner (as defined in this subpart) of the housing and related facilities, including the site.

(3) Be unable to provide the necessary housing from its own resources, including any power to levy taxes, assessments, or charges, and be unable to obtain the necessary credit through an LH loan or from other sources upon terms and conditions the applicant could reasonably be expected to fulfill.

(4) Possess the legal and actual capacity, ability, and experience to incur and carry out the undertakings and obligations required, including the obligations to maintain and operate the housing and related facilities for the purpose for which the grant is made.

(5) Legally obligate itself not to divert income from the housing to any other business, enterprise, or purpose.

(c) *Eligibility of applicant for an LH technical assistance grant.* To be eligible for an LH technical assistance grant, the applicant must:

(1) Be a private or public nonprofit agency;

(2) Have the knowledge, ability, technical expertise, or practical experience necessary to develop and package loan and grant applications for LH under the section 514 and 516 programs; and,

(3) Possess the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a timely and cost efficient manner. The grantee may arrange for other nonprofit agencies to provide services on its behalf; however, RHS will expect the grantee to provide the overall management necessary to ensure the objectives of the grant are met. Nonprofit agencies acting on behalf of the grantee must also meet the above stated eligibility requirements.

(d) *Authorized representative of applicant.* FmHA or its successor agency under Public Law 103–354 will deal only with the applicant or its bona fide representative and technical advisers. The authorized representative of the applicant must be a person who has no pecuniary interest in the award of the architectural or construction contracts, management contracts, the purchase of equipment, or the purchase of land for the housing site.

[45 FR 47655, July 16, 1980, as amended at 48 FR 7159, Feb. 18, 1983; 48 FR 44762, Sept. 30, 1983; 50 FR 8590, Mar. 4, 1985; 56 FR 28474, June 21, 1991; 58 FR 44753, Aug. 25, 1993; 64 FR 24480, May 6, 1999; 67 FR 66310, Oct. 31, 2002]

§ 1944.158 Loan and grant purposes.

LH loans and grants may be made to qualified applicants to:

(a) Build, buy, improve or repair housing as defined in § 1944.153(b).

(b) Purchase and improve the necessary land on which the housing will be located.

(1) The cost of land purchased with loan or grant funds may not exceed its present market value in its present condition. Present market value will be determined by a current appraisal in accordance with subpart B of part 1922 of this chapter.

(2) Loan or grants funds will not be used to buy land from a member of an applicant-organization, or from another organization in which any member of the applicant-organization has an interest, without prior approval of the State Director. In granting this approval the State Director should be sure that the purchase price does not exceed the present market value.

(3) Loan or grant funds may not be used to acquire land in excess of that needed for the housing, including related facilities, except when the applicant cannot acquire only the needed land at a fair price, can justify the acquisition, agrees to sell the excess land as soon as practicable and apply proceeds on the loan, and has legal authority to acquire and administer the land.

(c) Develop and install water supply, sewage disposal, streets, storm water retention facilities or areas, and heat and light systems necessary in connection with the housing. If the facilities are located offsite, the following requirements must be met:

(1) The applicant will hold the title to the facility or have a legally assured adequate right to use of the facility for at least the life of the loan or grant and such title or right can be transferred to any subsequent owner of the site.

(2) The facilities are provided for the exclusive use of the LH project or funds are limited to the prorated part of the total cost of the facility according to the use and benefit to the project. The applicant will agree in writing to the application of extra payments on the LH loan of any subsequent collection by the applicant from other users or beneficiaries of the facility.

(3) Adequate security can be obtained with or without a mortgage based on the offsite facilities.

(d) Construct other related facilities in connection with the housing such as:

(1) Maintenance workshop and storage facilities.

(2) Recreation center including lounge if the project is large enough to justify such a facility.

(3) Central cooking and dining facilities when the project is large enough to justify such services.

(4) Small infirmary for emergency care only when justified.

(5) Laundry room and equipment, including clotheslines, if not provided in the individual units.

(6) Appropriate outdoor recreational facilities and other facilities to meet essential needs.

(7) Child day care facilities when needed and feasible.

(8) Trash retention areas if necessary.

(9) Outdoor lighting in pedestrian areas where use is anticipated after sunset.

(e) Construct office and living quarters for the resident manager and other operating personnel if needed and advantageous to the project and the Government.

(f) Purchase and install ranges, refrigerators, drapes, drapery rods, clothes washers, and clothes dryers. If individual washer and dryer hookups are provided, clothes washers and clothes dryers may be installed in individual rental units only if the inclusion of such items in individual units is needed and is customary in the area for the type of housing involved and is consistent with the requirement that the construction be undertaken in an economical manner and not constitute elaborate or extravagant items. Otherwise, the clothes washers and clothes dryers must be installed in a central laundry room. The number of washers and dryers must be adequate to serve the tenant needs. Whenever practical, this equipment should be attached to the real property in a manner to prevent easy removal.

(g) Purchase and install essential equipment which upon installation becomes a part of the real estate.

(h) Provide landscaping, foundation planting, seeding or sodding of lawns, and necessary facilities related to buildings such as walks, yards, fences, parking areas, and driveways.

(i) Provide loan/grant funds to enable a nonprofit group or public body to be reimbursed for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist the nonprofit applicant entity in the development and packaging of its loan/grant docket and project.

(1) Loan and grant funds may also be used to reimburse any appropriate and necessary legal, architectural, engineering, technical, and professional fees.

(2) Costs incurred by the nonprofit applicant entity for development and packaging of its own loan/grant docket and project may also be reimbursed. Any costs incurred by the entity for its own formation and incorporation are not reimbursable.

(3) The amount to be reimbursed for developing and packaging the loan/grant docket and project are limited by the total development cost (excluding initial operating and capital expenses). Reimbursed costs may range from 2 to 4 percent of total development costs and should reflect costs that are reasonable and typical for the area. In no

case will the Agency reimburse in excess of 4 percent.

(4) The packaging costs are not required to be considered a part of the security value of the project.

(5) Related project costs as listed in § 1944.169 of this subpart are not included as a part of the costs for development and packaging of the loan/grant docket and project.

(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.

(k) Pay normal charges necessary to obtain interim financing.

(l) Pay initial operating expenses up to 2 percent of the development cost for any type applicant except an individual farmowner, family farm corporation or partnership, or an association of farmers.

(m) Pay for related costs incurred in compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and in accordance with § 1944.164(q) of this subpart.

(n) To make advances in accordance with § 1965.217 (d) of subpart E of part 1965 of this chapter to nonprofit corporations and public agencies to avert prepayment of the loan.

(o) Encourage the development of farm labor housing. RHS may award ''technical assistance'' grants to eligible private and public nonprofit agencies. These grant recipients will, in turn, assist other organizations obtain loans and grants for the construction of farm labor housing. Technical assistance services may not be funded under both this paragraph and paragraph (i) of this section. In addition, technical assistance may not be funded by RHS when an identity of interest exists between the technical assistance provider and the loan or grant applicant. Requests for Proposals (RFP) may be periodically published in the FEDERAL REGISTER by RHS inviting eligible nonprofit organizations to submit LH technical assistance grant proposals. RFPs will contain the amount of available funding, the method of allocating or distributing funds, where to submit proposals, proposal requirements, the deadline for the submission of proposals, the selection criteria, and the grant agreement to be entered into between RHS and the grantee.

[45 FR 47655, July 16, 1980, as amended at 50 FR 8590, Mar. 4, 1985; 58 FR 38923, July 21, 1993; 60 FR 4070, Jan. 20, 1995; 67 FR 66311, Oct. 31, 2002]

§ 1944.159 Rates and terms.

(a) *Amortization period.* Each loan will be scheduled for payment in installments within a period, not to exceed 33 years, as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(b) *Interest rate.* Upon request of the applicant, the interest rate charged by FmHA or its successor agency under Public Law 103–354 will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in exhibit B of FmHA Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103–354 office).

(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.

[45 FR 47655, July 16, 1980, as amended at 50 FR 8591, Mar. 4, 1985; 51 FR 6734, Feb. 26, 1986]

§ 1944.160 Off-farm loan limits.

(a) For all applicants, including its members, who will be receiving any benefits from Low-Income Housing Tax Credits (LIHTC), the amount of the RHS loan will be limited to no more than 95 percent of the total development cost or 95 percent of the security value, whichever is less.

(b) For all applicants, including its members, not receiving any benefits from LIHTC, who are nonprofit entities or State or local public agencies, the amount of the RHS loan will be limited to the total development cost or the security value, whichever is less, plus the 2 percent initial operating capital.

(c) For all other applicants, including its members, not receiving any benefits from LIHTC, the amount of the RHS loan will be limited to no more than 97 percent of the development cost or the security value, whichever is less.

[64 FR 24480, May 6, 1999]

§§ 1944.161–1944.162 [Reserved]

§ 1944.163 Conditions under which an LH grant may be made.

A grant may be made to an eligible applicant only when all of the following requirements can be met:

(a) The applicant will contribute at least one-tenth of the total development cost, obtained from its own resources, including any power to levy taxes, assessments, or charges, with funds from other sources, or with an LH loan. The applicant's contribution must be available at the time of grant closing. If an LH loan is needed, the applicant will file an application for a combination loan and grant at the same time.

(b) The housing and related facilities will fulfill a pressing need in the area in which the housing is or will be located and there is reasonable doubt that such housing can be provided without the grant.

(1) The applicant will furnish FmHA or its successor agency under Public Law 103–354 factual evidence of fulfilling a pressing need. This need will be documented in accordance with exhibits A–1 or A–2 of this subpart, as applicable, and using exhibit A–4 as a guideline if appropriate.

(2) When appropriate, the District Director may check with sources such as the State Department of Labor, Bureau of Employment Security, and other reliable sources to verify the information submitted.

(3) If, after evaluating the information furnished by the applicant and additional information that may be provided, the District Director determines that the housing will fulfill a pressing need and that a reasonable doubt exists that the housing can be provided without the grant, the District Director will prepare a narrative statement to support these conclusions.

(c) The housing will be constructed in accordance with exhibit A–3 of this subpart.

(d) The housing will be constructed in an economical manner and will not be of elaborate or extravagant design or material.

(e) The housing must be durable and suitable for year round use unless the need for such housing is seasonal and year-round occupancy is not practical and will not be needed. Construction of seasonal farm labor housing will be permitted upon a finding of persistent need for migrant farmworker housing in the area and such housing will be used solely by migrant farmworkers while they are away from their residence. Seasonal farm labor housing that will be occupied for six months or less per year by migrant farmworkers while they are away from their residence, will be constructed in accordance with exhibit I to subpart A of part 1924. Farm labor housing that is to be occupied less than year-round but more than six months shall be in substantial conformance with and be easily convertible to the applicable development standards as required by § 1924.5(d)(1) of subpart A of part 1924 of this chapter. Such projects that are to be occupied less than year-round but more than six months may be approved after review of the savings in construction costs, the plan for conversion to full compliance with development standards and the long term need for such housing.

(f) Housing will be constructed and designed with the consideration given to selecting the most economic, energy

efficient heating (and cooling, if applicable) systems including, but not limited to, insulation in excess of the requirements of exhibit D of subpart A of part 1924 of this chapter (FmHA Instruction 1924–A, exhibit D); active/passive solar design; building orientation; and sun control measures.

[45 FR 47655, July 16, 1980, as amended at 47 FR 28086, June 29, 1982; 52 FR 8036, Mar. 13, 1987]

§ 1944.164 Limitations and conditions.

(a) *Limitations on use of loan and grant funds.* Among the purposes for which loan and grant funds will *not* be used are the following:

(1) Providing housing for the members of the immediate family of the applicant when the applicant is an individual farmowner, family farm corporation, or partnership, or an association of farmers. (Immediate family in this instance includes mother, father, brothers, sisters, sons and daughters of applicant(s) and spouse.)

(2) Housing, related facilities, or household furnishings which are elaborate or extravagant in design or material.

(3) Refinancing debts of the applicant.

(4) Moveable-type furnishings or equipment except household furnishings as defined in § 1944.153(c).

(5) Payment of any fees, charges, or commissions to any broker, negotiator, or other person for the referral of a prospective applicant or solicitation of the loan.

(6) Payment of any fee, salary, commission, profit, or compensation to an applicant, or any officer, director, trustee, stockholder, member, or agent of the applicant, except as provided in § 1944.158(i).

(b) *Maximum amount of grant.* The amount of any grant may not exceed the lesser of:

(1) Ninety percent of the total development cost; or

(2) That portion of the total cash development cost which exceeds the sum of any amount the applicant can provide from its own resources plus the amount of a loan which the applicant will be able to repay, with interest, from income from rentals which low-income farmworker families can be reasonably expected to be able to pay. The availability of rental assistance and HUD section 8 subsidies will be considered in determining the rentals that farmworkers will pay.

(c) *Advance of grant funds.* The times for requesting Treasury Checks representing LH grant funds and depositing such checks in the applicant's supervised bank account will be determined in accordance with § 1944.175. When other funds to help finance the labor housing are being supplied by the applicant from its own resources or from a loan, such other funds will be used before a grant check is requested from the Treasury or deposited in or disbursed from the supervised bank account, as appropriate to comply with § 1944.175.

(d) *Obligations incurred before loan or grant closing.* When the applicant files an application for a loan or grant, the Loan Official will advise the applicant that construction must not be started and obligations for work materials or land must not be incurred or made before the loan or grant is closed, and that it is the policy of RHS not to permit loan or grant funds to be used to pay such obligations or reimburse the applicant for such payments. If, nevertheless, the applicant incurs expenses or makes payments for such purposes before the loan or grant is closed, the State Director may authorize the use of loan or grant funds to pay such expenses or reimburse the applicant only when the State Director finds that all the following conditions exist:

(1) The expenses were incurred:

(i) After the applicant filed a written application for a loan with RHS; or

(ii) before the date of application as part of a predevelopment loan specifically intended as interim financing from a public agency or nonprofit organization and prior concurrence of the National Office is obtained; or

(iii) before the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and prior concurrence of the National Office is obtained.

(2) The applicant is unable to pay such expenses from its own resources or from credit from other sources, and failure to authorize the use of loan or

grant funds to pay such expenses or reimburse the applicant would impair the applicant's financial position.

(3) The expenses were incurred or payments were made for authorized loan and grant purposes.

(4) Contracts, materials, construction and any land purchase meet FmHA or its successor agency under Public Law 103–354 standards.

(5) Payment of the expenses will remove any liens which have attached and any basis for liens that may attach to the property on account of such expenses.

(e) *Grant resolution.* A resolution will be adopted by the applicant's Board of Directors and a certified copy included in the grant docket before a grant is approved.

(1) For a grant accompanied by an LH loan, the form of resolution attached as exhibit E to this subpart will be used with any necessary changes required or approved by OGC. For a grant not accompanied by an LH loan, the form of resolution will be provided or approved by the National Office, following exhibit E as closely feasible.

(2) The form of resolution to be adopted by the applicant will contain policy and procedural requirements which should be read and be fully understood by the applicant's Board of Directors and officers. Included in the resolution will be provisions authorizing FmHA or its successor agency under Public Law 103–354 to prescribe requirements regarding the operation of the housing and related facilities and other provisions including the following:

(i) The rentals charged domestic farm labor will not exceed such amounts as are approved by FmHA or its successor agency under Public Law 103–354 after considering the income of the occupants and the necessary costs of operation, debt service, and adequate maintenance of the housing.

(ii) The housing will be maintained at all times in a safe and sanitary condition in accordance with standards prescribed by State and local law, and as required by FmHA or its successor agency under Public Law 103–354.

(iii) In granting occupancy of the housing an absolute priority will be given at all times to domestic farm labor.

(3) The resolution will also authorize the appropriate officers of the applicant to execute a ''Labor Housing Grant Agreement,'' in the format of exhibit F of this subpart. If changes are required in exhibit F they must be approved by OGC.

(f) *Conditional obligations to repay grants.* The obligations incurred by the applicant as a condition of the grant will be in accordance with exhibit F of this subpart.

(g) *Loan resolution or loan agreement.* (1) An organization will have its Board of Directors adopt a loan resolution and furnish a certified copy for the loan docket before loan approval. The resolution will be substantially in the format of exhibit C of this subpart. Any necessary changes must be approved by OGC.

(2) All other loan applicants of this subpart will execute a loan agreement in substantially the same format as exhibit D of this subpart (for rental units) or exhibit K of this subpart (for non-rental units). Any necessary changes must be approved by OGC.

(h) Restrictions on conditions of occupancy. No organizational borrower, other than an association of farmers or family farm corporation or partnership will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing. Tenant selection should be in accordance with exhibit B of subpart C of part 1930 of this chapter. No borrower will discriminate, or permit discrimination by any agent, lessee, or other operator in the use or occupancy of the housing or related facilities because or race, color, religion sex, age, handicap, marital or familial status or National origin. Each borrower will comply with subpart E of part 1901 of this chapter and prepare and submit HUD Form 935.2, ''Affirmative Fair Housing Marketing Plan,'' which is available in any FmHA or its successor agency under Public Law 103–354 Office.

(i) *Supervisory assistance.* Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government. The provision of subpart C of part 1930 of this chapter (FmHA Instruction 1930–C) will be followed.

(j) *Location of housing.* (1) Multifamily type housing designed for year-round occupancy will meet the location requirements as explained in exhibit A–3 of this subpart.

(2) Single family type housing designed for year-round occupancy, as explained in exhibit A–3 of this subpart, will be located:

(i) On plotted lots within a subdivision which complies with all local requirements and is developed in accordance with subpart C of part 1924 of this chapter; or

(ii) On scattered sites located to meet the location requirements of subpart C of part 1924 of this chapter and 7 CFR part 3550.

(3) Housing designed for seasonal occupancy, whether single family or multifamily type housing may be located on the farm as long as it is not located near farm service buildings and will be situated to allow for possible conversion to full-year occupancy should the need for migrant farmworkers in the area change.

(k) *International review.* Intergovernmental consultation should be carried out in accordance with 7 CFR part 3015 subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities'' for 25 units or more. See FmHA Instruction 1940–J, available in any FmHA or its successor agency under Public Law 103–354 office.

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

(m) *Guidelines for projects affecting floodplains.* The provisions of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 apply to FmHA or its successor agency under Public Law 103–354 authorities permitting financing of LH now located in or to be located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency. Subpart B of part 1806 of this chapter (FmHA Instruction 426.2) applies. It should be emphasized, however, that FmHA or its successor agency under Public Law 103–354's response to floodplain development is not limited to the Flood Insurance Program. Pursuant to Executive Order 11988, ''Floodplain Management,'' FmHA or its successor agency under Public Law 103–354 shall not fund any housing projects which impact a floodplain unless there is no practicable alternative siting of the project. Applicants, therefore, should concentrate in the early planning stages of this proposal to locating sites which do not impact floodplains. See subpart G of part 1940 of this chapter for applicable environmental requirements.

(n) *LH loans to American Indians secured by trust or restricted land.* Loans to individuals will be secured by a mortgage on the leasehold interest held by the applicant. The leasehold interest must meet the conditions of 7 CFR part 3550. Loans to tribes or tribal corporations will be secured in accordance with §§ 1823.409 and 1823.414(a) of subpart N of part 1823 of this chapter (FmHA Instruction 442.11, paragraphs IX and XIV A).

(o) *Refinancing LH loans.* Each borrower must agree to refinance the unpaid balance of the LH loan at the request of FmHA or its successor agency under Public Law 103–354 whenever it appears to FmHA or its successor agency under Public Law 103–354 that the borrower is unable to obtain a loan from responsible cooperative or private credit sources at rates and terms which FmHA or its successor agency under Public Law 103–354 considers reasonable, and still rent the units to eligible occupants at rental rates within their payment ability. The refinancing of an LH loan must comply with the restrictions indicated in § 1944.176(d)(2) of this subpart. The provisions of subpart E of part 1965 of this chapter must be followed before the State Director or other designated official can approve or accept prepayment or refinancing of the FmHA or its successor agency under Public Law 103–354 loan.

(p) *Restrictive-use provisions for LH loans.* The acceptance of a farm labor housing loan will make the borrower

subject to the restrictive-use provisions contained in exhibit A–1 of subpart E of part 1965 of this chapter.

(q) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Compliance with the requirements of this Act applies to public bodies and agencies which have the power of eminent domain and/or condemnation. It will be the responsibility of the applicant to provide assistance required for relocation of displaced persons from the site on which a LH project will be located. FmHA or its successor agency under Public Law 103–354 loan funds may be increased to cover costs incurred in the relocation of displaced persons from the site over and above the appraised value of the property. Until national FmHA or its successor agency under Public Law 103–354 instructions are published the Department regulations found at part 21 of this chapter should be followed and the National Office should be consulted for guidance in developing an LH loan for a project affected by this Act. However, the following should be considered:

(1) Generally, sites which will involve relocation of displaced persons should not be considered if alternative sites are available.

(2) For the purpose of determining the appraisal value of the site to be acquired in respect to LH projects which involve relocation of displaced persons, the designated FmHA or its successor agency under Public Law 103–354 multiple family housing appraiser or such other agency designated appraiser shall be used.

[45 FR 47655, July 16, 1980, as amended at 46 FR 61990, Dec. 21, 1981; 48 FR 29121, June 24, 1983; 49 FR 3762, Jan. 30, 1984; 52 FR 19301, May 22, 1987; 55 FR 6244, Feb. 22, 1990; 57 FR 59904, Dec. 17, 1992; 58 FR 38923, July 21, 1993; 64 FR 24480, May 6, 1999; 67 FR 78328, Dec. 24, 2002]

§§ 1944.165–1944.167 [Reserved]

§ 1944.168 Security requirements.

(a) *General.* Each loan will be secured to adequately protect the financial interest of the Government in the loan during its repayment period. The amount of the loan may not exceed the value of the security for the loan as determined by an appraisal, less the unpaid principal balance, plus past due interest of any prior liens that will or will likely exist against the security after the loan is closed. If the State Director determines it necessary or advisable to encumber household furnishings purchased with loan funds, the State Director will, with the advice of OGC, issue appropriate instructions setting forth the manner in which household furnishings will be secured.

(b) *Loan to an organization or an association of farmers.* (1) A loan to an organization or association of farmers which can give a real estate mortgage will be secured by a mortgage on good and marketable title to the real estate including the housing, the related facilities, and the site, subject to any exceptions that may be waived as provided in subpart B of part 1927 of this chapter.

(2) If a first mortgage cannot be obtained, a junior mortgage may be taken provided:

(i) The prior mortgage as affected by the State law does not contain such provisions for future advances, payment schedules, forfeiture or cancellation, foreclosure without adequate notice to junior lienholders, or other matters which may jeopardize FmHA or its successor agency under Public Law 103–354's security position or the borrower's ability to pay the loan; or

(ii) Such provisions are satisfactorily limited, modified waived, or subordinated.

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

(4) In individual cases, additional security may be advisable to ensure that the loan objectives will be carried out. For example, to provide for more effective management and operation, one or more of the following types of security may be required.

(i) A mortgage on other real estate owned by the applicant.

(ii) A pledge, assignment, mortgage, or other security interest in income from the housing.

(iii) A cosigner on the promissory note, letter of credit, endorsements, assessments, user agreements, personal liability agreements, or membership subscription agreements.

(5) As a general policy, personal liability will be required of the members of an association of farmers.

(c) *Loan to an individual farmowner or family farm corporation or partnership.* For every loan to an individual farm owner or family farm corporation or partnership, a real estate mortgage will be taken on the farm, whenever practicable, in accordance with subpart B of part 1927 of this chapter. However, if requested by the applicant, a mortgage may be taken on the units and at least enough land to clearly provide adequate security for the loan as determined by an appraisal. In such cases, the loan must meet the following conditions:

(1) If the tract to be mortgaged is covered by a prior lien which also applies to other land, the tract to be given as security must either:

(i) Be released from the prior lien or subordinated to permit a first lien for the LH loan, or

(ii) Provide adequate security for the entire prior lien debt and the LH loan and comply with 7 CFR part 3550.

(2) Personal liability will be required of all stockholders or partners.

[45 FR 47655, July 16, 1980, as amended at 46 FR 61990, Dec. 21, 1981; 56 FR 67482, Dec. 31, 1991; 67 FR 78328, Dec. 24, 2002]

§ 1944.169 Technical, legal, and other services.

(a) *Appraisals.* (1) An appraisal is required when real estate is taken as security. The appraisal must be made in accordance with the Uniform Standards of Professional Appraisal Practices (available in any Rural Development office).

(2) If the loan includes funds for purchasing household furnishings or equipment which will not become part of the real estate, a narrative type appraisal, identifying the items, will be prepared by the employee preparing the real estate appraisal. The value placed on such furnishings will be based on comparable selling prices in the area.

(b) *Architectural and engineering services.* Housing and related facilities will be planned and designed to meet the needs of the type of occupants who will likely occupy it. A written contract for architectural or engineering services will be required as outlined in subpart A of part 1924 of this chapter.

(c) *Construction and development policies*—(1) *Planning and construction.* Housing and related facilities will be planned in accordance with subpart A of part 1924 of this chapter and exhibit A–3 of this subpart. Construction and development will be performed in accordance with subpart A of part 1924 of this chapter.

(2) *Labor standards provisions.* Construction financed with the assistance of an LH grant will be subject to the provisions of the Davis-Bacon and related acts, and the regulations implementing those acts published by the Department of Labor regulations at 29 CFR parts 1, 3, and 5.

(3) *Compliance with local codes and regulations.* Planning construction, and operation of housing finance with the LH loan or grant will conform with all applicable Federal, State, and local laws, ordinances, codes, and regulations governing such matters as zoning, construction, heating, plumbing, electrical installation, fire prevention, health and safety, and sanitation. If there are no local or State codes and regulations governing these matters, the State Director will issue appropriate guidelines to insure that the facilities meet all FmHA or its successor agency under Public Law 103–354 requirements.

(4) *Land use objectives.* Location of projects shall, to the extent practicable, result in the preservation of Important Farmlands and Forestlands, Prime Rangeland and Wetlands. State Directors will assure that FmHA or its successor agency under Public Law 103–354 actions, investments, and programs on non-Federal lands are consistent with State and local land use plans and programs to the extent practicable. In carrying this out, State Directors will:

(i) Attempt to integrate departmental and State and local land use policies and programs.

(ii) Identify and minimize to the extent practicable adverse environmental, economic, and social effects of FmHA or its successor agency under

Public Law 103–354 projects and programs.

(iii) Provide landholders and other concerned people information about the alternatives to, and the associated environmental, social, and economic implications of proposed actions.

(iv) Refrain from enabling others to irreversibly convert these lands or encroaching or enabling other encroachments on flood plains unless there are no practicable alternatives.

(v) In unusual circumstances when the State Director is unable to make a determination regarding land classification, the State Director will request assistance from the Chief of the Natural Resources Conservation Service in Washington, DC.

(d) *Optioning of land.* If a loan or grant includes funds to purchase real estate, an acceptable option to purchase or purchase agreement will be included in the application. After the loan is approved, the District Director will have Form FmHA or its successor agency under Public Law 103–354 440–35, ''Acceptance of Option,'' or other appropriate form of acceptance, completed, signed, and mailed to the seller.

(e) *Insurance.* The State Director will determine the minimum amounts and types of insurance the applicant will carry.

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with subpart A of part 1806 of this chapter (FmHA Instruction 426.1).

(2) Suitable Workman's Compensation Insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged, or may be required when appropriate, to obtain liability insurance.

(f) *Title clearance and legal services.* When the applicant is an organization, or has special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from the OGC. In other cases, the provisions of subpart B of part 1927 of this chapter regarding title clearance and legal services apply.

(g) *Use of and accountability for loan and grant funds.* Loan and grant funds and any funds furnished by the borrower for authorized purposes will be deposited and handled in accordance with subpart A of part 1902 of this chapter.

(1) Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan or grant funds could not be used, should not be deposited in the supervised bank account with loan or grant funds.

(2) For all organizations collateral will be pledged by the financial institution for any loan or grant funds or borrower contribution in accordance with § 1902.7 of this chapter.

(3) Funds may be disbursed from the supervised bank account only for authorized loan or grant purposes.

(h) *Bond counsel.* All public bodies offering bonds as security for the LH loan are required to obtain the services of recognized bond counsel in the preparation of evidence of indebtedness in accordance with § 1942.19 of subpart A of part 1942 of this chapter except as provided in paragraph 1 of exhibit H of this subpart.

(i) *Surety bonding and fidelity coverage.* (1) The provisions of subpart A of part 1924 of this chapter pertaining to surety bonds are applicable to LH loans and grants.

(2) If the applicant is an organization, it will provide fidelity coverage for any personnel entrusted with the receipt, custody, and disbursement of any project monies, securities, or readily saleable personal property other than money or securities. Fidelity coverage will be in force as soon as there are assets in the organization in accordance with the provisions described at paragraph XV A of exhibit B of subpart C of part 1930 of this chapter.

(j) *Contracts for legal services.* On projects requiring extensive legal services, the applicant will be required to have a written contract for these services. All such contracts will be subject to review and approval by FmHA or its successor agency under Public Law 103–354 and, therefore, should be submitted to FmHA or its successor agency under Public Law 103–354 before execution by the applicant. Contracts will provide for the types of service to be performed and the amount of the fees to be paid, either in lump-sum on the completion

of all services or in installments as services are performed. ''Legal Service Agreement,'' exhibit G of this subpart, may be used.

[45 FR 47655, July 16, 1980, as amended at 46 FR 36112, July 14, 1981; 48 FR 7159, Feb. 18, 1983; 56 FR 67482, Dec. 31, 1991; 58 FR 40951, July 30, 1993; 58 FR 44752, Aug. 25, 1993; 61 FR 56116, Oct. 31, 1996; 64 FR 24480, May 6, 1999]

§ 1944.170 Preapplication requirements and processing.

A two-stage application process is used. In stage one, applicants submit a preapplication, which is used to determine preliminary eligibility and feasibility. Preapplications selected for further processing will be invited to submit an application. The preapplication consists of SF–424.2, ''Application for Federal Assistance (For Construction)'' and the information listed in exhibit A–1 or A–2 of this subpart, as applicable. Preapplications for off-farm new construction loans and grants will be accepted and processed in accordance with this section when NOFA is announced in the FEDERAL REGISTER. Applicants are advised to read the notice carefully for any restrictions on loan or grant amounts. Preapplications for repair and rehabilitation of existing off-farm LH units and new units of on-farm housing may be submitted any time during the year and will be processed on a first-come, first-served basis in accordance with subpart L of part 1940 of this chapter.

(a) *Preapplications for new units in off-farm facilities.* (1) The Agency will publish NOFA annually in the FEDERAL REGISTER with deadlines for submitting preapplications. The notice will include the amount of funds available, any limit on the amount of individual loan and grant requests, any limit on the amount of funds that any one State may receive, and the loan scoring criteria.

(2) The preapplication must be submitted in accordance with NOFA and consists of SF–424.2, ''Application for Federal Assistance (For Construction)'', and the information required by exhibit A–1 of this subpart. The preapplication will be used by the Agency to determine preliminary eligibility and to score and rank proposals.

(b) *Preliminary eligibility assessment of preapplications received in response to NOFA.* The Agency will make a preliminary eligibility assessment using the following criteria:

(1) The preapplication was received by the submission deadline specified in NOFA;

(2) The preapplication is complete as specified in NOFA;

(3) The applicant is an eligible entity and is not currently debarred, suspended, or delinquent on any Federal debt; and

(4) The proposal is for authorized purposes.

(c) *Scoring and ranking off-farm preapplications.* The Agency will score and rank off-farm preapplications for new units that meet the criteria of paragraph (b) of this section.

(1) The following criteria will be used to score project proposals:

(i) The presence and extent of leveraged assistance, including donated land, for the units that will serve program-eligible tenants, calculated as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. Leveraged assistance includes, but is not limited to, funds for hard construction costs, Section 8 or other non-RHS tenant subsidies, and state or federal funds. A minimum of ten percent leveraged assistance is required to earn points. (0 to 20 points)

(A) To count as leveraged funds for purpose of the selection criteria:

(*1*) A commitment of funds must be received within a timeframe that permits processing of the loan request within the current funding cycle (the latest commitment date for leveraged funds will be announced in NOFA); and

(*2*) If RHS RA is being provided, the interest cost to the project using leveraged loan funds may not exceed the cost of 100 percent LH loan financing.

(B) For donated land to be scored as leveraged assistance, all of the following conditions must be met.

(*1*) Based on a preliminary review, the land is suitable and meets Agency requirements. Final site acceptance is subject to a completed environmental review.

(*2*) Site development costs do not exceed what they would be to purchase and develop an alternative site.

(*3*) The overall cost of the project is reduced by the donation of the land.

(C) Points for leveraged assistance will be awarded in accordance with the following table. Percentages will be rounded to the nearest whole number, rounding up at .50 and above and down at .49 and below. For example, 25.50 becomes 26; 25.49 becomes 25. If the total percentage of leveraged assistance is less than ten percent, and it includes donated land, two points will be awarded for the donated land.

Percentage	Points
75 or more	20
60–74	18
50–59	16
40–49	12
30–39	10
20–29	8
10–19	5
0–9	0
Donated land in proposals with less than ten percent total leveraged assistance	2

(ii) The loan request is in support of an Agency initiative announced in NOFA. (10 points)

(iii) Seasonal, temporary, or migrant housing. (5 points for up to and including 50 percent of the units; 10 points for 51 percent or more)

(iv) For Fiscal Year 1999 and Fiscal Year 2000 funding cycles, outstanding applications or requests that were issued an AD–622, ''Notice of Preapplication Review Action,'' inviting a formal application, or had been reviewed and authorized by the National Office prior to October 29, 1998. (15 points)

(2) The Agency will rank preapplications by point score. For point-score ties within the State, rank order will be determined by giving first preference to the application with the greatest actual percentage of leveraged assistance. In case of further same-State ties, rank order will be determined by lottery.

(d) *Selection of preapplications for further processing.* (1) States will make a preliminary eligibility and feasibility assessment, score and rank the preapplications, and provide this information to the National Office with their review comments.

(2) The National Office will rank the preapplications nationwide. In case of point-score ties in the National ranking, first preference will be given to a preapplication to develop units in a state that does not have existing RHS-financed off-farm LH units; second preference to a preapplication from a State that has not yet been selected in the current funding cycle. In the event there are multiple preapplications in either category, one preapplication from each State (the highest State-ranked) will compete by computer-based random lottery. If necessary, the process will be completed until all same-pointed preapplications are selected or funds are exhausted.

(3) The Agency will not select a preapplication for a new LH loan in an area with competing or problem projects when:

(i) The Agency has selected another LH proposal in the same market area for further processing;

(ii) A previously authorized or approved Agency, HUD, or similar assisted MFH project in the same market area serving farmworkers has not been completed or reached its projected occupancy level; or

(iii) An existing Agency, HUD, or similar assisted MFH project in the same market area serving farmworkers is experiencing high vacancy levels, unless such vacancy is planned as part of the occupancy cycle of a seasonally-operated migrant farmworker facility.

(4) If any selected preapplications cannot meet the processing deadlines established by the Agency to enable processing and fund obligation within the current funding cycle, or if requested leveraged funds are not committed within the timeframe established in NOFA, the Agency will select the next ranked preapplication for processing.

(e) *Notification to applicants.* States will notify all applicants of the results of the selection process.

(1) Applicants selected for further processing will be notified and processed in accordance with this section and § 1944.171.

(2) Project proposals not selected for further processing, including incomplete proposals or those that failed to meet NOFA requirements, or those

that could not be reached because of insufficient funds, will be returned to the applicant with the reason they were not selected.

(f) *Actions by State Director.* (1) If the applicant is an organization adopting without change the ''Articles and Bylaws'' prescribed by State supplements, the preapplication need not be submitted to OGC.

(2) In all other cases involving loans or grants to organizations, the docket, with any questions or comments of the State Director, will be submitted to OGC for a preliminary opinion as to whether the applicant and the proposed loan meet or can meet the requirements of State law and this subpart.

(3) An original and one copy of the appropriate environmental review document required by subpart G of part 1940 of this chapter must be completed prior to submitting the docket to the National Office for review.

(4) In cases not receiving a National Office review, the following statement is to be added to the Form AD–622: ''You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered, or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process in accordance with subpart G of part 1940 of this chapter must occur prior to loan approval. The issuance of this review action does not constitute site approval.''

(5) *Determining amount of grant.* (i) *General.* The State Director will determine the amount the applicant can obtain from other sources, including an LH loan, and the amount of the grant to be made, within the limits set forth in § 1944.164(b). The State Director will make this determination after thoroughly analyzing the information in the docket and receiving authorization from the National Office.

(ii) Method of determining amount of grant. (A) The State Director will examine the income of the project based on the estimated rental charges and operating costs of the housing when in full operation to determine the soundness of the operations. When there is any doubt as to the probable soundness due to unrealistic planning of income or operating expenses, or for other reasons, the housing project and its operation will be discussed with the applicant to determine changes which can be made to correct the deficiencies.

(B) When a sound plan of operation has been agreed upon, the State Director will determine the amount of funds that can be expected to be available from other sources, including a LH loan. The State Director will also determine the amount of income available for loan repayments after allowing for reasonable and necessary maintenance costs, payments on debts of the applicant, and the orderly accumulation of an adequate reserve.

(C) The amount of the grants will be the difference between the amount of funds to be provided in accordance with paragraph (f)(5)(ii)(A) of this section, plus any funds available from the applicant's own resources and the total development cost of the project. In no case, however, may the amount of the grant exceed 90 percent of the total development cost.

(6) When the State Director considers it necessary, any preapplication may be sent to the National Office for evaluation and instructions.

[48 FR 200, Jan. 4, 1983, as amended at 53 FR 36267, Sept. 19, 1988; 55 FR 13503, Apr. 11, 1990; 55 FR 25077, June 20, 1990; 58 FR 40951, July 30, 1993; 61 FR 39851, July 31, 1996; 64 FR 24480, May 6, 1999]

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

(a) *Information needed.* If the applicant has been requested to file an application, SF 424.2 (for application submission), and the additional information as outlined in exhibit A–1 or A–2, as applicable, will be submitted to the District Director.

(b) *District Director's responsibility.* As the information for the loan docket is being developed, the District Director will work closely with the applicant. The District Director will review and verify the information furnished for correctness, adequacy, and completeness. The District Director will determine that the market survey is adequate and that the market survey report is accurate. The District Director will evaluate the manner in which the applicant plans to conduct its business

and financial affairs and comment on the adequacy of the management.

(c) *County Committee certification.* County Committees will not be used to review LH loan and/or grant applications.

(d) *Assembly, review, and distribution of complete loan and/or grant docket items.* When all items required for the complete loan and/or grant docket have been furnished, they will be examined thoroughly by the FmHA or its successor agency under Public Law 103–354 official who will approve the loan and/or grant to make sure they are properly and accurately prepared and are complete in all aspects, including dates and signatures. The loan and/or grant docket items will be assembled in the following order for distribution after approval:

Form No.	Name of form or document	Total No. of copies	Signed by borrower	Number for docket	Copy for borrower
Exhibit A–1 (or exhibit A–2)[2].	Information to be Submitted for Labor Housing (LH) Loan or Grant.	2	0	1–O	1–C
	Memorandum from the National Office authorizing development of loan docket and loan or grant approval if required by § 1944.170(c).[2]	1		1–O	
AD–622	Notice or Preapplication Review Action.	3		2–C	1–O
SF 424.2	Application for Federal Assistance ((For Construction) (for application submission).	3	1	2–O and 1C	1–C
1910–11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.	2	1	1–O	1–C
Exhibit A–1 (or exhibit A–2)[2].	Information to be Submitted for an LH Loan or Grant.	2	0	1–O	1–C
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
FmHA 400–1	Equal Opportunity Agreement	2		1–O	1–C
FmHA 400–3[2]	Notice to Contractors and Applicants	3		2–O and 1C	1–C
FmHA 400–4	Assurance Agreement	2	1	1	1
FmHA 400–6[2]	Compliance Statement	3		2–O and 1C	1–C
HUD 935.2	Affirmative Fair Housing Marketing Plan.	2		2–O and 1C	
	Evidence of Legal Authority (copies or citation of specific provisions of State constitution and statutory authority).[2]	2	1	1–O	1–C
	Appraisal report with attachments	1		1–O	
FmHA 1940–20[2]	Request for Environmental Information.	1	1	1–O	
FmHA 1940–21	Environmental Assessment For Class I Actions.	1		1–O	
FmHA 1940–22[2]	Environmental Checklist For Categorical Exclusions.	1		1–O	1
Exhibit H Subpart G of Part 1940[2].	Class II Environmental Assessment	1		1–O	1
FmHA 426–1	Valuation of Buildings	1		1–O	
FmHA 440–9[2]	Supplementary Payment Agreement	2	1	1–O	1–C
Other Loan Docket Items. Preliminary Title Opinion or a title insurance binder, and a copy of deed, purchase contract, or other instrument of ownership, or an option.					
	Proof of Organization (certified copy of charter or articles of incorporation)[1].	2	1	1–O	1–C
	Certified copies of bylaws or regulations[1].	2	1	1–O	1–C
	List of names and addresses of officers, directors, and members and membership interest held by each.[1]	2	1	1–O	1–C
	Certified copy of Loan Resolution[1]	1	1	1–O	1–C
	Loan Agreement[2]	2	1	1–O	1–C

Form No.	Name of form or document	Total No. of copies	Signed by borrower	Number for docket	Copy for borrower
	Survey of land given as security, plans, specifications, cost estimates, and proposed manner of construction.[2]	2	1	1–O	1–C
Exhibit A–5[2]	Statement of Budget and cash flow	2	1	1–O	1–C
FmHA 431–2[2]	Farm and Home Plan	2	1	1–O	1–C

When applicable, include copy of lease or occupancy agreement to be used, report of lien search, option or foreclosure notice agreement, and items of information concerning prior mortgage(s). For subsequent loans made in conjunction with transfers to nonprofit corporations or public agencies to avert prepayment, follow the additional directions in § 1965.65(f) of subpart B of part 1965 of this chapter. For advances made to nonprofit corporations or public agencies to avert prepayment, follow the directions in § 1965.217 of subpart E of part 1965 of this chapter.

[1] When applicant is an organization.
[2] When applicable.

(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.

(f) *Submission of docket to National Office.* The final loan and/or grant docket need not be submitted to the National Office unless required by an authorizing memorandum resulting from compliance with § 1944.170.

(g) *Announcement.* When it is determined that a loan and/or grant can be approved, project information will be prepared in accordance with FmHA Instruction 2015–C which is available in the FmHA or its successor agency under Public Law 103–354 State and National Offices.

(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 or its successor agency under Public Law 103–354 1944–50.

[45 FR 47655, July 16, 1980, as amended at 47 FR 36414, Aug. 20, 1982; 49 FR 3762, Jan. 30, 1984; 50 FR 8591, Mar. 4, 1985; 54 FR 29332, July 12, 1989; 55 FR 13503, Apr. 11, 1990; 58 FR 38923, July 21, 1993]

§ 1944.172 [Reserved]

§ 1944.173 Loan and grant approval—delegation of authority.

The State Director and District Director are authorized to approve loans and/or grants in accordance with this subpart and subpart A of part 1901 of this chapter. The State Director may delegate loan or grant approval in writing to State Office employees other than District Directors. No LH grant may be approved by the State Director without the prior consent of the National Office.

(a) *Action before loan or grant approval.* The loan or grant approval official is responsible for reviewing the docket to determine that the proposed loan and/or grant complies with all pertinent regulations, instructions, and directives. In making this review, the approval official will determine that:

(1) The applicant is eligible.

(2) The funds are requested for authorized purposes.

(3) The proposed loan or grant is sound.

(4) The security is adequate for the loan.

(5) All preapproval requirements have been met.

(6) Compliance with title VI of the Civil Rights Act will be met.

(7) All other requirements will be met.

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

(1) The approving official will prepare and sign Form FmHA or its successor agency under Public Law 103–354 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 or its successor agency under Public Law 103–354 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 or its successor agency under Public Law 103–354 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 or its successor agency under Public Law 103–354 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 or its successor agency under Public Law 103–354 1944–57. Form FmHA or its successor agency under Public Law 103–354 1944–57 will be prepared and distributed in accordance with the FMI.

(5) Form FmHA or its successor agency under Public Law 103–354 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 or its successor agency under Public Law 103–354 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 or its successor agency under Public Law 103–354 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.

(c) *Disapproval of or adverse action on a loan or grant.* When a loan and/or

grant is disapproved or if adverse action is taken, the reasons for such action will be shown on the original Form FmHA or its successor agency under Public Law 103–354 1944–51. Form FmHA or its successor agency under Public Law 103–354 1944–51 will be initialed and dated. The District Director will notify the applicant in writing of the disapproval of or adverse action on the loan or grant and the reasons therefore and advise them of their right to appeal in accordance with subpart B of part 1900 of this chapter. The disapproved docket will then be handled in accordance with Form FmHA or its successor agency under Public Law 103–354 Instruction 2033–A which is available in any FmHA or its successor agency under Public Law 103–354 office. Any appeals as a result of disapproval or adverse action will be handled in accordance with subpart B of part 1900 of this chapter.

[45 FR 47655, July 16, 1980, as amended at 50 FR 8591, Mar. 4, 1985]

§ 1944.174 Distribution of loan and/or grant approval documents.

For a loan to an organization, or in special cases, the approved loan or grant docket, including any title evidence, will be sent to OGC by the State Office for preparation of closing instructions and any special legal documents required for closing. The original executed, witnessed loan and grant resolution, or a certified copy of the required loan and grant resolution must be supplied by the applicant in time to be included in the loan or grant docket. If applicable, the docket will also include the proposed grant agreement for OGC review. No docket will be considered which fails to include such a required resolution or proposed agreement. OGC will route the docket, including closing instructions and any such legal documents, to the District Office through the State Office for review and for inclusion of any further instructions needed in closing the loan.

[45 FR 47655, July 16, 1980, as amended at 47 FR 54423, Dec. 3, 1982]

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

(a) *Interim financing from commercial sources.* Interim financing may be used when a loan or combination loan and grant exceeds $50,000 provided funds can be borrowed at reasonable interest rates from commercial sources for the construction period. When interim commercial financing is used:

(1) The docket will be processed to the stage where the FmHA or its successor agency under Public Law 103–354 loan or combination loan and grant would normally be closed. FmHA or its successor agency under Public Law 103–354 loan or combination loan and grant funds will be obligated before the applicant proceeds with the final arrangements for interim commercial financing.

(2) The State Director or District Director may deliver a copy of Form FmHA or its successor agency under Public Law 103–354 1944–57 as evidence of FmHA or its successor agency under Public Law 103–354 commitment, if necessary, or a letter stating that funds in specified amounts have been obligated and will be available to retire the interim financing if the applicant complies with the approval conditions. See exhibit I of this subpart for a sample letter that may be used.

(3) FmHA or its successor agency under Public Law 103–354 will undertake similar functions as if FmHA or its successor agency under Public Law 103–354 funds had been advanced from the standpoint of approving construction contracts and the monitoring of construction.

(4) The supervised bank account will normally not be used for funds obtained through interim commercial financing. However, the District Director will approve Form FmHA or its successor agency under Public Law 103–354 1924–18, ''Partial Payment Estimate,'' to insure that funds are used for authorized purposes.

(5) When the interim financing funds have been expended, the FmHA or its successor agency under Public Law 103–354 loan or combination loan and grant will be closed and permanent instruments will be issued to evidence the FmHA or its successor agency under Public Law 103–354 indebtedness. The FmHA or its successor agency under Public Law 103–354 loan or combination loan and grant proceeds will be used to

retire the interim commercial indebtedness.

(6) Before the FmHA or its successor agency under Public Law 103–354 loan or combination loan and grant is closed, the applicant will be required to provide the district Director with statements from the contractor(s), engineer, and attorney that they have been paid in full in accordance with their contracts or other agreements and that there are no unpaid obligations outstanding in connection with the construction of the project. See in addition §1924.6 of subpart A of part 1924.

(b) *Multiple advances of LH loan and/or grant funds.* In the event FmHA or its successor agency under Public Law 103–354 provides grant only assistance, or if interim commercial financing is not available for a loan or combination loan and grant in excess of $50,000, multiple advances will be used subject to the following:

(1) When relatively large amounts of funds are to be expended for purchases of real estate or for other reasons at the time of closing, separate checks for such purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing such funds in the supervised bank account and reduce the amount of required collateral.

(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 or its successor agency under Public Law 103–354 440–11, ''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 or its successor agency under Public Law 103–354 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 or its successor agency under Public Law 103–354 440–11 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 or its successor agency under Public Law 103–354 440–11, 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 or its successor agency under Public Law 103–354 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.

(d) *Increase or decrease in the amount of the loan.* If it becomes necessary for the amount of the loan and/or grant to be increased or decreased before loan closing, the loan approval official or District Director will request that all distributed docket forms be returned to the District Office. The loan docket will be revised accordingly and reprocessed.

(e) [Reserved]

(f) *Handling the loan or grant check.* The loan or grant check will be handled in accordance with FmHA Instruction 2018–D, which is available in any FmHA or its successor agency under Public Law 103–354 office and subpart A of part 1902 of this chapter.

(g) *Property insurance.* Buildings will be insured in accordance with subpart A of part 1806 of this chapter (FmHA Instruction 426.1).

[45 FR 47655, July 16, 1980, as amended at 47 FR 36414, Aug. 20, 1982; 50 FR 8592, Mar. 4, 1985; 52 FR 8036, Mar. 13, 1987; 53 FR 26590, July 14, 1988; 54 FR 39728, Sept. 28, 1989; 56 FR 67482, Dec. 31, 1991; 59 FR 54788, 54789, Nov. 2, 1994; 68 FR 61331, Oct. 28, 2003]

§ 1944.176 Loan and/or grant closing.

(a) *Applicable instructions.* LH loans and/or grants will be closed in accordance with applicable provisions of subpart B of part 1927 of this chapter and State supplements. Loan dockets for an organization and loan dockets for an individual in special cases will be sent to OGC for additional closing instructions. A family farm corporation or partnership or an association of farmers applicant may use its attorney to close the loan in accordance with applicable loan closing instructions provided the attorney is not a member, officer, director, trustee, stockholder, or partner of the applicant entity. Nonprofit organizations may use an attorney who is a member of their organization. The cost incurred by the organization for legal services must be reasonable and competitive for the area.

(b) *LH grant agreement.* An LH grant agreement, prepared and authorized as provided in § 1944.164(e), will be dated and executed by the applicant on the date of grant closing. The executed agreement will be filed with the mortgage or other security instrument in the County Office case file.

(c) *LH loan agreement.* A LH loan agreement, prepared and authorized as provided in § 1944.164 (g) of this subpart will be dated and executed by the applicant on the date of loan approval. The executed agreement will be filed with the mortgage or other security instrument in the District Office case file.

(d) *Mortgage.* Unless the OGC determines the Form to be inappropriate, real estate mortgage Form FmHA or its successor agency under Public Law 103–354 1927–1 (state), ''Real Estate Mortgage for _____,'' will be used. For loans and/or grants to organizations, Form FmHA or its successor agency under Public Law 103–354 1927–1 will be modified as prescribed by or with the advice of the OGC with respect to the name, address, and other identification of the borrower, style of execution, acknowledgement, and any other provisions.

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

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

(2) For all LH loans, the restrictive-use provisions contained in exhibit A–1 of subpart E of part 1965 of this chapter will be included in the mortgage.

(3) When a loan resolution or loan agreement is used, an additional paragraph will be included in the mortgage to read as follows:

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

(4) When the borrower is an organization the mortgage will include the following provision:

''Borrower will not require any occupant of the housing or related facilities, as a condition of occupancy, to work or be employed on any particular farm or other place, or work for or be employed by any particular person, firm, or interest.''

(5) For a grant made at the same time as an LH loan, the mortgage securing the loan will contain a provision making it also secure the applicant's obligations under the LH grant agreement. For a grant not made at the same time as an LH loan, the type of security instrument will be determined by the National Office based upon the State Director's recommendation and the advice of OGC.

(e) *Promissory note.* (1) Form FmHA or its successor agency under Public Law 103–354 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 or its successor agency under Public Law 103–354 440–9.

(2) The note will be dated the date of loan closing as authorized in subpart B of part 1927 of this chapter.

(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 or its successor agency under Public Law 103–354 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 or its successor agency under Public Law 103–354 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 or its successor agency under Public Law 103–354 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 subpart B of part 1927 of this chapter 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.

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

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

(2) After the loan and/or grant is closed, the account and case folder will be established in accordance with applicable FmHA or its successor agency under Public Law 103–354 regulations (FmHA Instruction 1905–A which is available in any FmHA or its successor agency under Public Law 103–354 office and FmHA Instruction 2033–A which is available in the FmHA or its successor agency under Public Law 103–354 State and National Offices.)

[45 FR 47655, July 16, 1980 as amended at 50 FR 8592, Mar. 4, 1985; 51 FR 12308, Apr. 10, 1986; 52 FR 24288, June 30, 1987; 56 FR 67482, Dec. 31, 1991; 57 FR 59904, Dec. 17, 1992; 58 FR 38923, July 21, 1993]

§ 1944.177 Coding loans and grants as to initial or subsequent.

A borrower may obtain financing for more than one project. Each project will be coded as an initial loan or grant when the total number of units are built or purchased at one place at one time. A subsequent loan or grant will be so coded when an additional loan or grant is necessary to complete the units planned with the initial loan or grant. As an example, the borrower may obtain initial loans or grant for more than one project in the same district, in different counties under the same District Office jurisdiction, or in more than one District Office jurisdiction. Codes to be used will be in accordance with the FMI for Forms FmHA 1944–51 and FmHA 1944–57.

[45 FR 47655, July 16, 1980 as amended at 50 FR 8593, Mar. 4, 1985]

§ 1944.178 Complaints regarding discrimination in use and occupancy of Labor housing.

Any tenant or prospective tenant seeking occupancy or use of LH or related facilities who believes he/she has been discriminated against because of age, race, color, religion, sex, marital or familial status, handicap or National origin may file a complaint in person with, or by mail to the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD), Washington, DC, 20410, or any HUD Office, or to the Secretary of Agriculture, Washington, DC. If the complaint is made to an FmHA or its successor agency under Public Law 103–354 county, district or State office, it must be directed to the Director of Equal Opportunity Staff, National Office, by the FmHA or its successor agency under Public Law 103–354 employee in charge of that office. When a complaint is sent to FmHA or its successor agency under Public Law 103–354-EOS by a county or district office, the State Director will be made aware of the complaint.

(a) Personnel in FmHA or its successor agency under Public Law 103–354 field offices will provide assistance to the aggrieved party when filling out required forms and filing a complaint.

(b) Each complaint must contain the following information:

(1) The name and address of the respondent.

(2) The name and address of the aggrieved person.

(3) A description and the address of the dwelling which is involved, if appropriate.

(4) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

(c) Participants in FmHA or its successor agency under Public Law 103–354's housing program failing to comply with the requirements of title VIII, as amended of the Civil Rights Act of 1968, and the respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanction authorized by law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made. All complaints will be handled in accordance with prescribed procedure.

[55 FR 6244, Feb. 22, 1990]

§§ 1944.179–1944.180 [Reserved]

§ 1944.181 Loan servicing.

(a) For general purposes, LH loans and grants will be serviced in accordance with this subpart B of part 1924, subpart C of part 1930, and subpart D of part 1944 of this chapter. Requests for rent increases will be processed in accordance with exhibit C of subpart C of part 1930 of this chapter for nonprofit organizations.

(b) For special servicing of LH loans when the Loan Agreement was waived. There will be many instances where the loan agreement was waived because of a loan agreement waiver provision in this regulation that was in effect for more than 10 years. As a result of regulation change, the State Director shall notify all LH loan farm borrowers within 180 days of the effective date of this regulation, that such labor housing borrowers will be:

(1) Requested to sign a loan agreement;

(2) Required to report tenant occupancy, at least annually (reference exhibit K–1 of this subpart); and

(3) Provided with exhibit K–1 of this subpart.

(i) The above action need not be completed: If there is existing servicing action where a management agreement exists and such agreement is sufficient to satisfy the notification items, or; If there is a pre-existing loan agreement, and paragraphs (b) (2) and (3) of this section are addressed. If the existing loan agreement does not include annual occupancy reporting, then the borrower must be notified in accordance with paragraphs (b) (2) and (3) of this section.

(ii) [Reserved]

(c) All special servicing needs for LH loans to farm borrowers should be incorporated in a management agreement in addition to a loan agreement. Examples of special servicing needs are: When the housing is temporarily not needed for farm laborers; When rent is being charged; When occupied by ineligibles, or; When farmers share housing costs with the borrower in exchange for the occupant(s) labor. The use of a management agreement is not limited to the examples cited. Whenever the management agreement is for a purpose unrelated to agriculture, the farmer should understand that the housing should be returned to the original loan purpose as soon as practical. A final consideration in loan servicing should be to sell the Labor Housing outside of the program when the farmer can no longer use the housing in his farming operation.

[57 FR 59904, Dec. 17, 1992, as amended at 68 FR 61331, Oct. 28, 2003]

§ 1944.182 Rental assistance.

Rental assistance may be provided to eligible tenants in LH projects in accordance with exhibit E of subpart C of part 1930 of this chapter. Income will be verified for LH tenants requesting rental assistance from all easily identifiable sources by using Form FmHA or its successor agency under Public Law 103–354 1910–5, ''Request for Verification of Employment.'' Income or portions of income from sources that are not known or not easily contacted will be verified from the best information obtainable. This may include copies of payroll records, tenant's own records, contacts with individuals who may be knowledgeable of the tenant's income, or, if no other verifiable data is available, a notarized affidavit from the tenant attesting to his/her previous year's income. The borrower and tenant will execute Form FmHA or its successor agency under Public Law 103–354 1944–8, ''Tenant Certification.'' The borrower will be expected to certify only that the income is correctly stated based on the best information available. The borrower will be expected to have the tenants that occupy the project year round and do not have easily verifiable income report monthly income to enable accurate income certification at the end of one year of occupancy.

[45 FR 47655, July 16, 1980, as amended at 45 FR 70777, Oct. 27, 1980; 48 FR 6697, Feb. 15, 1983; 50 FR 16056, Apr. 24, 1985; 51 FR 27670, Aug. 1, 1986]

§ 1944.183 Exception authority.

The Administrator of the Farmers Home Administration or its successor agency under Public Law 103–354 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 immediate health or safety of the tenants or the community. The Administrator will exercise the authority only at the request of the State Director. The State 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.

§§ 1944.184–1944.199 [Reserved]

§ 1944.200 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0045. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 150 hours per response, with an average of 11 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0045), Washington, DC 20503.

[57 FR 59905, Dec. 17, 1992]

EXHIBIT A TO SUBPART D OF PART 1944—LABOR HOUSING LOAN AND GRANT APPLICATION HANDBOOK

Introduction

The section 514 Labor Housing loan and section 516 Labor Housing grant programs are administered by the Rural Development's Rural Housing Service (RHS), herein referred to as the Agency. Interested parties are advised to contact any Rural Development office processing Labor Housing (LH) loans and grants to obtain information on program and application requirements prior to developing an application. Notice of Funds Availability (NOFA) for off-farm facilities will be announced annually in the Federal Register, along with application requirements and the deadline for applying. Requests received during the application period will be selected competitively, based on the objective selection criteria in the regulation and announced in the NOFA. Applications for on-farm facilities are accepted any time during the year and are funded on a first-come, first-served basis, based on the availability of funds.

Payments for technical assistance incurred by a nonprofit group or public body applicant entity for developing and packaging an application will be reimbursed with loan and grant funds. If the services are performed, the proceeds will be limited and must be documented. The reimbursable costs should be negotiated and approved by the Agency in advance of the applicant entity's process of packaging and developing a preapplication. Based upon what is typical in the area, the Agency will respond in writing approving the packaging plan and a range of costs in advance.

Applicants should also be aware that rental assistance (RA) subsidies are available to eligible projects to reduce rents for very low- and low-income farmworkers. RA may be used in conjunction with LH grants to develop feasible LH projects to meet local farmworker housing needs. When at all possible, applicants should consider the use of RA in lieu of a full 90% grant for LH projects with year-round occupancy.

[45 FR 47655, July 16, 1980, as amended at 51 FR 27670, Aug. 1, 1986; 60 FR 4070, Jan. 20, 1995; 64 FR 24482, May 6, 1999]

EXHIBIT A–1 TO SUBPART D OF PART 1944—INFORMATION TO BE SUBMITTED BY ORGANIZATIONS AND ASSOCIATIONS OF FARMERS FOR LABOR HOUSING LOAN OR GRANT

I. INFORMATION TO BE SUBMITTED WITH SF 424.2 (FOR PREAPPLICATION SUBMISSION).

A. ELIGIBILITY.

1. Financial Statement—A current, dated, and signed financial statement showing assets and liabilities with information on the repayment schedule and status of all debts. If the applicant is an association of farmers, a current financial statement will also be required from each member who holds an interest in the association in excess of 10 percent. If the applicant is a limited partnership, financial statements are required from each general partner who holds an interest in the organization, and from each limited partner who will have 10 percent or more ownership. The financial statement must reflect sufficient financial capacity to meet the initial operating capital requirements. Loan or grant funds may be used to provide

the required initial operating capital for nonprofit entities and State or local public agencies. If the applicant is a limited partnership, the financial statement must also demonstrate sufficient capacity to meet the applicant's equity contribution.

2. All applicants, except State and local public agencies, must provide evidence that they are unable to obtain credit from other sources. Letters from credit institutions who normally provide real estate loans in the area should be obtained and these letters should indicate the rates and terms upon which a loan might be provided.

3. If a Labor Housing (LH) grant is requested, the applicant should provide a statement on their projected use of Rental Assistance (RA) and their need for a LH grant. This statement should include preliminary estimates of the rents required with and without a grant and the relative need for a grant if RA is provided to supplement market rents for eligible farmworkers. [LH grants and RA are not available to associations of farmers; LH grants are not available to limited partnerships.]

4. A statement of the applicant's experience in operating LH or other rental housing. If the applicant's experience is limited, additional information should be provided to indicate how the applicant plans to compensate for this limited experience. (i.e., obtaining assistance and advice of a management firm, non-profit group, public agency, or other organization which is experienced in rental management and will be available on a continuous basis).

5. A brief statement explaining the applicant's proposed method of operation and management. This does not have to be a full-fledged management plan, as outlined by exhibit B of this subpart; however, it should generally explain how the applicant proposes to operate the facility. (i.e., on-site manager, contracting for management services, etc.).

6. Applicants must provide a copy of or an accurate citation to the special provisions of State law under which the applicant is or is to be organized, a copy of the applicant's charter, Articles of Incorporation, bylaws, and other basic authorizing documents; names, occupations, and addresses of the applicant's members, directors, and officers; and, if a member or subsidiary of another organization, its name, address, and principal business.

B. NEED AND DEMAND.

A preliminary survey should be conducted to identify the supply and demand for LH in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. The applicant must provide documentation to justify need within the intended market area. The market survey should address or include the following items:

1. The annual income level of farmworker families in the area and the probable income of those farmworkers who are most apt to occupy the proposed unit.

2. A realistic estimate of the number of farmworkers who are home-based in the area and the number of farmworkers who normally migrate into the area. Information on migratory workers should indicate the average number of months the migrants reside in the area and an indication of what type of family groups are represented by the migrants (i.e., single individuals as opposed to families). Much of this information may be available from the local office of the Rural Manpower Services section of the Department of Employment Services.

3. General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers (i.e., prospects for mechanization, etc.). Information may be available from the local U.S. Department of Agriculture (USDA) Cooperative, State, Research, Education and Extension Service office or from the Farm Service Agency.

4. The overall occupancy rate for comparable rental units in the area and rents charged and customary rental practices for these units (i.e., will they rent to large families, do they require annual leases, etc.). This information may be available from census data, local planning organizations, or local housing authorities.

5. The number, condition, adequacy, ownership and rental rates for units currently used or available to farmworkers. This information may be available from local farmworker advocacy groups, Rural Manpower Services, or social service agencies.

6. A description of the units proposed, including number, type, size, rental rates, amenities such as carpets and drapes, related facilities such as a laundry room or community room and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants such as a health clinic or day care facility; estimated development timeline; estimated total development cost and applicant contribution. If the application includes leveraged funds, include documentation of the dollar amount, source, and commitment status.

NOTE: The market survey is one of the most important determinates of the overall feasibility of the proposed project. Therefore, the applicant may wish to do a more detailed study of the market in accordance with item II J below. Endorsement of the proposal by community leaders will not be required.

C. ENVIRONMENTAL INFORMATION.

The applicant will complete Form RD 1940–20, ''Request for Environmental Information,'' along with a description of anticipated environmental issues or concerns.

D. AFFIRMATIVE FAIR HOUSING MARKETING PLAN.

Each applicant will prepare and submit HUD 935.2, ''Affirmative Fair Housing Marketing Plan,'' where they propose developing five (5) or more units. The plan will reflect that occupancy is *not* limited to their employees and they will not discriminate on the basis of race, color, sex, age, handicap, marital or familial status or National origin in regard to the occupancy or use of these units.

E. ADDITIONAL INFORMATION.

1. Evidence of site control such as an option or sales contract; a map and description of the proposed site, including the availability of water, sewer, and utilities, and proximity to community facilities and services such as shopping, schools, transportation, doctors, dentists, and hospitals.

2. Preliminary plans and specifications, including plot plans, building layouts, and type of construction and materials.

3. A supportive services plan describing services that will be provided on-site or made available to tenants through cooperative agreements with service providers in the community, such as a health clinic or day care facility. Off-site services must be accessible and affordable to farmworkers and their families. Letters of intent from service providers are acceptable documentation at the preapplication stage.

II. INFORMATION TO BE SUBMITTED WITH SF 424.2 (FOR APPLICATION SUBMISSION).

A. After the applicant has received the signed SF 424.2 authorizing the applicant to proceed to develop a final application, the applicant and the applicant's architect should meet with the FmHA or its successor agency under Public Law 103–354 architect/engineer and other officials responsible for loan processing. During this preprocessing meeting, FmHA or its successor agency under Public Law 103–354 will discuss the services which the applicant's architect will be expected to provide and will also explain the items needed to complete the final application such as Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information,'' if not previously submitted in the preapplication stage.

If after the preprocessing meeting the applicant believes that the Labor Housing (LH) project can be developed within the guidelines required by FmHA or its successor agency under Public Law 103–354, the following information should be submitted with SF 424.2:

B. If applicable, evidence of compliance with 7 CFR part 3015 subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities.'' See FmHA Instruction 1940–J, available in any FmHA or its successor agency under Public Law 103–354 office.

C. Proposed contracts for architectural, engineering, and legal services as applicable. FmHA or its successor agency under Public Law 103–354 approval of these contracts should be obtained before execution of the contract.

D. A plot plan and detailed preliminary drawings and specifications prepared in accordance with subpart A of part 1924 of this chapter. Exhibit A–3 provides FmHA or its successor agency under Public Law 103–354's general philosophy and standards concerning the construction of LH facilities.

E. A detailed cost breakdown of the project for items such as land purchase, right-of-ways, building construction, equipment, utility connections, on-site improvements, architectural and/or engineering services, and legal services. Also, if applicable, the cost breakdown should include the costs incurred for the development and packaging of its own application. These costs may range from 2 to 4 percent of total development cost (excluding initial operating and capital expenses) and should reflect costs that are reasonable and typical for the area. Costs in excess of 4 percent will not be reimbursed. If an LH grant is proposed, construction will be subject to the provisions of the Davis-Bacon and related Acts. LH grant applications should, therefore, obtain a copy of the Department of Labor regulations (29 CFR part 5), which contain the applicable labor standards provisions.

F. Satisfactory evidence of review and approval of the proposed housing, including compliance with zoning requirements by State and local officials, as required by applicable State or local laws, ordinances, or regulations.

G. If not already provided in the preapplication submittal, a map of the proposed site showing the location of the site in relation to available facilities such as schools, shopping, churches, hospitals, etc. In addition, supporting information should be provided indicating that essential utilities such as sewer, water, electricity, etc., will be available to the project. (See exhibit A–3 for FmHA or its successor agency under Public Law 103–354's general requirements for location of LH facilities).

H. A description of and justification for any related facilities such as community or multi-purpose type buildings, cafeterias, dining halls, infirmaries, child care facilities, etc. To be included for funding by FmHA or its successor agency under Public Law 103–

354, the facilities should not be of extravagant design and their size must be commensurate with the needs of the farmworkers who will occupy the housing facility. Any long-term agreements which are contemplated with other agencies for services such as manpower training, migrant health services, child care, and education programs should be explained and included as justification for the related facilities.

I. A detailed market analysis addressing in detail the preapplication information required under item I B above, ''Need and Demand,'' should be conducted in accordance with the following:

1. The market area (i.e., the area from which tenants can reasonably be drawn for the project) should be clearly identified.

2. Adequate existing units which are currently available or which could become available should be surveyed and information obtained and recorded in a format similar to exhibit A–4.

3. Individual farmworkers and farmworker groups should be contacted and their ideas obtained concerning the type of housing which would gain the greatest acceptance. (This information may not seem important at the outset of the loan if there is a pressing need for LH, however, to assure a long-term demand for the project, consideration should be given to the views of the prospective tenants).

4. The above items should then be correlated to arrive at a realistic estimate of the total need for units, type of units, estimated occupancy, maximum rental rates which can be charged for the units, and the type of amenities or related facilities which should be provided.

J. Proposed, detailed operating budgets for: (1) The first year of operation, and (2) a typical year's operation. The overall percentage of occupancy should be based upon the data collected in the market analysis. Operating costs should be realistic and should reflect somewhat higher than normal maintenance costs and an allowance for the establishment of a reserve as required by the loan agreement. The budget should be prepared in a format similar to exhibit A–5.

K. A management plan which includes the applicable items of exhibit B.

L. When the loan is to be secured by a junior real estate lien, certain agreements will be required from prior lien holders. The local or State FmHA or its successor agency under Public Law 103–354 Official will provide the applicable agreements.

M. An option to purchase or other evidence of ability to purchase or evidence of ownership for the proposed site.

III. SUBMISSION OF FINAL APPLICATION.

When the final application is assembled it should be submitted to the local FmHA or its successor agency under Public Law 103–354 District Office for review and submission to the State Office. As soon as a final decision to approve the loan is reached, the applicant will be notified and advised to proceed with the preparation of final plans and specifications, contract documents, and other items needed to close the loan. *The applicant should not proceed with bid advertisement or contract awards until advised to proceed by FmHA or its successor agency under Public Law 103–354.*

[45 FR 47655, July 16, 1980, as amended at 48 FR 29121, June 24, 1983; 49 FR 3762, Jan. 30, 1984; 53 FR 36268, Sept. 19, 1988; 55 FR 6245, Feb. 22, 1990; 55 FR 13503 and 13504, Apr. 11, 1990; 60 FR 4070, Jan. 20, 1995; 61 FR 56116, Oct. 31, 1996; 64 FR 24482, May 6, 1999]

EXHIBIT A–2 TO SUBPART D OF PART 1944—INFORMATION TO BE SUBMITTED BY INDIVIDUALS, FARMOWNERS AND FAMILY FARM CORPORATIONS OR PARTNERSHIPS FOR LABOR HOUSING LOANS

I. INFORMATION TO BE SUBMITTED BY INDIVIDUALS, FARMOWNERS AND FAMILY FARM CORPORATION OR PARTNERSHIPS FOR LABOR HOUSING LOANS.

A. *Financial Statement.* Show assets and liabilities of the applicant, each individual farmer, and each farming partnership or corporation of which the individuals are members. Each statement must be signed and dated. Financial statements of family farm corporation or partnership members with less than a ten percent corporate or partnership interest need not be submitted to FmHA or its successor agency under Public Law 103–354.

B. *Other Credit.* All applicants must provide evidence that they are unable to obtain credit from other sources. Applicants should attach letters showing what rates, terms and conditions are available for the project from private credit sources. In seeking other credit, the assets and personal liability of each of the members must be offered if the applicant is a family farm corporation or partnership.

C. *Experience.* Describe the experience of each *member* in owning or operating labor or rental housing. If limited, describe other business experience.

D. *Operation.* Describe the proposed operation of the housing and its relationship to the farm operation. Include the proposed method of tenant selection, unit maintenances, determining rental charges (if any), payment of utilities, etc.

E. *Need.* Describe the farming operations in which the laborers to be housed in the units will be used. Include acreages of each crop or details of other operations. Discuss present laborers and their living arrangements and

the number and condition of labor housing now provided.

F. *Continuing Need.* Discuss any possible changes in mechanization or shifts to other farm products that might decrease the need for labor housing in the future.

G. *Proposed Security.* If a mortgage is not being given on the entire farm, explain why not and describe the sites proposed as security. Attach a map showing the site locations, shopping areas, schools, doctors, hospitals, nearest public water and sewer system, and school bus stop.

H. *Proposed Project.* Describe the housing proposed to be bought or built (specify which) and the estimated cost. If building sites are to be purchased, show the cost of each. Attach any options available. List any other expenses expected. Show the total cost, the loan requested, and the applicant contribution.

I. *Environmental Information.* The District Office will advise the application of the applicability of FmHA or its successor agency under Public Law 103–354's environmental requirements under subpart G of part 1940 of this chapter which are primarily based on the size of the proposed project. If the preapplication must go to the National Office for approval, the applicant will complete Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information.'' The District Office will provide assistance and guidance to the applicant in completing this form.

J. Each applicant will prepare and submit HUD 935.2, ''Affirmative Fair Housing Marketing Plan'', where they propose developing five (5) or more units. The plan will reflect that occupancy is limited to their employees and that they will not discriminate on the basis of race, color, sex, age, handicap, marital or familial status or National origin.

II. Information to be submitted with SF 424.2 (for application submission).

A. *Supplemental.* Any information requested to clarify or augment information supplied earlier with the preapplication.

B. *Site.* Options to purchase or a copy of deeds and mortgages on sites already owned.

C. *Surveys.* When needed to identify the site, a current survey showing boundaries, geographical features, access to public roads, and public utility location.

D. *Plans, Specifications, and Proposed Contracts.* Attach one copy of each complete set of building plans and specifications and a bid or contract for construction. A complete site plan is also required.

E. *Environmental Information.* If not submitted with the preapplication, the applicant will complete Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information.''

[45 FR 47655, July 16, 1980, as amended at 49 FR 3762, Jan. 30, 1984; 53 FR 36268, Sept. 19, 1988; 55 FR 6245, Feb. 22, 1990; 55 FR 13503 and 13504, Apr. 11, 1990]

Exhibit A–3 to Subpart D of Part 1944—Labor Housing Construction Guidelines

I. Introduction:

This exhibit provides the Farmers Home Administration or its successor agency under Public Law 103–354's (FmHA's) general guidelines and policies concerning the planning, location, and construction of housing for farmworkers. The type of housing should be in accordance with the needs of the prospective tenants. Multi-family type units are encouraged whenever possible; however, when planning units for farmworker families, lower density building design and layout is normally desirable. Housing should be designed in such a manner that it will be decent, safe, sanitary, and modest in size and cost. Actual plans, specifications, and contract documents should be prepared in accordance with subpart A of part 1924.

II. Types of housing and appropriate standards

a. Single-family type housing is defined as an individual or a group of individual single family detached dwelling units. These type units should meet the following standards:

1. All sites shall be planned and constructed in accordance with subpart C of part 1924 of this chapter.

2. All planning and construction other than seasonal farm labor housing and housing to be occupied more than six months but less than year-round shall be in conformance with the applicable development standard as required by §1924.5(d)(1) of subpart A of part 1924 of this chapter and applicable state and local codes.

b. Multi-family type housing is defined as a project or a number of projects encompassing a building or buildings containing more than one dwelling unit and may include mixtures of detached and multi-unit structures in a project. These type units should meet the following standards:

1. All housing designed for year-round occupancy will be planned in compliance with the applicable development standard and will be compatible with conventional rental type housing.

2. Housing for seasonal occupancy (less than six months) shall be designed and constructed in accordance with exhibit I to subpart A of part 1924 of this chapter.

3. Housing to be occupied more than six months but less than year-round shall be designed and constructed in substantial conformance with and be easily converted to the applicable development standard requirements for year-round housing.

4. All planning and construction should be in conformance with applicable State and local codes.

[44 FR 59212, Oct. 15, 1979, as amended at 45 FR 39794, June 12, 1980; 47 FR 28086, June 29, 1982; 52 FR 8036, Mar. 13, 1987; 52 FR 19302, May 22, 1987]

EXHIBIT A–4 TO SUBPART D OF PART 1944—SURVEY OF EXISTING LABOR HOUSING

SURVEY OF EXISTING LABOR HOUSING Exhibit A-4

Name of Town _____ Date of Survey _____

Name and Address of Rental Units	Number, Size and Monthly Rent of Units in each Project								Project Type **	Age	Condition of Bldg.	Area
	*0 or 1 BR			2 BR		3 BR		4 or 5 Br				
	No.	Size	Rent	No.	Size	Rent	No.	Size Rent				

*Circle Applicable Type Units
If both 0 and 1 Br or 4 and 5 Br units in same project use two lines

** i.e. Number of stories; number of units per building in project. Identify architectural style

[44 FR 59213, Oct. 15, 1979]

EXHIBIT A–5 TO SUBPART D OF PART 1944—STATEMENT OF CASH FLOW

FmHA Instruction 1944-D
Exhibit A-5

EXHIBIT A-5--STATEMENT OF BUDGET AND CASH FLOW

Name of Borrower _____
Address _____
Project Location _____
Kind of Loan _____ Term of Loan _____ Interest Rate _____ Amount $_____

	1st Year	Typical Year	Typical Yr w/ Grant	Typical Yr w/o Grant
1. Total Operation and Maintanence Expense (From Reverse)				
2. Transfer to Reserve				
3. FmHA Payment				
4. Return to Ownership@-%				
5. Other Authorized Payments				
6. Authorized Capital Improvements				
7. Total Income Needed (Add lines 1-6)				
Other Income				
8. Laundry				
9. Interest				
10. Other (Specify)				
11. Total Other Income				
12. Rental Income Needed				
Rental Income				
13. ____Units@___month,week				
14. ____Units@___month,week				
15. ____Units@___month,week				
16. ____Units@___month,week				
17. Vacancy Allowance	( )	( )	( )	( )
18. Rental Income (Add lines 13-16 less 17)				
19. Excess of (Deficit) (lines 18 less 12)				

Certified Correct

_____ by _____
date Applicant's or Borrower's signature

OPERATION AND MAINTENANCE EXPENSES:	(1)	(2)	(3)	(4)
1. Salaries and Wages	$_____	$_____	$_____	$_____
Caretaker	$_____	$_____	$_____	$_____
Manager	$_____	$_____	$_____	$_____
2. Utilities	$_____	$_____	$_____	$_____
Water	$_____	$_____	$_____	$_____
Sewer	$_____	$_____	$_____	$_____
Gas	$_____	$_____	$_____	$_____
Electricity	$_____	$_____	$_____	$_____
Heating	$_____	$_____	$_____	$_____
Garbage and Trash Removal	$_____	$_____	$_____	$_____
Telephone	$_____	$_____	$_____	$_____
Other	$_____	$_____	$_____	$_____
3. Maintenance	$_____	$_____	$_____	$_____
Janitor's Supplies	$_____	$_____	$_____	$_____
Repairs	$_____	$_____	$_____	$_____
Building Equipment Repairs	$_____	$_____	$_____	$_____
Exterminating	$_____	$_____	$_____	$_____
Decorating	$_____	$_____	$_____	$_____
Grounds Maintenance	$_____	$_____	$_____	$_____
Furniture & Furnishing Replacements	$_____	$_____	$_____	$_____
Other	$_____	$_____	$_____	$_____
4. Insurance	$_____	$_____	$_____	$_____
Fire and Extended Coverage	$_____	$_____	$_____	$_____
Liability	$_____	$_____	$_____	$_____
Compensation	$_____	$_____	$_____	$_____
Other	$_____	$_____	$_____	$_____
5. Taxes	$_____	$_____	$_____	$_____
Real Estate	$_____	$_____	$_____	$_____
Social Security	$_____	$_____	$_____	$_____
Special Assessments	$_____	$_____	$_____	$_____
Income	$_____	$_____	$_____	$_____
Other	$_____	$_____	$_____	$_____
6. Other Expenses	$_____	$_____	$_____	$_____
Accounting	$_____	$_____	$_____	$_____
Legal	$_____	$_____	$_____	$_____
Advertising	$_____	$_____	$_____	$_____
Interest (FmHA)	$_____	$_____	$_____	$_____
Other Interest	$_____	$_____	$_____	$_____
7. Total Operation and Maintenance Expenses (Add Section 1 thru 6) (Total to Line 12 Front Side)	$_____	$_____	$_____	$_____

[44 FR 59214, Oct. 15, 1979, as amended at 48 FR 56174, Dec. 19, 1983]

EXHIBIT B TO SUBPART D OF PART 1944—MANAGEMENT PLANS

The management of a rental project, regardless of the type of tenants, is one of the most, if not the most, important determinants of the success or failure of a proposed project.

The management plan, therefore, as the primary management charter should constitute a comprehensive description of the detailed policies and procedures to be followed in managing the project and should as a minimum address the following items:

1. *Staffing.* The number, qualifications required, and duties of all personnel who will

be hired to operate the project. Equal employment opportunity should be provided and special consideration should be given to hiring Spanish-speaking persons if warranted by the expected occupancy. Roles and responsibilities of owner and of manager should be specified.

2. *Marketing.* The marketing efforts or techniques which will be used to obtain initial rent up and occupancy of future vacancies (i.e. advertisement, contacts with social service agencies, local farmers, etc.). Definite dates for opening and closing of the project will be spelled out for projects constructed for seasonal purposes.

3. *Tenant selection.* Domestic farm workers must be given absolute priority in renting available units. Other selection criteria should be specifically outlined in the management plan. Arbitrary restrictions as to family size, age of children, or other similar items are prohibited, however, the size of unit assigned to a family should be commensurate with its needs. Rejected tenant applications should be maintained for a minimum of 1 year and applicants must be advised in writing of the reasons for rejection.

4. *Ineligible tenants.* Units can be rented to other than farm workers when they are not needed by farm workers (i.e., during the off season), however, the leases must be on a short-term basis, normally not exceeding 30 days, and ineligible tenants must be advised that they will have to vacate the units if an eligible farm worker becomes available. To avoid future problems, occupancy by ineligibles should be avoided if at all possible. Written permission to rent to ineligibles must be obtained from the District Director before allowing the ineligible tenant to occupy LH projects.

5. *Lease or occupancy agreement.* A copy of any proposed lease or occupancy agreement should be submitted with the plan. The lease or occupancy agreement should clearly outline the responsibilities of the tenant and landlord.

6. *Counseling services.* Pre- and post-occupancy counseling services, which will be provided to tenants by borrowers to acquaint them with the project or otherwise assist them should be thoroughly explained.

7. *Collection of rent.* The system which will be used in the collection of rent must be outlined including proper provisions for the internal control and security of cash collections, followup on overdue accounts, persons responsible for collections, recordkeeping, and conditions for the return of security deposits, if required.

8. *Evictions.* The plan should spell out the specific reasons which warrant eviction and the steps which will be taken to resolve problems before eviction, including provisions for appeal. Voluntary compliance with the lease or occupancy agreement should be emphasized and every effort should be made to utilize the benefits available through local social service agencies and other community organizations.

9. *Maintenance and repairs.* A schedule for preventive maintenance and the procedure for handling service requests from individual tenants, including procedures for the handling of emergency repairs on a 24 hour basis, should be outlined. Management plans for projects constructed for seasonal occupancy will include provisions for off-season maintenance and security.

10. *Records and reports.* The type of recordkeeping system which will be established and the person or persons who will be responsible for keeping records and submitting required reports to FmHA or its successor agency under Public Law 103–354. Subpart C of 1930 of this chapter (FmHA Instruction 1930—C) outlines the reports required and the formats for these reports. This Instruction is available from the local District Office.

11. *Fidelity bonds.* Bonding should be provided for all persons entrusted with the receipt, custody, and disbursement of funds and custody of other negotiable or readily salable personal property. The amount of the bond should be at least equal to the maximum amount of money or property which the individual will have control of at any one time.

12. *Tenant councils.* Tenant councils should be encouraged and should be given an input into proposed changes in lease agreements, staff selection, eviction, and in some cases tenant selection and other management decisions which have a bearing on the tenant's overall situation. Provisions should also be outlined for the democratic election of tenant councils.

13. *Rent increases.* Requested or proposed rent increases should be handled in accordance with exhibit C of subpart C of part 1930 of this chapter.

14. *Non-discrimination.* The plan should address the policy of non-discrimination in tenant selection and employee hiring in accordance with Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement,'' and the affirmative action planned in the recruitment of employees and tenants.

15. *Other items.* Any other items which have a bearing on the operation and management of the project.

16. The management plan must be signed and dated by the borrower or the borrower's authorized representative.

[44 FR 59199, Oct. 15, 1979, as amended at 45 FR 70738, Oct. 27, 1980; 47 FR 28086, June 29, 1982; 58 FR 40951, July 30, 1993]

EXHIBIT C TO SUBPART D OF PART 1944—LOAN RESOLUTION

(LH INSURED LOAN TO NONPROFIT CORPORATION)

LOAN RESOLUTION OF _____, 19__

RESOLUTION OF THE BOARD OF DIRECTORS OF _____ PROVIDING FOR BORROWING $_____ TO FINANCE HOUSING AND RELATED FACILITIES FOR DOMESTIC FARM LABOR, THE COLLECTION, HANDLING, AND DISPOSITION OF INCOME, THE ISSUANCE OF INSTALLMENT PROMISSORY NOTE AND REAL ESTATE SECURITY INSTRUMENT, AND RELATED MATTERS

Whereas _____ (herein referred to as ''Corporation'') is a nonprofit corporation duly organized and operating under (authorizing State statute)

_____

The Board of Directors of the Corporation (herein referred to as the ''board'') has decided to provide certain housing and related facilities for domestic farm labor;

The board has determined that the Corporation is unable to provide such housing and facilities with its own resources or to obtain from other sources for such purpose sufficient credit upon terms and conditions which the Corporation could reasonably be expected to fulfill;

Be it resolved:

1. *Application for Loan.* The Corporation shall apply for and obtain a domestic farm labor housing loan (herein called ''the loan'') of $____ through the facilities of the United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture (herein called ''the Government'') pursuant to title V of the Housing Act of 1949. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government, in order to provide housing and related facilities for domestic farm labor. Such housing and facilities and the land constituting the site are herein called ''the housing.''

2. *Execution of Loan Instruments.* To evidence the loan the Corporation shall issue a promissory note (herein referred to as ''the note''), signed by its President and attested by its Secretary, with its corporate seal affixed thereto, for the amount of the loan, payable in installments over a period of _____ years, bearing interest at the rate of 1 percent per annum, and containing other terms and conditions prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, the President and Secretary are hereby authorized to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Corporation as the Government shall require, including an assignment or security interest in the rents and profits as collateral security to be enforceable in the event of any default by the Corporation, and containing other terms and conditions prescribed by the Government. The President and Secretary are further authorized to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Corporation under the note, the related security instruments, and any related agreements are herein called the ''loan obligations.''

3. *Equal Opportunity and Nondiscrimination Provisions.* The borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing; (b) Farmers Home Administration or its successor agency under Public Law 103–354 Form FmHA or its successor agency under Public Law 103–354 400–1 entitled ''Equal Opportunity Agreement,'' including an ''Equal Opportunity Clause,'' to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, (c) Farmers Home Administration or its successor agency under Public Law 103–354 Form FmHA or its successor agency under Public Law 103–354 400–4, entitled ''Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964),'' a copy of which is attached hereto and made a part hereof, and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Supervised Bank Account.* The proceeds of the note and the amount of $_____ to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited in a ''supervised bank account'' as required by the Government.[1] Amounts in the supervised bank account exceeding $100,000 shall be secured by the financial institution in advance in accordance with the U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Corporation shall be made only on checks signed by the _____ of the Corporation and countersigned by the County Supervisor of the Farmers Home Administration or its successor agency under

[1] Only loan funds, and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

Public Law 103–354, and only for the specific loan purposes approved in writing by the Government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in the supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an ''extra payment'' as defined in the regulations of the Farmers Home Administration or its successor agency under Public Law 103–354, and the supervised bank account shall be closed.

5. *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by Section 9. The Treasurer of the Corporation shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution.

6. *General Fund Account.* By the time the loan is closed the Corporation shall from its own funds deposit in the General Fund Account the amount of $_____. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in section 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan obligations.

7. *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account, sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes and insurance, normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Corporation in trust for the Government as security therefor.

9. *Reserve Account.* (a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Corporation in trust as security for the loan obligations. Transfers at a rate not less than $_____[2] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $_____[3] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account, to restore it to said sum. Of such sum, at least 50 percent shall be maintained on a cash basis, referred to herein as the ''cash reserve.'' After the cash reserve reaches the required 50 percent of said sum, all or any portion of the balance of said sum may, at the option of the Corporation, consist of an amount, referred to herein as the ''prepayment reserve,'' by which the Corporation is ''ahead of schedule'' as defined in the regulations of the

[2] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

Farmers Home Administration or its successor agency under Public Law 103–354. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by the Corporation—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by the Corporation which in the judgment of the Government likely will promote the loan purposes without jeapordizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection (a), and is not agreed between the Corporation and the Government to be used for purposes authorized in subsection 9(b) shall be applied promptly on the loan obligations.

10. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Corporation shall—

(a) Impose and collect such fees, assessments, rents, and charges that the income of the Corporation will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the Corporation's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit to the Government regular and special reports concerning the housing or the Corporation's financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use or permit use of the housing for any purpose other than as housing and related facilities for domestic farm labor.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit voluntary dissolution of the Corporation, nor merge or consolidate with any other organization, nor cause or permit any transfer or encumberance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise, nor engage in any other new business, enterprise, or venture than operation of the housing.

(4) Not cause or permit the issuance or transfer of any stock, borrow any money, nor incur any liability aside from current expenses as defined in section 7.

(e) Submit the following to the Government for prior review and approval not less than ____ days before the effective dates, unless approval is waived by the Government:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements.

(4) Rates of compensation to officers and employees of the Corporation payable from or chargeable to any account provided for in this resolution.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Corporation in connection with the loan.

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan obligations, or the security.

11. *Refinancing of Loan.* If at any time it appears to the Government that the Corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12. *General Provisions.*

(a) It is expressly understood and agreed that any loan made will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the loan, enforce such limitations, and protect the Government's financial interest in the loan and the security.

(b) The provisions of this resolution are representations to the Government to induce the Government to make a loan to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any provision of this resolution or any requirement made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable, and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Upon request by the Government the Corporation will permit representatives of the Government to inspect and make copies of any of the records of the Corporation pertaining to this loan. Such inspection and copying may be made during regular office hours of the Corporation, or any other time the Corporation and the Government finds convenient.

(d) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone, or agreed to in amended form, by the Government initially.

(e) Any notice, consent, approval, waiver, or agreement must be in writing.

(f) This resolution may be cited in the security instrument and any other instruments or agreements as the ''Loan Resolution of (date of this resolution) _____ 19___.''

_____

_____

_____

Certificate

The undersigned, _____, the Secretary of the Corporation identified in the foregoing Loan Resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors on _____ 19___, which has not been altered, amended, or repealed.

_____

(Date)

_____

(Secretary)

[44 FR 59199, Oct. 15, 1979, as amended at 46 FR 36112, July 14, 1981]

EXHIBIT D TO SUBPART D OF PART 1944—LOAN AGREEMENT

(LH INSURED LOAN TO INDIVIDUAL)

1. *Parties and Terms Defined.* This agreement dated _____ of the Undersigned _____, herein called ''Borrower'' whether one or more, whose post office address is _____, with the United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture, herein called ''the Government,'' is made in consideration of a loan, herein called ''the loan,'' to Borrower in the amount of $_____ made or insured, or to be made or insured by the Government pursuant to title V of the Housing Act of 1949 to provide housing and related facilities for domestic farm laborers. Such housing and related facilities, together with the site, may be referred to herein as ''the housing.'' The indebtedness and other obligations of Borrower under the note evidencing the loan, the related security instrument, and any related agreement are herein called the ''loan obligations.''

2. *Equal Opportunity and Nondiscrimination Provisions.* The borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration or its successor agency under Public Law 103–354 Form FmHA or its successor agency under Public Law 103–354 400–1 entitled ''Equal Opportunity Agreement,'' including an ''Equal Opportunity Clause'' to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, (c) Farmers Home Administration or its successor agency under Public Law 103–354 Form FmHA or its successor agency under Public Law 103–354 400–4, entitled ''Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964),'' a copy of which is attached hereto and made a part hereof, and any other undertakings and agreements required by the Government pursuant to lawful authority.

3. *Supervised Bank Account.* The proceeds of the note and the amount of $_____ to be contributed by the borrower from its own funds and used for eligible loan purposes

shall be deposited in a ''supervised bank account'' as required by the Government.[1] Amounts in the supervised bank account exceeding $100,000 shall be secured by the financial institution in advance in accordance with U.S. Treasury Department Circular No. 176. As provided therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the borrower shall be made only on checks signed by the _____ of the borrower and countersigned by a representative of the Farmers Home Administration or its successor agency under Public Law 103–354, and only for the specific loan purposes approved in writing by the Government. The borrower's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in the supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an ''extra payment'' as defined in the regulations of the Farmers Home Administration or its successor agency under Public Law 103–354, and the supervised bank account shall be closed.

4. *Accounts for Housing Operations and Loan Servicing.* Borrower shall establish on his books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 8(a).

5. *General Fund Account.* By the time the loan is closed Borrower shall from his own funds deposit in the General Fund Account the amount of $_____. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. Borrower may also in his discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in sections 6, 7, or 8. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by Borrower in trust for the Government as security for the loan obligations.

6. *Operation and Maintenance Account.* Not later than the 15th of each month out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable Borrower to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance, and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

7. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 6, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by Borrower in trust for the Government as security therefor.

8. *Reserve Account.*

(a) Immediately after each transfer to the Debt Service Account as provided in section 7, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this agreement and until so used shall be held by the Borrower in trust as security for the loan obligations. Transfers at a rate not less than $_____[1] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $_____[2] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account, to restore it to said sum. Of such sum, at least 50 percent shall be maintained on a cash basis, referred to herein as the ''cash reserve.'' After the cash reserve reaches the required 50 percent of said sum, all or any portion of the balance of said sum may, at the option of Borrower, consist of an amount, referred to as the ''prepayment reserve,'' by which Borrower is ''ahead of schedule'' as defined in

[1] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence as indicated by footnote 2.

[2] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

the regulations of the Farmers Home Administration or its successor agency under Public Law 103–354. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by Borrower—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 6.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by Borrower which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) For any purpose desired by Borrower, provided Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 8(a) to be accumulated by that time, and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 8(a) and is not agreed between the borrower and the Government to be used for purposes authorized in subsection 8(a) shall be applied promptly on the loan obligations.

9. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, Borrower shall—

(a) Impose and collect such fees, assessments, rents, and charges that his income will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to his financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or Borrower's financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as labor housing and related facilities for domestic farm laborers.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit the transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(e) Submit the following to the Government for prior review and approval not less than _____ days before the effective dates.

(1) Annual budgets and operating plans, including proposed rents and charges and other terms of rental agreements for occupancy and compensation to employees chargeable as operating expenses of the housing.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Do other things as may be required by the Government in connection with the operation of the housing or with any of Borrower's operations or affairs which may affect the housing, the loan obligations, or the security.

10. *Refinancing of Loan.* If at any time it appears to the Government that Borrower is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, Borrower will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

11. *General Provisions.*

(a) It is understood and agreed by Borrower that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the loan, enforce such limitations, and protect the Government's financial interest in the loan and the security.

(b) Borrower shall also comply with all covenants and agreements set forth in the note, security instrument, and any related agreements executed by Borrower in connection with the loan.

(c) The provisions of this agreement are representations to the Government to induce the Government to make or insure a loan to Borrower as aforesaid. If Borrower should

fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant hereto, such failure shall constitute default as fully as default in payment of amounts due on the loan. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(d) Upon request by the Government the Borrower will permit representatives of the Government to inspect and make copies of any of the records of the Borrower pertaining to this loan. Such inspection and copying may be made during regular office hours of the Borrower, or any other time the Borrower and the Government finds convenient.

(e) Any provisions of this agreement may be waived by the Government, or changed by agreement between the Government and Borrower to any extent such provisions could legally have been foregone, or agreed to in any amended form, by the Government initially. Any notice, consent, approval, waiver, or agreement must be in writing.

(f) This agreement may be cited in the security instrument and other instruments or agreements as the ''Loan Agreement of (date of this agreement)_____ 19_____.''

Witness _____

Borrower _____

Witness _____

Borrower _____

[44 FR 59199, Oct. 15, 1979, as amended at 46 FR 36112, July 14, 1981]

EXHIBIT E TO SUBPART D OF PART 1944—LOAN AND GRANT RESOLUTION

(LABOR HOUSING LOAN AND GRANT TO A NONPROFIT CORPORATION)

Loan and Grant Resolution of _____, 19____ Resolution of the Board of Directors of _____ providing for obtaining financial assistance in the amount $_____ to aid in financing federally defined low-rent housing and related facilities for low-income domestic farm labor, and related matters. Whereas _____ (herein referred to as the ''Corporation'') is organized and operating under and the board of (authorizing State statute) _____ directors of the Corporation has determined that—

(a) The Corporation should provide low-rent housing and related facilities for low-income domestic farm labor, as defined in title V of the Housing Act of 1949.

(b) The estimated total cash development cost of such housing and facilities amounts to $_____.

(c) For such purpose the Corporation is able to furnish from its own resources $_____.

(d) The Corporation will need financial assistance in the amount of $_____ which the Corporation is unable to obtain from other sources for such purpose upon terms and conditions which the Corporation could reasonably be expected to fulfill.

(e) Of such amount of needed financial assistance the Corporation will be able to repay, with interest at 1% per annum, the amount of $_____ over a repayment period of_____ years, if the balance of $_____ is made available to the Corporation as a grant.

(f) The housing and related facilities will fulfill a pressing need in the area in which they are or will be located.

(g) The housing and facilities cannot be provided without the aid of a grant in the amount stated above:

Therefore Be It Resolved:

1. *Application for Loan and Grant.* The Corporation shall apply to the United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture (herein called ''the Government'') for a loan of $_____ and a grant of $_____, pursuant to Title V of the Housing Act of 1949. Such loan may be insured by the Government. The loan and the grant shall be used only for the specific eligible purposes approved by the Government, in order to provide low-rent housing and related facilities for low-income domestic farm labor. Such housing and facilities and the land constituting the site may be referred to herein as the ''housing.''

2. *Execution of Loan and Grant Instruments.* To evidence the loan the Corporation shall issue a promissory note (herein referred to as ''the Note''), signed by its President and attested by its Secretary, with its corporate seal affixed thereto, for the amount of the loan, payable in installments over a period of_____ years, bearing interest at a rate not to exceed ____ percent per annum, and containing other terms and conditions prescribed by the Government. To evidence the obligations of the grant, the Corporation shall execute an instrument in the form attached hereto entitled ''Labor Housing Grant Agreement'' and referred to herein as the ''Grant Agreement,'' evidencing terms and conditions upon which the grant is made by the Government and the obligations of the Corporation with respect thereto. To secure the note and/or all other obligations and agreements of the Corporation with respect to the loan and the grant, as required by the

Government, the President and the Secretary are hereby authorized to execute a security instrument giving a lien upon or security interest in the housing and such other property as the Government shall require, including an assignment of or security interest in the rents and profits as collateral security to be enforceable in the event of any default by the Corporation. The President and the Secretary are further authorized to execute any other security and other instruments, agreements, and documents required by the Government for the loan or grant. The indebtedness and other obligations of the Corporation under the note, Grant Agreement, this resolution, the security instrument, and any other instruments and agreements related to the loan or grant are herein called the ''loan and grant obligations.''

