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CODE OF FEDERAL REGULATIONS

Title 7
Agriculture

Parts 1940 to 1949

Revised as of January 1, 2025

Containing a codification of documents
of general applicability and future effect

As of January 1, 2025

Published by the Office of the Federal Register
National Archives and Records Administration
as 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 1940.551 *refers to title 7, part 1940, section 551.*

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Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
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OLIVER A. POTTS,
Director,
Office of the Federal Register
January 1, 2025

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, 1600–1759, 1760–1939, 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, 2025.

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.

For this volume, Cheryl E. Sirofchuck was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

Title 7—Agriculture

(This book contains parts 1940 to 1949)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE (CONTINUED)

Part

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

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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.

EDITORIAL NOTE: Nomenclature changes to part 1940 appear at 80 FR 9876, Feb. 24, 2015.

Subparts A–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 for the Rural Business-Cooperative Service or the Administrator for the Rural Housing Service, as applicable, 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.) This

subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

(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 Rural Development State Office. The exhibit also contains clarifications of allocation policies and provides further guidance to the State Directors on any suballocation within the State. Rural Development 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; 72 FR 64122, Nov. 15, 2007]

§ 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 Rural Development 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]

§§ 1940.553–1940.559 [Reserved]

§ 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. The data source for the criterion specified in paragraph (b)(1) of this section is the most recent decennial Census of the United States (decennial Census). The data source for the criterion specified in paragraph (b)(2) of this section is 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. The data source for the criterion specified in paragraph (b)(3) of this section is 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, as amended at 80 FR 9876, Feb. 24, 2015]

§§ 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. The data source for each criterion is specified in paragraph (b)(5) of this section. 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%)

(5) The data source for the criteria specified in paragraphs (b)(1) and (b)(2) of this section is the most recent decennial Census. The data source for the criteria specified in paragraph (b)(3) and (b)(4) of this section is 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data.

(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, as amended at 80 FR 9876, Feb. 24, 2015]

§ 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. The data source for each criterion is specified in paragraph (b)(5) of this section. 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%)

(5) The data source for the criteria specified in paragraphs (b)(1), (b)(2), and (b)(4) of this section is the most recent decennial Census. The data source for the criterion specified in paragraph (b)(3) of this section is 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data.

(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, as amended at 80 FR 9877, Feb. 24, 2015]

§ 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. The data source for the first criterion is the most recent decennial Census data. The data source for the second criterion is

5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. 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.

[50 FR 24180, June 10, 1985, as amended at 80 FR 9877, Feb. 24, 2015]

§ 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. The data source for the first two of these criteria is the most recent decennial Census data. The data source for the third criterion is the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. 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 33 1/3%) + (criterion No. 2 × weight of 33 1/3%) + (criterion No. 3 × weight of 33 1/3%)

(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.

[50 FR 24180, June 10, 1985, as amended at 80 FR 9877, Feb. 24, 2015]

§ 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. The data source for the first two of these criterion is the most recent decennial Census data. The data source for the third criterion is the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. 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 33 1/3%) + (criterion No. 2 × weight of 33 1/3%) + (criterion No. 3 × weight of 33 1/3%)

(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, as amended at 80 FR 9877, Feb. 24, 2015]

§ 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 Rural Development 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, Rural Development will announce opening and closing dates for receipt of HPG applications. After the closing date, Rural Development 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) The data source for the first criterion is the most recent decennial Census data. The data source for the second and third criteria is the 5-year data from the American Community Survey (ACS). 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 0.05.

Equation 1 to Paragraph (b)

$$SF = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

(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 Rural Development 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; 80 FR 9877, Feb. 24, 2015; 89 FR 34961, May 1, 2024]

§§ 1940.586–1940.587 [Reserved]

§ 1940.588 Business and Industry Guaranteed and Direct Loans, Rural Business Development Grants, and Intermediary Relending Program.

The Agency will allocate funds to the States each Federal fiscal year for the programs identified in this section using the procedures specified in paragraph (a) of this section. If the Agency determines that it will not allocate funds to the States for a program identified in this section in a particular Federal fiscal year, the Agency will announce this decision in a notice published in the FEDERAL REGISTER. The conditions under which the Agency will not allocate a program's funds to the

States are identified in paragraph (b) of this section.

(a) *Procedures for allocating funds to the States.* Each Federal fiscal year, the Agency will use the amount available to the program and the procedures identified in paragraphs (a)(2) through (10) of this section to determine the amount of program funds to allocate to each of the States. The Agency will make the allocation calculation each Federal fiscal year.

(1) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(2) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

(i) The criteria used in the basic formula are:

(A) State's percentage of national rural population.

(B) State's percentage of national rural population with incomes below the poverty level.

(C) State's percentage of national nonmetropolitan unemployment.

(ii) The data sources for each of the criteria identified in paragraph (a) of this section are:

(A) For the criterion specified in paragraph (a)(2)(i)(A), the most recent decennial Census data.

(B) For the criterion specified in paragraph (a)(2)(i)(B), 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data.

(C) For the criterion specified in paragraph (a)(2)(i)(C) of this section, the 5-year data from the ACS.

(iii) Each criterion is assigned a specific weight factor according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at State Factor (SF). The SF cannot exceed 0.05. The Agency may elect to use different weight factors than those identified in this paragraph by publishing a timely notice in the FEDERAL REGISTER.

$$\begin{aligned} SF = &(\text{criterion (a)(2)(i)(A)} \times 25 \text{ percent}) \\ &+ (\text{criterion (a)(2)(i)(B)} \times 50 \text{ percent}) \\ &+ (\text{criterion (a)(2)(i)(C)} \times 25 \text{ percent}) \end{aligned}$$

(iv) The Agency will recalculate, as necessary, each criterion specified in paragraph (a)(2)(i) of this section each year. In making these recalculations, the Agency will use the most recent data available to the Agency as of October 1 of