3. *Equal Employment Opportunity under Construction Contracts and Nondiscrimination in the Use of Occupancy and Housing and in Any Other Benefits of the Loan or Grant.* The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation (a) any undertakings and agreements required by the Government regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration or its successor agency under Public Law 103–354 Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement,'' involving an Equal Opportunity Clause to be incorporated in or attached as a rider to each construction contract which exceeds $10,000 in amount and is paid for in whole or in part with loan or grant funds, and (c) Farmers Home Administration or its successor agency under Public Law 103–354 Form FmHA or its successor agency under Public Law 103–354 400–4, ''Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964),'' a copy of which is attached hereto and made a part hereof.

4. *Supervised Bank Account.* The proceeds of the loan and grant and the amount of $_____ to be contributed by the Corporation from its own funds and used for approved eligible purposes shall be deposited in a ''supervised bank account'' as required by the Government.[1] Amounts in the supervised bank account exceeding $100,000 shall be secured by the financial institution in advance in accordance with U.S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan and grant obligations. Withdrawals from the supervised bank account by the Corporation shall be made only on checks signed by the _____ of the Corporation and countersigned by the County Supervisor or other authorized official of the Farmers Home Administration or its successor agency under Public Law 103–354, and only for the specific eligible purposes approved in writing by the Government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors of their sureties shall be deposited in the supervised bank account to assure completion of the project. When all approved items eligible for payment with loan or grant funds are paid in full, any balance remaining in the supervised bank account shall be treated as a refund of loan and grant funds in the same ratio as that between the amounts of the loan and grant, and the supervised bank account shall be closed.

5. *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan or grant obligations continue: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. The Treasurer of the Corporation shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution.

6. *General Fund Account.* By the time the loan and grant are closed the Corporation shall from its own funds deposit in the General Fund Account the amount of $_____. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in sections 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan and grant obligations.

7. *Operation and Maintenance Account.* Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account,

[1] Only loan or grant funds, and borrower's funds to be used for an eligible loan or grant purpose, may be deposited in the supervised bank account.

sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes and insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan and, unless the Government gives prior written consent, are not income or revenue from the housing.

8. *Debt Service Account.* Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations while they continue and, until so used, shall be held by the Corporation in trust for the Government as security for the loan and grant obligations.

9. *Reserve Account.* (a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Corporation in trust as security for the loan and grant obligations. Transfers at a rate not less than $_____,[2] annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $_____[3] and shall be resumed at any time when necessary, because of disbursements from the Reserve Account, to restore it to said sum. Of such sum, at least 50 percent shall be maintained on a cash basis, referred to herein as the ''cash reserve.'' After the cash reserve reaches the required 50 percent of said sum, all or any portion of the balance of said sum may, at the option of the Corporation, consist of an amount, referred to herein as the ''prepayment reserve,'' by which the Corporation is ''ahead of schedule'' as defined in the regulations of the Farmers Home Administration or its successor agency under Public Law 103–354. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by the Corporation—

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by the Corporation which in the judgment of the Government likely will promote the loan or grant purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(c) Any amount in the Reserve Account which exceeds the sum specified in sub-section (a), and is not agreed between the Corporation and the Government to be used for purposes authorized in subsection (b) shall be applied promptly on the loan obligations.

10. *Regulatory Covenants.* So long as the loan or grant obligations continue, the Corporation shall—

(a) Impose and collect such fees, assessments rents, and charges that the income of the Corporation will be sufficient at all times for operation and maintenance of the housing payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the Corporation's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts to cover handling and disposition of income from the payment of expenses attributable to the

[2] In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence as the total amount of the Reserve Account.

[3] The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan and grant.

housing or to any other property securing the loan or grant obligations, and submit to the Government regular and special reports concerning the housing or the Corporation's financial affairs, including any information required by the Government regarding income of the occupants of the housing.

(d) Unless the Government gives prior consent—

(1) Not use or permit use of the housing for any purpose other than as low-rent housing and related facilities for low-income domestic farm labor, as those terms are defined by the Government.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan or grant obligations.

(3) Not cause or permit voluntary dissolution of the Corporation, nor merge or consolidate with any other organization, nor transfer or encumber title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or other conveyance or encumbrance, nor engage in any other new business, enterprise, or venture than operation of the housing.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in Section 7.

(e) Submit the following to the Government for prior review not less then _____d days before the effective dates:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements for occupancy of the housing.

(4) Rates of compensation to officers and employees of the Corporation payable from or chargeable to any account provided for in this resolution.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under this resolution, the note, Grant Agreement, security instrument, and any related agreement executed by the Corporation in connection with the loan or grant.

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan and grant obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan or grant obligations, or the security.

11 *Refinancing of Loan.* If at any time it appears to the Government that the Corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12 *General Provisions.* (a) It is understood and agreed by the Corporation that any loan or grant will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the loan and grant, enforce such limitations, and protect the Government's financial interest in the loan and grant and the security.

(b) The provisions of this resolution are representations of the Corporation to induce the Government to make or insure a loan or make a grant to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any of its loan or grant obligations, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of default, the Government at its option may declare the entire amount of the loan and grant obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Upon request by the Government the corporation will permit representatives of the Government to inspect and make copies of any of the records of the corporation pertaining to the financial assistance. Such inspection and copying may be made during regular office hours of the corporation, or any other time the corporation and the Government finds convenient.

(d) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone, or agreed to in amended form, by the Government initially.

(e) Any notice, consent, approval, waiver, or agreement must be in writing.

(f) This resolution may be cited in the security instrument and elsewhere as the ''Loan and Grant Resolution of (date of this resolution) _____ 19___.''

Certificate

The undersigned, _____, the Secretary of the corporation identified in the foregoing resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors

on _____ 19___, which has not been altered, amended, or repealed.
Date _____
Secretary _____
[SEAL]

[44 FR 59199, Oct. 15, 1979, as amended at 46 FR 36112, July 14, 1981]

EXHIBIT F TO SUBPART D OF PART 1944—LABOR HOUSING GRANT AGREEMENT

THIS AGREEMENT dated _____, 19___,
between— _____

_____

which is organized and operating under

_____

_____ (Authorizing statute)

herein called ''Grantee,'' and the United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103–354, Department of Agriculture, herein called ''Grantor,'' WITNESSETH:

Whereas Grantee has determined to undertake a project of acquisition, construction, enlargement and/or capital improvement of a Labor Housing Project to serve domestic farm laborers at an estimated cost of $_____ and has duly authorized the undertaking of such project.

Grantee is able to finance not more than $_____ of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable rental rate.

Said sum of $_____ has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed $_____ subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

Now therefore, in consideration of said grant by Grantor to Grantee, to be made pursuant to Section 516 of the Housing Act of 1949 for the purpose only of defraying a part not to exceed ____ percent of the development costs, as defined by applicable Farmers Home Administration or its successor agency under Public Law 103–354 instructions.

Grantee agrees that Grantee will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the project, including these units if less than the whole of said project, continuously in an efficient and economic manner.

D. Make services of said project available within its capacity to all domestic farm laborers in borrowers/grantees service area without discrimination because of race, color, religion, sex, age, handicap, marital or familial status, or National origin at reasonable rental rates, whether for one or more types of units, adopted by resolution dated ____ 19 ____, as may be revised from time to time by Grantee. The initial rental rates must be approved by the Grantor. Thereafter, Grantee may not make changes to the rental rate structure without prior authorization from the Grantor.

E. Adjusts its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

G. To execute Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement,'' and to execute Form 400–4, ''Assurance Agreement,'' and to execute any other agreements required by Grantor which Grantee is legally authorized to execute. If any such form has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

H. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The Provisions of this Grant agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grantee Agreements or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

I. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

J. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its sucessor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions.

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

K. Abide by the following conditions pertaining to nonexpendable personal property which is furnished by the Grantor or acquired wholly or in part with grant funds. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

1. Use of nonexpendable property.

(a) The Grantee shall use the property in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the property in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by the FmHA or its successor agency under Public Law 103–354.

(2) Activities sponsored by other Federal agencies.

(b) During the time that nonexpendable personal property is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the property was originally acquired. First preference for such other use shall be given to FmHA or its successor agency under Public Law 103–354 sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of nonexpendable property. When the Grantee no longer needs the property as provided in paragraph (a) above, the property may be used for other activities in accordance with the following standards:

(a) Nonexpendable property with a unit acquisition cost of less than $1000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) Nonexpendable personal property with a unit acquisition cost of $1000 or more. The Grantee may retain the property for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within the agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the property exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later

than 120 days after the Grantee request and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the property elsewhere the Grantee shall be reimbursed by the benefitting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the property, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for nonexpendable personal property shall also include:

(a) Property records which accurately provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage (at the end of budget year) of Federal participation in the cost of the project for which the property was acquired; location, use and condition of the property and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(e) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described nonexpendable property (use continuation sheets as necessary).

L. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

M. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

N. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

O. Provide an audit report prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

P. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

Q. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item J above.

R. To include in all contracts for construction or repair a provision for compliance with the Copeland ''Anti-Kick Back'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, part 3). The Grantee shall report all suspected or reported violations to the Grantor.

S. Pay all laborers and mechanics employed by contractors and subcontractors wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5).

T. In construction contracts in excess of $2,000 and in other contracts in excess of $2,500 which involve the employment of mechanics or laborers, to include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR, part 5).

U. To include in all contracts in excess of $100,000 a provision that the contractor agrees to comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. §1875C–9) and Section 308 of the Water Pollution Control Act specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. Such regulations and guidelines can be found in 40 CFR 15.4 and 40 FR 17126 dated April 16, 1975. In so doing the Contractor further agrees:

1. As condition for the award of contract to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term *facility* means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor agrees that it: A. Will make available to Grantee for the purpose of this Agreement not to exceed $_____ which it will advance to Grantee to meet not to exceed ___ percent of the development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without available consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

_____

and attested and its corporated seal affixed by its duly authorized

_____

ATTEST:

By _____

(Title)

By _____

(Title)

UNITED STATES OF AMERICA, FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354

By _____

(Title)

[44 FR 59199, Oct. 15, 1979, as amended at 55 FR 6245, Feb. 22, 1990]

EXHIBIT G TO SUBPART D OF PART 1944—LEGAL SERVICE AGREEMENT

Agreement made this _____ day of _____, 19___ between the _____, hereinafter called the owners, and _____, hereinafter called the attorney, witnesseth:

Whereas the owners intent to form a corporation, hereinafter called the corporation, to construct and operate a labor housing project in

Town _____

County _____

State _____

and to obtain a loan from the Farmers Home Administration or its successor agency under Public Law 103–354 to finance the construction, and the attorney agrees to perform all legal services necessary to incorporate the Corporation, and to perform all other customary legal services necessary to the organization, financing, construction, and initial operation of the proposed rural rental housing project, such services to include but not to be restricted to the following:

1. Prepare and file necessary incorporating papers and supervise and assist in taking other necessary or incidental actions to create the Corporation and authorize it to finance, construct, and operate the proposed housing project.

2. Prepare for, and furnish advice and assistance to the owners, and to the Board of Directors and officers of the Corporation, in connection with (a) notices and conduct of meetings; (b) preparation of minutes of meetings; (c) preparation and adoption of necessary resolutions in connection with the authorization, financing, construction, and initial operation of a rural rental housing project; (d) necessary construction contracts; (e) preparation of adoption of bylaws and related documents; (f) any other action necessary for organizing the Corporation or financing, constructing, and initially operating the proposed housing project.

3. Review of construction contract, bid-letting procedure, and surety and performance bonds.

4. Examination of real estate titles and preparation, review, and recording of deeds and any other instruments.

5. Cooperation with the architect employed by the owners or the Corporation in connection with preparation of survey sheets, easements, and any other necessary title documents, construction contracts, and other instruments.

6. Rendering of legal opinions as required by the owners or the Corporation or the Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture.

7. Owners agree to pay to the attorney for professional services in accordance with this agreement, as follows:

_____

_____

The fees to be payable in the following manner and at the following times:

_____

_____

The attorney states and agrees that of the above total fees, _____ represents fees for services in connection with the organization and incorporation of the Corporation.

The owners and the attorney further covenant and agree that, if upon organization and incorporation the Corporation fails or refuses to adopt and ratify this Agreement by appropriate resolution within _____ days, this Agreement shall terminate and owners shall be liable only for payment for legal services rendered in connection with such organization and incorporation.

Signed this _____ day of _____, 19___.

Attorney: _____

Owners: _____

_____

_____

_____

[44 FR 59199, Oct. 15, 1979]

EXHIBIT H TO SUBPART D OF PART 1944—INFORMATION PERTAINING TO PREPARATION OF NOTES OR BONDS AND BOND TRANSCRIPT DOCUMENTS FOR PUBLIC BODY APPLICANTS

This exhibit includes information for use by public body applicants in the preparation and issuance of evidences of debt (''bonds'' or ''debt instruments''). This information is made available to applicants as appropriate for application processing and loan docket preparation.

(1) *Policies.* (i) This exhibit outlines the policies of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 with respect to preparation and issuance of evidences of debt (hereinafter sometimes referred to as ''bonds'' or ''debt instruments'').

(ii) Preparation of the bonds and the bond transcript documents will be the responsibility of the applicant. Public body applicants will obtain the services and opinion of recognized Bond Counsel with respect to the validity of a bond issue. The applicant normally will be represented by a local attorney who will obtain the assistance of a recognized Bond Counsel firm which has had experience in municipal financing with such investors as investment dealers, banks, and insurance companies.

(iii) At the option of the applicant for issues of $250,000 or less, Bond Counsel may be used for the issuance of a final opinion only and not for the preparation of the other documents and of the bond docket when the applicant, FmHA or its successor agency under Public Law 103–354, and Bond Counsel have agreed in advance as to the method of

preparation of the bond transcript documents. Under such circumstances the applicant will be responsible for the preparation of the bond transcript documents.

(iv) At the option of the applicant and with the prior approval from the National Office of FmHA or its successor agency under Public Law 103–354, for issues of $50,000 or less, the applicant need not use Bond Counsel if:

(A) The amount of the issue does not exceed $50,000 and the applicant recognizes and accepts the fact that processing the application may require additional legal and administrative time.

(B) There is a significant cost saving to the applicant particularly with reference to total legal fees after determining what Bond Counsel would charge as compared with what the local attorney will charge without Bond Counsel.

(C) The local attorney is able and experienced in handling this type of legal work.

(D) The applicant understands that, if it is required by FmHA or its successor agency under Public Law 103–354 to refinance its loan pursuant to the statutory refinancing requirements, it will probably have to obtain at its expense a Bond Counsel's opinion at that time.

(E) All bonds will be prepared in accordance with this regulation and will conform as nearly as possible to accepted methods of preparation of similar bonds in the area.

(F) Many matters necessary to comply with FmHA or its successor agency under Public Law 103–354 requirements such as land rights, easements, and organizational documents will be handled by the applicant's local attorney. Specific closing instructions in addition to any requirements of Bond Counsel will be issued by the Office of the General Counsel of the U.S. Department of Agriculture for the guidance of FmHA or its successor agency under Public Law 103–354.

(2) *Bond transcript documents.* Any questions with respect to FmHA or its successor agency under Public Law 103–354 requirements should be discussed with local FmHA or its successor agency under Public Law 103–354 representatives. Bond Counsel is required to furnish at least two complete sets of the following to the applicant, who will furnish one complete set to FmHA or its successor agency under Public Law 103–354:

(i) Copies of all organizational documents.

(ii) Copies of general incumbency certificate.

(iii) Certified copies of minutes or excerpts therefrom of all meetings of the applicant's governing body at which action was taken in connection with the authorization and issuance of the bonds.

(iv) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding of a favorable bond election, if such an election is necessary in connection with bond issuance.

(v) Certified copies of the resolutions or ordinances or other documents, such as the bond authorizing resolution or ordinance and any resolution establishing rates and regulating the use of the improvement, if such documents are not included in the minutes furnished.

(vi) Copies of official Notice of Sale and affidavit of publication of Notice of Sale where a public sale is required by State statute.

(vii) Specimen bond, with any attached coupons.

(viii) Attorney's no-litigation certificate.

(ix) Certified copies of resolutions or other documents pertaining to the bond award.

(x) Any additional or supporting documents required by Bond Counsel.

(xi) For loans involving multiple advances of FmHA or its successor agency under Public Law 103–354 loan funds, a preliminary approving opinion of Bond Counsel if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered on or before the first advance of loan funds and state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan subject only to changes during the advance of funds such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates.

(xii) Preliminary approving opinion, if any, and final unqualified approving opinion of recognized Bond Counsel including opinion regarding interest on bonds being exempt from Federal and any State income taxes. On approval of the Administrator, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation.

(3) *Interim financing from commercial sources during construction period for loans of $50,000 or more.* In all cases where it is possible for funds to be borrowed at reasonable interest rates on an interim basis from commercial sources, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA or its successor agency under Public Law 103–354 funds.

(4) *Permanent instruments for FmHA or its successor agency under Public Law 103–354 loans to repay interim commercial financing.* Such loans will be evidenced by one of the types of instruments in the order of preference shown in paragraph (a)(5) of this exhibit.

(5) *Multiple advances of FmHA or its successor agency under Public Law 103–354 funds using permanent instruments.* Where interim financing from commercial sources is not available, FmHA or its successor agency under Public Law 103–354 loan proceeds will be disbursed on an ''as needed by borrower''

basis in amounts not to exceed the amount needed during 30-day periods. FmHA or its successor agency under Public Law 103–354 loans will be evidenced by the following types of instruments chosen in accordance with the following order of preference:

(i) *First preference—Form 1944–52.* If legally permissible, use Form FmHA or its successor agency under Public Law 103–354 1944–52, ''Multiple Family Housing Promissory Note.''

(ii) *Second preference—single instrument with amortized installments.* If Form FmHA or its successor agency under Public Law 103–354 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 or its successor agency under Public Law 103–354 advance on the reverse thereof or an attachment to the instrument. Form FmHA or its successor agency under Public Law 103–354 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 or its successor agency under Public Law 103–354 1944–52 for specific instructions.

(iii) *Third preference—single instrument with installments of principal plus interest.* If a single amortized installment instrument is not legally permissible, use a single instrument providing for specified installments of principal plus accrued interest. The principal should be in an amount best adapted to making principal retirement and interest payments which closely approximate equal installments of combined interest and principal as required by the first two preferences.

(A) The repayment terms described in paragraph (a)(5)(ii) of this exhibit ''Second preference'' apply.

(B) The instruments shall contain in substance the following provisions:

(*1*) A statement of principal maturities and due dates.

(*2*) Payments made on indebtedness evidenced by this instrument, regardless of when made, shall be applied first to interest due through the date of payment and next to principal except that payments made from security depleting sources shall, after payment of interest to the payment date, be applied to the principal last to become due under the instrument and shall not affect the obligation of the borrower to pay the remaining installments as scheduled.

(iv) *Fourth preference.* If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be delivered in the order of their numbers. Such bonds will conform with the minimum requirements of paragraph (7) of this exhibit. Rules for application of payments on serial bonds will be the same as those for principal installment single bonds as set out in the preceding paragraph (5)(iii) of this exhibit.

(6) *Multiple advances of FmHA or its successor agency under Public Law 103–354 funds using temporary debt instrument.* When none of the instruments described in paragraph (5) of this exhibit are legally permissable or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advance of FmHA or its successor agency under Public Law 103–354 loan funds and will be for the full amount of the FmHA or its successor agency under Public Law 103–354 loan. The instrument will be prepared by Bond Counsel and approved by the State Director and OGC. At the same time FmHA or its successor agency under Public Law 103–354 delivers the last advance, the borrower will deliver the permanent bond instrument to FmHA or its successor agency under Public Law 103–354 to replace the temporary debt instrument and the canceled temporary instrument will be delivered to the borrower. The approved debt instrument will show at least the following:

(i) The date from which each advance will bear interest.

(ii) The interest rate.

(iii) A payment schedule providing for interest on outstanding principal at least annually.

(iv) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instrument(s).

(7) *Minimum bond specifications.* The provisions of paragraph (7) are of this exhibit minimum specifications only, and must be followed to the extent legally permissible.

(i) *Type and denominations.* Bond resolutions or ordinances will provide that the instrument(s) be either a bond representing the total amount of the indebtedness or Serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than $1,000). Single bonds may provide for either repayment of principal plus interest or amortized installments; amortized installments are preferable from the standpoint of FmHA. Coupon bonds will not be used unless required by statute.

(ii) *Bond registration.* Bonds will contain provisions permitting registration as to both principal and interest. Bonds purchased by FmHA will be registered in the name of ''United States of America, Farmers Home Administration, or its successor agency under Public Law 103–354'' and will remain so registered at all times while the bonds are held or insured by the United States. The address of FmHA for registration purposes will be that of the FmHA or its successor agency under Public Law 103–354 Finance office.

(iii) *Size and quality.* Size of bonds and coupons should conform to standard practice.

Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(iv) *Date of bonds.* Bonds will be dated as of the day of delivery.

(v) *Payment date.* Insofar as loan payments are consistent with income availability, applicable State statutes, and commercial customs in the preparation of bonds or other evidence of indebtedness, they should be scheduled on a monthly basis either in the bond or other evidence of indebtedness or through the use of a supplemental agreement. Such requirements will be accomplished not later than the time of loan closing. When monthly payments are required, such payments will be scheduled beginning one full month following the date of loan closing or the end of any approved deferment period. Subsequent monthly payments will be scheduled each full month thereafter. In those cases where evidence of indebtedness calls for annual or semiannual payments, they will be scheduled beginning six or twelve full months, respectively following the date of loan closing or the end of any approved deferment period. Subsequent payments will be scheduled each sixty or twelfth full month respectively, thereafter. When the evidence of indebtedness is dated the 29th, 30th, or 31st day of a month, the payment date will be scheduled the 28th day of the month. Borrowers scheduled to make monthly payments will be given a monthly payment card jacket at the time of loan closing. These borrowers will submit payment directly to the Finance Office.

(vi) *Place of payment.* Payments on bonds purchased by FmHA or its successor agency under Public Law 103–354 should be submitted to the FmHA or its successor agency under Public Law 103–354 Finance Office by the borrower.

(vii) *Redemptions.* Bonds should contain customary redemption provisions, subject, however, to unlimited right of redemption without premium of any bonds held by FmHA or its successor agency under Public Law 103–354 except to the extent limited by the provisions under the ''Third Preference'' and ''Fourth Preference'' in paragraph (5) of this exhibit.

(viii) *Additional revenue bonds.* Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless the net revenues (that is, unless otherwise defined by the State statute, gross revenues less essential operation and maintenance expense) for the fiscal year preceding the year in which such parity bonds are to be issued were 120 percent of the average annual debt service requirements on all bonds then outstanding and those to be issued; provided, that this limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then outstanding principal indebtedness. Junior and subordinate bonds may be issued without restriction.

(ix) *Scheduling of FmHA or its successor agency under Public Law 103–354 payments when joint financing is involved.* In all cases in which FmHA or its successor agency under Public Law 103–354 is participating with another lender in the joint financing of the project to supply funds required by one applicant, the FmHA or its successor agency under Public Law 103–354 payments of principal and interest should approximate amortized installments.

(x) *Precautions.* The following types of provisions in debt instruments should be avoided.

(A) Provisions for the holder to manually post each payment to the instrument.

(B) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than FmHA or its successor agency under Public Law 103–354, may post the date and amount of each advance or repayment on the instrument.

(8) *Bidding by FmHA or its successor agency under Public Law 103–354.* Where a public bond sale is required by State statutes, FmHA or its successor agency under Public Law 103–354 will not normally submit a bid at the advertised sale unless State statutes require a bid to be submitted. Preferably FmHA or its successor agency under Public Law 103–354 will negotiate the purchase with the applicant subsequent to the advertised sale if no acceptable bid is received. In those cases where FmHA or its successor agency under Public Law 103–354 is required to bid, the bid will be made at the applicable FmHA or its successor agency under Public Law 103–354 interest rate.

[44 FR 59199, Oct. 15, 1979, as amended at 50 FR 8593, Mar. 4, 1985]

EXHIBIT I TO SUBPART D OF PART 1944—GUIDE LETTER FOR USE IN INFORMING INTERIM LENDER OF FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354'S COMMITMENT

Name and Address of Private Lender _____

_____

_____

Dear _____:

(FOR ORGANIZATIONS)

Reference is made to a request from the (Smith Housing Assoc.) through (John Smith) its President, for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

(FOR INDIVIDUALS)

Reference is made to a request from (John Jones) for interim financing from your firm

to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

This letter is to confirm certain understandings on behalf of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354.

Final drawings, specifications, and all other contracts documents have been prepared and approved, and the applicant is prepared to commence construction. It has been determined by the applicant and the Farmers Home Administration or its successor agency under Public Law 103–354 that the conditions of loan closing can be met. Funds have been obligated for the project, as evidenced by the attached copy of Form FmHA or its successor agency under Public Law 103–354 1944–57, 'Multiple Family Housing Acknowledgement of Obligated Funds/Check Request.'

The applicant has been required by FmHA or its successor agency under Public Law 103–354 to deposit $_____ with your firm to be utilized prior to any interim loan funds. The applicant has proposed and FmHA or its successor agency under Public Law 103–354 has agreed that you may first advance any applicant funds on deposit, and then advance the proceeds of the interim loan in accordance with the terms and conditions stated in your attached letter, as needed to pay for construction and other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper statements and partial payment estimates prepared by the builder, and approved for payment by the consulting architect, the applicant, and the FmHA or its successor agency under Public Law 103–354 District Director.

We have scheduled the Farmers Home Administration or its successor agency under Public Law 103–354 loan to be closed when construction to be financed with loan funds is substantially complete in accordance with the FmHA or its successor agency under Public Law 103–354 approved contract documents, drawings and specifications (except for minor punch list items), and the applicant provides evidence indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the FmHA or its successor agency under Public Law 103–354 loan amount will be available to pay off the amount of loan advances your lending institution has made for authorized approved purposes, including accrued interest to the date of closing.

FmHA or its successor agency under Public Law 103–354 cannot provide you with an unconditional letter of commitment guaranteeing FmHA or its successor agency under Public Law 103–354 loan closing. Factors such as noncompletion, default, unacceptable workmanship, and marked deviation from approved drawings and specifications could prevent the FmHA or its successor agency under Public Law 103–354 loan from being closed.

These problems can be minimized by making a thorough review of the [contract documents,]* drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance.

The following are additional safeguards to help assure FmHA or its successor agency under Public Law 103–354 loan closing:

1. We invite you or your representatives to accompany FmHA or its successor agency under Public Law 103–354 personnel during construction inspections so that at least 3 or 4 joint inspections at critical points during construction (including the final inspection), can be made to help assure that construction is proceeding in accordance with the FmHA or its successor agency under Public Law 103–354 approved drawings and specifications.

2. FmHA or its successor agency under Public Law 103–354 will maintain its commitment in the amount of the obligated loan funds for a reasonable period of time after the expiration of any specified completion dates, provided work on the project is progressing satisfactorily and any identified problems have been resolved.

3. FmHA or its successor agency under Public Law 103–354 will not arbitrarily abandon your lending institution in the event of default. Should the contractor default, FmHA or its successor agency under Public Law 103–354 will attempt to provide financial assistance to the applicant in accordance with our administrative procedures and lending requirements, provided a new contractor can complete the project for a total cost within the security value of the project. If this is not possible, or should the FmHA or its successor agency under Public Law 103–354 loan applicant become unable or unwilling to continue with the project, FmHA or its successor agency under Public Law 103–354 also will attempt to provide financial assistance to any eligible applicant (subject to the availability of funds, our administrative procedures, and our lending requirements), to purchase the completed project from your lending institution.

4. FmHA or its successor agency under Public Law 103–354 is aware that circumstances, such as subsurface ground conditions and change orders necessitated by required changes in the work to be performed, may cause cost increases after FmHA or its successor agency under Public Law 103–354 loan approval and the obligation of FmHA or its successor agency under Public Law 103–354 loan funds. It is a general practice for

FmHA or its successor agency under Public Law 103–354 to make subsequent loans when necessary to help cover these eligible costs, provided additional loan funds are available, the change orders were approved by FmHA or its successor agency under Public Law 103–354, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value.

Your assistance to the applicant is appreciated.

Sincerely,

State Director.

[44 FR 59199, Oct. 15, 1979, as amended at 50 FR 8593, Mar. 4, 1985]

EXHIBIT J TO SUBPART D OF PART 1944 [RESERVED]

EXHIBIT K TO SUBPART D OF PART 1944—LOAN AGREEMENT

(LH INSURED LOAN TO FARM BORROWERS TO PROVIDE HOUSING FOR THE FARM BORROWER'S FARMING OPERATIONS)

A. General provisions:

1. This agreement is entered into _____ (Date).

2. This agreement is between _____ (borrower's name whether one or more), whose mailing address is _____, and the United States of America, acting through the Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture (the Government).

3. This agreement is made in return for receiving Labor Housing (LH) loan assistance from the Government totaling $_____ as evidenced by a Promissory Note dated _____. This assistance is made with the understanding that housing is to be provided to Domestic Farm Laborers on a rent free basis. Any rents collected without the written consent of the Government are the responsibility of the borrower and shall be refunded by the borrower to the tenants.

4. The borrower agrees to comply with Government regulations governing the LH loan program.

5. This agreement is in addition to any other agreements entered into with the Government, such as any promissory note, mortgage or deed of trust, loan approval requirements, etc.

B. Rent and Occupancy.

Occupancy of the housing will be limited to domestic farmworkers or migrant farmworkers as defined by the Government, unless the Government gives prior written approval for other occupancy, except that in no case will a member of the borrower's immediate family occupy the housing.

The borrower agrees:

1. To meet the LH loan objectives by providing decent, safe, and sanitary housing for eligible tenants;

2. To provide the housing rent free to eligible farmworker tenants;

3. To get the Government's prior approval before collecting utility charges (i.e. electricity, fuel, water, waste disposal, etc.) or requiring a refundable damage deposit or cleaning fee from tenants;

4. To get the Government's prior approval if there is a need to permit occupancy by tenants who are not working in the borrower's farming operation or not normally eligible to occupy the housing unit; and

5. To get the Government's prior approval if there is a need to charge rent to tenants or change any existing rents. To provide a management plan, which meets requirements set out in Government regulations, whenever rents are charged to tenants. The management plan will describe how the housing operation will be conducted.

C. Recordkeeping.

The borrower agrees:

1. To provide the Government financial information as required by Government regulations;

2. To provide annual verification of employment of eligible tenants as occupancy changes, not less than once per year; and

3. To keep information required by Government regulations and make the information available for Government inspection, to include tenant nonrent affidavits.

D. Compliance with Federal, State, and Local Laws and Regulations.

The borrower agrees to comply with applicable Federal, State, and local laws and regulations, including but not limited to, the following:

1. To provide equal housing opportunities to tenants;

2. To operate the housing in a safe environment;

3. To maintain comprehensive property insurance on the property taken as security;

4. To pay taxes and assessments on the property taken as security; and

5. To make the security property available for inspection by the Government.

E. Disposition of LH Security Property.

The borrower agrees:

1. Not to sell or otherwise dispose of property taken as security for the LH loan without the Government's prior written approval;

2. Not to sell or enter into any business arrangement which may potentially or actually place the housing operation under the management or control of another party without the prior approval of the Government; and

3. To prohibit any liens to be taken on the security property without the prior approval of the Government.

F. Enforcement Considerations.

The. borrower understands that any violation of the terms of this agreement may enable the Government to declare the note immediately due and payable and may adversely affect the borrower's ability to obtain other Government loans or grants.

G. General Provisions.

This agreement may be cited in the security instrument and other Instruments or agreements as the ''Loan Agreement of _____ 19__.''
(date of this instrument)

H. Signature(s).

Signature of Borrower

Witness

Signature of Borrower

Witness

[57 FR 59905, Dec. 17, 1992]

EXHIBIT K–1 TO SUBPART D OF PART 1944

Date _____

SUBJECT: Verification of Domestic Farm Labor and Occupancy in Rent Free Housing

_____(borrower's name or the farm's business name)

On_____, __, I/We became the occupant(s) of the rent free dwelling owned by the above named borrower. The dwelling is provided as a condition of my farm labor employment.

If the rent free status changes, I/we will notify the Farmers Home Administration or its successor agency under Public Law 103–354 at:

_____ Office
_____ Phone number
_____
_____
_____, occupant
_____
_____

Distribution:

Original to occupant.

1 copy for borrower's records to be kept available for inspection upon request by Farmers Home Administration or its successor agency under Public Law 103–354 for all current tenants.

[57 FR 59905, Dec. 17, 1992]

EXHIBIT L TO SUBPART D OF PART 1944 [RESERVED]

EXHIBIT M TO SUBPART D OF PART 1944

MARKET RENT DETERMINATION FOR LABOR HOUSING PROJECTS

I. *Objective.* The objective of this exhibit is to provide guidance for a market rent determination for Labor Housing (LH) when the farmworker is not required to live on the farm (§1944.176(d)(5) of this subpart) or when it is necessary to determine a rent for farmer owned housing.

II. *Purpose.* When an eligible farmworker becomes ineligible because of above-moderate-income and has been granted permission to continue residing in the unit in accordance with paragraph VI B 5 or 6 of exhibit B of subpart C of part 1930 of this chapter, then an appropriate rent must be formulated that must not exceed the market rent for the local area as determined in accordance with the provisions set out in this exhibit.

III. *Determination.* Whenever a market rent determination is required for one or more LH resident(s), the market rent will be computed by using the most recently approved Form FmHA or its successor agency under Public Law 103–354 1930–7, ''Statement of Budget and Cash Flow,'' and substituting a new debt service computation based on the project's development cost. The amortization factor for the Farm Labor Housing-State Director Exception interest rate as published in FmHA Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103–354 office) will be used with a 33 year term. The rate used for amortization for debt service in the market rent budget should be rounded down to the nearest eighth of a percent. For example, 9.95 percent would be rounded to 9.875. The market rent is computed on a basis of the project's initial development cost and subsequent loans and grants. In contrast, the ''basic'' rent debt service is computed 1 percent loans offset by the construction grants.

The market rent determination, one set, will remain in place for the project; therefore, the determination must be recorded in a narrative statement which must be filed with the Promissory Note.

IV. *Limitations.* If the market rent determined in the proceeding paragraph is found to exceed the conventional market rents in the area (within an approximate 48 kilometer or (30 mile) radius or the effective market area or other appropriate geographical or local boundary) by more than $20, then the LH market rent will be limited to the prevailing market rent. Prevailing market rents may be determined from such sources as recent Rural Rental Housing Market studies or recent area classified advertisements (within the last two months), documented, and adjusted for comparability. Documentation should be similar to the information found in exhibit A–4 of this subpart, with the advertisements attached. The adjustment for comparability should consider unit size, bedroom mix, age, and amenities. This rental determination is not intended to survey housing used exclusively for farm labor rental housing, but to determine a fair conventional market rent for an

above-moderate-income farmworker and family.

[57 FR 59906, Dec. 17, 1992]

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

SOURCE: 53 FR 2159, Jan. 26, 1988, unless otherwise noted.

EFFECTIVE DATE NOTE: At 69 FR 69105, Nov. 26, 2004, Subpart E was removed and reserved, effective Feb. 24, 2005.

§ 1944.201 General.

This subpart sets forth the policies and procedures and delegates authority for making Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans under sections 515 and 521 of the Housing Act of 1949. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA or its successor agency under Public Law 103–354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA or its successor agency under Public Law 103–354 employee.

[56 FR 2232, Jan. 22, 1991, as amended at 58 FR 227, Jan. 5, 1993]

§ 1944.202 Objective.

The basic objective of RRH and RCH loans is to provide eligible persons with economically designed and constructed rental or cooperative housing and related facilities suited to their living requirements.

[56 FR 2232, Jan. 22, 1991]

§§ 1944.203–1944.204 [Reserved]

§ 1944.205 Definitions.

Accessible. When used in respect to the public and common use area of a building containing covered multi-family dwellings, means that these areas of the building can be approached, entered, and used by individuals with handicaps.

Adviser to the board. An individual or organization who will work with and provide guidance to a cooperative board.

Agency. The Rural Housing Service within the Rural Development mission area of the U.S. Department of Agriculture or its successor agency which administers Section 515 loans and Section 521 rental assistance.

Amortization effective date (AED). A date established by the accounting system on which advanced principal and any accrued interest is combined and amortized to establish a schedule of payments. This date is always the first day of a month.

Articles of incorporation. A document filed with a government agency containing information about the organization's structure and operation.

Board and directors. The governing body and members of the governing body of an organization.

Bylaws. Rules adopted by an organization to govern the conduct of its affairs.

Census Designated Place (CDP). An unincorporated population center identified by the Census Bureau.

Community. Cities, towns, boroughs, villages and unincorporated places which have the characteristics of an incorporated area and are easily identifiable as established concentrations of inhabited dwellings located in rural areas as defined in 7 CFR part 3550.

Congregate housing. Residential housing, for persons or families who are elderly, have handicaps or disabilities, consisting of private apartments and central dining facilities in which a number of specific pre-established services are provided to tenants (short of those services provided by a health care facility that provides health related care and services recognized by the medicaid program). Tenants requiring additional services not provided by the facility will acquire them or provide for them with their own financial, familial or social resources.

Consolidated Plan. A plan developed by a community or state addressing community planning and development that is used to support requests for assistance from the Department of Housing and Urban Development.

Consumer cooperative. A corporation which:

(1) Is organized under the cooperative laws of a State or Federally recognized Indian tribe;

(2) Will own and operate the housing on a cooperative basis solely for the benefit of the members;

(3) Will operate at cost and, for this purpose, any patronage refunds accruing to members as defined in § 1944.205 of this subpart will not be considered gains or profits; and

(4) Will restrict membership in the housing to eligible persons and, to any extent the cooperative and FmHA or its successor agency under Public Law 103–354 permit, to others in special circumstances.

Dealer-contractor. A person, firm, partnership or corporation in the business of selling and servicing manufactured homes and developing sites for manufactured homes for persons who purchase such homes for purposes other than resale. Dealer-contractors will be qualified as shown in 7 CFR part 3550, except all processing will be handled by the servicing official rather than the County Supervisor.

Development cost. The cost of constructing, purchasing, improving, altering, or repairing housing and related facilities and the value or cost of purchasing and improving the necessary land. Costs that can be paid for with RRH and RCH loan funds are detailed in § 1944.212 of this subpart.

Dwelling unit. A residence for a family of one or more persons, and includes, in addition to those that would normally come to mind, units in which sleeping accommodations are provided but toileting or cooking facilities are shared, such as dormitories or shelters for the homeless.

Elderly (Senior Citizen). A person who is a least 62 years old. The term elderly (senior citizen) also means individuals with handicaps or disabilities as separately defined in this section, regardless of age.

Elderly family. A household where the tenant, cotenant, member or comember (individual) is a least 62 years old, disabled, or handicapped as defined separately in this section. An elderly family may include a person(s) younger than 62 years of age who is essential to the care and well-being of the person who is elderly, disabled, and/or handicapped. (To receive an elderly family deduction, the person who is elderly, or has disabilities or handicaps must be the tenant, cotenant, member or comember.)

Elderly household. A household where the tenant or co-tenant is at least 62 years of age, handicapped, or disabled as defined in § 1944.205(h) of this subpart. An elderly household may include a person(s) younger than 62 years of age who is essential to the elderly, handicapped, or disabled person's care and well-being. (To receive an elderly household deduction, the elderly, handicapped, or disabled person must be the tenant or cotenant.)

Eligible tenants or cooperative members. Persons who are elderly, or have handicaps or disabilities and very low-, low-, or moderate-income households or any combination thereof as planned for the project and shown on the applicant's loan resolution or loan agreement and who meet the eligibility requirements of exhibit B to subpart C of part 1930 of this chapter. In the case of cooperative housing projects, all members must have a very low, low, or moderate income except that any member who is admitted as an eligible member of the cooperative may not subsequently be deprived of his/her membership or tenancy by reason of no longer meeting the income eligibility requirements as outlined in 7 CFR 3550.53.

EZ/EC. Empowerment Zone or Enterprise Community.

Familial status. One or more individuals (who have not attained the age of 18) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person, or a person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Gains or profits. For the purpose of the patronage capital refund, gains and profits do not include dividends payable on stock which is nonvoting, limited as to the amount of dividends that

can be paid thereon and limited as to liquidation value in the event of corporate dissolution.

Group home. Housing that is occupied by tenants who are elderly, or have handicaps, or disabilities sharing living space within a rental unit in which a group home resident assistant may be required.

Household. One or more persons who maintain or will maintain residency in one rental or cooperative unit, but not including a resident assistant or chore service worker.

HUD. The U.S. Department of Housing and Urban Development.

Individual. A natural person.

Individual with disability. A person is considered disabled if the person meets the criteria of either of the following:

(1) The person has an inability to engage in any substantial gainful activity, but with use of auxiliary aids apparatus can otherwise participate in gainful activity, by reason of any medically determinable physical or mental impairment where the disability:

(i) Has lasted or can be expected to last for a continuous period of not less than 12 months, or which can be expected to result in death, and

(ii) Substantially impedes the ability to live independently, and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or

(iv) In the case of a sight impaired person who is at least 55 years old (within the meaning of sight impairment as determined in section 223 of The Social Security Act), is unable, because of the sight impairment, to engage in substantial gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

(v) Receipt of veteran's benefits or Social Security Disability Payments for disability, whether service oriented or otherwise, does not automatically establish disability.

(2) The person has a developmental disability; a severe, chronic disability which:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairment; and

(ii) Was manifested before age 22; and

(iii) Is likely to continue indefinitely; and

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living; and

(G) Economic self-sufficiency.

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.

Individual with handicap. (1) A person with a physical or mental impairment that:

(i) Is expected to be of long-continued and indefinite duration: and

(ii) Substantially impedes the person or is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions.

(2) The term handicap further means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current illegal use of or addiction to a controlled substance. As used in this definition:

(i) Physical or mental impairment includes:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special senses organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatics; skin; and endocrine; or

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and special learning disabilities. The term *physical or mental impairment* includes, but is not limited

to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus (HIV) infection, acquired immunodeficiency syndrome (AIDS), mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(ii) Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(iii) Has a record of such an impairment means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more of major life activities.

(iv) Is regarded as having an impairment means:

(A) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(C) Has one of the impairments defined in paragraphs (2)(i)(A) and (2)(i)(B) of this definition but is treated by another person as having such an impairment.

Initial operating capital. Cash to pay for costs such as property and liability insurance premiums, fidelity coverage premiums if an organization, utility hookup deposits, maintenance equipment, movable furnishings and equipment, printing lease forms, and other initial operating expenses. The initial operating capital will be at least 2 percent of the total development cost of the project.

Interested parties. Any person who has or will have a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project or activity shall include but not be limited to any developers, contractors, and consultants involved in the application for assistance under this title or the planning, development, or implementation of the project or activity. Residency of an individual in housing for which assistance is being sought shall not, by itself, be considered a pecuniary interest.

LIHTC. Low-income housing tax credits.

Limited equity. The amount of funds which have accumulated in the cooperative member's patronage capital account (defined in §1944.205) and as described in exhibit H of this subpart.

Limited partnership. A partnership consisting of one or more general partners who are jointly and severally responsible for conducting the business of the partnership, and one or more special partners contributing cash in a specific amount as capital to the common stock, who are not liable for the debts for the partnership beyond the funds contributed.

Limited profit basis. An individual or organization applicant who, in order to obtain interest credit assistance, will agree to limit the amount of profit to be obtained. Applicants operating on this basis will be permitted to receive a return on their initial investment in accordance with the requirements outlined in §1944.215 of this subpart. The applicant will legally obligate itself to regulate rents, charges, rate or return, and methods of operation.

Loans to build or acquire new units. Any initial or subsequent loan made on or after December 15, 1989, to build or acquire new RRH units. Loans under this category may not be prepaid for the term of the mortgage.

Low-income household. A household having an adjusted annual income within the maximum low-income limit stated in Appendix 9 of HB–1–3550 (available in any Rural Development office).

Management reserve. That portion of the cooperative occupancy charge which is designated for payment of professional management services.

Manufactured home (unit). A dwelling unit which is built to conform with the Federal Manufactured Home Construction and Safety Standards and Farmers Home Administration (FmHA) or its successor agency under Public Law 103–

354 thermal requirements. Manufactured homes are described further in exhibit J of subpart A of part 1924 of this chapter.

Manufactured home project. A parcel(s) of land located in the same community which contain two or more manufactured home units one each parcel for rental or cooperative member occupancy and operated under one management plan with one loan agreement/resolution. For a cooperative housing project, the parcels of land must be in the same neighborhood and in a clustered configuration.

Maximum debt limit (MDL). The maximum amount that FmHA or its successor agency under Public Law 103–354 will lend for a project based on the appraised value or total development cost, whichever is less, multiplied by 95, 97, or 102 percent in accordance with § 1944.213(b) of this subpart.

Member. A person who has executed documents pertaining to a cooperative housing type of living arrangement and has committed himself/herself to upholding the cooperative concept.

MFH. Multi-Family Housing.

Moderate-income household. A household having an adjusted annual income within the maximum moderate-income limit stated in Appendix 9 of HB–1–3550 (available in any Rural Development office).

Modification. Any change to the public or common use areas of a building or any change to a dwelling unit to comply with handicap accessibility.

NOFA. Notice of funds availability.

Occupancy agreement. A contract setting forth the rights and obligations or the cooperative member and the cooperative, including the amount of the monthly occupancy charge and the other terms under which the member will occupy the housing. An example of the agreement is in exhibit J of this subpart.

OGC. The Regional Attorney or the Attorney in Charge in the field office of the Office of the General Counsel (OGC) of the United States Department of Agriculture.

Organization. A private nonprofit corporation, profit corporation, consumer cooperative, association, State, or local public agency, trust, partnership, or limited partnership.

Other government assistance. Any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof. Such related assistance shall include but not be limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

Owner-builder. A qualified builder-applicant who has experience and has demonstrated the ability and capability to build a RRH project.

Patronage capital refund. Amounts received by the cooperative in excess of operating costs and expenses which have been assigned to members' patronage capital accounts each year of membership in the cooperative.

Pecuniary Interest. Financial concern or financial gain.

Private nonprofit corporation. A corporation which:

(1) Is controlled by private persons or interests;

(2) Is organized and operated for purposes other than making gains or profits for the corporation or its members;

(3) Is legally precluded from distributing to its members any gains or profits during its existence; and

(4) In the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a public corporation which will operate the housing for the same or similar purposes.

Project. The total number of rental or cooperative housing units that are operated under one management plan with one loan agreement/resolution.

Public use areas. Interior or exterior rooms or spaces of a building that are made available to the general public.

RCH. Rural Cooperative Housing.

REAP. Rural Economic Area Partnership.

Resident assistant. A person(s) residing in a tenant's housing unit who is essential to the well-being and care of person(s) who are elderly, or have handicaps or disabilities residing in the unit but is not obligated for the person's financial support and would not be living in the unit except to provide the needed support services. While the resident assistant may be a family member, the resident assistant may

not be a dependent for tax purposes and is not subject to the eligibility requirements of a tenant or member. A resident assistant is not a chore service worker. A resident assistant may function in any type of housing affected by this subpart.

RHS. Rural Housing Service.

RRH. Rural Rental Housing.

Rural area. Open country or rural places as defined in §3550.10 of this title.

Rural rental housing. Structures in a rural area which are or will be suitable for, and available to, eligible tenants on a rental basis for dwelling use. The structures may include related facilities where appropriate.

Section 515. Section 515 of title V of the Housing Act of 1949 (42 U.S.C. 1485 *et seq.*).

Security value. The present market value of the real estate offered as security for the loan as determined by the loan approval official less the unpaid principal balance plus past due interest on any other liens against it. Other liens will include any prior liens and Junior liens to be or likely to be taken or subordinated at or immediately after loan closing.

Service agreement. A written agreement between the borrower and service provider detailing the specific service to be provided, the cost of the service and length of time the service will be provided.

Service plan. A written plan describing how services will be provided to a FmHA or its successor agency under Public Law 103–354 financed project. At a minimum, the plan must specify the services to be provided, the frequency of the services, who will provide the services, how tenants will be advised of the availability of services, and the staff needed to provide the services.

Servicing office. FmHA or its successor agency under Public Law 103–354 servicing office or other place designated by the FmHA or its successor agency under Public Law 103–354 State Director where loan requests are processed.

Servicing official. FmHA or its successor agency under Public Law 103–354 servicing official or other FmHA or its successor agency under Public Law 103–354 staff member designated by the State Director to be responsible for processing loan requests.

State Agency. The Agency within a State that has been given the responsibility to allocate low-income tax credits.

Subscription agreement: The initial contract between the prospective cooperative member and the cooperative specifying the terms of application for membership and the amount of the membership fee contributed by the member. An example of the agreement is in exhibit I of this subpart.

Very low-income household. A household having an adjusted annual income within the maximum very low-income limit stated in Appendix 9 of HB–1–3550 (available in any Rural Development office).

[56 FR 2232, Jan. 22, 1991; 56 FR 47376, Sept. 19, 1991, as amended at 56 FR 66960, Dec. 27, 1991; 58 FR 40951, July 30, 1993; 58 FR 44263, Aug. 20, 1993; 59 FR 6886, 6897, Feb. 14, 1994; 62 FR 25066, May 7, 1997; 62 FR 67222, Dec. 23, 1997; 67 FR 78328, Dec. 24, 2002]

§§ 1944.206–1944.210 [Reserved]

§ 1944.211 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for an RCH or RCH loan, the applicant must:

(1) Be a citizen of the United States or a legally admitted alien for permanent residence in the United States; an organization as defined in §1944.205 of this subpart; or an American Indian tribe, band, group, or nation (including Alaskan Indians, Aleuts, Eskimos, and any Alaskan native village), which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512).

(2) Be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that allow establishment of rent or occupancy charges within the payment ability of eligible tenants or members.

(i) For an individual, the assets of both the applicant and spouse will be considered.

(ii) For nonprofit organizations, the assets of the individual members will not be considered.

(3) Have the ability and intention to maintain and operate the housing for the purposes for which the loan is made.

(4) With the exception of a nonprofit organization, consumer cooperative or public body, provide from its own resources the borrower contribution required by §1944.213 (b) of this subpart. This contribution must be in the form of cash, land, or a combination thereof.

(5) Own the housing and related land or become the owner when the loan is closed. In addition to the owner of full marketable title, an owner may be a lessee of a tract of land owned by a nonpublic body, State, political subdivision, public body, or public agency, or American Indian tribal lands which are not available for purchase. The State Director must determine that leaseholds are fully marketable in the area. The following conditions must be met when considering leasehold interests:

(i) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security.

(ii) The amount of the RRH or RCH loan against the property will not exceed the estimated market value determined in accordance with subpart B of part 1922 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(iii) The unexpired term of the lease on the date of loan approval must be at least 25 percent longer than the repayment period of the loan and rent charged for the lease does not exceed the rate being paid for similar leases in the area.

(iv) The borrower's interest must not be subject to summary foreclosure or cancellation.

(v) The lease must:

(A) Not restrict the right to foreclose the RRH or RCH mortgage or to transfer the lease.

(B) Permit FmHA or its successor agency under Public Law 103–354 to bid at a foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(C) Permit FmHA or its successor agency under Public Law 103–354 to occupy or sublet the property and sell the leasehold for cash or credit if the leasehold is acquired through foreclosure (or voluntary conveyance in lieu of foreclosure), or if the borrower abandons the property.

(D) Permit the borrower, in the event of default or inability to continue with the lease and the loan, to transfer the leasehold, subject to the RRH or RCH mortgage, to a transferee with the assumption of the RRH or RCH debt.

(vi) The advice of OGC will be obtained as to legal sufficiency of the lease. When the State Director is uncertain as to whether a loan can be made on a leasehold, he/she should request National Office evaluation and instruction.

(6) Have or be able to obtain the initial operating capital and other assets needed for a sound loan. Loans made to nonprofit organizations, consumer cooperatives, and to State or local public agencies may include up to 2 percent of the development cost for initial operating expenses.

(i) The applicant will provide a detailed list of all materials and equipment needed to be funded by the initial operating capital including, but not limited to, property and liability insurance premiums, fidelity bond premiums when the applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction, purchase of office equipment and furniture, community room furnishings, other movable equipment and furnishings, congregate items referenced in §1944.224 of this subpart, advertising expenses, management fees, etc. The list will be approved by the servicing office based upon similar projects in the State. The initial 2 percent operating and maintenance (O&M) expenses, plus any amounts needed for these items above the 2 percent, must be provided in cash.

(ii) The O&M cash will be deposited into the general operating account in accordance with the provisions of the loan agreement or loan resolution. FmHA or its successor agency under Public Law 103–354 will be provided with documentation of the deposit prior to the start of construction or loan closing (whichever is first) and

such funds will be used for authorized purposes only.

(iii) If the borrower provided the initial 2 percent operating capital from its own funds, the State Director may, in accordance with subpart C of part 1930 of this chapter, authorize the borrower to make a one-time withdrawal from project funds. The borrower must request in writing the withdrawal after 2 years, but before 5 full (12-month) borrower fiscal years of operation.

(7) Possess the ability, experience, and the legal and financial capacity to incur and carry out the obligations required for the loan.

(8) Agree to comply with all FmHA or its successor agency under Public Law 103–354 requirements, such as those set forth in the loan resolution, loan agreement, the form of note, the mortgage and FmHA or its successor agency under Public Law 103–354 regulations.

(9) Provide necessary management to assure the successful operation of the project. Management services may be provided by the applicant, a management firm or an agent. Management will be handled in accordance with exhibit B to subpart C of part 1930 of this chapter.

(10) In the case of a private nonprofit organization:

(i) If operating in one community and its trade area, meet the following additional requirements for an RRH loan:

(A) The organization must maintain a broadly-based membership reflecting a variety of interests in the community. The organization should have at least 25 members. The number of members may be decreased for projects with less than 25 units.

(B) Each member must be limited to one vote in the affairs of the organization.

(C) A majority of the members must reside in the community or the trade area where the housing will be located.

(D) At least five of the members must be recognized as leaders in civic, governmental, fraternal, religious, and other community organizations of the community where the housing will be located.

(E) There must be at least five people on the board of directors and they must be selected by a procedure that insures that the interests of minorities and women are adequately represented.

(F) The directors must be members of the organization.

(G) The organization should adopt articles of incorporation and bylaws substantially conforming to the model articles and bylaws set forth in exhibits C and D, modified as appropriate in accordance with State law. The State Director, with the assistance of OGC, may develop a model set of articles of incorporation and bylaws for the State which are consistent with exhibits C and D and publish an appropriate State supplement.

(ii) If operating in more than one community or on a county or regional basis and providing or planning to provide rental housing in more than one community, meet the following requirements in addition to those in paragraph (a)(10)(i) of this section, with the exception of (a)(10)(i)(C) of this section:

(A) The membership base should be representative of the area being served with at least five members representing a variety of interests from each community where the housing will be located.

(B) The organization's articles of incorporation and bylaws must include the requirements outlined in paragraph (a)(10)(ii)(A) of this section.

(11) In the case of transfers of projects to nonprofit corporations which receive subsequent loans to avert prepayment, meet the requirements of § 1965.216 (c) of subpart E of part 1965 of this chapter.

(12) In the case of a cooperative:

(i) Each member must be limited to one vote in the affairs of the Cooperative.

(ii) The number of directors must not be less than 5, or whatever is allowable under State law.

(13) In the case of a limited partnership:

(i) The general partners must be able to meet the financial requirements of § 1944.211(a)(4) of this subpart if the partnership is not able to when the loan request is filed.

(ii) The general partners must maintain a minimum 5 percent financial interest in the partnership. For this purpose, the minimum 5 percent requirement will be deemed to have been met if the general partner has a minimum 5 percent interest in the residuals or refinancing proceeds. The general partner will not be required to have a minimum 5 percent interest in current profits, losses, and cash distributions of the partnership. For example, an agreement where the general partners have such a 5 percent interest in a limited partnership and receive only 1 percent of the profits while the limited partners receive 99 percent of the profits would be allowable.

(iii) The partnership must agree that new general partners can be brought into the organization only with the prior written consent of FmHA or its successor agency under Public Law 103–354.

(14) Be willing to honor the long-term commitment associated with receipt of a section 515 loan. Borrowers or principals of borrower organizations who sell or transfer loans less than 5 years old will not be considered eligible for further participation in the program as borrowers or principals (i.e., a general partner in a limited partnership) for at least 5 years from the date of the loan or assumption closing. The State Director may make an exception to this provision only if the transfer or sale meets the hardship provisions of §1965.65(a)(4) of subpart B of part 1965 and the applicant meets all other eligibility requirements.

(15) Meet the following requirements if the applicant, including the principals, has prior or existing RHS debts and is applying for a new or subsequent loan or requesting incentives to preclude prepayment. Applicants who do not meet these requirements will be rejected for failure to meet the applicable provisions of this section, as well as §1965.213(c)(2)(i) of subpart E of part 1965 of this chapter, if applicable.

(i) The applicant, including the principals, must be in compliance with existing debts in accordance with all legal and regulatory requirements and agreements, including the Promissory Note, Loan Agreement, and mortgage, all applicable local, state, and federal laws, and must provide regular financial and other required reports within required timeframes; or, if the applicant fails to meet any of these requirements, has an approved workout plan in effect that meets the provisions of paragraph (a)(15)(ii) of this section.

(ii) An applicant or principal with an approved workout plan in effect to correct deficiencies in an existing RHS debt may be considered for eligibility if the applicant or principal has been in compliance with the provisions of the workout plan for 6 months. The State Director may waive this requirement for borrowers who have acted in good faith but are in noncompliance through circumstances beyond their control, including substantial local economic downturn, natural disaster, assuming responsibility for a troubled loan through substitution of the general partners, or assuming a loan with an existing workout plan.

(iii) Applicants and principals must be in compliance with the provisions of the Civil Rights Act of 1964 (in accordance with their Form RD 400–4, ''Assurance Agreement'') and all other civil rights laws. If the Agency has reasonable grounds, based on a substantiated complaint, the Agency's own investigation, or otherwise, to believe that the representations of an applicant or borrower as to civil rights compliance are in some material respect untrue or are not being honored, assistance may be deferred or denied.

(iv) Applicants or principals who have been debarred but whose debarment period has expired will be considered for eligibility subject to all requirements of this section.

(v) Applicants, including principals, who have been determined ineligible by one state may not be determined eligible by another State until the problems have been corrected or workout plans are in effect in all States in which the applicant or principal is operating.

(b) *Authorized representative of an applicant.* FmHA or its successor agency under Public Law 103–354 will deal only with the applicant or its authorized representative and the representative's technical advisers. An authorized representative of a nonprofit applicant must have no pecuniary interest in the

award of the architectural or construction contracts, the purchase of equipment or the purchase of the land for the housing site.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7491, Mar. 9, 1988; 54 FR 14336, Apr. 11, 1989; 56 FR 2235, Jan. 22, 1991; 58 FR 38924, July 21, 1993; 58 FR 40952, July 30, 1993; 59 FR 6886, Feb. 14, 1994; 62 FR 25065, 25074, May 7, 1997]

§ 1944.212 Loan and grant purposes.

RRH and RCH loans may be made to qualified applicants to:

(a) Construct new housing.

(b) Purchase and rehabilitate existing buildings only when the loan for such purchase and rehabilitation does not exceed by 5 percent the loan for new construction in the same area and when moderate or substantial modifications, repairs or improvements to the structures are necessary to meet the requirements of decent, safe, and sanitary living units.

(1) All rehabilitation work to be performed must be classified as either moderate or substantial rehabilitation as defined in exhibit K of subpart A to part 1924 of this chapter.

(2) The structure to be rehabilitated must be physically and structurally sound enough to afford maximum safety (including fire safety) to the residents of the structure after rehabilitation.

(3) Rehabilitation must be planned and accomplished so that the resulting housing will:

(i) Meet the applicable development standards as provided for in § 1924.5(d)(1) of subpart A of part 1924 of this chapter and any applicable historic preservation requirements.

(ii) Create a suitable and appealing living environment and be substantially equivalent to new construction in quality and livability.

(4) The applicant must submit complete plans and specifications for rehabilitation for FmHA or its successor agency under Public Law 103–354's review and acceptance.

(5) The rehabilitated project must generally meet the provisions of § 1944.215(b) of this subpart.

(6) When the downtown location of a rehabilitation project dictates such, a portion of the structure (such as part of the ground floor and basement) can be designated for commercial use on a lease basis. Loan funds, however, cannot be used to finance any cost associated with the commercial space. In order to determine the correct loan amount for the residential portion of such a structure, the following guidelines will apply:

(i) The applicant must supply a complete cost breakdown for purchasing and rehabilitating the entire structure into its joint residential/commercial use.

(ii) The costs that can be easily and appropriately identified as being part of either the commercial or residential portion of the structure should be separated.

(iii) The costs which cannot be easily and appropriately isolated (such as the cost associated with repair or renovation of a boiler, the value of the structure ''as is,'' and certain mechanical or electrical components that will benefit both commercial and residential tenants or members will be prorated between the two uses based on the percentage of equipment load (example—central boiler or air conditioning) which would be necessary for each portion of the structure.

(iv) For the purposes of the loan limitations in § 1944.213(b) (1) and (2) of this subpart, the term *development cost* means the development costs associated with or prorated to the residential use of the structure, and the term *security value* is the security value of the project exclusive of the value contributed to the land and structure(s) by the commercial space. The capitalization approach to value is one means by which FmHA or its successor agency under Public Law 103–354 may establish the value contributed by the commercial space.

(v) The applicant must rely on other sources of financing for all costs associated with or prorated to the commercial space, given the FmHA or its successor agency under Public Law 103–354 security requirements of § 1944.221 of this subpart.

(7) The applicant may not lease any authorized commercial space without the prior written consent of the State Director. Prior to loan closing, the advice of OGC will be obtained as to any

modifications needed in the mortgage, loan agreement or loan resolution to enforce this requirement. The State Director may not consent to any lease unless:

(i) The lease contains a provision by which the lessee agrees to vacate the premises if FmHA or its successor agency under Public Law 103–354 withdraws its consent to the lease.

(ii) The proposed use of the leased space has a mutually supportive relationship to the needs of the residential tenants or member and to the use of the residential portion of the structure.

(iii) The terms of the lease and the proposed use of the leased space do not jeopardize the interests of the tenants or members of the project or the continued use of the residential portion of the structure.

(iv) The lease has been reviewed by OGC and found to be legally sufficient and in compliance with the requirements of this subpart.

(c) Purchase and improve the necessary land on which the housing will be located.

(1) Loan funds used to purchase land may not exceed the estimated market value of the site in its present condition as shown by a current appraisal in accordance with FmHA Instruction 1922–B (available in any FmHA or its successor agency under Public Law 103–354 office).

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

(3) Loan funds may be used to acquire land in excess of that needed for the housing, including related facilities, only when:

(i) The applicant cannot acquire only the needed land at a fair price, can justify the acquisition, agrees to sell the land as soon as practicable and apply proceeds on the loan, and has legal authority to acquire and administer the land; and

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

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

(d) Develop and install streets, a water supply, and sewage disposal, heating, cooling, and light systems necessary in connection with the housing. If the facilities are located offsite, the following requirements must be met:

(1) The applicant will hold the title to the facility or have a legal right to use the facility for a period of at least 25 percent longer than the life of the loan and the title or right can be transferred to any subsequent owner of the site.

(2) The facilities are provided for the exclusive use of the project or funds are limited to the prorated part of the total cost of the facility according to the use and benefits to the project. The applicant will agree in writing to the application, as extra payments on the loan, of any subsequent collection by the borrower from other users or beneficiaries of the facility.

(3) Adequate security can be obtained with or without a mortgage based on the offsite facilities.

(e) Develop other related facilities in connection with the housing such as:

(1) Maintenance workshop and storage facilities.

(2) Recreation center when the project is large enough to justify the facility. In all projects, passive recreation (such as outdoor seating) for elderly rental projects and active facilities (such as tot lots) for family projects will be provided.

(3) Central cooking and dining in congregate and group living housing when the project is large enough to justify them to supplement the kitchen facilities in each unit. All equipment purchased with loan funds for the central cooking and dining facilities, such as stoves, refrigerators, ovens, dish washing machines and steam tables, should be attached to the land or buildings in a manner regarded in law as part of the real estate.

(4) Space for a small infirmary for emergency care only when justified by the size of the project. An infirmary will not be justified if facilities for emergency care expected to be needed by the tenants are readily accessible elsewhere.

(f) Construct office and living quarters for the resident manager and other operating personnel if the facilities would be to the advantage of the

project and the Government. The State Director should make a determination and the justification will be included in the docket.

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

(h) Provide landscaping, seeding or sodding of lawns, and other necessary facilities related to buildings such as walks, yards, fences, parking areas, and driveways.

(i) Pay related costs such as fees and charges for market studies, tax credit application, legal (costs pertaining to the closing of the FmHA or its successor agency under Public Law 103–354 loan only), archeological, architectural, engineering, environmental, and other appropriate technical and professional services. The fees and charges may be paid to an applicant or officer, director, trustee, stockholder, member, or agent of the applicant provided those fees and charges are reasonable and typical for the area and are earned and the identity of interest is disclosed. Legal, technical, and professional fees do not include the costs incurred in the formation or incorporation of the limited profit applicant, costs of syndication, or the payment of a loan packaging or development fee.

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

(1) Fees can also be provided to pay the nonprofit applicant entity for packaging of its loan docket and project, but not to include the formation and incorporation of the entity.

(2) The amount to be paid for packaging of the loan docket and project should not exceed 1% of the FmHA or its successor agency under Public Law 103–354 loan or whatever is reasonable and typical for the area.

(3) Related project costs as listed in § 1944.222 of this subpart are not included as a part of the fee for packaging of the loan docket and project.

(k) Provide loan funds to pay for the cost of educational programs for the board of directors both before and after incorporation of the cooperative.

(l) 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, loan funds are fully advanced and the project is ready for full operation or when advances plus accrued interest reach the maximum debt limit (MDL). When requested by the borrower, each month the servicing official will provide the borrower monthly computations of the amount of interest that is accruing during the construction period.

(2) In the case of interim financed construction, interest accrued and customary charges necessary to obtain interim financing may be included in the loan amount.

(m) Purchase housing from an interim lender that holds fee simple title to an RRH project upon which construction commenced pursuant to § 1944.235(c)(1) and after issuance of a letter of commitment to the interim lender in accordance with exhibit B of this subpart, when all of the following conditions exist.

(1) The interim lender holds title to the property because the original RRH applicant for whom funds were obligated will not or cannot continue with the project after a letter such as that shown in exhibit B to this subpart was issued.

(2) The owner of the property is the interim lender to whom FmHA or its

successor agency under Public Law 103–354 issued a letter such as that shown in exhibit B to this subpart for the construction of the project.

(3) The project is substantially complete (see §1944.235(c)(1)(vi) of this subpart), all work has been satisfactorily completed in a workmanlike manner in accordance with the originally approved drawings, specifications and contract documents, and is in compliance with subparts A and C of part 1924 of this chapter.

(4) There are no unpaid obligations outstanding in connection with the project.

(5) All other requirements of this subpart have been met.

(n) Pay for related costs incurred in compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and in accordance with §1944.215(t) of this subpart.

(o) Contruct demonstration projects involving innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies, but do meet the intent of providing decent, safe, and sanitary rural housing. Only the Administrator may authorize loan funds to be used for this purpose.

(p) Finance the conversion of section 502 units in inventory to a section 515 project, in accordance with requirements of this subpart and subpart C of part 1955 of this chapter. Loans for this purpose can be made only to public agencies and private nonprofit organizations. Units should be repaired or rehabilitated prior to conversion to section 515 housing. To facilitate a cooperative's self-maintenance plan, the use of 502 inventory houses will be considered only if the units are located in the same subdivision and in a clustered configuration.

(q) Grants for advances to nonprofit corporations or public agencies for costs to develop an application package or close a loan to purchase a project to avert prepayment. Such grants shall not exceed $10,000 and shall be administered in accordance with §1965.217 (d) of subpart E of part 1965 of this chapter.

[53 FR 2159, Jan. 26, 1988, as amended at 54 FR 14336, Apr. 11, 1989; 55 FR 26644, June 29, 1990; 55 FR 29560, July 20, 1990; 56 FR 2235, Jan. 22, 1991; 56 FR 66960, Dec. 27, 1991; 58 FR 38924, July 21, 1993; 59 FR 6887, 6897, Feb. 14, 1994; 62 FR 25074, May 7, 1997]

§1944.213 Limitations.

(a) *Loan limits.* The Agency must certify that assistance provided any housing project is not more than is necessary to make the project affordable to potential tenants and the Government. The applicant must disclose, during each stage of the process, all other assistance proposed for the project, including all other government assistance as defined in §1944.205.

(1) *Fee norms.* RHS has established the fee norms below for purposes of analysis. The total of the three fees may not exceed 21 percent.

(i) Builder's profit: up to 10% of the construction contract.

(ii) General overhead: up to 4% of the construction contract.

(iii) General requirements: up to 7 % of the construction contract.

(2) *Other fee norms.* (i) RHS has established the new construction and rehabilitation fee norm for a developer's fee at up to 15% of the total development cost authorized for tax credit purposes. (A developer's fee is not an authorized Section 515 loan purpose.)

(ii) For transfer proposals that include acquisition costs, RHS has established the developer's fee on the acquisition costs at up to 8% of the acquisition costs only when authorized by the state agency and only for tax credit purposes. (A developer's fee is not an authorized Section 515 loan purpose.)

(3) *Analysis of loan requests to determine the minimum amount of assistance.* (i) The fee structure of the state agency administering low-income housing tax credits will be used in the RHS analysis of the amount of assistance that is necessary for a proposal.

(ii) In all cases where the results of an analysis indicate that there will be excess assistance (defined as more than the lesser of $25,000 or 1 percent of the total development cost as authorized by the state agency), RHS will consult with the applicant, as well as with the

state agency, to strive to reach an agreement for reducing the excess assistance.

(iii) In the event that excess assistance is not reduced through an agreement with the applicant and state agency, RHS will adjust the amount of equity contribution by the amount of excess assistance (through the reduction of the loan) to ensure that assistance provided is not more than is necessary to provide affordable housing after taking into account assistance from all Federal, state and local sources.

(b) *State Director's loan limitation.* The amount of the RRH loan(s) on each project (including principal and interest on all existing and proposed loans) is limited to the maximum amount of the State Director's loan approval authority unless the National Office provides prior written authorization. To request authorization, the State Director must submit the loan request and all information required in §1944.231(h) of this subpart to the National Office, Attention: Multi-Family Housing Processing Division (MFHPD). This must be done before notice is given to the applicant indicating that the loan has been determined eligible and/or feasible. Each loan will also be subject to the following additional requirements:

(1) For all applicants, including its members, who will be receiving any benefits from Low Income Housing Tax Credits (LIHTC), the amount of the RRH loan(s) will be limited to no more than 95 percent of the development cost or 95 percent of the security value, whichever is less.

(2) For all applicants, including its members, not receiving any benefits from LIHTC, who are comprised solely of nonprofits, consumer cooperatives, State or local public agencies, the amount of the loan(s) will be limited to the development cost or the security value of each project, whichever is less, plus the 2 percent initial operating capital and/or the relocation costs incurred as indicated in §1944.215(v) of this subpart. Grants made in accordance with §1944.212(q) of this subpart are not included in the preceding limitations.

(3) For all other applicants, including its members, not receiving any benefits from LIHTC, the amount of the RRH loan(s) will be limited to no more than 97 percent of the development cost or 97 percent of the security value, whichever is less.

(4) The examples set forth in exhibit A–13 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) provide clarity in determining the proper loan amount for various types of loans.

(5) For equity loans to avert prepayment, the amount of the RRH equity loan will be limited to no more than the difference between 90 percent of current value of the project as appraised as conventional unsubsidized housing and current unpaid balance(s).

(6) For all applicants, the amount of the loan after capitalized construction interest is considered will not exceed the loan limits in paragraphs (b)(1), (2), and (3) of this section. However, Predetermined Amortization Schedule System (PASS) loans closed with multiple advances may exceed that amount when an additional amount is permitted to allow interest to be capitalized to the first of the following month.

(7) All applicants must agree in writing to provide funds from their own resources to pay any cost for completing planned construction after the MDL is reached.

(c) *Limitations on use of loan funds.* Loans will not be made for:

(1) Specialized equipment for training and therapy.

(2) Commercial facilities except essential service-type facilities for tenants or members when such facilities are not conveniently available.

(3) Housing to serve primarily temporary and transient residents.

(4) Nursing homes, special care facilities, or institutional-type homes.

(5) Operating capital for a central dining facility or any items which do not become affixed to the real estate security, such as special portable equipment, furnishings, kitchen ware, dining ware, eating utensils, movable tables, and chairs, etc.

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

(7) Refinancing debts of the applicant except:

(i) As authorized in §§ 1944.235(c) and 1944.213(d)(1) of this subpart; or

(ii) When a nonprofit organization or a State or local public agency applicant already owns land on which a lien exists and a subordination or release cannot be obtained and the applicant does not have the financial resources necessary to obtain a release of the existing lien(s). In this situation, loan funds may be used to obtain a release of the land needed for the site of the proposed project. The amount of funds used for such purposes will be limited to the amount necessary to obtain the release but will not exceed this ''as is'' value of the land as determined in accordance with FmHA Instruction 1922–B (available in any FmHA or its successor agency under Public Law 103–354 office).

(8) Payment of any fee, charge or commission to any broker, negotiator or other person for the referral of a prospective applicant or solicitation of a loan.

(9) Payment of any fee, salary, commission, profit, or compensation to an applicant or to any officer, director, trustee, stockholder, member, or agent of an applicant except as provided in § 1944.212(j) of this subpart.

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

(11) Compensation to an applicant for value of land contributed in excess of the initial contribution as required by paragraph (b) of this section.

(d) *Obligations incurred before loan closing.* When an applicant files a loan request, the servicing official will advise the applicant not to start construction or incur any indebtedness until the loan is closed, except for those cases involving interim financing; the guidelines outlined in § 1944.235(c)(1) of this subpart and the environmental requirements of part 1940, subpart G, of this chapter will then apply. During the period of review and processing, applicants will not take any actions with respect to their applications which would have an adverse impact on the environment or limit the choice of reasonable alternatives. This requirement does not preclude the applicant from developing preliminary plans or designs or performing other work necessary to support an application for Federal, State, or local permits or assistance. If the applicant incurs debts for work, materials, land purchase, or other authorized fees and charges before the loan is closed, the State Director may authorize the use of loan funds to pay the debts when all of the following conditions exist and debts were authorized in writing by FmHA or its successor agency under Public Law 103–354 prior to their being incurred (market studies will be exempt from this requirement):

(1) The debts were incurred:

(i) After the applicant filed a written loan request for a loan with FmHA or its successor agency under Public Law 103–354;

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

(iii) Prior to the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and the State Director secures prior concurrence from the National Office.

(2) The applicant is unable to pay the debts from its own resources or to obtain credit from other sources and failure to authorize the use of loan funds to pay the debts would impair the applicant's financial position.

(3) The debts were incurred for eligible loan purposes.

(4) Contracts, materials, construction, and any land purchased meet FmHA or its successor agency under Public Law 103–354 standards and requirements.

(5) Payment of the debts will remove any liens which have attached and any basis for liens that may attach to the property on account of such debts.

(e) *Limitations on cost increases.* After loan approval of a project involving

new construction or major rehabilitation:

(1) No increase in per unit development cost will be approved, whether the circumstance causing the cost increase occurs before, during, or after the construction period, unless these conditions were unforeseen factors beyond the owner's control and the increase in cost was approved by FmHA or its successor agency under Public Law 103–354 in writing before the expense was incurred. (In case of an emergency, the requirement that the cost be approved by FmHA or its successor agency under Public Law 103–354 in writing before the expense is incurred is waived as long as the servicing official is notified by the next working day.) Such costs are:

(i) Design changes required by FmHA or its successor agency under Public Law 103–354 or State or local government having jurisdiction over the development of the project; or

(ii) Changes in financing approved by FmHA or its successor agency under Public Law 103–354.

(2) Any cost increase which cannot be approved for funding by FmHA or its successor agency under Public Law 103–354 must be satisfied by the owner from its own resources. Whenever there is doubt as to the resulting effect of a cost increase upon per unit development cost, the cost increase request may be conditionally approved provided:

(i) The owner agrees in writing to provide any funds necessary in excess of its initial contribution and the loan amount to complete the project; and

(ii) The owner furnishes surety that guarantees payment under the assurance agreement in the form of a surety bond, unconditional and irrevocable letter of credit or cash which is put into an interest or noninterest bearing supervised bank account. Such funds will not result in a lien on the project or its operating income.

(3) Under no circumstances will a cost increase request be approved without concurrent agreement between FmHA or its successor agency under Public Law 103–354 and the applicant/borrower as to how the cost increase will be funded.

(f) *New loans in areas with RHS, the Department of Housing and Urban Development (HUD), or similar type rental housing assistance.* (1) *Definitions.* As used in this paragraph only.

(i) *Similar type rental housing assistance.* Housing assistance provided by a Federal, State or local agency or other entity which provides very-low or low income housing assistance. Vouchers or tenant-based Section 8 assistance are not considered similar rental housing assistance. The State Director will determine if similar type rental housing assistance is available within his/her jurisdiction and will coordinate efforts under this paragraph.

(ii) *Market area.* See exhibit A–8 of this subpart. When a difference in opinion exists in the market area determined by FmHA or its successor agency under Public Law 103–354 personnel, the applicant, market analyst, HUD, or similar type rental housing provider, for the purposes of this paragraph, the market area established by FmHA or its successor agency under Public Law 103–354 personnel will prevail.

(2) *Applicability.* A request for an RRH/RCH loan to develop additional housing units (regardless of type) in the same market area with an FmHA or its successor agency under Public Law 103–354, HUD, LIHTC or similar rental housing assistance project will *not* be determined eligible/feasible, authorized, or approved when any of the following conditions exist:

(i) Another RRH or RCH loan request in the same market area has been selected for further processing; or

(ii) A previously authorized/approved FmHA or its successor agency under Public Law 103–354, HUD, LIHTC or similar type rental housing assistance project in the same market area has not been completed or reached its projected occupancy level. For example, a recently completed FmHA or its successor agency under Public Law 103–354 project is 85 percent occupied, reflecting a 15 percent vacancy. The Form FmHA or its successor agency under Public Law 103–354 1930–7, ''Multiple Family Housing Project Budget,'' approved when this loan was obligated indicated a proposed vacancy rate of 10 percent. In this case, another project

could not be authorized until the recently completed project reached and sustained a 90 percent occupancy level; or

(iii) An existing FmHA or its successor agency under Public Law 103–354, HUD, LIHTC or similar type rental housing assistance project in the same market area is experiencing high vacancies. The State Director, without authority to redelegate, will determine a reasonable vacancy rate for this purpose on a state, district or regional basis. Generally, a high vacancy rate would be in the 5 to 10 percent range. For the purpose of this paragraph, a high vacancy rate due to documented mismanagement will not be considered as a reason to defer processing a viable loan request provided there is an adequate market for the existing and proposed units. In addition, substandard units or excessive nonmarketable efficiency apartments would not be a reason to defer a viable loan request; or

(iv) A request for a Servicing Market Rate Rent (SMR), or similar servicing tool, as defined in subpart C of part 1930 of this chapter in the same market is pending, or in effect and still needed; or

(v) The need in the market area is for additional rental assistance (RA) or similar subsidy and not for additional housing units. This can be evidenced by similar rental housing in the market area in which tenants are experiencing rent overburden; existing projects in the market area which are experiencing vacancies due to lack of RA, Section 8 or similar subsidy; high vacancies in conventionally financed apartments or other circumstances where the market needs affordable housing but not additional housing.

(3) *Status.* When a loan proposal or project exists in the market area which meets any of the criteria in paragraph (f)(2) of this section, loan requests in the same market area will be returned to the applicant in accordance with §1944.231. This does not affect the processing of loan requests in other market areas.

(4) *Exceptions*—(i) *Categorical.* A group home for persons with disabilities is exempt from the provisions of paragraph (f)(2) of this section when existing housing in the market area is not available or insufficient for their needs.

(ii) *Other.* In unusual circumstances where there is a compelling need for additional housing in a market area, the State Director may request an exception to the provisions of paragraph (f)(2) of this section, to the Assistant Administrator, Housing. Circumstances in which an exception would be considered include, but are not limited to: A colonia, or market area which is located within a county, designated under the Rural Housing Targeted Set Aside (RHTSA) defined in exhibit C to subpart L to part 1940 of this chapter; a market area where an applicant/borrower is only constructing a small fraction of the units (generally less than 25 percent) proposed by the original market analysis; or a market area which is in need of housing as the result of a natural disaster which destroyed existing similar rental housing units. The State Director will submit a request for exception to the Assistant Administrator, Housing, with clear documentation to support the request. The Assistant Administrator, Housing, may authorize an exception at the request of the State Director or Director, MFH/PD.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7491, Mar. 9, 1988; 54 FR 14337, Apr. 11, 1989; 55 FR 26644, June 29, 1990; 55 FR 29558 and 29561, July 20, 1990; 56 FR 2236, Jan. 22, 1991; 56 FR 66960, Dec. 27, 1991; 58 FR 44263, Aug. 20, 1993; 59 FR 6887, Feb. 14, 1994; 62 FR 25065, 25066, May 7, 1997; 62 FR 67222, Dec. 23, 1997]

§ 1944.214 Rates and terms.

(a) *Interest.* Upon request of the borrower, the interest rate charged by FmHA or its successor agency under Public Law 103–354 will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice at the time of loan approval, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in exhibit B of FmHA Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103–354 office).

(b) *Amortization period.* Each loan will be scheduled for payment within a period that is necessary to assure that

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

[53 FR 2159, Jan. 26, 1988, as amended at 62 FR 67222, Dec. 23, 1997]

§ 1944.215 Special conditions.

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

(1) Each State architect/engineer (A/E) will compile and maintain data on costs of all projects. Total project estimates will be compared with estimates available through the Marshall & Swift computer program. These estimates, along with the line item costs recorded in FmHA or its successor agency under Public Law 103–354's Automated Multi-Housing Accounting System (AMAS) cost tracking system, will be used to establish a benchmark for future project costs. Any proposal that exceeds these costs must be carefully evaluated for possible cost reductions. The borrower will be responsible for resolving the differences in cost to bring the project into line with the lesser of the cost tracking system or Marshall & Swift estimates. Final determinations must be realistic, interrelated to maintenance and operation costs, and based upon local conditions and common sense. The State will consider circumstances such as high land costs, remote rural areas, etc., which could present a problem in achieving such an alignment of costs. The AMAS cost tracking system will be used to record both estimates and actual line item costs. At the time the estimates are being examined by FmHA or its successor agency under Public Law 103–354, the percentages for builder's profit, general overhead, and general requirements will be calculated to determine if they are within the allowable percentages established in accordance with §1944.213(a)(1)(iii) and (a)(1)(iv). They will again be calculated at the time the final estimates are submitted to FmHA or its successor agency under Public Law 103–354. Estimated amounts in excess of the allowable percentages will be reduced to the appropriate percentage. Once the final estimates are approved by FmHA or its successor agency under Public Law 103–354, payment of builder's profit, general overhead, and general requirements will not exceed the estimated amounts.

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

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

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

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

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

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

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

	Minimum	Maximum
One-story buildings	10	14
Two-story buildings	14	18
Three or more story buildings	18	22

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

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

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

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

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

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

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

(i) Garages/covered parking;

(ii) Bay/box/picture or similar type windows;

(iii) Fireplaces;

(iv) Community room furniture;

(v) Sliding glass/atrium or similar type doors;

(vi) Materials atypical for the area;

(vii) Atriums/solariums;

(viii) Saunas;

(ix) Whirlpools;

(x) Gyms (facilities to accommodate physical exercises may be included in elderly projects without regard to this restriction); and

(xi) Swimming pools.

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

(i) Patios/balconies (minimum size which will accommodate handicapped accessibility);

(ii) Washer and dryer hookups in individual units; and

(iii) Washers and dryers in individual units.

(13) The following is a list of allowable amenities according to the type of units:

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

[1] In central kitchens only.

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

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

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

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

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

(1) Be economically constructed and not of elaborate design or materials. All new construction will conform with the applicable development standards of § 1924.5(d)(1) of subpart A of part 1924 of this chapter. The gross square foot living area of new units will be within the ranges listed below. Living area is defined as: All enclosed space for the unit (except unfinished storage space for outdoor items and space needed for heating and/or cooling equipment) and measured from the exterior surface of the framing of exterior walls and the center line of interior party or corridor walls. States should establish ranges within these dimensions to be commensurate with unit sizes in the local market. For example, when conventional units in the market are at the low end of FmHA or its successor agency under Public Law 103–354's range scale, FmHA or its successor agency under Public Law 103–354 will also build a comparably smaller unit.

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

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

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

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

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

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

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

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

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

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

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

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

(v) Elevators will be provided in accordance with the applicable development standards. If elevators are included, the subsoil conditions of the site must be adequate for the installation of elevators and sufficient service personnel must be available in the area for service and repair work.

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

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

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

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

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

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

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

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

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

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

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

(5) The District Office will:

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

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

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

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

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

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

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

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

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

guide for determining the qualifications of the adviser.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) In cases where there is an identity of interest between the donor of the site (including any members of the donor entity) and the applicant for the loan (including any members of the applicant entity), the applicant meets the requirements of §1944.231(e) of this subpart.

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

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

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

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

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

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

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

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

(iii) Evidence must be presented from the local governing body verifying that the community has adopted, through resolution or other official act, the community development and housing plan referenced in paragraph (r)(6)(ii) of this section. A copy of the adopted plan should be made available to FmHA or its successor agency under Public Law 103–354. While it is not necessary that the downtown redevelopment/revitalization area be formally designated as an urban renewal or other similar area, evidence supporting a local determination that the downtown business area meets the criteria established in the community development and housing plan must be maintained in the locality's records. Documentation received from the local governing body must also identify the site or structure involved in the applicant's proposal as part of or essential to the downtown redevelopment/revitalization area.

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

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

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

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

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

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

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

Date _____

Farmers Home Administration or its successor agency under Public Law 103–354

By: _____

Title: _____

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

(v) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Public bodies and agencies which have the power of eminent domain and/or condemnation must comply with the requirements of this Act. The applicant must provide assistance for relocation of displaced persons from a site on which a project will be located. RHS loan funds may be increased over and above the appraised value of the property to cover costs incurred in the relocation of displaced persons. Until instructions are published by the National Office, the Department regulations found at part 21 of this title should be followed and the National Office should be consulted for guidance in developing an RRH or RCH loan for a project affected by this Act. Generally, if there are alternative sites of equal quality which meet the Agency's requirements, the site with the least relocation impact will be selected.

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

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

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

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

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

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

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

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

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

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

§§ 1944.216–1944.220 [Reserved]

§ 1944.221 Security.

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

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

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

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

(b) *Financing statement.* To secure the FmHA or its successor agency under Public Law 103–354 loan, each borrower will execute Form FmHA or its successor agency under Public Law 103–354 440–25, ''Financing Statement,'' and a security agreement at loan closing pledging all revenue from the housing project. This includes any FmHA or its successor agency under Public Law 103–354 RA payments State or private RA payments and/or rent or occupancy payments.

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

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

§ 1944.222 Technical, legal, and other services.

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

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

(2) A written contract for architectural services will be required as outlined in subpart A of part 1924 of this chapter.

(c) *Construction and development policies.* Construction and development will be performed in accordance with subpart A of part 1924 of this chapter (FmHA Instruction 1924–A), available in any FmHA or its successor agency under Public Law 103–354 office.

(d) *Compliance with Federal, State and local codes, regulations and ordinances.* Planning, construction and operation of housing financed with an RRH or RCH loan will conform with applicable laws, ordinances, codes and regulations (including any licensing required governing such matters as construction, heating, plumbing, electrical installation, fire prevention, health, sanitation, use and occupancy).

(e) *Contracts for legal services.* On projects requiring extensive legal services, the applicant must have a written contract if loan funds will be use for these services. All contracts will be subject to review and concurrence by FmHA or its successor agency under Public Law 103–354 and should be submitted to FmHA or its successor agency under Public Law 103–354 before execution by the applicant. Contracts will provide for the types of services to be performed and the amount of the fees to be paid, either in lump-sum on the completion of all services or in installments as services are performed.

(f) *How to apply for a rural rental or rural cooperative housing loan.* Exhibit A may be used as a guide for applicants applying for loans. Extra copies may be obtained from FmHA or its successor agency under Public Law 103–354.

(g) *Optioning of land.* If a loan includes funds to purchase real estate, the applicant must obtain an option on the parcel to be purchased from the current owner of public record. Form FmHA or its successor agency under Public Law 103–354 440–34, ''Option to Purchase Real Property,'' or other option form with provisions acceptable to FmHA or its successor agency under Public Law 103–354 and the applicant may be used. When an option form other than Form FmHA or its successor agency under Public Law 103–354 440–34 is used, a provision should be included indicating that it is contingent upon FmHA or its successor agency under Public Law 103–354 making a loan to the buyer.

(h) *Title clearance and legal services.* When the applicant is an organization or an individual with special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from OGC. In other cases, the provisions of subpart A of part 1944 and 7 CFR part 3550 of this chapter regarding title clearance and legal services will apply.

(i) *Use of and accountability for loan funds.* Loan funds and any funds furnished by the borrower for eligible loan purposes may be deposited in accordance with the loan agreement or loan resolution and the provisions of subpart A to part 1902 and subpart C to part 1930. Collateral for deposit of funds will be pledged in accordance with §1902.7 of subpart A of part 1902 of this chapter. Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan funds cannot be used, should not be deposited in the supervised bank account with loan funds. Withdrawals of funds from the supervised bank account may be made only for eligible loan purposes.

(j) *Insurance.* The loan approval official will determine the minimum amounts and types of insurance the applicant will carry.

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with subpart A of part 1806 of this chapter (FmHA Instruction 426.1) and subpart C of part 1930 of this chapter.

(2) Suitable worker's compensation insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged or required, when appropriate, to obtain liability insurance.

(4) Flood insurance will be required on all buildings located in or to be located in special flood or mudslide prone areas in accordance with subpart B of part 1806 (FmHA Instruction 426.2).

(k) *Surety bonding and fidelity coverage.* (1) The provisions of subpart A of part 1924 of this chapter pertaining to

surety bonds are applicable to RRH and RCH loans. When interim financing is used during the construction period, the decision concerning whether or not to require surety bonds is the interim lender's. If the interim lender decides not to require surety bonds, a bond waiver is not required from the National Office.

(2) If the applicant is an organization, it will see that fidelity coverage is in place on any personnel entrusted with the receipt, custody and disbursement of any project monies, securities, or readily salable property other than money or securities. Fidelity coverage will be in force as soon as there are assets in the organization in accordance with the provisions described at paragraph XV A of exhibit B of subpart C of part 1930 of this chapter.

(l) *Previous participation certification.* All principals and affiliates are required to submit a properly completed Form HUD–2530/FmHA 1944–37, ''Previous Participation Certification.'' Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals. The forms will be completed and processed in accordance with instructions attached to the form.

[53 FR 2159, Jan. 26, 1990, as amended at 55 FR 6245, Feb. 22, 1990; 55 FR 26644, June 29, 1990; 55 FR 35895, Sept. 4, 1990; 56 FR 2238, Jan. 22, 1991; 58 FR 40953, July 30, 1993; 58 FR 44265, Aug. 20, 1993; 59 FR 6890 and 6896–6897, Feb. 14, 1994; 67 FR 67328, Dec. 24, 2002]

§ 1944.223 Supplemental requirements for manufactured home project development.

This section includes additional provisions that apply to the making of loans for manufactured home rental and cooperative project development. This section will apply in addition to all other applicable requirements contained elsewhere in this subpart. All references in this subpart to projects and housing for rent to eligible tenants will also mean the rental of sites with manufactured homes within a rental project development.

(a) *Eligible projects.* When a loan is closed on a manufactured home project, the borrower will have constructed and completed, pursuant to a commitment given in accordance with § 1944.235(c)(2) of this subpart, such project designed principally for rental or cooperative use for manufactured homes, and conforming to the development, installation and set-up requirements of exhibit J to subpart A of part 1924 of this chapter.

(1) The borrower must be the first owner purchasing the manufactured homes for purposes other than resale.

(2) The project must include two or more continguous sites with dwelling units. Each manufactured home unit must not have been previously occupied as a residence or for any other purpose and be less than 1 year old from date of manufacture.

(3) A project is not eligible if the purpose of the loan is to refinance the project, except as provided in § 1944.212(l) of this subpart.

(4) A loan may be made to rehabilitate manufactured home units of an existing project only if the units to be rehabilitated are currently financed by FmHA or its successor agency under Public Law 103–354 under this subpart.

(5) An eligible project may include the purchase of the real property of an existing project which will be redeveloped with the placement of new, previously unoccupied, manufactured homes conforming to the development, installation and set-up requirements of exhibit J to subpart A of part 1924 of this chapter.

(b) *Loan limitations.* The maximum loan amount will be determined in accordance with § 1944.213 of this subpart as applicable.

(c) *Rates and terms.* The amortization period of each loan will not exceed the economic life of the security, taking into account probable depreciation. However, under no circumstance will the amortization period for a loan made under this section exceed 30 years from the date of the promissory note.

(d) *Security.* A mortgage or deed of trust will be taken on the entire property purchased or improved with the loan. The encumbered property must be covered under a standard real estate title insurance policy or attorney's title opinion that identifies the project (including the manufactured homes) as

real property and insures or indemnifies against any loss if the manufactured home is determined not to be part of the real property. The property must be taxed as real estate by the jurisdiction where the project is located if such taxation is permitted under applicable law when the loan is closed.

(e) *Property requirements.* (1) Construction and development of the project, including related facilities constructed or erected on the security property, will be in accordance with §1944.222(d) of this subpart and exhibit J to subpart A of part 1924 of this chapter.

(2) Manufactured home projects will be designed to provide for a desirable residential environment. Innovative and imaginative design is encouraged. Stylized patterns and monotony will be avoided. All property improvements will relate to the individual characteristics of the land. The project, including structures, streets, and all site improvements, should be harmoniously, efficiently and conveniently arranged in relation to the topography and the shape of the property.

(3) The borrower will not use or permit the use of any portion of the security property for demonstrating mobile home models for sale promotion purposes.

(4) The manufactured home, when placed on site, will have floor space area of not less than 400 square feet, and a width of 12 feet or more for single wide and 20 feet or more for a double wide unit. The unit must:

(i) Be placed on a site-built permanent foundation that meets or exceeds applicable requirements of the FmHA or its successor agency under Public Law 103–354 adopted standards which are identified in exhibit J to subpart A of part 1924 of this chapter or other building codes approved by FmHA or its successor agency under Public Law 103–354.

(ii) Be permanently attached to the foundation by anchoring devices adequate to resist all loads identified in exhibit J to subpart A of part 1924 of this chapter or other building codes approved by FmHA or its successor agency under Public Law 103–354.

(iii) Be constructed in compliance with Rural Development thermal performance construction standards as specified in Exhibit D to subpart A of part 1924 of this chapter. The unit must have an affixed label as specified in 7 CFR part 3550 indicating that the unit is constructed to Rural Development thermal requirements for the appropriate winter degree days.

(iv) Be constructed in compliance with applicable standards and manuals adopted by FmHA or its successor agency under Public Law 103–354 as evidenced in part A, paragraph V of exhibit J to subpart A of part 1924 of this chapter. All units must conform to the HUD ''Federal Manufactured Home Construction and Safety Standards,'' and be identified by an affixed certification label according to exhibit J to subpart A of part 1924 of this chapter.

(f) *Special warranty requirements.* The general contractor or dealercontractor, as applicable, must provide a warranty in accordance with the provisions of §1924.9(d) of subpart A of part 1924 of this chapter.

(1) The warranty will provide that the manufactured homes, foundations, positioning and anchoring of the units to their permanent foundations, and all contracted improvements are constructed in substantial conformity with applicable approved plans and specifications.

(2) The warranty will also include provisions that the manufactured homes sustained no hidden damage during transportation and, for double-wide units, that the sections were properly joined and sealed.

(3) The general contractor or dealer-contractor must warrant that the manufacturer's warranty is in addition to and not in derogation of all other warranties, rights and remedies that the borrower may have.

(4) The seller of the manufactured homes will deliver to the borrower the manufacturer's warranty. The warranty will identify the units by serial number.

[53 FR 2159, Jan. 26, 1988, as amended at 55 FR 29561, July 20, 1990; 56 FR 2239, Jan. 22, 1991; 67 FR 78328, Dec. 24, 2002]

§ 1944.224 Supplemental requirements for congregate housing and group homes.

This section includes additional provisions that apply to the making of loans for congregate housing and group homes. It will apply in addition to all other applicable requirements contained elsewhere in this subpart. Congregate housing and group homes are types of section 515 RRH that require a broader commitment from applicants to ensure that needed and desired services will be provided when requested by prospective tenants. The concept may not be desired or feasible in all market areas. Congregate housing is unique and has many components. It is not merely an elderly housing project with services. It must be designed and managed to meet the needs of aging tenants. The management of congregate housing requires supervision of support services and more interaction and consultation with tenants. We strongly recommend that applicants who have not dealt with this type of housing obtain assistance from organizations or individuals who have experience in planning and designing congregate housing.

(a) *Congregate housing.* Congregate housing will create an environment that will assist individuals who request services to maintain their independence longer by making available nutritious meals and other services that can help enhance their independence. Congregate housing will also help people who need some services to extend an independent lifestyle.

(1) *Eligible tenants.* Eligible tenants are described in § 1944.205 of this subpart and paragraph VI A of exhibit J of subpart C of part 1930 of this chapter.

(2) *Design criteria.* Applicants must pay particular attention to the layout of the structure and the effect of design elements on project management and ongoing operations. Applicants should engage the services of an architect experienced in congregate design. The initial planning of congregate housing should include input on design considerations from project management to prevent the potential long-term affects of poorly conceived design on operations. Congregate housing must be planned and developed in accordance with subparts A and C of part 1924 of this chapter. In addition, it must meet the following design criteria:

(i) Applicants must pay particular attention to the site requirements contained in § 1944.215(r) of this subpart. Congregate housing should be located as close to services and shopping as possible, considering the availability of affordable residential sites. The time it takes to reach services is also important especially when considering potential medical emergencies.

(ii) Facilities needed to accommodate the services described in § 1944.224 (a)(5) of this subpart must be designed in accordance with acceptable practices. Specific design guidelines are provided in chapter 1 of guide 2 of subpart A of part 1924 of this chapter. These facilities may be larger than necessary to meet the tenants' requirements if they are needed in the community and other sources of funds are available to pay a pro rata share of the cost.

(iii) The design must accommodate the needs of the individuals the housing is designed to serve. The walkways and corridors between living units and the support service facilities must be safe, comfortable and minimal in length. Handrails that comply with the Uniform Federal Accessibility Standards must be provided on at least one side of all public corridors.

(iv) Areas used by the tenants will be separated as much as possible from areas needed for delivery of food and supplies and other building services. Interior spaces and finish materials must be residential in character and designed to help prevent tenants from becoming disoriented within the building(s).

(v) Emergency lighting must be provided in every public space, corridor, stairway, elevator and other means of egress.

(vi) The entrances to all living units must be on a route accessible to individuals with handicaps. Living units accessible only via exterior steps or interior stairs will not be acceptable.

(vii) The size of rooms and spaces in the living units must be comparable to units provided in other housing for the elderly. Kitchen facilities must be provided in all living units and include, as

a minimum, a cooktop, oven, sink, refrigerator and a food preparation surface.

(viii) The bathroom and one bedroom in each living unit, and any public toilet rooms, must be furnished with an emergency call system that is appropriate for the size and management of the housing facility.

(3) *Limitation on use of loan funds.* Loan funds cannot be used for:

(i) Items which do not become affixed to the real estate security, such as special portable equipment, furnishings, kitchen bars, dining ware, eating utensils, movable tables and chairs, etc. Congregate housing projects require additional items that will not become affixed to the real estate. Developers are responsible for ensuring that these items are made available to the project. The initial operating capital can be used for these items in accordance with §1944.211(a)(6)(i) of this subpart.

(ii) Specialized equipment for training and therapy.

(iii) Operating capital for a central dining facility.

(4) *Management of congregate projects.* Applicants must meet the provisions of exhibit J of subpart C of part 1930 of this chapter in managing congregate housing and are encouraged to review exhibit J before completing a loan application. In addition to the elements of managing a typical RRH project, congregate housing requires increased management experience and skills. Delivery of services, counseling with tenants, and the decisionmaking process of tenant selection add a unique dimension to prudent management. The success or failure of a project will rely heavily upon management's specialized management and marketing skills and abilities and delivery of services. Applicants who are not experienced with congregate housing must seek assistance from organizations or individuals experienced with congregate issues in developing the management and servicing plans. A separate plan detailing the delivery of services must be submitted with the loan request. If the applicant will be the service provider, it must also submit separate budgets for operation and maintenance of the project and services.

(5) *Support services.* Exhibit E of this subpart must be addressed in planning services. Adequate services must be offered to assist tenants in living independently and be reasonably priced to ensure affordability by very low- and low-income tenants of the tenant base as defined in part 1930, subpart C, exhibit J, paragraph V, of this chapter. A wide variety of services may be offered; however, the following services must be provided:

(i) *Meals.* Since some tenants will depend on the meal service as their only sustenance, at least one cooked meal a day, 7 days a week, must be provided. There may be cases where the meal provider does not furnish meals on a daily basis. On days the meal provider does not furnish meals, an alternate source must provide meals to tenants who are not inclined to prepare their own meals. The following conditions apply to meals:

(A) To ensure that the meals are wholesome and meet the needs of individual tenants, a professionally trained dietitian or nutritionist must be involved in planning the menus.

(B) The feasibility of sustained meal service may be dependent on the number of people who elect to use it. Congregate housing borrowers should actively solicit tenant participation in the meal service if the economic feasibility of the service depends on user charges.

(C) If the entity that operates the service is eligible to accept food stamps under the regulations of the Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA), the entity must be authorized by FNS to accept food stamps from tenants for the purchase of meals.

(ii) *Transportation.* Transportation must be provided to the project on a fixed schedule based on tenant needs. Applicants are encouraged to work with public and private transportation sources to develop a dependable and economical method for providing this service. If these sources cannot provide adequate transportation, the applicant must develop a project-sponsored transportation system.

(iii) *Housekeeping.* Housekeeping services must be provided to tenants who request assistance in keeping their

units clean. Light housekeeping tasks, such as dusting, vacuuming, floor washing, bathroom cleaning and laundry for bedding, generally should be provided on a weekly basis. Heavier tasks, such as oven cleaning, window cleaning and drapery cleaning, should be provided periodically.

(iv) *Personal services.* Limited nonmedical personal services must be made available to tenants who request them. Personal services can include such items as assistance with personal hygiene, nutrition counseling and general health screening. They do not include recurring medical assistance such as dispensing medication or constant medical supervision. Space may be included in the project for a small beauty shop and health screening area. Applicants may want to consider contracting for personal services to assure their continued and dependable availability to tenants.

(v) *Recreation/social.* Recreational and social activities must be offered to tenants to encourage interest in a variety of areas. Areas such as hobby and craft classes, special dinners and wellness exercise classes could be considered.

(6) *Service providers.* Service must be provided at a cost that can be afforded by very low-, low- and moderate-income tenants. Applicants should explore as many service providers as possible to ensure services at the most reasonable cost. Applicants must research alternative service providers since the original provider may be unable to furnish service in the future. If feasible, project management should be consulted concerning alternative service providers since they may have experience with available sources in the area. Documentation concerning alternative services must be submitted as part of the loan request. Alternative sources must be documented even if the applicant plans to use onsite personnel for services. The availability of services from alternative sources can enhance a proposal's feasibility since long-term services are crucial to the success of congregate housing.

(7) *General service requirements.* Applicants must provide a plan which addresses the long-term availability of assistance from service providers. As a part of the loan request, applicants must provide a letter of commitment from each service provider detailing its ability and willingness to provide services. This letter must identify the type, scope, cost, term and any licensing requirements of services that will be provided to the project. If a local agency on aging will provide a service, the commitment can be contingent on the agency maintaining its level of funding. In these cases, it is imperative that applicants document the availability of alternative sources as required in 1944.224(a)(6) of this section. As a part of the final application, applicants must provide a service agreement detailing the information contained in the letter of commitment. Initial service agreements must be effective for at least 1 year after the project becomes operational. Subsequent agreements must be effective for at least 1 year. Applicants should refer to paragraph V D of exhibit J of subpart C of part 1930 for further guidance.

(8) *Services provided to people who are not tenants of FmHA or its successor agency under Public Law 103–354 financed congregate housing.* If the meal facility serves people who are not tenants of the project, the applicant must obtain a lease from the service provider and require payment sufficient to cover the annual operating expenses, debt service and reserve account attributable to the portion of increased space that is in excess of the needs of tenants in the project. In most cases, this will be a negligible amount that the meal provider can afford to pay. Applicants should refer to paragraph VIII B of exhibit J of subpart C of part 1930 of this chapter for further guidance.

(b) *Group homes.* Group homes will provide housing in a residential environment for individuals capable of caring for themselves in the basic functions of everyday living but otherwise need the direction and/or assistance of a trained resident assistant. Group homes may be designed for individuals who are elderly, have handicaps, or disabilities as defined in § 1944.205 of this subpart. Appropriate common areas and facilities should be included to encourage participation by the tenants under the direction of a staff person in

sharing the meal preparation, housekeeping, social and recreational activities within the home. It is not the goal of group homes to provide housing for tenants requiring constant medical attention. The following conditions are applicable to group homes:

(1) A group home is generally designed as a single household dwelling; however, it can also be a small multi-unit structure. Specific design guidelines are provided in chapter 1 of guide 2 of subpart A of part 1924 of this chapter. In addition, group homes must meet the following design criteria:

(i) The potential decreasing physical and mental capabilities of tenants must be considered in the design.

(ii) Interior spaces and finish materials must be residential in character.

(iii) Emergency lighting must be provided in every corridor, stairway and other means of egress.

(iv) The entrances to all living units must be on a route accessible to handicapped persons.

(2) Prospective tenants must be evaluated to determine if they meet the essential eligibility requirements to reside in a group home. Applicants should be guided by paragraph VI B 1 b of exhibit J of subpart C of part 1930 of this chapter.

(3) A group may limit occupancy to a specific group of tenants. For example, a group home may limit occupancy to eligible elderly tenants, developmentally disabled people, or mentally impaired tenants. Refer to exhibit J of subpart C of part 1930 of this chapter for additional information.

(4) A group home may be associated with another organization, such as a workshop for the developmentally disabled. However, it must be a separate entity and able to function without being dependent on another organization.

(5) Applicants must show that adequate support services needed by the tenants will be available on a continual long range basis. Support services can be provided by the project or by a State or local public agency. A nonprofit organization with an estimated ongoing service program also may be deemed capable of providing support services.

(6) Food stamps must be accepted from tenants as part of their contribution for meals in accordance with 1944.224 (a)(5)(C) of this section.

(7) A legal guardian (an individual) may execute a lease agreement on behalf of a tenant in a group home when that tenant does not possess the legal capacity to enter into a legal contract with the project owner.

(8) Instructions on how to determine the per unit rental rates for group homes are stipulated in exhibit J of subpart C of part 1930 of this chapter.

(c) *Market studies for congregate housing and group homes.* In addition to the requirements of exhibit A–7 of this subpart, the following are applicable to market studies for congregate housing and group homes:

(1) Market studies must address the need for housing with services. Local agencies on aging and other groups familiar with the elderly can be a valuable source of information on the needs and wants of elderly people in the market area. Applicants can conduct a mail-out survey to age and income qualified elderly people if information is not available from other sources.

(2) An expanded market area may be considered only when the additional communities are part of the trade area and are so rural that they cannot support development of a congregate or group home facility. If an expanded market area is proposed, the market study must establish conclusively that the community will be able to draw enough tenants from the market area to ensure feasibility of the project. The market study must clearly identify the expanded area and contain separate information on the additional communities. If used, mail-out surveys must clearly address the probability of respondents relocating to the proposed site.

(3) Market studies should include income information from the local social security office since many elderly people are dependent on social security and/or supplemental security income. This information will assist in determining if proposed tenants would have sufficient income to afford the services provided by the project.

(4) Demand for congregate housing generally is displayed by elderly people

who are older than 70 years. Therefore, the market study must contain demographic information particular to those over the age of 62 and those over 70 years old. The study must also address the growth trends of people who are over 85 years old.

(5) Market studies must include information concerning alternative service providers as required in paragraph (a)(6) of this section.

(d) *Compliance with other laws.* Congregate housing and group homes must meet all applicable Federal, State and local laws, statutes, codes and/or ordinances pertaining to these types of housing and the services provided.

[55 FR 26644, June 29, 1990, as amended at 58 FR 38925, July 21, 1993; 58 FR 40953, July 30, 1993; 59 FR 6890, Feb. 14, 1994; 62 FR 25065, 25067, May 7, 1997]

§§ 1944.225–1944.227 [Reserved]

§ 1944.228 Ranking of rural places based on greatest need for Section 515 housing.

The Agency will rank rural places based on greatest need for Section 515 housing in accordance with this section. Places may be incorporated population centers such as cities, boroughs, towns, and villages; or unincorporated population centers identified by the Census Bureau (known as Census Designated Places (CDPs)). States must be consistent state-wide in their use of place types that are included in the list of designated places. Ranking will be based on the following:

(a) Qualifies as a rural area in accordance with 7 CFR 3550.10.

(b) Lacks mortgage credit for borrowers in accordance with §1944.211(a)(2).

(c) Demonstrates a need for multi-family housing based on the following factors, with equal weight given to each. Data for this purpose will be provided to States by the National Office from the most recent rural place data obtained from the Census Bureau. If Census data is not available for an eligible rural place, the State may request authority from the National Office to include the place on the list of designated places established in accordance with §1944.229, provided the place meets the requirements of §1944.229(b) and it can be demonstrated that there is a high need for assisted multi-family housing based on information obtained from reliable local or state sources. The State may request authority from the National Office to use other state-wide data if it is objective and consistent with the Housing Act of 1949, as amended.

(1) The incidence of poverty, measured by determining households below 30 percent of the county rural median income.

(2) The existence of substandard housing, measured by determining the number of occupied housing units that lack complete plumbing or have more than one occupant per room.

(3) The lack of affordable housing, measured by determining households below 30 percent of county rural median income paying more than 30 percent of income in rent.

[62 FR 25067, May 7, 1997, as amended at 62 FR 67222, Dec. 23, 1997]

§ 1944.229 Establishing the list of designated places for which Section 515 applications will be invited.

States will compile a list of designated places for which Section 515 applications will be invited, in accordance with the provisions of this section and the ranking process described in §1944.228. Inclusion on the list of designated places does not indicate that market need and demand has been established; this will be a loan feasibility determination. Once placed on the list of designated places, places will be considered equal, with no regard to their ranking on the ranking list or order of selection. In exceptional circumstances, there may be an instance when a place with an urgent need for multi-family housing is not reflected in the ranking process in §1944.228; for example, a place that has had a substantial increase in income-eligible population since the most recent decennial Census data because of a new industry, a place that has experienced a loss of affordable housing because of a natural disaster, or a community within the limits of an Indian reservation or tribal alloted or trust land with a demonstrated need for multifamily housing. With concurrence from the National Office, the State may include

the place on the list of designated places.

(a) *Establishing the number of designated places.* Initially, the number of designated places may equal up to 10 percent of the state's total eligible rural places ranked in accordance with § 1944.228, but must equal, in all cases, at least 10 places. For example, in a state with 1,000 total rural places, the State may designate up to 10 percent, or 100 places. However, in a state with 60 total rural places, the State would use the minimum number of 10 places, since 10 percent of 60 equals 6. In states where 10 percent equals more than the minimum number of 10, consideration in determining the number of places to include on the list should be given to the size and population of the state, funding levels, and the potential for leveraging. If warranted by funding levels, the Administrator may authorize in NOFA the selection of designated places up to 20 percent of the States' total rural places.

(1) States may designate a higher number of places than 10 percent or the minimum 10 places to reach high-need areas in accordance with paragraph (c)(3) of this section.

(2) States that anticipate high loan activity because of leveraging may designate a number of places higher than 10 percent or the minimum 10 places with the concurrence of the National Office.

(b) *Requirements for inclusion on the list of designated places.* Places selected for the list of designated places:

(1) Must have 250 or more households as a minimum feasibility threshold for multi-family housing, or, for Indian reservations, must have 250 or more households within the boundaries of the reservation; and

(2) May not have any of the ''build and fill'' conditions described in § 1944.213(f)(2). Places thus identified will be deferred for inclusion on the current year's list of designated places. Deferred places will be reviewed annually and, at such time that the ''build and fill'' conditions no longer exist, will be considered for inclusion on the list for the next fiscal year in accordance with this section. To the extent practicable, States will consult with HUD and other state or local agencies or entities that provide very low- or low-income rental housing to determine places where loan proposals have been approved or are in process.

(c) *Selection of designated places.* Places meeting the requirements of paragraph (b) of this section will be selected from the ranking list as follows:

(1) At least 80 percent of the State's total designated places must be selected in rank order from the list.

(2) With concurrence from the National Office, up to 20 percent of the State's designated places may be selected for geographic diversity. For example, in a state with 1,000 total rural places, the State has elected to select designated places equal to the maximum 10 percent, or 100 places. Of the 100 places, at least 80 percent, or 80 places, must be selected from the places that meet the requirements of paragraph (b) of this section in order of their ranking; up to 20 percent, or 20 places, may be selected for geographic diversity. Places selected for geographic diversity must be the highest ranked place in each geographic division designated by the State, which must correspond with established State divisions, such as districts, regions, or servicing areas.

(3) In addition to the designated places selected in accordance with paragraphs (c)(1) and (c)(2) of this section, States may designate the following high need areas for multi-family housing:

(i) Places identified in the state Consolidated Plan or similar state plan or needs assessment report.

(ii) EZ/ECs, Indian reservations or communities located within the boundaries of tribal allotted or trust land, colonias, or REAP communities.

(d) *Length of designation.* Places will remain on the list of designated places for 3 years or until a loan request is selected for funding or the community is otherwise deferred for other ''build and fill'' conditions, whichever occurs first. Places that are deferred before the end of the 3-year designation period will be reviewed annually for potential inclusion on the next year's list of designated places. A place may be removed from the list prior to the end of the 3-year designation period because of a substantial loss of income-eligible

population or an increase in the affordable rental housing supply, for example, a place that experiences the closing of a military base or other major employer.

(e) *List of designated places.* A list of designated places may be obtained by contacting the State Office or any Rural Development office in the state.

(f) *Partnership designated place list.* States with an active leveraging program and formal partnership agreement with the state agency may establish a partnership designated place list consisting of places identified by the partnership as high need areas based on criteria consistent with the Agency's and the state's authorizing statutes. The partnership agreement and partnership designated place list must have the concurrence of the Administrator. Ranking and selection of loan requests for places on the partnership designated place list will be in accordance with § 1944.231(b)(3)(iii) and § 1944.231 (b)(6) of this subpart.

[62 FR 25067, May 7, 1997, as amended at 62 FR 67222, Dec. 23, 1997]

§ 1944.230 Application submission deadline and availability of funds.

(a) *Application submission and funding cycle.* Dates governing the submission and funding cycle of Section 515 loan requests will be published annually in the FEDERAL REGISTER and may be obtained from any Rural Development office.

(b) *Availability of funds.* The amount of funds available for each State, as well as any limits on the amount of individual loan requests, will be published as a notice annually in the FEDERAL REGISTER.

[62 FR 25068, May 7, 1997]

§ 1944.231 Processing loan requests.

(a) *Actions by the applicant.* Loan requests may be submitted for designated areas when the availability of funds is announced. The loan request will consist of an application form prescribed by the Agency and the items listed in exhibit A–7 of this subpart. If an application is selected, the applicant will be required to provide the additional items required by exhibit A–9 of this subpart within the timeframes established by the Agency.

(b) *Actions by the Agency*—(1) *Actions by the Agency on loan requests received.* Loan requests received after the deadline announced in the FEDERAL REGISTER will not be considered for funding in that funding cycle and will be returned to the applicant.

(2) *Review and scoring of loan requests.* Loan requests will be reviewed:

(i) To determine if the loan request is complete and includes the additional information required in NOFA;

(ii) To determine if the request is for an authorized purpose; and

(iii) To establish a point score based on the following factors:

(A) The presence and extent of leveraged assistance for the units that will serve RHS income-eligible tenants at basic rents comparable to those if RHS provided full financing. Eligible types of leveraged assistance include loans and grants from other sources, contributions from the borrower above the required contribution indicated by the Sources and Uses Comprehensive Evaluation, and tax abatements or other savings in operating costs provided that, at the end of the abatement period when the benefit is no longer available, the basic rents are comparable to or lower than the basic rents if RHS provided full financing. Scoring will be based on the presence and extent of leveraged assistance for each loan request compared to the other loan requests being reviewed, computed as a percentage of the total development cost of the units that will serve RHS income-eligible tenants. A total monetary value will be determined for leveraged assistance such as tax abatements or services in order to compare such items equitably with leveraged funds. As part of the loan application, the applicant must include specific information on the source and value of the services for this purpose. Proposals will then be ranked in order of the percent of leveraged funds and assigned a point score accordingly. Loan proposals that include secondary funds from other sources that have been requested but have not yet been committed will be processed as follows: the proposal will be scored based on the

requested funds: *Provided,* that the applicant includes evidence of a filed application for the funds; *and* the funding date of the requested funds will permit processing of the loan request in the current funding cycle, or, if the applicant does not receive the requested funds, will permit processing of the next highest ranked proposal in the current year. The Agency will issue a conditional commitment to the applicant with a specific deadline for providing a commitment of funds from the other source. If the deadline is not met, the application will be returned as incomplete and the next ranked proposal will be processed. (0 to 20 points)

(B) The loan request is for units to be developed in a colonia, tribal land, EZ/EC, or REAP community, or in a place identified in the state Consolidate Plan or state needs assessment as a high need community for multi-family housing. (20 points)

(C) The loan request is in support of a National Office initiative announced in NOFA. (20 points)

(D) The loan request is in support of an optional factor developed by the State that promotes compatibility with special housing initiatives in conjunction with state-administered housing programs such as HOME funds or low income housing tax credits.

A factor thus developed cannot duplicate factors already included in this paragraph and must be provided to the National Office prior to the funding cycle for concurrence and inclusion in NOFA. (20 points)

(E) The loan request includes donated land meeting the provisions of §1944.215(r)(4). (5 points)

(3) *Point score ties and ranking of loan requests.* Loan requests will be ranked in order of highest point score or, where there are point score ties, in order of highest point score and number assigned as follows:

(i) If one of the same-pointed requests is from an entity meeting the requirements of paragraph (e) of this section, it will be denoted with a #1 following the point score. If two or more are from entities meeting these requirements, a lottery will be held. The first drawn request will be denoted #1, the second drawn #2, etc.

(ii) After all requests from entities meeting the requirements of paragraph (e) of this section have been numbered, the next sequential number will be assigned to a loan request from an entity not meeting the requirements of paragraph (e) of this section. If there are two or more requests from entities not meeting the requirements of paragraph (e) of this section, a lottery will be held and each request numbered in the order it is drawn, beginning with the next sequential number.

(iii) States with a partnership designated place list developed in accordance with §1944.229(f) of this subpart, will score and rank loan requests as follows:

(A) All loan requests (including those for places on the partnership designated place list) will be reviewed and scored together as one group, following the process described in paragraph (b)(2) of this section.

(B) Using the point score and rank order established in accordance with paragraphs (b)(3)(i) and (b)(3)(ii) of this section, two separate ranking lists will be formed: the RHS ranking list will consist of loan requests for places on the State's designated place list; the partnership ranking list will consist of loan requests for places on the partnership designated place list. Selection of loan requests for further processing will be in accordance with paragraph (b)(6) of this section.

(4) *Preliminary eligibility and feasibility review.* In order of ranking, a preliminary review of eligibility and feasibility will be made on the highest ranked requests, including:

(i) A review of the preliminary plans and cost estimates.

(ii) A market feasibililty review, including the Agency's review of the market, a review of HUD's (and similar lender's, if applicable) feedback on the market area, and a review to ensure compliance with the ''build and fill'' provisions of §1944.213(f).

(iii) A site visit and preliminary review to determine if the site criteria of §1944.215(r) can be met.

(iv) A review of the Affirmative Fair Housing Marketing Plan.

(v) Analysis of a current (within 6 months) credit report.

(5) *Selection of loan requests for further processing.* The Agency will select loan requests for further processing from loan requests determined preliminarily eligible and feasible, in ranking order, taking into consideration the amount of available funds.

(i) If any selected loan requests are later withdrawn, rejected, or delayed for a period of time that will not permit funding in the current funding cycle, the Agency will select additional loan requests in ranking order as funding levels permit. For this purpose, the State may keep the next highest ranked loan request until it is determined that all selected loan requests will be funded. Applicants whose loan requests are held for this purpose will be advised that their loan request was not selected but ranked sufficiently high to be retained in the event a selected request is withdrawn or rejected in the current funding cycle.

(ii) Loan requests not funded in the funding cycle, including incomplete requests, or requests not meeting the requirements of exhibit A–7 of this subpart or NOFA, will be returned to the applicant with the reason it was not considered.

(6) *Selection of loan requests for further processing for States with a partnership ranking list.* States with a partnership ranking list developed in accordance with paragraph (b)(3)(iii) of this section, will use the following process:

(i) Loan requests must first be selected in rank order from the RHS ranking list that, based on total development cost (TDC), are proportionate to the State's RHS allocation amount.

(ii) After loan requests have been selected in accordance with paragraph (b)(6)(i) of this section, remaining RHS funds must be used for the next highest scoring loan requests (or point score and tie-breaker number assigned in accordance with paragraph (b)(3) of this section), regardless of whether they are on the RHS ranking list or the partnership ranking list.

(c) *Additional requirements for selected loan requests.* For selected loan requests, the applicant must provide the additional information required by exhibit A–9 of this subpart and any additional State requirements within the timeframes established by the Agency. If the applicant fails to meet established timeframes, the Agency may grant an extension if the delay appears reasonable and granting the extension will still permit funding of the loan request in the current funding cycle.

(d) *Site rejections.* Site rejections will be handled as follows:

(1) Applicants will be given 15 calendar days from the date of the Agency's site rejection letter to submit a new site option. If the applicant appeals the decision but submits a new site option within 15 days, the new site option will be accompanied by a copy of their letter to the National Appeals Division withdrawing their appeal request. If the new site is acceptable, processing will continue. If the new site is not acceptable, the loan request will be rejected.

(2) If the applicant does not submit a new site option within 15 days, and has appealed the Agency's decision, the Agency will not delay processing of loan requests in other market areas pending the outcome of the appeal. The next ranked loan request, within available funding limits, will be selected for further processing.

(3) If the applicant prevails in the appeal, the loan request will be considered in the next funding cycle. The applicant will be given the opportunity to amend their loan request consistent with NOFA.

(e) *Nonprofit or public body preference.* Preference in ranking loan requests will be provided to an entity that meets all of the following conditions:

(1) Is a local nonprofit organization, public body, or Indian Tribe whose principal purposes include the planning, development, and management of low-income housing;

(2) Is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code (26 U.S.C. 501(c)(3) or 501(c)(4));

(3) Is not wholly or partially owned or controlled by a for-profit or limited-profit type entity;

(4) Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity;

(5) Is not co-venturing with another entity; and

(6) The entity or its members will not be receiving any direct or indirect benefits pursuant to LIHTC.

(f) *RCH loan requests.* (1) Loan requests for RCH assistance will be processed in the order in which a complete loan request was received.

(2) All loan requests for RCH assistance will be reviewed for eligibility and feasibility. In cases where the proposal is not eligible or feasible, the proposal will be rejected. Proposals which appear eligible and feasible will be forwarded to the National Office for review and authorization.

(3) If authorized by the National Office, the State will notify the applicant that the proposal appears eligible and feasible. The applicant will be requested to provide the additional information required by exhibit A–9 of this subpart and any additional State requirements.

(4) If funds are not available in the current funding cycle, the loan request will be considered for funding in the next funding cycle.

(g) *General guidance on processing requests for Multi-Family Housing (MFH) Assistance.* (1) All applicants must provide their taxpayer identification number. The taxpayer identification number for individuals who are not businesses is their Social Security Number.

(2) A loan request for MFH assistance may be withdrawn upon written request of the applicant at any time. The Agency may withdraw a loan request for failure of an applicant to provide necessary information to process a request for assistance should the applicant fail to respond to a written request which provides the applicant with a reasonable time period to submit the information.

[62 FR 25068, May 7, 1997, as amended at 62 FR 67223, Dec. 23, 1997]

§ 1944.232 Rental Assistance (RA) from sources other than FmHA or its successor agency under Public Law 103–354.

RA from sources other than FmHA or its successor agency under Public Law 103–354 may be used in new or existing RRH projects upon National Office authorization. FmHA or its successor agency under Public Law 103–354 will consider authorizing such private RA (PRA) proposals which offer RA in the same general dollar amount and terms in which FmHA or its successor agency under Public Law 103–354 RA is calculated and granted. PRA proposals will be in the form of a memorandum of understanding (MOU) between the provider and FmHA or its successor agency under Public Law 103–354.

(a) *Provisions of MOU.* FmHA or its successor agency under Public Law 103–354 may consider entering into an MOU with other providers of RA such as State or local public entities, profit or nonprofit organizations, individuals, or other providers acceptable to FmHA or its successor agency under Public Law 103–354. The MOU will be executed between FmHA or its successor agency under Public Law 103–354 and the provider prior to the appropriate official issuing an AD–622 for new projects. At a minimum, the MOU must contain the following provisions:

(1) Reason for providing PRA and its intended purpose.

(2) The length of time PRA will be provided.

(3) Actions to be taken at the end of the PRA proposal to minimize impact on tenants losing PRA and avoid displacement.

(4) A copy of the proposed PRA agreement, which is the instrument of agreement involving the tenant, owner, and provider of assistance. FmHA or its successor agency under Public Law 103–354 will not be a party to the PRA agreement nor have any responsibilities under the agreement. The PRA agreement must state that:

(i) The payments should be paid directly to the tenants or a separate project operating account for this purpose. The tenants must be advised of the amount and source of the assistance through the lease or a supplement to the lease.

(ii) Sufficient funds will be set aside in a way that assures availability of PRA for the life of the PRA agreement, which must be for a minimum of 5 years. The method of supplying the funds must be clearly set forth and acceptable to FmHA or its successor agency under Public Law 103–354.

(b) *Documentation.* (1) Documentation must be provided that the PRA is needed in the market area.

(2) The provider must provide FmHA or its successor agency under Public Law 103–354 with reasonable assurances that tenants receiving the PRA will not be displaced when the PRA expires.

(3) In accordance with §1944.215(w)(2)(ii) of this subpart, it must be demonstrated that for the term of the loan remaining after PRA is no longer available, an adequate rental market exists for the project without the assistance.

(4) For complexes with LIHTC, if the PRA term is less than the LIHTC compliance periods, the marketability of the PRA units must be further demonstrated by either:

(i) Demonstrating that there are sufficient households within the LIHTC income limits to support the units without rent overburden; or

(ii) The applicant's certification that the targeted percentage of LIHTC units (not the minimum set-aside option) does not include the PRA units, so that the units will be marketable to households in all FmHA or its successor agency under Public Law 103–354 income ranges.

(c) *Review and recommendations.* The documentation, the MOU, and the PRA agreement will be submitted to the servicing official for review. If acceptable, the servicing official will submit the proposal for similar review to the State Office and submission to the National Office. Proposals forwarded to the National Office will contain the recommendations of the District and State Director.

[58 FR 44272, Aug. 20, 1993, as amended at 59 FR 6897, Feb. 14, 1994]

§1944.233 Participation with other funding sources.

In order to develop the maximum number of affordable housing units and promote partnerships with states, local communities, and other partners with similar housing goals, RHS participation loans are encouraged.

Apartment complexes developed with participation funds may serve lower income households exclusively (RHS very-low and low income-eligible households; LIHTC income-eligible households) or may be marketed to households with mixed incomes. The following will apply:

(a) *RHS loan and rental assistance (RA) participation.* (1) RHS may participate with loan funds only, or with both RA and loan funds, as provided in paragraphs (a)(2) and (a)(3) of this section.

(2) If RHS RA is being provided, RHS loan participation should equal at least ten percent of the project's total development cost unless authorization for a lower percentage of participation is obtained from the National Office in accordance with §1944.240.

(3) RHS RA may be provided on any unit where the basic rent does not exceed what the basic rent would have been on that unit if RHS provided full financing. The number of RHS RA units available for participation loans is limited and established annually through subpart L of part 1940 of this chapter.

(b) *General conditions.* (1) The number of units that will serve RHS income-eligible tenants must equal or exceed the number of units financed by RHS, determined by dividing the RHS loan amount by the State's average new construction cost.

(2) The total funds provided by all sources may not exceed what is necessary to make the project feasible in accordance with §1944.213(a).

(3) The total debt from all sources is limited to the State Director's loan approval authority unless written authorization is obtained from the National Office in accordance with §1944.213(b).

(4) The complex will be operated and managed in compliance with RHS requirements and regulations.

(5) If Low Income Housing Tax Credits are anticipated on a proportion of units higher than the percentage receiving RA or similar tenant subsidy, the market study must clearly reflect a need and market for units without deep subsidy. It is not the intent of RHS to provide servicing RA in the future nor can RHS provide RA on units which have basic rents higher than those if RHS had provided full financing.

(c) *Design requirements.* Complexes must comply with the provisions of §§1944.215 and 1944.222.

(1) Design features such as patios or balconies, washers and dryers, and garbage disposals may be included if they

are customary for the area and needed for marketability.

(2) Mixed income complexes may include nonessential common facilities such as swimming pools provided:

(i) The facility is not financed with RHS funds,

(ii) The complex is able to support the facility's operating and maintenance costs through collection of a user fee from tenants who subscribe to the service, and

(iii) The facility is designed and operated with appropriate safeguards for tenant health and safety.

(d) *Borrower contribution and return on investment.* (1) The minimum required borrower contribution will be based on the RHS loan amount and determined in accordance with §1944.213(b).

(2) For limited profit borrowers, additional funds exceeding the minimum required contribution that are provided from the borrower's own resources (not loans or grants from other sources) may be included in the borrower's initial investment, for purposes of determining return on investment, as provided in §1944.215(n).

(3) A loan from the borrower to the project may be considered, provided the loan proposal meets all conditions of this section and the loan to the project is from the borrower's own resources. LIHTC proceeds may be considered the borrower's own resources as provided in §1944.215(n)(1).

(e) *Reserve requirements.* RHS reserve requirements (the annual reserve requirement and the fully funded reserve amount) will be determined on a case-by-case basis, taking into consideration the reserve requirements of the other participating lenders, so that the *aggregate* fully funded reserve amount established by RHS and the other lenders equals at least 10 percent of the project's total development cost (TDC) or appraised value, whichever is greater. For example, if the other lenders do not have reserve requirements, RHS will establish its reserve requirements to meet the full aggregate amount (at least 10 percent of the TDC or appraised value of the project, whichever is greater), regardless of the RHS loan amount. On the other hand, if the other lenders have aggregate reserve requirements equal to or higher than the minimum 10 percent of TDC or appraised value required by RHS, and the amount is sufficient to meet project needs based on its capital improvement plan, it may not be necessary for RHS to establish additional reserve requirements. Reserve requirements and procedures for reserve withdrawals should be agreed upon by all lenders and included in the intercreditor or participation agreement referenced in paragraph (g) of this section.

(f) *Security requirements.* (1) RHS will take a first or parity lien in all instances where the Agency's participation is 50 percent or more.

(2) If RHS participation is less than 50 percent, every effort should be made to obtain a parity lien position. If a parity lien cannot be negotiated, an exception may be requested to accept a second lien position in accordance with §1944.240. The State Director will submit requests to accept a second lien position to the Deputy Administrator, Multi-Family Housing with comments and recommendations.

(3) RHS will take a first lien on project revenue from rent or occupancy payments; RHS, State, or private RA payments; and operating and reserve accounts.

(g) *Participation agreement.* RHS will enter into a participation (or intercreditor) agreement with the other lenders that clearly defines each party's relationship and responsibilities to the others.

[62 FR 25075, May 7, 1997, as amended at 62 FR 67223, Dec. 23, 1997]

§1944.234 Actions prior to loan approval.

Prior to loan approval the application will be reviewed for continued eligibility. The applicant may be required to submit updated information at that time.

[62 FR 25076, May 7, 1997]

§ 1944.235 Actions subsequent to loan approval.

(a) *Precommitment or closing actions.* After loan approval, the loan docket will be processed to the stage where a construction loan would normally be

closed prior to the start of construction. During this processing, the following actions should be taken:

(1) FmHA or its successor agency under Public Law 103–354 will obtain closing instructions from OGC in accordance with the requirements of subpart B of part 1927 of this chapter and §§ 1944.236(a) and 1944.236(b)(4) of this subpart.

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

(3) The applicant will provide evidence indicating the terms and final arrangements for interim financing.

(4) The applicant will certify as to the availability or non availability of other government assistance as defined in § 1944.205 of this subpart immediately prior to loan closing. If other government assistance becomes available prior to loan closing, the loan amount will be decreased in accordance with paragraph (e)(3) of this section.

(b) *Transfer of obligations.* The transfer of fund obligations may occur only when:

(1) *Organizational entity remains the same.* The entity remains legally the same but a substitution of the members occurs. All or part of the membership may change as long as eligibility is not affected. The project site location and market must remain the same.

(2) *Organizational entity changes.* The membership and their interests remain identical, the project site location and market are the same, but the legal entity changes.

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

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

(ii) There have been no deviations from the FmHA or its successor agency under Public Law 103–354 approved plans and specifications;

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

(iv) The transfer will be in the best interest of the FmHA or its successor agency under Public Law 103–354 and prospective tenants;

(v) The applicant/entity and all members thereof whose obligations are transferred will not be considered eligible for further participation in the RRH program for at least 5 years from the date of the transfer of the FmHA or its successor agency under Public Law 103–354 loan obligation; and

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

(c) *Financing during the construction period*—(1) *Interim financing.* When the amount of the loan exceeds $50,000, the applicant may obtain interim financing from commercial or public sources for the construction period if it can be obtained at reasonable interest rates, fees, and terms, and in the best financial interests of the Government. Interim financing will be obtained to preclude the necessity for multiple advances of FmHA or its successor agency under Public Law 103–354 funds. The interim lender must be authorized to operate in the State in which the project will be located and must have an established record of providing financing to entities other than FmHA or its successor agency under Public Law 103–354-financed projects. Since the interim lender is responsible for inspecting construction along with FmHA or its successor agency under Public Law 103–354, the borrowing entity (including any of its identity of interest entities) cannot provide interim financing to its own project. Interim financing will be used subject to the following:

(i) FmHA or its successor agency under Public Law 103–354 will proceed as if FmHA or its successor agency under Public Law 103–354 funds had been advanced from the standpoint of approving construction contracts, inspection of construction and assuring compliance with applicable equal opportunity and nondiscrimination.

(ii) The guide letter shown as exhibit B of this subpart will be used to inform

a proposed interim lender that a specified amount of funds have been obligated and will be available to retire the interim financing if the applicant complies with the approval conditions, the builder's performance is acceptable and all construction bills are paid.

(iii) Since FmHA or its successor agency under Public Law 103–354's commitment to the applicant is contingent upon acceptable performance by the builder and payment of all construction bills, the interim lender should be advised of the additional risk involved if the builder is unable to provide, or the interim lender does not require a payment and performance bond. Although partial payments to the builder constructing the project by the contract method of construction must be made in accordance with the approved construction contract, the interim lender should not be permitted to make disbursements of more than 90 percent of the value of acceptable work in place.

(iv) Any cash for land purchase or development that is to be furnished by the applicant in fulfillment of the applicant's contribution requirement in §1944.213(b) of this subpart must be placed on deposit with the interim lender and disbursed prior to any disbursement of interim loan funds. Obligations incurred prior to loan closing and the start of construction will be handled in accordance with §1944.213(d) of this subpart.

(v) A supervised bank account need not be established for funds obtained through interim financing except for any small amounts held to complete construction so loan funds can be fully advanced and AED can be established. However, in order to assure that funds are requested and used for authorized purposes, requests for partial payments will be submitted through the servicing official on Form FmHA or its successor agency under Public Law 103–354 1924–18, ''Partial Payment Estimate,'' or other professionally recognized form containing the certifications of the architect, applicant and FmHA or its successor agency under Public Law 103–354 representative shown on Form FmHA or its successor agency under Public Law 103–354 1924–18. For recordkeeping purposes, Form FmHA or its successor agency under Public Law 103–354 402–2, ''Statement of Deposits and Withdrawals,'' should be used to record the deposit of applicant funds for construction with the interim lender and payments of estimates where FmHA or its successor agency under Public Law 103–354 has approved the estimate.

(vi) When the project is substantially complete, the FmHA or its successor agency under Public Law 103–354 loan may be scheduled for closing. A project is substantially complete when it is possible, in accordance with any contract documents, applicable State or local codes or ordinances and the FmHA or its successor agency under Public Law 103–354 approved drawings and specifications, to permit safe and convenient occupancy and use of the buildings. Upon substantial completion, the owner's architect must issue a dated and signed statement certifying to substantial completion. The owner's architect will also prepare and verify a punch list of any minor items of development that need to be corrected and completed.

(vii) The FmHA or its successor agency under Public Law 103–354 loan may be closed, permanent instruments issued to evidence the FmHA or its successor agency under Public Law 103–354 indebtedness and FmHA or its successor agency under Public Law 103–354 loan funds used to retire the interim indebtedness when the project is substantially complete and all bills have been paid. To evidence that there are no unpaid obligations outstanding in connection with the project, the applicant must submit to the servicing official, at or prior to loan closing, signed statements from the contractor, architect, engineer and attorney indicating that obligations for material, labor or services have been paid in full in accordance with their contracts or other agreements, less any funds withheld for minor punch list items. Form FmHA or its successor agency under Public Law 103–354 1924–10, ''Release by Claimants,'' or other similar form may be used for this purpose. If these statements cannot be obtained, the loan may be closed if all of the following can be met:

(A) Statements to the extent possible are obtained.

(B) The interests of FmHA or its successor agency under Public Law 103–354 can be adequately protected and its security position is not impaired.

(C) Adequate provisions are made for paying the unpaid accounts by withholding or escrowing sufficient funds to pay such claims or obtaining a release bond.

(viii) Because interest rates can fluctuate between the time construction estimates are finalized and completion of construction, any excess funds remaining from interim financing will be returned on the FmHA or its successor agency under Public Law 103–354 loan. Also, interim funds remaining because of early completion of construction will be returned. The leftover interest may be used for certain other eligible loan purposes critical to the completion of the project which were unknown to the applicant and contractor at the time the loan was approved, provided prior National Office concurrence is obtained.

(2) *Multiple advances of loan funds.* If interim financing is not available and the applicant supplies such evidence, multiple advances will be used subject to the following:

(i) In cases where relatively large amounts of funds are to be expended for purchases of real estate or for other reasons at the time of closing, separate checks for these purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing these loan funds in the supervised bank account and reduce the amount of required collateral.

(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, there should be no more than 24 advances. These advances should generally be used within 2 years of 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, interest and other expenses as needed. The borrower will prepare Form FmHA or its successor agency under Public Law 103–354 440–11, ''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 servicing official or his/her designee.

(iii) After it is determined that the estimate prepared by the borrower is adequate, the advance will be requested through field office terminals in accordance with 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 or its successor agency under Public Law 103–354 440–11 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 of $40,000 would then be available on July 1, the date of loan closing.

(iv) The second advance is also based on the borrower's estimate prepared on Form FmHA or its successor agency under Public Law 103–354 440–11 which must 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 down as follows:

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

(v) When the project is substantially complete in accordance with § 1944.235(c)(i)(vi), schedule final payment to the contractor for disbursement. Withhold funds over the amount needed to cover the costs for correcting or completing the minor items identified from the contractor's final payment in accordance with the requirements of subpart A to part 1924 of this chapter until full performance. Any

funds withheld should be deposited in the supervised bank account so the loan can be fully advanced and AED can be established.

(vi) If funds remain after the loan is fully disbursed and AED has been reached, they must be put into a supervised bank account. The funds cannot be returned on the loan to be drawn later since AMAS will treat as a refund.

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

(d) *Requesting the check.* When loan approval conditions can be met, including any real estate lien required, and a date for FmHA or its successor agency under Public Law 103–354 loan closing has been agreed upon, the servicing official will determine the amount of funds needed in accordance with paragraph (c)(1) or (c)(2) of this section. The servicing official his/her designee 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.

(e) *Increase or decrease in the amount of the loan.* (1) If it is necessary to increase the amount of the loan within *the same fiscal year* but before loan closing, the loan approving official or servicing official will request that all distributed docket forms be returned to the servicing office. The loan docket will be revised accordingly and reprocessed provided no funds have been disbursed. The State Office, through a field office terminal, must deobligate the existing obligation and enter the new amount to be obligated.

(2) If it is necessary to increase the amount of the loan in *the next fiscal year* but before loan closing, the servicing official must process a subsequent loan for the amount of increase.

(3) If it is necessary to decrease the amount of the loan before closing, the deobligation will be processed through field office terminals.

(f) *Cancellation of the loan.* Loans may be canceled after approval and before loan closing in accordance with instructions on the Form Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103–354 1944–53, ''Multiple Family Housing Cancellation of U.S. Treasury Check and/or Obligation.''

(1) *Treasury check method.* If the loan check is received in the servicing office, the servicing official will return the check as prescribed in FmHA Instruction 2018–D (available in any FmHA or its successor agency under Public Law 103–354 office), except if the check was issued by the National Finance Center (NFC). If the check was issued by NFC, cancel under FmHA Instruction 2024–A (available in any FmHA or its successor agency under Public Law 103–354 office).

(2) *Notification.* Notify all interested parties of cancellation as provided in subpart B of part 1927 of this chapter.

(g) *Handling the loan check.* The loan check will be handled in accordance with FmHA Instruction 2018–D (available in any FmHA or its successor agency under Public Law 103–354 office and subpart A of part 1902 of this chapter.

(h) *Preoccupancy conference.* To promote proper planning for initial rent-up and occupancy, the servicing official will meet with the applicant and management firm, if any, 90 to 120 days prior to the construction completion date. Among the items that should be discussed are the advertisement of available units, the affirmative fair housing marketing practices, tenant eligibility and tenant selection criteria. The same effort to achieve adequate marketing results will be required for RCH loans except that its completion will be necessary at the loan request stage.

(1) The servicing official will review the applicant's marketing plan to determine that it is complete and all supplemental information is provided. If the plan needs to be modified before marketing activity begins, approval must be granted from the official authorized to approve the loan. The servicing official will review the approved operating budget to determine if it is still adequate for the initial operating period. If it is not adequate, the budget and rent schedule will be revised by the borrower and approved by the loan approval official.

(2) The servicing official should be assured that the applicant will sincerely direct marketing activity in an

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

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

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

§ 1944.236 Loan closing.

(a) *Applicable regulations.* RRH loans will be closed in accordance with subpart B of part 1927 of this chapter and any State supplements. Loan dockets for organizations and, in special cases, dockets for individuals will be sent through the State Office to OGC for closing instructions. A profit or limited profit organization or individual applicant may use any designated attorney or title insurance company to close the loan in accordance with the applicable loan closing instructions if the attorney or title insurance company and its principals or employees are not members, officers, directors, trustees, stockholders or partners of the applicant entity. Nonprofit organizations may use a designated attorney who is a member of their organization if the cost is in accordance with § 1944.212(j) of this subpart.

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) For the following categories of loans, the language set forth in exhibit A–1 or A–2, as appropriate, of subpart E of part 1965 of this chapter will be included in the mortgage instead of the language contained in paragraph (b)(5) of this section:

(i) Equity loans made to avert prepayment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1944.237 Subsequent loans.

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

(b) If the designation of an area changed from rural to nonrural after the initial FmHA or its successor agency under Public Law 103–354 loan was made, a subsequent loan can be made, only to make necessary improvements and repairs to the property or for equity and other purposes when necessary to avert prepayment.

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

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

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

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

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

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

(e) Subsequent loans, other than those made to a nonprofit corporation or public agency to avert prepayment, will be subject to the restrictive-use provisions contained in exhibit A–1 of subpart E of part 1965 of this chapter. Subsequent loans made to nonprofit organizations or public agencies to avert prepayment will be subject to the restrictive-use provisions contained in exhibit A–2 of subpart E of part 1965 of this chapter. The required restrictive-use language for subsequent loans shall be appended to the mortgage referencing all notes for the applicable term, beginning on loan closing. The advice of OGC shall be obtained to carry out the requirements of this paragraph.

(f) For additional requirements in closing quality loans to avert prepayment, see exhibit A–11 of this subpart.

(g) For additional requirements in closing subsequent loans to nonprofit corporations and public agencies made in conjunction with transfers to avert prepayment, see § 1965.65(f) of subpart B of part 1965 of this chapter.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7492, Mar. 9, 1988; 53 FR 13245, April 22, 1988; 56 FR 2241, Jan. 22, 1991; 58 FR 38925, July 21, 1993; 58 FR 44273, Aug. 20, 1993; 59 FR 6890, Feb. 14, 1994; 62 FR 25069, May 7, 1997]

§ 1944.238 Prohibition against prepayment.

The Agency shall not accept an offer to prepay, or request refinancing of any loan made to build or acquire new units made or insured under section 515 pursuant to a contract entered into on or after December 15, 1989 regardless of the fact the borrower has received previous RRH loans on the project. For purposes of this requirement, the date a ''contract is entered into'' is the date on which the Form FmHA or its successor agency under Public Law 103–354 1944–51 is mailed or delivered to the applicant/borrower.

[55 FR 29562, July 20, 1990, as amended at 58 FR 38925, July 21, 1993]

§ 1944.239 Complaints regarding discrimination in use and occupancy of RRH and RCH.

Any tenant/member or prospective tenant/member seeking occupancy or use of RRH, RCH or related facilities who believes he/she has been discriminated against because of age, race, color, religion, sex, familial status, handicap or national origin may file a complaint in person with, or by mail to the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD), Washington, DC, 20410, or any HUD office, or to the Administrator, FmHA or its successor agency under Public Law 103–354, USDA, Washington, DC 20250. If a complaint is made to an FmHA or its successor agency under Public Law 103–354 County, District or State Office, it must be directed to the Director of Equal Opportunity Staff (EOS), National Office, by the FmHA or its successor agency under Public Law 103–354 employee in charge of that office. When a complaint is sent to FmHA or its successor agency under Public Law 103–354-EOS by a county or servicing office, the State Director will be made aware of the complaint.

(a) Personnel in FmHA or its successor agency under Public Law 103–354 field offices will provide assistance to the aggrieved party when filling out required forms and filing a complaint.

(b) Each complaint must contain the following information:

(1) The name and address of the respondent.

(2) The name and address of the aggrieved person.

(3) A description and the address of the dwelling which is involved, if appropriate.

(4) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

(c) Participants in FmHA or its successor agency under Public Law 103–354's housing program failing to comply with the requirements of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and the respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanction authorized by law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made. Victims of discriminatory housing practices may seek reparations from HUD or by private lawsuit.

(d) All complaints will be handled in accordance with prescribed procedure.

[56 FR 2241, Jan. 22, 1991, as amended at 58 FR 40954, July 30, 1993; 59 FR 6896, Feb. 14, 1994]

§ 1944.240 Exception authority.

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the accomplishment of the purposes of the program or result in undue hardship by applying the requirement. The Administrator may exercise the authority at the request of the State Director. The State Director will submit the request supported by data that demonstrates the adverse impact, citing the particular requirement involved and recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated. Exception to any requirement may also be initiated by the Assistant Administrator for Housing.

[56 FR 2241, Jan. 22, 1991]

§§ 1944.241–1944.245 [Reserved]

§ 1944.246 Loan approval.

(a) *Authority.* Loans will be approved in accordance with this subpart and subpart A of part 1901. The State Director may redelegate loan approving authority in writing to State Office employees.

(b) *Loan approval action*—(1) *Responsibilities of loan approving official.* The loan approving official is responsible for reviewing the docket to determine that the proposed loan complies with established policies and all pertinent regulations. In making this review, the loan approving official will determine that:

(i) The applicant is eligible and has legal authority to contract for a loan and enter into the required statements.

(ii) The location of the housing meets the requirements outlined in § 1944.215(p) of this subpart.

(iii) The funds are requested for authorized purposes.

(iv) The proposed loan is sound.

(v) The security is adequate.

(vi) All preapproval requirements have been met, including the applicant's execution of Form FmHA or its successor agency under Public Law 103–354 400–4.

(vii) For projects with four or less units, the State Director has taken the necessary action to comply with § 1944.406 of subpart I of part 1940 of this chapter.

(viii) All other requirements will be met.

(2) *Approval or disapproval of a loan*—(i) *Approval.* Before the loan approving official executes documents evidencing loan approval, a complete review of the proposed management and rental procedures must be made to assure compliance with title VI of the civil Rights Act of 1964 and the Rehabilitation Act of 1973. If the loan approving official is assured of compliance, he/she may execute the loan approval documents. When a loan is approved, Form FmHA or its successor agency under Public Law 103–354 1944–51 will be completed according to the instructions on the Forms Manual Insert. The approving official will insert a statement in block 48 of Form FmHA or its successor agency under Public Law 103–354 1944–51 advising the applicant that the amount of the loan may decrease if other government assistance as defined in § 1944.205 of this subpart becomes available to the applicant before loan closing.

(ii) *Disapproval.* If a loan is disapproved after the docket has been developed, the reason for the action will be shown on the original Form FmHA or its successor agency under Public Law 103–354 1944–51 and the form will be initialed and dated. The servicing official will notify the applicant of the reasons for disapproval. The disapproved docket will then be handled in accordance with subpart A of part 2033 of this chapter. If disapproval is not at the applicant's request or by mutual agreement, the applicant will be notified that it may request a further review of the decision in accordance with subpart B of part 1900 of this chapter.

(3) *OGC closing instructions.* For a loan to an organization, or an individual in special cases, the approved docket, including any title evidence,

will be sent through the State Office to OGC for preparation of closing instructions and any special legal documents required for closing. A certified copy of a loan resolution or the original executed witnessed loan agreement must be supplied by the applicant in time to be included in the docket. No docket will be considered which does not include the required resolution or agreement. The OGC will route the docket, including closing instructions and any legal documents, to the servicing office through the State Office.

[55 FR 29562, July 20, 1990, as amended at 59 FR 6896–6897, Feb. 14, 1994]

§§ 1944.247–1944.249 [Reserved]

§ 1944.250 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0047. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 40 hours per response, with an average of 6.4 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0047), Washington, DC 20503.

[56 FR 2241, Jan. 22, 1991, as amended at 58 FR 44273, Aug. 20, 1993]

EXHIBIT A TO SUBPART E OF PART 1944—HOW TO BRING RENTAL AND COOPERATIVE HOUSING TO YOUR TOWN

I. Introduction
II. Applying for a Loan
III. Review of the Preapplication
IV. Developing the Loan Docket
V. Review of the Complete Docket
VI. Construction
VII. Open House
VIII. Exhibits

A–1 Legal Service Agreement
A–2 Survey of Existing Rental Housing
A–3 Rental Housing Survey
A–4 Cooperative Housing Survey
A–5 Housing Survey Summary
A–6 Housing Allowances for Utilities and Other Public Services
A–7 Information to be Submitted with Preapplication for a Rural Rental Housing (RRH) and a Rural Cooperative Housing (RCH) Loan
A–8 Outline of Professional Market Study
A–9 Administrative Process for Combining FmHA or its successor agency under Public Law 103–354 Assistance with Low-Income Housing Tax Credits
A–10 Information to be Submitted with Application for a Rural Rental Housing (RRH) and a Rural Cooperative Housing (RCH) Loan.

I. INTRODUCTION

A. Most areas in rural America need more adequate rental housing. Some people with modest incomes live in impoverished housing that is cold in the winter and hot in the summer because adequate housing at a reasonable rent is not available. Other households that prefer to rent have the choice of either commuting many miles to work or living in the substandard rental housing that is available in small rural communities. To help reduce this rental housing shortage, the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 finances rental housing in rural communities.

B. To augment the choice of living accommodations available to modest income persons, FmHA or its successor agency under Public Law 103–354 also provides financing for cooperative-type housing units. Although this kind of housing units is appropriate only to a particular group of persons, it also serves to help reduce the existing housing shortage in rural communities. Nonprofit organizations, other types of organizations and individuals may qualify for these housing loans. Information about the loans is available at the local FmHA or its successor agency under Public Law 103–354 office.

C. This handbook will assist interested persons and groups in applying for a rural rental or cooperative housing loan. It also briefly explains requirements regarding the construction and operation of the housing.

D. The basic guidelines in this handbook apply to all applicants; however, some procedural requirements will vary depending on the size of the project being proposed and the type of applicant/borrower. However, in no instance will different policies, practices or procedures be utilized in the evaluation or in determination of the creditworthiness of any organization or person(s) in connection with the provision of any RRH or RCH loan or other financial assistance for a project or other financial assistance which is secured by residential real estate because of race,

color, religion, sex, handicap, marital or familial status, age, or National origin.

E. The objective of the FmHA or its successor agency under Public Law 103–354 housing loan program is to provide credit for housing that serves the needs of eligible very low-, low-, and moderate-income permanent residents.

F. Successful housing depends on the existence of the following three important conditions:

1. There must be a need for the housing to be built.

2. The housing must fit the needs of prospective tenants or cooperative members from the standpoint of location, design and cost.

3. The applicant for a loan must provide adequate information to FmHA or its successor agency under Public Law 103–354 to show that these basic conditions can be met.

II. Applying for a Loan

A. An individual, organization, or group organizing to provide housing may contact any Rural Development office processing Section 515 loan requests to obtain information and necessary forms. The Section 515 program is administered by Rural Development's Rural Housing Service (RHS).

B. Each funding cycle, RHS will publish in the Federal Register a notice of the availability of funds (NOFA) for Section 515 loans and a list of designated places (communities) for which loan requests may be submitted. The list of designated places is also available from any Rural Development office processing Section 515 loan requests. Designated places are rural places identified by RHS as having the greatest potential need for Section 515 housing. Except in unusual circumstances, places are designated for a period of three years or until a loan has been selected for funding, whichever occurs first.

C. Applicants must submit a loan request by the deadline announced in the Federal Register, and available in any Rural Development office, to be considered in the funding cycle. Section III of this exhibit provides information on the loan review and selection process. In addition, applicants are advised to read this subpart, which provides detailed information on the Section 515 program.

D. The loan request consists of SF–424.2, ''Application for Federal Assistance (For Construction),'' the supporting material or information listed in exhibit A–7 of this subpart, and any additional information required in NOFA. This information will enable the Agency to determine:

1. The eligibility of the applicant;

2. The feasibility (economic, environmental, and architectural) of the proposed housing;

3. That prospective cooperative members have read and understand their responsibilities as outlined in ''What is Cooperative Housing?'' (available in any Rural Development office) before agreeing to a cooperative housing project;

4. Whether the proposed housing can appropriately be financed by RHS; and

5. Its Civil Rights impact.

E. This information usually can be furnished by the applicant without hiring extensive professional services. However, fees for professional packaging services rendered to a nonprofit organization can be made a part of loan development costs.

III. Review of the Loan Request

A. Loan requests received by the deadline announced in the NOFA will be reviewed, scored, and ranked based on the loan selection criteria announced in the NOFA. Requests that rank sufficiently high will be reviewed for eligibility and feasibility.

B. Upon completion of the loan review process, applicants will be advised of RHS' decision. Applicants whose loan requests are selected for further processing will be notified of the additional steps that need to be taken. Loan requests not selected for further processing in the current funding cycle will be returned to the applicant.

IV. Developing the Loan Docket

A. When a loan request is selected for further processing, the servicing official will review the items required in exhibit A–9. The amount of information required will vary based on the complexity and size of the proposed project. The servicing official will also provide forms and guides to assist the applicant in recording required information. Some of the guides are included as exhibits in this handbook. The applicant is responsible for providing the information required. The servicing official will assemble this information and complete the docket.

B. The following information will be helpful in developing a loan docket. The first two items are applicable only to nonprofit organizations. The other items apply to any applicant. In addition, the requirements of exhibit A–7 of this subpart must be met when developing a loan request and the requirements of exhibit A–9 must be met for loan requests selected for further processing.

1. *Getting organized if applicant is a nonprofit organization and has not adopted articles* of incorporation and bylaws. a. *Steering committee or sponsor.* The group may choose a steering committee or, in the case of a cooperative, a sponsor to act for it. An attorney will usually be required to advise the organization on incorporation and assist in developing the loan application. The steering committee, or sponsor, should select an attorney who is interested in the proposed housing and will render the necessary services promptly for a reasonable fee.

b. *Articles of incorporation and bylaws.* FmHA or its successor agency under Public Law 103–354 has developed model articles of incorporation and bylaws for nonprofit organizations. The steering committee, or sponsor, should arrange for the servicing official to meet with the attorney. The servicing official will give the attorney copies of the FmHA or its successor agency under Public Law 103–354 model articles of incorporation and bylaws and explain FmHA or its successor agency under Public Law 103–354 requirements. Separate bylaws have been developed for cooperatives and for rental housing organizations.

c. *Attorney's fees.* Reasonable attorney's fees may be included in the FmHA or its successor agency under Public Law 103–354 loan. A written agreement between the applicant and attorney is required. See exhibit A–1 for a sample copy of an agreement.

d. *Board of directors.* The steering committee, or sponsor, usually selects the incorporators for the corporation. The board of directors is responsible for conducting the corporation's business, including obtaining the loan and providing overall management after the housing is completed.

2. *Obtaining broadly based membership for rental housing.* a. A nonprofit corporation applying for a loan must have and maintain a broadly based local membership, including leaders in the community, representing a variety of interests in the community. The members may be individuals or organizations but each member is limited to one vote.

b. The purpose of the broadly based membership requirement is to obtain community support, provide enough members to be able to rotate officers and members of the board of directors, protect the Government's financial interest as mortgagee and provide assurance that the housing will be a success and the purpose of the loan carried out.

c. In RRH loans made to nonprofit organizations and public bodies, there is no profit incentive. The term of the loan may be for as long as 30 years, with an amortization period not to exceed 50 years. Therefore, factors such as the prospect for continuous competent management and supervision, maintenance and adequate community support for the housing project over the expected life of the loan are important.

d. A membership list showing the names and addresses of each member should be maintained by the secretary of the organization.

(1) *Number of members required.* The organization should have at least 25 members. The number of members may be decreased for projects with less than 25 units.

(2) *Contributions by members.* Nonprofit corporations may require a membership fee or ask prospective members for a contribution. This is the method often used by nonprofit corporation applicants to raise initial operating capital. However, no such fee or contribution can entitle a member or prospective member to a preference in occupancy of the housing.

3. *Cooperative membership.* a. Only those persons who will reside in the cooperative housing will be members of the cooperative. The composition of the board of directors will be drawn from that membership, initially by appointment and later by election from the general membership. The board should be composed of at least 5 members.

b. The board of directors, with assistance from the adviser to the board (discussed in a later section), will devise the rules and regulations under which the cooperative will operate. Additionally, the board will be responsible for management of the cooperative.

c. A membership list showing the names and addresses of each member will be maintained by the secretary of the cooperative.

d. Cooperative membership will require the deposit of a membership fee by each member as outlined in §1944.215(g) of this subpart. The fee will be retained by the cooperative for as long as the person remains a member of the cooperative. The fee will be refunded to the person when membership is terminated.

4. The applicant should communicate with officials of the community early in the development of the proposal to explain the benefits of the proposed housing to the community. This meeting will serve to remove the uncertainty of the impact of the housing on the community and may aid in a timely processing of the loan request. The support of community officials is helpful in obtaining environmental clearances, possible zoning changes, favorable taxation, etc.

5. *Initial operating capital.* a. All applicants must have enough inital operating capital to get started. When justified, FmHA or its successor agency under Public Law 103–354 may include these funds in a loan made to a consumer cooperative, nonprofit organization or public body. Initial operating capital should be sufficient to pay such costs as property and liability insurance premiums, fidelity coverage premiums when the applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction and other initial expenses.

b. At least 2 percent of the total development cost of the project is required for initial operation and maintenance costs. The applicant can determine the amount required by working out a detailed budget of income and expenses for the period of time until the housing is ready for occupancy and income will be available. The actual budget may indicate that more than 2 percent is needed.

6. *Analysis of market to determine demand for rental housing.* a. Applicants should discuss with the servicing official the type of market analysis that will be needed. Applicants must comply with paragraph II of exhibit A–7 when preparing market information.

b. Exhibits A–2 and A–3 are sample forms which may be modified by the applicant to assist in the assembly of the information for the market analysis.

7. *Planning to serve the market.* a. Planning the housing to serve the market in the community involves more than obtaining a blueprint of the building. It requires a careful evaluation of conditions in the community and careful planning to assure that the result will be good housing designed for independent living at a cost eligible tenants can afford. Well planned housing is:

(1) Convenient, attractive, safe and comfortable.

(2) Easily maintained.

(3) Located where tenants or members can have easy access to the goods and services they require for daily living.

(4) Planned to meet all codes, regulations, and acceptable construction practices.

(5) Priced within an affordable range of its prospective tenants and members.

(6) Energy efficient and complies with FmHA or its successor agency under Public Law 103–354's thermal performance standards.

b. The servicing official and State Office architect can provide information that will help the applicant in planning the housing.

8. *Selecting an architect.* a. The services of an architect are required for all housing projects which have more than four units. The cost of a registered architect/engineer may be included in the loan.

b. Before anything more than schematic drawings are prepared, the applicant and its architect, the FmHA or its successor agency under Public Law 103–354 architect/engineer and the servicing official should arrange a meeting. This meeting will acquaint the applicant's architect with the purposes of the housing and FmHA or its successor agency under Public Law 103–354's requirements. This will be helpful in eliminating misunderstandings. Among the topics that should be discussed are:

(1) Objectives of the housing program.

(2) Design requirements that will produce good housing at reasonable cost.

(3) Stages at which FmHA or its successor agency under Public Law 103–354 must review plans and specifications.

(4) Services the architect will be expected to perform.

(5) Agreement between architect and applicant.

9. *Selecting a site.* a. The location of the housing is an important part of planning to serve the market. Occupants should have easy access to required services. A desirable residential setting within a rural community is essential.

b. Site cost is also important. The total cost of the site, including the cost of improvements and the price of the land, must be considered. Both may be included in the loan. However, loan funds made available to purchase land may not exceed the present market value of the land in its present condition as determined by an FmHA or its successor agency under Public Law 103–354 appraisal.

c. Before buying a site, the applicant should consult the architect to determine the suitability of the site for the proposed housing. The applicant must consider the site requirements detailed in paragraph III of exhibit A–7 of this instruction. The applicant should not enter into any firm agreement to buy a site with the expectation of receiving an FmHA or its successor agency under Public Law 103–354 loan without consulting with the servicing official and prior to the Agency's completion of the environmental impact review.

10. *Drawings, specifications and cost estimates.* The size, complexity and cost of housing projects can vary from a duplex located on a small building lot to a complex of buildings located on a site containing several acres. The applicant must provide drawings and specifications in accordance with paragraph IV of exhibit A–7 of this subpart.

11. *Budgets.* a. The initial budget should cover the period from the date the first construction expenses are incurred until the end of the applicant's first fiscal year following completion of the housing. After the final cost estimate has been made and the amount of the loan needed has been determined, a budget for a typical year should be developed.

b. This budget should be based on a typical annual operation after the project is occupied. Budgeting is an important part of the management. The applicant should spend enough time working on it to assure that the estimates are realistic. Budgets will be required each year until the FmHA or its successor agency under Public Law 103–354 loan is repaid in full. The budget serves several purposes including:

(1) Helps determine rental or occupancy rates.

(2) Indicates financial soundness.

(3) Serves as a guide for paying expenses.

c. Form FmHA or its successor agency under Public Law 103–354 1930–7, ''Multiple Family Housing Project Budget,'' and its accompanying exhibit A–6 of this subpart are a sample budget form and utility allowance form.

12. *Loan resolution or loan agreement.* When the applicant is a corporation or an individual applying for a loan above certain amounts, a copy of the required loan resolution or loan agreement should be obtained

from and discussed with the servicing official before the loan docket is developed. Among other things, this document outlines how the income from the housing is to be used. These requirements should be understood at the time the budget is developed.

13. *Rental management plan.* A detailed management plan will be developed which will outline the basic policies and procedures to be followed and the duties of the officers and employees. The applicant must manage the project in accordance with the requirements of subpart C to part 1930 of this chapter.

14. *Rental manager and caretaker.* a. A comprehensive management program is essential to the successful operation of the project. A carefully written plan should be developed in accordance with exhibit B of FmHA Instruction 1930–C.

b. The use of an onsite manager should be based on the size of the project. The manager should be readily available to the tenants. The manager might be one of the tenants or a member of the board of directors of a nonprofit corporation. The manager's duties should be specified in the management plan.

c. The board of directors of a corporation is responsible for overall supervision and management of all its affairs. The board should delegate actual operating and management responsibility to committees or individuals and meet often enough to see that enterprise is being managed successfully.

15. *Cooperative self-management.* a. The success of cooperative housing will depend on how well the members are able to manage the cooperative themselves with assistance from the adviser to the board. The cooperative must first develop and designate those areas of responsibilities to be delegated to committees, a list of the committees, and the functions of the committees. A copy of this information will be provided to each prospective member.

b. It will be necessary for the proposed board of directors to become familiar with how a cooperative is supposed to work before it is able to successfully assume the responsibilities of running the cooperative. This can best be achieved by participating in programs designed for the express purpose of educating potential board members. The prospective board members will be expected to take part in such a training program.

c. Participation on committees by members will be on a voluntary basis. However, if it appears a committee does not have sufficient numbers for it to adequately operate, then additional members will be expected to volunteer their time and talents. Thus, participation on committees is voluntary up to a point. If a member has experience in a particular area, that member should be encouraged to join the committee which will benefit from his/her experience. The cooperative will need a total commitment from the membership in order to assure success of self-management. Examples of the types of committees which may be considered are:

(1) Maintenance
(2) Groundskeeping
(3) Communications
(4) Budget and finance
(5) Rules
(6) Recreation
(7) Home service

d. If the cooperative is not successful in managing itself, professional management will be hired by the cooperative.

16. *Occupancy policies.* a. Applicants should review carefully the occupancy requirements with the servicing official. Particular attention should be given to the following requirements:

(1) The housing must be open to all eligible persons regardless of race, color, religion, sex, handicap, familial status, age, or national origin.

(2) The incomes of tenants and the initial incomes of cooperative members must be within the maximum income limits approved by FmHA or its successor agency under Public Law 103–354.

b. Additional guidance concerning occupancy in congregate housing projects can be found in exhibit J of subpart C of part 1930 of this chapter.

17. *Cooperative board of directors.* The board will essentially be the backbone of the cooperative structure. In this capacity it will be responsible for establishing the policies and procedures which will govern the operation of the cooperative and for enforcing those policies and procedures. The board will be composed of members of the cooperative with the same interests and concerns as the general membership. For instance, instituting an increase in the occupancy rates or terminating a member's right to cooperative ownership because of serious repeated violations of cooperative rules and regulations will be the types of actions which are taken by the board. The members of the board will be affected by these same decisions since they must adhere to the same rules and regulations as the rest of the cooperative community.

18. *Adviser to the board.* Resident(s) of the community who is not a member of the cooperative will serve as an adviser to the board during the period of formation and until the board of directors has effectively demonstrated its ability to manage the cooperative. At that time, the adviser will maintain close contact with the cooperative and provide advice and assistance as needed. The adviser may also be an organization; however, one specific individual will have sole contact with the board to eliminate confusion and to prevent one person from countermanding another's instructions. The adviser will closely monitor the cooperative for at least 2 years after it becomes its own manager. This time

may vary, depending on the circumstances. The adviser must be very carefully selected to ensure that adequate guidance is given to the board. The adviser must be able to meet certain criteria in order to provide the best possible counsel. The Qualifications of an Adviser to the Board, Relationship of Adviser to Members, and Adviser Responsibilities, found at exhibits E, E–1, and F of this subpart, should be used in evaluating potential advisers. While it may not be possible to find some one individual or individuals who can meet all the requirements outlined, the criteria should be used as guides in determining the best candidate. FmHA or its successor agency under Public Law 103–354 will provide counsel to the cooperative during the interview period and must approve the selection of the individual(s). We recognize the adviser will require compensation for services rendered, however, the amount paid should not severely limit the amount of patronage capital accruing to the members.

19. *Management reserve.* The board's ability to manage the cooperative will determine whether members will receive equity from membership in the cooperative. A set rate for professional management will be assessed each month as part of the occupancy rate and will be maintained in a separate reserve account. If the cooperative is successful at managing its own affairs during the year, the amount accumulated in the reserve will be assigned equally to each member at the end of the year as patronage capital. This same procedure will be followed each year, allowing a buildup of patronage capital. If professional management is hired by the cooperative to correct deficiencies which have arisen from poor self-management, further accumulations to the management account will then be used to pay for professional management and the amount being accrued to the members' patronage capital account will be suspended. If the amount being accumulated for management is not sufficient to meet the needs, occupancy rates will be increased to cover the expense of management. When the cooperative begins to again manage itself, the assessment for the management reserve will resume as previously stated. Any other income remaining at the end of the year will also be assigned as patronage capital. Assignment from both of these sources must be accomplished in accordance with the IRS ruling concerning patronage distribution. Careful records must be kept to track the monthly amount being contributed by each member to the management reserve account so that the cooperative will know how much patronage capital the member is entitled to should membership be terminated prior to the end of the fiscal year. FmHA or its successor agency under Public Law 103–354 rental assistance proceeds are not to be used to make the member's contribution to the management reserve account. Therefore, the member must have sufficient income from which to make this payment. If it becomes necessary to hire full-time professional management, then the management fee will be considered part of the shelter cost and thus eligible for RA. FmHA or its successor agency under Public Law 103–354 will assist the adviser to the board in determining if and when professional management will be hired in lieu of self-management. In the event the adviser and FmHA or its successor agency under Public Law 103–354 are unable to reach an agreement regarding the hiring of professional management, the ultimate decision will rest with FmHA or its successor agency under Public Law 103–354. Compensation paid to the adviser will be shared by members through the deduction of equal amounts from their management reserve payments.

20. *Rules and regulations.* The rules and regulations for tenants and members should be developed by the applicant and a copy included in the loan docket.

21. *Lease or occupancy agreement.* The applicant should develop an application form for occupancy and a lease or occupancy agreement form in accordance with the requirements of subpart C of part 1930 of this chapter. Exhibit J of this subpart is to be used as a guide for developing an occupancy agreement. Copies of these forms should be included in the loan docket.

22. *Affirmative fair housing marketing.* In order to promote proper planning for initial rent-up and occupancy, the servicing official will meet with the applicant after loan approval, preferably at the preconstruction and/or the prerent-up or preoccupancy conference to discuss the Affirmative Fair Housing Marketing Plan or other similar agreement approved for the project. In the case of a cooperative, the servicing official will discuss the Plan at the loan request stage.

V. Review of the Complete Docket

A. When the applicant has developed the complete loan docket, it should furnish and discuss the information with the servicing official. SF 424.2, the information and materials listed in exhibit A–9 plus FmHA or its successor agency under Public Law 103–354 forms provided by the servicing official become the loan docket.

B. If the docket is submitted to the State Office for consideration, the State Director will indicate any special requirements that need to be met before loan approval or loan closing.

C. Commercial financing should be used for projects during the interim construction period if available at reasonable rates and terms, FmHA or its successor agency under Public Law 103–354 can make a conditional commitment to the interim lender that will loan the funds to finance the construction of

the project. The commitment will be conditioned upon acceptable performance by the builder and payment of all construction bills. After the conditions have been met, the FmHA or its successor agency under Public Law 103–354 loan will be closed to pay the interim construction indebtedness. Draws on interim loan funds will be made only as needed and will require the joint approval of the applicant and the FmHA or its successor agency under Public Law 103–354 servicing official.

D. In other cases FmHA or its successor agency under Public Law 103–354 can make advances of loan funds for construction, the note and mortgage will be signed by the applicant and the loan funds deposited in a joint bank account at loan closing. The loan funds are disbursed from the bank account as needed. Checks on the account must be signed by the borrower and countersigned by the FmHA or its successor agency under Public Law 103–354 servicing official.

VI. CONSTRUCTION

The start of construction is the first physical sign that the housing will become a reality. The construction period is a most critical period of time.

A. *Competitive bidding.* 1. Competitive bidding is recommended and may be required by FmHA or its successor agency under Public Law 103–354 in some cases. If required, the State Director's letter sent after the loan is authorized will instruct the servicing official to have the applicant or its architect complete the necessary bid documents.

2. The applicant and the architect should invite competent contractors to bid on the housing. If bids are within the estimates, the successful bidder will be selected and the contract for construction will be awarded. During construction, a qualified FmHA or its successor agency under Public Law 103–354 representative and the applicant and its architect will inspect the work to protect their respective interests in the project. Payment will be made from the FmHA or its successor agency under Public Law 103–354 loan funds, or interim loan funds, according to provisions in the contract.

B. *Construction without competitive bidding.* When competitive bidding is not required, the loan docket will include reliable cost estimates or a firm offer to build from a builder selected by the applicant. A contract concurred with by FmHA or its successor agency under Public Law 103–354 will be executed by the applicant and the contractor. If full architectural services are obtained by the applicant, inspection of the work will be performed by the architect's staff. The applicant and FmHA or its successor agency under Public Law 103–354 will inspect the construction to protect their respective interests in the project. Payments will be made to the contractor in accordance with the terms of the contract.

C. *Starting construction.* Construction should not be started until the FmHA or its successor agency under Public Law 103–354 loan is closed or the FmHA or its successor agency under Public Law 103–354 commitment has been made to the interim lender.

VII. OPEN HOUSE

Promotion of the housing availability should start at least 90 days prior to completion. The applicant may want to create interest in the housing and build up the list of prospective tenants or members by having a dedication ceremony. This will attract attention and remind the local residents of what the housing means to the community. This is especially recommended for housing developed by nonprofit corporations.

VIII. EXHIBITS

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

Exhibit

A–1 Legal Services Agreement
A–2 Survey of Existing Rental Housing
A–3 Rental Housing Survey
A–4 Cooperative Housing Survey
A–5 Housing Survey Summary
A–6 Housing Allowances for Utilities and Other Public Services
A–7 Information to be Submitted with a Loan Request for a Rural Rental Housing (RRH) or a Rural Cooperative Housing (RCH) Loan
A–8 Outline of Professional Market Study
A–9 Additional Information to be Submitted for Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) Loan Requests
A–10 [Reserved]
A–11 Processing Guidelines for Loans for Equity to Avert Prepayment
A–12 Market Study Checklist (Available in Any FmHA or Its Successor Agency Under Public Law 103–354 Office)
A–13 Work Sheet for Loan Calculation (Available in Any FmHA or Its Successor Agency Under Public Law 103–354 Office)
A–14 Information To Be Submitted for Subsequent Loans (Available in Any FmHA or Its Successor Agency Under Public Law 103–354 Office)

[56 FR 2241, Jan. 22, 1991; 56 FR 47376, Sept. 19, 1991, as amended at 58 FR 40954, July 30, 1993; 59 FR 6891, 6897, Feb. 14, 1994; 62 FR 25065, 25069, May 7, 1997; 62 FR 67223, Dec. 23, 1997]

EXHIBIT A–1 TO SUBPART E OF PART 1944—LEGAL SERVICES AGREEMENT (FOR COOPERATIVE OR OTHER NONPROFIT ORGANIZATIONS)

Agreement made this _____ day of _____, 19___ between the _____, hereinafter called the (owner) (board of directors), and _____, hereinafter called the attorney, witnesseth:

Whereas the (owner) (board of directors) intend to form a cooperative or other nonprofit corporation, hereinafter called the (corporation) (cooperative), to construct and operate a rural housing project in

_____
(Town) (County) (State)

and to obtain a loan from the Farmers Home Administration or its successor agency under Public Law 103–354 to finance the construction, and the attorney agrees to perform all legal services necessary to incorporate the (corporation) (cooperative), and to perform all other customary legal services necessary to the organization, financing, construction, and initial operating of the proposed rural housing project, such services to include but not to be restricted to the following:

1. Prepare and file incorporating papers and supervise and assist in taking other necessary or incidental actions to create the (corporation) (cooperative) and authorize it to finance, construct, and operate and proposed housing project.

2. Prepare for and furnish advice and assistance to the owner, or to the board of directors and officers of the corporation, in connection with (a) notices and conduct of meetings; (b) preparation of minutes of meetings; (c) preparation of adoption of necessary resolutions in connection with the authorization, financing, construction, and initial operation of a rural housing project; (d) special tax treatment applicable to housing cooperatives; (e) necessary construction contracts; (f) preparation of adoption of bylaws and related documents; (g) any other action necessary for organizing the (corporation) (cooperative) or financing, constructing, and initially operating the proposed housing project.

3. Review construction contract, bid-letting procedure, and surety and performance bonds.

4. Examine real estate titles and prepare, review and record deeds and any other instruments.

5. Cooperate with the architect employed by the (owner) (board of directors) in connection with preparation of survey sheets, easements, and any other necessary title documents, construction contracts, and other instruments.

6. Render legal opinions as required by the (owner) (board of directors) or the Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture.

7. (Owner) (board of directors) agree to pay the attorney for professional services in accordance with this agreement, as follows:

_____

_____

The fees to be payable in the following manner and at the following times:

_____

_____

The attorney states and agrees that of the above total fees, _____, represents fees for services in connection with the organization and incorporation of the (corporation) (cooperative).

The (owner) (board of directors) and the attorney further covenant and agree that, if upon organization and incorporation, the (corporation) (cooperative) fails or refuses to adopt and ratify this agreement by appropriate resolution within _____ days, this agreement shall terminate and (owner) (board of directors) shall be liable only for payment for legal services rendered in connection with such organization and incorporation.

Signed this _____ day of _____ 19___.

Attorney: _____
(Owner)
(board of directors)

_____

_____

_____

_____

_____

[56 FR 2245, Jan. 22, 1991]

EXHIBIT A–2 TO SUBPART E OF PART 1944—SURVEY OF EXISTING RENTAL HOUSING

Name	No. of units	BR mix	Type	Year built	Rent	Vacancies	Location	Amenities
								Drapes Carpet Central cooling Dishwasher Garbage disposal TV cable

EXHIBIT A–3 TO SUBPART E OF PART 1944—RENTAL HOUSING SURVEY

(SAMPLE)

A rental housing project is being planned for (name of community.) The project would provide comfortable living at monthly rental rates of (Indicate proposed basic rent by number of bedrooms.) Your opinion on the following will help us to determine whether such a project is practical. This information does not obligate you in any way.

1. What age group are you in? 62 or over [ ] 50–61 [ ] 35–49 [ ] Under 35 [ ]

2. Are you or members of the household handicapped or impaired and in need of specially designed housing arrangements? yes [ ] no [ ]

3. Number of person(s) in your household: _____.

4. Approximate annual income from all sources including any social security pension, payments made on behalf of minor children, public assistance, etc.: $_____.

5. Do you own ( ) or rent ( ) present residence?

6. Do you live in house ( ) apartment ( ) room ( ) mobile home ( ) on a farm ( ) in town ( )?

7. Is your present housing modern ( ) not modern, but adequate ( ) inadequate ( ). If inadequate, in what respect? _____.

8. What amount of monthly rent do you pay with utilities included? $_____.

9. Would you pay 30 percent of your monthly income for modern housing for your family? yes ( ) no ( )

10. Would you be willing to move in if an apartment were available_____, 19___? yes ( ) no ( )

11. Do you have a car? No, 1, 2, 3 (circle)

Name _____
Address _____
(including city/town)
Telephone Number _____
Location of employment _____

For Elderly and Congregate Housing

12. Number of meals you would like prepared for you per day _____

13. What other services would you like to have available to you?

	Yes	No
a. Housekeeping services		
b. Personal care services		
c. Social and recreational activities services.		
d. Linen and laundry services.		
e. Health and medical related services.		
f. Beauty and barber services.		
g. Transportation or access services.		
h. Other (specify)		

14. List any hobbies or organizational membership you have.

NOTE TO APPLICANT: This sample survey form is for your use in evaluating the need for new rental units in the community and its market area. You should be prepared to explain the methodology of the survey since FmHA or its successor agency under Public Law 103–354 will be spotchecking the respondents' answers. How the survey is performed can influence the outcome; therefore, it is encumbent upon you to see that the manner in which it is conducted is suitable and acceptable to FmHA or its successor agency under Public Law 103–354. For instance, compensation being paid to someone for survey work should not be dependent upon the number of respondents who would be willing to move into the project. The survey should be based on a random sampling of persons now residing in the market area. Things to avoid are surveying from the telephone book listing or a door-to-door canvass of a certain segment of the community. We want the development of rental units to be based upon actual circumstances prevailing in the market area in order that the housing development will present a secure and economical living arrangement for the persons in need of the housing.

EXHIBIT A–4 TO SUBPART E OF PART 1944—COOPERATIVE HOUSING SURVEY

BEFORE ATTEMPTING TO ANSWER THESE QUESTIONS, PLEASE READ THE *GUIDELINES FOR UNDERSTANDING THE PRINCIPLES OF COOPERATIVE HOUSING*. NOW TAKE TIME TO ANSWER THE FOLLOWING QUESTIONS AS HONESTLY AS YOU CAN.

(Circle yes or no)

1. Are you willing to share the responsibilities required of a cooperative member?
yes _____ no_____

2. If asked, will you serve on the board of directors or on a committee?
yes _____ no_____

3. Are you willing to help in maintaining the cooperaive property?
yes _____ no_____

4. Do you now have a better idea of what cooperative housing really is?
yes _____ no_____

5. Do you want to ask more about the cooperative before deciding whether to join?
yes _____ no_____

6. If the answer to question 5 is ''yes,'' will you come to an information meeting to be held in town?

yes _____ no_____

7. Have you answered the questions truthfully? Did you answer ''no'' to any of questions 1, 2, or 3? If so, this type of housing is not for you. If you are interested, please go on to complete the second portion of this survey.

1. How many persons in your household?
adults _____
children _____

2. Approximate annual income from all sources: $_____

3. Are you or members of the household handicapped or impaired and in need of specifically designed housing arrangements?
yes _____ no_____

4. An informal meeting is scheduled for _____ a.m./p.m., on _____, 19___, for the purpose of discussing a proposed _____-unit cooperative planned for this community. At that time a representative of the cooperative will be on hand to answer other questions you may have.

So that we may know how many persons to expect at the meeting, we ask that you give us your name, address, and phone number.

NAME _____
ADDRESS _____
_____
PHONE _____

[56 FR 2245, Jan. 22, 1991]

EXHIBIT A–5 TO SUBPART E OF PART 1944—HOUSING SURVEY SUMMARY

(SAMPLE)

Item	Age—Head of household			
	62 or over	50 to 61	35 to 49	Under 35
Handicapped:				
Yes				
No				
Household Size (Bedrooms Needed):				
1 or 2 persons (1 bedroom)				
3 to 4 persons (2 bedrooms)				
5 to 6 persons (3 bedrooms)				
7 to 8 persons (4 bedrooms)				
Annual Income:				

[53 FR 2159, Jan. 26, 1988. Redesignated and amended at 56 FR 2245, 2246; 56 FR 65985, Dec. 20, 1991]

EXHIBIT A–6 TO SUBPART E OF PART 1944—HOUSING ALLOWANCES FOR UTILITIES AND OTHER PUBLIC SERVICES

Effective Date _____

_____
Name of Borrower

_____
Location and Identification of Project

PART I

Utility or service	Monthly dollar allowances					
	O-BR	1-BR	2-BR	3-BR	4-BR	5-BR
Heating:						
a. Natural Gas						
b. Bottle Gas						
c. Electric						
d. Oil						
Air Conditioning						
Cooking:						
a. Natural Gas						
b. Bottle Gas						
c. Electric						
Other electric lighting, refrigeration, etc.						
Water Heating:						
a. Natural Gas						
b. Bottle Gas						
c. Electric						
d. Oil						
Water						
Sewer						
Trash Collection						
Other (specify)						
Total allowance						
(Round to next highest dollar)						

Prepared by:
Borrower or Agent

Title
Signature

Date

Approved by Farmers Home Administration or its successor agency under Public Law 103–354

Name _____

Title _____

Signature _____

Date _____

PART II

Block A

To: _____
Name of Tenant

_____
Address of Tenant

No. of Bedrooms _____

You will be billed directly for utilities and service charges. Block B sets forth the allowances credited in your rent for the payment of utilities. You may be billed for more or less than shown in Block B depending on your use of utilities

_____
Signature of Borrower or Agent

_____
(Date)

BLOCK B

Allowance for utilities and services billed directly to and paid by tenant	Per month
Heating	$
Air Conditioning	
Cooking	
Other Electric	
Water Heating	
Water	
Sewer	
Trash Collection	
Other (Specify)	
Total (Round to next highest dollar)	

INSTRUCTIONS FOR PREPARATION AND USE OF HOUSING ALLOWANCES FOR UTILITIES AND OTHER PUBLIC SERVICES

I. *General.* These instructions are for completing exhibit A–5 for the establishment and use of approved utility allowances for tenants. The objective will be to establish allowances at levels that will apply to the majority of the households assigned to the specified size unit.

II. *Determining allowances.*

A. *Existing construction.* The borrower will provide information which shows the utility bills and fees for public services which have been charged to units in the project in previous years. If possible, this historical data should cover a period of at least 24 months and should show billings to all types and sizes of units in the project. If data is not available on the specific project, data from similar projects may be substituted. Consideration should be given to making proper adjustments in the data caused by some tenants' excessive use of utilities. Current rate schedules and known rate increases will be used to estimate utility allowances. The following local sources should be contacted as appropriate:

1. Electric utility suppliers.
2. Natural gas utility suppliers
3. Water and sewer suppliers.
4. Fuel oil and bottle gas suppliers.
5. Public service commissions.
6. Real estate and property management firms.
7. State and local agencies including public housing authorities.

In cases where a project uses a single meter for more than one living unit or where a single fuel supply or heating or cooling plant is used for more than one unit, the following factors will be used to determine the pro rata share of utility costs or public service fees per living unit:

Size of unit	Factor
0–BR	0.5
1–BR	0.7
2–BR	0.9
3–BR	1.1
4–BR	1.4
5–BR	1.6

Example: An 8-plex structure containing four 1-bedroom apartments and four 2-bedroom apartments has an average annual consumption of 42,000 kilowatt-hours of electricity. Allowance per unit is calculated as follows:

Four (one-bedroom) @ .7	=2.8
Four (two-bedroom) @ .9	=3.6
Total	6.4

Total use total of factors ____ × cost per kilowatt-hour (kwh)-average billing (assume $.04 per kwh)

42,000/6.4×.04=262.50

unit factor×average billing=−unit allowance

(one bedroom)/.7×262.50=$183.75/yr.

(two bedroom)/.9×262.50=$236.25/yr.

B. *New construction.* The applicant, with assistance from its architect, mechanical engineer or other heating and cooling system specialists, will provide heating and cooling load calculations for each type and size of unit. Heating and/or cooling costs will be calculated from these load factors using current rate schedules and known rate increases. Procedures described in the American Society of Heating, Refrigeration and Air Conditioning Engineers ''Handbook of Fundamentals,'' the National Association of Homebuilders ''Insulation Manual Home, Apartments,'' or other recognized authority may be used.

General appliance and lighting loads and fees for public services should be estimated using data from the local utility companies

and from other sources listed in paragraph II A above.

C. *Type of allowance.*

1. Separate heating and cooling allowances will be estimated for the various types of multiple family housing financed by FmHA or its successor agency under Public Law 103–354 in the project. For example, separate allowances may be needed for duplexes, row or townhouses, or for garden and low and medium rise apartments. In addition to establishing different heating and cooling allowances for various types of structures, attention should be given to different allowances for water depending on whether the tenants will have responsibility for lawn care.

2. Allowances for air-conditioning will be established only for projects in which the owner furnishes a central air-conditioning system or other type unit as a part of the permanent equipment.

3. The cost of gas and electricity varies according to amounts consumed as shown on the appropriate rate schedules of the supplier. It is not possible to compute exactly the cost of electricity for any given function without knowing the total electrical usage for a unit. However, because neither the borrower nor the tenants know beforehand what the combination of utilities for any unit rented will be, it will be necessary to approximate the allowances for each function (e.g., heating, cooking, etc.) as follows: For electricity, the rates used for lighting, refrigeration and appliances should be from the top of the rate schedule or the higher unit costs. Allowances for electric cooling, water heating and space heating should be computed from the middle or lower steps in the rate schedules. Similarly, allowances for gas used for water heating and cooking should be computed using rates from the top of the rate schedule and for heating from the lower steps.

III. *Preparation by borrower or applicant.*

A. *Applicable projects.* Except for projects operating on a profit basis, exhibit A–5 will be completed in an original and three copies in all instances where the tenants pay utilities or authorized services directly. When the borrower pays all utilities, part I of exhibit A–5 may also be required as part of the budget submitted for any new project if the loan approval official determines it is needed to properly evaluate projected utility costs. This form will establish the allowances for all size units in the project. The allowances will be adequate for all utilities and any authorized services which are or will be payable directly by the tenants, except telephone and cable TV. The forms will be signed by the borrower. The original and two copies of the form will be submitted to FmHA or its successor agency under Public Law 103–354. Backup data and necessary documentation should be included with the submission.

B. *Submission of supporting data to FmHA or its successor agency under Public Law 103–354.* The applicant will submit to FmHA or its successor agency under Public Law 103–354 adequate data to justify the utility allowances for the project. The data will include the following:

1. Completed exhibit A–5.

2. List of local sources contacted for information and copies of any data provided by such sources.

3. Any data on allowances already established for the area.

4. Complete narrative statement and computations on method used in arriving at the allowances.

IV. *Actions by FmHA or its successor agency under Public Law 103–354.* If FmHA or its successor agency under Public Law 103–354 finds the allowances acceptable, the approval portion of part I will be completed. The servicing official will keep a copy for the servicing office file and return the original to the borrower. If the proposed utility allowance is unacceptable, the borrower will be requested to revise the data and resubmit it for further consideration.

V. *Subsequent action by borrower.* After approval by FmHA or its successor agency under Public Law 103–354, the borrower will complete part II of exhibit A–5 and provide copies for each tenant paying utilities directly by attaching it to the lease entered into by the borrower and tenant. The form will provide the household with the amount of allowance for each utility and service which is to be paid by the tenant. If all utilities and services are paid by the borrower, exhibit A–5 need not be attached to the lease.

[53 FR 2159, Jan. 26, 1988. Redesignated at 56 FR 2245, Jan. 22, 1991; 56 FR 65985, Dec. 20, 1991; 58 FR 40954, July 30, 1993; 59 FR 6896–6897, Feb. 14, 1994]

EXHIBIT A–7 TO SUBPART E OF PART 1944—INFORMATION TO BE SUBMITTED WITH A LOAN REQUEST FOR A RURAL RENTAL HOUSING (RRH) OR A RURAL COOPERATIVE HOUSING (RCH) LOAN

The following information is to be submitted with SF 424.2:

I. *Eligibility.*

A. Financial Statements for Rental Projects—Each applicant must submit a current, signed, and dated financial statement. The financial statement must reflect sufficient financial capacity to meet the applicant's equity capital and initial operating capital requirements. Applicants may contribute cash, free and clear title to the building site, or a combination of both as an equity contribution. The initial operating capital must be furnished in cash.

(1) For a corporation (other than a nonprofit corporation) or a trust, financial statements will be required from each member, stockholder or beneficiary who holds an interest in the organization in excess of 10 percent.

(2) For a partnership, financial statements will be required from each general partner who holds an interest in the organization.

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

(4) For applicants that are not legally organized at the time of filing the loan request, financial statements will be required from all of the proposed parties in proportion to the proposed ownership interest of each part. However, the applicant must be legally organized prior to loan approval and must submit financial statements.

(5) For cases in which financial statements are required from an individual, the financial statements must also include the financial interest and signature of the spouse.

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

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

(A) In new projects in which the loan has not been closed:

I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.

(B) For projects in which the loan has been closed and the applicant has been formed:

I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of enabling the United States of America to make a determination of continued eligibility of the borrower organization for a loan as requested in the application of which this statement is a part.

B. Financial Statements for Cooperative Members—Each prospective member must provide a statement of monthly income and expenses showing the repayment of debts and whether those payments are current. The statement must indicate that the person will have the financial ability to meet the monthly occupancy rate requirement, while still meeting other monetary obligations. FmHA Form 1944–38, ''Application for Cooperative Housing Assistance,'' may be used for this purpose. (See FMI for preparation instructions.)

C. The names and addresses of persons who have expressed an interest in becoming members of the cooperative. Signature and date evidencing this interest from each person will be obtained to fully document the need for the cooperative housing. This certification should contain a statement that the prospective member understands the cooperative type of organization and the time and effort each member must spend in its operating and maintenance.

D. For all cooperative projects containing over four units, the applicant must submit an Affirmative Fair Housing Marketing Plan for approval in accordance with §1901.203 of subpart E to part 1901 of this chapter. The plan must be prepared in a complete, meaningful, responsive and detailed manner.

E. Evidence Concerning the Test for Other Credit—Applicants must be unable to obtain other credit at rates and terms that will allow a unit rent or occupancy charge within the payment ability of the occupants. Based upon a review of the applicant's financial condition, the servicing official may require the applicant to provide documentation regarding the availability of other credit.

F. Statement of applicant's experience in operating rental housing and related business, including a statement on the proposed method of operation and management.

G. For an Organization Applicant—A copy of, or an accurate citation to, the specific provisions of State law under which the applicant is, or is to be organized; a certified copy of the applicant's actual, or a copy of the applicant's proposed charter, articles of incorporation, bylaws, partnership agreement, certification of limited partnership, or other basic authorizing documents; the names and addresses of the applicant's members, directors and officers; and, if a member of a subsidiary of another organization, its name, address, and principal business, if available.

H. Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 requires that applicants disclose identities of interest that will exist in the development of the proposed housing. Forms FmHA 1944–30, ''Identity of Interest (IOI) Disclosure Certificate,'' and 1944–31, ''Identity of Interest (IOI) Qualification Form,'' (available in any FmHA or its successor agency under Public Law 103–354 office) will be completed and submitted as part of the loan request package.

I. 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.

(1) In the case of an individual, the social security number of the applicant must be provided. The spouse's social security number must also be provided when they have joint responsibility for the loan.

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

(3) 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 possible.

(4) 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 possible.

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

J. All known principals and affiliates are required to submit a properly completed Form HUD 2530/FmHA 1944–37, ''Previous Participation Certification.'' Architects and attorneys who have any interest in the project other than an arms length fee arrangement for professional services are also considered principals. The form will be completed and processed according to the instructions attached to the form.

II. *Need and demand.*

A. Economic justification, the number of units, and the type of facility (family, elderly, congregate, mixed, group home, or cooperative) will be based on the housing need and demand of eligible prospective tenants or members who are permanent residents of the community and its surrounding trade area. Since the intent of the program is to provide housing for the eligible permanent residents of the community, temporary residents of a community (such as college students in a college town, military personnel stationed at a military installation within the trade area, or others not claiming their current residence as their legal domicile) may not be included in determining need and project size. Similarly, homeowners may not be included in determining need and project size. The market study must include a discussion of the current market for single family houses and how sales, or the lack of sales, will affect the demand for elderly rental units. The market study may discuss how elderly homeowners may reinforce the need for rental housing, but only as a secondary market and not as the primary market. The market study must assess need and demand for both family and elderly renter households. The conclusions of the market study must be provided to the community by the applicant, through direct contact with community officials whenever possible. The type of complex (family, elderly, etc.) that is proposed by the applicant must reflect the greater proportionate need and demand of the community, that is, the share or percentage of the community's total rental units that are designated for the elderly will be compared to the community's share of elderly households, and the share of total rental units for families will be compared to the share of family households in the community. (For mixed complexes, the unit mix must reflect the proportionate need of each household type.) In unusual circumstances, where there is a compelling need for a complex type that does not represent the greater proportionate need (i.e., family vs. elderly need), the State Director may consider granting an exception to this requirement. At least one of the following conditions must be met in order to consider an exception: the community's or State's housing plan indicates that the greater immediate need is for the complex type of the smaller proportionate need and the plan includes a specific proposal to address the housing needs of the other household type; the complex has the support of a public community forum represented by diverse interests; or the units are needed due to an emergency or hardship situation, for example, a loss of housing caused by a natural disaster. The circumstances for the exception must be documented in the casefile. The bedroom mix of the proposed units must reflect the need in the market area based on renter household size and the bedroom mix of existing units. Market feasibility for the proposed units will be determined by RHS based on the market information provided by the applicant (requirements are described in section II.E. of this exhibit), RHS' knowledge of the market area and judgment concerning the need for new units, RHS' experience with the housing market in the State and local area, and the U.S. Department of Housing and Urban Development's (HUD's) or similar lender's analysis of market feasibility for the proposed units.

B. The applicant must provide a schedule of the proposed rental or occupancy rates and, for congregate housing proposals, a separate schedule listing the proposed cost of any nonshelter service to be provided.

C. For proposals where the applicant is requesting Low-Income Housing Tax Credits (LIHTC), the applicant must provide the number of LIHTC units and the maximum LIHTC incomes and rents by unit size. This information will determine the levels of incomes in the market area which will support the basic rents while also qualifying the borrower for tax credits.

D. For Rural Cooperative Housing (RCH) proposals, market feasibility will be evidenced by the names and addresses of prospective members who have definitely affirmed their intention of becoming cooperative members in the proposed project. In the event some persons cannot be accepted for membership for financial or other reasons, the cooperative should obtain more names than the number of proposed units in order to assure adequate feasibility coverage. Exhibit A–4 of this subpart contains a Cooperative Housing Survey form which may be used for this purpose.

E. For Rural Rental Housing (RRH) proposals, except as permitted by section II. G. of this exhibit, a professional market study is required. The qualifications of the person preparing the market study should include some housing or demographic experience. The following requirements apply:

(1) A table of contents, the analyst's statement of qualifications, and a certification of the accuracy of the study must be included.

(2) Market analysts must affirm that they will receive no fees which are contingent upon approval of the project by RHS, before or after the fact, and that they will have no interest in the housing project. An analyst with an identity of interest with the developer will need to fully disclose the nature of the identity.

(3) The analyst must personally visit the market area and project site and must certify to same in the market study. Failure to do so may result in the denial of further participation by the analyst in the Section 515 program.

(4) A detailed study based upon data obtained from census reports, state or county data centers, individual employers, industrial directories, and other sources of local economic and housing information such as newspapers, realtors, apartment owners and managers, community groups, and chambers of commerce is required. Exhibit A–8 of this subpart details the specific information which professional market studies are required to provide. The study must be presented in clear, understandable language. Negative as well as positive market trends must be disclosed and discussed. Statistical data must be accompanied by analytical text which explains the data and its significance to the proposed housing. Mathematical calculations must be expressed in actual numbers and may be accompanied by percentages. Each table or section must identify the source of the data. A brief statement of the methodology used in the study should be included in the foreword and in other sections where necessary for clarity. RHS personnel will utilize the market study checklist found at exhibit A–12 of this subpart (available in any Rural Development office) as a means of measuring market study credibility.

(5) The market study will include:

a. A complete description of the proposed site and its location with respect to city boundary lines, residential developments, employment centers, and transportation; the location and description of available services and facilities and their distances from the site; a discussion of the site's desirability and marketability based on its location in the community, adjacent land uses, traffic conditions, air or noise pollution, and the location of competitive housing units; and a description of the site in terms of its size, accessibility, and terrain.

b. Pertinent employment data, including the name and location of each major employer within the community and market area, its product or service, number of employees and salary range, commute times and distances, and the year the employer was established at the location. If income data cannot be obtained from individual employers, salary information for the community can be obtained from the state employment commission.

c. Population data required by exhibit A–8 of this subpart, including population figures by year, number and percentage of increase or decrease, and population characteristics by age.

d. Household data required by exhibit A–8 of this subpart, including number of households by year, tenure (owner or renter), age, income groups, and number of persons per household.

e. Building permits issued and demolitions by year by single unit dwelling and multiple unit dwelling. In nonreporting jurisdictions, this information may be substituted with the number of requests for electric service connections, number of water or sewer hookups, etc., obtained from local suppliers.

f. Housing stock by tenure and vacancy rates for total number of units, one-unit buildings, two- or more-unit buildings, mobile homes, and number lacking some or all plumbing facilities.

g. A survey of existing rental housing by name, location, year built, number of units, amenities, bedroom mix, type (family, elderly, etc.), rental rates, and rental subsidies if any.

h. A projection of housing need and demand and the analyst's recommendation for the number, type, and size of units, based on the number of RHS and LIHTC income-eligible renter households, the existing comparable housing supply and vacancy rates, the absorption rate of recently completed units, the number of comparable units currently proposed or under construction, and current and projected economic conditions.

F. For congregate housing proposals with central dining area or housing involving a group living arrangement, a narrative statement from local, state, or federal government agencies supporting the current and

long-range need for the facilities in the community and its trade area is required.

G. For RRH proposals of 12 or fewer units, the State Director may authorize the use of a market survey to establish market feasibility on a case-by-case basis. This authority may be used when there is evidence of strong market demand, for example, very low vacancy rates and long waiting lists in existing assisted or comparable rental units. The casefile must be documented accordingly. Exhibits A–2, A–3, and A–5 of this subpart may be used for the market survey.

III. *Site.*

A. Size of tract and a plot map identifying its boundaries.

B. A map showing the location and other supporting information on the neighborhood and existing facilities, such as distance to shopping areas, churches, schools, available transportation, drainage, santitation facilities, water supply and access to essential services such as doctors, dentists, pharmacies and hospitals. The map should also show significant features such as main highways, railroads, rivers and lakes. The use of property surrounding the site should also be indicated.

C. The applicant will provide evidence of having control of the proposed site either by ownership or by executing an option to buy with the current owner of public record.

D. Appropriate zoning or evidence of capability to be appropriately zoned.

IV. General description of the housing planned. A brief narrative description of the housing planned should include the following items:

A. The type of project and structures proposed, such as garden apartments for elderly and handicapped persons; townhouses for low- and moderate-income persons; congregate housing for senior citizens and handicapped persons, or housing designed for cooperative living.

B. The size of each type of rental unit measured in square feet of living area.

C. The size and type of other facilities to be included in the project, such as laundry rooms, storage spaces, etc., and a justification for any related facilities to be financed wholly or in part by RHS funds.

D. The total number of units and the number of each type of unit proposed.

E. The type of construction proposed and the method of construction, i.e., owner/builder, negotiated bid or public bid.

F. A detailed cost breakdown of the project on Form FmHA or its successor agency under Public Law 103–354 1924–13, ''Estimate and Certificate of Actual Cost,'' will be prepared and submitted by all applicants. In addition to completing the individual line items, the cost of items such as rights-of-way, equipment, and utility connections must be included and identified with the Form FmHA or its successor agency under Public Law 103–354 1924–13. Off-site improvements and the method of prorating the cost between eligible and noneligible loan items must be provided with the Form FmHA or its successor agency under Public Law 103–354 1924–13. The cost breakdown must also separately show items not included in the loan, such as furnishings, equipment, and the noneligible off-site improvements. The trade item cost breakdowns must be updated just prior to loan approval.

G. Type of utilities such as water, sewer, gas and electricity and whether each is publicly, community or individually owned.

H. The comments and recommendations of any professional consultants regarding on- or off-site conditions that could affect the proposed project should be submitted, if available. Any comments addressing an adverse condition should include recommended corrective actions. Any special regulation waivers or variances that may be necessary should also be identified.

I. Schematic design drawings should be included with the narrative description and contain, as a minimum:

(1) Site plan, including significant ground contour lines.

(2) Floor plans of each living unit type and other type spaces.

(3) Building exterior elevations.

(4) Typical building exterior wall section.

J. A plot plan showing the relationship of the proposed structures, the property lines, streets, utility lines, alleys and adjacent structures and their uses. It should also show proposed off-street parking for the tenants or members and their visitors. Other facilities, such as private and public walks, private drives and recreation areas on and off the property, laundry drying areas, and garbage and refuse holding areas which are sufficient for the period between collections in the neighborhood should be shown.

V. The applicant must submit a signed statement agreeing to pay cost overruns from its own resources.

VI. Form RD 1940–20, ''Request for Environmental Information.''

VII. *Disclosures by Applicants.*

(A) Applicants will submit information regarding any other government assistance as defined in §1944.205 of this subpart from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is expected to be made available with respect to the project for which the applicant is seeking.

(B) The applicant will submit the names of any interested parties as defined in §1944.205 of this subpart.

(C) The applicant will also submit a report detailing the expected sources and uses of funds that are to be made available for the project.

(D) The disclosures required in paragraphs (A)–(C) will be updated within 30 days of any

substantial change during the period of the application process.

VIII. For congregate housing proposals. Applicants must submit information on the services to be provided in accordance with exhibit E of this subpart.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7492, Mar. 9, 1988; 53 FR 36268, Sept. 19, 1988; 54 FR 14337, Apr. 11, 1989; 55 FR 13503, Apr. 11, 1990; 55 FR 26647, June 29, 1990; 55 FR 29558, and 29562, July 20, 1990. Redesignated and amended at 56 FR 2245, 2246, Jan. 22, 1991; 56 FR 65985, Dec. 20, 1991; 59 FR 6891, Feb. 14, 1994; 62 FR 25065, 25070, 25076, May 7, 1997; 62 FR 67223, Dec. 23, 1997]

EXHIBIT A–8 TO SUBPART E OF PART 1944—OUTLINE OF PROFESSIONAL MARKET STUDY

Market studies which do not address all segments of this outline will not be considered acceptable and may adversely affect the processing of preapplications. Preapplications with unacceptable market studies may be returned, deferred, or rejected, as determined appropriate by the servicing office.

The following information is to be used by analysts in the preparation of market studies for the Section 515 housing program. It generally contains the type and depth of information which Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 requires for evaluating the feasibility of prospective housing developments. The analyst will be expected to provide sufficient quantitative data (such as census tables), primary data (such as survey of existing comparables), and qualitative data (such as local contacts in the community) to support the conclusions reached. The analyst may present any other discussions and/or data which will help support the complete analysis of the market.

The outline provides for the demonstration of historical trends and allows the analyst to project into the 2 years beyond the last actual year of record. Additional guidance is offered in individual segments of the outline. You will need to provide a statement of your experience and why you think you are qualified to prepare such a study.

Determination of need and demand will be derived for prospective rental tenants only from: (1) Persons migrating into the area, (2) persons dwelling in family units who desire to move into their own units (elderly living with family members will only be considered if evidence of their interest in moving into the project is furnished with the market study), (3) conservative estimate (not to exceed 20 percent) of households living in substandard rental housing, (4) demolition of rental stock, (5) allowance for a 5 percent vacancy rate, and (6) conservative estimate (not to exceed 20 percent) of households experiencing rent overburden provided the analyst has made a determination there are sufficient households in the market area to occupy any rental units vacated by those lower income persons who choose to move into the proposed project from the existing units. Substandard is defined as (1) Units lacking complete plumbing and (2) overcrowded (1.01 or more persons per room).

For proposed congregate projects, the analyst will be responsible for researching the current need for, and usage of, services in the market area. The types of services being used, the provider of the services, and their location will be included.

Homeowners will not be included in the determination of need and demand for rental units. The analyst will discuss the current market for single family houses and how sales, or the lack of, will affect the demand for elderly rental units. If the economic conditions reflect a trend toward normal selling times for houses in the market area, then the discussion should point to how elderly homeowners may reinforce the need, but only as a secondary market and not as the primary market.

A statement, with signature, certifying that the analyst (including an individual under contract to the analyst's company) actually traveled to and physically surveyed the community where the proposed project will be located is also required.

I. MARKET AREA—GENERAL

The market area will be the community where the project will be located and only those outlying rural areas which will be impacted by the project (excluding all other established communities). Except in specific cases of congregate housing projects where an expanded market may be justified, the market area will not include the entire county (or parish, township, or other subdivision). Any deviation from this definition must be coordinated with the servicing office. The market area must be realistic. The criteria for selection should be described by the analyst. A map showing the market area will be required. The following is an example of a market area description:

A. Based on an analysis of population and housing development patterns, major employers and commuting patterns, the effective market area for the subject proposal is defined to include all of (Name), 35 percent of (Name) and 25 percent of (Name) census divisions. This area is shown on Map 2 following Table 4 (page 11) in Section II of this report. In 1980, this geographic market area contained an estimated 6,350 persons (6.1 percent of the county total of 103,829 persons). During the 1970's decade, the overall market area experienced growth of 1,253 persons (representing 13.5 percent of total gains in the county). In 1990, the (Name) market area population of 7,603 represented 6.7 percent of

the county population of 113,086. (See Table 4 and Map 2 in Section II for details.)

B. The effective market area for the subject proposal includes the town of (Name) and a portion of the unincorporated areas to the east and south. The (Name) River forms a natural barrier restricting development to the west. Housing development and population growth have occurred along major transportation corridors, particularly Interstate 81 and U.S. 11 between (Name) and (Name). Secondary growth has occurred along State Roads 63 and 68 to the northwest and southeast of (Name). The Interstate Industrial Park, with 16 employers providing 999 jobs, is centrally located within the market area.

II. SITE

This section will contain a full description of the site, its position in the community and location with respect to residential support services.

A. The proposed site is located in the eastern section of (Town) on (Major Thoroughfare). The area surrounding the site is predominantly comprised of modest single family dwellings. The terrain is gently sloped, with grass, oak trees, and some shrubs.

B. The site is currently zoned for commercial business and is currently owned by a local car dealer.

C. The site is approximately .3 mile east of the heart of town which contains a grocery store, drugstore, restaurants, banking facilities, the post office, and town hall. Other shopping is available .2 mile south at (Town) Plaza.

D. The medical clinic, which provides services of an osteopath, X-ray technician, a physician's assistant, and a nurse, is approximately .8 mile north of this site. This clinic is open daily and also provides 24-hour emergency service. The nearest hospitals are (Large Town) and (Town).

E. All public services are available at the site.

F. Photographs of the site are required.

G. Communities suitable for multi-family projects may have certain smaller businesses necessary for the day-to-day living convenience of the tenants and to supplement the employment base. For example, these may include, but not be limited to, pharmacy, restaurants and fast food establishments, grocery and department stores, hardware and sundries, etc. A representative number of these businesses are to be listed (by name) and location with respect to the proposed site.

Name of business and street address

_____

_____

_____

III. DEMOGRAPHIC CHARACTERISTICS

A. *Economic profile.*

1. *Labor force and employment trends between 1980 and the present year.* This will provide current year estimates and projected changes at the county level.

Civilian Labor Force and Employment Trends and Forecasts, _____ County, 1980–19____

	1990	19__[1]	19__
Civilian Labor Force[2].			
Unemployment.			
Rate of Unemployment.			
Employment.			
Change in Total Employment.			

Number _____

Percent

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

[1] Preliminary—based on monthly data through _____.
[2] Data based on place of residence.

Source

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

Example

County _____

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

Source

3. *Major employers.* This section will contain information pertinent to an analysis of the economic stability of the town. The major employers within the town and market area, the product or service offered by each employer, location of employer, and year each employer was established are types of data FmHA or its successor agency under Public Law 103–354 will need to evaluate. It is also important to know if the larger employers intend to increase or decrease

number of employees in the immediate future or if there have been any significant recent changes in number of employees.

Example

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

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

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

Source

B. *Demographic profile.*

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

Example

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

Projected: 19__ (2 years)

2. *Age characteristics.*

Age	Town, 1980–1990			County, 1980–1990		
	1980	1990	Change	1980	1990	Change
Under 18.						
19–34.						
35–54.						
55–61.						
62–74.						
75–84.						
85+.						

3. *Households.* A breakdown by town, market area, and county for last 2 census years, a current year estimate and a projection to the year the housing would be built (24 months) will have to be illustrated so that household formations can be tracked. This data will tell us what portion of a housing demand is being created by an increase in numbers of new households.

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

Projected: 19__ (2 years)

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

	Market		
	Town	Area	County
Households with:			
1 or more age 60 years and over.			
1 person household.			
2 or more persons (family).			
2 or more persons (nonfamily).			
1 or more age 65 and over.			
1 person household.			
2 or more persons (family).			
2 or more persons (nonfamily).			

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

	Market		
	Town	Area	County
Total.			
In Households.			
In Family Households.			
Householder.			
Spouse.			
Other Relatives.			
Nonrelatives.			
In Nonfamily Households.			
Male Householder.			
Living Alone.			
Not Living Alone.			
Female Householder.			
Living Alone.			
Not Living Alone.			
Nonrelatives.			
In Group Quarters.			
Institution (persons).			
Other Persons in Group Quarters.			

6. *Households by tenure.* This section is one of the more important aspects of the market analysis. This information will enable FmHA or its successor agency under Public Law 103–354 to more closely pinpoint the number of households which would comprise the target group of its evaluation. If the projected percentage of renters exceeds the historic percentage of renters, the analyst will have to explain why there is an increase. The information will be provided for town, market area, and county.

Example

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

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

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

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

9. *Households by income group.* With the advent of Low Income Housing Tax Credits (LIHTC), we have found that more emphasis must be placed on analyzing persons whose incomes qualify for LIHTC. This means families who earn 60 percent or less of the median income as established by the U. S. Department of Housing and Urban Development (HUD). Therefore, feasibility for projects expecting to receive tax credits will also be based on the incomes required to support the tax credits. This could mean a level of incomes either slightly lower or higher than FmHA or its successor agency under Public Law 103–354 very low-incomes. For those tax credit units occupied by low-income families, the monthly gross rent cannot exceed 30 percent of the family income. Gross rent includes utilities, but excludes payments of rental assistance by Federal, State, and local entities. The applicant will be responsible for notifying FmHA or its successor agency under Public Law 103–354 and the market analyst of the amount of tax credits being requested, the income percentage on which the credits will be based, and the percentage of project units targeted for tax credit eligible persons. In those cases where less than 100 percent of the units will be designated for tax credit eligible persons, the incomes needed to support the non-LIHTC units will need to be analyzed. Income data will be shown for total and renter households. This information will be presented as follows: (It is recommended that decile distribution of incomes be obtained from HUD. Other sources are acceptable and must be identified.)

Incomes Needed to Support Proposed Rents + Utilities (without LIHTC):

1–Bedroom	2–Bedroom	3–Bedroom	4–Bedroom
$_____	$_____	$_____	$_____

Number of Tax Credit Units Requested for Project:

_____

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

_____ _____ _____ _____

Tax Credit Eligible Incomes: (based on 50% [ ] or 60% [ ] of income)

$_____ $_____ $_____ $_____

Tax Credit Eligible Rents:

$_____ $_____ $_____ $_____

Proposed Project Rents:

$_____ $_____ $_____ $_____

Town or Market Area

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

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

Source

County

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

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

Source

C. *Housing supply profile*

1. *Building permits issued for the last 10 years.* The Housing Units Authorized by Building Permits and Public Contracts (C–40 Construction Report), furnished by the Bureau of the Census, provides a list of permits issued in all reporting jurisdictions. This publication is printed monthly and annually. If available, the number of units which have been demolished over the last 5 years will be needed.

Example

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

2. *Housing stock.* The study must include the number of units within the town and county (where available), both single family and multi-family, the number of mobile homes by tenure, along with the number of substandard units by tenure, based on the most recent census data. Occasionally, a situation will exist within a community where a number of detached single family homes are standing vacant. How this condition may affect the rental market must be evaluated and discussed.

Example

Inventory Change Profile

	Single family	Multifamily	Mobile home	
			Own	Rent
1980 Stock				
1990 Stock				

	Annual	Percent
Change in Number of Units.		

3. *Existing rental housing.* The analyst must determine where the proposed project will fit into the present housing stock. To accomplish this, the analyst will survey the existing units and will discuss how they (a) would be comparable with the proposed project in overall appeal; (b) are less than desirable because of the age factor or upkeep; (c) are inconveniently located; (d) do not provide the appropriate bedroom mix for the community need, etc.

4. *Details of existing stock.*

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

b. The analyst will explore the availability of individual Section 8 certificates with the local housing authority since they can be used on any project to bring the existing rents into an affordable range. For instance, 10 to 15 available Section 8 certificates in a community could have an influence on the determination for new units and the number should be reduced to correspond to this availability. However, before automatically reducing the number of proposed units to match the number of available Section 8 units, the reason the certificates are available must be explored, (e.g., owners of non-Government subsidized units will not accept the certificates). (The bedroom sizes which the certificates cover must match the prospective bedroom sizes in the proposed project bedroom mix.)

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

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

IV. Housing Demand Forecasts

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

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

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

RECOMMENDED NUMBER BY UNIT

Size	One	Two	Three	Four

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

- _____
- _____
- _____
- _____

[59 FR 6892, Feb. 14, 1994, as amended at 59 FR 49346, Sept. 28, 1994]

EXHIBIT A–9 TO SUBPART E OF PART 1944—ADDITIONAL INFORMATION TO BE SUBMITTED FOR RURAL RENTAL HOUSING (RRH) AND RURAL COOPERATIVE HOUSING (RCH) LOAN REQUESTS

1. Drawings and specifications, including any cost containment considerations and special design features for elderly or handicapped persons.

2. Updated cost estimates on Form FmHA or its successor agency under Public Law 103–354 1924–13, ''Estimate and Certificate of Actual Cost,'' will be submitted by all applicants, along with the updated estimates of associated costs specified in exhibit A–7 of this subpart.

3. Information on the method of construction, the proposed contractor if a construction contract is to be negotiated, and the architectural, engineering and legal services included in the proposal.

4. Satisfactory evidence of review and approval of the proposed housing by applicable State and local officials whose approval is required by State or local laws, ordinances or regulations. This could be an indication of approval to proceed with the development of the project rather than final approval of plans and specifications.

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

6. For all projects containing over four units, the applicant must submit an Affirmative Fair Housing Marketing Plan for approval in accordance with §1901.203 of subpart E to part 1901 of this chapter. The plan must be prepared in a complete, meaningful, responsive and detailed manner.

7. If more than 90 days have transpired since the applicant submitted the dated financial statement, the State Director may require a new one if he/she determines it necessary.

8. If there is any change in related assistance available to the applicant from other government agencies or in the interested parties as defined in §1944.205 of this subpart, it must be disclosed at this time.

9. Detailed operating budgets showing a schedule of proposed rental rates for the first year's operation and a typical year's operation. The first year's budget should show that the applicant has sufficient operating capital on hand or sufficient planned income to pay all operating costs and meet scheduled payments on debts during the planning and construction period prior to occupancy. The typical year's budget should show there will be ample income to pay essential operating costs, meet required debt payments and permit accumulation of required reserves. Form FmHA or its successor agency under Public Law 103–354 1930–7, ''Multiple Family Housing Project Budget,'' and exhibit A–5 of this subpart (or similar forms) may be used for this purpose. The operating budgets should be updated if necessary just prior to loan approval.

a. The initial budgets should include an allowance of 10 percent for vacancies, nonpayment of rent and contingency expenses. The allowance in subsequent year budgets may be adjusted to be consistent with the actual past experience in vacancy, nonpayment of rent and contingency needed for the project.

b. The budgets should provide for accumulating a reserve at the rate of 1 percent per annum of the amount of the loan until a minimum reserve equal to 10 percent of the loan is reached. Budgets should not include an additional item for depreciation since the reserve account is to provide funds for this purpose.

c. All applicable taxes, including Federal and State income taxes, should be included in the budgets and separately identified. If the applicant considers itself tax-exempt, evidence of exemption must be included in the loan docket before the loan is closed. An eligible nonprofit organization should ordinarily be able to qualify for Federal income tax exemption under section 501(c) (4) of the Internal Revenue Code.

10. The applicant will submit all proposed agreements for architectural, engineering, and legal services.

11. A statement in narrative form outlining the proposed manner of management of the housing, such as whether by owner or by hired management firm or agent. Experience and other factors pertaining to the qualifications of the manager should be set forth and will be taken into consideration. If management will be performed by a hired management firm or agent, a copy of the proposed management agreement should be

submitted. It must contain the clause stating that it is not in full force and effect until approved by FmHA or its successor agency under Public Law 103–354.

12. A management plan which sets forth clear and concise statements of policy concerning management and operation of the project in accordance with the requirements of paragraph V of exhibit B of subpart C to part 1930 of this chapter. Copies of the proposed application for occupancy, sample waiting lists, lease or rental agreement, and rules and regulations governing administration, occupancy and pet policies should be included. The management plan must be submitted in writing and the applicant must certify that it is in compliance with the requirements of subpart C to part 1930 of this chapter.

13. A schedule of any separate charges for the use of any related facilities and, in the case of congregate housing, a schedule of any separate charges for nonshelter services (such as meals, personal care and housekeeping). These schedules should be supported by appropriate operating budgets for services to be provided.

14. A satisfactory survey of the land to be given as security prepared by a licensed surveyor will be included in the loan docket. If necessary, a new survey will be obtained.

15. Form FmHA or its successor agency under Public Law 103–354 1910–11, ''Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.''

16. [Reserved]

17. Comments must be submitted in accordance with 7 CFR, part 3015, subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities.'' See RD Instruction 1940–J (available in any Rural Development office).

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 36268, Sept. 19, 1988; 54 FR 29332, July 12, 1989; 55 FR 13503, Apr. 11, 1990; 55 FR 29563, July 20, 1990. Redesignated at 56 FR 2245; 56 FR 65985, Dec. 20, 1991; 59 FR 6896, Feb. 14, 1994; 62 FR 25070, May 7, 1997; 62 FR 67224, Dec. 23, 1997]

EXHIBIT A–10 TO SUBPART E OF PART 1944 [RESERVED]

EXHIBIT A–11 TO SUBPART E OF PART 1944—PROCESSING GUIDELINES FOR LOANS FOR EQUITY TO AVERT PREPAYMENT

To apply for an equity loan to avert prepayment, the borrower should submit the following items in accordance with exhibit A–6 of this subpart and this exhibit:

1. Form SF–424.2 with a narrative discussion of the borrower's equity loan request,

2. Current Financial Statement,

3. Proposed budget showing anticipated rents to cover revised financing package, including updated figures on required reserve contributions and return on investment (if any),

4. Data on current tenants' income, rents and RA, and incomes of those on the waiting list to show that new rents will not displace or prevent occupancy by eligible tenants, unless sufficient RA is made available.

[58 FR 38925, July 21, 1993]

EXHIBIT B TO SUBPART E OF PART 1944—GUIDE LETTER FOR USE IN INFORMING INTERIM LENDER OF FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354'S COMMITMENT

(Name and Address of Private Lender)

_____

_____

Dear Mr./Ms.: _____

(For Organizations)
Reference is made to a request from the
(Smith Housing Assoc.)

_____

through
(John Smith),

_____

its President, for interim financing from your firm to construct a housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

(For Individuals)
Reference is made to a request for
(John Jones)

_____

for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

This letter is to confirm certain understandings on behalf of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354.

Final drawings, specifications and all other contract documents have been prepared and approved, and the applicant is prepared to start construction. The applicant and FmHA or its successor agency under Public Law 103–354 have determined that the conditions of loan closing can be met. Funds have been obligated for the project.

FmHA or its successor agency under Public Law 103–354 has required the applicant to deposit $_____ with your firm to be used before any interim loan funds. The applicant has proposed and FmHA or its successor agency under Public Law 103–354 has agreed that you may first advance any applicant funds on deposit, and then advance the proceeds of the interim loan in accordance with the terms and conditions stated in your attached letter to pay for construction and

other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper statements and partial payment estimates proposed by the builder and approved for payment by the consulting architect, applicant and FmHA or its successor agency under Public Law 103–354 servicing official.

We have scheduled the FmHA or its successor agency under Public Law 103–354 loan to be closed when construction to be financed with loan funds is substantially complete in accordance with the FmHA or its successor agency under Public Law 103–354 approved (contract documents), drawings and specifications, (except for minor punch list items), and the applicant provides evidence and a signed certification indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the FmHA or its successor agency under Public Law 103–354 loan amount will be available to pay off the amount of loan advances your lending institution has made for authorized approved purposes, including accrued interest to the date of closing.

FmHA or its successor agency under Public Law 103–354 cannot provide you with an unconditional letter of commitment guaranteeing FmHA or its successor agency under Public Law 103–354 loan closing. Factors such as noncompletion, default, unacceptable workmanship and marked deviation from approved drawings and specifications could prevent the FmHA or its successor agency under Public Law 103–354 loan from being closed.

These problems can be minimized by making a thorough review of the [contract documents][1] and drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance. If the builder is unable to provide a surety bond, we suggest that your lending institution consider making advances for partial payments to the builder [in accordance with the provisions of the construction contract][1] based upon no less than 60 percent and no more than 90 percent of the value of acceptable work in place, less the aggregate of previous payments.

The following are additional safeguards to help assure FmHA or its successor agency under Public Law 103–354 loan closing:

1. We invite you or your representatives to accompany FmHA or its successor agency under Public Law 103–354 personnel during construction inspections so that at least three or four joint inspections at critical points during construction, including the final inspection, can be made to help assure that construction is proceeding in accordance with the FmHA or its successor agency under Public Law 103–354 approved drawings and specifications.

2. FmHA or its successor agency under Public Law 103–354 will maintain its commitment in the amount of the obligated loan funds for a reasonable period of time after the expiration of any specified completion dates provided work on the project is progressing satisfactorily and any identified problems have been resolved.

3. FmHA or its successor agency under Public Law 103–354 will not arbitrarily abandon your lending institution in the event of default. If the contractor defaults, FmHA or its successor agency under Public Law 103–354 will attempt to provide financial assistance to the applicant in accordance with our administrative procedures and lending requirements if a new contractor can complete the project for a total cost within the security value of the project. If this is not possible or if the FmHA or its successor agency under Public Law 103–354 loan applicant becomes unable or unwilling to continue with the project, FmHA or its successor agency under Public Law 103–354 will attempt to provide financial assistance to any eligible applicant (subject to the availability of funds, our administrative procedures, and our lending requirements) to purchase the completed project from your lending institution.

4. FmHA or its successor agency under Public Law 103–354 is aware that circumstances such as subsurface ground conditions and change orders necessitated by required changes in the work to be performed may cause cost increases after FmHA or its successor agency under Public Law 103–354 loan approval and the obligation of FmHA or its successor agency under Public Law 103–354 loan funds. When justified, FmHA or its successor agency under Public Law 103–354 may make subsequent loans when necessary to help cover the eligible costs, provided additional loan funds are available, the change orders were approved by FmHA or its successor agency under Public Law 103–354, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value.

Your assistance to the applicant is appreciated.

Sincerely,

State Director

[53 FR 2159, Jan. 26, 1988, as amended at 56 FR 2247, Jan. 22, 1991; 59 FR 6897, Feb. 14, 1994]

[1] These words may be omitted for projects constructed by the owner-builder method of construction with a construction contract.

EXHIBIT C TO SUBPART E OF PART 1944—ARTICLES OF INCORPORATION FOR RENTAL OR COOPERATIVE ORGANIZATIONS (NOT FOR PROFIT)

We, the undersigned, incorporators, hereby associate ourselves together to form and establish a (corporation) (cooperative) not for profit under the laws of the State of _____.

First: The name of the (corporation) (cooperative) is

_____

Second: The location of its principal place of business in this State is _____, _____ County.

Third: The location of its registered office in this State is _____, _____ County.

Fourth: The name and address of its resident agent in this State is _____ County.

Fifth: This (corporation) (cooperative) is organized not for profit under , _____ and the objects and purposes to be transacted and carried on are to promote the general social welfare of the community and for that purpose:

To acquire, construct, provide, and operate (rental) (cooperative) housing and related facilities suited to the special needs and living requirements of eligible occupants as determined by FmHA or its successor agency under Public Law 103–354 regulations, without regard to race, color, religion, sex, age, handicap, marital or familial status or national origin;

To acquire, improve, and operate any real or personal property or interest or right herein or appurtenant thereto;

To sell, convey, assign, mortgage, lease any real and personal property;

To borrow money and to execute such evidence of indebtedness and such contracts, agreements, and instruments as may be necessary, and to execute and deliver any mortgage, deed of trust, assignment of income, or other security instrument in connection therewith; and to do all things necessary and appropriate for carrying out and exercising the foregoing purposes and powers.

Sixth: The number of directors shall be prescribed in the bylaws, but shall not be less than five nor more than nine.[1]

Seventh: The (corporation) (cooperative) formed hereby shall have no capital stock. It shall be composed of members rather than shareholders. The conditions and regulations of membership and the rights or other privileges of the classes of members shall be determined and fixed by the bylaws.

Eighth: (Rental only) The corporation is not organized for pecuniary profit and shall have no power to declare dividends. No part of its net earnings shall inure to the benefit of any member, director, or individual. The balance, if any, of all money received by the corporation from its operations, after payment in full of all operating expenses, debts, and obligations of the corporation of whatsoever kind and nature as they become due shall be used to make advance payments on a _____ owed by the corporation, to lower the lease-rental charge to occupants of the housing, to provide additional housing and related facilities, or for some related purpose.

Eighth: (Cooperative only) The cooperative is not organized for pecuniary profit and shall have no power to declare dividends. The balance, if any, of all money received by the cooperative from its operations, after payment in full of all operating expenses, debts, and obligations of the cooperative of whatsoever kind and nature as they become due, shall accumulate in an interest-bearing account but be equally assigned to each member as patronage capital.

Ninth: The name and place of residence (post office address) of each of the incorporators and initial directors until the first annual meeting:

Incorporators

_____

_____

Directors

_____

_____

Tenth: (Rental only) In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more such nonprofit corporations or municipal corporations as may be selected by the board of directors of this corporation, to be used for and devoted to the purpose of carrying on a nonprofit housing project for such rural residents or other purposes to promote the general social welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, either for the reimbursement of any sum subscribed, donated, or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

Tenth: (Cooperative only) In the event of dissolution of this cooperative, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the cooperative, except members' patronage capital and

[1] If the statute under which the cooperative housing project is to be incorporated will permit, it is preferable to state here the minimum number of directors. The actual number can then be stated in the bylaws which are more easily amended if it becomes necessary to change the number.

membership fees, shall be used for providing low income rental housing or other purposes to promote the general welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, except that the membership fee and money accrued to members in their patronage capital accounts shall be paid to members prior to conversion or satisfaction of the Government's debt.

Eleventh: (Cooperative only) At any time prior to dissolution the member wishes to terminate membership in the cooperative, money which has accrued in the member's patronage capital account and the member's membership fee shall be paid to the member provided the member's occupancy account is not delinquent and that any other charges to which the member is liable are paid.

Twelfth: The duration of the existence of this corporation shall be perpetual.[1]

IN TESTIMONY WHEREOF, We have here unto subscribed our names on _____ 19 _____.

_____

_____

_____

(Insert acknowledgement or other form if required by State law.)

[56 FR 2247, Jan. 22, 1991]

EXHIBIT D TO SUBPART E OF PART 1944—BYLAWS (EXCEPT COOPERATIVE)

(Sample)

BYLAWS OF

A NONPROFIT CORPORATION

Article I

OFFICE

Section 1.01. *Principal Office.*

The principal office of the corporation in the State of _____, shall be located at _____, County of _____ Section 1.02. Registered Office and Agent. The corporation shall have and continuously maintain in the State of _____ a registered office and a registered agent whose office is identical with such registered office.

Article II

MEMBERS

Section 2.01. *Eligibility for membership.*

The corporation shall have one class of members. Members may be individuals or organizations. Any legally competent person of good reputation who resides in the town of _____ or in the surrounding trade area, applies for membership, and pays the required membership fee shall be eligible.

Section 2.02. *Approval of Applications.*

All applications for membership shall be approved at: (1) Any special or regular meeting of the board of directors, when a quorum is present, by a majority vote of the board members or (2) by a majority vote of the existing membership present at any annual or special meeting held in accordance with Article III herein.

Section 2.03. *Voting Rights.*

Each member shall be entitled to one vote on each matter submitted to a vote of the members.

Section 2.04. *Termination of Membership.*

A member may be suspended or expelled, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of meeting and provided the member has been informed in writing of the charges preferred against the member at least ten days before such meeting. The members shall be given an opportunity to be heard at such meeting. The members of the board, by a majority vote of those present at any regularly constituted meeting, may terminate the membership of any member who becomes ineligible for membership and may suspend or expel any member who shall be in default with respect to any financial obligation to the corporation.

Section 2.05. *Resignation.*

Any member may resign by filing a written resignation with the secretary.

Section 2.06. *Reinstatement.*

Upon written request signed by a former member and filed with the secretary, the board may reinstate such former member to membership upon such terms as the board may deem appropriate.

Section 2.07. *Transfer of Membership.*

Membership in this corporation is not transferable or assignable.

Section 2.08. *Membership—Fees.*

The membership fee shall be $_____ or such other amount as may be fixed by the members at any annual meeting or at any special meeting called for the purpose. No person shall attain membership before paying the treasurer the membership fee.

Section 2.09. *Membership—Liability for Corporation's Obligations.*

Fully paid members shall not be liable for any debts or obligations of the corporation and shall not be subject to any assessment; but the members at any annual meeting or at any special meeting called for the purpose, may fix reasonable annual dues to become effective after not less than 30 days' notice to all members of such action.

Section 2.10. *Membership—Minimum Number.*

[1] Duration should be perpetual, or long enough to cover the period of the loan plus 5 years.

The board will make all reasonable efforts to maintain a broad community-wide membership of not less than 25 members at any time.

Section 2.11. *Membership—Residence.*

A majority of the members shall be residents of the community where the housing is or will be located.

Article III

MEETINGS OF MEMBERS.

Section 3.01. *Annual Meeting.*

An annual meeting of the members shall be held at _____, on the _____ of the month of _____ each year, beginning with the year 19___, at the hour of _____ o'clock, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in said State, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board shall cause the election to be held at a special meeting of the members as soon thereafter as convenient.

Section 3.02. *Special Meetings.*

Special meetings of the members may be called by the president, the board, or not less than one-tenth of the members.

Section 3.03 *Place of Meeting.*

The board of directors may designate any place within or not more than ___ miles from _____ as the place for an annual meeting or for any special meeting called by the board. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the registered office of the corporation in said State.

Section 3.04. *Notice of Meetings.*

Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail, to each member entitled to vote at such meeting, not less than seven or more than thirty days before the date of such meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute of these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at the address as it appears on the records of the corporation, with postage thereon prepaid.

Section 3.05. *Informal Action by Members.*

Any action required by law to be taken at a meeting of the members, or any action which may be taken at a meeting of the members, may be taken without a meeting upon written consent or approval of all the members, setting forth the action so taken.

Section 3.06. *Quorum.*

At such meeting, a quorum shall consist of 30 percent of the members, or twice the number of directors, whichever is greater. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting from time to time without further notice.

Section 3.07. *Proxies.*

(a) At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after eleven months from the date of its execution. A proxy may be canceled by notice executed by the member with like formality and delivered to the secretary.

(b) At each meeting of the members, every member shall be entitled to vote in person or by proxy and shall be entitled to cast one vote. The votes for directors shall be by ballot. Only the person in whose name membership is standing in the books of the corporation on the day of such meeting shall be entitled to vote in person or by proxy.

(c) For any person to represent a member by proxy, such person must submit a power of attorney to the secretary of the board for examination at least one hour before the time of meeting. When the secretary has certified the power of attorney is in good order, the proxy holder shall have the right to do any and all things which might be done by the member were the member present in person, which right shall include the establishment of a quorum and the organizing of any meeting.

Article IV

BOARD OF DIRECTORS

Section 4.01. *General Powers.*

The affairs of the corporation shall be managed by its board of directors.

Section 4.02. *Number, Tenure, and Qualifications.*

The number of directors shall be _____. The directors elected at the annual meeting to succeed the directors named in the Articles of Incorporation shall be elected for staggered terms of three, two, and one year. As the terms of such directors expire, their successors shall be elected for terms of three years and until their successors are elected and have qualified. Directors shall be members of the corporation and residents of the community where the housing is or will be located. Of the total number of directors, at least five must be among the leaders in such community.

Section 4.03. *Regular Meetings.*

A regular annual meeting of the board shall be held, without other notice than these bylaws, immediately after and at the same place as the annual meeting of the

members. The board may provide by resolution the time and place, within or not more than _____ miles from _____ for holding of additional regular meetings of the board without other notice than such resolution.

Section 4.04. *Special Meetings.*

Special meetings of the board may be called by or at the request of the president and shall be called by the secretary at the request of any two directors. The authorized person or persons calling a special meeting of the board may fix any place within or not more than _____ miles from _____ as the place for holding such meeting.

Section 4.05. *Notice.*

Notice of any special meeting of the board shall be given at least two days previously thereto by written notice delivered personally, or four days notice sent by mail or telegram, to each director at the director's address as shown by the records of the corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at the meeting need not be specified in the notice or waiver of notice of such meeting, unless specifically required by law or these bylaws.

Section 4.06. *Quorum.*

A majority of the board shall constitute a quorum for the transaction of business at any meeting of the board; but if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 4.07. *Manner of Acting.*

The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by law or by these bylaws. The board may also act by written consent of all the directors of the corporation setting forth the action taken.

Section 4.08. *Vacancies.*

Any vacancy occurring in the board shall be filled by the board until the next meeting of the members and until a successor has been elected by the members to fill a vacancy. Such person shall be elected for the unexpired term of office of the predecessor in office.

Section 4.09. *Compensation.*

Directors shall not receive any compensation for their services as directors.

Section 4.10. *Director—Absence From Meetings.*

Any director who is absent from _____ consecutive meetings without excuse satisfactory to the board shall be deemed to have surrendered the office as director.

Section 4.11. *Directors—Residuary Powers.*

The board shall have the powers and duties necessary or appropriate for the administration of the affairs of the corporation. All powers of the corporation except those specifically granted or reserved to the members by law, the articles of incorporation, or these bylaws shall be vested to the board.

Section 4.12. *Directors—Removal From Office.*

A director may be removed from office, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the director has been informed in writing of the charges preferred against the director at least 10 days before such meeting. The director involved shall be given an opportunity to be heard at such meeting. Any vacancy created by the removal of a director shall be filled by a majority vote, which may be taken at the same meeting at which such removal takes place.

Article V

OFFICERS

Section 5.01. *Officers.*

The officers of the corporation shall be a president, a vice president, a secretary, and a treasurer. The board may elect or appoint such other officers as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the board. The offices of secretary and treasurer may be combined and held by one person.

Section 5.02. *Election and Term of Office.*

(a) The officers of the corporation specified in Section 5.01 shall be elected from the membership of the board by the board at its annual meeting or as soon thereafter as feasible. New offices may be created and filled at any meeting of the board. Each officer shall hold office until the next annual election of directors and until a successor shall have been duly elected and shall have qualified.

(b) The term of office shall be one year. Election of officers shall take place at the annual board meeting and shall be by ballot cast by qualified directors. A plurality of votes cast shall elect.

Section 5.03. *Removal.*

Any officer elected or appointed by the board may be removed by the board by two-thirds vote of the remaining directors whenever in its judgment the best interests of the corporation would be served thereby, but

such removal shall be without prejudice to the contract rights, if any, of the officer so removed.

Section 5.04. *Vacancies.*

A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the board by majority vote for the unexpired portion of the term.

Section 5.05. *President.*

The president shall be the principal executive officer of the corporation and shall in general supervise and control all the business and affairs of the corporation. The president shall preside at all meetings of the members and of the board. The president may sign, with attestation of the secretary or any other proper officer of the corporation authorized by the board, any deeds, mortgages, bonds, contracts, or other instruments which the board authorizes to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of these bylaws or statutes to some other officer or agent of the corporation and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board from time to time.

Section 5.06. *Vice President.*

In the absence of the president or in the event of an inability or refusal to act, the vice president shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all restrictions upon the president. Any vice president shall perform such other duties as from time to time may be assigned by the president of the board.

Section 5.07. *Treasurer.*

The treasurer shall give a bond for the faithful discharge of duties in such sum and with such surety or sureties as the board shall determine. The treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation from any source whatsoever, deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VIII of these bylaws; and in general perform all duties incident to the office of treasurer and such other duties as from time to time may be assigned by the president or the board.

Section 5.08. *Secretary.*

The secretary shall keep the minutes of the meeting of the members and the board in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of and see that the seal of the corporation is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each member, which shall be furnished to the secretary by such member; and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the president or the board.

Article VI

ORDER OF BUSINESS

Section 6.01. *Order of Business.*

The order of business at any regular or special meeting of the members or the board shall be:

(a) Reading and approval of any unapproved minutes.

(b) Reports of officers and committees.

(c) Unfinished business.

(d) New business.

(e) Adjournment.

Section 6.02. *Parliamentary Procedure.*

On questions of parliamentary procedure not covered in these bylaws, a ruling by the president shall prevail.

Article VII

COMMITTEE

Section 7.01. *Committees of Directors.*

The board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees, each of which shall consist of one or more directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the board in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board, or any individual director, of any responsibility imposed upon the board, or any individual director, by law.

Section 7.02. *Other committees.*

Other committees not having and exercising the authority of the board in the management of the corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be members of the corporation, and the president of the corporation shall appoint the member thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interest of the corporation shall be served by such removal.

Section 7.03. *Term of Office.*

Each member of a committee shall continue as such until the next annual meeting of the members of the corporation and until a successor is appointed, unless the committee shall be sooner terminated, or unless

such member to be removed from such committee, or unless such member shall cease to qualify as a member thereof.

Section 7.04. *Chairman.*

One member of each committee shall be appointed chairman by the persons authorized to appoint the members thereof.

Section 7.05. *Vacancies.*

Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 7.06. *Quorum.*

Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7.07. *Rules.*

Each committee may adopt rules for its own government not inconsistent with these bylaws or with rules adopted by the board of directors.

Article VIII

CONTRACTS, CHECKS, DEPOSITS, AND FUNDS

Section 8.01. *Contracts.*

The board may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation; and such authority may be general or confined to specific instance.

Section 8.02. *Checks, Drafts, etc.*

All checks, drafts, or orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the corporation shall be signed by the officer or officers, agent or agents of the corporation, and in a manner as shall from time to time be determined by resolution of the board. In the absence of determination by the board, these instruments shall be signed by the treasurer and countersigned by the president of the corporation.

Section 8.03. *Deposits.*

All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the board may select.

Section 8.04. *Gifts.*

The board may accept on behalf of the corporation any contribution, gift, bequest, or devise for the general purposes or for any special purposes of the corporation.

Article IX

CERTIFICATES OF MEMBERSHIP

Section 9.01. *Certificates of Membership.*

The board may provide for the issuance, and determine the form of certificates evidencing membership in the corporation. Such certificates shall be signed by the president and the secretary, sealed with the seal of the corporation, and consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the corporation. If any certificate becomes lost, mutilated or destroyed, a new certificate may be issued upon such terms and conditions as the board may determine.

Section 9.02. *Issuance of Certificates.*

When a member has been elected to membership and has paid any dues that may then be required, a certificate of membership shall be issued in his or her name and delivered to the member by the secretary.

Article X

BOOKS AND RECORDS

The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, the board, and committees having any of the authority of the board of directors, and shall keep at the registered or principal office a record giving the names and addresses of the members. All books and records of the corporation may be inspected by any member, or member's agent or attorney, for any proper purposes at any reasonable time. The board shall cause an audit of the records of the corporation to be made each year by a competent auditor.

Article XI

FISCAL YEAR

The fiscal year of the corporation shall begin on the first day of January and end on the last day of December in each year.

Article XII

SEAL

The board shall provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words, ''corporate seal.''

Article XIII

WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the statutes of said State or the articles of incorporation or the bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled thereto, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article XIV

REPEAL OR AMENDMENT OF BYLAWS

Section 14.01. These bylaws may be repealed or amended by a majority vote of the members present at any annual meeting of the members, or at any special meeting of the members called for such purpose, at which a quorum is present: provided, however, no such action shall change the purposes of the corporation so as to impair its rights and powers under the laws of said State, or to waive any requirements of bond or any provision for the safety and security of the property and funds of the corporation or its members or to deprive any member without any express assent of rights, privileges, or immunities then existing. Notice of any amendment to be offered at any meeting shall be given not less than 7 nor more than 30 days before such meeting and shall set forth such amendment.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned secretary of the corporation identified in the foregoing bylaws does hereby certify that the foregoing bylaws were duly adopted by the members of said corporation, as bylaws of said corporation, on the _____ day of _____, 19_____ at a duly called and constituted meeting of the members, and that they do now constitute the bylaws of said corporation.

_____

Secretary

(Corporate Seal)

[53 FR 2159, Jan. 26, 1991, as amended at 56 FR 2248, Jan. 22, 1991]

EXHIBIT D–1 TO SUBPART E OF PART 1944—BYLAWS (COOPERATIVE)

Bylaws of

_____

(a nonprofit cooperative corporation)

Article I

OFFICE

Section 1.01. *Principal office.* The principal place of business of the cooperative in the State of _____ shall be located at _____, County of _____.

Section 1.02. *Registered office and agent.*

Article II

MEMBERS

Section 2.01. *Eligibility for membership during cooperative's formation.* Any natural person who is approved by the cooperative under its rules and regulations by the board of directors shall be eligible for membership, provided that he/she executes a Subscription Agreement and Occupancy Agreement in the usual form employed by the cooperative covering a specific unit in the housing project.

Section 2.02. *Approval of Applications for Membership after the cooperative's formation.*

All applications for membership received after the cooperative has been established and in operation shall be approved at any special or regular meeting of the board of directors, when a quorum is present, by a majority vote of the board members.

Section 2.03. *Membership certificates.* The board may provide for the issuance, and determine the form of, certificates evidencing membership in the cooperative. Such certificates shall state that the cooperative is organized under the laws of the State of _____, the cooperative's lien rights against such membership as set forth in these Bylaws, shall be signed by the president and the secretary, sealed with the seal of the cooperative, and consecutively numbered. The name and address of each member and the date of cooperative. If a certificate becomes lost, mutilated, or destroyed, a new certificate may be issued upon such terms and conditions as the board may determine.

Section 2.04. *Lien.* The cooperative shall have a lien on the outstanding memberships in order to secure payment of any sums which shall be due or become due from the holders for any reason whatsoever, including any sums due under any occupancy agreements.

Section 2.05. *Voting rights.* Each member shall be entitled to one vote on each matter submitted to a vote of the members.[1]

Section 2.06. *Patronage capital.* All funds accruing to the cooperative during the year, above and beyond the costs and expenses of operating the cooperative, shall be assigned to each member on the books of the cooperative as patronage capital at the end of each fiscal year. These patronage capital funds may not be removed from the patronage capital account except in payment to members upon termination of membership. Any member not wishing to renew the Occupancy Agreement will be entitled to receive the patronage capital assigned to the member on the books of the cooperative. Likewise, members terminated because of violation of these bylaws may receive his/her patronage capital pursuant to provisions of section 2.07.

Section 2.07. *Termination of membership.* A member may be suspended or expelled, for violation of rules set forth in the Occupancy Agreement or these bylaws, by the vote of not less than a majority of the board of directors, provided the member has been informed in writing of the charges preferred against the member at least ten days before such meeting. However, the cooperative shall

[1] In the case of joint membership, each member shall be entitled to cast a one-half vote.

not evict any member except by judicial action pursuant to State or local law and in accordance with the requirements of the Farmers Home Administration or its successor agency under Public Law 103–354 Tenant Grievance and Appeals Procedure. The member shall be given an opportunity to be heard at such meeting. Upon termination of membership rights under the Occupancy Agreement, the member shall be required to deliver promptly to the cooperative his/her membership certificate and Occupancy Agreement endorsed as required by the cooperative. The retiring member then shall be entitled to receive the amount determined in accordance with the provisions of section 2.10 less the following amounts (the determination of such amounts by the cooperative to be conclusive):

a. Any amounts due to the cooperative from the member under the Occupancy Agreement;

b. The cost or estimate cost of all deferred maintenance, including painting, redecorating, floor finishing, and such repairs and replacements as are deemed necessary by the cooperative to place the dwelling unit in suitable condition for another occupancy; and

c. Legal and other expenses incurred by the cooperative in connection with the default of such member. In the event the retiring member fails, within a 10-day period after demand, to deliver to the cooperative his endorsed membership certificate, the membership certificate shall be deemed to be canceled and may be reissued by the cooperative to a new member.

Section 2.08. *Resignation.* Any member may choose not to renew the Occupancy Agreement by notifying the cooperative 4 months in advance of the renewal date.

Section 2.09. *Transfer of membership.* Membership in this cooperative is not transferable or assignable except to the cooperative unless, upon death of a member, his/her membership in the cooperative passes by will or intestate distribution to a member of the immediate family. This is conditioned upon the person's eligibility and approval for membership according to FmHA or its successor agency under Public Law 103–354 regulations and by his/her assuming in writing the terms of the Subscription Agreement and Occupancy Agreement within 60 days after member's death and payment of such debts.

Section 2.10. *Transfer value.* Whenever a membership is transferred to the cooperative, the term *transfer value* shall mean the sum of:

a. The membership fee paid by the member on the books of the cooperative, and

b. The amount of the patronage capital which has accrued to the member during his/her period of membership as shown on the books of the cooperative.

Section 2.11. *Subscription fees.* All subscription funds shall be deposited promptly without deduction in a special account or accounts of the cooperative as escrow or trustee for the subscribers membership. These funds shall not be corporate funds, but shall be held solely for the benefit of the subscribers until transferred to the account of the cooperative as hereinafter provided. Such special account or accounts shall be established with a banking institution where deposits are insured by an agency of the Federal Government. Such funds shall be subject to withdrawal, or transfer to the account of the cooperative, or disbursed in a manner directed by the cooperative only upon certification by the president and secretary of the cooperative that:

(a) The subscription agreement of a named applicant has been terminated pursuant to its terms and such withdrawal is required to repay the amount paid by him under such agreement; or

(b) A sufficient number of applicants for _____ dwelling units has not been established and such withdrawal is required to repay established applicants the amounts paid by them; or

(c) Applicants for _____ dwelling units have signed subscription agreements, have been approved as to their eligibility by the board of directors, and have made at least a downpayment on their subscription (membership) fee. If these requirements have been met and the mortgage loan has been scheduled for closing, the entire amount of the funds in the subscription escrow account may be transferred to the cooperative which shall at that time deliver membership certificates to all members.

Article III

MEETINGS OF MEMBERS.

Section 3.01. *Annual meeting.* An annual meeting of the members shall be held at _____ on the _____ of the month of _____ each year, beginning with the year 19_____ at the hour of _____ o'clock, ??m., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in said State, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board shall cause the election to be held at a special meeting of the members as soon thereafter as convenient.

Section 3.02. *Special meetings.* Special meetings of the members may be called by the president, the board or not less than one-fourth of the members.

Section 3.03. *Place of meeting.* The board of directors may designate any place within or

not more than _____ miles from _____ as the place for an annual meeting or for any special meeting called by the board.,

Section 3.04. *Notice of meetings.* Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail, to each member entitled to vote at such meeting, not less than ten or more than twenty days before the date of such meeting, by or at the direction of the president, or the Secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute of these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at the address as it appears on the records of the cooperative, with postage thereon prepaid.

Section 3.05. *Informal action by members.* Any action required by law to be taken at a meeting of the members, or any action which may be taken at a meeting of the members, may be taken without a meeting upon written consent or approval of all the members, setting forth the action so taken.

Section 3.06. *Quorum.* At such a meeting a quorum shall consist of 40 percent[2] of the members, or twice the number of directors, whichever is greater. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting from time to time without further notice.

Section 3.07. *Proxies.* (a) At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after eleven months from the date of its execution. A proxy may be cancelled by notice executed by the member with like formality and delivered to the secretary.

(b) At each meeting of the members, every member shall be entitled to vote in person or by proxy and shall be entitled to cast one vote. The votes for Directors shall be by ballot. Only the person in whose name membership is standing in the books of the cooperative on the day of such meeting shall be entitled to vote in person or by proxy. If the membership is jointly owned, co-members are limited to one-half vote each.

(c) For any person to represent a member by proxy, such person must submit a power of attorney to the secretary of the board for examination at least one hour before the time of meeting. When the secretary has certified the power of attorney is in good order, the proxy holder shall have the right to do any and all things which might be done by the member were the member present in person, which right shall include the establishment of a quorum and the organizing of any meeting.

Article IV

BOARD OF DIRECTORS

Section 4.01. *General powers.* The affairs of the cooperative shall be managed by its board of directors.

Section 4.01. *Powers and duties.* The board of directors shall have all the powers and duties necessary for the administration of the affairs of the cooperative and may do all such acts and things as are not by law or by these bylaws directed to be exercised and done by the members. The powers of the board of directors shall include but not be limited:

a. To accept or reject all applications for membership and admission to occupancy of a dwelling unit in the cooperative housing project, either directly or through an authorized representative;

b. To establish monthly occupancy charges, subject to approval of FmHA or its successor agency under Public Law 103–354, as provided for in the Occupancy Agreement and based on an operating budget formally adopted by the board;

c. To engage an agent or employees, subject to the approval of FmHA or its successor agency under Public Law 103–354, for the management of the project under such terms as the board may determine;

d. To authorize the recording of patronage capital assignments on the cooperative's books to members;

e. To terminate membership and occupancy rights for cause; and

f. To promulgate such rules and regulations pertaining to use and occupancy of the premises as may be deemed proper and are consistent with these bylaws and the Certificate of Incorporation and with any requirements of FmHA or its successor agency under Public Law 103–354 while mortgagee.

The affairs of the cooperative shall be managed by its board of directors.

Section 4.02. *Number and qualifications.* The board of directors shall be composed of _____ persons, all of whom shall be members of the cooperative.[3]

Section 4.03. *Election and term of office.* The term of the directors named in the Certificate of Incorporation shall expire when their successors have been elected at the first annual meeting or any special meeting called

[2] For large organizations, a smaller figure may be used if it will not result in a quorum of less than 20 members.

[3] Number of directors must be not less than 5 and must be selected by a procedure that insures that the interest of minorities and woman are adequately represented.

for that purpose. For a board of five (5) directors, the first annual meeting of the members the term of office of two (2) directors shall be fixed for two (2) years, and the term of office of one (1) director shall be fixed at (1) year. At the expiration of the initial term of office of each respective director, his/her successor shall be elected to serve a term of office for three (3) years.

The directors shall hold office until their successors have been elected and hold their first meeting. (If a larger board of directors is contemplated, the terms of office should be established in a similar manner so that they will expire in different years.) The term of any director who becomes more than 30 days delinquent in payment of his occupancy charges shall be automatically terminated and the remaining directors shall appoint his successor as provided in §4.11.

Section 4.04. *Organization meeting.* The first meeting of a newly elected board of directors shall be held within ten (10) days of election at such place as shall be fixed by the directors at the meeting at which such directors were elected. No notice shall be necessary to the newly elected directors in order legally to constitute such meeting, providing a majority of the whole board shall be present.

Section 4.05. *Regular Meetings.* Regular meetings of the board of directors shall be held each month at such time and place within _____ miles of _____. Notice of regular meetings of the board of directors shall be given to each director, personally or by mail, telephone or telegraph, at least 5 days prior to the day named for such meeting.

Section 4.06. *Special meetings.* Special meeting of the board may be called by or at the request of the president and shall be called by the secretary at the request of any two directors on three days notice. Such notice shall be by mail, telephone or telegraph and shall state the time, place (as provided below) and purpose of meeting. The authorized person or persons calling a special meeting of the board may fix any place within or not more than _____ miles from _____ as the place for holding such meeting.

Section 4.07. *Waiver of notice.* Before or at any meeting of the board of directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the given of such notice. Attendance by a director at any meeting of the board shall be a waiver of notice by him/her of the time and place thereto. If all directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 4.08. *Quorum.* A majority of the board shall constitute a quorum for the transaction of business at any meeting of the board; but if less than a majority of the directors is present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 4.09. *Fidelity Bonds.* The board of directors shall require that all officers and employees of the cooperative handling or responsible for cooperative or trust funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the cooperative.

Section 4.10. *Manner of acting.* The act of a majority of the directors at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by law or by these bylaws. The board may also act by written consent of all the directors of the cooperative setting forth the action taken.

Section 4.11. *Vacancies.* Any vacancy occurring on the board shall be filled by the board until the next meeting of the members and until a successor has been elected by the members to fill a vacancy. Such person shall be elected for the unexpired term of office of the predecessor in office.

Section 4.12 *Directors—removal from office.* A director may be removed from office for violation of these bylaws or rules set forth in the Occupancy Agreement, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the director has been informed in writing of the charges preferred against the director at least 10 days before such meeting. The director involved shall be given an opportunity to be heard at such meeting. Any vacancy created by the removal of a director shall be filled by a majority vote, which may be taken at the same meeting at which such removal takes place.

Section 4.13. *Compensation.* Directors shall not receive any compensation for their services as directors.

Section 4.14. *Directors—absence from meetings.* Any director who is absent from _____ consecultive meetings without excuse satisfactory to the board shall be deemed to have surrendered the office of director.

Section 4.15. *Directors—Residuary Powers.* The board shall have the powers and duties necessary or appropriate for the administration of the affairs of the cooperative. All powers of the cooperative except those specifically granted or reserved to the members by law, the Articles of Incorporation, or these bylaws shall be vested in the board.

Section 4.16. *Adviser to the board.* The adviser to the board will be a member (or members) of the community who is not a member of the cooperative. In that capacity, the individual will be responsible for maintaining regular contacts with the board as well as being available to respond to special needs of the board at mutually agreeable times. The adviser will guide the board in its role of

self-manager until such time as the adviser and FmHA or its successor agency under Public Law 103–354 determine that such close guidance is no longer necessary, usually not to exceed 2 years. At that time, the adviser will continue to counsel the board as appropriate. If it is apparent to the adviser, during this second phase of converting to self-management, that the cooperative is unable to assume such a responsibility, the adviser will again establish the close supervision required in the first phase of operation. The ultimate goal of the adviser and the board is to achieve self-management for the cooperative. If this goal cannot be realized within a timeframe determined during the first, or subsequent, year of operation, then the management reserve funds will be used to hire professional management, thus relieving the adviser of his/her responsibilities.

Article V

OFFICERS

Section 5.01. *Officers.* The officers of the cooperative shall be a president, a vice president, a secretary, and a treasurer. The board may elect or appoint such other officers as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the board. The offices of secretary and treasurer may be combined and held by one person.

Section 5.02. *Election and term of office.* (a) The officers of the cooperative specified in Section 5.01 shall be elected from the membership of the board by the board at its annual meeting or as soon thereafter as feasible. New officers may be created and filled at any meeting of the board. Each officer shall hold office until the next annual election of directors and until a successor shall have been duly elected and shall have qualified.

(b) The term of office shall be one year. Election of officers shall take place at the annual board meeting and shall be by ballot cast by qualified directors. A plurality of votes cast shall elect.

Section 5.03. *Removal.* Any officer elected or appointed by the board may be removed by the board by two-thirds vote of the remaining directors FmHA or its successor agency under Public Law 103–354 whenever, in its judgment, the best interests of the cooperative would be thereby served. Such removal shall be without prejudice to the membership rights, if any, of the officer so removed.

Section 5.04. *Vacancies.* A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the board by majority vote for the unexpired portion of the term.

Section 5.05. *President.* The president shall be the principal executive officer of the cooperative and shall in general supervise and control all the business and affairs of the cooperative. The president shall preside at all meetings of the members and of the board. The president may sign, with attestation of the secretary or any other proper officer of the cooperative authorized by the board, any deeds, mortgages, bonds, contracts, or other instruments which the board authorizes to be executed. In some cases the signing and execution thereof shall be expressly delegated by the board or these bylaws or statute to some other officers or agent of the corporation and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board from time to time.

Section 5.06. *Vice President.* In the absence of the president or in the event of an inability or refusal to act, the vice president shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice president shall perform such other duties as from time to time may be assigned by the president of the board.

Section 5.07. *Secretary.* The secretary shall keep the minutes of the meeting of the members and the board in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of and see that the seal of the cooperative is affixed to all documents, the execution of which is on behalf of the cooperative under its seal, is duly authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each member, which shall be furnished to the secretary and such other duties as from time to time may be assigned by the president of the board.

Section 5.08. *Treasurer.* The treasurer shall have charge and custody of and be responsible for all funds and securities of the cooperative; receive and give receipts for moneys due and payable to the cooperative, from any source whatsoever, deposit all such money in the name of the cooperative in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VIII of these bylaws; and in general perform all duties incident to the office of treasurer and such other duties as from time to time be assigned by the president of the board.

Article VI

ORDER OF BUSINESS

Section 6.01. *Order of business.* The order of business at any regular or special meeting of the members or the board shall be:

a. Roll Call.
b. Proof of notice of meeting or waiver of notice.

c. Reading and approving of any unapproved minutes.
d. Reports of officers and committees.
e. Election of inspectors of election (when applicable)
f. Election of directors (when applicable).
g. Unfinished business.
h. New business.
i. Adjournment.

If present, a representative of FmHA or its successor agency under Public Law 103–354 will be given an opportunity to address any regular or special meeting.

Section 6.02. *Parliamentary Procedure.* On questions of parliamentary procedure not covered in these bylaws, a ruling by the president shall prevail.

Article VII

COMMITTEES

Section 7.01. *Committees of directors.* The board of directors, by resolution adopted by majority of the directors in office, may designate one or more committees, each of which shall consist of one or more directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the board in the management of the cooperative; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board, or any individual director, of any responsibility imposed upon the board or any individual director by law.

Section 7.02. *Membership committees.* Other committees not having and exercising the authority of the board in the management of the cooperative will be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. At the first membership meeting the members will be solicited by the president to obtain voluntary commitments to serve on the various committees. As many members as possible should be encouraged to become involved in committee responsibilities. Any member may be removed from a committee by the president whenever in his/her judgment the best interest of the cooperative shall be served by such removal.

Section 7.03. *Term of office.* Each member of membership committees shall continue as such until the next annual meeting of the members of the cooperative when members may change from one committee to another. Additional members may join a committee at any time during the year.

Section 7.04. *Chairperson.* One member of each membership committee shall serve as chairperson by decision of the members of the committee. The chairperson will report committee activities and receive direction from a designated member of the board.

Section 7.05. *Vacancies.* Vacancies in the membership of any membership committee may be filled in the same manner as provided in the case of the original members.

Section 7.06. *Quorum.* Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole membership committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7.07. *Rules.* Each membership committee may adopt rules for its own government not inconsistent with these bylaws or with rules adopted by the board of directors.

Article VIII

CONTRACTS, CHECKS, DEPOSITS, AND FUNDS

Section 8.01. *Deposits.* All funds of the cooperative shall be deposited from time to time to the credit of the cooperative in such Federally insured banks, trust companies, or other Federally insured depositories as board may select.

Section 8.02. *Gifts.* The board may accept on behalf of the cooperative any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the cooperative.

Article IX

CERTIFICATES OF MEMBERSHIP

Section 9.01. *Issuance of certificates.* When a person has been approved for membership and has paid any dues that may then be required, a certificate of membership shall be issued in his/her name and delivered to the member by the secretary.

Article X

Section 10.01. *Books and accounts.* The Treasurer of the cooperative shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, the board, and committees having any of the authority of the board of directors, and shall keep at the registered or principal office a record giving the names and addresses of the members. All books and records of the cooperative may be inspected by any member, or member's agent or attorney, or FmHA or its successor agency under Public Law 103–354 for any proper purposes at any reasonable time.

Section 10.02. *Auditing.* At the close of each fiscal year, the books and records of the cooperative shall be audited by a Certified Public Accountant or other person acceptable to FmHA or its successor agency under Public Law 103–354 whose report will be prepared and certified in accordance with the requirements of FmHA or its successor agency under Public Law 103–354. Based on such reports, the cooperative will furnish its members with an annual financial statement including the income and disbursements of

the cooperative. The cooperative will also supply the members, as soon as practicable after the end of each calendar year, with a statement showing the amount assigned to each member's patronage capital account.

Article XI

FISCAL YEAR

The fiscal year of the cooperative shall begin on the first day of January and end on the last day of December in each year, except that the first fiscal year of the cooperative shall begin at the date of incorporation.

Article XII

SEAL

The board shall provide a cooperative seal, which shall be in the form of a circle and shall have inscribed thereon the name of the cooperative and the words ''Cooperative Seal.'' The seal will be kept by the secretary.

Article XIII

WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of the statutes of said State or the Articles of Incorporation or the Bylaws of the cooperative, a waiver thereof in writing signed by the person or persons entitled thereto, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article XIV

REPEAL OF AMENDMENT OF BYLAWS

Section 14.01. *Repeal of amendment of bylaws.* These bylaws may be repealed or amended by a majority vote of the members present at any annual meeting of the members, or at any special meeting of the members called for such purpose, at which a quorum is present provided that while FmHA or its successor agency under Public Law 103–354 is mortgagee no amendment will become effective until it has received the FmHA or its successor agency under Public Law 103–354 written approval of FmHA or its successor agency under Public Law 103–354 and provided no such action shall change the purposes of the cooperative so as to impair its rights and powers under the laws of said State, or to waive any requirements of bond or any provision for the safety and security of the property and funds of the cooperative or its members, or to deprive any member without an express assent of rights, privileges or immunities then existing. Notice of any amendment to be offered at any meeting shall accompany the notice of any regular or special meeting at which proposed amendment is to be voted upon.

[56 FR 2248, Jan. 22, 1991]

EXHIBIT E TO SUBPART E OF PART 1944—SUPPORT SERVICES FOR CONGREGATE HOUSING AND GROUP HOMES

I. PURPOSE

This exhibit prescribes support services for congregate housing and group homes.

II. GENERAL

The success of congregate housing and group homes will depend on the quality and affordability of the service component. Congregate housing applicants should explore the feasibility of providing services individually to ensure affordability by very low-income tenants.

III. EXISTING COMMUNITY SERVICES AND REQUIREMENTS

Applicants should check local service agencies to determine what services are already available in the community. Services can often be provided more inexpensively through local service agencies or other groups which assist in providing services. In many communities there are established volunteer groups that may be willing to provide volunteer assistance to congregate housing tenants. Volunteer groups with a history of assisting elderly people may be able to supplement the delivery of services and help keep the costs affordable. Applicants should explore the availability of volunteers from the Retired Senior Volunteer Program (RSVP), local church groups and other community organizations. If volunteer groups are used, an alternative method of service delivery must be addressed in case the availability of volunteers ceases in the future. Applicants must also verify State and local licensing and certification requirements and include relevant information in the loan request.

IV. SERVICE AGREEMENTS

Applicant must submit a service agreement(s) for services that will not be provided by employees of the project. If services will be provided by employees of the project, the applicant must submit a separate budget for services and describe how tenants will be billed for services. Employees of congregate housing facilities who perform tasks for the management of the building and spend an appreciable amount of time in providing services to tenants should have their salaries prorated between the project's operation and maintenance budget and the services budget.

V. SERVICES FOR CONGREGATE HOUSING

The following services must be made available to tenants of congregate housing projects:

A. *Meals.* At least one nutritious meal a day, 7 days a week, must be provided in accordance with §1944.224(a)(5)(i) of this subpart. The following information concerning the meal service must be included with the loan request.

1. Who will provide the meals (i.e., meals offered by a local agency with tenant contribution; supplied or contracted for by owner with charge to tenant)?

2. If the service will be provided by employees of the project, a proposed breakdown of costs for the meal service. The breakdown should include the cost of food, personnel and utilities needed to prepare and serve the meals. Information concerning the proposed staffing should be included.

3. The cost to the tenant. Will tenants pay by the meal or be charged a rate for a specified time?

4. A statement concerning the frequency of meals, including the number of meals to be served per week.

5. Information concerning how the meals will be served (i.e., waiter style, buffet, tray service).

6. Any licensing requirement necessary for the service.

B. *Transportation.* Adequate transportation must be provided to shopping, medical and other services to meet the needs of the tenants. Applicants are encouraged to locate congregate housing facilities so that tenants can use public services. In many cases, service is available and the applicant can arrange for the project to be included in the schedule established by the provider. The following information concerning the transportation service must be included with the loan request:

1. Who will provide the service (i.e., transportation provided by a local agency with tenant contribution; vehicle leased or purchased by applicant with charge to tenant)?

2. If the service will be provided by employees of the project, a proposed breakdown of costs for the transportation service. The applicant should address the following costs: vehicle purchase or lease payment; personnel to operate the vehicle; fuel; maintenance; and insurance.

3. The cost to the tenant. Will tenants pay for each trip or will they be charged a monthly rate?

4. A typical proposed schedule.

C. *Housekeeping.* Housekeeping services must be offered to assist congregate tenants with household tasks. The applicant must address the following concerning the housekeeping service:

1. Who will provide the service (i.e., housekeeping offered by a local agency with tenant contribution; supplied or contracted for by applicant with charge to tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown for the service which includes the cost of labor and supplies.

3. The type of tasks that will be offered (i.e., light housekeeping, laundry, shampooing carpeting). What is the planned frequency of the tasks?

4. The cost to the tenant.

D. *Personal services.* Personal services include such items as assistance with personal hygiene, nutrition counseling and general health screening (blood pressure checks, etc.). The following information concerning the personal services must be submitted with the loan request:

1. Who will provide the service (i.e., personal services offered by a local agency with tenant contribution; volunteer health services; contracted for by applicant with charge to tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown for the service which includes the cost of labor and supplies.

3. The type of tasks that will be provided.

4. The cost to the tenant.

5. Any licensing requirement necessary for the services.

E. *Recreational/social.* Recreational and social activities must be offered to tenants to encourage interest in a variety of areas. The following areas could be considered: hobby and craft classes; dinners for holidays, birthdays, etc.; educational lectures; wellness and exercise programs; and a library. The applicant should encourage recreational/social activities which cause interaction between tenants, the project and the community. The following information concerning the recreational/social service must be included with the loan request:

1. Who will provide the service (i.e., recreational/social activities offered by a local agency with tenant contribution; supplied or contracted for by applicant with charge to the tenant)?

2. If the service is provided by employees of the project, a proposed cost breakdown which includes the cost of labor and supplies.

3. The types and frequency of recreational/social activities that will be offered.

4. The cost to the tenant.

VI. SERVICES FOR GROUP HOMES

The following services must be made available to tenants of a group home:

A. *Meals.* At least three nutritious meals a day, 7 days a week, must be provided if tenants are not capable of preparing their meals. If meals are provided, the budget may include only the cost of food if tenants assist a staff person in preparing meals. Tenants in some group homes may be able to prepare meals on their own with supervision from a

project personnel. In these cases, applicants must ensure that the tenants will be preparing nutritious meals.

B. *Transportation.* Applicants must submit information on the transportation service as detailed in paragraph V B of this exhibit.

C. *Housekeeping.* Applicants must provide a narrative explaining how housekeeping will be accomplished. In many cases, group home tenants assist with housekeeping chores with little expense being borne by the project. Applicants should detail expenses that will be part of the service budget.

D. *Personal services.* A higher percentage of tenants in a group home may require personal services. Applicants must detail the services to be offered and the cost to tenants.

E. *Recreational/social.* In most cases, there will be little expense for recreational/social opportunities in a group home. Applicants should explain what will be offered to the tenants and the projected cost to tenants.

VII. ADDITIONAL ITEMS NECESSARY FOR CONGREGATE HOUSING/GROUP HOMES THAT CANNOT BE FINANCED WITH FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 LOAN FUNDS

Congregate housing/group home projects require additional items that will not become affixed to the real estate. These items can include special portable equipment, furnishings, kitchen bars, dining ware, eating utensils, movable tables and chairs, steamtables, etc. In accordance with §1944.224(a)(3) of this subpart, loan funds cannot be used to finance these items. As a part of the loan request, applicants must include a proposed list of additional items that will be needed by the project and state how these items will be paid for.

[55 FR 26647, June 29, 1990, as amended at 58 FR 40954, July 30, 1993; 62 FR 25065, May 7, 1997]

EXHIBIT F TO SUBPART E OF PART 1944—QUALIFICATIONS OF AN ADVISER TO THE BOARD

Qualifications of an Adviser to the Board

In the Board's analysis of the talents and abilities of a person to handle the job of adviser, the first attribute most desirable is the capacity to be a friend. The definitions of a friend include (1) A person whom one knows, likes, and trusts; (2) one with whom one is allied in a struggle or cause; (3) one who supports, sympathizes with or patronizes a group, cause, or movement.

The adviser must care about the person he or she is trying to help. That means having patience and understanding during the trial and error period of a new cooperative's operation and also when it becomes necessary to explain complicated regulations or legal documents more than just once to those who have had less educational opportunities than the adviser.

The adviser must teach a totally new housing concept to persons who have only had experience with a rental environment. This means that the adviser must be able to talk to each and every person who is interested in the cooperative housing and explain just what the person is facing. The adviser must also be able to listen to those who rely on someone's ''being there'' to hear their problems and ideas. The adviser must be someone who is able to work with low-income persons and one who both understands their particular circumstances and strives to improve their well-being. The adviser, in this regard, must be able to learn as well as to teach.

The adviser must be dedicated to those persons with whom he or she is associated as well as to have the capacity to work with city officials, Government officials, politicians, and other professionals to achieve the goal of housing the local citizens.

I. EDUCATIONAL BACKGROUND

a. Experience in working with—

Low-income people and with the problems inherent with this group.

b. Administrative background for—

1. Setting up system for management, including detailed financial, personal, and activity records;
2. Setting up system for maintenance for buildings, grounds, and equipment.

c. Training to—

1. Accept the major responsibility of teaching and have the experience to carry this out.
2. Make certain that members are learning while doing, whatever the activity.
3. Know how to use group dynamics.
4. Be ready to assist individual members resolve problems.
5. Recognize a need for social casework when required, then be able to give or obtain that assistance. (Individual problems quickly affect cooperatives.)
6. Have knowledge of and make effective use of resources.
7. Handle the business of a cooperative while teaching members how to manage it themselves.
8. Understand complexity of management and maintenance.
9. Be able to understand, interpret, and teach the contents of documents from funding agencies.

Ideally, a background in social work would be the most logical experience, but others can be considered.

[56 FR 2252, Jan. 22, 1991]

EXHIBIT F–1 TO SUBPART E OF PART 1944—RELATIONSHIP OF ADVISER TO MEMBERS

Relationship of Adviser to Members

I. The adviser must be able to teach the members and the members must be willing to learn management and maintenance of total Cooperative while they gradually assume more and more responsibilities, until the cooperative is completely self-managed.

II. In order to be effective, the adviser should have the ability to teach to members:

a. The complete procedures and techniques of management and maintenance.
b. A cooperative approach to everything involved while member lives in a cooperative.
c. An ability to deal with persons in authority.
d. Resources and how to use them.
e. Board procedures and specific duties.
f. Functions and responsibilities of Committees.
g. Regulatory documents and their importance.
h. Attitudes and procedures that will help member to:
   1. Learn while doing.
   2. Make payments on time.
   3. Develop a willingness to do his or her fair share of the work and the decision-making.
   4. Cultivate a concern for his or her neighbor.
   5. Consider the good of the group, ahead of self-interest.
   6. Use his or her vote and know it counts: within the cooperative for directors and officers of the board; outside for local, state, and national Government.
   7. Cooperate with board and committees.

III. The adviser must be able to help the people understand that there are rules which must be followed. The adviser must make certain that the members realize that, by signing their occupancy agreement, they are agreeing to live up to all aspects of that agreement. In so doing, they are agreeing to abide by all of the funding agency's regulations pertaining to the cooperative. These regulatory documents must be taught over and over and consulted by the members in all major decisions. The adviser would also be expected to:

a. Work with families or individuals with specific problems.
b. Consider each activity as an opportunity for the members to learn, learning while doing must be the members' primary goal.
c. Become involved in the early planning stage of the cooperative.
d. Involve members in decisionmaking during the planning stage, including the selection of living unit.
e. Feel a part of the group of members and break down regulations and instructions into language understood by them.
f. Give members the freedom and encouragement to express ideas and to carry out ideas accepted by the majority unless they are contrary to Government regulations.
g. Interpret Government regulations and guidelines, being able to apply and teach them.

[56 FR 2252, Jan. 22, 1991]

EXHIBIT G TO SUBPART E OF PART 1944—ADVISER RESPONSIBILITIES

Adviser Responsibilities

I. Responsibilities of the adviser to the board will include—

a. Serving as backup manager while teaching self-management and maintenance to the members.
b. Assisting in organizing the board of directors and standing committees and meeting regularly with them.
c. Assisting in continual evaluation and monitoring of operations.
d. Developing an educational plan and being responsible for its implementation.
e. Assisting in setting up systems and procedures for—
   1. Management, including detailed financial, personal, and activity records;
   2. Maintenance of buildings, grounds, and equipment.
f. Assisting with financial questions that are not of sufficient complexity to require referral to an outside auditor.
g. Advising in evaluation of new applicants for membership.

[56 FR 2252, Jan. 22, 1991]

EXHIBIT H TO SUBPART E OF PART 1944—LIMITED EQUITY AGREEMENT

Limited Equity Agreement

This Agreement, dated _____, by and between _____ (hereinafter ''referred to as the ''Cooperative''), a corporation having its principal office and place of business at _____ and Farmers Home Administration or its successor agency under Public Law 103–354, United States Department of Agriculture (hereinafter referred to as FmHA).

Witnesseth Whereas

The purpose of the cooperative is to own and operate cooperative housing on behalf of its members, and the cooperative has applied to FmHA or its successor agency under Public Law 103–354 for mortgage financing as authorized under Section 515 of the Housing Act of 1949, as amended.

The purpose of FmHA or its successor agency under Public Law 103–354 is to provide long term housing financing for very-low, low-, and moderate-income persons and households, although initially eligible cooperative members may remain in occupancy after exceeding the income limit established for moderate income.

The additional purpose of FmHA or its successor agency under Public Law 103–354 is to maintain the availability of units financed by FmHA or its successor agency under Public Law 103–354 for very-low, low-, and moderate-income persons for as long as possible up to the 30-year maximum life of the loan.

As a means for implementing and carrying out these purposes, the cooperative pledges to FmHA or its successor agency under Public Law 103–354 that:

(a) Equity accumulated by the cooperative, other than through the appreciation in value of real estate, furnishings, and equipment of the cooperative, will be assigned on the cooperative's books equally to members at the end of its fiscal year and in accordance with the IRS ruling concerning patronage capital.

(b) The members will be notified, in writing, of the amount assigned to his or her patronage account each year after the assignment has been made.

(c) The officers, board of directors, and members of the cooperative may not act to dissolve the cooperative for the purpose of distributing equity, or for other reasons, except as necessary due to default or other circumstances beyond the cooperative's control, and

(d) Should it become necessary to dissolve the cooperative, all property and assets of the cooperative will be transferred to another nonprofit or such other municipal organization and be maintained for the same purposes for which it was started.

(e) Only membership fees and money accrued in the member's patronage capital accounts will be distributed to the members and represents the entire equity payment to which the members are entitled. The cooperative reserves the right to withdraw from the equity payment or membership fee any amount due the cooperative through member's delinquency in payment of occupancy charge or through damage to the premises.

In witness thereof, the parties hereto have caused this agreement to be signed and sealed the day and year first above written.

_____
(Cooperative)

_____
(Witness)

By:_____ (Seal)
(Member)

This agreement will be filed with the member's record.

[56 FR 2252, Jan. 22, 1991, as amended at 62 FR 67224, Dec. 23, 1997]

EXHIBIT I TO SUBPART E OF PART 1944—SUBSCRIPTION AGREEMENT

Subscription Agreement

Dwelling Unit No. _____

Date _____

1. Subscription Amount:

(a) I/We _____, a legal resident(s) of _____, hereinafter called ''Subscriber,'' hereby subscribe for membership in _____, a cooperative housing corporation hereinafter called the ''Cooperative,'' and hereby subscribe to a Membership Certificate in said Cooperative having a par value of $_____.

(b) Subscriber hereby agrees to pay for the Membership Certificate, also referred to as Membership Fee, as follows:

(1) $_____ upon signing this Agreement.

(2) $_____ in monthly payments of _____ payable over _____ consecutive months (not to exceed 12 months).

2. *Ratification of Other Provisions.* Subscriber has read and agrees to be bound by all provisions of the articles of incorporation, bylaws, and occupancy agreement, copies of which are attached hereto and receipt of which is hereby acknowledged, and agrees to be bound by requirements of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 as long as it remains mortgagee.

3. *Priority of mortgage lien.* This agreement and all rights hereunder are and at all times shall be subject and subordinate to the lien of the mortgage and accompanying documents to be executed by the Cooperative to FmHA or its successor agency under Public Law 103–354 and to any and all modifications, extensions, and renewals thereof; and to any mortgage or deed of trust which may at any time hereafter be placed on the property of the Cooperative or any part thereof.

4. *Occupancy agreement.* Subscriber, if approved for membership, will be entitled to occupancy of the above numbered dwelling unit under provisions of the above-mentioned occupancy agreement. Estimated initial charge per month for said unit will be established prior to signing the occupancy agreement. Future charges will be based on family income, as provided for in the occupancy agreement. I/We agree to execute the occupancy agreement on demand and to comply with all the terms thereof.

5. *Cancellation rights.* (a) The Cooperative reserves the right at any time before it has notified the Subscriber of his/her acceptability for membership, for reasons deemed

sufficient by the Cooperative, and approved by FmHA or its successor agency under Public Law 103–354, to return the amount paid by the Subscriber under this Agreement. In the event the Subscriber shall have died prior to becoming a member, the Cooperative reserves the right to return the amount paid by the Subscriber under this Agreement to the Subscriber's estate or legal representative, and thereupon all rights of the Subscriber shall cease and terminate without further liability on the part of the Cooperative.

(b) It is understood that the Subscriber's credit is subject to approval by FmHA or its successor agency under Public Law 103–354, and that said Subscriber's total household income must not exceed any limitations for initial occupancy established by FmHA or its successor agency under Public Law 103–354. In the event FmHA or its successor agency under Public Law 103–354 determines that the Subscriber does not meet FmHA or its successor agency under Public Law 103–354 credit, income limitation, or other eligibility requirements for participation in this project, the Cooperative shall return to Subscriber the sums paid hereunder. In the event FmHA or its successor agency under Public Law 103–354 determines that the necessary loan to finance the Cooperative housing project cannot be made or insured by FmHA or its successor agency under Public Law 103–354, or the Cooperative withdraws its application for such loan, the Cooperative shall return to Subscriber all sums paid by Subscriber hereunder. Upon either determination by FmHA or its successor agency under Public Law 103–354 and the return of the sums to Subscriber as provided in this paragraph (b), this agreement shall become null and void and all rights and liabilities hereunder of the parties shall cease and terminate.

(c) If the Subscriber within five (5) days after the execution of this subscription agreement, notifies the Cooperative in writing that he wishes to withdraw from the agreement, the amounts paid by the Subscriber under this agreement will be returned to the Subscriber and thereupon all rights and liabilities of the Subscriber hereunder shall cease and terminate. If, at the end of the five-day period, the Subscriber has not exercised this right to withdraw, the right will be terminated. If FmHA or its successor agency under Public Law 103–354 determines that membership has not been achieved to the extent required by FmHA or its successor agency under Public Law 103–354, the Subscriber will again have the right to withdraw within a five-day period.

(d) If the Subscriber defaults in any obligation under this Agreement, and such default continues for fifteen (15) days after notice sent by registered mail by the Cooperative to the Subscriber at the address given below, then at the option of the Cooperative, the Subscriber shall lose any and all rights under this agreement. Any amount paid toward this subscription price at the option of the Cooperative may be retained by the Cooperative as liquidated damages or be returned, less the Subscriber's proportionate share of expenses incurred by the Cooperative as determined solely by the Cooperative. The Cooperative may, at its option, release the obligations of the Subscriber under this agreement in the event the Subscriber secures an assignee of this agreement who assumes the obligations herein contained and is satisfactory to the Cooperative and FmHA or its successor agency under Public Law 103–354 while mortgagee. This Agreement is not otherwise assignable.

6. *Oral Representation Not to be Relied Upon.* This agreement will supersede any prior understandings and agreements and constitutes the entire agreement between the Subscriber and the Cooperative, and no oral representation or statements shall be considered a part hereof.

Witness:

_____

Subscriber

_____

_____

Subscriber

_____

Address

_____

_____

Telephone

[56 FR 2253, Jan. 22, 1991]

EXHIBIT J TO SUBPART E OF PART 1944—OCCUPANCY AGREEMENT

Occupancy Agreement

This Agreement, dated _____, by and between _____ (hereinafter referred to as the ''Cooperative''), at _____ and _____ (hereinafter referred to as ''Member'').

Witnesseth: Whereas:

The purpose of the Cooperative is to acquire, own, and operate a cooperative housing project and its members shall have the right to occupy its dwelling units under the terms and conditions set forth in this agreement:

Member is the owner and holder of a certificate of membership of the Cooperative and intends to occupy a dwelling unit in the project as permanent residence; and

Member has certified to the accuracy of the statements in Member's application and agrees and understands that household income and other eligibility requirements are substantial and material requirements of his initial and continuing occupancy.

To Have and To Hold dewelling unit Number _____ on the terms and conditions set forth in this agreement, in the corporate charter, bylaws, and any other rules and regulations of the Cooperative. The term of this agreement shall be for a three-year period ending on _____, 19 ____,[1] renewable for successive three-year periods under the conditions provided for in this Agreement.

ARTICLE 1. OCCUPANCY CHARGES

Section 1.01. Commencing at the time indicated in ARTICLE 2, the Member agrees to pay to the Cooperative a monthly sum referred to as the ''Occupancy Charge.'' This amount will be equal to one-twelfth of the Member's proportionate share of the total amount required by the Cooperative, as estimated by its board of directors, to meet its annual expenses and the requirements of the FmHA or its successor agency under Public Law 103–354 loan. These inlcude but are not limited to, the following items:

(a) Project operating expenses and cost of services furnished.

(b) Necessary management reserve and administrative costs.

(c) Taxes and assessments levied against the project or the Cooperative which it is required to pay.

(d) Fire and extended coverage insurance on the project and any other insurance which the Cooperative may require.

(e) The cost of furnishing any water, electricity, heat, gas, garbage and trash collection, and other utilities, if furnished by the Cooperative.

(f) Payments to other reserves set up by the board of directors.

(g) Estimated costs of repairs, maintenance, and replacements of project property to be made by the Cooperative.

(h) The amount of principal, interest, and any other required payments on any indebtedness of the Cooperative, including any loan made or insured by the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354, United States Department of Agriculture.

(i) Any other expenses of the Cooperative approved by the board of directors and by FmHA or its successor agency under Public Law 103–354, while mortgagee, including operating deficiencies, if any, for prior periods.

Section 1.02. The board of directors shall determine the amount of the occupancy charges annually, but may do so at more frequent intervals should circumstances so require. No Member shall be charged with more than the appropriate share determined by the board of directors. That amount of the occupancy charge required for payment on the principal of mortgage of the Cooperative or any other capital expenditures shall be credited upon the books of the Cooperative as a capital contribution by the Members. Until further notice from the Cooperative, the monthly charge for the above-mentioned dwelling unit shall be $_____.

ARTICLE 2. WHEN PAYMENT OF OCCUPANCY CHARGES TO COMMENCE

Section 2.01. After thirty days' notice by the Cooperative that the dwelling unit is available for occupancy, or upon acceptance of occupancy, whichever is earlier, Member shall make a payment for occupancy charge covering the unexpired balance of the month. Thereafter, Member shall pay occupancy charge in advance on the first day of each month. Dates of payments may be changed by mutual agreement of the Cooperative and FmHA or its successor agency under Public Law 103–354.

Section 2.02. The Member agrees to furnish to the Cooperative, each year, a certificate of income on which the Member's occupancy charge will be determined.

ARTICLE 3. PATRONAGE REFUNDS

Section 3.01. The Board shall, on the books of the Cooperative, assign to Member in accordance with the IRS ruling concerning patronage capital, a porportionate share of money collected in excess of the amount needed for Cooperative expenses, including reserves designated as management reserve, and Members will be notified of the amount assigned each year.

ARTICLE 4. MEMBER'S OPTION TO RENEW

Section 4.01. It is agreed that the term of occupancy shall be renewed for further periods of three years from the expiration of the initial term (or for the term mutually agreed to by the member and the Cooperative). Such renewals shall be based upon the same agreements as contained in this agreement unless: (1) Notice of Member's decision not to renew is given to the Cooperative in writing at least 4 months prior to expiration of the current terms, and (2) Member, before expiration of said term, shall (a) endorse membership certificate for transfer to Cooperative and deposits same with the Cooperative, (b) meet all obligations and pay all amounts due under this Agreement before said expiration, and (c) vacate and leave the premises in good state of repair. Upon compliance with foregoing provisions (1) and (2), Member shall have no further liability under this agreement. If extenuating circumstances warrant, the Member's four-month notification of intention to vacate may be modified appropriately. The Member will be entitled to the

[1] The termination date to be inserted should be three years from the date of the occupancy agreement. (These terms may be for periods longer than 3 years if mutually agreeable to the member and to the cooperative.)

patronage capital which has accrued and been assigned during the term of this agreement provided that provisions (1) and (2) have been met.

ARTICLE 5. PREMISES TO BE USED FOR RESIDENTIAL PURPOSES ONLY

Section 5.01. Member shall occupy the dwelling unit covered by this agreement as a private dwelling unit for the Member and/or immediate household and for no other purpose. The Member shall have use of all common community property and facilities of the project so long as Member continues to own a membership certificate of the Cooperative, occupies the assigned dwelling unit, and abides by the terms of this Agreement. Any sublessee of the Member , if approved pursuant of Article 7 hereof, may enjoy the rights to which Member is entitled under this Article 5, except that the sublessee will have no voting rights in the affairs of the Cooperative.

Section 5.02. Member shall not permit or suffer anything to be done or be kept upon said premises which will increase the rate of insurance on the building, or on its contents. Member will not obstruct or interfere with the rights of other occupants, or annoy them by unreasonable noises or otherwise permit any nuisance on the premises, or allow any illegal act to be committed. Member shall comply with all the requirements of the Board of Health and of all other governmental authorities with respect to the said premises. If, by reason of the occupancy or use of these premises by Member, the rate of insurance on the building is increased, Member shall become personally liable for the additional insurance premiums.

ARTICLE 6. MEMBER'S RIGHT TO PEACEABLE POSSESSION

Section 6.01. In return for Member's continued fulfillment of the terms and conditions of this agreement, the Cooperative agrees that the Member may at all times while this agreement remains in effect, have and enjoy for the Member's sole use and benefit the dwelling unit and community facilities hereinabove described.

ARTICLE 7. NO SUBLETTING WITHOUT CONSENT OF CORPORATION

Section 7.01. This agreement shall not be assigned nor Member's dwelling unit sublet without the written consent of the Cooperative and FmHA or its successor agency under Public Law 103–354, while mortgagee. Under this agreement the Member shall be liable for the conduct of the sublessee. Any unauthorized subleasing shall, at the option of the cooperative and of FmHA or its successor agency under Public Law 103–354, while mortgagee, result in termination and forfeiture of Member's rights under this occupancy agreement.

ARTICLE 8. TRANSFERS

Section 8.01. Neither this agreement nor Member's right of occupancy shall be transferrable or assignable except as provided in the bylaws of the Cooperative for the transfer of membership.

ARTICLE 9. MANAGEMENT, TAXES, AND INSURANCE

Section 9.01. The Cooperative shall provide necessary management, operation, and administration of the project; pay or provide for the payment of all taxes or assessments levied against the project; procure and pay or provide for the payment of fire insurance and extended coverage, and other insurance as the Cooperative may deem advisable on property in the project. The Cooperative will not, however, provide insurance on Member's personal property.

ARTICLE 10. UTILITIES

Section 10.01. The Cooperative shall arrange for utilities (water, electricity, heat, and gas) for common areas of the structure(s) in amounts which it deems reasonable and in conformance with exhibit A–6 to subpart E of part 1944 (Strike out any of the foregoing items in this Article which are not applicable.) Each unit will be separately metered and Member shall pay directly to the supplier for the utilities billed to Member.

ARTICLE 11. REPAIRS

Section 11.01. By Member. Member agrees to repair and maintain Member's dwelling unit at own expense as follows:

(a) Any repairs or maintenance necessitated by Members's own negligence or misuse;

(b) Any redecoration of own dwelling unit authorized, done or contracted for by Member;

(c) Any repairs, maintenance, or replacements required on the following items: (Insert the items desired, subject to FmHA or its successor agency under Public Law 103–354 approval.)

Section 11.02. By cooperative. The Cooperative shall provide and pay for all necessary repairs, maintenance, and replacements except as specified in §11.01. Member agrees to the right of the officers of the Cooperative to authorize entrance to Member's dwelling unit in order to complete necessary repairs, maintenance, and replacements and to authorize entrance for such purposes by employees of any contractor, utility company, municipal agency, or others at any reasonable hour of the day, and upon reasonable notice. In the event of emergency, the unit may be entered at any time. Notification of

entry will be left for the member by the person performing the maintenance or repair.

Section 11.03. Right of cooperative to make repairs at member's expense. In case Member shall fail to effect and pay for the repairs, maintenance, or replacement specified in §11.01, in a manner satisfactory to the Cooperative, the board may do so and add the cost of repairs to Member's next month's occupancy charge payment.

ARTICLE 12. ALTERATIONS AND ADDITIONS

Section 12.01. The Member shall not, without the written consent of the Cooperative make any structural alterations in the premises or in the water, gas or steampipes, electrical conduits, plumbing or other fixtures connected therewith, or remove any additions, improvements, or fixtures from the premises.

Section 12.02. If Member for any reason ceases to be an occupant of the premises, Member shall surrender to the Cooperative possession thereof, including any alterations, additions, fixtures, and improvements.

Section 12.03. Member shall not, without the prior written consent of the Cooperative install or use in dwelling unit any air conditioning equipment, electric heater, or power tools. Member agrees that the Cooperative or FmHA or its successor agency under Public Law 103–354, while mortgagee, may require the prompt removal of any such equipment at any time, and that failure to remove such equipment upon request shall constitute a default within the meaning of Article 13 of this agreement.

ARTICLE 13. DEFINITION OF DEFAULT BY MEMBER AND EFFECT THEREOF

Section 13.01. If, at any time after the happening of any event specified in clauses (a) through (k), below, the Cooperative gives to Member a 30-day notice of expiration, this agreement and all Member's rights under this agreement will expire on the date specified in such notice. In the meantime the default may be cured in a manner deemed satisfactory by the Cooperative. After 10 days following such expiration of Member's rights, the Cooperative may reenter the dwelling unit and remove all persons and personal property therefrom, by any means available to it by law, and may repossess the dwelling unit in its former state as if this agreement had not been made.

(a) If, during the term of this agreement, Member ceases to be the owner and legal holder of a membership of the Cooperative.

(b) If Member attempts to transfer or assign this agreement in a manner inconsistent with the provisions of the bylaws.

(c) If, during continuance of this agreement, Member is declared bankrupt under the laws of the United States so as to be released from any debt or obligation to the Cooperative or to interfere with his full exercise of his rights as Member and occupant.

(d) If, during continuance of this agreement, a receiver of Member's property is appointed under the laws of the United States or of any State.

(e) If, during continuance of this agreement, Member shall make a general assignment for the benefit of creditors.

(f) If, during continuance of this agreement, any of the membership rights in the Cooperative owned by Member are duly levied upon and sold under the process of any court.

(g) If Member fails to effect and/or pay for repairs and maintenance as provided for in Article 11.

(h) If Member fails to pay any sum due pursuant to Article 1.

(i) If default occurs with respect to any obligation of Member under this agreement.

(j) If, during the term of this agreement, Member fails to comply promptly with all requests by the Cooperative for information and certifications concerning the total current income of Member and Member's household or any other eligibility requirements for membership or occupancy.

(k) If, during the term of this agreement, limitations for continued occupancy are established from time to time by the FmHA or its successor agency under Public Law 103–354 and are exceeded.

Section 13.02. Member hereby expressly waives any and all right to reenter the dwelling if the eviction is by judgment of any court or judge. The words *enter, reenter,* or *reentry* as used in this agreement are not restricted to their technical legal meaning. In the event of a breach by Member of the terms of this agreement, the Cooperative shall have the right of injunction and the right to invoke any remedy allowed at law or in equity, as if reentry, summary proceedings, and other remedies were not provided for.

Section 13.03. Failure by the Cooperative to avail itself of any remedy given under this agreement shall not waive or destroy any right of the Cooperative to avail itself of remedies for any similar or other breach or default by Member.

Section 13.04. Notice by the Cooperative under any of the conditions described in section 13 shall be in writing. The cooperative shall not evict any member except by judicial action pursuant to State or local law and in accordance with the requirements of subpart C of part 1930 of this chapter.

ARTICLE 14. MEMBER TO COMPLY WITH ALL CORPORATE REGULATIONS

Section 14.01. Member agrees to preserve and promote the cooperative ownership principles on which the Cooperative has been founded and to abide by the charter, bylaws,

rules and regulations of the Cooperative, and amendments. The Member agrees to make diligent effort in performing duties and accepting responsibilities either through volunteering or by assignment from the board of directors. By acts of cooperation with other members, Member will strive to bring about and maintain a high standard in home and community conditions. The Cooperative agrees to deliver to Member its rules and regulations and/or to distribute them in such other manner as to constitute adequate notice.

ARTICLE 15. EFFECT OF FIRE LOSS ON INTERESTS OF MEMBER

Section 15.01. In the event of loss or damage by fire or other casualty to Member's dwelling unit without fault or negligence of Member, the Cooperative shall determine (1) Whether to restore the damaged premises and, if not to restore (2) the amount to be paid to Member to redeem membership and for reimbursement for any loss sustained by the Member.

Section 15.02. If, under such circumstances, the Cooperative decides to restore the premises, occupancy charges shall stop wholly or partially, as determined by the Cooperative, until the premises have been restored. If, on the other hand, the cooperative decides not to restore the premises, the occupancy charges shall cease from the date of such loss or damage.

ARTICLE 16. INSPECTION OF DWELLING UNIT

Section 16.01. Member agrees that the representatives of any mortgage holding a mortgage on the property of the Cooperative, the officers of the Cooperative, or authorized representative of the Cooperative shall have the right to enter the dwelling unit of Member and make inspections and, with the approval of the Cooperative, the employees of any contractor, utility company, municipal agency, or others shall have the right to enter the dwelling unit of Member and make inspections at any reasonable hour of the day, upon reasonable notice, and at any time in the event of emergency.

ARTICLE 17. SUBORDINATION CLAUSE

Section 17.01. The Cooperative housing project of which Member's dwelling unit is a part is planned to be constructed by the Cooperative with the assistance of a loan to the Cooperative made or insured by the FmHA or its successor agency under Public Law 103–354. Therefore, this agreement and all rights, privileges, and benefits hereunder shall be at all times subject and subordinate to a first mortgage lien or any documents executed by the Cooperative to secure its obligations to FmHA or its successor agency under Public Law 103–354 and to any extensions and removals and to any security instrument which may be made in replacement thereof or at any time hereafter be placed on the property of the corporation. Member hereby agrees to execute, at the Cooperative's request and expense, any instrument which the Cooperative or any lender or mortgagee may deem necessary or desirable to subordinate this Agreement to any such security instrument. Member hereby appoints the Cooperative and each and every officer thereof, and any future officer, as irrevocable attorney-in-fact during the term of the agreement to execute any such instrument on behalf of Member.

ARTICLE 18. LATE CHARGES AND OTHER COSTS IN CASE OF DEFAULT

Section 18.01. In addition to all other sums due or to become due under this agreement, Member shall pay to the Cooperative a late charge, not to exceed $10.00, at any time payment of occupancy charges, or part thereof, is more than 10 days late. This late fee may be waived, depending on the circumstances and at the discretion of the board.

Section 18.02. If, because of default by Member under any obligation in this agreement, the Cooperative obtains the services of an attorney, Member shall pay to the Cooperative all costs and fees involved, including reasonable attorney's fees and the costs of any resulting law suit, if such an action becomes necessary.

ARTICLE 19. NOTICES

Section 19.01. Whenever any bylaw of Cooperative, any law, or this agreement requires notice to be given to either party, any notice or demand by the Cooperative to Member shall be considered to have been duly given if the same is delivered to Member at Member's unit or to Member's last known address. Any notice or demand by Member to the Cooperative shall be considered to have been duly given if delivered to an officer of the Cooperative. Such notice may also be given by depositing same in the United States mails addressed to Member as shown on the books of the Cooperative, or to the president of the cooperative, as the case may be, and the time of mailing shall be the time of giving such notice.

ARTICLE 20. ORAL REPRESENTATION NOT BINDING

Section 20.01. No representation other than those contained in this Agreement and in the charter and the bylaws of the Cooperative shall be binding upon the Cooperative.

In Witness Whereof, the parties hereto have caused this agreement to be signed and sealed the day and year first above written.

_____

Cooperative

By: _____(Seal)

Member

To Be Duly Acknowledged

[56 FR 2253, Jan. 22, 1991]

Subpart F—Congregate Housing Services Program

SOURCE: 61 FR 42943, 42949, Aug. 19, 1996, unless otherwise noted.

§ 1944.251 Purpose.

The requirements of this subpart augment the requirements of section 802 of the National Affordable Housing Act of 1990 (approved November 28, 1990, Public Law 101–625) (42 U.S.C. 8011), (hereinafter, section 802), as amended by the Housing and Community Development Act of 1992 (Public Law 102–550, approved October 28, 1992), which authorizes the Congregate Housing Services Program (hereinafter, CHSP or Program).

§ 1944.252 Definitions.

In addition to the definitions in section 802(k), the following definitions apply to CHSP:

Activity of Daily Living (ADL) means an activity regularly necessary for personal care.

(1) The minimum requirements of ADLs include:

(i) Eating (may need assistance with cooking, preparing or serving food, but must be able to feed self);

(ii) Dressing (must be able to dress self, but may need occasional assistance);

(iii) Bathing (may need assistance in getting in and out of the shower or tub, but must be able to wash self);

(iv) Grooming (may need assistance in washing hair, but must be able to take care of personal appearance);

(v) Getting in and out of bed and chairs, walking, going outdoors, using the toilet; and

(vi) Household management activities (may need assistance in doing housework, grocery shopping or laundry, or getting to and from one location to another for activities such as going to the doctor and shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.)

(2) Each of the Activities of Daily Living noted in paragraph (1) of this definition includes a requirement that a person must be able to perform at a specified minimal level (e.g., to satisfy the eating ADL, the person must be able to feed himself or herself). The determination of whether a person meets this minimal level of performance must include consideration of those services that will be performed by a person's spouse, relatives or other attendants to be provided by the individual. For example, if a person requires assistance with cooking, preparing or serving food plus assistance in feeding himself or herself, the individual would meet the minimal performance level and thus satisfy the eating ADL, if a spouse, relative or attendant provides assistance with feeding the person. Should such assistance become unavailable at any time, the owner is not obligated at any time to provide individualized services beyond those offered to the resident population in general. The Activities of Daily Living analysis is relevant only with regard to determination of a person's eligibility to receive *supportive services* paid for by CHSP and is not a determination of eligibility for occupancy;

Adjusted income means adjusted income as defined in 24 CFR parts 813 or 913.

Applicant means a State, Indian tribe, unit of general local government, public housing authority (PHA), Indian housing authority (IHA) or local nonprofit housing sponsor. A State, Indian tribe, or unit of general local government may apply on behalf of a local nonprofit housing sponsor or a for-profit owner of eligible housing for the elderly.

Area agency on aging means the single agency designated by the State Agency on Aging to administer the program described in Title III of the Older Americans Act of 1965 (45 CFR chapter 13).

Assistant Secretary means the HUD Assistant Secretary for Housing-Federal Housing Commissioner or the HUD Assistant Secretary for Public and Indian Housing.

Case management means implementing the processes of: establishing linkages with appropriate agencies and service providers in the general community in order to tailor the needed services to the program participant; linking program participants to providers of services that the participant needs; making decisions about the way resources are allocated to an individual on the basis of needs; developing and monitoring of case plans in coordination with a formal assessment of services needed; and educating participants on issues, including, but not limited to, supportive service availability, application procedures and client rights.

Eligible housing for the elderly means any eligible project including any building within a mixed-use project that was designated for occupancy by elderly persons, or persons with disabilities at its inception or, although not so designated, for which the eligible owner or grantee gives preference in tenant selection (with HUD approval) for all units in the eligible project (or for a building within an eligible mixed-use project) to eligible elderly persons, persons with disabilities, or temporarily disabled individuals. For purposes of this subpart, this term does not include projects assisted under the Low-Rent Housing Homeownership Opportunity program (Turnkey III (24 CFR part 905, subpart G)).

Eligible owner means an owner of an eligible housing project.

Excess residual receipts mean residual receipts of more than $500 per unit in the project which are available and not committed to other uses at the time of application to HUD for CHSP. Such receipts may be used as matching funds and may be spent down to a minimum of $500/unit.

For-profit owner of eligible housing for the elderly means an owner of an eligible housing project in which some part of the project's earnings lawfully inure to the benefit of any private shareholder or individual.

Grantee or *Grant recipient* means the recipient of funding under CHSP. Grantees under this Program may be states, units of general local government, Indian tribes, PHAs, IHAs, and local nonprofit housing sponsors.

Local nonprofit housing sponsor means an owner or borrower of eligible housing for the elderly; no part of the net earnings of the owning organization shall lawfully inure to the benefit of any shareholder or individual.

Nonprofit includes a public housing agency as that term is defined in section 3(b)(6) of the United States Housing Act of 1937.

Person with disabilities means a household composed of one or more persons, at least one of whom is an adult who has a disability.

(1) A person shall be considered to have a disability if such person is determined under regulations issued by the Secretary to have a physical, mental, or emotional impairment which:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that the person's ability could be improved by more suitable housing conditions.

(2) A person shall also be considered to have a disability if the person has a developmental disability as defined in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001–7). Notwithstanding the preceding provisions of this paragraph, the terms *person with disabilities* or *temporarily disabled* include two or more persons with disabilities living together, one or more such persons living with another person who is determined (under regulations prescribed by the Secretary of HUD) to be essential to their care or well-being, and the surviving member or members of any household where at least one or more persons was an adult with a disability who was living, in a unit assisted under this section, with the deceased member of the household at the time of his or her death.

Program participant (participant) means any project resident as defined in section 802(e)(1) who is formally accepted into CHSP, receives CHSP services, and resides in the eligible housing project served by CHSP grant.

Qualifying supportive services means those services described in section 802(k)(16). Under this Program, *health-*

related services mean non-medical supervision, wellness programs, preventive health screening, monitoring of medication consistent with state law, and non-medical components of adult day care. The Secretary concerned may also approve other requested supportive services essential for achieving and maintaining independent living.

Rural Housing Service (RHS) means a credit agency for rural housing and rural development in the U.S. Department of Agriculture (USDA).

Secretary concerned means (1) The Secretary of Housing and Urban Development, with respect to eligible federally assisted housing administered by HUD; and

(2) The Secretary of Agriculture with reference to programs administered by the Administrator of the Rural Housing Service.

Service coordinator means CHSP staff person responsible for coordinating Program services as described in section 1944.130.

Service provider means a person or organization licensed or otherwise approved in writing by a State or local agency (e.g., Department of Health, Department of Human Services or Welfare) to provide supportive services.

State agency means the State or an agency or instrumentality of the State.

State agency on aging means the single agency designated by the Governor to administer the program described in Title III of the Older Americans Act of 1965 (See 45 CFR part 13).

§ 1944.253 Notice of funding availability, application process and selection.

(a) *Notice of funding availability*. A Notice of Funding Availability (NOFA) will be published periodically in the FEDERAL REGISTER by the Secretary concerned containing the amounts of funds available, allocation or distribution of funds available among eligible applicant groups, where to obtain and submit applications, the deadline for submissions, and further explanation of the selection criteria, review and selection process. The Secretary concerned will designate the maximum allowable size for grants.

(b) *Selection criteria* are set forth in section 802(h)(1) and shall include additional criteria specified by the Secretary concerned.

§ 1944.254 Program costs.

(a) *Allowable costs.* (1) Allowable costs for direct provision of supportive services includes the provision of supportive services and others approved by the Secretary concerned for:

(i) Direct hiring of staff, including a service coordinator;

(ii) Supportive service contracts with third parties;

(iii) Equipment and supplies (including food) necessary to provide services;

(iv) Operational costs of a transportation service (e.g., mileage, insurance, gasoline and maintenance, driver wages, taxi or bus vouchers);

(v) Purchase or leasing of vehicles;

(vi) Direct and indirect administrative expenses for administrative costs such as annual fiscal review and audit, telephones, postage, travel, professional education, furniture and equipment, and costs associated with self evaluation or assessment (not to exceed one percent of the total budget for the activities approved); and

(vii) States, Indian tribes and units of general local government with more than one project included in the grant may receive up to 1% of the total cost of the grant for monitoring the projects.

(2) Allowable costs shall be reasonable, necessary and recognized as expenditures in compliance with OMB Cost Policies, i.e., OMB Circular A–87, 24 CFR 85.36, and OMB Circular A–128.

(b) *Nonallowable costs.* (1) CHSP funds may not be used to cover expenses related to any grantee program, service, or activity existing at the time of application to CHSP.

(2) Examples of nonallowable costs under the program are:

(i) Capital funding (such as purchase of buildings, related facilities or land and certain major kitchen items such as stoves, refrigerators, freezers, dishwashers, trash compactors or sinks);

(ii) Administrative costs that represent a non-proportional share of costs charged to the Congregate Housing Services Program for rent or lease, utilities, staff time;

(iii) Cost of supportive services other than those approved by the Secretary concerned;

(iv) Modernization, renovation or new construction of a building or facility, including kitchens;

(v) Any costs related to the development of the application and plan of operations before the effective date of CHSP grant award;

(vi) Emergency medical services and ongoing and regular care from doctors and nurses, including but not limited to administering medication, purchase of medical supplies, equipment and medications, overnight nursing services, and other institutional forms of service, care or support;

(vii) Occupational therapy and vocational rehabilitation services; or

(viii) Other items defined as unallowable costs elsewhere in this subpart, in CHSP grant agreement, and OMB Circular A–87 or 122.

(c) *Administrative cost limitation.* Grantees are subject to the limitation in section 802(j)(4).

§ 1944.255 Eligible supportive services.

(a) Supportive services or funding for such services may be provided by state, local, public or private providers and CHSP funds. A CHSP under this section shall provide meal and other qualifying services for program participants (and other residents and nonresidents, as described in § 1944.125(a)) that are coordinated on site.

(b) Qualifying supportive services are those listed in section 802(k)(16) and in section 1944.105.

(c) Meal services shall meet the following guidelines:

(1) *Type of service.* At least one meal a day must be served in a group setting for some or all of the participants; if more than one meal a day is provided, a combination of a group setting and carry-out meals may be utilized.

(2) *Hot meals.* At least one meal a day must be hot. A hot meal for the purpose of this program is one in which the principal food item is hot at the time of serving.

(3) *Special menus.* Grantees shall provide special menus as necessary for meeting the dietary needs arising from the health requirements of conditions such as diabetes and hypertension. Grantees should attempt to meet the dietary needs of varying religious and ethnic backgrounds.

(4) *Meal service standards.* Grantees shall plan for and provide meals which are wholesome, nutritious, and each of which meets a minimum of one-third of the minimum daily dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council (or State or local standards, if these standards are higher). Grantees must have an annual certification, prepared and signed by a registered dietitian, which states that each meal provided under CHSP meets the minimum daily dietary allowances.

(5) *Food stamps and agricultural commodities.* In providing meal services grantees must apply for and use food stamps and agricultural commodities as set forth in section 802(d)(2)(A).

(6) *Preference for nutrition providers:* In contracting for or otherwise providing for meal services grantees must follow the requirements of section 802(d)(2)(B). These requirements do not preclude a grantee or owner from directly preparing and providing meals under its own auspices.

§ 1944.256 Eligibility for services.

(a) *Participants, other residents, and nonresidents.* Such individuals are eligible either to participate in CHSP or to receive CHSP services, if they qualify under section 802(e)(1), (4) and (5). Under this paragraph, temporarily disabled persons are also eligible.

(b) *Economic need.* In providing services under CHSP, grantees shall give priority to very low income individuals, and shall consider their service needs in selecting program participants.

§ 1944.257 Service coordinator.

(a) Each grantee must have at least one service coordinator who shall perform the responsibilities listed in section 802(d)(4).

(b) The service coordinator shall comply with the qualifications and standards required by the Secretary concerned. The service coordinator shall be trained in the subject areas set forth in section 802(d)(4), and in any

other areas required by the Secretary concerned.

(c) The service coordinator may be employed directly by the grantee, or employed under a contract with a case management agency on a fee-for-service basis, and may serve less than full-time. The service coordinator or the case management agency providing service coordination shall not provide supportive services under a CHSP grant or have a financial interest in a service provider agency which intends to provide services to the grantee for CHSP.

(d) The service coordinator shall:

(1) Provide general case management and referral services to all potential participants in CHSP. This involves intake screening, upon referral from the grantee of potential program participants, and preliminary assessment of frailty or disability, using a commonly accepted assessment tool. The service coordinator then will refer to the professional assessment committee (PAC) those individuals who appear eligible for CHSP;

(2) Establish professional relationships with all agencies and service providers in the community, and develop a directory of providers for use by program staff and program participants;

(3) Refer proposed participants to service providers in the community, or those of the grantee;

(4) Serve as staff to the PAC;

(5) Complete, for the PAC, all paperwork necessary for the assessment, referral, case monitoring and reassessment processes;

(6) Implement any case plan developed by the PAC and agreed to by the program participant;

(7) Maintain necessary case files on each program participant, containing such information and kept in such form as HUD and RHS shall require;

(8) Provide the necessary case files to PAC members upon request, in connection with PAC duties;

(9) Monitor the ongoing provision of services from community agencies and keep the PAC and the agency providing the supportive service informed of the progress of the participant;

(10) Educate grant recipient's program participants on such issues as benefits application procedures (e.g. SSI, food stamps, Medicaid), service availability, and program participant options and responsibilities;

(11) Establish volunteer support programs with service organizations in the community;

(12) Assist the grant recipient in building informal support networks with neighbors, friends and family; and

(13) Educate other project management staff on issues related to ''aging-in-place'' and services coordination, to help them to work with and assist other persons receiving housing assistance through the grantee.

(e) The service coordinator shall tailor each participant's case plan to the individual's particular needs. The service coordinator shall work with community agencies, the grantee and third party service providers to ensure that the services are provided on a regular, ongoing, and satisfactory basis, in accordance with the case plan approved by the PAC and the participant.

(f) Service coordinators shall not serve as members of the PAC.

§ 1944.258 Professional assessment committee.

(a) *General.* (1) A professional assessment committee (PAC), as described in this section, shall recommend services appropriate to the functional abilities and needs of each eligible project resident. The PAC shall be either a voluntary committee appointed by the project management or an agency in the community which provides assessment services and conforms to section 802(e)(3)(A) and (B). PAC members are subject to the conflict of interest provisions in section 1944.175(b).

(2) The PAC shall utilize procedures that ensure that the process of determining eligibility of individuals for congregate services affords individuals fair treatment, due process, and a right of appeal of the determination of eligibility, and shall ensure the confidentiality of personal and medical records.

(3) The dollar value of PAC members' time spent on regular assessments after initial approval of program participants may be counted as match. If a community agency discharges the duties of the PAC, staff time is counted as its imputed value, and if the members are volunteers, their time is

counted as volunteer time, according to sections 1944.145(c)(2) (ii) and (iv).

(b) *Duties of the PAC.* The PAC is required to:

(1) Perform a formal assessment of each potential elderly program participant to determine if the individual is frail. To qualify as frail, the PAC must determine if the elderly person is deficient in at least three ADLs, as defined in section 1944.105. This assessment shall be based upon the screening done by the service coordinator, and shall include a review of the adequacy of the informal support network (i.e., family and friends available to the potential participant to assist in meeting the ADL needs of that individual), and may include a more in-depth medical evaluation, if necessary;

(2) Determine if non-elderly disabled individuals qualify under the definition of person with disabilities under section 1944.105. If they do qualify, this is the acceptance criterion for them for CHSP. Persons with disabilities do not require an assessment by the PAC;

(3) Perform a regular assessment and updating of the case plan of all participants;

(4) Obtain and retain information in participant files, containing such information and maintained in such form, as HUD or RHS shall require;

(5) Replace any members of the PAC within 30 days after a member resigns. A PAC shall not do formal assessments if its membership drops below three, or if the qualified medical professional leaves the PAC and has not been replaced.

(6) Notify the grantee or eligible owner and the program participants of any proposed modifications to PAC procedures, and provide these parties with a process and reasonable time period in which to review and comment, before adoption of a modification;

(7) Provide assurance of nondiscrimination in selection of CHSP participants, with respect to race, religion, color, sex, national origin, familial status or type of disability;

(8) Provide complete confidentiality of information related to any individual examined, in accordance with the Privacy Act of 1974;

(9) Provide all formal information and reports in writing.

(c) *Prohibitions relating to the PAC.* (1) At least one PAC member shall not have any direct or indirect relationship to the grantee.

(2) No PAC member may be affiliated with organizations providing services under the grant.

(3) Individuals or staff of third party organizations that act as PAC members may not be paid with CHSP grant funds.

(d) *Eligibility and admissions.* (1) Before selecting potential program participants, each grantee (with PAC assistance) shall develop a CHSP application form. The information in the individual's application is crucial to the PAC's ability to determine the need for further physical or psychological evaluation.

(2) The PAC, upon completion of a potential program participant's initial assessment, must make a recommendation to the service coordinator for that individual's acceptance or denial into CHSP.

(3) Once a program participant is accepted into CHSP, the PAC must provide a supportive services case plan for each participant. In developing this plan, the PAC must take into consideration the participant's needs and wants. The case plan must provide the minimum supportive services necessary to maintain independence.

(e) *Transition-out procedures.* The grantee or PAC must develop procedures for providing for an individual's transition out of CHSP to another setting. Transition out is based upon the degree of supportive services needed by an individual to continue to live independently. If a program participant leaves the program, but wishes to retain supportive services, he or she may do so, as long as he or she continues to live in an eligible project, pays the full cost of services provided, and management agrees (section 802(e)(4) and (5)). A participant can be moved out of CHSP if he or she:

(1) Gains physical and mental health and is able to function without supportive services, even if only for a short time (in which case readmission, based upon reassessment to determine the degree of frailty or the disability, is acceptable);

(2) Requires a higher level of care than that which can be provided under CHSP; or

(3) Fails to pay services fees.

(f) *Procedural rights of participants.* (1) The PAC must provide an informal process that recognizes the right to due process of individuals receiving assistance. This process, at a minimum, must consist of:

(i) Serving the participant with a written notice containing a clear statement of the reasons for termination;

(ii) A review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(iii) Prompt written notification of the final decision to the participant.

(2) Procedures must ensure that any potential or current program participant, at the time of initial or regular assessment, has the option of refusing offered services and requesting other supportive services as part of the case planning process.

(3) In situations where an individual requests additional services, not initially recommended by the PAC, the PAC must make a determination of whether the request is legitimately a needs-based service that can be covered under CHSP subsidy. Individuals can pay for services other than those recommended by the PAC as long as the additional services do not interfere with the efficient operation of the program.

§ 1944.259 Participatory agreement.

(a) Before actual acceptance into CHSP, potential participants must work with the PAC and the service coordinator in developing supportive services case plans. A participant has the option of accepting any of the services under the case plan.

(b) Once the plan is approved by the PAC and the program participant, the participant must sign a participatory agreement governing the utilization of the plan's supportive services and the payment of supportive services fees. The grantee annually must renegotiate the agreement with the participant.

§ 1944.260 Cost distribution.

(a) *General.* (1) Grantees, the Secretary concerned, and participants shall all contribute to the cost of providing supportive services according to section 802(i)(A)(i). Grantees must contribute at least 50 percent of program cost, participants must contribute fees that in total are at least 10 percent of program cost, and the Secretary concerned will provide funds in an amount not to exceed 40 percent.

(2) Section 802(i)(1)(B)(ii) creates a cost-sharing provision between grantee and the Secretary concerned if total participant fees collected over a year are less than 10 percent of total program cost. This provision is subject to availability of appropriated grant funds. If funds are not available, the grantee must assume the funding shortfall.

(b) *Prohibition on substitution of funds and maintenance of existing supportive services.* Grantees shall maintain existing funding for and provision of supportive services prior to the application date, as set forth in section 802(i)(1)(D). The grantee shall ensure that the activities provided to the project under a CHSP grant will be in addition to, and not in substitution for, these previously existing services. The value of these services do not qualify as matching funds. Such services must be maintained either for the time the participant remains in CHSP, or for the duration of CHSP grant. The grantee shall certify compliance with this paragraph to the Secretary concerned.

(c) *Eligible matching funds.* (1) All sources of matching funds must be directly related to the types of supportive services prescribed by the PAC or used for administration of CHSP.

(2) Matching funds may include:

(i) Cash (which may include funds from Federal, State and local governments, third party contributions, available payments authorized under Medicaid for specific individuals in CHSP, Community Development Block Grants or Community Services Block Grants, Older American Act programs or excess residual funds with the approval of the Secretary concerned),

(ii) The imputed dollar value of other agency or third party-provided direct services or staff who will work with or

provide services to program participants; these services must be justified in the application to assure that they are the new or expanded services of CHSP necessary to keep the program participants independent. If services are provided by the state, Indian tribe, unit of general local government, or local nonprofit housing sponsor, IHA, PHA, or for-profit or not-for-profit owner, any salary paid to staff from governmental sources to carry out the program of the grantee and any funds paid to residents employed by the Program (other than from amounts under a contract under section 1944.155) is allowable match.

(iii) In-kind items (these are limited to 10 percent of the 50 percent matching amount), such as the current market value of donated common or office space, utility costs, furniture, material, supplies, equipment and food used in direct provision of services. The applicant must provide an explanation for the estimated donated value of any item listed.

(iv) The value of services performed by volunteers to CHSP, at the rate of $5.00 an hour.

(d) *Limitation.* (1) The following are not eligible for use as matching funds:

(i) PHA operating funds;

(ii) CHSP funds;

(iii) Section 8 funds other than excess residual receipts;

(iv) Funds under section 14 of the U.S. Housing Act of 1937, unless used for service coordination or case management; and

(v) Comprehensive grant funds unless used for service coordination or case management;

(2) Local government contributions are limited by section 802(i)(1)(E).

(e) *Annual review of match.* The Secretary concerned will review the infusion of matching funds annually, as part of the program or budget review. If there are insufficient matching funds available to meet program requirements at any point after grant start-up, or at any time during the term of the grant (i.e., if matching funds from sources other than program participant fees drop below 50 percent of total supportive services cost), the Secretary concerned may decrease the federal grant share of supportive services funds accordingly.

§ 1944.261 Program participant fees.

(a) *Eligible program participants.* The grantee shall establish fees consistent with section 1944.145(a). Each program participant shall pay CHSP fees as stated in paragraphs (d) and (e) of this section, up to a maximum of 20 percent of the program participant's adjusted income. Consistent with section 802(d)(7)(A), the Secretary concerned shall provide for the waiver of fees for individuals who are without sufficient income to provide for any payment.

(b) *Fees shall include:* (1) Cash contributions of the program participant;

(2) Food Stamps; and

(3) Contributions or donations to other eligible programs acceptable as matching funds under section 1944.145(c).

(c) *Older Americans Act programs.* No fee may be charged for any meals or supportive services under CHSP if that service is funded under an Older Americans Act Program.

(d) *Meals fees:* (1) For full meal services, the fees for residents receiving more than one meal per day, seven days per week, shall be reasonable and shall equal between 10 and 20 percent of the adjusted income of the project resident, or the cost of providing the services, whichever is less.

(2) The fees for residents receiving meal services less frequently than as described in paragraph (d)(1) of this section shall be in an amount equal to 10 percent of the adjusted income of the project resident, or the cost of providing the services, whichever is less.

(e) *Other service fees.* The grantee may also establish fees for other supportive services so that the total fees collected from all participants for meals and other services is at least 10 percent of the total cost of CHSP. However, no program participants may be required to pay more than 20 percent of their adjusted incomes for any combination of services.

(f) *Other residents and nonresidents.* Fees shall be established for residents of eligible housing projects (other than eligible project residents) and for nonresidents who receive meals and other services from CHSP under section

1944.125(a). These fees shall be in an amount equal to the cost of providing the services.

§ 1944.262 Grant agreement and administration.

(a) *General.* HUD will enter into grant agreements with grantees, to provide congregate services for program participants in eligible housing projects, in order to meet the purposes of CHSP.

(b) *Term of grant agreement and reservation of amount.* A grant will be for a term of five years and the Secretary concerned shall reserve a sum equal to the total approved grant amount for each grantee. Grants will be renewable at the expiration of a term, subject to the availability of funds and conformance with the regulations in this subpart, except as otherwise provided in section 1944.160.

(c) *Monitoring of project sites by governmental units.* States, Indian tribes, and units of general local government with a grant covering multiple projects shall monitor, review, and evaluate Program performance at each project site for compliance with CHSP regulations and procedures, in such manner as prescribed by HUD or RHS.

(d) *Reports.* Each grantee shall submit program and fiscal reports and program budgets to the Secretary concerned in such form and at such times, as the Secretary concerned requires.

(e) *Enforcement.* The Secretary concerned will enforce the obligations of the grantee under the agreement through such action as may be necessary, including terminating grants, recapturing grant funds, and imposing sanctions.

(1) These actions may be taken for:

(i) A grantee's non-compliance with the grant agreement or HUD or RHS regulations;

(ii) Failure of the grantee to provide supportive services within 12 months of execution of the grant agreement.

(2) Sanctions include but are not limited to the following:

(i) Temporary withholding of reimbursements or extensions or renewals under the grant agreement, pending correction of deficiencies by the grantee;

(ii) Setting conditions in the contract;

(iii) Termination of the grant;

(iv) Substitution of grantee; and

(v) Any other action deemed necessary by the Secretary concerned.

(f) *Renewal of grants.* Subject to the availability of funding, satisfactory performance, and compliance with the regulations in this subpart:

(1) Grantees funded initially under this subpart shall be eligible to receive continued, non-competitive renewals after the initial five-year term of the grant.

(2) Grantees will receive priority funding and grants will be renewed within time periods prescribed by the Secretary concerned.

(g) *Use of Grant Funds.* If during any year, grantees use less than the annual amount of CHSP funds provided to them for that year, the excess amount can be carried forward for use in later years.

§ 1944.263 Eligibility and priority for 1978 Act recipients.

Grantees funded initially under 42 U.S.C. 8001 shall be eligible to receive continued, non-competitive funding subject to its availability. These grantees will be eligible to receive priority funding under this subpart if they comply with the regulations in this part and with the requirements of any NOFA issued in a particular fiscal year.

§ 1944.264 Evaluation of Congregate Housing Services Programs.

(a) Grantees shall submit annually to the Secretary concerned, a report evaluating the impact and effectiveness of CHSPs at the grant sites, in such form as the Secretary concerned shall require.

(b) The Secretaries concerned shall further review and evaluate the performance of CHSPs at these sites and shall evaluate the Program as a whole.

(c) Each grantee shall submit a certification with its application, agreeing to cooperate with and to provide requested data to the entity responsible for the Program's evaluation, if requested to do so by the Secretary concerned.

§ 1944.265 Reserve for supplemental adjustment.

The Secretary concerned may reserve funds subject to section 802(o). Requests to utilize supplemental funds by the grantee shall be transmitted to the Secretary concerned in such form as may be required.

§ 1944.266 Other Federal requirements.

In addition to the Federal Requirements set forth in 24 CFR part 5, the following requirements apply to grant recipient organizations in this program:

(a) *Office of Management and Budget (OMB) Circulars and Administrative Requirements.* The policies, guidelines, and requirements of OMB Circular No. A–87 and 24 CFR part 85 apply to the acceptance and use of assistance under this program by public body grantees. The policies, guidelines, and requirements of OMB Circular No. A–122 apply to the acceptance and use of assistance under this program by non-profit grantees. Grantees are also subject to the audit requirements described in 24 CFR part 44 (OMB Circular A–128).

(b) *Conflict of interest.* In addition to the conflict of interest requirements in OMB Circular A–87 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the applicant, and who exercises or has exercised any function or responsibilities with respect to activities assisted with CHSP grant funds, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or any proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties during his or her tenure, or for one year thereafter. CHSP employees may receive reasonable salary and benefits.

(c) *Disclosures required by Reform Act.* Section 102(c) of the HUD Reform Act of 1989 (42 U.S.C. 3545(c)) requires disclosure concerning other government assistance to be made available with respect to the Program and parties with a pecuniary interest in CHSP and submission of a report on expected sources and uses of funds to be made available for CHSP. Each applicant shall include information required by 24 CFR part 12 on form HUD–2880 ''Applicant/Recipient Disclosure/Update Report,'' as required by the FEDERAL REGISTER Notice published on January 16, 1992, at 57 FR 1942.

(d) *Nondiscrimination and equal opportunity.* (1) The fair housing poster regulations (24 CFR part 110) and advertising guidelines (24 CFR part 109);

(2) The Affirmative Fair Housing Marketing Program requirements of 24 CFR part 200, subpart M, and the implementing regulations at 24 CFR part 108; and

(3) Racial and ethnic collection requirements—Recipients must maintain current data on the race, ethnicity and gender of program applicants and beneficiaries in accordance with section 562 of the Housing and Community Development Act of 1987 and section 808(e)(6) of the Fair Housing Act.

(e) *Environmental requirements.* Support services, including the operating and administrative expenses described in section 1944.115(a), are categorically excluded from the requirements of the National Environmental Policy Act (NEPA) of 1969. These actions, however, are not excluded from individual compliance requirements of other environmental statutes, Executive Orders, and agency regulations where appropriate. When the responsible official determines that any action under this subpart may have an environmental effect because of extraordinary circumstances, the requirements of NEPA shall apply.

Subparts G–H [Reserved]

Subpart I—Self-Help Technical Assistance Grants

SOURCE: 55 FR 41833, Oct. 16, 1990, unless otherwise noted.

§ 1944.401 Objective.

This subpart sets forth the policies and procedures and delegates authority for providing Technical Assistance

(TA) funds to eligible applicants to finance programs of technical and supervisory assistance for self-help housing, as authorized under section 523 of the Housing Act of 1949. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA or its successor agency under Public Law 103–354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA or its successor agency under Public Law 103–354 employee. This financial assistance may pay part or all of the cost of developing, administering, or coordinating programs of technical and supervisory assistance to aid needy very low- and low-income families in carrying out self-help housing efforts in rural areas. Very low-income families must receive a priority for recruitment and participation and may not comprise less than the percentage stated in subpart L of part 1940 of this chapter of those assisted in any grant. The primary purpose is to fund organizations that are willing to locate and work with families that otherwise do not qualify as homeowners. Generally, these are families below 50 percent of median incomes, living in substandard housing, and/or lacking the skills to be good homeowners. Grantees will comply with the nondiscrimination regulation subpart E of part 1901 of this chapter which states that no person in the United States shall, on the grounds of race, color, national origin, sex, religion, marital status, mental or physical handicap, or age, be excluded from participating in, be denied the benefits of, or be subject to discrimination in connection with the use of grant funds and all provisions of the Fair Housing Act of 1988.

[55 FR 41833, Oct. 16, 1990, as amended at 58 FR 227, Jan. 5, 1993]

§ 1944.402 Grant purposes.

Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 may contract or make a grant to an organization to:

(a) Give technical and supervisory assistance to eligible very low- and low-income families as defined in Appendix 9 of HB–1–3550 (available in any Rural Development office), in carrying out self-help housing efforts.

(b) Assist other organizations to provide technical and supervisory assistance to eligible families.

(c) Develop a final application, recruit families and related activities necessary to participate under paragraph (a) of this section.

[55 FR 41833, Oct. 16, 1990, as amended at 67 FR 78328, Dec. 24, 2002]

§ 1944.403 Definitions.

(a) *Agreement.* The Self-Help Technical Assistance Agreement, which is a document signed by FmHA or its successor agency under Public Law 103–354 and the grantee, sets forth the terms and conditions under which TA funds will be made available. (Exhibit A of this subpart).

(b) *Agreement period (or grant period).* The period of time for which an agreement is in force. Generally, the period will not exceed 24 months.

(c) *Date of completion.* The date when all work under a grant is completed or the date in the TA grant agreement, or any supplement or amendment to it, when Federal assistance ends.

(d) *Direct costs.* Those costs that are specifically identified with a particular project or activity. Grantees receiving funds from a single grant source would consider all costs as direct costs.

(e) *Disallowed costs.* Those charges to a grant which FmHA or its successor agency under Public Law 103–354 determines cannot be authorized.

(f) *Equivalent units.* Equivalent units represent the ''theoretical number of units'' arrived at by adding the equivalent percentage of completion figure for each family in the self-help program (pre-construction and actual construction) together at any given date during program operations. The sum of the percentage of completion figures for all participant families represent the total number of ''theoretical units'' completed at any point in time. Equivalent units are useful in measuring progress during the period of the grant and are not a measurement of actual accomplishments. The number of

equivalent units for any group can never exceed the number of planned or completed houses for that group.

(g) *Equivalent value of a modest house.* The equivalent value of a modest house is the typical cost of a recent contractor-built FmHA or its successor agency under Public Law 103–354 financed home in the area plus the actual or projected costs of an acceptable site and site development. If FmHA or its successor agency under Public Law 103–354 has not financed a contractor-built house during the last twelve months, the value will be established by use of the Marshall and Swift cost handbook or a similar type of handbook. Equivalent value of a modest house is established by FmHA or its successor agency under Public Law 103–354.

(h) *Indirect costs.* Those costs that are incurred for common or joint objectives and therefore, cannot be readily and specifically identified with a particular project or activity, e.g., self-help.

(i) *Mutual self-help.* The construction method by which participating families organized in groups generally of 4 to 10 families utilize their own labor to reduce the total construction cost of their homes. Participating families complete construction work on their homes by an exchange of labor with one another. The mutual self-help method must be used for new construction.

(j) *Organization.* (1) A State, political subdivision, or public nonprofit corporation (including Indian tribes or Tribal corporations); or

(2) A private nonprofit corporation that is owned and controlled by private persons or interests and is organized and operated for purposes other than making gains or profits for the corporation and is legally precluded from distributing any gains or profits to its members.

(k) *Participating family.* Individuals and/or their families who agree to build homes by the mutual self-help method and rehabilitate homes by the self-help method. Participants are families with very low- or low-incomes who have the ability to furnish their share of the required labor input regardless of the handicap, age, race, color, national origin, religion, family status, or sex of the head of household. The participating family must be approved for a section 502 RH loan or similar loans from other Federal, state, and private lenders that uses income guidelines substantially similar to the Department of Housing and Urban Development before the start of construction, have sufficient time available to assist in building their own homes, and show a desire to work with other families. Each family in the group must contribute labor on each other's homes to accomplish the 65 percent of the total 100 percent of tasks listed in exhibit B–2 of this subpart. A participating family may use a substitute to perform the labor with prior approval of the Grantee and the FmHA or its successor agency under Public Law 103–354 State Director. A substitute is only permitted when the participating family is incapacitated.

(l) *Self-help.* The construction method by which an individual family utilizes their labor to reduce the construction cost of their home without an exchange of labor between participating families. Unless otherwise authorized by the District Director, this method is only funded for repair and rehabilitation type construction.

(m) *Sponsor.* An existing entity that is willing and able to assist an applicant, with or without charge, in applying for a grant and in carrying out responsibilities under the agreement. Examples of sponsors are local rural electric cooperatives, institutions of higher education, community action agencies and other self-help grantees. Also, when available, regional technical and management assistance contractors may qualify to serve as a sponsor at no charge.

(n) *Technical assistance.* The organizing and supervising of groups of families in the construction of their own homes including:

(1) Recruiting families who are interested in sharing labor in the construction of each other's homes and assisting such families in obtaining housing loans.

(2) Conducting meetings of the families to explain the self-help program

and subjects related to home ownership, such as loan payments, taxes, insurance, maintenance, and upkeep of the property.

(3) Helping families in planning and developing activities that lead to the acquisition and development of suitable building sites.

(4) Assisting families in selecting or developing house plans for homes which will meet their needs and which they can afford.

(5) Assisting families in obtaining cost estimates for construction materials and any contracting that may be required.

(6) Providing assistance in the preparation of loan applications.

(7) Providing construction supervision and training for families while they construct their homes.

(8) Providing financial supervision to individual families with section 502 Rural Housing (RH) loans which will minimize the time and effort required by FmHA or its successor agency under Public Law 103–354 in processing borrower expenditures for materials and contract services.

(9) Assisting families in solving other housing problems.

(o) *Termination of a grant.* The cancellation of Federal assistance, in whole or in part, at any time before the date of completion.

§ 1944.404 Eligibility.

To receive a grant, the applicant must:

(a) Be an organization as defined in § 1944.403(j) of this subpart.

(b) Have the financial, legal, administrative, and actual capacity to assume and carry out the responsibilities imposed by the Agreement. To meet the requirement of actual capacity it must either:

(1) Have necessary background and experience with proven ability to perform responsibly in the field of mutual self-help or other business management or administrative ventures which indicate an ability to perform responsibility in the field of mutual self-help; or

(2) Be sponsored by an organization with background experience, and ability, which agrees in writing to help the applicant to carry out its responsibilities.

(c) Legally obligate itself to administer TA funds, provide adequate accounting of the expenditure of such funds, and comply with the Agreement and FmHA or its successor agency under Public Law 103–354 regulations.

(d) If the organization is a private nonprofit corporation, be a corporation that:

(1) Is organized under State and local laws.

(2) Is qualified under section 501(c)(3) of the Internal Revenue Code of 1986.

(3) Has as one of its purposes the production of affordable housing.

(4) Has a Board of Directors which consist of not less than five.

§ 1944.405 Authorized use of grant funds.

(a) Payment of salaries of personnel as authorized in the Agreement.

(b) Payment of necessary and reasonable office expenses such as office rental, office utilities, and office equipment rental. The purchase of office equipment is permissible when the grantee determines it to be more economical than renting. As a general rule, these types of expenses would be classified as indirect costs in multiple funded organizations.

(c) Purchase of office supplies such as paper, pens, pencils, and trade magazines.

(d) Payment of necessary employee benefit costs including but not limited to items such as Worker's Compensation, employer's share of social security, health benefits, and a reasonable tax deferred pension plan for permanent employees.

(e) Purchase, lease, or maintenance of power or specialty tools such as a power saw, electric drill, sabre saw, ladders, and scaffolds, which are needed by the participating families. The participating families, however, are expected to provide their own hand tools such as hammers and handsaws.

(f) Payment of liability insurance and special purpose audit costs associated with self-help activities. These would be considered direct costs, even though the grantee's general liability insurance cost and the cost of audits

for the organization are generally indirect costs.

(g) Payment of reasonable fees for training of grantee personnel including board members. This may include the cost of travel and per diem to attend in or out-of-State training as authorized by the board of directors and, when necessary, for the employee to do the current job. These costs are generally direct costs.

(h) Payment of services rendered by a sponsor or other organization after the grant is closed and when it is determined the sponsor can provide the necessary services which will result in an overall reduction in the cost of assistance. Typically, this will be limited to new grantees and an existing grantee for the period of time that its size or activity does not justify a full staff. A full staff is a full or part-time director, project worker, secretary-bookkeeper, and a construction supervisor. This type of cost is generally direct.

(i) Payment of certain consulting and legal costs required in the administration of the grant if such service is not available without cost. This does not include legal expenses for claims against the Federal Government. (Legal costs that may be incurred by the organization for the benefit of the participating families may be paid with prior approval of the State Director).

(j) Payments of the cost of an accountant to set up an accounting system and perform audits that may be required. Generally, these costs are indirect.

(k) Payments of reasonable expenses of board members for attending regular or special board meetings. These costs are indirect.

§ 1944.406 Prohibited use of grant funds.

(a) Hiring personnel specifically for the purpose of performing any of the construction work for participating families in the self-help projects.

(b) Buying real estate or building materials or other property of any kind for participating families.

(c) Paying any debts, expenses, or costs which should be the responsibility of the participating families in the self-help projects.

(d) Paying for training of an employee as authorized by Attachment B of OMB Circular A–122.

(e) Paying costs other than approved indirect (including salaries) that are not directly related to helping very low- and low-income families obtain housing consistent with the objectives of this program.

§ 1944.407 Limitations.

The amount of the TA grant depends on the experience and capability of the applicant and must be justified based on the number of families to be assisted. As a guide, the maximum grant amounts for any grant period will be limited to:

(a) An average TA cost per equivalent unit of no more than 15 percent of the cost of equivalent value of modest homes built in the area. (Upon request, the County Supervisor will provide the grantee the average cost of modest homes for the area); or

(b) An average TA cost per equivalent unit that does not exceed the difference between the equivalent value of modest homes in the area and the average mortgage of the participating families minus $1,000; or

(c) A TA per equivalent unit cost that does not exceed an amount established by the State Director. The State Director may authorize a greater TA cost than paragraph (a) or (b) of this section when needed to accomplish a particular objective, such as requiring the grantee to serve very low-income families, remote areas, or similar situations; or

(d) A negotiated amount for repair and rehabilitation type proposals. At a minimum, applicants applying for repair and rehabilitation grants must include information on the proximity of the houses in a project, the typical needed repairs, and the cost savings between self-help and contractor rehabilitation and repair.

[55 FR 41833, Oct. 16, 1990; 56 FR 19253, Apr. 26, 1991]

§ 1944.408 [Reserved]

§ 1944.409 Executive Order 12372.

The self-help program is subject to the provision of Executive Order 12372

which requires intergovernmental consultation with State and local officials. Under subpart J of part 1940 of this chapter (available in any Agency office), new applicants for the self-help program must submit their Statement of Activities to the State single point of contact prior to submitting their preapplication to Agency. The name of the point of contact is available from the State Office.

[55 FR 41833, Oct. 16, 1990, as amended at 61 FR 39851, July 31, 1996]

§ 1944.410 Processing preapplications, applications, and completing grant dockets.

(a) *Form SF–424, ''Application for Federal Assistance.''* Form SF–424 in an original and one copy must be submitted by the applicant to the District Director. It will be used to establish communication between the applicant and RHS, determine the applicant's eligibility, determine how well the project can compete with similar applications from other organizations and eliminate any proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application. In addition, the following information will be attached to and become a part of the preapplication:

(1) Complete information about the applicant's previous experience and capacity to carry out the objective of the agreement.

(2) If the applicant organization is already formed, a copy of or an accurate reference to the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence 1 year or more; the names and addresses of the applicant's members, directors, and officers; and, if another organization is a member of the applicant-organization, its name, address, and principal business. If the applicant is not already formed, attach copies of the proposed organizational documents demonstrating compliance with § 1944.404(d) of this subpart.

(3) A current (no more than 12 months old) dated and signed financial statement showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt owed by the applicant. If the applicant is being sponsored by another organization, the same type of financial statement also must be provided by the applicant's sponsor.

(4) A narrative statement which includes information about the amount of the grant funds being requested, area(s) to be served, need for self-help housing in the area(s), the number of self-help units proposed to be built, rehabilitated or repaired during the agreement period, housing conditions of low-income families in the area and reasons why families need self-help assistance. Evidence should be provided that the communities support the activity and that there are low-income families willing to contribute their labor in order to obtain adequate housing. Evidence of community support may be letters of support from local officials, individuals and community organizations. The pre-application may contain information such as census materials, local planning studies, surveys, or other readily available information which indicates a need in the area for housing of the type and cost to be provided by the proposed self-help TA program.

(5) A plan of how the organization proposes to reach very low-income families living in houses that are deteriorated, dilapidated, overcrowded, and/or lacking plumbing facilities.

(6) A proposed budget which will be prepared on SF–424A, ''Budget Information (Non-Construction Programs)'' will be completed to address applicable assurances as outlined in § 3015.205 of 7 CFR part 3015. State and local Government will include an assurance that the grantee shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. The State and local governments shall also comply with 7 CFR part 3016.

(7) A preliminary survey as to the availability of lots and projected cost of the sites.

(8) A list of other activities the applicant is engaged in and expects to continue, and a statement as to other sources of funding and whether it will have sufficient funds to assure continued operation of the other activities for at least the period of the agreement. If multi-funded, its cost allocation plan or indirect cost rate must be part of the pre-application.

(9) Whether assistance under paragraph (d) of this section is requested and a brief narrative identifying the need, amount of funds needed, and projected time period.

(10) If a project is planned for five or more housing lots or units, an Affirmative Fair Marketing Plan is required. The plan will be in effect until the completion of the project.

(b) *Preapplication review.* (1) The District Director, within 30 days of receipt of the preapplication, Form SF–424, and all other required information and material will complete a thorough review for completeness, accuracy, and conformance to program policy and regulations. Incomplete preapplications will be returned to the applicant for completion. The applicant should be given the name of the regional technical assistance contractor. The County Supervisor in the prospective county will be contacted as to the need for the program in the proposed area and if the necessary resources are available to the grantee. This will include a discussion of the number of 502 and 504 units that will need to be committed to the grantee and the potential work impact on the office during the grant period. If it is determined that the County Office lacks the resources (either personnel or funds) to process all loan requests in a timely manner, the District Director must communicate this need to the State Director along with a recommended solution. (Lack of resources at the county level are not grounds to deny a request). After the District Director has determined that the preapplication is complete and accurate, the District Director will assemble the material in an applicant case file and forward it to the State Director. The case file, as a minimum, must contain the following:

(i) Form SF–424,

(ii) Original and one copy of Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information,''

(iii) Eligibility recommendations, and

(iv) HUD Form 935.2 ''Affirmative Fair Housing Marketing Plan'', if applicable.

(2) The State Director may, if needed, submit the organizational documents with any comments or questions to the Office of General Counsel (OGC) for a preliminary opinion as to whether the applicant is or will be a legal organization of the type required by these regulations and for advice on any other aspects of the preapplication.

(3) The State Director, if unable to determine eligibility or qualifications with the advice of the OGC, may submit the preapplication to the National Office for review. The preapplication will contain all memoranda from OGC giving the results of its review. The State Director will identify in the transmittal memorandum to the National Office the specific problem and will recommend possible solutions and any information about the applicant which would be helpful to the National Office in reaching a decision.

(4) After an eligibility determination has been made, which should be completed within 30 days unless OGC is involved, the State Director will:

(i) If the applicant is eligible, contact the National Office as to the availability of funds or submit the proposal to the National Office for authorization if the requested amount exceeds the State Director's approval authority. If funds are available, the final review officer, either the State Director or the Assistant Administrator, Housing will issue a letter of conditions that the applicant must meet and direct the District Director to issue Form AD–622, ''Notice of Preapplication Review Action.''

(ii) If the applicant is determined not eligible, the State Director will direct the District Director to issue Form AD–622.

(c) *Form AD–622, ''Notice of Preapplication Review Action.''* (1) If the applicant is eligible and after the State Director has returned the

preapplication information and the executed original Form FmHA or its successor agency under Public Law 103–354 1940–20 to the District Office, the District Director will, within 10 days, prepare and issue Form AD–622. The original Form AD–622 will be signed and delivered to the applicant along with the letter of conditions, a copy to the applicant's case file, a copy to the County Supervisor, and a copy to the State Director.

(2) If the applicant is not eligible and after the State Director has returned the preapplication information, the District Director will within 5 days notify the applicant on Form AD–622. The notification will inform the applicant that an appeal of the decision may be made to the National Appeals Staff under subpart B of part 1900 of this chapter.

(3) If the applicant is eligible and no grant or loan funds are available, the State Director will return the preapplication information to the District Director who will, within 10 days, notify the applicant on Form AD–622. The notification will explain the facts concerning the lack of funding and that FmHA or its successor agency under Public Law 103–354 will notify them when funding will be available. This is not an appealable decision.

(d) *Self-help technical assistance grant predevelopment agreement.* If the grantee requested predevelopment assistance and the State Director determines that the applicant lacks the financial resources to meet the conditions of grant approval, a grant of up to $10,000 and for up to six months will be made in order for the applicant to provide what is required by paragraph (e) of this section. Exhibit D of this subpart will be used for this purpose. Existing grantees proposing to operate in an area different from the area that they are currently funded to operate are eligible for this grant. However, this grant is available only once for a defined area. This grant is available only after the letter of conditions has been issued. Denial of this assistance is an appealable decision under subpart B of part 1900 of this chapter.

(e) *Form SF–424, ''Application for Federal Assistance.''* The applicant will submit Form SF–424 in an original and one copy to the District Director. The application should provide a detailed proposal of its goals including:

(1) Names, addresses, number in household, and total annual household income of families who have been contacted by the applicant and are interested in participating in a self-help housing project. Community organizations including minority organizations may be used as a source of names of people interested in self-help housing.

(2) Proof that the first group of prospective participating self-help families have qualified for financial assistance.

(3) Evidence that lots are optioned by the prospective participating self-help families for the first group. Evidence that lots are available for the remaining groups.

(4) Detailed cost estimates of houses to be built by the mutual self-help method. Plans and specifications should be submitted with the cost estimates.

(5) Proposed staffing need, including qualifications, experience, proposed hiring schedule, and availability of any prospective employees.

(6) Name, address, and official position of the applicant's representative or representatives authorized to act for the applicant and work with FmHA or its successor agency under Public Law 103–354.

(7) Budget information including a detailed budget for the Agreement period based upon the needs outlined in the proposal. SF 424A will be completed to furnish the budget information.

(8) Indirect or direct cost policy and proposed indirect cost rate developed in accordance with 7 CFR part 3015 and part 3016.

(9) Personnel procedures and practices that will be established or are in existence. Forms to be used should be submitted with the application.

(10) A proposed monthly activities schedule showing the proposed dates for starting and completing the recruitment, loan processing and construction phases for each group of participant families.

[55 FR 41833, Oct. 16, 1990, as amended at 61 FR 39851, July 31, 1996]

§ 1944.411 Conditions for approving a grant.

A grant may be approved for an eligible applicant when the conditions in the letter of conditions are met and the following conditions are present:

(a) The applicant has or can hire, or contract directly or indirectly with, qualified people to carry out its responsibilities in administering the grant.

(b) The applicant has met all of the conditions listed in § 1944.410(e) of this subpart.

(c) The grantee furnishes a signed statement that it complies with the requirements of the Departmental Regulations found in 7 CFR part 3015 and part 3016.

(d) A resolution has been adopted by the board of directors which authorizes the appropriate officer to execute exhibit A of this subpart and Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement.''

(e) The grantee has fidelity bonding as covered in 7 CFR part 3015 if a nonprofit organization or, if a State or local government, to the extent required in 7 CFR part 3016.

(f) The grantee has agreed by completing SF–424B, ''Assurances-Non Construction Programs,'' that it will establish a recordkeeping system that is certifiable by a certified public accountant that it adequately meets the Agreement.

(g) The grantee has established an interest bearing checking account on which at least two bonded officials will sign all checks issued and understands that interest earned in excess of $250.00 annually must be submitted to FmHA or its successor agency under Public Law 103–354 quarterly. (The use of minority depository institutions is encouraged.)

(h) The grantee has developed an agreement to be executed by the grantee and the self-help participants which clearly sets forth what is expected of each and has incorporated exhibit B–2 of this subpart which clearly shows what work is expected of the participating family.

[55 FR 41833, Oct. 16, 1990; 56 FR 19253, Apr. 26, 1991]

§ 1944.412 Docket preparation.

When the application and all items required for the complete docket have been received, the District Director will thoroughly examine it to insure the application has been properly and accurately prepared and that it includes the required dates and signatures. The docket items will be assembled and distributed by the District Director in the following order:

Form No.	Name of form or document	Total No. of copies	Signed by applicant	No. for agreement docket	Copy for applicant
SF–424	Application for Federal Assistance	3	1	1–O and 1C	1–C
AD–622	Notice of Preapplication Review Action	2	.....	1–C	1–O
FmHA 1940–1	Request for Obligation of Funds	4	2	3–O and 2C	1–C
FmHA 400–4	Assurance Agreement	2	1	1–O	1–C
	HUD Form 935.2, Affirmative Fair Housing Marketing Plan	3	1	1–O and 1C	1–C
	Certified Copy Authorizing Resolution	1	1	1–O	–
	Self-Help Technical Assistance Grant Agreement (Exhibit A)	2	1	1–O	1–C
	Any Personnel Forms to be used	2	.....	1–O	1–C

O=Original.
C=Copy.

§ 1944.413 Grant approval.

(a) *Approval of grant.* Within 30 days of the grantee meeting the conditions of § 1944.411 of this subpart or, if applicable, signing exhibit D, the approving official will:

(1) Execute and distribute Form FmHA or its successor agency under Public Law 103–354 1940–1 in accordance with the Forms Manual Insert (FMI).

(2) After the Finance Office acknowledges that funds are obligated, request an initial advance of funds on Form FmHA or its successor agency under Public Law 103–354 440–57, ''Acknowledgment of Obligated Funds/Check Request,'' in accordance with the FMI. The amount of this request should cover the applicant's needs for the remainder of the month in which the

grant is closed plus the next month. Subsequent advances will cover only a one-month period.

(b) *Cancellation of an approved grant.* An approved grant may be canceled before closing if the applicant is no longer eligible, the proposal is no longer feasible, or the applicant requests cancellation. Cancellation will be accomplished as follows:

(1) The District Director will prepare Form FmHA or its successor agency under Public Law 103–354 1940–10, ''Cancellation of U.S. Treasury Check and/or Obligation,'' according to the FMI and send it to the State Director with the reasons for cancellation. If the State Director approves the request, Form FmHA or its successor agency under Public Law 103–354 1940–10 will be returned to the District Office for processing in accordance with the FMI.

(2) The District Director will notify the applicant of the cancellation and the right to appeal under subpart B of part 1900 of this chapter. If the applicant requested the cancellation, no appeal rights are provided, but the applicant will still be notified of the cancellation.

(c) *Disapproval of grant.* If a grant is disapproved after the docket has been developed, the approving official will state the reason on the original Form FmHA or its successor agency under Public Law 103–354 1940–1, or in a memorandum to the District Director. The District Director will notify the applicant in writing of the disapproval and the reason for disapproval. Also, the notification will inform the applicant of its appeal rights under subpart B of part 1900 of this chapter.

§ 1944.414 [Reserved]

§ 1944.415 Grant approval and other approving authorities.

(a) The State Director is authorized to approve or disapprove TA grants under this subpart. For a grant in excess of $300,000, or in the case of a grant amendment when the amount of the grant plus any unexpended funds from a previous grant will exceed $400,000, prior written consent of the National Office is required. In such cases, the docket, along with the State Director's recommendations, must be submitted to the National Office for review.

(b) The State Director may approve a grant not to exceed $10,000 to an eligible organization under § 1944.410(d) of this subpart. The grant must be limited to 6 months and funds must be used for the development of the final application, family recruitment, and related activities as explained in § 1944.410(e) of this subpart. The amount of this grant will not be included in figuring TA cost per units.

(c) The authority to contract for services is limited to the Administrator of FmHA or its successor agency under Public Law 103–354.

(d) Monthly expenditures of the grantee will normally be approved by the District Director unless:

(1) The grantee operates in only one county, in which case the authority may be delegated to the County Supervisor.

(2) The grantee operates in more than one FmHA or its successor agency under Public Law 103–354 District, in which case the State Director will designate the approving official.

(3) The grantee operates in more than one State Director's jurisdiction, in which case the Administrator will designate the approving official.

(4) The expenditure is under contract authority, in which case the Contracting Official Representative will approve the monthly expenditure.

§ 1944.416 Grant closing.

The grant is closed on the date the Agreement is executed as defined in § 1944.403(a) by the applicant and the Government. Funds may not be advanced prior to the signing of the Agreement. The District Director or Assistant District Director are authorized to execute the Agreement for FmHA or its successor agency under Public Law 103–354. Person(s) authorized by resolution may sign for the applicant.

§ 1944.417 Servicing actions after grant closing.

FmHA or its successor agency under Public Law 103–354 has a responsibility to help the grantee be successful and help the grantee avoid cases of fraud

and abuse. Servicing actions also include correlating activities between the grantee and FmHA or its successor agency under Public Law 103–354 to the benefit of the participating families. The amount of servicing actions needed will vary in accordance with the experience of the grantee, but as minimum the following actions are required:

(a) Monthly, the grantee will provide the District Director with a request for additional funds on Form SF–270, ''Request for Advance or Reimbursement.'' This request need only show the amount of funds used during the previous month, amount of unspent funds, projected need for the next 30 days, and written justification if the request exceeds the projected need for the next 30 days. This request must be in the District Director's office fifteen days prior to the beginning of the month. Upon receipt of the grantee's request, the District Director will:

(1) If the request appears to be in order, process Form FmHA or its successor agency under Public Law 103–354 440–57 so that delivery of the check will be possible on the first of the next month.

(2) If the request does not appear to be in order, immediately contact the grantee to resolve the problem. After the contact:

(i) If the explanation is acceptable, process Form FmHA or its successor agency under Public Law 103–354 440–57 so delivery may be possible by the first of the next month, or

(ii) If the explanation is not acceptable, immediately notify the grantee and request the amount of funds that appear reasonable for the next 30 days on Form FmHA or its successor agency under Public Law 103–354 440–57, so that delivery may be possible by the first of the next month. Unapproved funds that are later approved will be added to the next month's request.

(b) Quarterly, the grantee will submit exhibit B of this subpart in an original and three copies to the County Supervisor on or before January 15, April 15, July 15, and October 15 which will verify its progress toward meeting the objectives stated in the Agreement and the application. The County Supervisor will immediately complete the County Office review part and forward the report to the District Office. After exhibit B is received in the District Office, a meeting should be scheduled between the grantee, District Director, and the County supervisor since this is an opportune time for both the grantee and FmHA or its successor agency under Public Law 103–354 to review progress to date and make necessary adjustments for the future. This meeting is required if the grantee was previously identified as a problem grantee or will be identified as a problem grantee at this time. Regardless of whether a meeting will be held, the following will be done:

(1) Exhibit B and other information will be evaluated to determine progress made to date. The District Director will comment on exhibit B as to whether the grantee is ahead or behind schedule in each of the following areas:

(i) *Assisting the projected number of families.*

(ii) *Serving very low-income applicants.* Is the grantee reaching a minimum of very low-income families as required in exhibit A, attachment 2 to subpart L of part 1940 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office).

(iii) *Equivalent units (EUs).* Is the number of EUs completed representative of lapse in time of the grant? For example, if 25 percent of the grant period has elapsed, are 25 percent of the number of EUs completed?

(iv) *Labor contributions by the family.* Are the families working together and are they completing the labor tasks as established on exhibit B–2?

(2) The District Director will submit exhibit B to the State Director who will evaluate the quarterly report along with the District Director's comments. If the State Director determines the grantee is progressing satisfactorily, the State Director will sign and forward exhibit B to the National Office. However, if the State Director determines the grantee is not performing as expected, the State Director will notify the grantee that it has been classified a ''High Risk'' grantee. The notice will specify the deficiencies and inform the grantee of proposed remedies for noncompliance. The notice will advise the grantee that FmHA or its successor agency under Public Law

103–354 is available to assist and provide the name and address of an organization that is under contract with FmHA or its successor agency under Public Law 103–354 to assist them. The State Director will forward a copy of exhibit B, District Directors comments, and the reasons for classifying them as ''High Risk'' to the National Office, Single Family Housing, Special Programs Branch. When the period of time provided for corrective action has expired, an assessment will be made of the progress by the grantee toward correcting the situation. If the State Director determines:

(i) The situation has been corrected or reasonable progress has been made toward correcting the situation, the ''High Risk'' status will be lifted and the grantee so notified.

(ii) The situation has not been corrected but it is correctable if additional time is granted, an extension will be issued.

(iii) The situation has not been corrected and it is unlikely to be corrected if given additional time, the grant will be terminated under § 1944.426(b)(1) of this subpart.

[55 FR 41833, Oct. 16, 1990; 56 FR 19253, Apr. 26, 1991]

§ 1944.418 [Reserved]

§ 1944.419 Final grantee evaluation.

Near the end of the grant period but prior to the last month, an evaluation of the grantee will be conducted by FmHA or its successor agency under Public Law 103–354. The State Director may use FmHA or its successor agency under Public Law 103–354 employees or an organization under contract to FmHA or its successor agency under Public Law 103–354 to provide the evaluation. The evaluation is to determine how successful the grantee was in meeting goals and objectives as defined in the agreement, application, this regulation, and any amendments.

(a) This is a quantitative evaluation of the grantee to determine if it met its goals in:

(1) Assisting the project number of families in obtaining adequate housing.

(2) Meeting the goal of assisting very low-income families.

(3) Meeting the family labor requirement in § 1944.411(h) and exhibit B–2 of this subpart.

(4) Keeping costs within the guides set in § 1944.407.

(5) Meeting order objectives in the Agreement.

(b) The evaluation is a narrative addressed to the State Director with a copy of the National Office, Single Family Housing Processing Division. It will be in 3 parts, namely; findings, recommendations, and an overall rating. The rating will be either unacceptable, acceptable, or outstanding, as follows:

(1) Outstanding if the grantee met or exceeded all of the goals in paragraph (a) of this section.

(2) Acceptable if the grantee met or exceeded all of the goals as defined in paragraph (a) except two.

(3) Unacceptable if the grantee failed to obtain an acceptable rating.

(c) After the State Director has reviewed the evaluation, a copy will be mailed to the grantee. The grantee may request a review of the evaluation with the District Director. This review is for clarification of the material and to dispute the findings if they are known to be wrong. The rating is not open for discussion except to the extent it can be proven that the findings do not support the rating. If this is the case, the District Director will file an amendment to the State Director.

§ 1944.420 Extension or revision of the grant agreement.

The State Director may authorize the District Director to execute on behalf of the Government, exhibit C of this subpart, at any time during the grant period provided:

(a) The extension period is for no more than one year from the final date of the existing Agreement.

(b) The need for the extension is clearly justified.

(c) If additional funds are needed, a revised budget is submitted with complete justification, and

(d) The grantee is within the guidelines in § 1944.407 of this subpart or the State Director determines that the best interest of the Government will be served by the extension.

§ 1944.421 Refunding of an existing grantee.

Grantees wishing to continue with self-help efforts after the end of the current grant plus any extensions should file Form SF–424, in accordance with § 1944.410(e). It is recommended that it be filed at least 6 months before the end of the current grant period. Funds from the existing grant may be used to meet the conditions of a new grant to serve the same or redefined geographic area. If the grantee is targeting a different geographic area, a new preapplication must be submitted in accordance with § 1944.410 and the grantee may apply for a predevelopment grant in accordance with § 1944.410(d). In addition to meeting the conditions of an applicant as defined in § 1944.411 of this subpart, the grantee must also have received or will receive an acceptable rating on its current grant unless an exception is granted by the State Director. The State Director may grant an exception to the rating if it is determined that the reasons causing the previous unacceptable rating have been removed or will be removed with the approval of this grant.

§ 1944.422 Audit and other report requirements.

The grantee must submit an audit to the appropriate FmHA or its successor agency under Public Law 103–354 District Office annually (or biennially if a State or local government with authority to do a less frequent audit requests it) and within 90 days of the end of the grantee's fiscal year, grant period, or termination of the grant. The audit, conducted by the grantee's auditors, is to be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS), using the publication ''Standards for Audit of Governmental Organizations, Programs, Activities and Functions'' developed by the Comptroller General of the United States in 1981, and any subsequent revisions. In addition, the audits are also to be performed in accordance with 7 CFR parts 3015 and 3016 and FmHA or its successor agency under Public Law 103–354 requirements as specified in this subpart. Audits of borrower loan funds will be required. The number of borrower accounts audited will be determined by the auditor. In incidences where it is difficult to determine the appropriate number of accounts to be audited, auditors should be authorized by the State Director to audit the lesser of 10 loans or 10 percent of total loans.

(a) *Nonprofit organizations and others.* If determined necessary these organizations are to be audited in accordance with FmHA or its successor agency under Public Law 103–354 requirements OMB Circular A–110, A–133, and 7 CFR part 3015. These requirements also apply to public hospitals, public colleges, and universities if they are excluded from the audit requirements of paragraph (b) of this section.

(1) An audit conducted by the grantee's auditor shall be supplied to the FmHA or its successor agency under Public Law 103–354 District Director as soon as possible but in no case later than ninety (90) days following the period covered by the grant agreement.

(2) Auditors shall promptly notify United States Department of Agriculture's Office of the Inspector General Regional Inspector General and the FmHA or its successor agency under Public Law 103–354 District Office, in writing, of any indication of fraud, abuse, or illegal acts in grantees use of grant funds or in the handling of borrowers accounts.

(3) Nonprofit organizations that receive less than $25,000 a year in Federal financial assistance need not be audited.

(b) *State and local governments and Indian tribes.* These organizations are to be audited in accordance with this subpart and 7 CFR part 3016. The grantee will forward completed audits to the appropriate Federal cognizant agency and a copy to the FmHA or its successor agency under Public Law 103–354 District Director. *Cognizant agency* means the Federal agency assigned by OMB Circular A–128. Within USDA, and OIG shall fulfill cognizant agency responsibilities. Smaller grantees not assigned a cognizant agency by OMB should contact the Federal agency that provided the most funds. When USDA is designated as the cognizant agency or when it has been determined by the borrower that FmHA or its successor

agency under Public Law 103–354 provided the major portion of Federal financial assistance, the State Director will contact the appropriate USDA OIG Regional Inspector General. FmHA or its successor agency under Public Law 103–354 and the borrower shall coordinate all proposed audit plans with the appropriate USDA OIG.

(1) State and local governments and Indian tribes that receive $25,000 or more a year in Federal financial assistance shall have an audit made in accordance with 7 CFR part 3016.

(2) State and local and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from 7 CFR part 3016.

(3) Public hospitals and public colleges and universities may be excluded by the State Director from OMB Circular A–128 audit requirements. If such entities are excluded, audits shall be made in accordance with paragraph (a) of this section.

[55 FR 41833, Oct. 16, 1990; 56 FR 19253, Apr. 26, 1991]

§ 1944.423 Loan packaging and 502 RH application submittal.

A grantee is required to assist 502 RH applicants in submitting their application for a RH loan. Loan packaging will be performed in accordance with 7 CFR part 3550; therefore, it is important that the grantee be trained at an early date in the packaging of RH loans. Typically, this training should take place before the first applications are submitted to the County Office and before the grant is closed. A grantee should become very knowledgeable of FmHA or its successor agency under Public Law 103–354's eligibility requirements but must understand that only FmHA or its successor agency under Public Law 103–354 can approve or deny an applicant assistance. Grantee must work cooperatively with FmHA or its successor agency under Public Law 103–354 in the 502 loan approval process and must work within the regulations for the 502 program and recognize FmHA or its successor agency under Public Law 103–354's ultimate decision making authority to approve or deny loans. However, the grantee may ask for clarification that may be helpful in working with future applicants. Grant funds may not be used to pay any expense in connection with an appeal that the applicant may file or pursue.

[55 FR 41833, Oct. 16, 1990, as amended at 67 FR 78328, Dec. 24, 2002]

§ 1944.424 Dwelling construction and standards.

All construction will be performed in accordance with subpart A of part 1924 of this chapter. The planned work must meet the building requirements of 7 CFR part 3550 and meet the Development Standards as defined in subpart A of part 1924 of this chapter and in any local codes. Sites and site developments must conform to the requirements of subpart C of part 1924 of this chapter.

[55 FR 41833, Oct. 16, 1990, as amended at 67 FR 78328, Dec. 24, 2002]

§ 1944.425 Handling and accounting for borrower loan funds.

Grantees will be required to administer borrower loan funds during the construction phases. The extent of their involvement will depend on the experience of the grantee and the amount of authority delegated to them by the District Director in accordance with § 1924.6(c) of subpart A of part 1924 of this chapter. Training should include FmHA or its successor agency under Public Law 103–354's non-discrimination policies in receiving applications.

§ 1944.426 Grant closeout.

(a) *Grant purposes completed.* Promptly after the date of completion, grant closeout actions will be taken to allow the orderly discontinuance of grantee activity.

(1) The grantee will immediately refund to Rural Development any balance of grant funds that are not committed for the payment of authorized expenses.

(2) The grantee will furnish Form SF–269A, ''Financial Status Report (short form)'' to FmHA or its successor agency under Public Law 103–354 within 90 days after the date of completion of the grant. All other financial, performance, and other reports required as a condition of the grant also will be completed.

(3) After the grant closeout, FmHA or its successor agency under Public Law 103–354 retains the right to recover any disallowed costs which are discovered as a result of the final audit. 7 CFR part 3550 will be used by FmHA or its successor agency under Public Law 103–354 to recover any unauthorized expenditures.

(4) The grantee will provide FmHA or its successor agency under Public Law 103–354 an audit conforming to those requirements established in this part, including audits of self-help borrower accounts.

(5) Upon request from the recipient, any allowable reimbursable cost not covered by previous payments shall be promptly paid by FmHA or its successor agency under Public Law 103–354.

(b) *Grant purposes not completed*—(1) *Notification of termination.* The State Director will promptly notify the grantee and the National Office in writing of the termination action including the specific reasons for the decision and the effective date of the termination. The notification to the grantee will specify that if the grantee believes the reason for the proposed termination can be resolved, the grantee should, within 15 calendar days of the date of this notification, contact the State Director in writing requesting a meeting for further consideration. The meeting will be an informal proceeding at which the grantee will be given the opportunity to provide whatever additional information it believes should be considered in reaching a decision concerning the case. The grantee may have an attorney or any other person present at the meeting if desired. Within 7 calendar days of the meeting, the State Director will determine what action to take.

(i) If the State Director determines that termination is not necessary, the grantee will be informed by letter along with the District Director.

(ii) If the State Director determines that termination of the grant is appropriate, he/she will promptly inform the grantee by the use of exhibit B–3 of subpart B of part 1900 of this chapter.

(2) *National Office review.* (i) Upon receipt of a request from a grantee that the decision of the State Director be reconsidered, the National Office will make a preliminary decision concerning the continued funding of the grantee during the appeal period. Written notification of the decision will be given to the State Director and grantee.

(ii) The National Office will then obtain a comprehensive report on the matter from the State Office. This information will be considered together with any additional information that may be provided by the grantee.

(c) *Grant suspension.* When the grantee has failed to comply with the terms of the agreement, the District Director will promptly report the facts to the State Director. The State Director will consider termination or suspension of the grant usually only after a Grantee has been classified as ''high risk'' in accordance with §1944.417(b)(2) of this subpart. When the State Director determines that the grantee has a reasonable potential to correct deficiencies the grant may be suspended. The State Director will request written authorization from the National Office to suspend a grantee. The suspension will adhere to 7 CFR parts 3015 and 3016. The grantee will be notified of the grant suspension in writing by the State Director. The State Director will also promptly inform the grantee of its rights to appeal the decision by use of exhibit B–3 of subpart B of part 1900 of this chapter.

(d) *Grant termination.* The State Director may terminate the grant agreement whenever FmHA or its successor agency under Public Law 103–354 determines that the grantee has failed to comply with terms of the Agreement. The reasons for termination may include, but are not limited to, such problems as listed in paragraph (e)(3)(i) of exhibit A of this subpart. The State Director may also withhold further disbursement of grant funds and prohibit the grantee from incurring additional obligations of grant funds with written approval of the National Office. FmHA or its successor agency under Public Law 103–354 will allow all necessary and proper costs which grantee could not reasonably avoid.

(1) *Termination for cause.* The grant agreement may be terminated in whole, or in part, at any time before

date of completion, whenever FmHA or its successor agency under Public Law 103–354 determines that the grantee has failed to comply with terms of the Agreement. The State Director will notify the grantee in writing giving the reasons for the action and inform the grantee of its rights of appeal by use of exhibit B–3 of subpart B of part 1900 of this chapter.

(2) *Termination for convenience.* FmHA or its successor agency under Public Law 103–354 or the grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the grant would not produce beneficial results. The two parties will agree in writing to the termination conditions including the effective date. No notice of rights of appeal will be issued by FmHA or its successor agency under Public Law 103–354.

[55 FR 41833, Oct. 16, 1990, as amended at 67 FR 78328, Dec. 24, 2002; 68 FR 61331, Oct. 28, 2003]

§ 1944.427 Grantee self-evaluation.

Annually or more often, the board of directors will evaluate their own self-help program. Exhibit E of this subpart is provided for that purpose. It is also recommended that they review their personnel policy, any audits that may have been conducted and other reports to determine if they need to make adjustments in order to prevent fraud and abuse, and meet the goals in the current grant agreement.

§§ 1944.428–1944.449 [Reserved]

§ 1944.450 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have ben approved by the Office of Management and Budget and have been assigned OMB control number 0575–0043. Public reporting burden for this collection of information is estimated to vary from 10 minutes to 18 hours per response, with an average of 1.17 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575–0043), Washington, DC 20503.

EXHIBIT A TO SUBPART I OF PART 1944—SELF-HELP TECHNICAL ASSISTANCE GRANT AGREEMENT

THIS GRANT AGREEMENT dated _____, 19___, is between _____

_____

a nonprofit corporation (''Grantee''), organized and operating under

_____

(authorizing State statute)

and the United States of America acting through the Farmers Home Administration, Department of Agriculture (''FmHA'') or its successor agency under Public Law 103–354.

In consideration of financial assistance in the amount of $_____ (called ''Grant Funds'') to be made available by FmHA or its successor agency under Public Law 103–354 to Grantee under section 523(b)(1)(A) of the Housing Act of 1949 to be used in (specify area to be served) _____ for the purpose of providing a program of technical and supervisory assistance which will aid low-income families in carrying out mutual self-help housing efforts. Grantee will provide such a program in accordance with the terms of this Agreement and FmHA or its successor agency under Public Law 103–354 regulations.

DEFINITIONS:

Date of Completion means the date when all work under a grant is completed or the date in the TA Grant Agreement, or any supplement or amendment thereto, on which Federal assistance ends.

Disallowed costs are those charges to a grant which the FmHA or its successor agency under Public Law 103–354 determines cannot be authorized.

Grant Closeout is the process by which the grant operation is concluded at the expiration of the grant period or following a decision to terminate the grant.

Termination of a grant means the cancellation of Federal assistance, in whole of in part, under a grant at any time prior to the date of completion.

TERMS OF AGREEMENT:

(a) This Agreement shall terminate _____ years from this date unless extended or sooner terminated under paragraphs (e) and (f) of this Agreement.

(b) Grantee shall carry out the self-help housing activity described in the application docket which is attached to and made a part

of this Agreement. Grantee will be bound by the conditions set forth in the docket, 7 CFR part 1944, subpart I, and the further conditions set forth in this Agreement. If any of the conditions in the docket are inconsistent with those in the Agreement or subpart I of part 1944, the latter will govern. A waiver of any condition must be in writing and must be signed by an authorized representative of FmHA or its successor agency under Public Law 103–354.

(c) Grantee shall use grant funds only for the purposes and activities specified in FmHA or its successor agency under Public Law 103–354 regulations and in the application docket approved by FmHA or its successor agency under Public Law 103–354 including the approved budget. Any uses not provided for in the approved budget must be approved in writing by FmHA or its successor agency under Public Law 103–354 in advance.

(d) If Grantee is a private nonprofit corporation, expenses charged for travel or per diem will not exceed the rates paid FmHA or its successor agency under Public Law 103–354 employees for similar expenses. If Grantee is a public body, the rates will be those that are allowable under the customary practice in the government of which Grantee is a part; if none are customary, the FmHA or its successor agency under Public Law 103–354 rates will be the maximum allowed.

(e) Grant closeout and termination procedures will be as follows:

(1) Promptly after the date of completion or a decision to terminate a grant, grant closeout actions are to be taken to allow the orderly discontinuation of Grantee activity.

(i) Grantee shall immediately refund to FmHA or its successor agency under Public Law 103–354 any uncommitted balance of grant funds.

(ii) Grantee will furnish to FmHA or its successor agency under Public Law 103–354 within 90 days after the date of completion of the grant a ''Financial Status Report'', Form SF–269A. All financial, performance, and other reports required as a condition of the grant will also be completed.

(iii) Grantee shall account for any property acquired with technical assistance (TA) grant funds, or otherwise received from FmHA or its successor agency under Public Law 103–354.

(iv) After the grant closeout, FmHA or its successor agency under Public Law 103–354 retains the right to recover any disallowed costs which may be discovered as a result of any audit.

(2) When there is reasonable evidence that Grantee has failed to comply with the terms of this Agreement, the State Director may determine Grantee as ''high risk''. A ''high risk'' Grantee will be supervised to the extent necessary to protect the Government's interest and to help Grantee overcome the deficiencies.

(3) Grant termination will be based on the following:

(i) *Termination for cause.* This grant may be terminated in whole, or in part, 90 days after a Grantee has been classified as ''high risk'' if the State Director determines that Grantee has failed to correct previous deficiencies and is unlikely to correct such items if additional time is allowed. The reasons for termination may include, but are not limited to, such problems as:

(A) Actual TA costs significantly exceeding the amount stipulated in the proposal.

(B) The number of homes being built is significantly less than proposed construction or is not on schedule.

(C) The cost of housing not being appropriate for the self-help program.

(D) Failure of Grantee to only use grant funds for authorized purposes.

(E) Failure of Grantee to submit adequate and timely reports of its operation.

(F) Failure of Grantee to require families to work together in groups by the mutual self-help method in the case of new construction.

(G) Serious or repetitive violation of any of the provisions of any laws administered by FmHA or its successor agency under Public Law 103–354 or any regulation issued under those laws.

(H) Violation of any nondiscrimination or equal opportunity requirement administered by FmHA or its successor agency under Public Law 103–354 in connection with any FmHA or its successor agency under Public Law 103–354 programs.

(I) Failure to establish an accounting system acceptable to FmHA or its successor agency under Public Law 103–354.

(J) Failure to serve very low-income families.

(K) Failure to recruit families from substandard housing.

(ii) *Termination for convenience.* FmHA or its successor agency under Public Law 103–354 or Grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

(4) To terminate a grant for cause, FmHA or its successor agency under Public Law 103–354 shall promptly notify Grantee in writing of the determination and the reasons for and the effective date of the whole or partial termination. Grantee will be advised of its appeal rights under 7 CFR part 1900, subpart B.

(f) An extension of this grant agreement may be approved by FmHA or its successor

agency under Public Law 103–354 provided, in its opinion, the extension is justified and there is a likelihood that the Grantee can accomplish the goals set out and approved in the application docket during the period of the extension.

(g) Grant funds may not be used to pay obligations incurred before the date of this Agreement. Grantee will not obligate grant funds after the grant termination or completion date.

(h) As requested and in the manner specified by FmHA or its successor agency under Public Law 103–354, the Grantee must make quarterly reports, exhibit C of this subpart (on 1/15, 4/15, 7/15 and 10/15 of each year), and a financial status report at the end of the grant period, and permit on-site inspections of program progress by FmHA or its successor agency under Public Law 103–354 representatives. FmHA or its successor agency under Public Law 103–354 may require progress reports more frequently if it deems necessary. Grantee must also comply with the audit requirements found in §1944.422 of subpart I of 7 CFR part 1944, if applicable. Grantee will maintain records and accounts, including property, personnel and financial records, to assure a proper accounting of all grant funds. These records will be made available to FmHA or its successor agency under Public Law 103–354 for auditing purposes and will be retained by Grantee for three years after the termination or completion of this grant.

(i) Acquisition and disposal of personal equipment and supplies should comply with subpart R of 7 CFR part 3015 and subpart C of 7 CFR part 3016.

(j) Results of the program assisted by grant funds may be published by Grantee without prior review by FmHA or its successor agency under Public Law 103–354, provided that such publications acknowledge the support provided by funds pursuant to the provisions of Title V of the Housing Act of 1949, 42 U.S.C. 1471, *et seq.*, and that five copies of each such publication are furnished to the local representative of FmHA or its successor agency under Public Law 103–354.

(k) Grantee certifies that no person or organization has been employed or retained to solicit or secure this grant for a commission, percentage, brokerage, or contingent fee.

(l) Grantee shall comply with all civil rights laws and the FmHA or its successor agency under Public Law 103–354 regulations implementing these laws.

(m) In all hiring or employment made possible by or resulting from this grant, Grantee: (1) Will not discriminate against any employee or applicant for employment because of race, religion, color, sex, marital status, national origin, age, or mental or physical handicap, and (2) will take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, marital status, national origin, or mental or physical handicap. This requirement shall apply to, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In the event Grantee signs a contract which would be covered by any Executive Order, law, or regulation prohibiting discrimination, Grantee shall include in the contract the ''Equal Employment Clause'' as specified by FmHA or its successor agency under Public Law 103–354.

(n) It is understood and agreed by Grantee that any assistance granted under this Agreement will be administered subject to the limitations of Title V of the Housing Act of 1949 as amended, 42 U.S.C. 1471 *et seq.*, and related regulations, and that rights granted to FmHA or its successor agency under Public Law 103–354 in this Agreement or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and protect FmHA or its successor agency under Public Law 103–354's financial interest.

(o) Grantee will maintain a code or standards of conduct which will govern the performance of its officers, employees, or agents. Grantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from suppliers, contractors, or others doing business with the grantee. To the extent permissible by State or local law, rules, or regulations such standards will provide for penalties, sanctions, or other disciplinary actions to be taken for violations of such standards.

(p) Grantee shall not hire or permit to be hired any person in a staff position or as a participant if that person or a member of that person's immediate household is employed in an administrative capacity by the organization, unless waived by the State Director. (For the purpose of this section, the term *household* means all persons sharing the same dwelling, whether related or not).

(q) Grantee's board members or employees shall not directly pr indirectly participate, for financial gain, in any transactions involving the organization or the participating families. This includes activities such as selling real estate, building material, supplies, and services.

(r) Grantee will retain all financial records, supporting documents, statistical records, and other records pertinent to this agreement for 3 years, and affirms that it is fully aware of the provisions of the Administrative Remedies for False Claims and Statements Act, 31 U.S.C. 3801, *et seq.*

By _____

(Signature)

_____
(Title)
GRANTEE
By _____
(Signature)

_____
(Title)
FARMERS HOME ADMINISTRATION or its successor agency under Public Law 103–354

EXHIBIT B TO SUBPART I OF PART 1944—EVALUATION REPORT OF SELF-HELP TECHNICAL ASSISTANCE (TA) GRANTS

Evaluation for Quarter Ending: (1) _____, 19 _____

1. a. Name of Grantee: (2) _____
   b. Address: (3) _____
   c. Area the grant serves: (4) _____
2. Date of Agreement: (5) _____ Time Extended (6) _____
3. a. Equivalent unit increase during quarter:
(7) _____
First Month
(8) _____
Second Month
(9) _____
Third Month
   b. Cumulative total number of Equivalent Units since beginning of grant:
(10) _____
Total to Date
4. a. Method of Construction:
   Stick built _____%, Panelized _____%, Combined _____%
   b. Number of bedrooms per house built this grant period:
2BR, _____
3BR, _____
_____
   c. Household size this Quarter:
1 person _____,
2 persons _____,
3 persons _____,
4 persons _____,
5 persons _____.
   d. Number of houses under construction this grant period, but started during previous grant period: _____
5. a. Number of houses proposed under this grant:
(11) _____
   b. Number of houses completed under this grant:
(12) _____
   c. Number of houses currently under construction:
(13) _____
   d. Number of families in pre construction:
(14) _____
   e. Number of Construction Supervisors:
(15) _____
   f. Number of TA employees:
(16) _____
6. a. Average time needed to construct a single house:
(17) _____
   b. Number of months between submission of self-help borrower's docket and approval/rejection:
(18) _____
   c. Number and percentage of loan docket rejections during reporting period: _____
(19) _____
7. a. Did any of the following adversely affect the Grantee's ability to accomplish program objectives?

	YES	NO
TA Staff Turnover	_____	_____
FmHA Staff Turnover	_____	_____
Bad Weather	_____	_____
Loan Processing Delays ..	_____	_____
Site Acquisition and Development	_____	_____
Unavailable Loan/Grant Funds	_____	_____
Lack of Participants	_____	_____
Communication between FmHA/Grantee	_____	_____

8. Attach information concerning number of families contacted, number who have indicated a willingness to be a participating family, number of mutual self-help groups organized, progress on any construction started, and any problems relating to the operation of this grant.

I certify that the statements made above are true to the best of my knowledge and belief.

(20) _____
(Date)
(21) _____
(Title)
GRANTEE
(22) _____
(Signature)

County Office Review

I have reviewed the above information which I have found to be substantially correct. Must be completed by County Office.
Comment: Must be completed (23)
Average appraisal value of units financed this Quarter:

_____
Average amount loan per unit financed this Quarter:

_____
(24) _____
(Date)
(25) _____
County Supervisor

District Office Review

Comment: Must be completed (26)
(27) _____

Date

(28) _____

District Director

State Office Review

Comments: Must be completed (29)

(30) _____

Date

(31) _____

State Office Representative

EXHIBIT B–1 TO SUBPART I OF PART 1944—INSTRUCTIONS FOR PREPARATION OF EVALUATION REPORT OF SELF-HELP TECHNICAL ASSISTANCE GRANTS

Exhibit B will be used by all Technical Assistance (TA) Grantees obtaining self-help TA grants. This attachment provides the grantee and FmHA or its successor agency under Public Law 103–354 a uniform method of reporting the performance progress of self-help projects. The TA Grantee will prepare an original and 4 copies of the attachment. The TA Grantee will sign the original and 3 copies and forward it to the local FmHA or its successor agency under Public Law 103–354 County Office. The TA Grantee will keep the unsigned copy for its records.

The evaluation report will be completed in accordance with the following:

1. Enter the date the quarter ends either March 31, June 30, September 30, or December 31 and the year.

2. Enter the full name of the TA Grantee organization.

3. Enter the complete mailing address of the TA Grantee organization.

4. Enter the area served by the grant.

5. Enter the date of the initial self-help TA grant agreement.

6. Enter the time of any extension self-help TA grant agreement(s).

7. Insert the number of equivalent units (EU) completed the first/second/third month of the quarter using steps 1, 2, and 3 of exhibit B–3.

8. Insert the number of EU's completed the second month of the quarter by using steps 1, 2, and 3 of exhibit B–3.

9. Insert the number of EU's completed the third month of the quarter by using steps 1, 2, and 3 of exhibit B–3.

10. Add items (7), (8), and (9) to the total from the previous quarterly report to obtain the cumulative total number of EU's. This total is the cumulative total number of EU's for the project.

11. Enter the number of houses planned in the TA Grantee proposal(s).

12. Enter the number of houses completed and occupied since the beginning of the grant.

13. Enter the number of houses that are under construction at the end of this quarter.

14. Enter the number of families in the preconstruction phase.

15. Enter the total number of construction supervisor(s) paid with TA grant funds.

16. Enter the number of employees paid with TA grant funds including those listed in item 15.

17. Insert the average elapsed time needed per house from excavation to final inspection by FmHA or its successor agency under Public Law 103–354 to complete construction of a house. If no self-help homes have been completed by this grantee, use other projects or your best estimate as a guide.

18. Enter the number of months it takes on average to approve or reject a borrower's docket once it's submitted.

19. Enter number and percent of dockets submitted and rejected this quarter.

20. Enter date of exhibit submittal.

21. Insert title of the Grantee or authorized representative.

22. Signature of Grantee or authorized representative.

23. County Supervisor must answer questions concerning market value and loan amount and also should insert comments concerning progress of construction, success of the project and any problems that the organization may have.

24. Insert date of County Supervisor's review.

25. Signature of County Supervisor.

26. District Director representative should insert his/her comments concerning items listed in § 1944.417(b)(1) of 1944–I.

27. Insert date of District Director review.

28. Signature of District Director or representative.

29. Insert State Office comments.

30. Insert date of State Office review.

31. Signature of State Office representative.

EXHIBIT B–2 TO SUBPART I OF PART 1944—BREAKDOWN OF CONSTRUCTION DEVELOPMENT FOR DETERMINING PERCENTAGE CONSTRUCTION COMPLETED

	In percent—		
	With slab on grade	With crawl space	With basement
1. Excavation	3	5	6
The removal of earth to allow the construction of a foundation or basement.			
2. Footing, Foundations, columns	8	8	11
Footing: Construction of the spreading course or courses at the base or bottom of a foundation wall, pier, or column.			
Foundation: Construction of the supporting portion of a structure below the first floor construction, or below grade, including footing.			
3. Floor slab or framing	6	4	4
The floor slab consist of concrete, usually reinforced, poured over gravel and a vapor barrier with perimeter insulation to prevent heat loss.			
4. Subflooring	0	1	1
The installation of materials used for flooring that is laid directly on the joist and serving the purpose of a floor during construction prior installation of the finish floor.			
5. Wall framing sheathing	7	7	6
The construction process of putting together and erecting the skeleton parts of a building's walls (the rough lumber work) and, for the exterior walls, covering with sheathing (plywood, waferboard, oriented strand board or lumber) and insulating board to close up the side walls prior to the installation of finish materials on the surface.			
6. Roof and ceiling framing, sheathing	6	6	5
The process, or method, of putting the parts of a roof, such as truss, rafters, ridge and plates in position. Ceiling joist support the overhead interior lining of a room. Roof sheathing is any sheet material, such as plywood or particleboard, connected to the roof rafters or truss to act as a base for sheathing felt, shingles or other roof covers.			
7. Roofing	5	5	4
The installation of a material that acts as a roof covering, making it impervious to the weather, such as shingles over sheathing felt, tile, or slate.			
8. Siding, exterior trim, porches	7	7	6
The installation of lumber, panel products or other materials intended for use as the exterior wall covering including all trim.			
9. Windows and exterior doors	9	9	8
The installation of all exterior windows and doors. This includes securely fastening windows and doors plumb and level, square and true and adjusting sash, screens and hardware for smooth and proper operation.			
10. Plumbing—roughed in	3	2	3
Subject to local codes and regulations the installation of all parts of the plumbing system which must be completed prior to the installation of plumbing fixtures or appliances. This includes drain, waste, and vent piping, water supply, and the necessary built-in fixture supports.			
11. Sewage disposal	1	1	1
Subject to local codes and regulations the construction and installation of a wastewater disposal system consisting of a house sewer, a pretreatment unit (e.g., septic tank, individual package treatment plant), an acceptable absorption system (subsurface absorption field, seepage pit, or subsurface absorption bed). The system shall be designed to receive all sanitary sewage (bathroom, kitchen and laundry) from the dwelling, but not footing or roof drainage. It shall be designed so that gases generated anywhere in the system can easily flow back to the building sewer stack.			
12. Heating—roughed in	1	1	1
Subject to local codes and regulations the installation of ducts and/or piping and the necessary supports to minimize the cutting of walls and joist. This rough in is done before finish wall and floor installed.			
13. Electrical—roughed in	2	2	2
Subject to local codes and regulations the installation of conduit or cable and the location of switch, light, and outlet boxes with wires ready to connect. This roughing-in work is done before the dry wall finish is applied, and before the insulation is placed in the walls and ceiling.			
14. Insulation	2	2	2

	In percent—		
	With slab on grade	With crawl space	With basement
The installation of any material used in walls, floors, and ceilings to prevent heat transmission as required by FmHA Instruction 1924–A, exhibit D of 7 CFR of part 1924, subpart A.			
15. Dry wall	8	8	7
Dry walling is covering the interior walls using sheets of gypsum board and taped joints.			
16. Basement or porch floor, steps	1	1	6
The construction of basement or porch floors and steps whether wood or concrete.			
17. Heating—finished	3	3	3
Subject to local codes and regulations the installation of registers, grilles and thermostats.			
18. Flooring covering	6	6	5
The installation of the ''finish flooring'' (the material used as the final wearing surface that is applied to a floor). Floor covering include numerous flooring materials such as wood materials, vinyl, linoleum, cork, plastic, carpet and other materials in tile or sheet form.			
19. Interior carpentry, trim, doors	6	6	5
Installing visible interior finish work (molding and/or trim), including covering joints around window and door openings. The installation of an interior door including frames and trim.			
20. Cabinets and counter tops	1	1	1
Securing cabinets and counter tops (usually requiring only fastening to the wall or floor) that are plumb and level, square and true.			
21. Interior painting	4	4	3
Cleaning and preparation of all interior surfaces and applying paint in strict accordance with the paint manufacturer's instructions.			
22. Exterior painting	1	1	1
Cleaning and preparation of all exterior surfaces and applying paint in strict accordance with the paint manufacturer's instructions.			
23. Plumbing—complete fixtures	4	4	3
Subject to local codes and regulations the installation of a receptor or device which requires both a water supply connection and a discharge to the drainage system, such as water closets, lavatories, bathtubs or sinks. Also, the installation of an energized household appliance with plumbing connections, such as a clothes washer, water heater, dishwasher or garbage grinder.			
24. Electrical—complete fixtures	1	1	1
Subject to local codes and regulations the installation of the fixtures, the switches, and switch plates. This is usually done after the dry wall finish is applied.			
25. Finish hardware	1	1	1
The installation of all the visible, functional hardware in a house that has a finish appearance, including such features as hinges, locks, catches, pulls, knobs, and clothes hooks.			
26. Gutters and downspouts	1	1	1
The installation of a shallow channel of wood, metal, or PVC (gutters) positioned just below and following along the eaves of the house for the purpose of collecting and diverting water from a roof to a vertical pipe (downspouts) used to carry rainwater from the roof to the ground by way of a splash block or into a drainage system.			
27. Grading, paving, landscaping	3	3	3
Landscaping includes final grading, planting of shrubs and trees, and seeding or sodding of lawn areas. Final grading includes the best available routing of runoff water to assure that house and adjacent homes will not be endangered by the path of water runoff. The minimum slope should be 6″ in 10′ or 5% from the foundation of the home. Paving includes both driveways and walks.			
Total	100	100	100

EXHIBIT B–3 TO SUBPART I OF PART 1944—PRE-CONSTRUCTION AND CONSTRUCTION PHASE BREAKDOWN

I. *General.* This exhibit will be used by Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 and the Grantee in determining Grantee performance as required in §1944.417(b) of this subpart.

II. *Determining technical assistance (TA) cost per unit.*

A. Equivalent units are used to measure progress at any time during the period of the grant. It is necessary because self-help grantees have several groups of families in various stages of progress during the period of the grant. The following formula has been developed to provide a more accurate method of determining progress.

FORMULA

Phase breakdown	In percent—	
	Value of each phase	Cumulative
Pre-construction:		
Phase I	10	10
Phase II	10	10
Construction:		
Phase III	80	21–100

B. Using the Description of Phase Breakdown as a guide, the project staff selects the total percentage pertinent to the stage the self-help group is in and multiplies that percentage by the number of families (units) in the group. The result is the equivalent number of units completed. No credit may be given for Phase I, if the application is rejected. When this computation has been completed for each group that falls within Phases I-III, the total number of equivalent units is divided into the total grant funds expended to that date. The result is the TA cost per unit at that stage of the program's progress.

C. The definition of pre-construction and construction phases described are follows:

Pre-Construction

Phase I: Hold community meetings; conduct interviews; obtain house plans; prepare cost estimates; begin search for land; submit family applications to the lender; lender runs credit check; applications. Lender either approves or rejects.

Phase II: Organize an association of section 502 Rural Housing eligible families; association conducts weekly meetings at which required lender forms are discussed and completed; house plans and land sites are selected; outside speakers explain and discuss taxes, insurance, how to keep a checking account, how interest is computed, home maintenance, decorating, and landscaping; etc.; completed loan dockets for each family are submitted to the lender. Family loan dockets are reviewed and recommendations made as to the loan amounts requested; the lender reviews family loan dockets; preliminary title search of each proposed building site is begun; requests loan check from Finance Office; when check arrives, final title search is made, loan closed, checking accounts opened, and construction begun.

Construction: The grantee will utilize exhibit B–2 which outlines 27 construction tasks to determine the percentage of completed construction activities.

D. The computation of equivalent units and TA costs will be computed as follows:

Exhibit C will be used for recording the following information and construction in this example which starts January 1.

STEP 1

Both the grantee and FmHA or its successor agency under Public Law 103–354 review the FmHA or its successor agency under Public Law 103–354 loan application records to determine the percentage of completion for each family in the pre-construction phase of the program. These are Phases I-III. Total these percentages to find the number of ''equivalent units'' (EUs) completed at that date during pre-construction. For example, if there are eight families in Group #2 and all have completed the 20 percent phase of pre-construction, then there would be 1.6 EUs in the pre-construction phase of the program as of that date. Each phase must be completed before it is considered in the calculation.

STEP 2

Refer to the records of construction progress for families in the construction Phase III. As of that date, the director totals the percentage of completion figures for each family as follows:

Askew	0.45
Whited	0.40
Martinez	0.40
Gonzalez	0.38
Sherry	0.34
Duran	0.33
Johnson	0.13
Harvey	0.31
EUs	2.92

Total production in the construction phase is therefore 2.92 EUs as of that date.

STEP 3

Add the pre-construction and construction subtotals together:

Pre-construction	1.60
Construction	2.92
Total EUs	4.52

This provides the total EUs of production during the first three months of operation. Steps 1, 2, and 3 will be used to complete items 7, 8 and 9 of exhibit B of this subpart.

III. *Preparation:*

Compile exhibit B of this subpart in an original and four copies. The exhibit will be signed by the TA Grantee. Submit the original and three copies of the exhibit quarterly to FmHA or its successor agency under Public Law 103–354 County Office on or before January 15, April 15, July 15, and October 15, of each year for the quarters ending March 31, June 30, September 30, and December 31 of each year. The District Director will keep the original and forward two copies to the State Office. The State Office will forward one copy to the National Office. The State Office will prepare information concerning TA grants closed within 30 days of the end of a quarter on the next quarterly report.

EXHIBIT C TO SUBPART I OF PART 1944—AMENDMENT TO SELF-HELP TECHNICAL ASSISTANCE GRANT AGREEMENT

This Agreement dated, _____ 19___ between _____ a nonprofit corporation (''Grantee''), organized and operating under

_____
(authorizing State Statute)

and the United States of America acting through the Farmers Home Administration, Department of Agriculture (''FmHA'') or its successor agency under Public Law 103–354, amends the ''Self-Help Technical Assistance Grant Agreement'' between the parties dated _____ 19___, (''Agreement'').

The Agreement is amended by providing additional financial assistance in the amount of _____ to be made available by FmHA or its successor agency under Public Law 103–354 to Grantee pursuant to section 523 of Title V of the Housing Act of 1949 for the purpose of assisting in providing a program of technical and supervisory assistance which will aid low-income families in carrying out mutual self-help housing efforts; or

The Agreement is amended by changing the completion date specified in convenant 1 from _____ to _____ and by making the following attachments to this amendment: (List and identify proposal and any other documents pertinent to the grant.)

Agreed to this ___ day of ___ 19___.

_____
(Name of Grantee)

By _____
(Signature)

_____
(Title)

United States of America

By _____
(Signature)

_____
(Title)

Farmers Home Administration or its successor agency under Public Law 103–354

EXHIBIT D TO SUBPART I OF PART 1944—SELF-HELP TECHNICAL ASSISTANCE GRANT PREDEVELOPMENT AGREEMENT

This grant predevelopment agreement dated, ___ 19 ___, is between _____ a nonprofit corporation (''Grantee''), organized and operating under _____
(authorizing State statute)

and the United States of America acting through the Farmers Home Administration, Department of Agriculture (''FmHA'') or its successor agency under Public Law 103–354.

In consideration of financial assistance in the amount of $___ (''Grant Funds'') to be made available by FmHA or its successor agency under Public Law 103–354 to Grantee under section 523 (b)(1)(A) of the Housing Act of 1949 to be used in (specify area to be served) _____ for the purpose of developing a program of technical and supervisory assistance which will aid low-income families in carrying out mutual self-help housing efforts, Grantee will provide such a program in accordance with the terms of this Agreement and FmHA or its successor agency under Public Law 103–354 regulations.

Grant funds will be used for authorized purposes as contained in §1944.410(d) of 7 CFR part 1944, subpart I, as necessary, to develop a complete program for a self-help TA grant. This will include recruitment, screening, loan packaging and related activities for prospective self-help participants.

Agreed to this ___ day of ___ 19___.

_____
(Name of Grantee)

By _____
(Signature)

_____
(Title)

United States of America

By _____
(Signature)

_____
(Title)

Farmers Home Administration or its successor agency under Public Law 103–354

EXHIBIT E TO SUBPART I OF PART 1944—GUIDANCE FOR RECIPIENTS OF SELF-HELP TECHNICAL ASSISTANCE GRANTS (SECTION 523 OF HOUSING ACT OF 1949)

7 CFR part 1944, subpart I provides the specific details of this grant program. The following is a list of some functions of the grant recipients taken from this subpart. With the list are questions we request to be answered by the recipients to reduce the potential for fraud, waste, unauthorized use or mismanagement of these grant funds. We suggest the Board of Directors answer these questions every six months by conducting their own review. Paid staff should not be permitted to complete this evaluation.

A. FAMILY LABOR CONTRIBUTION

1. Does your organization maintain a list of each family and a running total of hours worked (when and on what activity)? ... Yes No
2. Are there records of discussions with participating families counselling them when the family contribution is falling behind? ..... Yes No
3. Are there obstacles which prevent the family from performing the required tasks? ..... Yes No

B. USE OF GRANT FUNDS

1. Were grant funds used to pay salaries or other expenses of personnel not directly associated with this grant? ..... Yes No
2. Were grant funds used to pay for construction work for participating families? ..... Yes No
3. Were all purchases or rentals (item and cost) of office equipment authorized? ..... Yes No
4. Are all office expenses authorized by 7 CFR part 1944, subpart I? ..... Yes No
5. Was a record of long distance telephone calls maintained and was that log and telephone checked? ..... Yes No
6. Was all travel and mileage incurred for official business and properly authorized in advance? ..... Yes No
7. Were mileage and per diem rates within authorized levels? Yes No
8. Were participating families charged for use of tools? ..... Yes No
9. Were grant funds expended to train grant personnel? ..... Yes No
10. Was training appropriate for the individual trainee? ..... Yes No
11. Were any technical or consultant services obtained for participating families? ..... Yes No
12. Were the provided technical or consultant services appropriate in type and cost? ..... Yes No

C. FINANCIAL RESPONSIBILITIES

1. Does each invoice paid by the grant recipient match the purchase order? ..... Yes No
2. Does each invoice paid by the borrower and FmHA or its successor agency under Public Law 103–354 match the purchase order? ..... Yes No
3. Were purchases made from the appropriate vendors? ..... Yes No
4. Are the invoices and itemized statements totalled for materials purchased for individual families? ..... Yes No
5. Is there a record of deposits and withdrawals to account for all loan funds? ..... Yes No
6. Are checks from grant funds signed by the Board Treasurer and Executive Director? ..... Yes No
7. Are grant funds deposited in an interest bearing account? .... Yes No
8. Are checks from loan funds prepared by the grant recipient for the borrower's and lender's signature? ..... Yes No
9. Are checks from loan funds accompanied by accurate invoices? ..... Yes No
10. Are any borrower loan funds including interests, deposited in grantee accounts? ..... Yes No
11. Are checks from loan funds submitted to FmHA or its successor agency under Public Law 103–354 more often than once every 30 days? ..... Yes No
12. Is the reconciliation of bank statements for both grant and loan funds completed on a monthly basis? ..... Yes No
13. If the person who issues the checks also reconciles them, does the Executive Director review this activity? ..... Yes No
14. Are materials purchased in bulk approved by the Executive Director? ..... Yes No
15. Was the amount of materials determined by both the Executive Director and construction staff? ..... Yes No
16. Were any participating families consulted about the purchase of materials? ..... Yes No
17. Were savings accomplished by the bulk purchase method? ..... Yes No
18. Did the Executive Director review the purchase order and the ultimate use of the materials? ..... Yes No

19. Are materials covered by insurance when stored by grantee? ..... Yes No

D. REPORTING

1. Are ''Requests for Advance or Reimbursement'' made once monthly to the FmHA or its successor agency under Public Law 103–354 District Office? ..... Yes No
2. Has the grant recipient engaged a certified public Accountant (CPA) or CPA firm to review their operations on a regular basis: (Annually is preferable but every two years and at the end or the grant period are requirements)? ..... Yes No
3. Are the quarterly evaluation reports submitted on time to the County Supervisor? ..... Yes No

What, if any, problems exist that need to be corrected for effective management of the grant project?

_____
Date

_____
President, Board of Directors
(Period covered by report _____)

Answer Key

The following answers should help your organization in assessing its vulnerability to fraud, waste, and abuse. You should take actions to correct practices that now generate an answer different from the key.

Question	*Answer*
A. 1	Yes
A. 2	Yes
A. 3	Yes
B. 1	No
B. 2	No
B. 3	Yes
B. 4	Yes
B. 5	Yes
B. 6	Yes
B. 7	Yes
B. 8	No
B. 9	Yes
B. 10	Yes
B. 11	Yes
B. 12	Yes
C. 1	Yes
C. 2	Yes
C. 3	Yes
C. 4	Yes
C. 5	Yes
C. 6	Yes
C. 7	No
C. 8	Yes
C. 9	Yes
C. 10	No
C. 11	No
C. 12	Yes
C. 13	Yes
C. 14	Yes
C. 15	Yes
C. 16	Yes
C. 17	Yes
C. 18	Yes
C. 19	Yes
D. 1	Yes
D. 2	Yes
D. 3	Yes

EXHIBIT F TO SUBPART I OF PART 1944—SITE OPTION LOAN TO TECHNICAL ASSISTANCE GRANTEES

I. OBJECTIVES

The objective of a Site Option (SO) loan under Section 523(b)(1)(B) of Title V of the Housing Act of 1949 is to enable technical assistance (TA) grantees to establish revolving fund accounts to obtain options on land needed to make sites available to families that will build their own homes by the self-help method. An SO loan will be considered only when sites cannot be made available by other means including a regular Rural Housing Site (RHS) loan.

II. ELIGIBILITY REQUIREMENTS

To be eligible for an SO loan, the applicant must be a TA grantee that is currently operating in a satisfactory manner under a TA grant agreement. If the SO loan applicant has applied for TA funds but is not already a TA grantee and it appears that the TA grant will be made, the SO loan may be approved but not closed until the TA grant is closed.

III. LOAN PURPOSES

Loans may be made only as necessary to enable eligible applicants to establish revolving accounts with which to obtain options on land that will be needed as building sites by self-help families participating in the TA self-help housing program. Loans will not be made to pay the full purchase price of land but only for the minimum amounts necessary to obtain an option from the seller. The option should be for as long as necessary but in no case should the option be for less than 90 days.

IV. LIMITATIONS

(A) If the amount of an SO loan will exceed $10,000, the prior consent of the National Office shall be obtained before approval.

(B) The amount of the SO loan should not exceed 15 percent of the purchase price of the land expected to be under option at any one time, unless a higher percent is authorized by the State Director when other land in not available or the particular area requires

more down payment than elsewhere or similar circumstances exist.

(C) Form FmHA or its successor agency under Public Law 103–354 440–34, ''Option to Purchase Real Property,'' will be used without modification in all cases for obtaining options under this subpart.

(D) The limitations of §1822.266(b) (1) and (2) of subpart F of part 1822 of this chapter (FmHA Instruction 444.8, paragraphs VI B (1) and (2)) concerning land purchase will apply to options purchased under this subpart.

V. Rates and Terms

(A) *Interest.* Loans will be made at an interest rate of 3 percent.

(B) *Repayment period.* Each SO loan will be repaid in one installment which will include the entire principal balance and accrued interest. The maximum repayment period for each SO loan will be the applicant's remaining TA grant funding period.

(1) A shorter repayment period will be established if SO funds will not be needed for the entire TA grant funding period.

(2) If a regular RHS loan is to be processed, the SO loan should be scheduled for repayment when RHS loan funds will be available to purchase the land and repay the amount of SO funds advanced on the option, unless SO loan funds will still be needed to purchase other options. Under no circumstances, however, will the repayment period exceed the applicant's remaining TA grant funding period.

VI. Processing Application

(A) *Form of application:* The application for assistance will be in the form of a letter to the FmHA or its successor agency under Public Law 103–354 County Supervisor having jurisdiction over the area of the proposed site to be optioned. The letter will be signed by the applicant or its authorized representative and contain, as a minimum, the following information:

(1) A copy of the proposed option that shows a legal description of the land, option price, purchase price, and terms of the option. If more than one site is to be purchased, a schedule of the proposed options should be included.

(2) Information to verify that a regular RHS loan cannot be processed in time to secure the option.

(3) Proposed method repayment of the SO loan.

(4) Resolution from the applicant's governing body authorizing the application for an SO loan from FmHA or its successor agency under Public Law 103–354.

(B) *Responsibility of the County Supervisor.* Upon receipt of an SO loan application, the County Supervisor will:

(1) Determine whether the applicant is eligible. If the applicant is not eligible, or the loan cannot be made for other reasons, the application may be rejected by the County Supervisor with the concurrence of the District Director. The reasons for the rejection should be clearly stated and provided, in writing to the applicant. The applicant will have the right to have the decision reviewed following the procedure established in subpart B of part 1900 of this chapter.

(2) Review and verify the accuracy of the information provided.

(3) Make an inspection and a memorandum appraisal of each proposed site ''as is.'' The appraisal will include a narrative statement as to whether the site has been recently sold, verify that the seller is the owner of the property, and indicate whether the purchase price is acceptable based on the selling price of similar properties in the area.

(4) Indicate whether or not it appears that, considering the location and cost of development, adequate building sites can be provided at reasonable costs.

(5) If the option is for a tract of land on which 5 or more sites are proposed, the County Supervisor will forward to the District Director with recommendations as defined in §1924.119 of subpart C of part 1924 of this chapter.

(6) If approval is recommended, prepare and have the applicant execute Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request for Obligation of Funds,'' for the amount needed. Copies of the form will be distributed as provided in the Forms Manual Insert (FMI).

(7) Forward the SO loan application and the applicant's TA application or TA docket to the State Director. The submission will include the appraisal report and the County Supervisor's comments and recommendations.

VII. Loan Approval Authority and State Office Actions

The State Director is authorized to approve SO loans developed in accordance with this exhibit. The approval or disapproval of the loan will be handled in the same manner as provided in §1822.272 of subpart F of part 1822 of this chapter (FmHA Instruction 444.8, paragraph XII). SO loans will be established in Automated Multiple Housing Accounting System (AMAS) using Form FmHA or its successor agency under Public Law 103–354 1944–51, ''Multiple Family Housing Obligation Fund Analysis''. The Issue loan/Grant checks transaction will be used to request a check for SO loans.

VIII. Loan Closing

(A) *General.* Loan closing instructions will be provided by the Office of the General Counsel (OGC) to assure that the Promissory Note is properly completed and executed.

The County Supervisor may then close the loan.

(B) *Security for the loan.* The loan will be secured by a Promissory Note properly executed by the grantee using Form FmHA or its successor agency under Public Law 103–354 1940–16, ''Promissory Note.'' A lien on the optioned real estate will not be taken.

(1) The ''kind of loan'' block on the note will read ''SO loan.''

(2) The note will be modified to show that the only installment on the loan will be the final installment.

(C) *Loan is closed.* The loan will be considered closed when the note is executed and the loan check delivered to the grantee.

IX. ESTABLISHMENT OF SO LOAN REVOLVING ACCOUNT

(A) Supervised bank accounts will not be used for SO loans.

(B) Grantee will deposit SO loan funds in a depository institution of its choice. The use of minority institutions is encouraged. Such funds will remain separate from any other account of the grantee and shall be established as an SO revolving account.

(C) Checks drawn on the revolving account will be for the sole purpose of purchasing land options and must be signed by at least two authorized officials of the grantee who have been properly bonded in accordance with § 1944.411 (e) and (g) of this subpart.

(D) Grantees will not expend funds for any options until the site and the option form have been reviewed and approved by the County Supervisor.

(1) SO funds will not be left unused in the revolving account in excess of 60 days.

(2) If the funds are not used for the intended purpose within the 60 days specified above, the unused portion will be refunded on the account.

(E) When funds become available for repayment of the SO loan, such funds will be deposited in the revolving account for the purchase of additional site options if needed. If such funds are not needed to purchase more options, they will be applied on the SO loan.

X. SOURCE OF FUNDS

SO loans will be funded from the self-help housing land development fund.

EFFECTIVE DATE NOTE: At 69 FR 69105, Nov. 26, 2004, Exhibit F to subpart I of part 1944 was amended in paragraph VII by revising the words ''Form FmHA or its successor agency under Public Law 103–354 1944–51'' to read ''Form RD 3560–51'', effective Feb. 24, 2005.

Subpart J [Reserved]

Subpart K—Technical and Supervisory Assistance Grants

SOURCE: 44 FR 36891, June 22, 1979, unless otherwise noted.

§ 1944.501 General.

(a) This subpart sets forth the policies and procedures for making grants under section 525(a) of the Housing Act of 1949, 42 U.S.C. 1490e(a), to provide funds to eligible applicants to conduct programs of technical and supervisory assistance (TSA) for low-income rural residents to obtain and/or maintain occupancy of adequate housing. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA or its successor agency under Public Law 103–354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA or its successor agency under Public Law 103–354 employee. This financial assistance may pay part or all of the cost of developing, conducting, administering, or coordinating effective and comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and families in benefiting from federal, state, and local programs in rural areas.

(b) The Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 will provide technical and supervisory grant assistance to applicants without discrimination because of race, color, religion, sex, national origin, age, marital status, or physical or mental handicap.

[44 FR 36891, June 22, 1979, as amended at 58 FR 228, Jan. 5, 1993]

§ 1944.502 Policy.

(a) The policy of the FmHA or its successor agency under Public Law 103–354 is to provide Technical and Supervisory Assistance to eligible applicants to do the following:

(1) Provide homeownership and financial counseling to reduce both the potential for delinquency by loan applicants and the level of payment delinquency by present FmHA or its successor agency under Public Law 103–354 housing loan borrowers; and

(2) Facilitate the delivery of housing programs to serve the most needy low-income families in rural areas of greatest need for housing.

(b) FmHA or its successor agency under Public Law 103–354 intends to fund projects which include counseling and delivery of housing programs.

(c) State Directors are given a strong role in the selection of grantees so this program can complement FmHA or its successor agency under Public Law 103–354's policies of targeting FmHA or its successor agency under Public Law 103–354 resources to areas of greatest need within their States.

(d) FmHA or its successor agency under Public Law 103–354 expects grant recipients to implement a TSA program and not to use TSA funds to prepare housing plans and strategies except as necessary to accomplish the specific objectives of the TSA project.

§ 1944.503 Objectives.

The objectives of the TSA Grant Program are to assist low-income rural families in obtaining adequate housing to meet their family's needs and/or to provide the necessary guidance to promote their continued occupancy of already adequate housing. These objectives will be accomplished through the establishment or support of housing delivery and counseling projects run by eligible applicants. This program is intended to make use of any available housing program which provides the low-income rural resident access to adquate rental properties or homeownership.

§§ 1944.504–1944.505 [Reserved]

§ 1944.506 Definitions.

References in this subpart to County, District, State, National and Finance Offices and to County Supervisor, District Director, State Director, and Administrator refer to FmHA or its successor agency under Public Law 103–354 offices and officials and should be read as prefaced by FmHA or its successor agency under Public Law 103–354. Terms used in this subpart have the following meanings:

(a) *Adequate housing.* A housing unit of adequate size and design to meet the specific needs of low-income families and the requirements governing the particular housing program providing the services or financial assistance.

(b) *Applicant or grantee.* Any eligible organization which applies for or receives TSA funds under a grant agreement.

(c) *Grant agreement.* The contract between FmHA or its successor agency under Public Law 103–354 and the applicant which sets forth the terms and conditions under which TSA funds will be made available.

(d) *Low-income family.* Any household, including those with one member, whose adjusted annual income, computed in accordance with 7 CFR part 3550, subpart B, does not exceed the maximum low-income limits specified in Appendix 9 of HB–1–3550 (available in any Rural Development office).

(e) *Organization.* (1) Public or private nonprofit corporations, agencies, institutions, Indian tribes, and other associations.

(2) A private nonprofit corporation with local representation from the area being served that is owned and controlled by private persons or interests and is organized and operated by private persons or interests for purposes other than making gains or profits for the corporation and is legally precluded from distributing any gains or profits to its members.

(f) *Rural area.* The definition in 7 CFR part 3550 applies.

(g) *Sponsored applicant.* An eligible applicant which has a commitment of financial and/or technical assistance to apply for the TSA program and to implement such a program from a state, county, municipality, or other governmental entity or public body.

(h) *Supervisory assistance.* Any type of assistance to low-income families which will assist those families in meeting the eligibility requirements for, or the financial and managerial responsibilities of, homeownership or tenancy in an adequate housing unit.

Such assistance must include, but is not limited to, the following activities:

(1) Assisting individual FmHA or its successor agency under Public Law 103–354 borrowers with financial problems to overcome delinquency and/or prevent foreclosure and assisting new low-income applicants to avoid financial problems through:

(i) Financial and budget counseling including advice on debt levels, credit purchases, consumer and cost awareness, debt adjustment procedures, and availablity of other financial counseling services;

(ii) Monitoring payment of taxes and insurance;

(iii) Home maintenance and managment; and

(iv) Other counseling based on the needs of the low-income families.

(2) Contracting and assisting low-income families in need of adequate housing by:

(i) Implementing an organized outreach program using available media and personal contacts;

(ii) Explaining available housing programs and alternatives to increase the awareness of low-income families and to educate the community as to the benefits which can accrue from improved housing;

(iii) Assisting low-income families locate adquate housing;

(iv) Providing construction supervision, training, and guidance to low-income families not involved in mutual self-help projects who are otherwise being assisted by the TSA project;

(v) Organizing local public or private nonprofit groups willing to provide adequate housing for low-income families; and

(vi) Providing assistance to families and organizations in processing housing loan and/or grant applications generated by the TSA program, including developing and packaging such applications for new construction, rehabilitation, or repair to serve low-income families.

(i) *Technical assistance.* Any specific expertise necessary to carry out housing efforts by or for low-income families to improve the quantity and/or quality of housing available to meet their needs. Such assistance should be specifically related to the supervisory assistance provided by the project, and may include, as appropriate, the following activities:

(1) Develop, or assist eligible applicants to develop, multi-housing loan and/or grant applications for new construction, rehabilitation, or repair to serve low-income families.

(2) Market surveys, engineering studies, cost estimates, and feasibility studies related to applications for housing assistance to meet the specific needs of the low-income families assisted under the TSA program.

[44 FR 36891, June 22, 1979, as amended at 46 FR 61990, Dec. 21, 1981; 50 FR 39967, Oct. 1, 1985; 51 FR 6393, Feb. 26, 1986; 59 FR 7193, Feb. 15, 1994; 67 FR 78328, Dec. 24, 2002]

§§ 1944.507–1944.509 [Reserved]

§ 1944.510 Applicant eligibility.

To be eligible to receive a grant, the applicant must:

(a) Be an organization as defined in § 1944.506(e).

(b) Have the financial, legal, administrative, and operational capacity to assume and carry out the responsibilities imposed by the grant agreement. To meet this requirement of actual capacity, it must either:

(1) Have necessary background and experience with proven ability to perform responsibly in the field of low-income rural housing development and counseling, or other business management or administrative experience which indicates an ability to provide responsible technical and supervisory assistance; or

(2) Be assisted by an organization which has such background experience and ability and which agrees in writing that it will provide, without charge, the assistance the applicant will need to carry out its responsibilities.

(c) Legally obligate itself to administer TSA funds, provide an adequate accounting of the expenditure of such funds, and comply with the grant agreement and FmHA or its successor agency under Public Law 103–354 regulations;

(d) Demonstrate an understanding of the needs of low-income rural families;

(e) Have the ability and willingness to work within established guidelines; and

(f) If the applicant is engaged in or plans to become engaged in any other activities, it must be able to provide sufficient evidence and documentation that it has adequate resources, including financial resources, to carry on any other programs or activities to which it is committed without jeopardizing the success and effectiveness of its TSA project.

§ 1944.511 [Reserved]

§ 1944.512 Authorized representative of the applicant.

FmHA or its successor agency under Public Law 103–354 will deal only with authorized representatives designed by the applicant. The authorized representatives must have no pecuniary interest in any of the following as they would relate in any way to the TSA grant: the award of any engineering, architectural, management, administration, or construction contracts; purchase of the furnishings, fixtures or equipment; or purchase and/or development of land.

NOTE: FmHA or its successor agency under Public Law 103–354 has designated the District Office as the primary point of contact for all matters relating to the TSA program and as the office responsbile for the administration of approved TSA projects.

§ 1944.513 [Reserved]

§ 1944.514 Comprehensive TSA grant projects.

(a) The rural area to be covered by the TSA project must be realistically serviceable by the applicant in terms of funding resources, manpower, and distances and generally should be limited to one to four counties within the service area of one District Office.

(b) Consideration of the following items may assist applicants develop TSA projects which meet the needs of low-income families in the proposed TSA service area: present population distribution, projected population growth or decline, the amount of inadequate housing, economic conditions, and trends of the rural areas concerned, and any other factors affecting the quantity and quality of housing currently available or planned for the area. Consideration must also be given to the needs and desires of the community; the financial and social condition of the individuals within the community; the needs of areas with a concentration of low-income minority families and the needs of FmHA or its successor agency under Public Law 103–354 borrowers who are delinquent in their housing loan payments; the availability of supporting services such as water, sewerage, health and educational facilities, transportation, recreational and community facilities, and the types of housing facilities and services presently available or planned to which the low-income families have or will have ready access.

(c) Each TSA applicant should consider the alternatives available to provide needed housing facilities and services for the area. Consideration should also be given to the recommendations and services available from local, state, federal governmental entities, and from private agencies and individuals.

(1) In no case should the TSA project deliberately conflict with or duplicate housing studies, plans, projects, or any other housing related activities in a rural area unless documentation shows these activities do not meet the needs of low-income families.

(2) Each TSA project should be coordinated to the extent possible with any comprehensive or special purpose plans and projects affecting low-income housing in the area.

(3) To the fullest extent possible, TSA projects should be coordinated with any housing-related activities currently being carried out in the area.

(d) TSA applicants must coordinate their proposals with the appropriate County and District Offices to be fully familiar with the needs of those offices and of the low-income families currently served by the County Offices.

§ 1944.515 [Reserved]

§ 1944.516 Grant purposes.

Grant funds are to be used for a housing delivery system and counseling program to include a comprehensive program of technical and supervisory assistance as set forth in the grant agreement and any other special conditions as required by FmHA or its successor agency under Public Law 103–

354. Uses of grant funds may include, but are not limited to:

(a) The development and implementation of a program of technical and supervisory assistance as defined in § 1944.506 (h) and (i).

(b) Payment of reasonable salaries of professional, technical, and clerical staff actively assisting in the delivery of the TSA project.

(c) Payment of necessary and reasonable office expenses such as office supplies and office rental, office utilities, telephone services, and office equipment rental.

(d) Payment of necessary and reasonable administrative costs such as workers' compensation, liability insurance, audit reports, travel to and attendance at FmHA or its successor agency under Public Law 103–354 approved training sessions, and the employer's share of Social Security and health benefits. Payments to private retirement funds are prohibited unless prior written authorization is obtained from the Administrator.

(e) Payment of reasonable fees for necessary training of grantee personnel. This may include the cost of travel and per diem to attend regional training sessions when authorized by the State Director.

(f) Other reasonable travel and miscellaneous expenses necessary to accomplish the objectives of the specific TSA grant which were anticipated in the individual TSA grant proposal and which have been included as eligible expenses at the time of grant approval.

§ 1944.517 [Reserved]

§ 1944.518 Term of grant.

TSA projects will be funded under one Grant Agreement for two years commencing on the date of execution of the Agreement by the State Director.

§ 1944.519 [Reserved]

§ 1944.520 Ineligible activities.

(a) Grant funds may not be used for:

(1) Acquisition, construction, repair, or rehabilitation of structures or acquisition of land, vehicles, or equipment.

(2) Replacement of or substitution for any financial support which would be available from any other source.

(3) Duplication of current services in conflict with the requirements of § 1944.514(c).

(4) Hiring personnel to perform construction.

(5) Buying property of any kind from families receiving technical or supervisory assistance from the grantee under the terms of the TSA grant.

(6) Paying for or reimbursing the grantee for any expenses or debts incurred before FmHA or its successor agency under Public Law 103–354 executes the grant agreement.

(7) Paying any debts, expenses, or costs which should be the responsibility of the individual families receiving technical and supervisory assistance.

(8) Any type of political activities.

(9) Other costs including contributions and donations, entertainment, fines and penalties, interest and other financial costs, legislative expenses and any excess of cost from other grant agreements.

(b) Advice and assistance may be obtained from the National Office where ineligible costs are proposed as part of the TSA project or where a proposed cost appears ineligible.

(c) The grantee may not charge fees or accept compensation or gratuities from TSA recipients for the grantee's assistance under this program.

§ 1944.521 [Reserved]

§ 1944.522 Equal opportunity requirements.

The policies and regulations contained in subpart E of part 1901 of this chapter apply to grants made under this subpart.

§ 1944.523 Other administrative requirements.

The following policies and regulations apply to grants made under this subpart:

(a) The policies and regulations contained in subpart F of part 1901 of this chapter regarding historical and archaeological properties.

(b) The policies and regulations contained in subpart G of part 1940 of this

chapter regarding Environmental Assessments.

[44 FR 36891, June 22, 1979, as amended at 48 FR 29121, June 24, 1983; 49 FR 3763, Jan. 30, 1984]

§ 1944.524 [Reserved]

§ 1944.525 Targeting of TSA funds to States.

(a) The Administrator will determine, based on the most current available information (generally that information used to determine the allocation to States of FmHA or its successor agency under Public Law 103–354 housing loan funds), those States with the highest degree of substandard housing and persons in poverty in rural areas eligible to receive FmHA or its successor agency under Public Law 103–354 housing assistance. The Administrator will distribute a portion of the available funds for TSA to these States, leaving the balance available for national competition.

(b) The Administrator will provide annual notice through a published Notice on the distribution of appropriated TSA funds, the number of preapplications to be submitted to the National Office from the State Offices, and the maximum grant amount per project.

§ 1944.526 Preapplication procedure.

(a) *Preapplication submission.* (1) All applicants will file an original and two copies of SF 424.1, ''Application for Federal Assistance (For Non-construction),'' and supporting information detailed below with the appropriate District Office serving the proposed TSA area. A preapplication packet including SF 424.1 is available in all District and State Offices.

(i) The applicant will provide informational copies of the preapplication to the County Supervisor(s) of the area to be served by the TSA project at the time of submittal to the appropriate District Office.

(ii) If the TSA area encompasses more than one District Office, the preapplication will be filed at the District Office which serves the area in which the grantee will provide the greatest amount of TSA efforts. Additional informational copies of the preapplication will be sent by the applicant to the other affected District Office(s).

(2) All preapplications shall be accompanied by the following information which will be used to determine the applicant's eligibility to undertake a TSA program and to determine whether the applicant might be funded.

(i) A narrative presentation of the applicant's proposed TSA program, including:

(A) The technical and supervisory assistance to be provided;

(B) The time schedule for implementing the program;

(C) The staffing pattern to execute the program and salary range for each position, existing and proposed;

(D) The estimated number of low-income and low-income minority families the applicant will assist in obtaining affordable adequate housing;

(E) The estimated number of FmHA or its successor agency under Public Law 103–354 borrowers who are delinquent or being foreclosed that the applicant will assist in resolving their financial problems relating to their delinquency;

(F) The estimated number of households which will be assisted in obtaining adequate housing in the TSA area through new construction and/or rehabilitation;

(G) Annual estimated budget for each of the two years based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, contracts, and other costs categories, detailing those costs for which the grantee proposes to use the TSA grant separately from non-TSA resources, if any;

(H) The accounting system to be used;

(I) The method of evaluation proposed to be used by the applicant to determine the effectiveness of its program;

(J) The sources and estimated amounts of other financial resources to be obtained and used by the applicant for both TSA activities and housing development and/or supporting facilities; and

(K) Any other information necessary to explain the manner of delivering the TSA assistance proposed.

(ii) Complete information about the applicant's previous experience and capacity to carry out the objectives of the proposed TSA program;

(iii) Evidence of the applicant's legal existence, including, in the case of a private nonprofit organization, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence one year or more; the names and addresses of the applicant's members, directors, and officers; and, if another organization is a member of the applicant-organization, its name, address, and principal business.

(iv) For a private nonprofit entity, a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant. If the applicant is an organization being assisted by another private nonprofit organization, the same type of financial statement should also be provided by that organization.

(v) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and actual number of both low-income and low-income minority families and substandard housing), the need for the type of technical and supervisory assistance being proposed, the method of evaluation to be use by the applicant in determining the effectiveness of its efforts (as related to paragraph (a)(2)(i) of this section), and any other information necessary to specifically address the selection criteria in § 1944.529.

(vi) A list of other activities the applicant is engaged in and expects to continue and a statement as to any other funding and whether it will have sufficient funds to assure continued operation of the other activities for at least the period of the TSA grant agreement.

(3) An applicant should submit written statements from the county, parish, or township governments of the area affected that the project is beneficial and does not duplicate current activities. If the local governmental units will not provide such statements, the applicant will prepare and include with its preapplication a summary of its analysis of alternatives considered under § 1944.514(c). However, Indian nonprofit organization applicants should obtain the written concurrence of the Tribal governing body in lieu of the concurrence of the county governments.

(4) Sponsored applicants should submit a written commitment for financial and/or technical assistance from their sponsoring entity.

(5) An original and one copy of Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information.''

(b) *District Office processing of preapplications.* (1) The District Director with whom the preapplication is filed will review the preapplication, SF 424.1, and any other supporting information from the applicant. The District Director will also:

(i) Complete any required environmental review procedures as specified in subpart G of part 1940 of this chapter and attach to the application.

(ii) Prepare a review of the project in accordance with subpart F of part 1901 of this chapter and attach it to the preapplication.

(2) All District Directors and County Supervisors receiving informational copies of the preapplication should submit their comments within five working days to the District Director with whom the preapplication if filed.

(3) The original and one copy of the preapplication, together with the District Director's written comments and recommendations, reflecting the criteria used in § 1944.529 and exhibit C of this subpart, will be forwarded to the State Director within ten working days of receipt of the preapplication.

(c) *State Office processing of preapplications.* (1) Upon receipt of a

preapplication, the State Office will review and evaluate the preapplication and accompanying documents in accordance with the project selection criteria of §1944.529 and exhibit B of this subpart. The State Office will also:

(i) Make a determination on Form FmHA or its successor agency under Public Law 103–354 1940–21, Form FmHA or its successor agency under Public Law 103–354 1940–22 or Class II Environmental Assessment in accordance with subpart G of part 1940 of this chapter.

(ii) Prepare an historical and archaeological assessment in accordance with §1901.255 (b) and (c) of subpart F of part 1901 of this chapter.

(2) Within 30 days of the closing date for receipt of preapplications as published in the FEDERAL REGISTER, the State Director will forward to the National Office the original preapplication(s) and supporting documents of the selected applicant(s), including any comments received in accordance with 7 CFR part 3015 subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities'' (See FmHA Instruction 1940–J, available in any FmHA or its successor agency under Public Law 103–354 Office), and the comments and recommendations of the County Office(s), District Office(s), and the State Office. The State Office will submit the preapplication(s) in accordance with the annual notice provided for by §1944.525 (b) of this subpart.

(3) Concurrently the State Office will send a copy of the selected applicant's(s') SF 424.1 and relevant documents to the Regional Office of the General Counsel (OGC) requesting a legal determination be made of the applicant's legal existence and authority to conduct the proposed program of technical and supervisory assistance.

(4) The State Office will notify other applicants that their preapplications will not selected and advise them of their appeal rights under subpart B of part 1900 of this chapter.

(d) *National Office processing of preapplications.* (1) Preapplications for this program from those States targeted under §1944.525 will be reviewed by the National Office for completeness and compliance with this subpart. If a grant is recommended, the National Office will return the preapplication(s) with any comments and recommendations to the State Office and advise that office to proceed with the issuance of Form AD–622, ''Notice of Preapplication Review Action,'' and to request the applicant to prepare SF 424.1 for submission to the District Office. If a grant is not recommended, the National Office will advise the State Office of action to take.

(2) Preapplications from States which are not targeted in accordance with §1944.525 will be reviewed for completeness and compliance with this subpart and then evaluated in accordance with the project selection criteria of §1944.529. Those preapplications which are selected, and for which funds are available, will be returned to the appropriate State Office with any National Office comments and recommendations. The State Office will be advised to proceed with the issuance of SF 424.1 and to request the applicant to prepare Form AD–623 for submission to the District Office as detailed in §1944.531.

(3) Those preapplications for which funds are not available will be returned to the appropriate State Office which will notify each applicant and advise the applicant of its appeal rights under subpart B of part 1900 of this chapter.

(4) State Directors will be advised of the National Office's action on their selected preapplication within 30 days of receipt of all preapplications.

[47 FR 40400, Sept. 14, 1982, as amended at 48 FR 29121, June 24, 1983; 49 FR 3763, Jan. 30, 1984; 55 FR 13503 and 13504, Apr. 11, 1990; 55 FR 50081, Dec. 4, 1990]

§1944.527 [Reserved]

§1944.528 Preapplication submission deadline.

Dates governing the review and selection of TSA grant preapplications will be published annually in the FEDERAL REGISTER. Preapplications received after that time will not be considered for funding. For use of fiscal year 1979 funds, the deadline for submission of preapplications will be 45 calendar days from date of publication of final regulations.

§ 1944.529 Project selection.

(a) Projects must meet the following criteria:

(1) Provide a program of supervisory assistance as defined in § 1944.506(h), and

(2) Serve areas with a concentration of substandard housing and low-income and low-income minority households.

(b) In addition to the items listed in paragraph (a) of this section, the following criteria will be considered in the selection of grant recipients:

(1) The extent to which the project serves areas with concentrations of FmHA or its successor agency under Public Law 103–354 single family housing loan borrowers who are delinquent in their housing loan payments and/or threatened with foreclosure.

(2) The capability and past performance demonstrated by the applicant in administering its programs.

(3) The effectiveness of the current efforts by the applicant to assist low-income families in obtaining adequate housing.

(4) The extent to which the project will provide or increase the delivery of housing resources to low-income and low-income minority families in the area who are not currently occupying adequate housing.

(5) The services the applicant will provide that are not presently available to assist low-income families in obtaining or maintaining occupancy of adequate housing and the extent of duplication of technical and supervisory assistance activities currently provided for low-income families.

(6) The extent of citizen and local government participation and involvement in the development of the preapplication and project.

(7) The extent of planned coordination with other Federal, State, or local technical and/or supervisory assistance programs.

(8) The extent to which the project will make use of other financial and contributions-in-kind resources for both technical and supervisory assistance and housing development and supporting facilities.

(9) Any comments received in accordance with 7 CFR part 3015 subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities.'' See FmHA Instruction 1940–J, available in any FmHA or its successor agency under Public Law 103–354 office.

(10) The extent to which the project will be cost effective, including but not limited to the ratio of personnel to be hired by the applicant to the cost of the project, the cost, both direct and indirect, per person benefiting from the project, and the expected benefits to low-income families from the project.

(11) The extent to which the proposed staff and salary ranges, including qualifications, experience, proposed hiring schedule and availability of any prospective employees, will meet the objectives of the proposed TSA program.

(12) The anticipated capacity of the applicant to implement the proposed time schedule for starting and completing the TSA program and each phase thereof.

(13) The adequacy of the records and practices, including personnel procedures and practices, that will be established and maintained by the applicant during the term of the agreement.

(c) Among the projects proposed by private nonprofit entities, preference will be given to sponsored applicants.

[47 FR 40400, Sept. 14, 1982, as amended at 48 FR 29121, June 24, 1983]

§ 1944.530 [Reserved]

§ 1944.531 Applications submission.

(a) Upon notification that the applicant has been tentatively selected for funding, the State Office will forward to the applicant a signed Form AD–622 and provide SF 424.1 with instructions to the applicant for preparation of an application.

(b) Upon receipt of Form AD–622, the applicant will submit an application in an original and 2 copies on Form SF 424.1, and provide whatever additional information is requested to the District Office within 30 days.

(c) Upon receipt of an application on SF 424.1 by the District Office, a docket shall be assembled which will include the following:

(1) Form SF 424.1 and the information submitted in accordance with § 1944.526(a)(2).

(2) Form AD–622.

(3) Any comments received in accordance with 7 CFR part 3015 subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities.'' See FmHA Instruction 1940–J, available in any FmHA or its successor agency under Public Law 103–354 office.

(4) SF 424.1.

(5) OGC legal determination made pursuant to § 1944.526(c)(3).

(6) Grant Agreement.

(7) Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request for Obligation of Funds.''

(8) Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement.''

(9) Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement.''

(10) Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information.''

(11) Form FmHA or its successor agency under Public Law 103–354 1940–22, ''Environmental Checklist for Categorical Exclusions,'' Form FmHA or its successor agency under Public Law 103–354 1940–21, ''Environmental Assessment for Class I Actions'' or exhibit H, subpart G of part 1940 entitled, Environmental Assessment for Class II Actions.

(12) The historical and archaeological assessment.

(13) The detailed budget for the agreement period based upon the needs outlined in the proposal and the comments and recommendations by FmHA or its successor agency under Public Law 103–354.

[47 FR 40400, Sept. 14, 1982, as amended at 48 FR 29121, June 24, 1983; 49 FR 3763, Jan. 30, 1984; 55 FR 13503 and 13504, April 11, 1990]

§ 1944.532 [Reserved]

§ 1944.533 Grant approval and announcement.

Grant approval and announcement will be accomplished under the following procedure. The Administrator may modify this section if necessary to obligate funds in a timely and efficient manner.

(a) The District Office will review the docket to determine whether the application complies with these regulations and is consistent with the information and supporting documents submitted with the preapplication and any comments and recommendations of the State and National Offices.

(b) If major problems occur during the development of the docket, the District Office will call upon the State Office for assistance.

(c) If a grant is recommended, Form FmHA or its successor agency under Public Law 103–354 1940–1 and the Grant Agreement will be prepared by the District Office and forwarded to the applicant for signature as authorized in its authorizing resolution. Exhibit A, Grant Agreement, is a part of these regulations.

(d) When Form FmHA or its successor agency under Public Law 103–354 1940–1 and the Grant Agreement are received from the applicant and signed by the applicant, the docket will be forwarded to the State Director.

(e) Exhibit A to FmHA Instruction 2015–C (available in any FmHA or its successor agency under Public Law 103–354 office) will be prepared and sent to the Director of Information in the National Office.

(f) If the State Director approves the project, the following actions will be taken in the order listed:

(1) The State Director, or the State Director's designee, will telephone the Finance Office Check Request Station requesting that grant funds for a particular project be obligated. Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in the rejection of the request for obligation. After the security code is furnished, the required information from Form FmHA or its successor agency under Public Law 103–354 1940–1 will be furnished to the Finance Office. Upon receipt of the telephone request for obligation of funds, the Finance Office will record all information necessary to process the request for obligation in addition to the date and time of the request.

(2) The individual making the request will record the date and time of the request and sign section 37 of Form

FmHA or its successor agency under Public Law 103–354 1940–1.

(i) The Finance Office will notify the State Office by telephone when funds are reserved and of the date of obligation. If funds cannot be reserved for a project, the Finance Office will notify the State Office that funds are not available. The obligation date will be six working days from the date the request for obligation is processed.

(ii) The Finance Office will terminally process telephone obligation requests. Those requests received prior to 2:30 p.m. Central Time will be processed on the date of the request. Those requests received after 2:30 p.m., to the extent possible, will be processed on the day received; however, there may be instances where the obligation will be processed on the next working day.

(iii) The Finance Office will mail Form FmHA or its successor agency under Public Law 103–354 440–57, ''Acknowledgement of Obligated Funds/Check Request,'' to the State Director, confirming the reservation of funds with the obligation date inserted as required by Item 9 on the Forms Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103–354 440–57.

(iv) Form FmHA or its successor agency under Public Law 103–354 1940–1 will not be mailed to the Finance Office.

(3) The State Director will notify the Director of Information in the National Office with a recommendation that the project announcement be released.

(4) An executed form FmHA or its successor agency under Public Law 103–354 1940–1 will be sent to the applicant along with an executed copy of the Grant Agreement and scope of work on or before the date funds are obligated.

(i) The actual date of applicant notification will be entered on the original of Form FmHA or its successor agency under Public Law 103–354 1940–1 and the original of the form will be included as a permanent part of the file.

(ii) Standard Form 270, ''Request for Advance or Reimbursement,'' will be sent to the applicant for completion and returned to FmHA or its successor agency under Public Law 103–354.

(5) If it is determined that a project will not be funded or if major changes in the scope of the project are made after release of the approval announcement, the State Director will notify the Administrator and the Director, Legislative Affairs and Public Information Staff (LAPIS) by telephone or electronic mail, giving the reasons for such action. The Director, LAPIS, will inform all parties who were notified by the project announcement if the project will not be funded or of major changes in the project using the procedure similar to the announcement process. Form FmHA or its successor agency under Public Law 103–354 1940–10, ''Cancellation of U.S. Treasury Check and/or Obligation,'' will not be submitted to the Finance Office until five working days after notifying the Administrator and the Director, LAPIS.

(6) Upon receipt from the grantee of a properly completed SF–270, Form FmHA or its successor agency under Public Law 103–354 440–57 will be completed and the check request will be called to the Finance Office Check Request Station in accordance with the FMI for Form FmHA or its successor agency under Public Law 103–354 440–57.

[44 FR 36891, June 22, 1979, as amended at 47 FR 36415, Aug. 20, 1982; 48 FR 30946, July 6, 1983; 55 FR 13504, Apr. 11, 1990]

§ 1944.534 [Reserved]

§ 1944.535 Cancellation of an approved grant.

(a) The District Director will prepare Form FmHA or its successor agency under Public Law 103–354 1940–10, ''Cancellation of U.S. Treasury Check and/or Obligation,'' in an original and two copies (three copies if the technical and supervisory assistance (TSA) check has been received in the District Office from the Disbursing Office). Form FmHA or its successor agency under Public Law 103–354 1940–10 will be sent to the State Director (original and two copies with the check if the Treasury check is being canceled) with the reasons for requesting cancellation.

(b) If the State Director approves the request for cancellation, he/she will forward the original request for cancellation (original and one copy of Form FmHA or its successor agency under Public Law 103–354 1940–10 with

the check if the Treasury check is being canceled) to the Finance Office. If the TSA check is received in the District Office, the District Director will return it to the Finance Office with an original and one copy of Form FmHA or its successor agency under Public Law 103–354 1940–10.

(c) The District Director will notify the applicant of the cancellation and, unless the applicant requested the cancellation, its right to appeal in accordance with the FmHA or its successor agency under Public Law 103–354 Appeal Procedure contained in subpart B of part 1900 of this chapter.

[44 FR 36891, June 22, 1979, as amended at 47 FR 36415, Aug. 20, 1982]

§ 1944.536 Grant closing.

Closing is the process by which FmHA or its successor agency under Public Law 103–354 determines that applicable administrative actions have been completed and the Grant Agreement is signed. The Grant Agreement (Exhibit A) will be executed by the State Director at the time the Form FmHA or its successor agency under Public Law 103–354 1940–1 and Grant Agreement is sent to the Grantee in accordance with §1944.533 (f)(4). An executed original of the Grant Agreement shall be sent to the District Director and one copy to the grantee.

[44 FR 36891, June 22, 1979, as amended at 55 FR 13504, April 11, 1990]

§ 1944.537 [Reserved]

§ 1944.538 Extending and revising grant agreements.

(a) All requests extending the original grant agreement or revising the TSA program must be in writing. Such requests will be processed through the District Director. Any such requests will be processed in accordance with the processing procedure specified in §1944.526 (b) and (c) of this subpart. The State Office will respond to the applicant within 30 days of receipt of the request in the State Office.

(b) An extension of a grant beyond the two year term may be granted by the State Director when:

(1) There are grant funds remaining and the grantee requests an extension at the end of the grant period,

(2) The grantee has demonstrated its ability to conduct a comprehensive program of technical and supervisory assistance in accordance with the terms of its grant agreement and in a manner satisfactory to FmHA or its successor agency under Public Law 103–354,

(3) The grantee is likely to complete the goals outlined in the initial proposal,

(4) There is an unmet need to continue the delivery of the technical and supervisory assistance being provided by the grantee, and

(5) The District Director recommends continuation of the grant until the grantee has expended all of the remaining grant funds.

(c) Upon approval of the extension, the State Director will authorize the District Director to amend the ending date of the grant agreement and revise the budgets, if necessary, on behalf of the Government.

(d) If the grant agreement must be revised and amended other than by extension, including any changes in the scope and objectives of the TSA program, the grantee will submit a revised budget and TSA program together with any information necessary to justify its requests. Such requests will be submitted to the State Director through the District Director.

(e) The State Office will advise the National Office of all requests to extend or modify the original grant agreement. Prior concurrence of the National Office is not required unless the State Director so desires, in which case the State Director will advise the applicant that the request has been forwarded to the National Office for concurrence. The State Director's recommendation will accompany such requests.

(f) Exhibit D to this subpart shall be executed upon approval of an extension of the grant period, or significant change in either the project budget or the objectives of the approved technical and supervisory activities.

(g) If extension or modification is not approved, the State Office will notify the applicant in writing of the decision and advise the applicant of the appeal procedures under subpart B of part 1900 of this chapter.

§ 1944.539 [Reserved]

§ 1944.540 Requesting TSA checks.

(a) The initial TSA check may cover the applicant's needs for the first calendar month. If the first calendar month is a partial month, the check will cover the needs for the partial month and the next whole month.

(b) The initial advance of TSA grant funds may not be requested simultaneously with the request for obligation of TSA grant funds. The initial advance must be requested on Form FmHA or its successor agency under Public Law 103–354 440–57 in accordance with the FMI after it has been received from the Finance Office indicating that funds have been obligated.

(c) All advances will be requested only after receipt of Standard Form 270 from the grantee. The amount requested must be in accordance with the detailed budget, including amendments, as approved by FmHA or its successor agency under Public Law 103–354. Standard Form 270 will not be submitted more frequently than once every 30 days. In no case will additional funds be advanced if the grantee fails to submit required reports or is in violation of the grant agreement.

§ 1944.541 Reporting requirements.

(a) Standard Form 269, ''Financial Status Report,'' and a project performance report will be required of all grantees on a quarterly basis. All grantees shall submit an original and two copies of these reports to the District Director. The project performance reports will be submitted not later than January 15, April 15, July 15, and October 15 of each year.

(b) As part of the grantee's preapplication submission required by § 1944.526(a)(2)(i), the grantee established the objectives of its TSA program including the estimated number of low-income families to be assisted by the TSA program and established its method of evaluation to determine the effectiveness of its program. The project performance report should relate the activities during the report period to the project's objectives and analyze the effectiveness of the program. Accordingly, the report should include, but need not be limited to the following:

(1) A comparison of actual accomplishments to the objectives established for that period, including:

(i) The number of low-income families assisted in improving their housing conditions or in obtaining affordable adequate housing.

(ii) The number of FmHA or its successor agency under Public Law 103–354 borrowers who were delinquent or being foreclosed who were assisted in resolving their financial problems.

(iii) The number of households assisted in obtaining adequate housing by the TSA program through new construction and/or rehabilitation.

(2) Reasons why, if established objectives are not met.

(3) Problems, delays, or adverse conditions which will materially affect attainment of the TSA grant objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Federal assistance needed to resolve the situation.

(4) Objectives established for the next reporting period, sufficiently detailed to identify the type of assistance to be provided, the number and type of families to be assisted, etc.

(c) These reports will be reviewed by the District Director to determine satisfactory progress. The District Director will work with the grantee to resolve any problems. The District Director will forward the original and one copy of the reports with any comments and recommendations to the State Director within ten working days of receipt.

(d) The State Director will review the reports, comments, and recommendations forwarded by the District Director within five working days of receipt.

(1) If the reports indicate satisfactory progress, the State Director will forward the original to the National Office with any comments or suggestions and return the remaining copy to the grantee through the District Director with a copy of the comments or recommendations.

(2) If the reports indicate unsatisfactory progress, the State Director will recommend appropriate action to resolve the indicated problem(s). The State Director has the discretion to not authorize further advances where the progress of the project is unsatisfactory. The State Director will notify the grantee through the District Director of a decision not to authorize further advances and advise the grantee of its appeal rights under subpart B of part 1900 of this chapter.

(3) A copy of the memorandum returning the unsatisfactory reports will be forwarded to the National Office together with the State Director's decision, comments and recommendations, if appropriate.

(e) The grantee will complete a final Standard Form 269 and a final performance report upon termination or expiration of the grant agreement.

§ 1944.542 [Reserved]

§ 1944.543 Grant monitoring.

Each grant will be monitored by FmHA or its successor agency under Public Law 103–354 to ensure that the grantee is complying with the terms of the grant and that the TSA project activity is completed as approved. Ordinarily, this will involve a review of quarterly and final reports by FmHA or its successor agency under Public Law 103–354 and review by the appropriate District Director.

§ 1944.544 [Reserved]

§ 1944.545 Additional grants.

An additional grant may be made to an applicant that has previously received a TSA grant and has achieved or nearly achieved the goals established for the previous grant by submitting a new proposal for TSA funds. The additional grant application will be processed as if it were an initial application. Upon approval, a new grant agreement will be required and the grant will be coded as an initial grant on Form FmHA or its successor agency under Public Law 103–354 440–1.

§ 1944.546 [Reserved]

§ 1944.547 Management assistance.

The District Director will see that each TSA grantee receives management assistance to help achieve a successful program.

(a) TSA employees who will be contacting and assisting families will receive training in packaging single family housing and Rural Rental Housing loans when, or very shortly after, they are hired so that they can work effectively.

(b) TSA employees who will provide counseling, outreach, and other technical and supervisory assistance will receive training on FmHA or its successor agency under Public Law 103–354 policies, procedures, and requirements appropriate to their positions and the type of assistance the grantee will provide at the outset of the grant.

(c) Training will be provided by FmHA or its successor agency under Public Law 103–354 employees and/or outside sources approved by FmHA or its successor agency under Public Law 103–354 when the technical and supervisory assistance involves rural housing programs other than FmHA or its successor agency under Public Law 103–354 programs. Appropriate training of TSA employees should be anticipated during the planning stages of the grant and the reasonable cost of such training included in the budget.

(d) The District Director, in cooperation with the appropriate County Supervisor(s), should coordinate the management assistance given to the TSA grantee in a manner which is timely and effective. This will require periodic meetings with the grantee to discuss problems being encountered and offer assistance in solving these problems; to discuss the budget, the effectiveness of the grant, and any other unusual circumstances affecting delivery of the proposed TSA services; to keep the grantee aware of procedural and policy changes, availability of funds, etc.; and to discuss any other matters affecting the availability of housing opportunities for low-income families.

(e) The District Director will advise the grantee of the options available to bring the delinquent borrowers' accounts current and advise the grantee

that the appropriate County Supervisor retains all approval authority for any resolution of the delinquent accounts and all other authority currently available to remedy delinquent accounts.

§ 1944.548 Counseling consent by FmHA or its successor agency under Public Law 103–354 single family housing borrowers.

(a) Subsequent to execution of the TSA grant agreement, the County Supervisor(s) serving the TSA project area will contact the delinquent FmHA or its successor agency under Public Law 103–354 single family housing borrowers who appear to be in need of supervisory assistance as defined in § 1944.506(h)(1). Such contact will indicate the availability of the counseling services of the grantee and solicit the borrower's participation in the program. Exhibit E should be used in contacting and/or discussing counseling with the borrowers.

(b) Upon indication of the borrower's willingness to participate in the program by his or her signature on exhibit E or similar letter or statement, the County Supervisor will make available to the grantee (at no cost) the borrower's FmHA or its successor agency under Public Law 103–354 loan history including the following information:

(1) Name, address, and telephone number;

(2) Status of the account including the amount of the loan, the repayment schedule, and the amount of the delinquency; and

(3) Other information needed for counseling purposes which may be provided in accordance with FmHA Instruction 2018–F.

§ 1944.549 Grant evaluation, closeout, suspension, and termination.

(a) Grant evaluation will be an ongoing activity performed by both the grantee and FmHA or its successor agency under Public Law 103–354. The grantee will perform self-evaluations by preparing periodic project performance reports in accordance with § 1944.541. FmHA or its successor agency under Public Law 103–354 will also review all reports prepared and submitted by the grantee in accordance with the grant agreement and this part.

(b) Within forty-five (45) days after the grant ending date, the grantee will complete closeout procedures as specified in the grant agreement.

(c) The grant can also be terminated before the grant ending date for the causes specified in the grant agreement. No further grant funds will be disbursed when grant suspension or termination procedures have been initiated in accordance with the grant agreement.

§ 1944.550 [Reserved]

EXHIBIT A TO SUBPART K OF PART 1944—GRANT AGREEMENT—TECHNICAL AND SUPERVISORY ASSISTANCE

This Agreement dated _____ is between _____ (name), _____ (address), (Grantee) and the United States of America acting through the Farmers Home Administration (Grantor or FmHA) or its successor agency under Public Law 103–354. The Grantor agrees to grant to Grantee a sum not to exceed $_____ subject to the terms and conditions established by the Grantor: *Provided, however,* That the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. The grantee may appeal this decision in accordance with the FmHA or its successor agency under Public Law 103–354 Appeal Procedure contained in subpart B of part 1900 of this chapter. In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 525(a) of the Housing Act of 1949 for the purpose of providing funds to eligible nonprofit applicants (grantees) to pay part or all of the cost of developing, conducting, administering, or coordinating comprehensive programs of technical and supervisory assistance (TSA) which will aid needy low-income individuals and families in benefiting from Federal, State and local housing programs in rural areas, the Grantee will provide such a program in accordance with the terms of this agreement and applicable Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 regulations.

PART A—DEFINITIONS:

1. *Beginning date* means the date when work under this grant will commence. Such

date is set forth in paragraph 2 of part B of this Agreement.

2. *Ending date* means the date when all work under this agreement is scheduled to be completed. It is also the latest date grant funds will be provided under this agreement, without an approved extension. Such date is set forth in paragraph 2 of part B of this Agreement.

3. *Disallowed costs* are those charges to a grant which the FmHA or its successor agency under Public Law 103–354 determines cannot be authorized in accordance with applicable Federal costs principles or other conditions contained in this Agreement.

4. *Grant closeout* is the process by which the grant operation is concluded at the expiration of the grant period or following a decision to terminate the grant.

5. *Termination* of a grant means the cancellation of Federal assistance, in whole or in part, under a grant at any time before the date of completion.

PART B—TERMS OF AGREEMENT:

Grantor and grantee agree:

1. This agreement shall be effective when executed by both parties.

2. The TSA activities approved by FmHA or its successor agency under Public Law 103–354 shall commence not later than _____, and shall be completed by _____, unless earlier terminated under paragraph B 18 below, or extended.

3. Grantee shall carry out the TSA activities described in the application docket which is made a part of this Agreement. Grantee will be bound by the conditions set forth in the docket and the further conditions set forth in this Agreement. If any of the conditions in the docket are inconsistent with those in the Agreement, the latter will govern. A change of any conditions must be in writing and must be signed by an authorized representative of FmHA or its successor agency under Public Law 103–354.

4. Grantee shall use grant funds only for the purpose and activities specified in FmHA or its successor agency under Public Law 103–354 regulations and in the application docket approved by FmHA or its successor agency under Public Law 103–354 including the approved budget. Any uses not provided for in the approved budget must be approved in writing by FmHA or its successor agency under Public Law 103–354 in advance.

5. If the Grantee is a private nonprofit corporation, expenses charged for travel or per diem will not exceed the rates paid FmHA or its successor agency under Public Law 103–354 employees for similar expenses. If the Grantee is a public body, the rates will be those that are allowable under the customary practice in the government of which the grantee is a part; if none are customary, the FmHA or its successor agency under Public Law 103–354 rates will be the maximum allowed.

6. Grant funds will not be used for any of the following:

(a) To pay obligations incurred before the effective date of this Agreement.

(b) To pay obligations incurred after the grant termination or ending date.

(c) Entertainment purposes.

(d) To pay for capital assets, the purchase of real estate or vehicles, improvement or renovation of space, or repair or maintenance of privately owned vehicles.

(e) Any other purpose specified in 7 CFR 1944.520.

7. Grant funds shall not be used to replace any financial support previously provided or assured from any other source.

8. Disbursal of grants will be governed as follows:

(a) In accordance with Treasury Circular 1075 (fourth revision) part 205, chapter II of title 31 of the Code of Federal Regulations, grant funds will be provided by FmHA or its successor agency under Public Law 103–354 as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by direct Treasury check to the Grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated in OMB Circular A–102 (42 FR 45828, September 12, 1977) for State and local governments and OMB Circular A–110 (41 FR 32016, July 30, 1976) for nonprofit organizations.

(b) Cash advances to the Grantee shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the Grantee in carrying out the purpose of the planned project.

(c) Grant funds should be promptly refunded to the FmHA or its successor agency under Public Law 103–354 and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) Will be disbursed by the recipient organization within seven calendar days from the date of the Treasury check, or

(ii) Are less than $10,000 and will be disbursed within 30 calendar days from the date of the Treasury check.

(d) Grantee shall provide satisfactory evidence to FmHA or its successor agency under Public Law 103–354 that all officers of the Grantee organization authorized to receive and/or disburse Federal funds are covered by satisfactory fidelity bonds sufficient to protect the Grantor's interests.

(e) Grant funds will be placed in the Grantee's bank account(s) until disbursed.

9. the Grantee will submit Performance and Financial reports as indicated below to

the appropriate FmHA or its successor agency under Public Law 103–354 District Office:

(a) As needed, but not more frequently than once every 30 days, an original and 2 copies of Standard Form 270, ''Request for Advance or Reimbursement.''

(b) Quarterly, (not later than January 15, April 15, July 15, and October 15 of each year) an original and 2 copies of Standard Form 269, ''Financial Status Report,'' and a Project Performance report in accordance with §1944.541 of this subpart.

(c) Within forty-five (45) days after the termination or expiration of the grant agreement, an original and 2 copies of Standard Form 269, and a final Project Performance report which will include a summary of the project's accomplishments, problems, and planned future activities of the Grantee for TSA. Final reports may serve as the last quarterly report.

(d) FmHA or its successor agency under Public Law 103–354 may require performance reports more frequently if it deems necessary.

10. In accordance with FMC 74–4, Attachment B, compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

11. If the grant exceeds $100,000, transfers among direct cost budget categories totaling more than 5 percent of the total budget must have prior written approval by the appropriate District Director.

12. Results of the program assisted by grant funds may be published by the grantee without prior review by FmHA or its successor agency under Public Law 103–354, provided that such publications acknowledge the support provided by funds pursuant to the provisions of Title V of the Housing Act of 1949 and that five copies of each such publication are furnished to the District Director.

13. Grantee certifies that no person or organization has been employed or retained to solicit or secure this grant for a commission, percentage, brokerage, or contingent fee.

14. No person in the United States shall, on the grounds of race, creed, color, sex, marital status, age, national origin, or mental or physical handicap, be excluded from participating in, be denied the proceeds of, or be subject to discrimination in connection with the use of grant funds. Grantee will comply with pertinent nondiscrimination regulations of FmHA or its successor agency under Public Law 103–354.

15. In all hiring or employment made possible by or resulting from this grant, Grantee: (a) Will not discriminate against any employee or applicant for employment because of race, creed, color, sex, marital status, national origin, age, or mental or physical handicap, and (b) will take affirmative action to insure that employees are treated during employment without regard to their race, creed, color, sex, marital status, national origin, age, or mental or physical handicap. This requirement shall apply to, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In the event Grantee signs a contract related to this grant which would be covered by any Executive Order, law, or regulation prohibiting discrimination, Grantee shall include in the contract the ''Equal Employment Clause'' as specified by FmHA or its successor agency under Public Law 103–354.

16. The grantee accepts responsibility for accomplishing the TSA program as submitted and included in the application docket. The Grantee shall also:

(a) Endeavor to coordinate and provide liaison with State and local housing organizations, where they exist.

(b) Provide continuing information to FmHA or its successor agency under Public Law 103–354 on the status of Grantee programs, projects, related activities, and problems.

(c) The Grantee shall inform the Grantor as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, and any Grantor assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

17. Grant closeout and termination procedures will be as follows:

(a) Promptly after the date of completion or a decision to terminate a grant, grant closeout actions are to be taken to allow the orderly discontinuation of Grantee activity.

(i) The grantee shall immediately refund to FmHA or its successor agency under Public Law 103–354 any uncommitted balance of grant funds.

(ii) The Grantee will furnish to FmHA or its successor agency under Public Law 103–354 within 45 days after the date of completion of the grant a Standard Form 269 and all financial, performance, and other reports required as a condition of the grant.

(iii) The Grantee shall account for any property acquired with TSA grant funds, or otherwise received from FmHA or its successor agency under Public Law 103–354.

(iv) After the grant closeout, FmHA or its successor agency under Public Law 103–354 retains the right to recover any disallowed costs which may be discovered as a result of an audit.

(b) When there is reasonable evidence that the Grantee has failed to comply with the terms of this Agreement, the State Director can, on reasonable notice, terminate the grant pursuant to paragraph (c) below and withhold further payments or prohibit the Grantee from further obligating grant funds. FmHA or its successor agency under Public Law 103–354 may allow all necessary and proper costs which the Grantee could not reasonably avoid.

(c) Grant termination will be based on the following:

(i) *Termination for cause.* This grant may be terminated in whole, or in part, at any time before the date of completion, whenever FmHA or its successor agency under Public Law 103–354 determines that the Grantee has failed to comply with the terms of the Agreement. The reasons for termination may include, but are not limited to, such problems as:

(A) Failure to make satisfactory progress in attaining grant objectives.

(B) Failure of Grantee to use grant funds only for authorized purposes.

(C) Failure of Grantee to submit adequate and timely reports of its operation.

(D) Violation of any of the provisions of any laws administered by FmHA or its successor agency under Public Law 103–354 or any regulation issued thereunder.

(E) Violation of any nondiscrimination or equal opportunity requirement administered by FmHA or its successor agency under Public Law 103–354 in connection with any FmHA or its successor agency under Public Law 103–354 programs.

(F) Failure to maintain an accounting system acceptable to FmHA or its successor agency under Public Law 103–354.

(ii) *Termination for convenience.* FmHA or its successor agency under Public Law 103–354 or the Grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

(d) Procedure for termination of grant for cause. FmHA or its successor agency under Public Law 103–354 shall notify the Grantee in writing of the determination and the reasons for and the effective date of the whole or partial termination in accordance with 7 CFR 1900.53.

18. Extension and/or revision of this grant agreement may be approved by FmHA or its successor agency under Public Law 103–354 provided, in its opinion, the extention and/or revision is justified and there is a likelihood that the Grantee can accomplish the goals set out and approved in the application docket during the period of the extension and/or revision as specified in 7 CFR 1944.538.

PART C—GRANTEE AGREES:

1. To comply with property management standards for expendable and nonexpendable personal property established by Attachment N of OMB Circular A–102 or Attachment N of OMB Circular A–110 for State and local governments or nonprofit organizations respectively. *Personal property* means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. *Nonexpendable personal property* means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. *Expendable personal property* refers to all tangible personal property other than nonexpendable personal property. When nonexpendable tangible personal property is acquired by a Grantee with project funds, title shall not be taken by the Federal Government but shall vest in the Grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, FmHA or its successor agency under Public Law 103–354 may reserve the right to transfer title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(i) The property shall be appropriately identified in the grant or otherwise made known to the Grantee in writing.

(ii) FmHA or its successor agency under Public Law 103–354 shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA or its successor agency under Public Law 103–354 fails to issue disposition instructions within the 120 calendar day period, the Grantee shall apply the standards of paragraph 1(c) below.

(iii) When FmHA or its successor agency under Public Law 103–354 exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in paragraph 1(a)(iv) below.

(iv) When title is transferred either to the Federal Government or to a third party and the Grantee is instructed to ship the property elsewhere, the Grantee shall be reimbursed by the benefitting Federal agency

with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other tangible nonexpendable property for which the Grantee has title.

(i) The Grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the Grantee shall use the property in connection with its other federally sponsored activities, in the following order of priority:

(A) Activities sponsored by FmHA or its successor agency under Public Law 103–354.

(B) Activities sponsored by other Federal agencies.

(ii) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the Grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by FmHA or its successor agency under Public Law 103–354; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by FmHA or its successor agency under Public Law 103–354. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the Grantee no longer needs the property, the property may be used for other activities in accordance with the following standards:

(i) Nonexpendable property with a unit acquisition cost of less than $1,000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The Grantee may retain the property for other use provided that compensation is made to FmHA or its successor agency under Public Law 103–354 or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency. FmHA or its successor agency under Public Law 103–354 shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR) to the General Services Administration by FmHA or its successor agency under Public Law 103–354 to determine whether a requirement for the property exists in other Federal agencies. FmHA or its successor agency under Public Law 103–354 shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(A) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse FmHA or its successor agency under Public Law 103–354 an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal shares $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(B) If the Grantee is instructed to dispose of the property other than as described in paragraph 1(a)(iv) above, the Grantee shall be reimbursed by FmHA or its successor agency under Public Law 103–354 for such costs incurred in its disposition.

(C) The Grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(*1*) Property records shall be maintained accurately and shall include:

(*a*) A description of the property.

(*b*) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(*c*) Sources of the property including grant or other agreement number.

(*d*) Whether title vests in the Grantee or the Federal Government.

(*e*) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(*f*) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government).

(*g*) Location, use, and condition of the property and the date the information was reported.

(*h*) Unit acquisition cost.

(*i*) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value when a Grantee compensates the Federal agency for its share.

(*2*) Property owned by the Federal Government must be marked to indicate Federal ownership.

(*3*) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any difference between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(*4*) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the Grantee shall promptly notify FmHA or its successor agency under Public Law 103–354.

(*5*) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(*6*) When the Grantee is authorized or required to sell the property, proper sales procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

(*7*) Expendable personal property shall vest in the Grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the Grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

2. To provide a financial management system which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are solely for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after the submission of the final Project Performance report pursuant to paragraph B(9)(c) of this agreement except in the following situations:

(a) If any litigation, claim, or audit is commenced before the expiration of the three year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(b) Records for nonexpandable property acquired with Federal funds shall be retained for three years after final disposition.

(c) When records are transferred to or maintained by FmHA or its successor agency under Public Law 103–354, the three year retention requirement is not applicable.

Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly auhthorized representatives, shall have access to any books, documents, papers, and records of the Grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

4. To provide information as requested by the Grantor concerning the Grantee's actions in soliciting citizen participation in the application process, including published notice of public meetings, actual public meetings held, and content of written comments received.

5. Not encumber, transfer, or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in part C 1.

6. To provide Grantor with such periodic reports of Grantee operations as may be required by authorized representatives of the Grantor.

7. To execute Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement,'' and to execute any other agreements required by Grantor to implement the civil rights requirements.

8. To include in all contracts in excess of $100,000 a provision for compliance with all applicable standards, orders, or regulations issued purusant to the Federal Clean Air Act as amended. Violations shall be reported to the Grantor and the Regional Office of the Environmental Protection Agency.

9. That, upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will, to the extent legally permissible, repay to the Grantor forthwith the grant funds received with interest at the rate of five percentum per annum from the date of the default. The provisions of this

Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State Courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

10. That no member of Congress shall be admitted to any share or part of this Grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the Grant a publicly held corporation whose ownership might include a member of Congress.

11. That all nonconfidential information resulting from its activities shall be made available to the general public on an equal basis.

12. That the purpose for which this grant is made may complement, but shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

13. That the Grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: ''The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source.''

14. That the Grantee shall abide by the policies promulgated in OMB Circular A–102, Attachment O, or OMB Circular A–110, Attachment O, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

15. That it is understood and agreed that any assistance granted under this Agreement will be administered subject to the limitations of Title V of the Housing Act of 1949 as amended, 42 USC 1471 et. seq., and related regulations, and that rights granted to FmHA or its successor agency under Public Law 103–354 herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and protect FmHA or its successor agency under Public Law 103–354's financial interest.

16. Standard of Conduct. No employee, officer or agent of Grantee shall participate in the selection, award or administration of a contract in which Federal funds are used where, to the knowledge of such employee, officer or agent, the employee, officer or agent or such person's immediate family members, partners or any organization in which such person or such person's immediate family award or administration of the contract, or (2) when such person is negotiating or has any arrangement concerning future employment. The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from landlords or developers of rental or ownership housing projects in which the persons receiving TSA assistance may be placed as a result of such assistance.

PART D—GRANTOR AGREES:

1. That it may assist Grantee, within available appropriations, with such technical and management assistance as needed in planning the project and coordinating the plan with local officials, comprehensive plans, and any State or area plans for improving housing for low-income families in the area in which the project is located.

2. That at its sole discretion, Grantor may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect Grantor's financial interests therein, and (b) consistent with the statutory purposes of the grant and the limitations of the statutory authority under which it is made and Grantor's regulations.

This Agreement is subject to current Grantor regulations and any future regulations not inconsistent with the express terms hereof. Grantee on _____, 19__, has caused this Agreement to be executed by its duly authorized _____ and attested and its corporate seal affixed by its duly authorized _____.

Attest:

_____

Grantee

_____

By _____

(Title)

By _____

(Title)

Grantor

United States of America

Farmers Home Administration or its successor agency under Public Law 103–354

By _____

_____

(Title)

EXHIBIT B TO SUBPART K OF PART 1944—ADMINISTRATIVE INSTRUCTIONS FOR STATE OFFICES REGARDING THEIR RESPONSIBILITIES IN THE ADMINISTRATION OF THE TECHNICAL AND SUPERVISORY ASSISTANCE GRANT PROGRAM

A. The State Office will maintain for distribution to potential applicants, upon request, a supply of preapplication packets consisting of:

1. SF 424.1.

2. Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement.''

3. Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement.''

4. Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information.''

5. Subpart K of part 1944 of this chapter.

B. The State Office should inform all potential applicants, at the time they pick up forms, that:

1. The preapplication must be submitted to the District Office serving the area in which the applicant proposes to operate the Technical and Supervisory Assistance (TSA) program.

2. The State Office will refer all requests for assistance in completing the preapplication to the appropriate District Office.

C. Beyond the responsibilities of the State Office in the selection of grantees and the administration of the program, and as stated in §1944.502 of this subpart, the TSA program provides an opportunity for the State Director to give priority to applicants serving the rural areas of greatest need as well as use the program cooperatively with other Federal and State agencies in addressing the housing needs of the residents of a proposed TSA service area. Therefore, the State Office should be prepared, before receipt of preapplications, to advise the District Directors, potential applicants and other Federal and State agencies which part(s) of the State has the greatest need for the TSA program. The State Director should identify target areas in a similar manner to the process used by the Administrator pursuant to §1944.525 of this subpart. Proposals which are clearly inappropriate and do not meet the basic priorities of §1944.529 (a) of this subpart should not be encouraged due to the complexity of the preapplication submission.

D. In addition to the instructions of §1944.526 of this subpart, the State Office should follow the procedures outlined below:

1. Review preapplications for completeness and adequacy and make assessments required by §1944.526(c)(1) of this subpart.

2. Request clarifications from the District Office if necessary.

3. Evaluate the proposals in light of §1944.529 of this subpart and select the proposal(s) which best meets the priorities established under the project selection criteria in §1944.529 (a), (b) and (c) of this subpart.

4. The State Office must provide written comments to be attached to the preapplication(s) justifying the selection(s) and addressing the items in §1944.529 of this subpart.

5. The State Office will forward the original SF 424.1 and accompanying documents of the selected preapplication(s) as quickly as possible to the National Office, Attention: Special Authorities Division, Multi-Family Housing. In no case should the State Office forward their selected TSA preapplication(s) later than thirty (30) days after the closing date for receipt of preapplications.

6. Preapplications not selected by the State Office will be returned to the applicants through the appropriate District Offices with notice of appeal rights.

7. In accordance with §1944.525 of this subpart, State Offices will be advised of the number of preapplications to be submitted from each state to the National Office.

E. Sections 1944.531 and 1944.533 of this subpart detail the responsibilities of the State Office after tentative selection or concurrence of the TSA grantees by the National Office. Those preapplicants not selected will be promptly notified and their preapplication returned with notice of appeal rights. Form AD–622, ''Notice of Preapplication Review Action,'' will be mailed from the State Office to the applicants. District Offices will receive a copy from the State Office.

F. After execution of the grant agreement, the State Office will work closely with the District Office and the grantee to obtain additional resources from other Federal and State agencies to meet the needs of the TSA service area. The State Office should closely review the quarterly project performance reports and assist the District Director, as appropriate, in resolving any problems or taking advantage of favorable funding or program opportunities.

[44 FR 36891, June 22, 1979, as amended at 48 FR 29121, June 24, 1983; 49 FR 3763, Jan. 30, 1984; 55 FR 13503 and 13504, Apr. 11, 1990]

EXHIBIT C TO SUBPART K OF PART 1944—INSTRUCTIONS FOR DISTRICT OFFICES REGARDING THEIR RESPONSIBILITIES IN THE ADMINISTRATION OF THE TECHNICAL AND SUPERVISORY ASSISTANCE GRANT PROGRAM

A. The District Office will maintain for distribution to potential applicants, upon request, a supply of preapplication packets consisting of:

1. SF 424.1.

2. Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement.''

3. Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement.''

4. Form FmHA or its successor agency under Public Law 103–354 1940–20, ''Request for Environmental Information.''

5. Subpart K of part 1944 of this chapter.

B. District Directors will provide any necessary assistance in completing preapplication forms.

C. All applicants will submit preapplications to District Offices. Upon receipt of the preapplication the District Director will review it to ensure that the preapplication is complete and make assessments required by §1944.526(b)(1) of this subpart.

D. The District Director will provide written comments to be attached to the preapplication. These comments will, at a minimum, address the following items:

1. Whether the area to be covered by the project is a ''rural area'' as defined by FmHA or its successor agency under Public Law 103–354 regulations.

2. The District Director's knowledge of the applicant's past history.

3. The need for the proposed activity, and its relationship to the targeting strategies for the District.

4. Appropriateness and applicability of this proposal for FmHA or its successor agency under Public Law 103–354 implementation funds.

5. Extent of citizen involvement in development of preapplication, particularly the involvement of minority and/or low-income groups.

6. All other criteria specified in §1944.529 of this subpart.

7. The comments and recommendations of the County Supervisors for the proposed TSA service area.

E. The District Director will forward the original and one copy of the preapplication and accompanying documents along with the comments and a summary recommendation to the State Director within ten (10) working days of receipt of the preapplication.

F. Those applicants invited to submit applications will submit their applications to the District Office with two copies. The District Office will retain the original for the docket and forward one copy to the appropriate State Office after making sufficient copies to forward one copy to each of the appropriate County Offices.

G. The District Director, upon receipt of the application, will prepare a docket in accordance with §1944.531 of this subpart. The procedures for approval and project servicing are detailed in this subpart.

[44 FR 36891, June 22, 1979, as amended at 48 FR 29121, June 24, 1983; 49 FR 3763, Jan. 30, 1984; 55 FR 13504, Apr. 11, 1990]

EXHIBIT D TO SUBPART K OF PART 1944—AMENDMENT TO TECHNICAL AND SUPERVISORY ASSISTANCE GRANT AGREEMENT

This Amendment to Agreement dated _____ 19__ between _____ herein called ''Grantee,'' organized and operating under _____

_____

(authorizing State Statute)

and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called ''FmHA,'' or its successor agency under Public Law 103–354 amends the Technical and Supervisory Assistance Grant Agreement'' between the parties hereto dated _____ 19__, hereinafter called the ''Agreement.''

Said Agreement is amended by changing the ending date specified in paragraph 2 of part B of the Agreement from _____ to _____ and/or by making the following changes noted in the attachments hereto: (List and identify proposal and any other documents pertinent to the grant which are attached to the Amendment.)

Agreed to this ___ day of _____ 19__.

_____

(Name of Grantee)

By _____

(Signature)

_____

(Title)

United States of America

By _____

(Signature)

_____

(Title)

Farmers Home Administration or its successor agency under Public Law 103–354

_____

(Date)

EXHIBIT E TO SUBPART K OF PART 1944—GUIDE LETTER TO DELINQUENT FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 SINGLE FAMILY HOUSING LOAN BORROWERS

Dear _____
(name of borrower):

This is to advise you that (name of TSA grantee) is available to provide independent counseling services to Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 borrowers in need of financial management assistance. These services may assist you in resolving your present delinquency in your housing loan.

This organization is prepared to provide financial and budget counseling at no charge to you. Their counseling services include advice on debt levels and credit purchases, consumer and cost awareness, debt adjustment procedures, and other financial information and services.

You are urged to take advantage of this program. However, your participation is voluntary and does not relieve you of any of your loan obligations to FmHA or its successor agency under Public Law 103–354 or limit the remedies FmHA or its successor agency under Public Law 103–354 has to bring your loan current or recover the loan in full. Any plan altering your repayment schedule in any way must be approved by this office. However, it is our intention to work with you and the counseling organization in every way we can to resolve your delinquency.

If you want to participate in this program, please sign the attached copy of this letter and return it to this office. At that time we will advise (name of TSA grantee) that you are interested in their services and provide them with the information they need to contact you. Only information available to the general public will be released.

We are sure you agree that it is in your interest to make every effort to bring your account current. We look forward to your return of the attached copy of this letter.

Sincerely,

County Supervisor
Farmers Home Administration or its successor agency under Public Law 103–354

Enclosure

(On attached copy only:)
I desire to participate in the counseling program with (name of TSA grantee).

_____
Borrower

_____
Date

Subpart L—Farmers Home Administration or Its Successor Agency Under Public Law 103–354 Tenant Grievance and Appeals Procedure

SOURCE: 48 FR 56177, Dec. 19, 1983, unless otherwise noted.

EFFECTIVE DATE NOTE: At 69 FR 69105, Nov. 26, 2004, subpart L was removed and reserved, effective Feb. 24, 2005.

§ 1944.551 Purpose.

The purpose of this subpart is to set forth uniform requirements for grievance and appeals procedures in all Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), and Labor Housing (LH) projects financed by the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 under sections 514, 515, and 516 of the Housing Act of 1949. The objective of this subpart is to ensure the fair treatment of persons residing in multiple family projects while providing for an equitable manner by which borrowers can operate, maintain, and safeguard housing projects. The right to appeal under this subpart will also extend to persons who seek admission to the projects.

[56 FR 2256, Jan. 22, 1991]

§ 1944.552 Definitions.

(a) *Applicant.* A person who has submitted an application for occupancy in a RRH, RCH, or LH project, and is not a tenant or member. This includes persons who have been denied an application for admission.

(b) *Borrower.* The borrower (landlord) is the owner of the owner's authorized representative of a RRH, RCH, or LH project.

(c) *Consumer cooperative.* A corporation which (1) Is organized under the cooperative laws of a State or Federally recognized Indian tribe; (2) will own and operate the housing on a cooperative basis solely for the benefit of the members; (3) will operate at cost and, for this purpose, any patronage refunds accruing to members in accordance with §1944.215(i) of this subpart will not be considered gains or profits; and (4) will restrict membership in the housing to eligible persons and, to any

extent the cooperative and FmHA or its successor agency under Public Law 103–354 permit, to others in special circumstances.

(d) *Eviction.* Dispossession of the tenant by judicial action pursuant to State or local law from a RRH or LH unit as a result of termination of the tenancy, including a termination before or at the end of the lease term.

(e) *Grievance.* A dispute which a tenant has with the borrower's action, or failure to act, according to the lease and/or FmHA or its successor agency under Public Law 103–354 regulations which results or may result in denial, significant reduction, or termination of benefits (other than eviction by judicial action pursuant to State or local law).

(f) *Hearing.* An informal proceeding at which a tenant's grievance or appeal of a borrower's adverse action or decision, or an applicant's appeal of a rejected application, or denial of an application for admission is heard before an impartial hearing officer or hearing panel.

(g) *Lease.* The written agreement, approved by FmHA or its successor agency under Public Law 103–354, between the borrower and tenant.

(h) *Tenant.* An eligible lessee/occupant of a RRH or LH project who has executed a lease agreement. For the purposes of this subpart, the term *tenant* will also mean *cooperative member.*

(i) *Termination of tenancy.* The termination of the lease, either before or at the end of the lease term, as the result of material noncompliance with the terms of the lease, rules for occupancy, or violation of FmHA or its successor agency under Public Law 103–354 regulations applicable to conditions for occupancy.

[48 FR 56177, Dec. 19, 1983, as amended at 56 FR 2256, Jan. 22, 1991; 58 FR 40954, July 30, 1993]

§ 1944.553 Exceptions.

This subpart does not apply to:

(a) *Rent changes authorized by FmHA or its successor agency under Public Law* 103–354. Rent changes must be authorized by FmHA or its successor agency under Public Law 103–354 in accordance with the requirements of exhibit C to subpart C of part 1930 of this chapter where tenants are provided an opportunity to provide comments to FmHA or its successor agency under Public Law 103–354 on a borrower's Notice of Proposed Rent Change.

(b) *Discrimination complaints.* Any tenant/member of prospective tenant/member seeking occupancy or use of RRH, RCH, or related facilities who believes he/she has been discriminated against because of age, race, color, religion, sex, marital or familial status, handicap or national origin may file a complaint in person with, or by mail to the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD), Washington, DC 20410, or any HUD office, or to the Secretary of Agriculture, Washington, DC 20250. If a complaint is made to an FmHA or its successor agency under Public Law 103–354 County, District or State Office, it must be directed to the Director of Equal Opportunity Staff, National Office, by the FmHA or its successor agency under Public Law 103–354 employee in charge of that office. When a complaint is sent to FmHA or its successor agency under Public Law 103–354–EOS by a county or district office, the State Director will be made aware of the complaint.

(c) *Projects in which an association of all tenants has been duly formed.* In projects where an association of all tenants has been duly formed and the association and the borrower have agreed to an alternate method of settling grievances, that method will be used.

(d) *Changes in rules required by FmHA or its successor agency under Public Law 103–354.* Changes in rules required by FmHA or its successor agency under Public Law 103–354 in which proper notice and opportunity have been given according to law and the provisions of the lease.

(e) *Notification of termination of tenancy and eviction.* Notification of termination of tenancy and eviction is to be handled in accordance with paragraph XIV C of exhibit B of subpart C of part 1930 of this chapter and according to State or local law.

(f) *Termination of tenancy and eviction by judicial action as prescribed by State or local law.* Termination of tenancy and eviction must be based on material

violation of the lease terms or for other good cause as determined by the borrower or the project manager in accordance with paragraph XIV A of exhibit B of subpart C of part 1930. The borrower shall not evict any tenant except by judicial action pursuant to State or local law and in accordance with the requirements of this subpart.

(g) *Disputes between tenants.* This subpart dose not apply to disputes between tenants not involving the borrower.

(h) *Displacement or other effects as a result of prepayment.* This subpart does not apply to tenant displacement or other effects due to prepayment of the FmHA or its successor agency under Public Law 103–354 loan. Opportunities for tenant input into the prepayment process are outlined in subpart E of part 1965 of this chapter.

[48 FR 56177, Dec. 19, 1983, as amended at 56 FR 2256, Jan. 22, 1991; 58 FR 38925, July 21, 1993; 58 FR 40954, July 30, 1993]

§ 1944.554 Reasons for grievance and appeal.

(a) *Tenants.* Grievance and appeal procedures provide a means for a tenant, in an FmHA or its successor agency under Public Law 103–354 financed rental project, to meet with a borrower and to obtain a hearing if the tenant has a grievance. This opportunity relates to a borrower's action or failure to act, in accordance with the lease and/or FmHA or its successor agency under Public Law 103–354 regulations and results in a denial, significant reduction or, termination of benefits; or, when a tenant contests a borrower's notice of proposed adverse action as provided in §1944.555(b) of this subpart. This may include:

(1) Failure to maintain the premises in such manner that provides decent, safe, and sanitary housing.

(2) Violation of lease covenants and rules.

(3) Modification of lease.

(4) Rule changes.

(5) Rent changes not authorized by FmHA or its successor agency under Public Law 103–354 according to exhibit C of subpart C of part 1930 of this chapter.

(6) Failure to maintain the premises according to State and local laws, statutes, or ordinances in effect at the date of final construction unless new or amended laws and ordinances are made retroactive to, or prior to, the date of final construction.

(7) Denials of RA.

(b) *Applicant.* Grievance and appeal procedure provides an appeal right for a person whose application for admission to occupancy in an RRH or LH project has been rejected, as well as for a person who has been denied an application for admission. This appeal right does not apply to those persons who are clearly not eligible for occupancy under FmHA or its successor agency under Public Law 103–354 regulations.

[48 FR 56177, Dec. 19, 1983, as amended at 50 FR 8596, Mar. 4, 1985; 58 FR 40954, July 30, 1993]

§ 1944.555 Settlement of grievances and appeals.

(a) *General.* Borrowers and applicants/tenants are encouraged to attempt to settle disputes through informal meetings without resorting to the hearing process further described in this subpart.

(b) *Notice to applicant/tenant.* In the case of a borrower's proposed adverse action including denial of admission to occupancy, the borrower shall notify the applicant/tenant in writing. The notice must be delivered by certified mail return receipt requested, or a hand-delivered letter with a signed and dated acknowledgement of receipt from the applicant/tenant, giving specific reasons for the proposed action. The notice must also advise the applicant or tenant of the right to respond to the notice within 10 calendar days after receipt, in accordance with paragraph (c) of this section and of the right to a hearing in accordance with §1944.556 of the subpart. In projects where there is a concentration of non-English speaking individuals, the notice must also be in the non-English concentration language, when necessary, for the tenant's understanding.

(c) *Presentation of grievances or responses to notice of proposed adverse actions.* If the adverse action cannot be resolved otherwise, the applicant/tenant shall personally present to the borrower or borrower's designee any grievance or response, either orally or in writing, within 10 calendar days after

occurrence of the grievance or receipt of a notice of proposed adverse action. If requested, the borrower shall meet with the tenant within 5 working days of the request in an attempt to resolve the grievance. The meeting shall be informal and the borrower shall be responsible for keeping appropriate notes relative to the meeting. If the grievance is not resolved to the applicant's/tenant's satisfaction, the borrower shall prepare a summary of the problem, including the borrower's position, the applicant's/tenant's position, and the results of the meeting (Exhibit A of this subpart must be used as the format for the summary) within 10 calendar days after the informal meeting. Two copies of the summary must be given to the applicant/tenant, one retained in the borrower's files and one sent to the District Director.

§ 1944.556 Procedure for obtaining a hearing.

(a) *Request for hearing.* If the applicant or tenant desires a hearing, a written request for a hearing must be submitted to the borrower within 10 calendar days after receipt of the summary of any informal meeting. The written request must specify:

(1) The reasons for the grievance or contest of the borrower's proposed action, and

(2) The action or relief sought.

(b) *Selection of hearing officer or hearing panel.* In order to properly evaluate grievances and appeals, the borrower and tenant shall select a hearing officer or hearing panel. The hearing officer shall be an impartial, disinterested person selected jointly by the borrower and the tenant. If the borrower and the tenant cannot agree on a hearing officer, they shall each appoint a member to a hearing panel and the members so selected shall select a third member. If within 30 days from the date of the request for a hearing the tenant and borrower, or their designee, have not agreed upon the selection of a hearing officer or hearing panel, the borrower shall notify the District Director by mail of the facts of the matter. The District Director shall, within 10 working days of receipt of the letter, appoint a person to serve as the sole hearing officer. The District Director's selection of a hearing officer is final. The person selected by the District Director should not be an individual previously considered by the tenant or borrower. Members of the hearing panel or the hearing officer must be willing to render their service without compensation. The hearing officer or hearing panel has the authority to reverse the borrower's decision.

(c) *Standing hearing panel.* In lieu of the procedure set forth in paragraph (b) of this section for each grievance or appeal presented, a borrower may provide that a standing panel be organized for each project. Such a panel may be organized soon after initial rent-up or at any time in the case of existing projects. Such a panel will be selected and have a membership as follows:

(1) Standing panelist(s) of the tenants would be elected by a majority of the tenants. Either two alternates could be elected or three panelists of the tenants could be elected with equal status. The tenant, in this latter case, would designate one of the three tenant panelists to participate in the hearing. All tenants would be notified of the time, date, and purpose of the meeting to elect permanent hearing panelists at least two weeks before the appointed date. The notice must be conspiculously posted in the rental office and in each apartment building or structure. The meeting must be held at a place which is convenient and accessible to the tenants.

(2) Standing borrower panelist(s) selected by the borrower. One or two alternates may also be designated.

(3) A standing mutual panelist, to serve as the chair, selected by the other two persons or groups, including alternates, in which case each ''group'' gets one vote.

(4) All standing hearing panel members serve one year and may be reelected. They must be willing to render their services without compensation.

(5) A panel for a hearing shall consist of 3 members, one tenant panelist, one borrower panelist and the chair.

(d) *Examination of records.* When the borrower has provided the applicant/tenant with a notice of proposed adverse action, the borrower shall allow the tenant to have the opportunity, at a reasonable time before the hearing

and, at the expense of the tenant, to examine and/or copy all documents, records, and regulations of the borrower *which the borrower intends to use at the meeting* unless otherwise prohibited by law.

(e) *Scheduling of hearing.* A hearing shall be scheduled to be held within 15 days after receipt of the tenant's request for a hearing at a time and place mutually convenient to both parties. If the parties cannot agree on a meeting place or time, the hearing officer or hearing panel will designate the place and time.

(f) *Escrow deposit.* Provided the tenant's rental payments are otherwise current, an escrow deposit of rental payments may be used by the tenant in the case of a grievance involving a rent increase not authorized by FmHA or its successor agency under Public Law 103–354, or if the borrower fails to maintain the property in a decent, safe, and sanitary manner. When an escrow deposit is used, the tenant shall deposit into escrow, when the rent is due, the amount required by the lease. The escrow deposits must continue until the complaint is resolved through informal discussion or by the hearing officer or panel. The rent must be deposited in a federally insured financial institution or with a bonded independent agent. Failure to make timely escrow payments will result in a termination of the tenant grievance and appeals procedure and all sums will immediately become due and payable under the lease. Receipts of deposit must be available for examination by the borrower or the borrower's designee.

(g) *Failure to request a hearing.* If the applicant/tenant does not request a hearing within the time provided by paragraph (a) of this section, the borrower's disposition of the grievance or appeal will become final.

§ 1944.557 Procedures governing the hearing.

(a) Subject to paragraph (b) of this section, the hearing will be an informal proceeding before a hearing officer or hearing panel at which evidence may be received without regard to whether that evidence could be used in judicial proceedings.

(b) The hearing must be structured so as to provide the basic safeguards for both the borrower and the tenant, which must include:

(1) The right of both parties to be represented by counsel or another person(s) chosen as their representative.

(2) The right of the applicant/tenant to a private hearing unless a public hearing is requested.

(3) The right of the applicant/tenant to present oral or written evidence and arguments in support of their grievance or appeal and to refute the evidence of all witnesses on whose testimony or information the borrower relies.

(4) The right of the borrower to present oral or written evidence and arguments in support of the decision, to refute evidence relied upon by the applicant/tenant, and to confront and cross-examine all witnesses on whose testimony or information the tenant relies.

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) At the hearing the applicant/tenant must present evidence that he/she is entitled to the relief sought, and thereafter, the borrower shall present evidence showing the basis of its action or failure to act against that which the grievance or appeal is directed.

(d) The hearing officer or hearing panel shall require that the borrower, the applicant/tenant, counsel and other participants or spectators conduct themselves in an orderly manner. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings, or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(e) If the applicant/tenant (or his/her representative) fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his or her right to a hearing under this subpart. Both the applicant/tenant and the borrower shall be notified of the determination of the hearing officer or hearing panel.

§ 1944.558 Decision of the hearing officer or hearing panel.

(a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within 10 calendar days after the hearing. The written decision must be specific as to the facts presented which were the basis upon which the decision was rendered. Copies of the decision must be sent to the borrower, the applicant/tenant, and the FmHA or its successor agency under Public Law 103–354 District Director.

(b) The decision of the hearing officer or hearing panel shall be binding upon the parties to the hearing unless the parties to the hearing are notified within 10 calendar days by the District Director that the decision violates FmHA or its successor agency under Public Law 103–354 regulations. The notification of the District Director will specify the FmHA or its successor agency under Public Law 103–354 regulation that the decision violates. The hearing officer or hearing panel shall amend the decision to comply with the regulation(s) within 10 days of receipt of the notice. (However, the decision of the hearing officer or hearing panel does not preclude either party's right thereafter to seek judicial relief through the courts.)

(c) Upon receipt of written notification from the District Director that the decision is in compliance with FmHA or its successor agency under Public Law 103–354 regulations, the decision is binding upon the borrower and tenant, and the borrower and tenant shall take the necessary action, or refrain from any actions, necessary to carry out the decision.

§ 1944.559 Responsibilities of the FmHA or its successor agency under Public Law 103–354 District Director.

(a) The District Director shall assure that a copy of this subpart is sent to each borrower with a requirement that the regulations be permanently posted in a conspicuous place for the information of tenants, such as the rental offices, laundry areas, activities rooms, or other places where it will be noticed by tenants. The District Director shall also require that the borrower maintain copies of this subpart at all times for inspection by the tenants and FmHA or its successor agency under Public Law 103–354 upon request. The District Director shall assure that where there is a concentration of non-English-speaking individuals, the regulation is made available in both English and the non-English concentration language.

(b) The District Director shall encourage the borrower and applicant/tenant to resolve grievances and appeals through informal discussion; however, upon receipt of a summary of informal discussion as required by § 1944.555(c) of this subpart, the District Director shall immediately review the summary to ascertain that the applicant/tenant has received a copy of the summary and a copy of the proceedings to obtain a hearing, if matters could not be resolved through informal discussion.

§§ 1944.560–1944.599 [Reserved]

§ 1944.600 OMB control number.

The collections of information requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0046.

EXHIBIT A TO SUBPART L OF PART 1944—SUMMARY OF MEETING

Name and Address of Borrower:

Name and Address of Project:

Name and Address of Complainant:

Specific Nature of Complaint:

Date of Meeting:
Participants in Meeting:

Decision and Specific Reasons Therefore:

Borrower's Signature _____

I hereby acknowledge receipt of a copy of this summary and have been advised of my rights to use the attached procedures to obtain a hearing if I so choose.

Tenant's Acknowledgment:

Tenant's signature _____

Procedures for Obtaining a Hearing:

The following procedures may be used to obtain a hearing if you are not satisfied with the decision made as a result of our discussion on (date) _____.

1. *Request for a Hearing.* Send a written request for a hearing within ten days after you receive this notice to the project address shown in the summary. Indicate specifically: (1) The reason for your grievance or challenge of our proposed action, and (2) the action or relief you seek.

2. *Selection of Hearing Officer or Hearing Panel.* (Strike out paragraph not needed).

(a) As you probably already know, a Standing Hearing Panel is available to conduct the hearing.

(b) We need to meet soon after your request for a hearing is received to select a hearing officer/hearing panel.

3. *Scheduling of Hearing:* The hearing will be scheduled to be held within 15 days after we receive your request for a hearing. It will be held at a time and place convenient for both of us. If we cannot agree on a time and place, the hearing officer/hearing panel will designate the time and place.

4. *Examination of Records:* You have the opportunity before the hearing to examine and, at your own expense, to copy all documents, records, and regulations that are relevant to the hearing unless otherwise prohibited by law.

5. *Procedures Governing Hearing:*

(a) The hearing will be an informal proceeding before a hearing officer or hearing panel at which both parties will have an opportunity to present their sides of the dispute.

(b) Both parties may be represented by legal counsel or another person of one's choice.

(c) You have a right to a private hearing, unless you request a public hearing.

(d) Both parties have the right to present evidence, arguments, and witnesses to support their sides of the dispute, to refute evidence relied upon by the other party, and to confront and cross-examine all witnesses.

(e) A decision will be based solely and exclusively upon the facts presented at the hearing.

Subpart M [Reserved]

Subpart N—Housing Preservation Grants

SOURCE: 58 FR 21894, Apr. 26, 1993, unless otherwise noted.

§ 1944.651 General.

(a) This subpart sets forth the policies and procedures for making grants under section 533 of the Housing Act of 1949, 42 U.S.C. 1490(m), to provide funds to eligible applicants (hereafter also referred to as grantee(s)) to conduct housing preservation programs benefiting very low- and low-income rural residents. Program funds cover part or all of the grantee's cost of providing loans, grants, interest reduction payments or other assistance to eligible homeowners, owners of single or multiple unit rental properties or for the benefit of owners (as occupants) of consumer cooperative housing projects (hereafter also referred to as co-ops). Such assistance will be used to reduce the cost of repair and rehabilitation, to remove or correct health or safety hazards, to comply with applicable development standards or codes, or to make needed repairs to improve the general living conditions of the resident(s), including improved accessibility by handicapped persons. Such assistance will be used to reduce the cost of repair and rehabilitation, to remove or correct health or safety hazards, to comply with applicable development standards or codes, or to make needed repairs to improve the general living conditions of the residents, including improved accessibility by persons with a disability. Individual housing that is owner occupied may qualify for replacement housing when it is determined by the grantee that the housing is not economically feasible for repair or rehabilitation.

(b) The Rural Housing Service (RHS) will provide Housing Preservation Grant (HPG) assistance to grantees who are responsible for providing assistance to eligible persons without discrimination because of race, color, religion, sex, national origin, age, familial status, or disability.

(c) The preapplication must only address a proposal to finance repairs and rehabilitation activities to individual housing or rental properties or co-ops.

Any combination proposal will not be accepted.

(d) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to RHS employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an RHS employee.

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26208, May 13, 1997]

§ 1944.652 Policy.

(a) The policy of RHS is to provide HPG's to grantees to operate a program which finances repair and rehabilitation activities to individual housing, rental properties, or co-ops for very low- and low-income persons. Individual housing that is owner occupied may qualify for replacement housing when it is determined by the grantee that the housing is not economically feasible for repair or rehabilitation. Grantees are expected to:

(1) Coordinate and leverage funding for repair and rehabilitation activities, as well as replacement housing, with housing and community development organizations or activities operating in the same geographic area; and

(2) Focus the program on rural areas and smaller communities so that it serves very low and low-income persons.

(b) RHS intends to permit grantees considerable latitude in program design and administration. The forms or types of assistance must provide the greatest long-term benefit to the greatest number of persons residing in individual housing, rental properties, or co-ops needing repair and rehabilitation or replacement of individual housing.

(c) Repairs and rehabilitation or replacement activities affecting properties on or eligible for listing on the National Register of Historic Places will be accomplished in a manner that supports national historic preservation objectives as specified in § 1944.673.

[62 FR 26208, May 13, 1997]

§ 1944.653 Objective.

The objective of the HPG program is to repair or rehabilitate individual housing, rental properties, or co-ops owned and/or occupied by very low- and low-income rural persons. Grantees will provide eligible homeowners, owners of rental properties, and owners of co-ops with financial assistance through loans, grants, interest reduction payments or other comparable financial assistance for necessary repairs and rehabilitation. Further, individual housing that is owner occupied may qualify for replacement housing when it is determined by the grantee that the housing is not economically feasible for repair or rehabilitation, except as specified in § 1944.659.

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

§ 1944.654 Debarment and suspension—drug-free workplace.

(a) For purposes of this subpart, exhibit A of FmHA Instruction 1940–M (available in any Agency office) requires all Rural Development applicants; for an HPG to sign and submit with their preapplication, Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions,'' which basically states that the applicant has not been debarred or suspended from Government assistance. Further, all grantees after receiving a HPG must obtain a signed certification (Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions'') from all persons or entities (excluding homeowner recipients) that the grantee does business with as a result of the HPG. Grantees are responsible for informing these persons or entities of the provisions of exhibit A of FmHA Instruction 1940–M (available in any Agency office) and of maintaining Form AD–1048 in the grantee's office.

(b) Grantees must also be made aware of the Drug-free Workplace Act of 1988 requirements found in exhibit A of FmHA Instruction 1940–M (available in any Agency office). For this subpart,

a grantee is defined as any organization who applies for or receives a direct grant from Rural Development. All preapplications must include a signed Form AD–1049, ''Certification Regarding Drug-free Workplace Requirements (Grants) Alternative I—Grants Other Than Individuals.''

[58 FR 21894, Apr. 26, 1993, as amended at 61 FR 39851, July 31, 1996]

§ 1944.655 [Reserved]

§ 1944.656 Definitions.

References in this subpart to District, State, National and Finance Offices, and to District Director, State Director, and Administrator refer to Rural Development offices and officials and should be read as prefaced by Rural Development. Terms used in this subpart have the following meanings:

Adjusted income. As defined in 7 CFR 3550.54(c).

Applicant or grantee. Any eligible organization which applies for or receives HPG funds under a grant agreement.

Cooperative (co-op). For the purposes of the HPG program, a cooperative (co-op) is one which:

(1) Is a corporation organized as a consumer cooperative;

(2) Will operate the housing on a nonprofit basis solely for the benefit of the occupants; and

(3) Is legally precluded from distributing, for a minimum period of 5 years from the date of HPG assistance from the grantee, any gains or profits from operation of the co-op. For this purpose, any patronage refunds to occupants of the co-op would not be considered gains or profits. A co-op may accept non-members as well as members for occupancy in the project.

Grant agreement. The contract between Agency and the grantee which sets forth the terms and conditions under which HPG funds will be made available. (See exhibit A of this subpart which is available in any Agency office.)

Homeowner. For the purposes of the HPG program, a homeowner is one who can meet the conditions of income and ownership under § 1944.661 of this subpart.

Household. For the purposes of the HPG program, a household is defined as all persons living all or part of the next 12 months in a unit or dwelling assisted with HPG funds.

Housing preservation. The repair and rehabilitation activities that contribute to the health, safety, and well-being of the occupant, and contribute to the structural integrity or long-term preservation of the unit. As a result of these activities, the overall condition of the unit or dwelling must be raised to meet RHS Thermal Standards for existing structures and applicable development standards for existing housing recognized by RHS in part 1924, subpart A, of this chapter or standards contained in any of the voluntary national model codes acceptable upon review by RHS. Properties included on or eligible for inclusion on the National Register of Historic Places are subject to the standards and conditions of § 1944.673. The term ''housing preservation'' does not apply to replacement housing.

HPG. Housing Preservation Grant.

Low income. An adjusted annual income that does not exceed the ''lower'' income limit according to size of household as established by the United States Department of Housing and Urban Development (HUD) for the county or Metropolitan Statistical Area (MSA) where the property is located. Maximum low-income limits are set forth in Appendix 9 of HB–1–3550 (available in any Rural Development office).

Organization. An organization is defined as one of the following:

(1) A State, commonwealth, trust territory, other political subdivision, or public nonprofit corporation authorized to receive and administer HPG funds;

(2) An American Indian tribe, band, group, nation, including Alaskan Indians, Aleuts, Eskimos and any Alaskan Native Village, of the United States which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law (Pub. L.) 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512);

(3) A private nonprofit corporation that is owned and controlled by private persons or interests for purposes other than making gains or profits for the

corporation, is legally precluded from distributing any gains or profits to its members, and is authorized to undertake housing development activities; or

(4) A consortium of units of government and/or private nonprofit organizations which is otherwise eligible to receive and administer HPG funds and which meets the following conditions:

(i) Be comprised of units of government and/or private nonprofit corporations that are close together, located in the same state, and serve areas eligible for FmHA or its successor agency under Public Law 103–354 housing assistance; and

(ii) Have executed an agreement among its members designating one participating unit of government or private nonprofit corporation as the applicant or designating a legal entity (such as a Council of Governments) to be the applicant.

Overcrowding. The guidelines in the table in this definition are designed to assist grantees in implementing occupancy standards. Part 1930, subpart C, exhibit B, paragraph VID2, of this chapter (available in any Rural Development State or District Office) gives further guidance. The table follows:

Number of bedrooms	Ideal number of persons
0	2
1	2
2	4
3	6
4	8
5	10

Rental properties. Rental properties are defined as single-unit or multi-unit dwellings used for occupancy by tenants, owners, or members of an owner's immediate family.

Replacement housing. The replacement of existing, individual owner occupied housing where repair and rehabilitation assistance is not economically feasible or practical. The term replacement housing does not apply to housing preservation. The overall condition of the unit or dwelling must meet RHS Thermal Standards for new or existing structures and applicable development standards for new or existing housing recognized by RHS in part 1924, subpart A, of this chapter or standards contained in any of the voluntary national model codes acceptable upon review by RHS. Properties included on or eligible for inclusion on the National Register of Historic Places are subject to the standards and conditions of § 1944.673 prior to replacement.

RHS. RHS means the Rural Housing Service, or a successor agency.

Rural area. The definition in 7 CFR part 3550 applies.

Tenant. Any person who resides in a single- or multi-unit rental property.

Very low-income. An adjusted annual income that does not exceed the very low-income limit according to size of household as established by HUD for the county of MSA where the property is located. Maximum very low-income limits are set forth in 7 CFR part 3550.

[58 FR 21894, Apr. 26, 1996, as amended at 61 FR 39851, July 31, 1996; 62 FR 26209, May 13, 1997; 67 FR 78329, Dec. 24, 2002]

EFFECTIVE DATE NOTE: At 69 FR 69105, Nov. 26, 2004, § 1944.656 was amended by revising the definition of ''Overcrowding'', effective Feb. 24, 2005. For the convenience of the user, the revised text is set forth as follows.

§ 1944.656 Definitions.

* * * * *

Overcrowding. Guidance is provided at 7 CFR 3560.155(e). These guidelines should result in an ideal range of persons per housing unit.

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§ 1944.657 Restrictions on lobbying.

All applicants must comply with FmHA Instruction 1940–Q (available in any FmHA or its successor agency under Public Law 103–354 office) which prohibits applicants of Federal grants from using appropriated funds for lobbying the Federal Government in connection with a specific grant.

§ 1944.658 Applicant eligibility.

(a) To be eligible to receive a grant, the applicant must:

(1) Be an organization as defined in § 1944.656 of this subpart;

(2) Have the necessary background and experience on the part of its staff or governing body with proven ability to perform responsibility in the field of

low-income rural housing development, repair and rehabilitation, or have other business management or administrative experience which indicates an ability to operate a program providing repair and rehabilitation financial assistance as well as for replacement housing;

(3) Legally obligate itself to administer HPG funds, provide an adequate accounting of the expenditure of such funds in compliance with the terms of this regulation, the grant agreement, and 7 CFR parts 3015 or 3016 (available in any FmHA or its successor agency under Public Law 103–354 office), as appropriate, and comply with the grant agreement and FmHA or its successor agency under Public Law 103–354 regulations; and

(4) If the applicant is engaged in or plans to become engaged in any other activities, provide sufficient evidence and documentation that they have adequate resources, including financial resources, to carry on any other programs or activities to which they are committed without jeopardizing the success and effectiveness of the HPG project.

(b) An applicant will *not* be considered eligible if it is a nonprofit entity *and* its proposal is based *solely* on an identity of interest, as defined in § 1924.4(i) of subpart A of part 1924 of this chapter, between the applicant and the owner(s) of the proposed dwelling or co-op to be rehabilitated or repaired.

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

§ 1944.659 Replacement housing.

Replacement housing applies only to existing, individual owner occupied housing. Replacement housing does *not* apply to rental properties (single-unit or multiple-unit) or to cooperative housing projects. The grantee is responsible for determining the extent of the repairs and rehabilitation prior to any assistance given to an individual homeowner. If the cost of such repairs and rehabilitation is not economically feasible, then the grantee may consider replacing the existing housing with replacement housing, subject to the following:

(a) The HPG grantee:

(1) Shall document the total costs for all repairs and rehabilitation of the existing housing; and

(2) Shall document the basis for the determination that the costs for all repairs and rehabilitation for the existing housing are not economically feasible.

(b) The individual homeowner:

(1) Must meet all requirements of § 1944.661;

(2) Must lack the income and repayment ability to replace their existing home without the assistance of the HPG grantee;

(3) Must have been determined by the HPG grantee and RHS to be unable to afford a loan under section 502 for replacement housing; and

(4) Must be able to afford the replacement housing on terms set forth by the HPG grantee.

(c) The existing home:

(1) Must be demolished as part of the process of providing replacement housing. It will be determined by the grantee and individual homeowner when is the best time for demolition; and

(2) May not be sold to make way for the replacement housing.

(d) The replacement housing:

(1) May be either new housing or a dwelling brought onto the site of the existing housing;

(2) May use no more than $15,000 in HPG funds;

(3) Must meet all applicable requirements of 7 CFR 3550.57; and

(4) May not be sold within 5 years of completion of the project.

(e) Any moneys received by the homeowner from selling salvaged material after demolishing the existing home must be used towards the replacement housing.

[62 FR 26209, May 13, 1997]

§ 1944.660 Authorized representative of the HPG applicant and FmHA or its successor agency under Public Law 103–354 point of contact.

(a) FmHA or its successor agency under Public Law 103–354 will deal only with authorized representatives designated by the HPG applicant.

(b) The State Director will designate either the State Office and/or the District Office as the processing office and/or the servicing office for the HPG

program. The State Director's selection may be based on staffing, total program size, number of preapplications anticipated, type of applicants, or similar criteria. The State Director must publish this designation each year at the time the FEDERAL REGISTER is published informing the public of the open period for acceptance of preapplications as outlined in § 1944.678 of this subpart.

§ 1944.661 Individual homeowners—eligibility for HPG assistance.

The individual homeowners assisted must have income that meets the very low- or low-income definitions, be the owner of an individual dwelling at least 1 year prior to the time of assistance, and be the intended occupant of the dwelling subsequent to the time of assistance. The dwelling must be located in a rural area and be in need of housing preservation assistance. Each homeowner is required to submit evidence of income and ownership for retention in the grantee's files.

(a) *Income.* Determination of income will be made in accordance with 7 CFR 3550.54(c). All members of the household, as defined in § 1944.656 of this subpart, must be included when determining income. Grantees must use certifications, may require additional information from the homeowner, and should seek advice from their attorney.

(b) *Ownership.* Evidence of ownership may be a photostatic copy of the instrument evidencing ownership. Methods for assuring the intention of the homeowner to continue to occupy the unit after assistance will be established by the grantee. 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, rehabilitated, or replaced when not all of the owners are occupying the property. HPG assistance may be made in such cases when:

(i) The occupant has been living in the house for at least 1 year prior to the date of requesting assistance;

(ii) The grantee has no reason to believe the occupant's position of owner/occupant will be jeopardized as a result of the improvements to be made with HPG funds; and

(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.

(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 consultation 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 which use a type of fuel that is commonly used, and is economical and dependably available;

(6) Providing storm cellars and similar protective structures, if typical for the area;

(7) Paying real estate taxes which are due and payable on the existing dwelling or site at the time of closing, if this amount is not a substantial part of the HPG assistance. (HPG assistance may not be made available if the real estate taxes which are due and payable are not paid at the time assistance is granted.);

(8) Providing living area for the HPG recipient and all members of the household as required in 7 CFR 3550.54(c);

(9) Moving a dwelling onto the site of the demolished, previously existing housing and meeting all HPG housing preservation requirements for repair and rehabilitation;

(10) Providing funds for demolishing the existing housing; and

(11) Any other cost that is reasonable and justifiable directly related to replacement activities.

(e) HPG funds may be used for payment of incidental expenses directly related to accomplishing authorized activities such as fees for connection of utilities (water, sewer, gas, electric), credit reports, surveys, title clearance, loan closing, inspections, and architectural or other technical services. All fees will be in accordance with local prevailing rates and so documented.

(f) HPG funds may be used where they do not contribute to the health, safety and well being of the occupant or do not materially contribute to the structural integrity or long-term preservation of the unit. The percentage of the funds to be used for such purposes must not exceed 20 percent of the total funding for the unit(s) and/or dwelling, and such work must be combined with improvements listed as eligible under

paragraph (c) of this section. These improvements may include, but are not limited to the following:

(1) Painting;

(2) Paneling;

(3) Floor covering, including carpeting;

(4) Improving clothes closets or shelving;

(5) Improving kitchen cabinets;

(6) Air conditioning; or

(7) Landscape plantings.

(g) Under the following conditions, HPG funds may be used to reimburse the grantee for authorized housing preservation or replacement housing activities performed by employees of the grantee where the grantee acts as a construction contractor and furnishes construction services:

(1) The grantee must demonstrate that such work performed by the grantee results in cost savings in terms of time and labor over cost for such work prevailing in the area;

(2) The grantee has established a process for third party review of all performance by a local government, building inspector or other independent party;

(3) The grantee has established or makes available a process that provides for consumer protection to the individual homeowner, owner of a rental property, or co-op assisted; and

(4) The grantee's accounting system provides a clear delineation between administrative costs and construction contractor (non-administrative) costs.

(h) HPG funds may *not* be used to:

(1) Assist in the construction or completion of an addition (excluding paragraph (c)(11) of this section) or a new dwelling. This paragraph does not apply to replacement housing.

(2) Refinance any debt or obligation of the grantee, the individual homeowner, owners of a rental property, or co-ops other than obligations incurred for eligible items covered by this section entered into after the date of agreement with the HPG grantee.

(3) Repair or rehabilitate as well as replace any property located in the Coastal Barrier Resources System.

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26210, May 13, 1997]

§ 1944.665 Supervision and inspection of work.

Grantees are responsible for supervising all rehabilitation and repair work, as well as replacement housing financed with HPG assistance. After all HPG work has been completed, a final inspection must be done by a disinterested third party, such as local building and code enforcement officials. If there are no such officials serving the area where HPG activities will be undertaken, or if the grantee would also normally make such inspections, the grantee must use qualified contract or fee inspectors.

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26210, May 13, 1997]

§ 1944.666 Administrative activities and policies.

Grant funds are to be used primarily for housing repair and rehabilitation activities. Use of grant funds for direct and indirect administrative costs is a secondary purpose and must not exceed 20 percent of the HPG funds awarded to the grantee.

(a) Administrative expenses may include:

(1) payment of reasonable salaries or contracts for professional, technical, and clerical staff actively assisting in the delivery of the HPG project.

(2) Payment of necessary and reasonable office expenses such as office rental, supplies, utilities, telephone services, and equipment. (Any item of nonexpendable personal property having a unit value of $1,000 or more, acquired with HPG funds, will be specifically identified to FmHA or its successor agency under Public Law 103–354 in writing.)

(3) Payment of necessary and reasonable administrative costs such as workers' compensation, liability insurance, and the employer's share of Social Security and health benefits. Payments to private retirement funds are permitted if the grantee already has such a fund established and ongoing.

(4) Payment of reasonable fees for necessary training of grantee personnel.

(5) Payment of necessary and reasonable costs for an audit upon expiration of the grant agreement.

(6) Other reasonable travel and miscellaneous expenses necessary to accomplish the objectives of the specific HPG grant which were anticipated in the individual HPG grant proposal and which have been approved as eligible expenses at the time of grant approval.

(b) HPG administrative funds may *not* be used for:

(1) Preparing housing development plans and strategies except as necessary to accomplish the specific objectives of the HPG project.

(2) Substitution of any financial support previously provided or currently available from any other source.

(3) Reimbursing personnel to perform construction related to housing preservation assistance. (Non-administrative funds may be used if construction is for housing preservation assistance under the provisions of §1944.664(g) of this subpart.

(4) Buying property of any kind from persons receiving assistance from the grantee under the terms of the HPG agreement.

(5) Paying for or reimbursing the grantee for any expense or debts incurred before FmHA or its successor agency under Public Law 103–354 executes the grant agreement.

(6) Paying any debts, expenses, or costs which should be the responsibility of the individual homeowner, owner, tenant or household member of a rental property, or owner (member) or non-member of a co-op receiving HPG assistance outside the costs of repair and rehabilitation as well as for replacement housing (individual homeowners only).

(7) Any type of political activities prohibited by the Office of Management and Budget (OMB) Circular A–122.

(8) Other costs including contributions and donations, entertainment, fines and penalties, interest and other financial costs unrelated to the HPG assistance to be provided, legislative expenses, and any excess of cost from other grant agreements.

(9) Paying added salaries for employees paid by other sources, i.e., public agencies who pay employees to handle grants.

(c) Advice concerning ineligible costs may be obtained from FmHA or its successor agency under Public Law 103–354 as part of the HPG preapplication review or when a proposed cost appears ineligible.

(d) The grantee may not charge fees or accept any compensation or gratuities from HPG recipients for the grantee's technical or administrative services under this program. Where the grantee performs as a construction contractor, the grantee may be paid such compensation directly related to construction services provided and limited to authorized housing preservation activities.

(e) The policies, guidelines and requirements of 7 CFR parts 3015 and 3016 apply to the acceptance and use of HPG funds.

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26210, May 13, 1997]

§ 1944.667 Relocation and displacement.

(a) *Relocation.* Public bodies and agencies must comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970. The grantee must provide assistance for permanent or temporary relocation of displaced persons for units repaired or rehabilitated or for individual homes replaced with HPG assistance. HPG funds may be used to cover costs incurred in the relocation of displaced persons. The applicant shall include in its statement of activities, a statement concerning the temporary relocation of homeowners and/or tenants during the period of repairs and/or rehabilitation to the units or dwellings. Any contract or agreement between the homeowner and the grantee, as well as between the grantee and the owner(s) of rental properties and co-ops shall include a statement covering at a minimum;

(1) The period of relocation (if any);

(2) The name(s) of the party (or parties) who shall bear the cost of temporarily relocating; and

(3) The name(s) of the party (or parties) who shall bear the cost of permanent relocation; and

(4) If paragraphs (a) (2) or (3) of this section is the grantee, the maximum amount of temporary or permanent relocation costs proposed to be allowed.

(b) *Displacement.* The applicant shall include in its statement of activities, a

statement as to how its proposed HPG financial assistance program shall keep to a minimum the displacement of homeowners and/or tenants.

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26210, May 13, 1997]

§ 1944.668 Term of grant.

HPG projects may be funded under the terms of a grant agreement for a period of up to 2 years commencing on the date of execution of the grant agreement by the FmHA or its successor agency under Public Law 103–354 approval official. Term of the project will be based upon HPG resources available for the proposed project and the accomplishability of the applicant's proposal within 1 or 2 years. Applicants requesting a 2 year term may be asked to develop a feasible 1 year program if sufficient funds are not available for a 2 year program.

§ 1944.669 [Reserved]

§ 1944.670 Project income.

(a) Project income during the grant period from loans made to homeowners, owners of rental properties, and co-ops is governed by 7 CFR parts 3015 and 3016. All income during the grant period, including amounts recovered by the grantee due to breach of agreements between the grantee and the HPG recipient, must be used under (and in accordance with) the requirements of the HPG program.

(b) Grantees are encouraged to establish a program which reuses income from loans after the grant period for continuing repair and rehabilitation activities, as well as for individual housing replaced.

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26210, May 13, 1997]

§ 1944.671 Equal opportunity requirements and outreach efforts.

The policies and regulations contained in subpart E of part 1901 of this chapter apply to grantees under this subpart.

(a) *Fair housing.* The Fair Housing Act prohibits any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making loans, grants, or other financial assistance for a unit or dwelling, or which will be secured by a unit or dwelling, because of race, color, religion, sex, national origin, age, familial status, or handicap/disability. Prohibited practices under this section include:

(1) Failing to provide any person in connection with a residential real estate-related transaction, information regarding the availability of loans, grants, or other financial assistance, or providing information that is inaccurate or different from that provided others; and

(2) The term *residential and real estate-related transaction* includes the making or purchasing of loans, grants, or other financial assistance for purchasing, constructing, improving, repairing, or rehabilitating a unit or dwelling, as well as for replacement housing for individual homeowners.

(b) *Outreach.* In addition, the HPG grantee is required to address an outreach effort in their program. The amount of outreach should sufficiently reach the entire service area. As a measure of compliance, the percentages of the individuals served by the HPG grantee should be in proportion to the percentages of the population of the service area by race/national origin. If the percentages are not proportional, then adequate justification is to be made. Exhibit E–1 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) will be used to monitor these requirements. (Further explanation and guidance of exhibit E–1 can be found in exhibit E–2 of this subpart which is available in any FmHA or its successor agency under Public Law 103–354 office). A separate file will be maintained by the grantee that will include the following outreach activities:

(1) Community contacts to community organizations, community leaders, including minority leaders, by name, race, and date contacted;

(2) Copies of all advertising in local newspapers, and through other media. Any advertising must reach the entire service area. FmHA or its successor agency under Public Law 103–354 encourages the use of minority-owned radio stations and other types of media, if available, in the service area.

The grantee's file shall also include the name of the media used, and the percentage of its patronage by race/national origin; and

(3) Copies of any other advertising or other printed material, including the application form used. The application form shall include the nondiscrimination slogan: ''This is an equal opportunity program. Discrimination is prohibited by Federal Law.''

(c) *Additional requirements.* In order to meet the Fair Housing requirements and the nondiscrimination requirements of Title VI of the Civil rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, the HPG grantee will need to adhere to the recommendations of exhibit H of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26210, May 13, 1997]

§ 1944.672 Environmental requirements.

Subpart G of part 1940 of this chapter will be followed regarding environmental requirements. The following is additional information on how to approach HPG projects under those requirements:

(a) The approval of an HPG grant for the repair, rehabilitation, or replacement of dwellings shall be a Class I action. As part of their preapplication materials, applicants shall submit Form RD 1940–20, ''Request for Environmental Information,'' for the geographical areas proposed to be served by the program. The applicant shall refer to exhibit F–1 of this subpart (available in any Rural Development State or District Office) when completing Form RD 1940–20. Further guidance on completing this form is available from the Agency office servicing the program.

(b) The use of HPG funds by the grantee to repair, rehabilitate, or replace on the same site, specific dwellings is generally exempt from an RHS environmental review. However, if such dwellings are located in a floodplain, wetland, or the proposed work is not concurred in by the Advisory Council on Historic Preservation under the requirements of §1944.673, an RHS environmental review is required. Dwellings within the Coastal Barrier Resources System are not eligible for HPG assistance. Applicants must include in their preapplication a process for identifying dwellings that may receive housing preservation or replacement housing assistance that will require an environmental assessment. This may be accomplished through use of exhibit F–2 of this subpart (available in any Rural Development State or District Office) or another process supplying similar information acceptable to RHS.

(c) If a specific dwelling is not located in a floodplain, wetland, or the proposed work is concurred in by the Advisory Council on Historic Preservation under the requirements of §1944.673 of this subpart, no environmental review is required by FmHA or its successor agency under Public Law 103–354. The grantee only needs to indicate its review and compliance with this subpart, indicating such in each recipient's file in accordance with paragraph (e) of this section.

(d) When a dwelling requiring an environmental assessment is proposed for HPG assistance, the grantee will immediately contact the RHS office designated to service the HPG grant. Prior to approval of HPG assistance to the recipient by the grantee, RHS will prepare the environmental assessment in accordance with part 1940, subpart G, of this chapter with the assistance of the grantee, as necessary. Paragraph VIII of exhibit C of this subpart (available in any Rural Development State or District Office) provides further guidance in this area.

(e) If FmHA or its successor agency under Public Law 103–354 is required to make an environmental assessment, the grantee will be provided with a copy of the assessment which will be made part of the recipient's file. The grantee must also include in each recipient's file:

(1) Documentation on how the process for historic preservation review under §1944.673 of this subpart has been complied with, including all relevant reviews and correspondence; and

(2) Determination as to whether the unit is located in a 100-year floodplain or a wetland.

(3) *Documentation of this review.* Suggested language is: ''We have considered this dwelling under FmHA or its successor agency under Public Law 103–354's environmental and historic preservation requirements for a HPG (§§ 1944.672 and 1944.673 of this subpart) and an environmental assessment is not required. The review was completed in accordance with the process to identify properties requiring an FmHA or its successor agency under Public Law 103–354 environmental assessment approved with our statement of activities.''

(f) Proposed use of funds by an applicant to use monies for additions under § 1944.664 (c)(11) of this subpart must be addressed in the statement of activities.

(g) Grantees must contact FmHA or its successor agency under Public Law 103–354 prior to actual usage of funds by the grantees under § 1944.664 (c)(11) of this subpart. FmHA or its successor agency under Public Law 103–354 must complete the appropriate level of environmental review in accordance with subpart G of part 1940 of this chapter.

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26210, May 13, 1997]

§ 1944.673 Historic preservation and replacement housing requirements and procedures.

(a) FmHA or its successor agency under Public Law 103–354 has entered into a Programmatic Memorandum of Agreement (PMOA) with the National Conference of State Historic Preservation Officers (SHPO) and the Advisory Council on Historic Preservation in order to implement the specific requirements regarding historic preservation contained in section 533 of the Housing Act of 1949, 42 U.S.C. 1490(m) of the enabling legislation. The PMOA, with attachments, can be found in FmHA Instruction 2000–FF (available in any FmHA or its successor agency under Public Law 103–354 office). A copy of the PMOA will be provided to each applicant for a HPG as part of the preapplication package specified in paragraph II of exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

(b) Each applicant for an HPG grant will provide, as part of its preapplication documentation submitted to RHS, a description of its proposed process for assisting very low- and low-income persons owning historic properties needing rehabilitation, repair, or replacement. ''Historic properties'' are defined as properties that are listed or eligible for listing on the National Register of Historic Places. Each HPG proposal shall comply with the provisions of Stipulation I, A-G of the PMOA (RD Instruction 2000–FF), available in any Rural Development State or District Office. Should RHS be required to assume responsibility for compliance with 36 CFR part 800 in accordance with Stipulation III of the PMOA, the grantee will assist RHS in preparing an environmental assessment. RHS will work with the grantee to develop alternative actions or mitigation measures, as appropriate.

(c) Such assumption of responsibility by FmHA or its successor agency under Public Law 103–354 on a particular property shall not preclude the grantee from carrying out the requirements of 36 CFR part 800 on other properties as though it were a Federal agency, but no work may be commenced on any unit or dwelling in controversy until and unless so advised by FmHA or its successor agency under Public Law 103–354.

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26211, May 13, 1997]

§ 1944.674 Public participation and intergovernmental review.

(a) In preparing its statement of activities, the applicant is responsible for consulting with leaders from the county, parish and/or township governments of the area where HPG activities will take place for the purpose of assuring that the proposed HPO program is beneficial and does not duplicate current activities. American Indian nonprofit organization applicants should obtain the written concurrence of the tribal governing body in lieu of consulting with the county governments when the program is operated only on tribal land.

(b) The applicant must also make its statement of activities available to the public for comment. The applicant must announce the availability of its statement of activities for review in a newspaper of general circulation in the project area and allow at least 15 days for public comment. The start of this 15-day period must occur no later than 16 days prior to the last day for acceptance of preapplications by FmHA or its successor agency under Public Law 103–354.

(c) The HPG program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Under FmHA Instruction 1940–J (available in any FmHA or its successor agency under Public Law 103–354 office) prospective applicants for HPG grants must submit its statement of activities to the State single point of contact prior to submitting their preapplication to FmHA or its successor agency under Public Law 103–354. Evidence of submittal of the statement of activities to the State single point of contact is to be submitted with a preapplication. Comments and recommendations made through the intergovernmental review process are for the purpose of assuring consideration of State and local government views. The name of the State single point of contact is available from any FmHA or its successor agency under Public Law 103–354 office. This section does not apply to American Indian tribes, bands, groups, etc., as noted in §1944.656 of this subpart.

§1944.675 Allocation of HPG funds to States and unused HPG funds.

The allocation and distribution of HPG funds is found in §1940.578 of subpart L of part 1940 of this chapter.

§1944.676 Preapplication procedures.

(a) All applicants will file an original and two copies of Standard Form (SF) 424.1, ''Application For Federal Assistance (For Nonconstruction),'' and supporting information with the appropriate FmHA or its successor agency under Public Law 103–354 office. A preapplication package, including SF–424.1, is available in any FmHA or its successor agency under Public Law 103–354 Office.

(b) All preapplications shall be accompanied by the following information which FmHA or its successor agency under Public Law 103–354 will use to determine the applicant's eligibility to undertake the HPG program and to evaluate the preapplication under the project selection criteria of §1944.679 of this subpart.

(1) A statement of activities proposed by the applicant for its HPG program as appropriate to the type of assistance the applicant is proposing, including:

(i) A complete discussion of the type of and conditions for financial assistance for housing preservation, including whether the request for assistance is for a homeowner assistance program, a rental property assistance program, or a co-op assistance program;

(ii) The process for selecting recipients for HPG assistance, determining housing preservation needs of the dwelling, performing the necessary work, and monitoring/inspecting work performed;

(iii) A description of the process for identifying potential environmental impacts in accordance with §1944.672 of this subpart, and the provisions for compliance with Stipulation I, A-G of the PMOA (FmHA Instruction 2000–FF available in any FmHA or its successor agency under Public Law 103–354 office) in accordance with §1944.673 (b) of this subpart. With the exception of Stipulation I, D of the PMOA, this may be accomplished by adoption of exhibit F–2 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), or another process supplying similar information acceptable to FmHA or its successor agency under Public Law 103–354;

(iv) The development standard(s) the applicant will use for the housing preservation work; and, if not the FmHA or its successor agency under Public Law 103–354 development standards for existing dwellings, the evidence of its acceptance by the jurisdiction where the grant will be implemented;

(v) The time schedule for completing the program;

(vi) The staffing required to complete the program;

(vii) The estimated number of very low- and low-income minority and non-minority persons the grantee will assist with HPG funds; and, if a rental property or co-op assistance program, the number of units and the term of restrictive covenants on their use for very low- and low-income;

(viii) The geographical area(s) to be served by the HPG program;

(ix) The annual estimated budget for the program period based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs, such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other cost categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant budget should also include a schedule (with amounts) of how the applicant proposes to draw HPG grant funds, i.e., monthly, quarterly, lump sum for program activities, etc.;

(x) A copy of an indirect cost proposal as required in 7 CFR parts 3015 and 3016, when the applicant has another source of federal funding in addition to the FmHA or its successor agency under Public Law 103–354 HPG program;

(xi) A brief description of the accounting system to be used;

(xii) The method of evaluation to be used by the applicant to determine the effectiveness of its program which encompasses the requirements for quarterly reports to FmHA or its successor agency under Public Law 103–354 in accordance with § 1944.683(b) of this subpart and the monitoring plan for rental properties and co-ops (when applicable) according to § 1944.689 of this subpart;

(xiii) The source and estimated amount of other financial resources to be obtained and used by the applicant for both HPG activities and housing development and/or supporting activities;

(xiv) The use of program income, if any, and the tracking system used for monitoring same;

(xv) The applicant's plan for disposition of any security instruments held by them as a result of its HPG activities in the event of its loss of legal status;

(xvi) Any other information necessary to explain the proposed HPG program; and

(xvii) The outreach efforts outlined in § 1944.671(b) of this subpart.

(2) Complete information about the applicant's experience and capacity to carry out the objectives of the proposed HPG program.

(3) Evidence of the applicant's legal existence, including, in the case of a private nonprofit organization, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence 1 year or more; and, the names and addresses of the applicant's members, directors and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, preapplications should be accompanied by the names, addresses, and principal purpose of the other organizations. If the applicant is a consortium, documentation showing compliance with § 1944.656 of this subpart will also be included.

(4) For a private nonprofit entity, the most recent audited statement and a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant. If the applicant is an organization being assisted by another private nonprofit organization, the same type of financial statement should also be provided by that organization.

(5) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and actual number of both low-income and low-income minority households and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for historic properties, the method of evaluation to be used by

the applicant in determining the effectiveness of its efforts (according to paragraph (b)(1)(xii) of this section).

(6) A statement containing the component for alleviating overcrowding as defined by §1944.656 of this subpart.

(7) A list of other activities the applicant is engaged in and expects to continue, a statement as to any other funding, and whether it will have sufficient funds to assure continued operation of the other activities for at least the period of the HPG grant agreement.

(8) Any other information necessary that specifically addresses the selection criteria in §1944.679 of this subpart.

(c) The applicant must submit an original and one copy of Form FmHA or its successor agency under Public Law 103–354 1940–20 prepared in accordance with exhibit F–1 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office).

(d) The applicant must submit a description of its process for:

(1) Identifying and rehabilitating properties that are listed on or eligible for listing on the National Register of Historic Places.

(2) Identifying properties that are located in a floodplain or wetland.

(3) Identifying properties located within the Coastal Barrier Resources System.

(4) Coordinating with other public and private organizations and programs that provide assistance in the rehabilitation of historic properties (Stipulation I, D, of the PMOA, FmHA Instruction 2000–FF, available in any FmHA or its successor agency under Public Law 103–354 office).

(5) Paragraphs (d) (1), (2), and (3) of this section may be accomplished by adoption of exhibit F–2 of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office), or another process supplying similar information acceptable to FmHA or its successor agency under Public Law 103–354.

(e) The applicant must submit evidence of SHPO concurrence in the proposal, or in the event of nonconcurrence, a copy of SHPO's comments together with evidence that the applicant has sought the Advisory Council on Historic Preservation's advice as to how the disagreement might be resolved, and a copy of any advice provided by the Council.

(f) The applicant must submit written statements and related correspondence reflecting compliance with §1944.674 (a) and (c) of this subpart regarding consultation with local government leaders in the preparation of its program and the consultation with local and state government pursuant to the provisions of Executive Order 12372.

(g) The applicant is to make its statement of activities available to the public for comment prior to submission to FmHA or its successor agency under Public Law 103–354 pursuant to §1944.674(b) of this subpart. The application must contain a description of how the comments (if any were received) were addressed.

(h) The applicant must submit an original and one copy of Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement,'' and Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement,'' in accordance with §1944.674(c) of this subpart.

§1944.677 [Reserved]

§1944.678 Preapplication submission deadline.

Dates governing the invitation and review of HPG preapplications will be published annually in the FEDERAL REGISTER and may be obtained from FmHA or its successor agency under Public Law 103–354 offices processing HPG preapplications. Preapplications received after the date specified in the FEDERAL REGISTER will not be considered for funding in that fiscal year and will be returned.

§1944.679 Project selection criteria.

(a) Applicants must meet all of the following threshold criteria:

(1) Provide a financially feasible program of housing preservation assistance. *Financially feasible* is defined as proposed assistance which will be affordable to the intended recipient or result in affordable housing for very low- and low-income persons;

(2) Serve eligible rural areas with a concentration of substandard housing for households with very low- and low-income;

(3) Be an eligible applicant entity as defined in § 1944.658 of this subpart;

(4) Meet the requirements of consultation and public comment in accordance with § 1944.674 of this subpart; and

(5) Submit a complete preapplication as outlined in § 1944.676 of this subpart.

(b) For applicants meeting all of the requirements listed in paragraph (a) of this section, FmHA or its successor agency under Public Law 103–354 will use the weighted criteria in this paragraph (b) in the selection of grant recipients. Each preapplication and its accompanying statement of activities will be evaluated and, based solely on the information contained in the preapplication, the applicant's proposal will be numerically rated on each criteria within the range provided. The highest ranking applicant(s) will be selected based on allocation of funds available to the State. Exhibit D of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) will be used to document the rating.

(1) Points are awarded based on the percentage of very low-income persons that the applicant proposes to assist, using the following scale:

(i) More than 80%: 20 points.

(ii) 61% to 80%: 15 points.

(iii) 41% to 60%: 10 points.

(iv) 20% to 40%: 5 points.

(v) Less than 20%: 0 points.

(2) The applicant's proposal may be expected to result in the following percentage of HPG fund use (excluding administrative costs) to total cost of unit preservation. This percentage reflects maximum repair or rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches. Points are awarded based on the following percentage of HPG funds (excluding administrative costs) to total funds:

(i) 50% or less: 20 points.

(ii) 51% to 65%: 15 points.

(iii) 66% to 80%: 10 points.

(iv) 81% to 95%: 5 points.

(v) 96% to 100%: 0 points.

(3) The applicant has demonstrated its administrative capacity in assisting very low- and low-income persons to obtain adequate housing based on the following:

(i) The organization or a member of its staff has 2 or more years experience successfully managing and operating a rehabilitation or weatherization type program, including FmHA or its successor agency under Public Law 103–354's HPG program: 10 points.

(ii) The organization or a member of its staff has 2 or more years experience successfully managing and operating a program assisting very low- and low-income persons obtain housing assistance: 10 points.

(iii) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal: 10 points.

(4) The proposed program will be undertaken entirely in rural areas outside MSAs identified by FmHA or its successor agency under Public Law 103–354 as having populations below 10,000 *or* in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population) as defined in § 1944.656 of this subpart: 10 points.

(5) The program will use less than 20 percent of HPG funds for administration purposes:

(i) More than 20%: Not Eligible.

(ii) 20%: 0 points.

(iii) 19%: 1 point.

(iv) 18%: 2 points.

(v) 17%: 3 points.

(vi) 16% 4 points.

(vii) 15% or less: 5 points.

(6) The proposed program contains a component for alleviating overcrowding as defined in § 1944.656 of this subpart: 5 points.

(c) In the event more than one preapplication receives the same amount of points, those preapplications will then be ranked based on the actual percentage figure used for determining the points under paragraph (b)(1) of this section. Further, in the event that preapplications are still tied, then those preapplications still tied will be ranked based on the percentage figures used (low to high) in paragraph (b)(2) of this section. Further, for applications

where assistance to rental properties or co-ops is proposed, those still tied will be further ranked based on the number of years the units are available for occupancy under the program (a minimum of 5 years is required). For this part, ranking will be based from most to least number of years. Finally, if there is still a tie, then a ''lottery'' System will be used.

§ 1944.680 Limitation on grantee selection.

After all preapplications have been reviewed under the selection criteria and if more than one preapplication has met the criteria of §1944.679(a) of this subpart, the State Director or approval official may not approve more than 50 percent of the State's allocation to a single entity.

§ 1944.681 Application submission.

Applicants selected by FmHA or its successor agency under Public Law 103–354 will be advised to submit a full application in an original and two copies of SF 424.1, and are to include any condition or amendments that must be incorporated into the statement of activities prior to submitting a full application. Instructions on submission and timing will be provided by FmHA or its successor agency under Public Law 103–354.

§ 1944.682 Preapplication/application review, grant approval, and requesting HPG funds.

The FmHA or its successor agency under Public Law 103–354 offices processing HPG preapplications/applications will review the preapplications and applications submitted. Further review and actions will be taken by FmHA or its successor agency under Public Law 103–354 personnel in accordance with exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office). Exhibit G of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) will be used by the State Office to notify the National Office of preapplications received, eligibility, ranking, number of proposed units, amount requested by applicants, and amount recommended by State Office. Preapplications determined not eligible and/or not meeting the selection criteria will be notified in the manner prescribed in exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office). In addition, FmHA or its successor agency under Public Law 103–354 will document its findings and advise the applicant of its review rights or appeal rights (if applicable) under subpart B of part 1900 of this chapter. Applications determined not eligible will be handled in the same manner. The preapplications or applications determined incomplete will be notified in the manner prescribed in exhibit C of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) and will not be given appeal rights. The State Director is authorized to approve an HPG in accordance with this subpart and subpart A of part 1901 of this chapter. The State Director may delegate this authority in writing to designated State Office personnel and District Directors. Further:

(a) Grant approval is the process by which FmHA or its successor agency under Public Law 103–354 determines that all applicable administrative and legal conditions for making a grant have been met, the grant agreement is signed, and funds have been obligated for the HPG project. If acceptable, the approval official will inform the applicant of approval, having the applicant sign Form FmHA or its successor agency under Public Law 103–354 1940–1, ''Request for Obligation of Funds,'' and exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office). The applicant will be sent a copy of the executed grant agreement and Form FmHA or its successor agency under Public Law 103–354 1940–1. Should any conditions be attached to the grant agreement that must be satisfied prior to the applicant receiving any HPG funds, the grant agreement and the conditions will be returned to the applicant for acceptance and acknowledgement on the grant agreement prior to execution by the approval official.

(b) The application may be disapproved before execution of the grant agreement if the applicant is no longer

eligible, the proposal is no longer feasible, or the applicant requests cancellation of its project. Except when the applicant requests cancellation, FmHA or its successor agency under Public Law 103–354 will document its findings and advise the applicant of its appeal rights under subpart B of part 1900 of this chapter.

(c) With the executed grant agreement and Form FmHA or its successor agency under Public Law 103–354 1940–1, FmHA or its successor agency under Public Law 103–354 will send the approved applicant (now the ''grantee'') copies of SF–270, ''Request for Advance or Reimbursement''. The grantee must submit an original and two copies of SF–270 to the FmHA or its successor agency under Public Law 103–354 office servicing the project. In addition, the grantee must submit SF–272, ''Federal Cash Transactions Report,'' each time an advance of funds is made. This report shall be used by FmHA or its successor agency under Public Law 103–354 to monitor cash advances made to the grantee. Advances or reimbursements must be in accordance with the grantee's budget and statement of activities, including any amendments, prior approved by FmHA or its successor agency under Public Law 103–354. Requests for reimbursement or advances must be at least 30 calendar days apart.

(d) If the grantee fails to submit required reports pursuant to § 1944.683 of this subpart or is in violation of the grant agreement, FmHA or its successor agency under Public Law 103–354 may suspend HPG reimbursements and advances or terminate the grant in accordance with § 1944.688 of this subpart and the grant agreement.

§ 1944.683 Reporting requirements.

(a) SF–269, ''Financial Status Report,'' is required of all grantees on a quarterly basis. Grantees shall submit an original and two copies of the report to the designated FmHA or its successor agency under Public Law 103–354 servicing office. When preparing the Financial Status Report, the total program outlays (Item 10, g, of SF–269) should be less any rebates, refunds, or other discounts. Reports must be submitted no later than 15 days after the end of each calendar quarter.

(b) Quarterly performance reports shall be submitted by grantees with SF–269, in an original and two copies (see exhibit E–1 or this subpart which is available in any FmHA or its successor agency under Public Law 103–354 office.) The quarterly report should relate the activities during the report period to the project's objectives and analyze the effectiveness of the program. As part of the grantee's preapplication submission, as required by § 1944.676(b) of this subpart, the grantee establishes its objectives for the HPG program, including its method of evaluation to determine its effectiveness. Accordingly, the report must include, but need not be limited to, the following:

(1) Use of HPG funds for administration and housing preservation activities.

(2) The following specific information for each unit or dwelling assisted:

(i) Name(s), address, and income(s) of each homeowner assisted or the name and address of the owner(s) or co-op for each rental property (single or multiunit) or co-op assisted;

(ii) Total cost of repair/rehabilitation, a list of major repairs made, amount financed by HPG, and amount financed from which other sources;

(iii) Type of assistance provided (interest subsidy, loan, grant, etc.); and

(iv) Results of implementing the environmental process contained in § 1944.672 of this subpart and the historic preservation process contained in § 1944.673 of this subpart.

(3) The use of HPG and any other funds for replacement housing.

(4) A comparison of actual accomplishments to the objectives set for that period, including:

(i) The number of very low- and low-income, minority and nonminority persons assisted in obtaining adequate housing by the HPG program through repair and rehabilitation as well as for replacement housing; and

(ii) The average cost of assistance provided to each household.

(5) Reasons why, if established objectives are not met.

(6) Problems, delays, or adverse conditions which will materially affect attainment of the HPG grant objectives, prevent the meeting of time schedules

or objectives, or preclude the attainment of program work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Federal or other assistance needed to relieve the situation.

(7) Objectives established for the next reporting period, sufficiently detailed to identify the type of assistance to be provided, the number and type of households to be assisted, etc.

(8) A certification that the final building inspection reports for each rehabilitation or repair work financed as well as for replacement housing with HPG funds for that quarter is on file.

(c) The grantee should be prepared to meet with the FmHA or its successor agency under Public Law 103–354 office servicing the project to discuss its quarterly report shortly after submission.

(d) If the reports are not submitted in a timely manner or if the reports indicate that the grantee has made unsatisfactory progress or the grantee is not meeting its established objectives, the FmHA or its successor agency under Public Law 103–354 official servicing the grant will recommend to the State Director appropriate action to resolve the indicated problem(s). If appropriate corrective action is not taken by the grantee, the State Director has the discretion to not authorize further advances by suspending the project in accordance with §1944.688 of this subpart and the grant agreement.

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26211, May 13, 1997]

§1944.684 Extending grant agreement and modifying the statement of activities.

(a) All requests extending the original grant agreement or modifying the HPG program's statement of activities must be in writing. Such requests will be processed through the designated FmHA or its successor agency under Public Law 103–354 office servicing the project. The approval official will respond to the applicant within 30 days of receipt of the request.

(b) A grantee may request an extension of the grant agreement prior to the end of the project term specified in the grant agreement if the grantee anticipates that there will be grant funds remaining and the grantee has demonstrated its ability to conduct its program in a manner satisfactory to FmHA or its successor agency under Public Law 103–354. The approval official may approve an extension when:

(1) The grantee is likely to complete or exceed the goals outlined in the approved statement of activities; and

(2) The FmHA or its successor agency under Public Law 103–354 office responsible for servicing the grant recommends continuation of the grant until the grantee has expended all of the remaining grant funds.

(c) Modifications to the statement of activities, such as revising the processes the grantee follows in operating the HPG program, may be approved by the approval official when the modifications are for eligible purposes in accordance with §§1944.664 and 1944.666 of this subpart, meet any applicable review and process requirements of this subpart, and the program will continue to serve the geographic area originally approved. The grantee will submit its proposed revisions together with the necessary supporting information to FmHA or its successor agency under Public Law 103–354 prior to modifying its operation from the approved statement of activities.

(d) Exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103–354 office) will be used for all extensions on and modifications to the grant agreement.

§1944.685 [Reserved]

§1944.686 Additional grants.

An additional HPG grant may be made when the grantee has achieved or nearly achieved the goals established for the previous or existing grant. The grantee must file a preapplication for the current fiscal year which will be processed and compared under the project selection criteria to others submitted at that time.

§1944.687 [Reserved]

§1944.688 Grant evaluation, closeout, suspension, and termination.

(a) Grant evaluation will be an ongoing activity performed by both the

grantee and FmHA or its successor agency under Public Law 103–354. The grantee will perform self-evaluations by preparing quarterly performance reports in accordance with § 1944.683 of this subpart. FmHA or its successor agency under Public Law 103–354 will also review all reports prepared and submitted by the grantee in accordance with the grant agreement and this subpart.

(b) The grant can be suspended or terminated before the grant ending date for the causes specified in the grant agreement. No further grant funds will be advanced when grant suspension or termination procedures have been initiated in accordance with the grant agreement. Grantees may be reimbursed for eligible costs incurred prior to the effective date of the suspension or termination. Grantees are prohibited from incurring additional obligations of funds after notification, pending corrective action by the grantee. FmHA or its successor agency under Public Law 103–354 may allow necessary and proper costs that the grantee could not reasonably avoid during the period of suspension provided they are for eligible HPG purposes. In the event of termination, FmHA or its successor agency under Public Law 103–354 may allow necessary and reasonable costs for an audit.

(c) Grantees will have the opportunity to appeal a suspension or termination under FmHA or its successor agency under Public Law 103–354's appeal procedures under subpart B of part 1900 of this chapter.

(d) The grantee will complete the closeout procedures as specified in the grant agreement.

(e) The grantee will have an audit performed upon termination or completion of the project in accordance with 7 CFR parts 3015 and 3016, as applicable. As part of its final report, the grantee will address and resolve all audit findings.

§ 1944.689 Long-term monitoring by grantee.

(a) The grantee is required to perform long-term monitoring on any housing preservation program involving rental properties and co-ops. This monitoring shall be at least on an annual basis and shall consist of, at a minimum, the following:

(1) All requirements noted in § 1944.663 of this subpart;

(2) All requirements of the ''ownership agreement'' executed between the grantee and the rental property owner or co-op; and

(3) All requirements noted in 7 CFR parts 3015 and 3016 during the effective period of the grant agreement.

(b) The grantee is required to make available to FmHA or its successor agency under Public Law 103–354 any such information as requested by FmHA or its successor agency under Public Law 103–354 concerning the above. The grantee shall submit to the FmHA or its successor agency under Public Law 103–354 servicing office an annual report every year while the ownership agreement is in effect. This report shall be submitted within 15 days after the anniversary date or end of the grant agreement. At a minimum, the report will consist of a statement that the grantee is in compliance with this subpart.

(c) All files pertaining to such rental property owner or co-op shall be kept separate and shall be maintained for a period of 3 years after the termination date of the ownership agreement.

§ 1944.690 Exception authority.

The Administrator of FmHA or its successor agency under Public Law 103–354 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, or adversely affect the accomplishment of the purposes of the HPG program, or result in undue hardship by applying the requirement. The Administrator or the Assistant Administrator for Housing may exercise this exception authority at the request of the State Director. The request must be supported by information demonstrating the adverse impact, citing the particular requirement involved, recommending proper alternative course(s) of action, and outlining how the adverse impact could be

mitigated. Exception to any requirement may also be initiated by the Assistant Administrator for Housing.

§§ 1944.691–1944.699 [Reserved]

§ 1944.700 OMB control number.

According to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for the information collection in this subpart is 0575–0115.

[62 FR 26211, May 13, 1997]

EXHIBIT A TO SUBPART N OF PART 1944—HOUSING PRESERVATION GRANT AGREEMENT

This Agreement dated _____ is between _____ (name), _____ (address), (grantee), organized and operating under _____ (authorizing State statute), and the United States of America acting through the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354. FmHA or its successor agency under Public Law 103–354 agrees to grant a sum not to exceed $_____ subject to the terms and conditions of this Agreement; provided, however, that the grant funds actually advanced and not needed for grant purposes shall be returned immediately to FmHA or its successor agency under Public Law 103–354. The Housing Preservation Grant (HPG) Statement of Activities approved by FmHA or its successor agency under Public Law 103–354, is attached, and shall commence within 10 days of the date of execution of this agreement by FmHA or its successor agency under Public Law 103–354 and be completed by _____ (date). FmHA or its successor agency under Public Law 103–354 may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of this Grant Agreement or FmHA or its successor agency under Public Law 103–354 regulation related hereto. The grantee may appeal adverse decisions in accordance with the FmHA or its successor agency under Public Law 103–354 Appeal Procedures contained in subpart B of part 1900 of this chapter.

In consideration of said grant by FmHA or its successor agency under Public Law 103–354 to the Grantee, to be made pursuant to section 533 of the Housing Act of 1949, Housing Preservation Grant (HPG) program, the grantee will provide such a program in accordance with the terms of this Agreement and applicable FmHA or its successor agency under Public Law 103–354 regulations.

PART A—DEFINITIONS

1. *Beginning date* means the date this agreement is executed by FmHA or its successor agency under Public Law 103–354 and costs can be incurred.

2. *Ending date* means the date when all work under this agreement is scheduled to be completed. It is also the latest date grant funds will be provided under this agreement, without an approved extension.

3. *Disallowed costs* are those charges to a grant which the FmHA or its successor agency under Public Law 103–354 determines cannot be authorized in accordance with applicable Federal cost principles contained in Treasury Circular 74–4, ''Cost Principles Applicable to Grants and Contracts with State and Local Governments,'' OMB Circular A–87, ''Cost Principles for State and Local Governments,'' OMB Circular A–122, ''Cost Principles for Nonprofit Organizations,'' and other conditions contained in this Agreement and OMB Circular A–102 ''Uniform Requirements for Grants to State and Local Governments,'' and OMB Circular A–110, ''Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, Uniform Administrative Requirements,'' as appropriate.

4. ''Grant closeout'' is the process by which the grant operation is concluded at the expiration of the grant period or following a decision to terminate the grant.

5. ''Termination'' of the grant means the cancellation of Federal assistance, in whole or in part, at any time before the date of completion.

PART B—TERMS OF AGREEMENT

FmHA or its successor agency under Public Law 103–354 and grantee agree:

1. All grant activities shall be limited to those authorized in subpart N of 7 CFR part 1944.

2. This Agreement shall be effective when executed by both parties.

3. The HPG activities approved by FmHA or its successor agency under Public Law 103–354 shall commence and be completed by the date indicated above, unless earlier terminated under paragraph B 18 below or extended.

4. Grantee shall carry out the HPG activities and processes as described in the approved Statement of Activities which is made a part of this Agreement. Grantee will be bound by the activities and processes set forth in the Statement of Activities and the further conditions set forth in this Agreement. If the Statement of Activities is inconsistent with the Agreement, the latter will govern. A change of any activities and processes must be in writing and must be

signed by the FmHA or its successor agency under Public Law 103–354 State Director or his or her delegated representative.

5. Grantee shall use grant funds only for the purpose and activities approved by FmHA or its successor agency under Public Law 103–354 in the HPG budget. Any uses not provided for in the approved budget must be approved in writing by FmHA or its successor agency under Public Law 103–354 in advance.

6. If the Grantee is a private nonprofit corporation, expenses charged for travel or per diem will not exceed the rates paid FmHA or its successor agency under Public Law 103–354 employees for similar purposes. If the grantee is a public body, the rates will be those that are allowable under the customary practice in the government of which the grantee is a part; if none are customary, the FmHA or its successor agency under Public Law 103–354 rates will be the maximum allowed.

7. Grant funds will not be used for any of the following:

(a) To pay obligations incurred before the effective date of this Agreement.

(b) To pay obligations incurred after the grant termination or ending date.

(c) Entertainment purposes.

(d) To pay for capital assets, the purchase of real estate or vehicles, improvement or renovation of grantee's office space, or repair or maintenance of privately owned vehicles.

(e) Any other purpose specified in §§ 1944.664(f) and 1944.666(b) of this subpart.

(f) Administrative expenses exceeding 20% HPG grant funds.

8. Grant funds shall not be used to substitute for any financial support previously provided and currently available or assured from any other source.

9. Disbursal of grants will be governed as follows:

(a) In accordance with Treasury Circular 1075 (fourth revision) part 205, chapter II of title 31 of the Code of Federal Regulations, grant funds will be provided by FmHA or its successor agency under Public Law 103–354 as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by direct Treasury check to the grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated to OMB Circular A–102 (42 FR 45828, September 12, 1977) for State and local governments and OMB Circular A–110 (41 FR 32016, July 30, 1976) for nonprofit organizations.

(b) Cash advances to the grantee shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the Grantee in carrying out the purpose of the planned project. The timing and amount of cash advances shall be as close as administratively feasible to the actual disbursements by the grantee for direct program costs (as identified in the grantee's Statement of Activity and budget and fund use plan) and proportionate share of any allowable indirect costs.

(c) Grant funds should be promptly refunded to the FmHA or its successor agency under Public Law 103–354 and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) Will be disbursed by the recipient organization within seven calendar days from the date of the Treasury check, or

(ii) Are less than $10,000 and will be disbursed within 30 calendar days from the date of the Treasury check.

(d) Grantee shall provide satisfactory evidence to FmHA or its successor agency under Public Law 103–354 that all officers of the Grantee organization authorized to receive and/or disburse Federal funds are covered by satisfactory fidelity bonds sufficient to protect FmHA or its successor agency under Public Law 103–354's interests.

10. The grantee will submit performance and financial reports as indicated below to the appropriate FmHA or its successor agency under Public Law 103–354 office.

(a) As needed, but not more frequently than once every 30 calendar days, an original and 2 copies of SF–270, ''Request for Advance or Reimbursement.''

(b) Quarterly (not later than February 15, May 15, August 15, and November 15 of each year), an original and 2 copies of SF–269, ''Financial Status Report,'' and a quarterly performance report in accordance with § 1944.683 of this subpart.

(c) Within ninety (90) days after the termination or expiration of the Grant Agreement, an original and 2 copies of SF–269, and a final performance report which will include a summary of the project's accomplishments, problems, and planned future activities of the grantee for HPG. Final reports may serve as the last quarterly report.

(d) FmHA or its successor agency under Public Law 103–354 may require performance reports more frequently if deemed necessary.

11. In accordance with FMC Circular 74–4, Attachment B, compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

12. If the grant exceeds $100,000, cumulative transfers among direct cost budget categories totaling more than 5 percent of the total budget must have prior written approval by FmHA or its successor agency under Public Law 103–354.

13. Results of the program assisted by grant funds may be published by the grantee without prior review by FmHA or its successor agency under Public Law 103–354, provided that such publications acknowledge the support provided by funds pursuant to the provisions of Title V of the Housing Act of 1949, as amended, and that five copies of each such publications are furnished to FmHA or its successor agency under Public Law 103–354.

14. Grantee certifies that no person or organization has been employed or retained to solicit or secure this grant for a commission, percentage, brokerage, or contingent fee.

15. No person in the United States shall, on the grounds of race, creed, color, sex, marital status, age, national origin, or mental or physical handicap, be excluded from participating in, be denied the proceeds of, or be subject to discrimination in connection with the use of grant funds. Grantee will comply with the nondiscrimination regulations of FmHA or its successor agency under Public Law 103–354 contained in subpart E of part 1901 of this chapter.

16. In all hiring or employment made possible by or resulting from this grant, the grantee: (a) Will not discriminate against any employee or applicant for employment because of race, creed, color, sex, marital status, national origin, age, or mental or physical handicap, and (b) will take affirmative action to insure that employees are treated during employment without regard to their race, creed, color, sex, marital status, national origin, age, or mental or physical handicap. This requirement shall apply to, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In the event grantee signs a contract related to this grant which would be covered by any Executive Order, law, or regulation prohibiting discrimination, grantee shall include in the contract the ''Equal Employment Clause'' as specified by Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Employment Agreement.''

17. The grantee accepts responsibility for accomplishing the HPG program as submitted and included in the Statement of Activities. The grantee shall also:

(a) Endeavor to coordinate and provide liaison with State and local housing organizations, where they exist.

(b) Provide continuing information to FmHA or its successor agency under Public Law 103–354 on the status of grantee HPG programs, projects, related activities, and problems.

(c) The grantee shall inform FmHA or its successor agency under Public Law 103–354 as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, new time schedules required and any FmHA or its successor agency under Public Law 103–354 assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

18. Grant closeout and termination procedures will be as follows:

(a) Promptly after the date of completion or a decision to terminate a grant, grant closeout actions are to be taken to allow the orderly discontinuation of grantee activity.

(i) The grantee shall immediately refund to FmHA or its successor agency under Public Law 103–354 any uncommitted balance of grant funds.

(ii) The grantee will furnish to FmHA or its successor agency under Public Law 103–354 within 90 calendar days after the date of completion of the grant an SF–269 and all financial, performance, and other reports required as a condition of the grant, including an audit report.

(iii) The grantee shall account for any property acquired with HPG grant funds, or otherwise received from FmHA or its successor agency under Public Law 103–354.

(iv) After the grant closeout, FmHA or its successor agency under Public Law 103–354 retains the right to recover any disallowed costs which may be discovered as a result of an audit.

(b) When there is reasonable evidence that the grantee has failed to comply with the terms of this Agreement, the State Director can, on reasonable notice, suspend the grant pending corrective action or terminate the grant pursuant to paragraph (c) below. In such instances, FmHA or its successor agency under Public Law 103–354 may reimburse the grantee for eligible costs incurred prior to the effective date of the suspension or termination and may allow all necessary and proper costs which the grantee could not reasonably avoid. FmHA or its successor agency under Public Law 103–354 will withhold further advances and grantees are prohibited from further obligating grant funds, pending corrective action.

(c) Grant termination will be based on the following:

(i) *Termination for cause.* This grant may be terminated in whole or in part at any time before the date of completion, whenever FmHA or its successor agency under Public Law 103–354 determines that the grantee has

failed to comply with the terms of this Agreement. The reasons for termination may include, but are not limited to, such problems as:

(A) Failure to make reasonable and satisfactory progress in attaining grant objectives.

(B) Failure of grantee to use grant funds only for authorized purposes.

(C) Failure of grantee to submit adequate and timely reports of its operation.

(D) Violation of any of the provisions of any laws administered by FmHA or its successor agency under Public Law 103–354 or any regulation issued thereunder.

(E) Violation of any nondiscrimination or equal opportunity requirement administered by FmHA or its successor agency under Public Law 103–354 in connection with any FmHA or its successor agency under Public Law 103–354 programs.

(F) Failure to maintain an accounting system acceptable to FmHA or its successor agency under Public Law 103–354.

(ii) *Termination for convenience.* FmHA or its successor agency under Public Law 103–354 or the grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

(d) FmHA or its successor agency under Public Law 103–354 shall notify the grantee in writing of the determination and the reasons for and the effective date of the suspension or termination. Except for termination convenience, grantees have the opportunity to appeal a suspension or termination under FmHA or its successor agency under Public Law 103–354's appeal procedure, subpart B of part 1900 of this chapter.

19. Upon any default under its representatives or agreements set forth in this instrument, the grantee, at the option and demand of FmHA or its successor agency under Public Law 103–354, will, to the extent legally permissible, repay to FmHA or its successor agency under Public Law 103–354 forthwith the grant funds received with interest at the rate of five per centum per annum from the date of the default. The provisions of this Grant Agreement may be enforced by FmHA or its successor agency under Public Law 103–354, at its option and without regard to prior waivers by it or previous defaults of the grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State Courts, as may be deemed necessary by FmHA or its successor agency under Public Law 103–354 to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

20. Extension of this Grant Agreement and/or modifications of the Statement of Activities may be approved by FmHA or its successor agency under Public Law 103–354 provided, in its opinion, the extension and/or modification is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the Statement of Activities during the period of the extension and/or modifications as specified in §1944.684 of this subpart.

PART C—GRANTEE AGREES

1. To comply with property management standards for expendable and nonexpendable personal property established by Attachment N of OMB Circular A–102 or Attachment N of OMB Circular A–110 for State and local governments or nonprofit organizations respectively. *Personal property* means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. *Nonexpendable personal property* means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A grantee may use its own definitions of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. *Expendable personal property* refers to all tangible personal property other than nonexpendable personal property. When nonexpendable tangible personal property is acquired by a grantee with project funds, title shall not be taken by the Federal Government but shall vest in the grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of $1,000 or more, FmHA or its successor agency under Public Law 103–354 may reserve the right to transfer title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(i) The property shall be appropriately identified in the grant or otherwise made known to the grantee in writing.

(ii) FmHA or its successor agency under Public Law 103–354 shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA or its successor agency under Public Law 103–354 fails to issue disposition instructions within the 120 calendar day period, the grantee shall apply the standards of paragraph 1(c) below.

(iii) When FmHA or its successor agency under Public Law 103–354 exercises its right to take title, the personal property shall be subject to the provisions for federally owned

nonexpendable property discussed in paragraph 1(a)(iv) below.

(iv) When title is transferred either to the Federal Government or to a third party and the grantee is instructed to ship the property elsewhere, the grantee shall be reimbursed by the benefitting Federal agency with an amount which is computed by applying the percentage of the grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other tangible nonexpendable property for which the grantee has title.

(i) The grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the grantee shall use the property in connection with its other federally sponsored activities, in the following order of priority:

(A) Activities sponsored by FmHA or its successor agency under Public Law 103–354.

(B) Activities sponsored by other Federal agencies.

(ii) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by FmHA or its successor agency under Public Law 103–354; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by FmHA or its successor agency under Public Law 103–354. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the grantee no longer needs the property, the property may be used for other activities in accordance with the following standards:

(i) Nonexpendable property with a unit acquisition cost of less than $1,000. The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(ii) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The grantee may retain the property for other use provided that compensation is made to FmHA or its successor agency under Public Law 103–354 or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the original Grantor agency. FmHA or its successor agency under Public Law 103–354 shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR) to the General Services Administration by FmHA or its successor agency under Public Law 103–354 to determine whether a requirement for the property exists in other Federal agencies. FmHA or its successor agency under Public Law 103–354 shall issue instructions to the grantee no later than 120 calendar days after the grantee request and the following procedures shall govern:

(A) If so instructed or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse FmHA or its successor agency under Public Law 103–354 an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the grantee shall be permitted to deduct and retain from the Federal shares $100 or ten percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(B) If the grantee is instructed to dispose of the property other than as described in paragraph 1(a)(iv) above, the grantee shall be reimbursed by FmHA or its successor agency under Public Law 103–354 for such costs incurred in its disposition.

(C) The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(*1*) Property records shall be maintained accurately and shall include:

(*a*) A description of the property.

(*b*) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(*c*) Sources of the property including grant or other agreement number.

(*d*) Whether title vests in the grantee or the Federal Government.

(*e*) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(*f*) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government).

(*g*) Location, use, and condition of the property and the date the information was reported.

(*h*) Unit acquisition cost.

(*i*) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value when a grantee compensates the Federal agency for its share.

(*2*) Property owned by the Federal Government must be marked to indicate Federal ownership.

(*3*) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(*4*) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the grantee shall promptly notify FmHA or its successor agency under Public Law 103–354.

(*5*) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(*6*) When the grantee is authorized or required to sell the property, proper sales procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

(*7*) Expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

2. To provide a financial management system which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effecting control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are solely for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after the submission of the final Project Performance report pursuant to part B (10)(c) of this Agreement except in the following situations:

(a) If any litigation, claim, audit, or investigation is commenced before the expiration of the three year period, the records shall be retained until all litigations, claims, audit or investigation findings involving the records have been resolved.

(b) Records for nonexpendable property acquired by FmHA or its successor agency under Public Law 103–354, the three year retention requirement is not applicable.

(c) When records are transferred to or maintained by FmHA or its successor agency under Public Law 103–354, the three year retention requirement is not applicable.

Microfilm copies may be substituted in lieu of original records. FmHA or its successor agency under Public Law 103–354 and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

4. To provide information as requested by FmHA or its successor agency under Public Law 103–354 concerning the grantee's actions in soliciting citizen participation in the application process, including published notice of public meetings, actual public meetings held, and content of written comments received.

5. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by FmHA or its successor agency under Public Law 103–354 or acquired wholly or in part with HPG funds without the written consent of FmHA or its successor agency under Public Law 103–354 except as provided in part C 1 of this Agreement.

6. To provide FmHA or its successor agency under Public Law 103–354 with such periodic reports of grantee operations as may be required by authorized representatives of FmHA or its successor agency under Public Law 103–354.

7. To execute Form FmHA or its successor agency under Public Law 103–354 400–1, and to execute any other agreements required by FmHA or its successor agency under Public

Law 103–354 to implement the civil rights requirements.

8. To include in all contracts in excess of $100,000 a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 1875C–9 as amended. Violations shall be reported to FmHA or its successor agency under Public Law 103–354 and the Regional Office of the Environmental Protection Agency.

9. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom, but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

10. That all nonconfidential information resulting from its activities shall be made available to the general public on an equal basis.

11. That the purpose for which this grant is made may complement, but shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

12. That the grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: ''The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source.''

13. That the grantee shall abide by the policies promulgated in OMB Circular A–102, Attachment O, or OMB Circular A–110, Attachment O, as applicable, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

14. That it is understood and agreed that any assistance granted under this Agreement will be administered subject to the limitations of Title V of the Housing Act of 1949 as amended, 42 U.S.C. 1471 *et seq.*, and related regulations, and that all rights granted to FmHA or its successor agency under Public Law 103–354 herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and project FmHA or its successor agency under Public Law 103–354's financial interest.

15. That it will adopt a Standard of Conduct that provides that, if an employee, officer, or agent of the grantee, or such person's immediate family members conducts business with the grantee, the grantee must not:

(a) Participate in the selection, award, or administration of a contract to such persons for which Federal funds are used;

(b) Knowingly permit the award or administration of the contract to be delivered to such persons or other immediate family members or to any entity (i.e., partnerships, corporation, etc.) in which such persons or their immediate family members have an ownership interest; or

(c) Permit such person to solicit or accept gratuities, favors or anything of monetary value from landlords or developers of rental or ownership housing projects or any other person receiving HPG assistance.

PART D—FMHA OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 AGREES

1. That it may assist grantee, within available appropriations, with such technical and management assistance as needed in coordinating the Statement of Activities with local officials, comprehensive plans, and any State or area plans for improving housing for very low- and low-income households in the area in which the project is located.

2. That at its sole discretion, FmHA or its successor agency under Public Law 103–354 may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect FmHA or its successor agency under Public Law 103–354's financial interests therein, and (b) consistent with the statutory purposes of the grant and the limitations of the statutory authority under which it is made and FmHA or its successor agency under Public Law 103–354 regulations.

This Agreement is subject to current FmHA or its successor agency under Public Law 103–354 regulations and any future regulations not inconsistent with the express terms hereof. Grantee has caused this Agreement to be executed by its duly authorized _____, properly attested to and its corporate seal affixed by its duly authorized _____.

Attest:

Grantee:

By _____

(Title) _____

United States Of America Farmers Home Administration or its successor agency under Public Law 103–354:

By _____

(Title) _____

Date of Execution of Grant Agreement by FmHA or its successor agency under Public Law 103–354:

_____

Attached Statement of Activities Is Made Part of This Agreement.

EXHIBIT B TO SUBPART N OF PART 1944—AMENDMENT TO HOUSING PRESERVATION GRANT AGREEMENT

This Amendment between _____ herein called ''Grantee,'' and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called ''FmHA,'' or its successor agency under Public Law 103–354 hereby amends the Housing Preservation Grant Agreement executed by said parties on _____, 19__, hereinafter called the ''Agreement.''

Said Agreement is amended by extending the Agreement to _____, 19__, and/or by making the following changes noted in the attachments hereto: (List and identify proposal and any other documents pertinent to the grant which are attached to the Amendment.)

Grantee has caused this Agreement to be executed by its duly authorized _____, properly attested to and its corporate seal affixed by its duly authorized _____.

Attest:

Grantee:

By _____

(Title) _____

United States Of America Farmers Home Administration or its successor agency under Public Law 103–354.

By _____

(Title) _____

Date of Execution of Amendment to Grant Agreement by FmHA or its successor agency under Public Law 103–354: _____.

EXHIBIT C TO SUBPART N OF PART 1944 [RESERVED]

EXHIBIT D TO SUBPART N OF PART 1944—PROJECT SELECTION CRITERIA—OUTLINE RATING FORM

Applicant Name _____ _____

Applicant Address _____ _____

Application received on _____.

State _____ District Office _____.

Threshold Criteria

Applicant must meet the following:

1. Proposes a financially feasible HPG program .... yes— no__
2. Serves an eligible rural area ..... yes— no__
3. Is an eligible HPG grantee ..... yes— no__
4. Has met consultation and public comment rules ..... yes— no—

If answer to any of the above is ''no'', application is rejected and applicant so notified.

Selection Criteria:

Select the appropriate rating:

1. Points awarded based on the percentage of very-low income homeowners or families the applicant proposes to assist, using the following scale _____:

(a) More than 80%: 20 points.
(b) 61% to 80%: 15 points.
(c) 41% to 60%: 10 points.
(d) 20% to 40%: 5 points.
(e) Less than 20%: 0 points.

2. Points awarded based on the applicant's percentage of use of HPG funds to total cost of unit preservation. This percentage reflects maximum rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, or other specified approaches. Points are based on the following percentage of HPG funds to total funds _____:

(a) 50% or less: 20 points.
(b) 51% to 65%: 15 points.
(c) 66% to 80%: 10 points.
(d) 81% to 95%: 5 points.
(e) 96% to 100%: 0 points.

3. The applicant has demonstrated its administrative capacity in assisting very low- and low-income families obtain adequate housing based on the following:

(a) The organization or a member of its staff has two or more years experience successfully managing and operating a rehabilitation or weatherization type program _____:

Yes—10 points.
No—0 points.

(b) The organization or a member of its staff has two or more years experience successfully managing and operating a program assisting very low- and low-income families obtain housing assistance _____:

Yes—10 points.
No—0 points.

(c) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal _____:

No findings: 10 points.
Outstanding findings: 0 points.

4. The proposed program will be undertaken *entirely* in rural areas outside Metropolitan Statistical Areas (MSAs) identified by FmHA or its successor agency under Public Law 103–354 as having populations below 10,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population) _____:

Non-MSA area below 10,000 pop.: 10 points.
MSA area below 5,000 pop.: 10 points.
Neither: 0 points.

5. The program will use less than 20 percent of HPG funds for administration_____:

Less than 20%: 5 points.
20%: 0 points.

6. The proposed program contains a component for alleviating overcrowding _____:

Has component: 5 points.
No component: 0 points.
7. The applicant is an existing grantee and meets the conditions of §1944.686 of this subpart for additional points _____:
Meets conditions: 10 points.
Doesn't meet conditions: 0 points.
Total Points _____:
Ranking of This Applicant _____

EXHIBIT E TO SUBPART N OF PART 1944—GUIDE FOR QUARTERLY PERFORMANCE REPORT

Grantee name: _____
Grantee address: _____
Grant quarter:_____ _____

Report Period: From: _____ To: _____

I. General Information on Use of HPG Funds During Period:

A. Use of Administrative Funds:
Budgeted Amount .....$_____
Expended Thru Last Quarter .....$_____
Direct Cost:
Personnel .....$_____
Supplies & Equip .....$_____
Travel .....$_____
Indirect Costs:
(_____% Rate).....$_____
This Quarter Total .....$_____

B. Use of Program Funds:
Budgeted Amount .....$_____
Expended Thru Last Quarter .....$_____
Loans .....No. _____ $ _____
Grants .....No. _____ _____
Other subsidies
(describe briefly).....No. _____ _____
This Quarter Total ..... _____

II. Description of recipients provided assistance during report period: (Attach breakdown for each HPG recipient on separate page including name, address, income, size, race, housing preservation activities, and type of assistance received):

Number of low-income homeowners assisted ..... _____
Number of very low-income homeowners assisted ..... _____
Total number of homeowners assisted ..... _____

Racial composition:
White ..... _____
Black ..... _____
Hispanic ..... _____
Am. Indian ..... _____
Other ..... _____

III. Description of types of housing preservation provided:

Housing preservation activity		Financial assistance		
Item	Cost of materials/labor	HPG	Other	Total

IV. Objectives for next period:

Loans .....No. _____ $_____
Grants .....No. _____ $_____
Other subsidy .....No. _____ $_____
Totals .....No. _____ $_____

V. Project summary:

	No. homeowners	HPG funds	Other
Assistance objectives of project	.....	$———	$———
Assistance to date	.....	———	———
Assistance during next period	.....	———	———
Average amount of HPG assistance	.....	.....	.....
Per unit provided (program to date) (per unit)	$———	.....	.....

VI. Narrative:
A. Significant accomplishments.
B. Problem areas.
C. Proposed changes/assistance needed, etc.
D. Status of implementing environmental and historic preservation requirements. Include number of historic properties assisted.

PART 1945—EMERGENCY

Subpart A—Disaster Assistance—General

Sec.
1945.1 [Reserved]
1945.2 Purpose.
1945.3–1945.4 [Reserved]
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1945.29 [Reserved]
1945.30 FmHA or its successor agency under Public Law 103–354 Emergency Loan Support Teams (ELST).

1945.31 FmHA or its successor agency under Public Law 103–354 Emergency Loan Assessment Teams (ELAT).
1945.32–1945.34 [Reserved]
1945.35 Special EM loan training.
1945.36–1945.44 [Reserved]
1945.45 Public information function.
1945.46–1945.50 [Reserved]

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989.

SOURCE: 46 FR 28331, May 26, 1981, unless otherwise noted.

Subpart A—Disaster Assistance—General

SOURCE: 53 FR 30384, Aug. 11, 1988, unless otherwisenoted.

§ 1945.1 [Reserved]

§ 1945.2 Purpose.

This subpart describes and explains the types of incidents which can result in an area being determined a disaster area, thereby making qualified farmers in such areas eligible for Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 Emergency (EM) loans. With respect to natural disasters, it sets forth the responsibility of the Secretary of Agriculture; the factors used in making a natural disaster determination; the relationship between FmHA or its successor agency under Public Law 103–354 and the Federal Emergency Management Agency (FEMA); the method for establishing and using Emergency Loan Support Teams (ELST) and Emergency Loan Assessment Teams (ELAT); the training of FmHA or its successor agency under Public Law 103–354 personnel; and disaster related public information functions. The natural disaster determinations/notifications made under this subpart do not apply to any program other than the FmHA or its successor agency under Public Law 103–354 EM loan program. FmHA or its successor agency under Public Law 103–354's policy is to make EM loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the applicant can execute a legal contract) as provided by law.

§§ 1945.3–1945.4 [Reserved]

§ 1945.5 Abbreviations.

The following abbreviations are used in this subpart.

(a) ASCS—Agricultural Stabilization and Conservation Service.

(b) DAR—Damage Assessment Report.

(c) ELAT—Emergency Loan Assessment Team.

(d) ELST—Emergency Loan Support Team.

(e) EM—Emergency.

(f) EOH—USDA Emergency Operations Handbook.

(g) FAC—Food and Agriculture Council.

(h) FCIC—Federal Crop Insurance Corporation.

(i) FCO—Federal Coordinating Officer.

(j) FEMA—Federal Emergency Management Agency.

(k) FmHA—Farmers Home Administration or its successor agency under Public Law 103–354.

(l) LFAC—Local Food and Agriculture Council.

(m) NASS—State Statistical Office of the USDA National Agricultural Statistics Service.

(n) OMB—Office of Management and Budget.

(o) SBA—Small Business Administration.

(p) SFAC—USDA State Food and Agriculture Council.

(q) USDA—United States Department of Agriculture.

§ 1945.6 Definitions.

The following definitions are applicable to this subpart:

(a) *Applicant.* The person or entity carrying on the farming operation at the time of the disaster and requesting EM loan assistance from FmHA or its successor agency under Public Law 103–354.

(b) *County.* A local administrative subdivision of a State or a similar political subdivision of the United States.

(1) *Primary county.* A county determined to be a disaster area.

(2) *Contiguous county.* A county that touches a primary county at any point.

(c) *Disaster.* A natural disaster, as determined by the Secretary of Agriculture or the FmHA or its successor agency under Public Law 103–354 Administrator, or a major disaster or emergency declared by the President.

(1) *Major disaster.* Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under the ''Disaster Relief Act of 1974,'' above and beyond normal emergency services available from Federal, State and local governments.

(2) *Presidential emergency.* Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which is of such magnitude that the President makes a declaration requiring Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety, or to avert or lessen the threat of a disaster.

(3) *Natural disaster.* A disaster in any part of the United States in which unusual and adverse weather conditions or other natural phenomena have substantially affected farmers by causing severe physical property losses and/or severe production losses within a county. Except where otherwise specified, the use of the term county or similar political subdivision is for administrative purposes only.

(i) Unusual and adverse weather conditions or natural phenomena include such things as:

(A) A major single natural occurrence or event such as a blizzard, cyclone, earthquake, hurricane or tornado.

(B) A single storm, or series of storms, accompanied by severe hail, excessive rain, heavy snow, ice and/or high wind.

(C) An electrical storm.

(D) A severe weather pattern over a period of time which, due to excessive rainfall, unusual lack of rainfall, or periods of high or low temperatures, causes flooding, substantial water damage, drought or freezing, or which results in the spreading and flourishing of insects or pests, or in plant or animal diseases spreading into epidemic proportions, or prevents the control of fire, however caused.

(ii) Severe *physical* property losses are those which the Administrator determines prior to a natural disaster determination by the Secretary, to be severe, and to have caused extensive damage to or destruction of, physical farm property including farmland (except sheet erosion); structures on the land such as buildings, fences, dams, etc.; machinery, equipment, and tools; livestock, livestock products; poultry; poultry products; growing crops (see §1945.163(b)(11) of subpart D of part 1945 of this chapter); harvested crops, and supplies which, if not repaired or replaced, would make it impossible for farmers affected by the unusual and adverse weather conditions to continue operating their farms on a sound basis.

(iii) Severe *production* losses within a county are those in which either:

(A) The Secretary determines that there has been a reduction countywide of at least 30 percent of the normal year's dollar value of all crops, including hay and pasture, and the crops could not be replanted or replaced with a substitute crop, or

(B) The Secretary determines that there has been a 30 percent loss countywide in the normal year's dollar value of a single enterprise (as defined in §1945.154(a) of subpart D of part 1945 of this chapter); or

(C) The Secretary, after exercising discretion, determines that, although the conditions set forth in §1945.6(c)(3)(iii)(A) and (B) of this subpart have not been met, the unusual and adverse weather conditions or natural phenomena have resulted in such significant production losses, or have produced such extenuating circumstances as to warrant a finding that a natural disaster has occurred. In making this determination, the Secretary may request the Administrator

to provide for consideration such factors as the nature and extent of production losses; the number of farmers who have sustained qualifying production losses; the number of farmers in that other lenders in the county indicate they will not be in position to finance; whether the losses will cause undue hardship to a certain segment of farmers in the county; whether damage to particular crops has resulted in undue hardship; whether other Federal and/or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and the demand for EM loans; and any other factors considered relevant. The Secretary will consider the information set forth in §1945.6(i) of this subpart in deciding whether a natural disaster has occurred.

(4) *Potential natural disaster.* Unusual and adverse weather conditions or natural phenomena that have caused physical and/or production losses, but which have not yet been examined by the Secretary or the Administrator for consideration as a natural disaster.

(d) *Disaster area(s).* The county(ies) declared/designated as a disaster area for EM loan assistance as a result of disaster related losses. This included counties named as contiguous to those counties declared/designated as disaster areas.

(e) *Farmers.* Individuals, cooperatives, corporations, partnerships or joint operations who are farmers, ranchers, or aquaculture operators actively engaged in their operation at the time a disaster occurs.

(f) *Incidence period.* The specific date or dates during which a disaster occurred.

(g) *National Office.* The Director, Emergency Designation Staff.

(h) *Normal year's dollar value.* The FmHA or its successor agency under Public Law 103–354 National Office will determine the normal year's dollar value by establishing a normal year yield and price. Normal year yield will be the average yield of the 5 years immediately preceding the disaster year for each cash crop, including hay and pasture, grown in the county. The price will be the average commodity price for the 36 months immediately preceding the disaster year for each crop. Yields and prices used to establish the value or normal production will be obtained from the NASS. In cases where crops produced and/or prices are not available from NASS, the information will be obtained from other reliable sources. Yields used to establish the disaster year's production will be obtained from DARs which are prepared by the LFACs and SFACs. Prices used to establish the value of disaster year production will be the same as those used to establish normal year values.

(i) *Substantially affected.* A farmer applicant has been substantially affected when there has been a disaster as defined in paragraph (c) of this section, and the applicant has sustained qualifying physical and/or production losses, as defined in §1945.154(a) of subpart D of part 1945 of this chapter.

(j) *Termination date.* The date specified in a disaster declaration/determination/notification which establishes the final date after which EM loan applications can no longer be accepted. For both physical and production losses, the termination date will be 8 months from the date of the disaster declaration/determination/notification.

(k) *United States or State.* Each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[53 FR 30384, Aug. 11, 1988, as amended at 58 FR 26681, May 5, 1993]

§§ 1945.7–1945.17 [Reserved]

§ 1945.18 United States Department of Agriculture (USDA) Food and Agriculture Council (FAC).

There is a USDA FAC established by the Secretary to serve every State and every County in the United States. The FACs are responsible for reporting the occurrence of and assessing the damage caused by potential disasters, as required to ensure that the Department's disaster programs are implemented when and where needed; to coordinate the Department's EM disaster programs with those of other Federal departments and agencies; and to provide personnel, as needed and requested by

FEMA, to help staff disaster application centers in major disaster areas.

(a) *State Food and Agriculture Council (SFAC).* The SFACs are composed of representatives of the several USDA agencies having emergency program responsibilities at the State level. The vice chairpersons, Emergency Programs, of the SFACs are the ASCS State Executive Directors. FmHA or its successor agency under Public Law 103–354 State Directors are members of the SFACs.

(b) *Local Food and Agriculture Council (LFAC).* These councils are composed of representatives of the several USDA agencies having available personnel at the County level. The chairpersons of the LFACs, in most cases, are the ASCS County Executive Directors. The FmHA or its successor agency under Public Law 103–354 County Supervisors are members of the LFACs.

(c) *FAC policies and procedures.* These policies and procedures are set forth in the USDA Emergency Operations Handbook (EOH), available in any ASCS or FmHA or its successor agency under Public Law 103–354 Office.

§ 1945.19 Reporting potential natural disasters and initial actions.

(a) *Purpose.* The purpose of reporting potential natural disasters is to provide a systematic procedure for rapid reporting of the occurrence and extent of damage and loss caused by such events which may result in a natural disaster determination.

(b) *Responsibility for assessing and reporting disasters.* USDA SFACs and LFACs representing their members agencies are best qualified at the State and County levels to accomplish the assessment of agricultural production losses resulting from a potential natural disaster. These councils are charged with the responsibility of reporting the occurrence of and assessing the damage caused by disasters and will perform this responsibility under policies and procedures as set forth in the EOH.

(c) *Actions to be taken.* Immediately after the occurrence of a potential natural disaster:

(1) When physical losses only occur, the FmHA or its successor agency under Public Law 103–354 County Supervisor will report to the State Director who will advise the Administrator that there has been a potential natural disaster with physical property losses to one or more farmers. This report must be made to the Administrator within 3 months from the last day of the disaster incidence period. Upon receiving the report, the Administrator will decide whether a natural disaster has occurred. If it has, the Administrator will make EM loans available to any otherwise qualified applicant who has suffered qualifying physical losses. Availability of EM loans assistance under this Administrator action shall be limited to physical losses only. Notices that EM loans are available will identify the county in which the unusual and adverse weather condition, or natural phenomenon has occurred and also each contiguous county.

(2) When physical and/or production losses occur, the FmHA or its successor agency under Public Law 103–354 County Supervisor will report to the LFAC chairperson, as specified in the EOH, all substantial physical property loss, damage or injury and severe production losses that have occurred in the County Office area. The County Supervisor will assist the LFAC in preparing the 24-hour report required in paragraph (c)(3) of this section. If the LFAC has not completed its 24 hour report within two workdays after the occurrence of a potential natural disaster, the County Supervisor will report to the State Director of Form FmHA or its successor agency under Public Law 103–354 1945–27, ''Report of Natural Disaster.'' In urgent situations, the report may be made by telephone, followed by the LFAC report or Form FmHA or its successor agency under Public Law 103–354 1945–27. Either of these reports will be based on information obtained from personal knowledge and from farmers, agricultural and community leaders, and from any other personally contacted reliable source(s). The County Supervisor will convey to the LFAC chairperson all information pertaining to the potential disaster and provide the chairperson with a copy of Form FmHA or its successor agency under Public Law 103–354 1945–27, if prepared.

(3) The LFAC will report the potential natural disaster, in accordance with the EOH, to:

(i) The SFAC, Vice Chairperson; and

(ii) Appropriate County Government representative(s).

(4) The SFAC will provide copies of the LFAC report to:

(i) The USDA Washington Offices of ASCS, FmHA or its successor agency under Public Law 103–354 and Office of Intergovernmental Affairs; and

(ii) The State Governor's Emergency Coordinator and the State Department of Agriculture.

(5) The FmHA or its successor agency under Public Law 103–354 State Director will inform the National Office of each potential natural disaster as soon as possible and forward to the National Office a copy of the LFAC report or Form FmHA or its successor agency under Public Law 103–354 1945–27, with any attachments, and supplemented with the State Director's comments and recommendations. The State Director must include a statement as to the number of farmers, ranchers, and aquaculture operators affected by the potential natural disaster. In urgent situations, the State Director will report to the National Office, Emergency Designation Staff, by telephone, and immediately thereafter send a written report to the National Office, Emergency Designation Staff. The State Director will continually notify the SFAC Vice Chairperson, Emergency Programs, of any additional information received concerning the potential natural disaster.

(6) When inquiries are received from persons affected by a potential natural disaster, they will be provided the following information:

(i) By the County Office:

(A) The kind of assistance that will be available if the President declares a major disaster or emergency, or if the Secretary determines that a natural disaster has occurred.

(B) Whether or not physical property loss EM loans are available.

(C) That applications for EM loans may be filed for future processing if such loans are made available, or may be filed at a later date after the necessary determinations have been made.

(D) Whether regular FmHA or its successor agency under Public Law 103–354 farm loan assistance is available.

(ii) State Office, or the National Office, will furnish the same information as the County Office, or will refer the person to the appropriate County Office.

(7) When inquiries are received from a Governor, a County Governing Body or Indian Tribal Council concerning a potential natural disaster, they will be informed of the procedure for making EM loans available.

(8) The actions required in paragraph (b) of this section will be taken even if the Governor of a State has requested the President to declare a county(ies) a major disaster or Presidential emergency area.

§ 1945.20 Making EM loans available.

EM loans will be made available to applicants having qualifying severe physical and/or production losses within a county named by FEMA as eligible for Federal assistance under a major disaster or emergency declaration by the President; or under a natural disaster determination by the Secretary of Agriculture, pursuant to § 1945.6(c)(3)(iii) of this subpart; and to applicants having qualifying severe physical property losses when, prior to action by the President or the Secretary, the FmHA or its successor agency under Public Law 103–354 Administrator has determined (pursuant to § 1945.6(c)(3)(ii) of this subpart) that such losses have occurred as a result of a natural disaster. Any determination made by the Secretary or the Administrator, pursuant to this subpart may be revised or reversed upon the receipt of new facts which establish that a change is warranted. FmHA or its successor agency under Public Law 103–354's policy is to make loans to any otherwise qualified applicant. When a county has been designated/declared a disaster area where eligible farmers may qualify for EM loans due to a disaster(s) occurring on or after May 31, 1983, under this section, all other counties contiguous to the eligible county(ies) are also named as areas where EM actual loss loans may be made to applicants whose operations have been

substantially affected by the same disaster(s).

(a) *Declaration by the President.* When there is a Presidential major disaster or emergency declaration and FEMA has notified the FmHA or its successor agency under Public Law 103–354 National Office, the following actions will be taken:

(1) The National Office will immediately:

(i) Notify the State Director and the Director, Finance Office by telephone and confirm by electronic message. The notification will contain:

(A) The date of the declaration;

(B) The name(s) of the county(ies) determined eligible for Federal disaster assistance;

(C) The type of disaster;

(D) The incidence period for the disaster;

(E) The termination date for accepting applications; and

(F) The disaster declaration number [Examples: Major Disasters, M491; or Presidential Emergency, E061].

(ii) Take the actions required by §1945.21(a)(1) of this subpart.

(2) The State Director will immediately:

(i) Notify the appropriate County Supervisor(s) to make EM loans available in the declared counties, and confirm this notification by a State supplement containing information listed in paragraphs (a)(1)(i) (A) through (F) of this section.

(ii) Notify the SFAC Vice Chairperson, Emergency Programs, in writing; and

(iii) Prepare the public announcements deemed appropriate to inform the farm community, and coordinate the issuance of such announcements with FEMA's Public Information Officer.

(3) The County Supervisor will immediately upon receiving notification that the county(ies) has been declared a disaster area:

(i) Notify the Chairperson LFAC in writing;

(ii) Make such public announcements as seem appropriate to adequately inform the local farm community;

(iii) Arrange and conduct meetings with local agricultural lenders and agricultural leaders within 10 working days after the disaster declaration date to explain the purpose and the assistance available under the EM loan program; and

(iv) Be available to help staff the FEMA disaster assistance centers, when requested to do so.

(b) *Determination by the Secretary of Agriculture.* When a potential disaster has substantially affected farmers, causing qualifying severe losses and it is requested by a Governor or Indian Tribal Council that there be a determination that a natural disaster has occurred, the Secretary will acknowledge the request in writing and consider whether a determination should be made, provided the Secretary receives such request in writing within three months of the last day of the occurrence of such potential disaster. The Governor or Indian Tribal Council should send a copy of the request to the FmHA or its successor agency under Public Law 103–354 State Director. When the Secretary finds based on the material received pursuant to this subpart that the conditions of §1945.6(c)(3)(iii) (A) or (B) have been met, it shall be announced that a natural disaster has occurred. Also, if on finding that the conditions of §1945.6(c)(3)(iii)(C) of this subpart so warrant, the Secretary may determine that a natural disaster has occurred.

(1) Upon receipt of the Governor's or Indian Tribal Council's request through the Secretary's Office, the FmHA or its successor agency under Public Law 103–354 National Office will immediately take the following actions:

(i) Notify the State Director by telephone of the Governor's request.

(ii) Obtain an immediate report from the State Director on whether there have been severe physical property losses within each of the counties requested by the Governor or Indian Tribal Council.

(iii) Obtain a report from the State Director on production losses.

(2) The State Director will immediately:

(i) Notify the SFAC Vice Chairperson, Emergency Programs, that a DAR is needed, unless the Governor has already made such request to the SFAC Vice Chairperson, in accordance with

the EOH for the requested county(ies); and

(ii) Advise the National Office on whether qualifying physical property losses have occurred.

(iii) Review each DAR, as soon as it is available, and forward it to the National Office with written comments on the extent of probable qualifying production losses, and other factors which are recommended for consideration by the Secretary in making determinations under § 1945.6(c)(3) of this subpart. The State Director will also submit to the National Office a list of all agricultural commodities produced in the State, giving the average yearly prices for each commodity for the three years immediately preceding the disaster year; the county average yields for each commodity for the five years immediately preceding the disaster year; and any additional supportive information. Yields and prices data will be used to establish the normal year's production and will be obtained from the USDA National Agricultural Statistics Service (NASS) by the State Director. In cases where crops produced and/or prices are not available from NASS, the information will be obtained from other reliable sources.

(iv) Upon receipt of the Administrator's request for a survey in connection with a request by the Secretary for information needed concerning § 1945.6(c)(3)(iii)(C), expeditiously gather and compile the information requested and submit it to the Administrator with a recommendation. The survey will be conducted in a manner jointly agreed upon by the Administrator and the State Director.

(3) The National Office will:

(i) Immediately use the State Director's report and accompanying price and yield information to analyze and verify losses reported in the DAR(s), along with any other information and comments provided by the State Director.

(ii) Promptly forward a written report to the Secretary, along with supporting information, for use by the Secretary in making a decision on the requested natural disaster determination.

(4) The Secretary will review the results of the survey and determine whether a natural disaster has occurred.

(i) When the Secretary determines that a natural disaster has occurred:

(A) The Administrator will be directed to make EM loans available in the county(ies) named by the Secretary, as provided by law.

(B) The Administrator will notify the State Director, by electronic message, of the Secretary's decision. Such notice *will not* be given to the State Director until the Secretary has notified the Governor or Indian Tribal Council, from whom the natural disaster determination request was received.

(C) The National Office will immediately pursue the same course of action as described in paragraph (a)(1) of this section, except the disaster determination number will be coded S and three numbers (Example S141).

(D) The State Director will immediately pursue the same course of action as described in paragraph (a)(2) of this section.

(E) The County Supervisor will immediately pursue the same course of action as described in paragraph (a)(3) of this section.

(ii) When the Secretary determines that the conditions in § 1945.6(c)(3)(iii)(A) or (B) of this subpart have *not* been met, and decides to consider other factors in accordance with § 1945.6(c)(3)(iii)(C) of this subpart, the Secretary will:

(A) Request the Administrator to provide additional information for consideration through an actual survey of farmers and lending institutions in the county(ies) requested to be determined a natural disaster area.

(B) The Administrator will instruct the State Director to conduct the survey focusing on such factors as:

(*1*) The nature and extent of production losses;

(*2*) The number of farmers who have sustained qualifying production losses;

(*3*) The number of farmers in paragraph (b)(4)(ii)(B)(*2*) of this section that other lenders in the County Office area indicate they will not be in a position to finance;

(*4*) Whether the losses will cause undue hardship to a certain segment of farmers in the county;

(*5*) Whether damage to particular crops has resulted in undue hardship;

(*6*) Whether other Federal and/or State benefit programs, which are being made available due to the same disaster, will consequently lessen undue hardship and the demand for EM loans; and

(*7*) Any other factors considered relevant.

(iii) If the Secretary finds that the conditions of §1945.6(c)(3)(iii) (A) or (B) of this subpart have *not* been met, and decides that the conditions do not warrant a natural disaster finding under §1945.6(c)(3)(iii)(C) of this subpart, the Governor or Indian Tribal Council and other concerned officials will be notified of this and the reason(s) for the Secretary's conclusions.

(c) *Notification by the FmHA or its successor agency under Public Law 103–354 Administrator.* When the Administrator determines that an unusual and adverse weather condition or natural phenomenon has substantially affected farmers, causing qualifying severe *physical losses,* the Administrator will make EM physical loss loans available in the county(ies) identified and notify the State Director by electronic message.

(1) The Administrator, upon notifying the State Director that EM physical loss loans are to be made available, will issue the following:

(i) The Administrator's notification number (Example: N181);

(ii) The incidence period for the natural disaster; and

(iii) The termination date for accepting applications.

(2) The State Director upon receiving written notification by electronic message from the Administrator will notify:

(i) Appropriate County Supervisor(s) to commence processing EM loan applications in appropriate county(ies).

(ii) The SFAC Vice Chairperson, Emergency Programs; and

(iii) The news media with appropriate announcements.

(3) The Administrator will notify the Office of the Secretary of Agriculture of any action taken concerning *physical* property losses. The National Office will also provide the same information to the appropriate Governor or Indian Tribal Council, FEMA, ASCS, SBA and other concerned officials at their request.

(4) Upon notification from the State Director that EM loans are available in a county, the County Supervisor will pursue the course of action described in §1945.20(a)(3) of this subpart.

(d) *Relationship between Administrator's notification and Secretary's determination.* Both the Administrator and the Secretary can make natural disaster determinations affecting the same county:

(1) When the Administrator has made physical loss loans available pursuant to §1945.6(c)(3)(ii), and the Secretary later makes production loss loans available pursuant to §1945.6(c)(3)(iii) on the basis of the same unusual and adverse weather condition or natural phenomenon, such physical and production losses will be considered to be caused by a single natural disaster. Any physical loss loans made pursuant to the Administrator's earlier notification will be included in the maximum amount available to an applicant as prescribed in §1945.163(e) of subpart D of part 1945 of this chapter.

(2) When a series of unusual and adverse weather conditions or natural phenomena occur in a county within the same crop year, and it is not possible for the Secretary to assess the damages in order to determine whether the conditions in §1945.6(c)(3)(iii) have been met until the end of such series or the crop year, a determination that a natural disaster has occurred shall be considered for both physical property and production losses to be due to a single natural disaster. Any physical loss loans made pursuant to the Administrator's earlier notification will be included in the maximum amount available to an applicant as prescribed in §1945.163(e) of subpart D of part 1945 of this chapter.

(e) *Extension of termination dates for continuing disaster conditions.* When a natural disaster continues beyond the date on which an Administrator's notification or Secretary's determination is made, and when there are continuing losses or damages caused by that disaster, the Administrator will extend the incidence period and the termination date for such specified period as

the Administrator finds appropriate, but not in excess of 60 days. The following actions will be taken to obtain an extension:

(1) The County Supervisor will advise the State Director of the conditions for which an extension is requested.

(2) The State Director will make a recommendation to the Administrator on whether an extension should be granted; and

(3) The Administrator will, if the request is granted:

(i) Amend the initial notification/determination (using the same number) by establishing a new incidence period and termination date; and

(ii) Notify the State Director by electronic message.

(f) *Limitations.* When actions are authorized by the Secretary or the Administrator under paragraphs (b) or (c) of this section, such actions will ordinarily be completed within six months after the beginning date of the incidence period of a reported disaster, except when the actions required in paragraph (b)(2) of this section cause a delay beyond the six months period, in which event the actions must be completed within nine months of the beginning date of the incidence period. The Secretary may extend this limitation up to 12 months from the beginning date of the incidence period if there were other exceptional causes for the delay.

§ 1945.21 Reporting and coordination requirements.

After EM loans are made available under § 1945.20 of this subpart, the following actions will be taken immediately:

(a) *By the National Office.* The Administrator or a designee will:

(1) Submit weekly reports to the following, informing them of the past week's disaster actions taken by FmHA or its successor agency under Public Law 103–354. If no actions are taken in any particular week, negative reports will be made:

(i) The Secretary of Agriculture or the Secretary's designee;

(ii) The Director of the FmHA or its successor agency under Public Law 103–354 Finance Office;

(iii) The FEMA;

(iv) The SBA Central Office;

(v) The ASCS National Office;

(vi) The FCIC National Office;

(vii) The OMB;

(viii) The National Oceanic and Atmospheric Administration; and

(ix) The Office of Governmental and Public Affairs.

(2) The weekly reports will contain the following information:

(i) The date of the declaration/determination/notification;

(ii) The name(s) of any county(ies) in which EM loans are available;

(iii) The nature of the damages and losses; and

(iv) The termination data for accepting EM loan applications.

(b) *By the State Director.* (1) Notify the appropriate County Supervisor(s) of the:

(i) Name(s) of any county(ies) in which EM loans are available;

(ii) Date of the declaration/determination/notification;

(iii) Disaster number;

(iv) Type of disaster;

(v) Incidence period; and

(vi) Termination date for accepting applications.

(2) Notify the State ASCS Executive Director of the authority to make EM loans. Promptly have a meeting to review and implement the provisions of the Memorandum of Understanding between ASCS and FmHA or its successor agency under Public Law 103–354 on Disaster Assistance, exhibit A of FmHA Instruction 2000–JJ (available in any FmHA or its successor agency under Public Law 103–354 office). Arrive at a mutual understanding as to how ASCS disaster program benefits are to be handled in conjunction with the processing of FmHA or its successor agency under Public Law 103–354 EM actual loss loans, so that duplication of benefits for the same losses are not received by disaster victims;

(3) Contact the FCIC Field Operations Office Director to review the Memorandum of Understanding between FCIC and FmHA or its successor agency under Public Law 103–354, exhibit A of FmHA Instruction 2000–N (available in any FmHA or its successor agency under Public Law 103–354 office), and arrive at a mutual understanding as to how FCIC indemnity

payments are to be handled in conjunction with the processing of EM actual loss loans so that duplication of benefits for the same losses are not received by disaster victims;

(4) Make appropriate public announcements, including notices in Indian Tribal Council(s) news media. However, if the declaration was by the President, under §1945.20(a) of this subpart, news releases should be cleared with the FEMA; and

(5) If the FEMA notifies the State Director that an agreement between the State and Federal Government (FEMA) has been made to provide 408 grants in a major disaster area to those suffering damages and losses to housing and personal property, who *are ineligible* for disaster loan assistance through the FmHA or its successor agency under Public Law 103–354 and/or SBA, the following actions will be taken:

(i) The State Director will notify the appropriate County Supervisor(s) of the address and phone number of the nearest FEMA office in the Supervisor's area; and

(ii) At the close of business each week, the County Supervisor(s) will forward to the State Director a list of applicants claiming physical losses who do not qualify for EM loan assistance, with the reason(s) they do not qualify; and

(iii) The State Director will immediately summarize the information received from the County Supervisors and forward a report to FEMA.

(c) *By the County Supervisor.* (1) Notify the County ASCS Executive Director of the declaration/determination/notification and have a meeting to review and implement the provisions of the Memorandum of Understanding between ASCS and FmHA or its successor agency under Public Law 103–354 on Disaster Assistance, exhibit A of FmHA Instruction 2000–JJ (available in any FmHA or its successor agency under Public Law 103–354 office), to arrive at a mutual understanding as to how ASCS disaster program benefits and other information in ASCS's records will be made available and used in processing EM actual loss loans. Also, the County Supervisor will request that information regarding the availability of EM loans be placed in the ASCS's newsletter;

(2) Notify the County Governing Body, Indian Tribal Council(s), and make appropriate public announcements including notices in Indian Tribal Council(s') news media; and

(3) Explain the assistance available under the EM program to agricultural lenders and leaders in the area including Indian agricultural lenders and leaders.

§§ 1945.22–1945.24 [Reserved]

§ 1945.25 Relationship between FmHA or its successor agency under Public Law 103–354 and FEMA.

(a) *General.* When a major disaster or emergency declaration is made by the President, the FEMA is charged with the responsibility for seeing that disaster assistance is made available to disaster victims. Also, FEMA is responsible for coordinating the actions of other Federal agencies who have programs to provide disaster assistance. A Federal Coordinating Officer (FCO) is appointed for each major disaster or emergency to coordinate Federal assistance in the disaster area.

(b) *Before the declaration.* (1) When a request for a major disaster or emergency declaration is made by the Governor of a State, the FEMA through its Regional Director is responsible for obtaining an assessment of the losses and damages to respond to the request.

(2) If the FEMA makes a request for information from FmHA or its successor agency under Public Law 103–354 on losses and damages caused by an unusual and adverse weather condition or natural phenomenon, the FEMA representative will be advised to contact the SFAC Vice Chairperson. The EOH provides that the SFAC will request the LFAC to prepare the DAR. State Directors and County Supervisors should cooperate with the SFAC Vice Chairpersons and LFAC Chairpersons in preparing the DARs.

(c) *After the declaration.* When a major disaster has been declared by the President and the FEMA establishes a disaster application center(s) in the local disaster area(s):

(1) The SFAC will be responsible for:

(i) Selecting qualified USDA employees to represent USDA at each center,

after consulting with other council members in making the selection. FmHA or its successor agency under Public Law 103–354 State Directors will cooperate with the SFAC in seeing that centers are properly staffed.

(ii) Orienting the selected employees on all current USDA disaster programs. FmHA or its successor agency under Public Law 103–354 State Directors will cooperate in this orientation to ensure that the USDA representatives at the center(s) are familiarized with the FmHA or its successor agency under Public Law 103–354 EM loan program and other FmHA or its successor agency under Public Law 103–354 loan programs that could be of assistance to the disaster victims; and

(iii) Informing the FEMA that USDA representatives are available to help at each of the disaster application centers.

(2) The FmHA or its successor agency under Public Law 103–354 State Director will be responsible for pursuing the following policy in working with the FEMA and the FCO by:

(i) Authorizing receipt of EM loan applications in the counties named by the FEMA. However, no EM loans can be approved until the National Office has given such notification as prescribed in § 1945.20(a)(1) of this subpart;

(ii) Attending or delegating a representative to attend any meeting(s) called by the FCO to discuss Federal assistance under the disaster declaration; and

(iii) Advising the FCO to contact the SFAC Vice Chairperson, if a request is made by the FCO for FmHA or its successor agency under Public Law 103–354 employees to help staff the FEMA's Disaster Application Centers; and

(iv) Advising the FCO that FmHA or its successor agency under Public Law 103–354's ''Report of Emergency Loans Made Pertaining to Disasters'' will be provided quarterly to FEMA's National Office by the FmHA or its successor agency under Public Law 103–354 National Office.

§ 1945.26 Relationship between FmHA or its successor agency under Public Law 103–354 and SBA.

(a) *General.* Public Law 99–272 made agricultural enterprises ineligible for SBA physical disaster and economic injury loan programs. However, in disaster areas declared by the President or the SBA Administrator, the SBA will continue to accept physical disaster loan applications for losses to dwellings and/or personal household contents, regardless of whether the dwelling is located on a farm or nonfarm tract. It is the policy of USDA and FmHA or its successor agency under Public Law 103–354 to cooperate with SBA in the use of each agency's respective loan making authorities, to complement the activities of each other; and to the extent possible, improve the delivery of disaster assistance to the agricultural segment of the country and minimize the potential for duplication of benefits for the same losses from the disaster loan programs administered by the two agencies.

(b) *Preventing duplication of disaster program benefits.* Preventing borrowers from receiving duplicate disaster program benefits will be assured by taking the following precautions:

(1) For all counties named by FEMA under a major disaster or Presidential emergency declaration, the FmHA or its successor agency under Public Law 103–354 County Offices will notify the appropriate SBA Disaster Area Office of all EM loan applications received each week, for damage or loss of farm dwellings and/or loss of household contents. Notice will be given by forwarding to SBA a photocopy of the applicant's completed Form FmHA or its successor agency under Public Law 103–354 410–1, ''Application for FmHA or its successor agency under Public Law 103–354 Services.'' Block 22 of the form should indicate the purpose for which the loan was requested.

(2) For each application referred to in paragraph (b)(1) of this section, FmHA or its successor agency under Public Law 103–354 County Offices will send a copy of each final action taken with EM loan applications to the appropriate SBA Disaster Area Office.

(3) A farm applicant may elect to obtain SBA financing for physical damage or loss to the dwelling and household contents, and separate financing from FmHA or its successor agency under Public Law 103–354 to cover damages or losses to the farming operation.

Accordingly, applicants who elect to receive SBA physical disaster loans for dwelling and/or household content losses may also file for FmHA or its successor agency under Public Law 103–354 EM loan assistance in disaster areas declared by the President or the Secretary of Agriculture or FmHA or its successor agency under Public Law 103–354 Administrator. An EM loan will *not* be approved until it is determined the requirements of §1945.163(d) of subpart D of this part will be met. When an EM loan is approved, the FmHA or its successor agency under Public Law 103–354 County Office will notify the SBA Disaster Area Office, pursuant to paragraph (a)(4)(ii) of §1945.183 of subpart D of this part.

(c) *How SBA disaster loans are made available.* SBA disaster loans are available in counties:

(1) Named by the FEMA under a major disaster or emergency declaration by the President; for physical loss and/or economic injury disaster loans.

(2) Declared by the SBA Administrator for physical loss and economic injury disaster loans.

(3) Designated by the Secretary of Agriculture for Agri-dependent businesses.

(d) *Notification of SBA disaster areas.* The SBA Central (National) Office will notify the FmHA or its successor agency under Public Law 103–354 National Office when its disaster loan program is made available. The FmHA or its successor agency under Public Law 103–354 National Office will notify State Directors, by memorandum, of the SBA disaster areas; and State Directors will notify the appropriate County Supervisor(s) in writing.

§ 1945.27 Relationship between FCIC and FmHA or its successor agency under Public Law 103–354.

(a) *General.* Exhibit A of FmHA Instruction 2000–N (available in any FmHA or its successor agency under Public Law 103–354 office) is a Memorandum of Understanding between FCIC and FmHA or its successor agency under Public Law 103–354. This Memorandum of Understanding is intended to assist in maintaining and improving the working relationship between the FCIC and the FmHA or its successor agency under Public Law 103–354 by providing encouragement to regular and FmHA or its successor agency under Public Law 103–354 EM loan borrowers to use Federal All-Risk Crop Insurance, where available; assist FmHA or its successor agency under Public Law 103–354 borrowers to obtain All-Risk Crop Insurance or other agricultural commodity insurance coverage; and exchange information essential to the elimination of duplicating compensatory disaster benefits from the FCIC and FmHA or its successor agency under Public Law 103–354 for the same disaster losses.

(b) *Annual meeting with FCIC.* FmHA or its successor agency under Public Law 103–354 State Directors will meet with FCIC Field Operations Office Directors at least once each year to review the Memorandum of Understanding and rededicate their efforts and those of their respective agency employees to comply with the agreements contained in the Memorandum of Understanding.

(c) *Contact after EM actual loss loans are made available.* After each disaster, when EM loans are made available, State Directors are *required* to promptly contact the FCIC Field Operations Office Director to review the Memorandum of Understanding and agree on how each agency will fulfill its responsibilities in dealing with the disaster situation.

(d) *Notification to County Offices.* State Directors *will* provide instructions for actions to be taken by County Supervisors in maintaining a good relationship with FCIC Insurance Representatives.

§ 1945.28 Relationship between ASCS and FmHA or its successor agency under Public Law 103–354.

Exhibit A of FmHA Instruction 2000–JJ (a copy of which is available in any FmHA or its successor agency under Public Law 103–354 office) is a Memorandum of Understanding between ASCS and FmHA or its successor agency under Public Law 103–354. This Memorandum of Understanding is intended to assist in maintaining and improving the working relationship between the ASCS and the FmHA or its successor agency under Public Law 103–

354 by coordinating certain ASCS disaster programs with the FmHA or its successor agency under Public Law 103–354 EM loan program. It specifically identifies the administrative responsibilities of FmHA or its successor agency under Public Law 103–354 County Supervisors and ASCS County Executive Directors concerning disaster benefits.

§ 1945.29 [Reserved]

§ 1945.30 FmHA or its successor agency under Public Law 103–354 Emergency Loan Support Teams (ELST).

(a) *Use of ELSTs.* ELSTs are to be used when a disaster warrants immediate attention by FmHA or its successor agency under Public Law 103–354 in implementing the EM loan program. Also, ELSTs are used when unusually large numbers of EM loan applications are received and personnel from other areas are required to be temporarily assigned to assist in rendering prompt service to the affected area(s).

(b) *State Office ELST.* Each State Director shall form an ELST to be deployed, when needed, in areas affected by a major disaster, Presidential emergency, or a natural disaster. ELSTs shall assist the State Directors in expediting the making of EM loans to disaster victims.

(1) State Directors shall use the ELSTs formed in their State(s) and all other FmHA or its successor agency under Public Law 103–354 personnel within their State(s), as the need arises, in making EM loans. If additional help is needed beyond that available in the State, including the use of overtime, temporary personnel, and/or private contractors, the State Director shall advise the National Office of these needs and request outside assistance.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing ELSTs from other States to assist in the making of EM loans.

(3) State ELSTs will consist of a team leader and team members, selected by the State Director.

(i) The State ELST can include Farmer Programs Specialists, County and Assistant County Supervisors, Program Review Assistants, County Office Assistants, and County Office Clerks.

(ii) So that no one person or County Office unit bears an unfair burden, State team members will be changed from time to time.

(iii) Team members will provide training in EM loan making and EM loan servicing to all County Office employees.

(iv) District Directors are responsible for notifying the State Director of any need to change a team member within their district.

(4) State ELSTs will be trained as follows:

(i) The National Office will hold training meetings or workshops for ELST leaders as needed; and

(ii) State ELST leaders will be responsible for training and keeping the State team and all other State personnel currently informed on all phases of EM loans.

(5) State Directors will issue a State supplement establishing an ELST for the State(s) under their jurisdiction. This supplement will name the team leader and all members. A copy of this supplement will be sent to the National Office, Attention: Director, Emergency Designation Staff.

(c) *National Office ELST leaders.* The National Office has established a cadre of ELST team leaders.

(1) National Office team leaders will be used as follows:

(i) Training of FmHA or its successor agency under Public Law 103–354 field personnel, other USDA personnel, and temporary personnel in the making of EM loans:

(ii) Assisting State Directors in the organization and expediting of assistance to eligible disaster victims; and

(iii) Leading ELSTs in areas with an unusually large volume of EM loan applications.

(2) Upon request from a State Director, the Assistant Administrator, Farmer Programs, will consider detailing one or more National Office team leaders to assist in the training of personnel and organizing of EM loan processing activities.

§ 1945.31 FmHA or its successor agency under Public Law 103–354 Emergency Loan Assessment Teams (ELAT).

The State Director will deploy ELATs on a continuing basis to the designated areas to monitor EM loan processing activities in order to minimize loan errors, especially in loss calculations and eligibility determinations. Such teams will be composed of State Office Farmer Programs staff members, District Directors or Assistant District Directors, Office Management Assistants/Program Review Assistants, and auditors from the Office of Inspector General, if they desire to participate. The team leader will keep the State Director informed by telephone and by submission of weekly written reports, setting forth the problems discovered and the corrective actions taken or to be taken. The State Director will keep all County and District Offices in the designated area of the State informed of the common problems found by the team and require appropriate corrective action to be taken by the County Office. Such actions will be monitored by the District Director and reported to the State Director when corrective measures have been completed. State Directors will monitor the handling of this quality control measure and will forward a copy of the ELAT team leader's report to the Administrator, Attention: Emergency Designation Staff.

§§ 1945.32–1945.34 [Reserved]

§ 1945.35 Special EM loan training.

(a) *General.* When it is evident that a large number of farmers were affected by a widespread disaster in a State, the National Office will send a qualified representative(s) from the Emergency Designation Staff to the State to assist the State Director in conducting a training meeting(s) with State, District and County employees, provided there has not been a recent training meeting in that State.

(b) *Purpose.* A good training program is a must in disaster areas. This program should adequately instruct State and County Office personnel so that when the training is completed they will be well qualified to process EM loans without undue delay. The training meeting will last two days (16 hours) and include a workshop and a test.

(c) *Objective.* The basic objective of this training program is to keep State and County personnel properly trained in the current methods of processing EM loan applications and EM loan making. This will result in more expeditious service to disaster victims during critical times and minimize erroneous interpretations of regulations by FmHA or its successor agency under Public Law 103–354 employees in administering the EM loan program.

(d) *Comprehensive EM loan training package.* A comprehensive EM loan training package has been developed for use by National Office and Staff Office personnel in training all EM loan writers (both regular and temporary employees). This package, including an application kit, will be used for the EM loan training meetings, and any subsequent EM loan training meetings conducted by State or District personnel.

(e) *Funding.* Travel for the two-day session required in paragraph (b) of this section may be funded from a special purpose account with advance approval from the Budget Division. The following information must be provided to the Budget Division when a request is made for these additional travel funds:

(1) Number of sessions.

(2) Categories, by number, of personnel attending each session.

(3) Estimated cost per session.

§§ 1945.36–1945.44 [Reserved]

§ 1945.45 Public information function.

A good public information program is a must in disaster areas. This program should inform farmers and the general public when and where EM loans are available. Also, the information will state the EM loan objectives, eligibility requirements, and type of assistance available. Public information functions will be performed according to exhibit A of FmHA instruction 2015–A (available in any FmHA or its successor agency under Public Law 103–354 office).

§§ 1945.46–1945.50 [Reserved]

PART 1946 [RESERVED]

PART 1948—RURAL DEVELOPMENT

Subpart A [Reserved]

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Subpart C [Reserved]

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1932 note.

Subpart A [Reserved]

Subpart B—Section 601 Energy Impacted Area Development Assistance Program

AUTHORITY: Sec. 601, Pub. L. 95–620, delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.

SOURCE: 44 FR 35984, June 19, 1979, unless otherwise noted.

§ 1948.51 General.

This subpart sets forth policies and procedures for designation, approval of designation, and making grants for assistance to areas impacted by increased coal and uranium production, processing, or transportation. The Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354 will fully consider all A–95 clearinghouse review comments and recommendations in selecting applications for funding. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA or its successor agency under Public Law 103–354 employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with

an FmHA or its successor agency under Public Law 103–354 employee.

[44 FR 35984, June 19, 1979, as amended at 58 FR 228, Jan. 5, 1993]

§ 1948.52 Objectives.

The objective of the program is to help areas impacted by coal or uranium development activities by providing assistance for the development of growth management and housing plans and in developing and acquiring sites for housing and public facilities and services.

§ 1948.53 Definitions.

(a) *Approved designated area.* A group of counties, a county, or a part of a county designated as an energy impacted area by the Governor of a State and approved by the Secretary of Energy.

(b) *Available financial resources.* All existing financial resources which could be used for impact assistance including Federal, State, and local financial resources and financial resources accruing to States and local governments as a result of coal or uranium development activity and not already committed to other programs by low or historical precedent.

(c) *Coal.* Coal means anthracite and bituminous coal, lignite, and any fuel derivative thereof.

(d) *Coal or uranium development activities.* The production, processing, or transportation of coal or uranium.

(1) Production includes the mining of coal or uranium and all mine site operations connected with such mining operations and processing activities. This includes construction activities on mine sites relating to mining, production, and processing.

(2) Processing includes all operations performed on coal or uranium including construction of processing plants. However, processing does not include conversion into electrical energy.

(3) Transportation which directly relates to the production and processing of coal or uranium including transportation networks in the county of origin of the coal or uranium and counties of processing of coal and uranium. This includes transportation depots along transportation networks that are used primarily for the transfer of coal or uranium for domestic consumption. This also includes unit train rolling stock construction and repair facilities.

(e) *Condemnation by U.S. Department of Agriculture (USDA).* The use of Federal authority by the Secretary of Agriculture to condemn real property.

(f) *Council of local governments.* An areawide development organization which includes one or more local governments servicing at least a portion of an approved designated area. Such organization must either have a policy-making body made up of a majority of local elected officials.

(g) *Eligible employment.* Full time work related to coal or uranium development activities.

(h) *Eligible employment facility.* A coal or uranium mine, processing plant, or transportation depot.

(i) *Energy impacted areas.* An area where coal and uranium development activities have a significant impact on the socio-economic structure of the area and which meet the criteria set out at § 1948.68 of this subpart.

(j) *Fair market value.* The price at which a property will sell in the open market allowing a reasonable period of time for typical, fully-informed buyers and sellers to react, assuming that the purchaser and seller are both willing participants in the transaction.

(k) *Grantee.* An entity with whom FmHA or its successor agency under Public Law 103–354 has entered into a grant agreement under this program.

(l) *Growth management planning.* Planning for the orderly development of an approved designated area. This planning includes, but is not limited to: Planning for provision of resources to support housing, public facility needs, sewer and water needs; planning for the provision of additional public services needed; overall plans for the coordinated development of all approved designated areas within a State; the development of State Investment Strategies for Energy Impacted Areas; and coordination of development of approved designated areas at the interstate level where impact is interstate in nature.

(m) *Housing planning.* Identification of present and future housing needs within an approved designated area and

providing methods for developing needed housing. This planning includes, but is not limited to the identification of: housing sites; housing site development needs; data and resource needs; funding needs; acquisition methods; and agencies of government responsible for delivery of housing services.

(n) *Industry reports.* Those reports concerning production, expected production, and employment within an approved designated area which are requested by the Governor and submitted by a person to the Secretary of Energy.

(o) *Local government.* Any county, parish, city, town, township, village, or other general purpose political subdivision of a State with the power to levy taxes and expend Federal, State, and local funds and exercise governmental powers and which is located in, or has authority over, the energy impact area. With the concurrence of the Governor, the term may also include such school, water, sewer, highway, or other public special purpose districts or authorities, or public or private nonprofit corporations as may be appropriate to carry out the purpose for which a grant is being made. These corporations or special purpose districts or authorities may apply (including applications previously received) for grants from fiscal year 1981 and earlier fiscal year funds only.

(p) *Person.* Any corporation, individual, partnership, company, association, firm, institution, society, trust, joint venture, or joint stock company, any State or any agency or instrumentality thereof.

(q) *Public facilities.* Installations open to the public and used for the public welfare. This includes but is not limited to: hospitals, clinics, firehouses, parks, recreation areas, sewer plants, water plants, community centers, libraries, city or town halls, jailhouses, courthouses, and schoolhouses.

(r) *Public services.* The provision to the public of services such as: health care, fire and police protection, recreation, etc.

(s) *Site.* A site is a plot of land which is suitable or can be made suitable for providing housing, public facilities, or services.

(t) *Site acquisition.* Obtaining legal title to a site (or sites) or obtaining leaseholds or other interests in land, by an instrumentality of a state or local Government, or by FmHA or its successor agency under Public Law 103–354, for housing, public facilities, or services.

(u) *Site development.* Site restoration, necessary off-site improvements and such on-site improvements as the construction of sewerage collection and water distribution lines (does not include individual taps) and construction of access roads; but does not include the construction of houses or public facilities.

(v) *Site restoration.* On-site improvements to the real property (such as backfilling, compacting, grading and leveling) necessary for the construction of houses and public facilities.

(w) *State.* Any of the fifty States, Puerto Rico, and any territory or possession of the United States.

(x) *State Investment Strategy for Energy Impacted Areas.* The investment strategy for the development of approved designated areas within a State as proposed by the Governor and approved by FmHA or its successor agency under Public Law 103–354.

(y) *Substandard housing.* All housing units which do not have complete plumbing fixtures, lack adequate heating systems, are not structurally sound, or contain any other conditions that would cause a safety, sanitary, or health hazard to the family or community.

[44 FR 35984, June 19, 1979, as amended at 45 FR 26943, Apr. 22, 1980; 46 FR 33021, June 26, 1981]

§ 1948.54 Eligible applicants.

Organizations eligible for grants include local governments, councils of local government, and State governments that have the leval authority necessary to undertake the proposed project.

[46 FR 33022, June 26, 1981]

§ 1948.55 Source of funds.

(a) Grants will be awarded from appropriate funds specifically allocated for this program.

(b) Grants made for growth management and housing planning may equal but will not exceed 10 percent of the

total amount of funds appropriated for and allocated to this program.

§ 1948.56 Program purposes.

(a) FmHA or its successor agency under Public Law 103–354 will make grants for assistance to approved designated areas in accordance with criteria contained in this subpart by providing assistance to fill gaps in growth management and housing planning, and to provide supplementary support for acquisition and development of sites for housing and public facilities and services by States, local governments, and councils of local government.

(b) Efforts will be made to provide comprehensive assistance to approved designated areas through the coordination power of the Secretary of Agriculture by utilizing existing plans, State and local programs, and other Federal programs to the maximum extent possible. Particular attention will be given to the utilization of existing FmHA or its successor agency under Public Law 103–354 authorities under other FmHA or its successor agency under Public Law 103–354 programs in conjunction with this subpart for providing assistance to approved designated areas in accordance with the Governor's approved State Investment Strategy for Energy Impacted Areas.

(c) Where existing plans are unsuitable or nonexistent, and other assistance programs are inadequate or unavailable on a timely basis, FmHA or its successor agency under Public Law 103–354 will provide assistance under this subpart to States, councils of local governments, and local governments for the modification, updating, and/or development of growth management and/or housing plans to deal with problems resulting from coal or uranium development within approved designated areas according to the criteria contained in this subpart.

(d) Where needed, FmHA or its successor agency under Public Law 103–354 will provide assistance for the development of sites and/or the acquisition of sites for housing and public facilities and services within approved designated areas according to the criteria contained in this subpart. Such assistance for site development and acquisition will be made in accordance with FmHA or its successor agency under Public Law 103–354 approved plans and State Investment Strategies for Energy Impacted Areas in accordance with the criteria contained in the subpart.

(e) At the request of the Governor of the appropriate State, FmHA or its successor agency under Public Law 103–354 will take action to acquire real property directly for sites for housing and/or public facilities and services in accordance with procedures set forth in this subpart.

(f) At the request of the Governor of the appropriate State, where neither the State nor local government has power to do so for this purpose, FmHA or its successor agency under Public Law 103–354 may take action through condemnation to acquire real property for sites necessary for housing, public facilities, or services.

§ 1948.57 Eligible activities.

Grant Funds may be used for:

(a) The preparation of growth management and/or housing plans (or aspects thereof) for which financial resources are not available for approved designated areas as set forth in the grant agreement, including but limited to:

(1) One hundred percent of the total cost of developing growth management and/or housing plans.

(2) One hundred percent of the cost of developing aspects of growth management plans and/or housing plans including but not limited to:

(i) Sewer plans;

(ii) Water plans;

(iii) Recreation plans;

(iv) Transportation plans;

(v) Education plans; and

(vi) Subdivision plans.

(3) Payment of salaries of professional, technical, and clerical staff to carry out growth management and housing planning and evaluation;

(4) Payment of necessary reasonable office expenses such as office rental, office utilities, and office equipment rental;

(5) Purchase of office supplies;

(6) Payment of necessary reasonable administrative posts, such as workmen's compensation, liability insurance, and employer's share of social security and travel; and

(7) Payment of costs to undertake tests, make appraisals, and arrange for engineering/architectural services necessary for the planning activity.

(b) Up to 75 percent of the actual cost of developing or acquiring sites for housing, public facilities, or services for which financial resources are otherwise not available as set forth in the grant agreement, including but not limited to:

(1) Necessary grading and leveling;

(2) Sewer and water connections;

(3) Necessary water and sewer lines to housing and public facilities sites;

(4) Access roads to housing and public facilities sites;

(5) Restoring previously mined sites;

(6) Necessary engineering reports in connection with site development;

(7) Payment of costs to undertake tests, make appraisals, and engineering/architectural services necessary for the site development and/or site acquisition;

(8) Necessary legal fees involved in the transfer of the real property.

§ 1948.58 [Reserved]

§ 1948.59 Ineligible activities.

(a) Growth management and housing planning grant funds may not be used for:

(1) Acquisition, construction, repair, or rehabilitation of existing housing and public facilities;

(2) Replacement of, or substitution for, any financial support previously provided or assured from any other source which would result in a reduction of current efforts on the part of the applicant;

(3) Duplication of current services;

(4) Routine administrative activities not allowed under Federal Management Circular FMC 74–4, ''Cost Principles Applicable to Grants and Contracts with State and Local Governments;''

(5) Planning for areas other than approved designated areas;

(6) Planning other than growth management and housing planning; or

(7) Political activities.

(b) Grant funds for site development may not be used for:

(1) Construction, repair, or rehabilitation of housing and public facilities;

(2) Replacement of, or substitution for, any financial support previously provided or assured from any other source which would result in a reduction of effort on the part of the applicant;

(3) Administrative expenses not allowed under FMC 74–4;

(4) Purposes for which funding exists under other State or Federal programs that may reasonably be obtained on a timely basis by the applicants;

(5) Duplication of current services; or

(6) Political activities.

§ 1948.60 Delegation and redelegation of authority.

The FmHA or its successor agency under Public Law 103–354 State Director is responsible for implementing the authorities contained in this subpart and may issue State supplements redelegating these authorities to appropriate FmHA or its successor agency under Public Law 103–354 employees.

§ 1948.61 State supplements and guides.

FmHA or its successor agency under Public Law 103–354 State Directors will obtain National Office clearance for all State supplements and guides in accordance with paragraph VIII of FmHA Instruction 021.2, (available in any FmHA or its successor agency under Public Law 103–354 office).

(a) *State supplements.* State Directors may supplement this subpart as appropriate to meet State and local laws and regulations and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to designations, designation approval, or plan approvals more restrictive than those in this subpart.

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this subpart are not adequate. State Directors may prepare guides for: items needed for the application; items necessary for the docket; and items required prior to grant closing or construction starts.

§ 1948.62 Environmental impact requirements.

(a) The policies and regulations contained in subpart G of part 1940 of this chapter apply to grants made and other actions under this program.

(b) Subsequent to an energy impact area designation by the Governor and establishment of priorities, the FmHA or its successor agency under Public Law 103–354 State Director, in consultation with the Governor, shall define the geographic boundaries or otherwise delineate the areas which will be studied for environmental impacts.

(c) Boundaries shall define the area within which the environmental impacts of the proposed action can be reasonably studied. Proper delineation of impact areas will avoid duplication of effort by using one assessment or impact statement to study a broad area rather than numerous overlapping documents prepared for smaller projects.

[44 FR 35984, June 19, 1979, as amended at 49 FR 3764, Jan. 30, 1984]

§ 1948.63 Historic preservation requirements.

The policies and regulations contained in part 1901, subpart F, of this chapter apply to this program.

§ 1948.64 Equal opportunity requirements.

The policies and regulations contained in part 1901, subpart E, of this chapter apply to grants made under this program.

§ 1948.65 Relocation Act requirements.

The policies and regulations contained in title 7, subtitle A, part 21 of the Code of Federal Regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) will apply to site development and acquisition grants and other actions under this program.

§ 1948.66 [Reserved]

§ 1948.67 Procedure for designation.

(a) Local governments may request the Governor of the State in which they are located to designate an area served by them as an energy impacted area.

(b) The Governor will define the geographic area of a designated area consistent with the nature of the impact and the socio-economic integration of the area.

(c) The Governor may designate an area as an energy impacted area based on the criteria contained in this subpart.

§ 1948.68 Criteria for designation.

(a) An area designated by the Governor must have the following characteristics:

(1) During the most recent calendar year, the eligible employment in coal or uranium development activities within the area has increased by eight percent or more from the preceding year, or such employment (as projected by generally acceptable estimates) will increase by eight percent (of the eligible employment in the year of the designation) or more per year during each of the next three calendar years.

(2) Because of increased employment in coal or uranium development activities, a shortage of housing, inadequate public facilities, or services exists or will exist in the area. Such shortages or inadequacies may be demonstrated by: Housing shortage statistics; higher occupancy rates of substandard houses than has historically occurred within the area; an increase (for which data or projected data is available) in eligible employment from the year of the designation of at least 100 workers and one-half of one percent of the designated area's population; or data showing that available public facilities and services in the area are below generally accepted standards due to the increased demand resulting from coal and uranium development activities.

(3) Available State and local financial resources are inadequate to meet the public need for housing or public facilities and services at present or in the next three years. In making this determination the Governor should consider the following:

(i) State revenue increases resulting from coal and uranium development activity based on existing tax laws;

(ii) Federal funds transferred to the State for impact assistance;

(iii) Local revenue increases resulting from coal or uranium development activities based on existing tax laws;

(iv) Other federal financial assistance to which the area may have access;

(v) All other available State and local sources of funding;

(vi) The time during which the resources will be available;

(vii) Existing laws committing increases in State and local revenues and Federal transfers to purposes other than impact assistance; and

(viii) The estimated cost of development based on the best available informed judgment.

(b) Designations submitted to the Secretary of Energy for approval must have the following attached:

(1) A list of all counties and parts of counties covered by the designation;

(2) If the area is smaller than a county, a map showing the boundary of the area and the approximate location of all eligible employment facilities in the area and nearby;

(3) A written justification for the inclusion of an area if the area is smaller than a county;

(4) The level of eligible employment within the designated area for each of the two most recent calendar years. This data should be obtained from a single source for the entire State, if possible; special surveys may be used when the Governor determines that these more accurately reflect employment conditions within the designated area, or in cases where data from other sources for the most recent calendar year is unavailable at the time of designation. Reference should be made to the data sources used if it is a Federal source; if a non-Federal sources is used, a copy of the source and a brief description of the procedures used for justification should be included. If projections of eligible employment are to be considered, projections of such employment for the next three years must be attached; identification of data sources and methodology used in developing those projections and a copy of any survey data used should be included.

(c) In areas where the impacted area covers counties or parts of counties located in more than one State, the Governors of the affected States may jointly designate such area and submit the designation to the Secretary of Energy for approval.

(d) After examining these factors and determining that the area meets the criteria of (a) above, the Governor may so certify in a letter bearing his or her signature and submit the letter of certification with all data and estimates upon which the designation is based to the Secretary of Energy for approval.

(e) Each designation submitted should have the name and phone number of a contact person in the Governor's designating office.

(f) An original and one copy of the designation should be submitted to the Secretary of Energy, Department of Energy, Mail Stop 8G–031, Forrestal Building, Washington, DC 20585.

(g) Two copies of all designations submitted for approval shall be submitted to the appropriate FmHA or its successor agency under Public Law 103–354 State Director. The FmHA or its successor agency under Public Law 103–354 State Director shall forward one copy to the Office of Area Development Assistance in the FmHA or its successor agency under Public Law 103–354 National Office.

(h) The Governor should designate all areas expected to be considered in fiscal year 1979 allocations of funds before July 1, 1979.

[44 FR 35984, June 19, 1979, as amended at 46 FR 33022, June 26, 1981]

§ 1948.69 [Reserved]

§ 1948.70 Designation approval.

Upon receipt of a request for approval of a designation made under this section, the Secretary of Energy shall:

(a) Determine to the best of his ability the consistency of the supporting data submitted along with the designation by the Governor;

(b) Confer with FmHA or its successor agency under Public Law 103–354 on approval;

(c) Notify the Governor and the Administrator of FmHA or its successor agency under Public Law 103–354 of action taken on each designation within 30 calendar days of the receipt of a request for approval;

(d) Consult with the Governor before the disapproval of any designation; and

(e) Publish a description in the FEDERAL REGISTER of all designated areas approved within 30 days of their approval.

§ 1948.71 [Reserved]

§ 1948.72 Industry reports.

Any person regularly engaged in any coal or uranium development activity within an area designated and approved in accordance with this subpart, shall prepare and transmit a report to the Secretary of Energy, Department of Energy, Mail Stop 8G–031, Forrestal Building, Washington, DC 20585 within 90 days after a written request to such person by the Governor of the State in which such area is located.

(a) The report shall contain:

(1) Projected levels of employment in coal or uranium development activities within the approved designated area for the next three calendar years;

(2) The projected number of new jobs to be created in coal or uranium development activities by the person within the approved designated area in each of the following three calendar years;

(3) Current or planned actions of the person in relation to the provision of housing or public facilities for such person's employees in the next three calendar years;

(4) Contracts in force whereby the person intends to provide funds to State government, local governments, and public or private nonprofit organizations for the provision of housing or public facilities for such person's employees; and

(5) The projected quantity of coal or uranium to be produced, processed, or transported by the person in each of the next three years.

(b) The Governor requesting the report will notify the Secretary of Energy of persons from whom reports have been requested.

(c) The Secretary of Energy shall provide a copy of these reports to the Secretary of Agriculture, the appropriate Governor, and the appropriate county or local officials, and make it available for public inspection and copying in the public reading room of the Department of Energy, Room GA152, Forrestal Building, Washington, DC 20585.

§§ 1948.73–1948.77 [Reserved]

§ 1948.78 Growth management and housing planning projects.

(a) Existing plans for growth management and housing may be used to meet the planning requirements of this subpart.

(b) A reasonable effort should be made to modify existing plans for use in meeting the planning requirements of this section.

(c) The Governor shall be responsible for the coordination of planning within a State.

(d) The planning process developed with assistance under this section should begin at the local level and flow upward to the State.

(e) Planning processes developed with assistance under this section should have the maximum possible citizen involvement in the development of plans.

(f) Governors should give full consideration to local and substate priorities in the development of the State Investment Strategy for Energy Impacted Areas.

(g) Plans developed with assistance under this section should be fully coordinated with other Federal, State, substate, and local planning activities affected by the project.

(h) Planning conducted by the State include effective management activities for coordinated development of approved designated areas through the plan implementation stage.

[44 FR 35984, June 19, 1979, as amended at 48 FR 29121, June 24, 1983]

§ 1948.79 Application procedure for planning grants.

(a) Applicants may submit a preapplication for a planning grant upon designation of the area as an energy impacted area by the Governor. FmHA or its successor agency under Public Law 103–354 will not take final action on the preapplication until the designation has been approved by the Secretary of Energy.

(b) Intergovernmental consultation should be carried out in accordance with 7 CFR part 3015 subpart V, ''Intergovernmental Review of Department of Agriculture office.''

(c) Applicants shall file an original and one copy of SF 424.1, ''Application

for Federal Assistance (For Non-construction),'' with the appropriate FmHA or its successor agency under Public Law 103–354 office. A copy should also be filed with the Governor's office of the appropriate State. This form is available in all FmHA or its successor agency under Public Law 103–354 offices. Local governments and councils of local governments shall submit preapplications to the appropriate FmHA or its successor agency under Public Law 103–354 District Office. State governments shall apply to the appropriate FmHA or its successor agency under Public Law 103–354 State Office. The FmHA or its successor agency under Public Law 103–354 District Office will forward the preapplication with written comments within 10 working days to the appropriate State Office.

(d) All preapplications shall be accompanied by:

(1) Evidence of applicant's legal existence;

(2) Evidence of applicant's authority to prepare growth management and/or housing plans;

(3) A statement declaring that the planning neither duplicates nor conflicts with current activities;

(4) An original and one copy of Forms FmHA 400–1, ''Equal Opportunity Agreement,'' and Form FmHA or its successor agency under Public Law 103–354 400–4, ''Assurance Agreement;'' and

(5) A statement regarding other financial resources available to the area for this planning.

(e) District and State FmHA or its successor agency under Public Law 103–354 Offices receiving preapplications will:

(1) Determine if the area to be covered by this project is an ''approved designated area'' as defined in this subpart;

(2) Comply with the environmental requirements set forth in this subpart; and

(3) Prepare a Historic Preservation Assessment in accordance with part 1901, subpart F, of this chapter.

(f) District FmHA or its successor agency under Public Law 103–354 Offices receiving preapplications will also provide written comments reflecting planning grant selection criteria listed in this subpart.

(g) The FmHA or its successor agency under Public Law 103–354 District Office will forward the original of the preapplication and accompanying documents including those described in paragraphs (e)(1) through (e)(3) and (f) of this section to the appropriate FmHA or its successor agency under Public Law 103–354 State Director within 10 working days of receipt of the preapplication.

(h) Upon receipt of a preapplication, the FmHA or its successor agency under Public Law 103–354 State Office will:

(1) Review and evaluate the preapplication and accompanying documents;

(2) Consult with the Governor of the appropriate State concerning the Governor's priorities and recommended funding level for the project; and

(3) Respond to the applicant within 30 days of the date of receipt of the preapplication using Form AD–622, ''Notice of Preapplication Review Action,'' indicating the action taken on the preapplication.

(i) Upon notification that the applicant is eligible to compete with other applicants for funding, a SF 424.1 may be submitted to the FmHA or its successor agency under Public Law 103–354 State Office by all applicants.

(j) The FmHA or its successor agency under Public Law 103–354 State Office will send evidence of the applicant's legal existence and authority to the USDA Regional Office of General Counsel (OGC) and request that a legal determination be made of the applicant's legal existence and authority to prepare growth management and/or housing plans in those cases where an application (SF 424.1) is requested.

(k) Upon receipt of an application on SF 424.1 by the FmHA or its successor agency under Public Law 103–354 State Office, a docket will be prepared which will include the following:

(1) Form SF 424.1;

(2) Form AD–622;

(3) Any comments received in accordance with 7 CFR part 3015 subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities''. See FmHA Instruction 1940–

J, available in any FmHA or its successor agency under Public Law 103–354 office.

(4) SF 424.1;

(5) Evidence of the applicant's legal existence and authority to prepare growth management and/or housing plans;

(6) OGC legal determinations;

(7) Grant agreement and scope of work;

(8) Form FmHA or its successor agency under Public Law 103–354 440–1, ''Request for Obligation of Funds;''

(9) Form FmHA or its successor agency under Public Law 103–354 400–1;

(10) Form FmHA or its successor agency under Public Law 103–354 400–4;

(11) Historic Preservation Assessment;

(12) District, where appropriate, and State FmHA or its successor agency under Public Law 103–354 written comments, assessments, and analysis of the proposed projects in accordance with the grant selection criteria; and

(13) All certificates and statements accompanying the pre-application and/or application.

[44 FR 35984, June 19, 1979, as amended at 48 FR 29121, June 24, 1983; 49 FR 3764, Jan. 30, 1984; 55 FR 13503 and 13504, Apr. 11, 1990]

§ 1948.80 Planning grant selection criteria.

The following criteria will be used in the selection of planning grant recipients:

(a) Planning assistance which could be used for the purpose of the proposed planning process is not available from other sources on a timely basis (Mandatory);

(b) The increase in the number of new employees and the percentage of increase in employment in coal and/or uranium development activities in the year of designation within the approved designated area (years projected will be averaged and treated equally);

(c) The need for planning in relation to the financial resources available for such planning;

(d) The planning priorities and recommended funding level of the Governor(s) of the appropriate State(s);

(e) The appropriateness of the proposed planning activity for meeting the planning needs of the area, including but not limited to the building of planning capacity and the local priority for the project;

(f) The inadequacy of existing plans for mitigating the effects of coal and/or uranium development activities; and

(g) The nature of comments and recommendation received in accordance with 7 CFR part 3015 subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities'' (See FmHA Instruction 1940–J, available in any FmHA or its successor agency under Public Law 103–354 office.

[44 FR 35984, June 19, 1979, as amended at 48 FR 29121, June 24, 1983]

§ 1948.81 State Investment Strategy for Energy Impacted Areas.

(a) The State Investment Strategy for Energy Impacted Areas should be a dynamic document updated as each plan or group of plans is submitted to FmHA or its successor agency under Public Law 103–354 for approval.

(b) The Governor shall consult with the FmHA or its successor agency under Public Law 103–354 State Director when developing or updating a State Investment Strategy for Energy Impacted Areas.

(c) The State Investment Strategy for Energy Impacted Areas will include but is not limited to:

(1) A list of projects in order of priority;

(2) The Governor's recommended level of and method of funding for each project through completion of the project identified in the plans submitted and incorporated into the State Investment Strategy for Energy Impacted Areas;

(3) Methods of coordinating assistance with other State and Federal development programs;

(4) The differential between available financial resources and the cost of needed site development and acquisition for housing and public facilities and services within the area covered by the State Investment Strategy for Energy Impacted Areas;

(5) References to plan and page number of plan on which each priority project is described.

(d) The State Investment Strategy for Energy Impacted Areas having

projects expected to be funded in FY 1979 should be submitted to the FmHA or its successor agency under Public Law 103–354 State Director of the appropriate State before July 15, 1979. A copy should also be forwarded to the Administrator, FmHA or its successor agency under Public Law 103–354.

§ 1948.82 Plan and State Investment Strategy approval procedure.

(a) Any plan submitted for FmHA or its successor agency under Public Law 103–354 approval, whether it is a plan developed with assistance under this section, an existing plan, or a modified plan, should contain:

(1) The present level of coal or uranium production, processing, or transportation within the approved designated area covered by the plan;

(2) The anticipated level of coal or uranium production, processing, or transportation in each of the next three calendar years within the area covered by the plan;

(3) A brief description of the socioeconomic impacts that have occurred during the two most recent calendar years in the approved designated area covered by the plan;

(4) A brief description of the socioeconomic impacts that are expected to occur in the approved designated area covered by the plan within each of the next three calendar years;

(5) The anticipated number of new employees expected to be hired in coal or uranium development activities in each of the next three years within the approved designated area covered by the plan;

(6) Available financial resources and federal programs that may be applied to meeting the needs of the approved designated area including but not limited to the following:

(i) The expected amount of State assistance and State expenditures in the approved designated area covered by the plan which will be used for impact assistance in the next three years;

(ii) The amount of tax revenues expected to accrue to local governments serving the approved designated area covered by the plan in each of the next three years due to increased economic activities which have occurred since the year prior to designation or are expected to occur as a result of coal and uranium development activity;

(iii) Sources and amount of assistance State and local governments are now receiving or are expected to receive from persons for the provision of housing and public facility and services; and

(iv) Existing budget surplus at the State and local level.

(7) The specific needs of the area covered by the plan as to the number of housing units now needed and the number that are expected to be needed in each of the next three years, and/or the number and type of public facilities and services now needed or expected to be needed in the next three years;

(8) The type and quantity of real property now needed or expected to be needed in the next three years for the construction of public facilities and/or housing and/or in the provisions of public services;

(9) Proposed method of acquisition for each site to be acquired by the State or local governments; and

(10) An estimate of assistance that will be necessary under this section and/or other FmHA or its successor agency under Public Law 103–354 or Federal programs for the development of the site.

(b) All plans meeting the criteria in paragraph (a) of this section should be forwarded to the Governor of the appropriate State or States for possible incorporation into the State Investment Strategy for Energy Impacted Areas.

(c) Appropriate growth management and/or housing plans received by the Governor under this section may be submitted to the appropriate FmHA or its successor agency under Public Law 103–354 State Office by the Governor.

(d) The Governor shall submit a copy of the State Investment Strategy for Energy Impacted Areas along with all plans the Governor is submitting to FmHA or its successor agency under Public Law 103–354 for approval.

(e) During fiscal year 1979 the Governor may submit existing plans to FmHA or its successor agency under Public Law 103–354 for qualified approval in which some sections under paragraph (a) above are incomplete, provided that planning is presently

being done to fill these gaps, or application for a planning grant has been submitted or is to be submitted to cover the cost of the needed planning. These plans must be resubmitted for final approval on or before December 31, 1980. No requested grant will be approved for land acquisition or site development unless the request is cited in the FmHA or its successor agency under Public Law 103–354-approved comprehensive growth management plan for the designated area in which the project is located.

(f) The FmHA or its successor agency under Public Law 103–354 State Director shall review all plans and the State Investment Strategy for Energy Impacted Areas and provide comments on the following:

(1) Appropriateness of FmHA or its successor agency under Public Law 103–354 assistance under this section as called for in the plans;

(2) Appropriateness of FmHA or its successor agency under Public Law 103–354 assistance under other programs as called for in the plans;

(3) Appropriateness of the State Investment Strategy for Energy Impacted Areas;

(4) Other Federal programs which could be used instead of, or in addition to, assistance under this section; and

(5) Recommended action.

(g) The FmHA or its successor agency under Public Law 103–354 State Director shall submit all plans received from the Governor, the State Investment Strategy Energy Impacted Areas, and any comments to the FmHA or its successor agency under Public Law 103–354 National Office for approval within 10 days of the submission of plans and the State Investment Strategies for Energy Impacted Areas to the State Director.

(h) The FmHA or its successor agency under Public Law 103–354 National Office shall review all plans and State Investment Strategy for Energy Impacted Areas received and approve or return them for modification within 30 days of their receipt in the FmHA or its successor agency under Public Law 103–354 National Office.

(i) The FmHA or its successor agency under Public Law 103–354 National Office shall notify the appropriate State Director of all plans that have been approved by the Administrator.

(j) Upon approval of the plans and State Investment Strategies for Energy Impacted Areas by the Administrator, FmHA or its successor agency under Public Law 103–354, the FmHA or its successor agency under Public Law 103–354 State Director may exercise the authority of the Secretary of Agriculture under Section 603 of the Rural Development Act of 1972 to convene a meeting of the appropriate representatives of all Federal and State agencies which are requested to supply development funds by the State Investment Strategy for Energy Impacted Areas for the purpose of obtaining tentative funding commitments consistent with their authorities.

(k) The FmHA or its successor agency under Public Law 103–354 State Office shall notify the Governor and the appropriate District Directors of all plans approved by the Administrator, FmHA or its successor agency under Public Law 103–354.

(l) Modifications to approved plans shall be approved by the Administrator of FmHA or its successor agency under Public Law 103–354 following the above procedure.

(m) The Governor's modification to the State Investment Strategy for Energy Impacted Areas may be approved by the FmHA or its successor agency under Public Law 103–354 State Director provided the modification is consistent with FmHA or its successor agency under Public Law 103–354 approved plans.

§ 1948.83 Performance of site development work.

Site development work will be done in accordance with §1942.18 of FmHA Instruction 1942–A.

§ 1948.84 Application procedure for site development and acquisition grants.

(a) For those projects for which Federal funding is sought in excess of $100,000 the applicant shall file SF 424.2, ''Application for Federal Assistance (For Construction)'' with the appropriate FmHA or its successor agency under Public Law 103–354 office. For

those projects for which Federal funding is sought for less than $100,000, the applicant shall file SF 424.2 with the appropriate FmHA or its successor agency under Public Law 103–354 office. A copy should also be filed with the Governor's office of the appropriate State.

(b) The FmHA or its successor agency under Public Law 103–354 office receiving a SF 424.2 shall reply to the applicant with-in 45 calendar days regarding the applicant's eligibility to compete for funding under this program using Form AD–622. (FmHA or its successor agency under Public Law 103–354 District offices will send each preapplication to the FmHA or its successor agency under Public Law 103–354 State Offices for review before replying to the applicant. FmHA or its successor agency under Public Law 103–354 District offices will send a copy of Form AD–622 to the FmHA or its successor agency under Public Law 103–354 State Office at the time the AD–622 is sent to the applicant.)

(c) Intergovernmental consultation should be carried out in accordance with 7 CFR part 3015 subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities''. See FmHA Instruction 1940–J, available in any FmHA or its successor agency under Public Law 103–354 office.

(d) Applicants shall file an original and one copy of SF 424.2, with the appropriate FmHA or its successor agency under Public Law 103–354 office. Local governments and councils of local government shall submit applications to the FmHA or its successor agency under Public Law 103–354 District Office and State governments to the FmHA or its successor agency under Public Law 103–354 State Office. Applications shall include:

(1) Evidence of applicant's legal existence and authority to undertake the proposed project;

(2) Evidence of ownership of or lease on a site to be developed or ''Options to Purchase Real Property,'' Form FmHA or its successor agency under Public Law 103–354 440–34, (Lease on a site for a public facility will be in accordance with FmHA Instruction 1942–A and lease on a site for housing will be in accordance with 7 CFR part 3550);

(3) Description of project and relationship to approved growth management and housing plan. Applicant must cite pages and section of the approved plan;

(4) A plat of the area including elevations;

(5) Preliminary plans and specifications on proposed development which will contain an estimate of the projected cost of site development prepared by independent qualified appraisers or architects/engineers;

(6) The amount of Federal grant needed;

(7) The amount and source of applicant's financial contribution to the project;

(8) An original and one copy of Form FmHA or its successor agency under Public Law 103–354 1940–20;

(9) An original and one copy of Forms FmHA or its successor agency under Public Law 103–354 400–1 and Form FmHA or its successor agency under Public Law 103–354 400–4;

(10) Evidence that the land is stable if the land has been previously mined (include relevant data on soil and analysis);

(11) Assurance that the requirements set forth in title 7, subtitle A, part 21 of the Code of Federal Regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) have been met.

(12) Specific concurrence of the Governor if the proposed applicant is neither a council of local governments nor a general purpose political subdivision of a State;

(e) District and State FmHA or its successor agency under Public Law 103–354 Offices receiving applications shall:

(1) Determine if the project is in accordance with a FmHA or its successor agency under Public Law 103–354 approved growth management and/or housing plan covering the approved designated area;

(2) Comply with environmental requirements set forth in subpart G of part 1940 of this chapter;

(3) Prepare a Historic Preservation Assessment in accordance with part 1901, subpart F, of this chapter;

(4) Determine site stability if the land has been previously mined; and

(f) District FmHA or its successor agency under Public Law 103–354 Offices receiving applications shall also provide written comments reflecting site development and acquisition grant selection criteria (§1948.86) listed in this subpart.

(g) The FmHA or its successor agency under Public Law 103–354 District Office shall forward the original of the application and accompanying documents including those required in paragraph (e) of this section to the FmHA or its successor agency under Public Law 103–354 State Director within 10 working days of receipt of the application.

(h) Upon receipt of an application, the FmHA or its successor agency under Public Law 103–354 State Office shall:

(1) Review and evaluate the application and accompanying documents;

(2) Determine that the project is a part of and consistent with the State Investment Strategy for Energy Impacted Areas;

(3) Send a copy of the applicant's evidence of legal existence and authority to the USDA Regional OGC for review;

(4) If applicant is local government(s), consult with the Governor on funding recommendation of the project; and

(5) Respond to the applicant within 30 days of the date of receipt of the application.

(i) Upon receipt of an application by the FmHA or its successor agency under Public Law 103–354 State Office, a docket shall be prepared which shall include the following:

(1) Application SF 424.2 and enclosures;

(2) Any comments received in accordance with 7 CFR part 3015 subpart V, ''Intergovernmental Review of Department of Agriculture Programs and Activities''. See FmHA Instruction 1940–J, available in any FmHA or its successor agency under Public Law 103–354 office.

(3) Evidence of ownership or lease of site to be developed;

(4) Evidence of applicant's legal existence and authority;

(5) OGC legal determination;

(6) Preliminary plans and specifications concerning the proposed development;

(7) Grant agreement and scope of work;

(8) An estimate of projected cost of site development prepared by independent qualified appraisers or engineers/architects;

(9) A topographical map of the area;

(10) Form FmHA or its successor agency under Public Law 103–354 440–1;

(11) Form FmHA or its successor agency under Public Law 103–354 400–1;

(12) Form FmHA or its successor agency under Public Law 103–354 400;

(13) Form FmHA or its successor agency under Public Law 103–354 1940–20, if required by subpart G of part 1940 of this chapter;

(14) A copy of the appropriate FmHA or its successor agency under Public Law 103–354 environmental review required by subpart G of part 1940 of this chapter;

(15) Historic Preservation Assessment;

(16) A copy of the State Investment for Energy Areas; and

(17) District, where appropriate, and State FmHA or its successor agency under Public Law 103–354 written comments, assessments and analysis of the proposed project in accordance with the grant selection criteria.

[44 FR 35984, June 19, 1979, as amended at 46 FR 61991, Dec. 21, 1981; 48 FR 29121, June 24, 1983; 49 FR 3764, Jan. 30, 1984; 55 FR 13503 and 13504, Apr. 11, 1990; 67 FR 78329, Dec. 24, 2002]

§1948.85 [Reserved]

§1948.86 Site development and acquisition grant selection criteria.

The following criteria will be considered in the selection of site development and/or acquisition grant recipients:

(a) *Required criteria.* Each project must meet the following criteria:

(1) The area is covered by a FmHA or its successor agency under Public Law 103–354 approved plan;

(2) The FmHA or its successor agency under Public Law 103–354 approved plan specifically calls for the site development and/or acquisition;

(3) Other Federal funds that the community could receive for the project

are inadequate or not available, and no State or local funds for site development are available to permit development on a timely basis;

(4) The site is to be developed and/or acquired and is to be used for housing, public facilities, or services;

(5) The applicant has title to the site, lease on site, or an option on the site and funds to purchase the site, or is applying for site acquisition funds;

(6) The site will comply with Executive Orders 11988, ''Flood Plain Management'' and 11990, ''Protection of Wetlands;''

(7) An appraisal of the fair market value of the site must have been completed;

(8) Priority has been given in the selection of site to unoccupied or previously mined land;

(9) Class I or Class II farm land was included in the site only if other suitable land was not available;

(10) The land is stable if previously mined; and

(11) Assurance that the requirements set forth in title 7, subtitle A, part 21 of the Code of Federal Regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) have been met.

(b) *Competitive criteria.* The following criteria will be considered in the selection of grantees:

(1) Priority assigned and recommended funding level by the Governor in the State Investment Strategy for Energy Impacted Areas;

(2) The increase in the number of new employees and the percentage of increase in employment in coal and/or uranium development activities in the year of designation within the approved designated area (years projected will be averaged and treated equally);

(3) The severity of need for housing, public facilities, services that has resulted from coal or uranium development activities in relation to available financial resources within the approved designated area covered by the plan calling for the project;

(4) Local priority for the project;

(5) The amount of effort by State and local government to meet the needs of the area covered by the application as called for in the State Investment Strategy for Energy Impacted Areas in relation to available financial resources;

(6) An assessment of the environmental impacts of the project; and

(7) The nature of comments and recommendations of A–95 clearinghouse(s).

§ 1948.87 [Reserved]

§ 1948.88 Direct land acquisition by FmHA or its successor agency under Public Law 103–354.

(a) FmHA or its successor agency under Public Law 103–354 may take action to acquire real property directly upon the written request of the Governor of the State in which the real property is located. FmHA or its successor agency under Public Law 103–354 will not acquire real property directly under this section without such a request.

(b) All requests for direct land acquisition should be submitted to the FmHA or its successor agency under Public Law 103–354 State Director. The following conditions must be met prior to the submission of a request for direct acquisition by FmHA or its successor agency under Public Law 103–354:

(1) The State or local government serving the area must lack power to condemn land of this type for this purpose and must supply an opinion by the State Attorney General that this authority is lacking;

(2) The real property is to be used as a site for needed housing, public facilities, or services;

(3) The site acquisition is called for in a FmHA or its successor agency under Public Law 103–354 approved plan;

(4) The site is specifically identified by a FmHA or its successor agency under Public Law 103–354 approved plan;

(5) State and local governments have been unable to obtain the real property for a price which does not substantially exceed its fair market value; and suitable alternate sites are not available;

(6) The land is not Indian Trust land;

(7) The land is not U.S. Forest Service land; and

(8) There is legal authority to undertake the proposed project.

(c) FmHA or its successor agency under Public Law 103–354 may acquire Federal real property not prohibited in paragraphs (b) (6) and (7) of this section for purposes contained in this subpart. Farm land (Class I and II) will not be considered unless there is no other suitable land available.

(d) If the State Director determines that no other suitable real property exists that can be obtained at a price which does not substantially exceed its fair market value, and if the appropriate State or local government lacks condemnation authority as evidenced by opinion from the Attorney General, and there is authority to undertake the proposed project, then the State Director shall follow the procedures set out in title 7, subtitle A, part 21 of the Code of Federal Regulations (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) and immediately open negotiations to directly acquire the real property through purchase or trade.

(e) The FmHA or its successor agency under Public Law 103–354 State Director may acquire real property by purchase to trade for other real property when FmHA or its successor agency under Public Law 103–354 has been requested to acquire real property by the Governor of the State in which the real property is located.

(f) The Governor shall submit, with this request, a commitment from the State to acquire real property, together with a plan of compensation to FmHA or its successor agency under Public Law 103–354 and evidence of the State's legal authority to enter into this agreement with FmHA or its successor agency under Public Law 103–354 to accept the real property and repay FmHA or its successor agency under Public Law 103–354 for the fair market value of the real property for the intended purpose.

(g) Real property acquired by FmHA or its successor agency under Public Law 103–354 shall be transferred to the State requesting by a quitclaim deed for a price equal to the fair market value in accordance with the terms of a transfer agreement.

(h) After obtaining title to the real property and prior to transfer to the State, the property shall be managed by FmHA or its successor agency under Public Law 103–354 in accordance with part 1955, subpart B of this chapter.

(i) The State Director shall inform the Governor that FmHA or its successor agency under Public Law 103–354 real property acquisition is not likely to occur by purchase or trade if negotiations have failed to produce acceptable results within 90 days of the request for FmHA or its successor agency under Public Law 103–354 acquisition of real property.

§ 1948.89 Land condemnation by FmHA or its successor agency under Public Law 103–354.

(a) If FmHA or its successor agency under Public Law 103–354 attempts to acquire real property at the request of a Governor through purchase or trade and is unable to do so, FmHA or its successor agency under Public Law 103–354 may take action to condemn the real property by the following procedures:

(1) A request for condemnation shall be submitted by the FmHA or its successor agency under Public Law 103–354 State Director to the Administrator, FmHA or its successor agency under Public Law 103–354, Washington, DC 20250 at the request of the Governor of the appropriate State. A copy of the Governor's request for FmHA or its successor agency under Public Law 103–354 real property condemnation and the State Attorney General's opinion that State and local government condemnation authority is lacking shall be attached to the FmHA or its successor agency under Public Law 103–354 State Director's request.

(2) The Administrator shall forward all requests for Federal condemnation to the OGC, USDA with a recommendation for action.

(3) The Administrator, FmHA or its successor agency under Public Law 103–354 shall inform the Governor of any action on the request for condemnation.

(4) Real property condemned by FmHA or its successor agency under Public Law 103–354 shall be transferred to the requesting State by a quitclaim

Deed for a price equal to the fair market value of the real property in accordance with terms of a negotiated real property transfer agreement.

(5) After obtaining title to real property and prior to transfer to the State, the property shall be managed by FmHA or its successor agency under Public Law 103–354 in accordance with part 1955, subpart B of this chapter.

(b) FmHA or its successor agency under Public Law 103–354 may not condemn Indian Trust Land or U.S. Forest Service Land.

§ 1948.90 Land transfers.

(a) Transfers of real property acquired by FmHA or its successor agency under Public Law 103–354.

(1) A request for FmHA or its successor agency under Public Law 103–354 acquisition of real property by a Governor of a State constitutes an agreement by that State to receive said real property and to reimburse FmHA or its successor agency under Public Law 103–354 for the fair market value of said real property for the intended use.

(2) Terms and conditions, including reimbursement terms, for real property transfers shall be set forth in a Real Property Transfer Agreement between the Administrator, FmHA or its successor agency under Public Law 103–354 and the appropriate Governor. These terms and conditions will be agreed upon by FmHA or its successor agency under Public Law 103–354 and the State prior to FmHA or its successor agency under Public Law 103–354 attempting to acquire the property. These agreements shall be prepared after consulting with OGC, and forwarded for prior approval by the FmHA or its successor agency under Public Law 103–354 National Office.

(3) All funds from real property transfers received by FmHA or its successor agency under Public Law 103–354 shall be deposited in the U.S. Treasury.

(b) Transfer of real property acquired and/or developed with grant funds from a grant made under this subpart to a person.

(1) Real property acquired and/or developed under this subpart may be transferred to a person for the purposes of construction of privately-owned housing.

(2) All transfers of real property to a person must be approved by the FmHA or its successor agency under Public Law 103–354 State Director of the appropriate State.

(3) Transfer of real property by a recipient of assistance under this subpart to a person must be by contract which: acknowledges the use of funds provided under this subpart to acquire or develop the site; specifies the date of performance prior to delivery of the deed; provides for FmHA or its successor agency under Public Law 103–354 concurrence before changes or modifications; and assures FmHA or its successor agency under Public Law 103–354 that the real property will be used for the purposes under which the grant was made.

(4) Proceeds derived from the sale of land acquired or developed through the use of a grant provided under this subpart must be divided between the grantee and Rural Development on a pro rata basis. A grantee may not recover its cost from sale proceeds to the exclusion of Rural Development. The amount to be returned to Rural Development is to be computed by applying the percentage of the Rural Development grant participation in the total cost of the project to the proceeds from the sale.

(5) All funds received by FmHA or its successor agency under Public Law 103–354 from real property transfers shall be deposited in the U.S. Treasury.

(42 U.S.C. 8401; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

[44 FR 35984, June 19, 1979, as amended at 46 FR 33022, June 26, 1981; 56 FR 28038, June 19, 1991; 68 FR 61331, Oct. 28, 2003]

§ 1948.91 Inspections of development.

Inspections will be made by the FmHA or its successor agency under Public Law 103–354 State Engineer or other employee designated by the FmHA or its successor agency under Public Law 103–354 State Director to ascertain whether site development is proceeding in accordance with plans and specifications. Such inspections are solely for the benefit of the Government and not for the benefit of the Grantee or any other person.

§ 1948.92 Grant approval and fund obligation.

(a) The FmHA or its successor agency under Public Law 103–354 State Office shall review the docket to determine whether the proposed grant complies with this subpart and that funds are available.

(b) The FmHA or its successor agency under Public Law 103–354 State Director shall be the approving officer on all grants made under this subpart.

(c) If at any time prior to grant approval it is decided that favorable action will not be taken on a preapplication or application, the FmHA or its successor agency under Public Law 103–354 State Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by FmHA or its successor agency under Public Law 103–354 may be requested by the applicant in accordance with FmHA Instruction 1900–B.

(d) If a grant is recommended, Form FmHA or its successor agency under Public Law 103–354 440–1 and the proposed grant agreement and scope of work will be prepared and forwarded to the applicant for signature.

(e) When Form FmHA or its successor agency under Public Law 103–354 440–1 and the grant agreement and scope of work are received by the applicant, the applicant will sign these documents and forward them to the State Director.

(f) Exhibit A to FmHA Instruction 2015–C (available in any FmHA or its successor agency under Public Law 103–354 Office) will be prepared by the State Director and sent to the Director of Information, Farmers Home Administration or its successor agency under Public Law 103–354.

(g) If the State Director approves the project, the following actions will be taken in the order listed:

(1) The State Director, or a designee, will telephone the Finance Office requesting that grant funds for a particular project be obligated. Immediately after contacting the Finance Office, the requesting official shall furnish the requesting office's security identification code. Failure to furnish the security code will result in the rejection of the request of obligation. After the security code is furnished, the required information from Form FmHA or its successor agency under Public Law 103–354 440–1 shall be furnished to the Finance Office. Upon receipt of the telephone request for obligation of funds, the Finance Office shall record all information necessary to process the request for obligation in addition to the date and time of request.

(2) The individual making the request shall record the date and time of the request.

(3) The Finance Office will notify the FmHA or its successor agency under Public Law 103–354 State Office by telephone when funds are reserved and the date the funds will be obligated. If funds cannot be reserved for a project, the Finance Office will notify the FmHA or its successor agency under Public Law 103–354 State Office that funds are not available. The obligation date will be six working days from the date the request for obligation is processed.

(4) The Finance Office will send Form FmHA or its successor agency under Public Law 103–354 440–57, ''Acknowledgement of Obligated Funds/Check Request,'' to the FmHA or its successor agency under Public Law 103–354 State Director, informing the State Director of the reservation of funds with the obligation date inserted as required by Item 9 on the Forms Manual Insert (FMI) for Form FmHA or its successor agency under Public Law 103–354 440–57.

(5) Form FmHA or its successor agency under Public Law 103–354 440–1 will not be mailed to the Finance Office.

(6) A copy of Form FmHA or its successor agency under Public Law 103–354 440–1 will be sent the FmHA or its successor agency under Public Law 103–354 National Office.

(7) The State Director shall notify the Director of Information in the FmHA or its successor agency under Public Law 103–354 National Office with a recommendation that the project announcement be released.

(8) An executed copy of Form FmHA or its successor agency under Public Law 103–354 440–1 shall be sent to the applicant along with an executed copy

of the grant agreement and scope of work on or before the date funds are obligated.

(9) The actual date of applicant notification will be entered on the original of Form FmHA or its successor agency under Public Law 103–354 440–1 and the original of the form will be included as a permanent part of the file.

(10) For planning grants, Standard Form 270, ''Request for Advance or Reimbursement,'' will be sent to the applicant for completion and return to FmHA or its successor agency under Public Law 103–354. For site acquisition and site development grants, Standard Form 271, ''Outlay Report and Request for Reimbursement for Construction Programs,'' will be sent to the applicant for completion and returned to FmHA or its successor agency under Public Law 103–354.

(11) If it is determined that a project will not be funded or if major changes in the scope of the project are made after release of the approval announcement, the FmHA or its successor agency under Public Law 103–354 State Director will notify the Director, Legislative Affairs and Public Information Staff (LAPIS) by telephone or electronic mail giving the reasons for such action. The Director, LAPIS, will inform all parties who were notified by the project announcement that the project will not be funded or of major changes in the project using a procedure similar to the announcement process. Form FmHA or its successor agency under Public Law 103–354 1940–10, ''Cancellation of U.S. Treasury Check and/or Obligation,'' will not be submitted to the Finance Office until five working days after notifying the Director, LAPIS.

(7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; sec. 10 Pub. L. 93–357; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.70)

[44 FR 35984, June 19, 1979, as amended at 47 FR 36416, Aug. 20, 1982; 48 FR 30946, July 6, 1983]

§ 1948.93 Appeal procedure.

Any grantee or applicant for FmHA or its successor agency under Public Law 103–354 assistance under this subpart who has been directly and adversely affected by an administrative decision by FmHA or its successor agency under Public Law 103–354 may appeal such decision in accordance with FmHA Instruction 1900–B.

§ 1948.94 Reporting requirements.

(a) For planning grants, SF–270 shall be submitted by grantees on an as-needed basis but not more frequently that once every 30 days. SF–269, ''Financial Status Report,'' and a project performance activity report will be required of all grantees on a quarterly basis. SF–269 and a final project performance report will also be required. These final reports may serve as the last quarterly reports. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. All grantees except States should submit an original of each report and one copy to the appropriate FmHA or its successor agency under Public Law 103–354 District Office. When the grantee is a State, an original should be submitted to the appropriate FmHA or its successor agency under Public Law 103–354 State Office. The project performance reports shall include, but need not be limited to the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why established objectives were not met;

(3) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated and any Federal assistance needed to resolve the situation; and

(4) Objectives established for the next reporting period.

(b) For site development and land acquisition grants, grantees shall submit Form SF–271 for payment of site development costs. Multiple advances will be made in accordance with FmHA Instruction 402.1 (available in any FmHA

or its successor agency under Public Law 103–354 office) and will be made as needed to cover required disbursements for not less than 30 day periods. Advances will be requested for the next 30 day period by the grantee on Form SF–272, ''Report of Federal Cash Transactions.'' Each payment estimate must be approved by the grantee. A final Form SF–272 will be submitted to FmHA or its successor agency under Public Law 103–354 to include the final advance not later than 90 days after the final advance.

§ 1948.95 Grant monitoring.

Each grant will be monitored by FmHA or its successor agency under Public Law 103–354 to ensure that the Grantee is complying with the terms of the grant and that the project activities are completed as approved. This will involve on-site visits to the project area and review of quarterly and final reports by FmHA or its successor agency under Public Law 103–354.

§ 1948.96 Audit requirements.

(a) Audit requirements for Site Development and Acquisition Grants will be made in accordance with FmHA Instruction 1942–G.

(b) Audits for planning grants made in accordance with State statutes or regulatory agencies will be acceptable provided they are prepared in sufficient detail to permit FmHA or its successor agency under Public Law 103–354 to determine that grant funds have been used in compliance with the proposal, any applicable laws and regulations, and the grant agreement. A copy of the audit shall be submitted to the State Director as soon as possible but in no case later than 90 days following the period covered by the grant.

§ 1948.97 Grant closing and fund disbursement.

Grant closing and fund disbursement will be accomplished in accordance with FmHA Instruction 1942–G.

§ 1948.98 Grant agreements.

The following Grant Agreements are a part of this regulation.

(a) Exhibit A of this subpart is a Grant Agreement for Growth Management and Housing Planning Grants for approved Designated Energy Impacted Areas.

(b) Exhibit B of this subpart is a Grant Agreement for Site Development and/or Site Acquisition for Housing and/or Public Facilities and/or Services.

§§ 1948.99–1948.100 [Reserved]

EXHIBIT A TO SUBPART B OF PART 1948—GRANT AGREEMENT—GROWTH MANAGEMENT AND HOUSING PLANNING FOR APPROVED DESIGNATED ENERGY IMPACTED AREAS

This Agreement is between

(Name), _____

(Address),(Grantee) and the United States of America acting through the Farmers Home Administration (Grantor or FmHA) or its successor agency under Public Law 103–354. Grantee has determined to undertake certain growth management and housing planning for energy impacted areas at an estimated cost of $_____ and has duly authorized such planning. The Grantor agrees to grant to Grantee a sum not to exceed $_____ subject to the terms and conditions established by the Grantor; provided, however, that any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620) for the purpose only of defraying the planning costs as permitted by applicable Farmers Home Administration or its successor agency under Public Law 103–354 regulations:

PART A

Grantor and Grantee agree:

1. This agreement shall be effective when executed by both parties.

2. The scope of work set out below shall be completed prior to_____.

3. (a) Use of grant funds for travel which is determined as being necessary to the program for which the grant is established may be subject to the travel policies of the Grantee institution if they are uniformly applied regardless of the source of funds in determining the amounts and types of reimbursable travel expenses of Grantee staff and consultants. Where the Grantee institution does not have such specific policies uniformly applied, the Federal Travel Regulations shall apply in determining the amount

charged to the grant. Grantee may purchase furniture and office equipment only if specifically approved in the scope of work. Approval will be given only when Grantee demonstrates that purchase is necessary and would result in less cost to the Government in providing Federal-share funds or to the Grantee in providing its contributions. Commercial purchase under these circumstances will be approved only after consideration of Federal supply sources.

(b) Expenses and Purchases Excluded:

(i) In no event shall the Grantee expend or request reimbursement from Federal-share funds for obligations entered into or for costs incurred or accrued prior to the effective date of this grant.

(ii) Funds budgeted under this grant may not be used for entertainment expenses.

(iii) Funds budgeted under this grant may not be used to pay for capital assets, the purchase of real estate or vehicles, improvement and renovation of space, and repair and maintenance of privately-owned vehicles.

(c) Grant funds shall not be used to replace any financial support previously provided or assured from any other source. The Grantee agrees that the general level of expenditure by the Grantee for the benefit of program area and/or program covered by this agreement shall be maintained and not reduced as a result of the Federal share funds received under this grant.

4. (a) In accordance with Treasury Circular 1075, grant funds will be disbursed by the FmHA or its successor agency under Public Law 103–354 as cash advances on an as-needed basis not to exceed one advance every 30 days. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as stated in OMB Circular A–102 revised for State and local governments.

(b) Cash advances to the Grantee shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the Grantee in carrying out the purpose of the planning project.

(c) The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program costs.

(d) Federal funds should be promptly refunded to the FmHA or its successor agency under Public Law 103–354 and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) Will be disbursed by the recipient organization within seven calendar days, or

(ii) Are less than $10,000 and will be disbursed within 30 calendar days.

(e) Grantee shall provide satisfactory evidence to FmHA or its successor agency under Public Law 103–354 that all officers of Grantee organization authorized to receive and/or disburse Federal funds are covered by such bonding and/or insurance requirements as are normally required by the Grantee.

(f) Grant funds will be placed in a bank account(s). If for any reason grant funds are invested, income earned on such investment shall be identified as interest income on grant funds and forwarded to the Finance Office, FmHA or its successor agency under Public Law 103–354, St. Louis, Missouri, unless the Grantee is a State. ''State'' includes instrumentalities of a State but not political subdivisions of a State. A State Grantee is not accountable for interest earned on grant funds.

5. The Grantee will submit Performance and Financial reports as indicated below:

(a) As needed, but not more frequently than once every 30 days, an original and 2 copies of Standard Form 270, ''Request for Advance or Reimbursement;''

(b) Quarterly, an original and 2 copies of Standard Form 269, ''Financial Status Report,'' and a Project Performance report according to the schedule below:

Period	Date due

(c) Final, an original and 2 copies of Standard Form 269, ''Financial Status Report,'' and a Project Performance report according to the schedule below:

Period	Date due

NOTE: Final reports may serve as the last quarterly reports.

(d) The Project Performance reports shall include but need not be limited to the following:

(i) A comparison of actual accomplishment to the objectives established for that period;

(ii) Reasons why established objectives were not met;

(iii) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives, prevent the meeting of time schedules or objectives, or preclude the attainment of project work elements during established time periods. This disclosure shall be accompanied by a Statement of the action taken or comtemplated and any Federal assistance needed to resolve the situation; and

(iv) Objectives established for the next reporting period.

(e) All Grantees except States shall submit an original of each report and one copy to the appropriate FmHA or its successor agency under Public Law 103–354 District Office. A State Grantee shall submit original reports to the appropriate FmHA or its successor agency under Public Law 103–354 State Office.

(f) The plan(s) developed under this grant shall be submitted to the appropriate Governor for incorporation into the State Investment Strategy for Energy Impacted Areas. The Governor will submit the plan and the State Investment Strategy to the appropriate FmHA or its successor agency under Public Law 103–354 State Office(s). The FmHA or its successor agency under Public Law 103–354 State Office will forward the plan and State Investment Strategy to the FmHA or its successor agency under Public Law 103–354 National Office for approval of the plan.

6. The Budget covered by this agreement is:

Budget categories	Federal funds	Non-Federal share		Total
		Cash	In-kind	
Direct charges:				
1. Personnel	$			
2. Fringe benefits				
3. Travel				
4. Equipment				
5. Supplies				
6. Contractual				
7. Others				
Total Direct Charges				
8. Indirect charges				
Total				

(a) In accordance with FMC 74–4, Attachment B, compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

(b) In accordance with OMB Circular A–102, Attachment K, transfers among direct cost budget categories of more than 5 percent of the total budget must have prior written approval by the State Director, Farmers Home Administration or its successor agency under Public Law 103–354.

7. (a) The scope of work is described in the attached exhibit 1. The Grantee accepts responsibility for establishing a development process which will improve local conditions and alleviate problems associated with increased coal or uranium production in the Grantee areas. The Grantee shall:

(i) Develop a growth management and housing plan for assistance to approved designated area(s) impacted by increased coal or uranium production.

(ii) Contribute to development of a State Investment Strategy for Energy Impacted Areas.

(iii) Endeavor to coordinate and provide liaison with State development organizations, where they exist.

(iv) Provide continuing information to FmHA or its successor agency under Public Law 103–354 on the status of Grantee programs, projects, related activities, and problems.

(b) The Grantee shall inform the Grantor as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, and any Grantor assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

PART B

Grantee agrees:

1. To comply with property management standards established by Attachment N of OMB Circular A–102 for expendable and nonexpendable personal property *Personal property* means property of any kind except real property. It may be tangible—having physical existence—or intangible—having no physical existence, such as patents, inventions, and copyrights. *Nonexpendable personal property* means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above. ''Expendable personal property'' refers to all tangible personal property other than nonexpendable property. When nonexpendable tangible property is acquired by a Grantee with project funds, title shall not be taken by the Federal Government but shall vest in the Grantee subject to the following conditions:

(a) Right to transfer title. For items of nonexpendable personal property having a

unit acquisition cost of $1,000 or more, FmHA or its successor agency under Public Law 103–354 may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(1) The property shall be appropriately identified in the grant or otherwise made known to the Grantee in writing.

(2) FmHA or its successor agency under Public Law 103–354 shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If FmHA or its successor agency under Public Law 103–354 fails to issue disposition instructions within the 120 calendar day period, the Grantee shall apply the standards of paragraph (4) below.

(3) When FmHA or its successor agency under Public Law 103–354 exercises its right to take title, the personal property shall be subject to the provisions for federally owned nonexpendable property discussed in paragraph (4), below.

(4) When title is transferred either to the Federal Government or to a third party and the Grantee is instructed to ship the property elsewhere, the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(b) Use of other nontangible expendable property for which the Grantee has title.

(1) The Grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When it is no longer needed for the original project or program, the Grantee shall use the property in connection with its other Federally sponsored activities, in the following order of priority:

(a) Activities sponsored by FmHA or its successor agency under Public Law 103–354.

(b) Activities sponsored by other Federal agencies.

(2) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the Grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by FmHA or its successor agency under Public Law 103–354; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissable if authorized by FmHA or its successor agency under Public Law 103–354. User charges should be considered if appropriate.

(c) Disposition of other nonexpendable property. When the Grantee no longer needs the property as provided in 1(a)(4) above, the property may be used for other activities in accordance with the following standards:

(1) Nonexpendable property with a unit acquisition cost of less than $1,000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) Nonexpendable personal property with a unit acquisition cost of $1,000 or more. The Grantee may retain the property for other use provided that compensation is made to FmHA or its successor agency under Public Law 103–354 or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

FmHA or its successor agency under Public Law 103–354 shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by FmHA or its successor agency under Public Law 103–354 to determine whether a requirement for the property exists in other Federal agencies. FmHA or its successor agency under Public Law 103–354 shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(a) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse FmHA or its successor agency under Public Law 103–354 an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(b) If the Grantee is instructed to dispose of the property other than as described in (1)(a)(4) above, the Grantee shall be reimbursed by FmHA or its successor agency under Public Law 103–354 for such costs incurred in its disposition.

(c) Property management standards for nonexpendable property. The Grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(a) A description of the property.

(b) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(c) Sources of the property including grant or other agreement number.

(d) Whether title vests in the Grantee or the Federal Government.

(e) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(f) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(g) Location, use and condition of the property and the date the information was reported.

(h) Unit acquisition cost.

(i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a Grantee compensates the Federal agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the Grantee shall promptly notify FmHA or its successor agency under Public Law 103–354.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the Grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(7) Expendable personal property shall vest in the Grantee upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other Federally sponsored project or program, the Grantee shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

2. To provide Financial Management Systems which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial Reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(d) Accounting records supported by source documentation.

(e) Provide an audit report prepared in sufficient detail to allow Grantor to determine that funds have been used in compliance with the proposal any applicable laws and regulations and this agreement.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

4. To provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

5. To provide information as requested by the Grantor concerning the Grantee's actions in soliciting citizen participation in the application process, including published notice of public meetings, actual public meetings held, and content of written comments received.

6. To account for and to return to Grantor interest earned on grant funds pending their

disbursement for program purposes unless the Grantee is a State. See part A 4(f) above.

7. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in part B 1.

8. To provide Grantor such periodic reports as it may require of Grantee operations by designated representative of the Grantor.

9. To execute Form FmHA or its successor agency under Public Law 103–354 400–1, ''Equal Opportunity Agreement,'' and to execute any other agreements required by Grantor to implement the civil rights requirements.

10. To include in all contracts in excess of $100,000 a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970. Violations shall be reported to the Grantor and the Regional Office of the Environmental Protection Agency.

11. That, upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will, to the extent legally permissible, repay to the Grantor forthwith the original principal amount of the grant stated herein above, with interest at the rate of five per centum per annum from the date of the default. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

12. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

13. That all non-confidential information resulting from its activities shall be made available to the general public on an equal basis.

14. That the purpose and scope of work for which this grant is made shall not duplicate programs for which monies have been received, are committed, or are applied for from other sources, public and private.

15. That the Grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: ''The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source.''

16. That the Grantee shall abide by the policies promulgated in OMB Circular A–102, Attachment O, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

17. To the following termination provisions:

(a) Termination for cause: The Grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. The Grantor agency shall promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) Termination for convenience. The Grantor agency or Grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Grantor agency shall allow full credit to the Grantee for the Federal share of the noncancelable obligations, properly incurred by the Grantee prior to termination.

PART C

Grantor agrees:

1. That it will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans and with any State or area plans for the area in which the project is located.

2. That at its sole discretion, Grantor may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect Grantor's financial interest therein, and (b) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

This agreement is subject to current Grantor regulations and any future regulations not inconsistent with the express terms hereof.

Grantee on _____, 19___, has caused this agreement to be executed by its duly authorized _____ and attested and its corporate seal affixed by its duly authorized _____.

Attest:

Grantee:

By _____

_____

(Title)

By _____

_____

(Title)

Grantor:

United States of America Farmers Home Administration or its successor agency under Public Law 103–354.

By _____

_____

(Title)

(Approved by the Office of Management and Budget under control number 0575–0040)

[44 FR 35984, June 19, 1979, as amended at 47 FR 745, Jan. 7, 1982]

EXHIBIT B TO SUBPART B OF PART 1948—GRANT AGREEMENT (PUBLIC BODIES) FOR SITE DEVELOPMENT AND/OR SITE ACQUISITION FOR HOUSING AND/OR PUBLIC FACILITIES AND/OR SERVICES

This agreement dated _____, 19__, between _____ a public body corporate organized and operating under _____ (Authorizing State Statute)

Herein called ''Grantee,'' and the United States of America acting through the Farmers Home Administration or its successor agency under Public Law 103–354, Department of Agriculture, herein called ''Grantor,'' Witnesseth:

Grantee has determined to undertake a project for site acquisition and/or site development as follows: _____ (herein called project) to serve the approved designated energy impacted area under its jurisdiction at an estimated cost of $_____, and has duly authorized the undertaking of such project;

Grantee is able to finance not more than $_____ of the site acquisition and/or site development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee. Said sum has been committed to and by Grantee for such project acquisition and/or site development costs.

The Grantor agrees to grant to Grantee a sum not to exceed $_____ subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620) for the purpose only of defraying a part of the acquisition and/or site development costs, as defined by applicable Farmers Home Administration or its successor agency under Public Law 103–354 regulations:

Grantee agrees that Grantee will:

1. Cause said project to be completed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any necessary modifications thereof prepared by Grantee and approved by Grantor.

2. Permit periodic inspection of the project by a representative of Grantor.

3. Make the housing or public facility or services available to all persons in Grantee's servce area without regard to race, color, national origin, religion, sex, marital status, age, physical or mental handicap.

4. Use the real property including land and land improvements for authorized purposes of the grant as long as needed.

a. The Grantee shall obtain approval of the Grantor before using the real property for other purposes when the Grantee determines that the property is no longer for the original purposes.

b. When the real property is no longer needed as provided above, return all real property furnished or purchased wholly with Federal grant funds to the Grantor. In the case of property purchased in part with Federal grant funds, the Grantee may be permitted to take title to the Federal interest therein upon compensating the Federal Government for its fair share of the property. The Federal share of the property shall be the amount computed by applying the percentage of the Federal Participation in the total cost of the grant program for which the property was acquired to the current fair market value of the property.

5. Not use grant funds to replace any financial support previously provided or assured from any other source. The Grantee agrees that the general level of expenditure by the Grantee for the benefit of program area and/or program covered by this agreement shall be maintained and not reduced as a result of the Federal share funds received under this grant.

6. Not use grant funds to pay for construction costs of housing or public facilities.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

7. Abide by the following conditions pertaining to nonexpendable personal property which is furnished by the Grantor or acquired wholly or in part with Grant Funds.

a. The Grantee shall retain such property as long as there is a need for the property to accomplish the purpose of the grant. When there is no longer a need for the property to accomplish the purpose of the grant, the Grantee shall use the property in connection with other Federal grants it has received in the following order of priority.

(1) Other grant of the Grantor needing the property.

(2) Grants of other Federal agencies needing the property.

b. When the Grantee no longer has need for the property in any of its Federal grant programs, the property may be used for its own official activities in accordance with the following standards:

(1) Nonexpendable property with an acquisition cost of less than $500 and used four years or more. The Grantee may use the property for its own official activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) All other nonexpendable property. The Grantee may retain the property for its own use provided that a fair compensation is made to the Grantor. The amount of compensation shall be computed by applying the percentage of the Grantor participation in the grant program to the current fair market value of the property as determined by the Grantor.

c. If the Grantee has no need for the property, disposition shall be made as follows:

(1) Nonexpendable property with an acquisition cost of $1,000 or less. Except for that property which meets the criteria of b(1) above, the Grantee shall sell the property and reimburse the Grantor an amount which is computed in accordance with (3) below.

(2) Nonexpendable property with an acquisition cost of over $1,000. The Grantee shall request disposition instructions from Grantor.

(3) If disposition instructions are not issued within 120 days after reporting, the Grantee shall sell the property and reimburse the Grantor an amount which is computed by applying the percentage of the Grantor participation in the grant program to the sales proceeds. Further, the Grantee shall be permitted to retain $100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

d. The Grantee's property management standards for nonexpendable personal property shall also include:

(1) Property records which accurately provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; sources of the property; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(2) A physical inventory of property shall be taken and the result reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft to the property shall be investigated and fully documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described nonexpendable property (use continuation sheets as necessary).

8. Provide Financial Management Systems which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial Reporting will be on an accrual basis.

(b) Records which identify adequately the source and application of funds for grant-supporting activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(d) Accounting records supported by source documentation.

9. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee governments which are pertinent to the specific grant program

for the purpose of making audit, examination, excerpts and transcripts.

10. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

11. Provide an audit report prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this agreement.

12. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies of instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

13. Not encumber, transfer, or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item 5 above.

14. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a designated representative of the Grantor.

15. Execute Form FHA 400–1, ''Equal Opportunity Agreement,'' Form FHA 400–4, ''Nondiscrimination Agreement,'' and any other agreements required by Grantor to implement the civil rights requirements. If any such form has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

16. Include in all contracts for construction or repair a provision for compliance with the Copeland ''Anti-Kick Back'' Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, part 3). The Grantee shall report all suspected or reported violations to the Grantor.

17. In Contracts in excess of $2,000 and in other contracts in excess of $2,500 which involve the employment of mechanics or laborers, to include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327–330) as supplemented by Department of Labor regulations (29 CFR, part 5).

18. Include in all contracts in excess of $2,500 a provision for compliance with applicable regulations and standards of the Cost of Living Council in establishing wages and prices. Grantee shall report any violations of such regulation and standards to the Grantor and the local Internal Revenue Service field office.

19. Include in all contracts in excess of $100,000 a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clear Air Act of 1970. Violations shall be reported to the Grantor and the Regional Office of the Environmental Protection Agency.

20. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and the demand of Grantor, will, to the extent legally permissible, repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest at the rate of five per centum per annum from the date of the default. The provisions of this Grant Agreement may be enforced by Grantor at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

21. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

22. That all non-confidential information resulting from its activities shall be made available to the general public on an equal basis.

23. That the purpose and scope of work for which this grant is made shall not duplicate programs for which monies have been received are committed, or are applied for from other sources, public and private.

24. That Grantee shall relinquish any and all copyrights and/or privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain notice and be identified by language to the following effect: ''The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source.''

25. That the Grantee shall abide by the policies promulgated in OMB Circular A–95, Attachment O, which provides standards for use by Grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

26. To the following termination provisions:

(a) Termination for cause: The Grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant. The Grantor agency shall promptly notify the Grantee in writing of the determination and the reasons for the

termination, together with the effective date.

(b) Termination for convenience. The Grantor agency or Grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Grantor agency shall allow full credit to the Grantee for the Federal share of the noncancelable obligations, properly incurred by the Grantee prior to termination.

Grantor agrees that it will:

1. Assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans and with any State or area plans for the area in which the project is located.

2. In its sole discretion, Grantor may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (a) advisable to further the purposes of the grant or to protect Grantor's financial interest therein, and (b) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Grantee on the date first above written has caused this agreement to be executed by its duly authorized_____
and attested and its corporate seal affixed by its duly authorized_____
Attest:
(Seal)
By _____

(Title)
Grantee

_____

By _____

_____
(Title)

Grantor
United States of America
Farmers Home Administration or its successor agency under Public Law 103–354

By _____

_____
(Title)
(Approved by the Office of Management and Budget under control number 0575–0040)

[44 FR 35984, June 19, 1979, as amended at 47 FR 745, Jan. 7, 1982]

Subpart C [Reserved]

PART 1949 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Title 2—Grants and Agreements

SUBTITLE A—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE FOR GRANTS AND AGREEMENTS

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1941.16 Introductory paragraph revised; interim 1573
1941.29 Heading and (b) revised; (d) removed 7568
1942 Authority citation revised 27014
1942.304 Amended; interim 27014
1943.29 Heading and (b) revised; (c) removed; (d) redesignated as new (c) 7568
1943.79 Removed 7568
1945 Authority citation revised 7568
1945.154 (a) amended 7568
1945.163 (e) amended 7568

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1940.401 (c)(3)(ii) and (iii) amended; eff. 1–23–03 78328
1941.970—1941.991 (Subpart C) Removed 59773
1942 Authority citation revised 77908
1942.5 (a)(1) introductory text, (2), (3), (b)(1)(ii)(C), (c) introductory text and (3) revised 60854
Corrected 63019
1942.17 (f)(1) revised 60854
1942.108 (b) removed 60854
1942.304 Regulation at 66 FR 27014 confirmed 63537

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1942.305 (a) revised; (b)(3)(iv)(G) added; interim 77908
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1944.75 Amended; eff. 1–23–03 78328
1944.51—1944.100 (Subpart B) Exhibit C amended; eff. 1–23–03 78328
1944.151 Revised 66310
1944.153 Amended 66310
Amended; eff. 1–23–03 78328
1944.157 (c) redesignated as (d); new (c) added 66310
1944.158 (o) added 66311
1944.164 (j)(2)(ii) and (n) amended; eff. 1–23–03 78328
1944.168 (c)(1)(ii) amended; eff. 1–23–03 78328
1944.205 Amended; eff. 1–23–03 78328
1944.22 (g) and (h) amended; eff. 1–23–03 78328
1944.223 (e)(4)(iii) revised; eff. 1–23–03 78328
1944.402 (a) amended; eff. 1–23–03 78328
1944.423 Amended; eff. 1–23–03 78328
1944.424 Amended; eff. 1–23–03 78328
1944.426 (a)(1) and (3) amended; eff. 1–23–03 78328
1944.506 (d) revised; (f) amended; eff. 1–23–03 78328
1944.656 Amended; eff. 1–23–03 78329
1945.151—1945.200 (Subpart D) Removed 801
1946 Removed 57319
1948.84 (d)(2) amended; eff. 1–23–03 78329

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1940.588 Heading, (d), (g), (h) and (j) revised; (k) removed 14528
1940.589 (b)(1)(ii), (g) and (h) revised; (k) removed 14528
1940.593 Added 14528
(g) correctly designated 17153
1941.1—1941.50 (Subpart A) Nomenclature change 7696
1941.1 Amended 7696
1941.4 Amended 7696
1941.6 (c) revised 7697
1941.12 (a)(4), (5), (b)(5)(iii), and (iv) removed; (a)(6) through (11), (b)(5)(v) and (vi) redesignated as (a)(4) through (9), (b)(5)(iii) and (iv); (a)(6), (b)(6)(i), (7)(i), (8)(iii) and (9) revised 7697
(a)(1) and (b)(5)(i) revised; (a)(8), (9), (b)(11) and (12) amended 62223
1941.17 (e) added 62224
1941.18 (b)(4) amended 62224
1941.23 (b)(3) removed; (b)(4) redesignated as (b)(3) 62224
1941.33 (b)(1)(iii) revised; (c)(2) amended 62224
1941.54 (b)(2) revised; (b)(3) removed 7697
1941.57 (a) revised 7697
1942 Authority citation revised; eff. 2–9–04 65830
1942.1 (a) amended; eff. 2–9–04 65830
1942.7 (d) revised 61331
1942.19 (h)(6) removed 61331
1942.101—1942.150 (Subpart C) Heading revised; eff. 2–9–04 65830
1942.101 Revised; eff. 2–9–04 65830
1942.103 Revised; eff. 2–9–04 65830
1942.104 (a) revised; (b) and (c) removed; (d) redesignated as new (b); eff. 2–9–04 65830
New (b) correctly revised; eff. 2–9–04 69001
1942.108 (e) and (g) revised; eff. 2–9–04 65830
1942.111 (b) revised; eff. 2–9–04 65830
1942.112 (a)(1)(iii) added; eff. 2–9–04 65831
1943.1—1941.50 (Subpart A) Nomenclature change 7697
1943.1 Amended 7697
1943.4 Amended 7697, 62224
1943.6 (c) revised 7698

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1943.12 (a)(4), (5), (b)(4)(iii) and (iv) removed; (a)(6) through (11), (b)(4)(v) and (vi) redesignated as (a)(4) through (9), (b)(4)(iii) and (iv); (b)(5)(i), (6)(i) and (7) revised 7698
(a)(1) and (b)(4)(i) revised; (a)(9) and (b)(11) amended 62224
1943.14 (c), (d)(4) and (e)(2)(i) revised 7698
1943.16 (e) added 7698
1943.17 (a)(2) amended; (c) added 62224
1943.34 Heading, (a) and (b) revised; (c) removed 62224
1943.38 (g)(3)(ii) amended; (g)(3)(iii) removed 7698
1944.175 (e) removed 61331
1944.181 (b)(3)(ii) removed 61331
1944.426 (a)(1) revised 61331
1948.90 (b)(4) revised 61331

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1940 Technical correction 75454
Comment period extension 77609
1940.551—1940.600 (Subpart L) Exhibit B amended; interim; eff. 2-24-05 69104
1940.589 (d) revised 5264
1941.4 Amended 5262
1941.12 (a)(8) and (b)(11) revised 5262
1941.25 (a)(4) revised 30999
1942 Technical correction 75454
Comment period extension 77609
1942.17 (q)(l)(iii) removed; (q)(l)(iv) redesignated as (q)(1)(iii); interim; eff. 2-24-05 69104
1942.21 Added 65519
1943.4 Amended 5263
1943.12 (a)(6) introductory text and (b)(8) introductory text revised 5263
1944 Technical correction 75454
Comment period extension 77609
1944.51—1944.100 (Subpart B) Exhibit B and Exhibit C amended; interim; eff. 2-24-05 69104
1944.151—1944.200 (Subpart D) Removed; interim; eff. 2-24-05 69105
1944.201—1944.250 (Subpart E) Removed; interim; eff. 2-24-05 69105

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1944.401—1944.450 (Subpart I) Exhibit F amended; interim; eff. 2-24-05 69105

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1944.551—1944.600 (Subpart L) Removed; interim; eff. 2-24-05 69105

1944.656 Amended; interim; eff. 2-24-05 69105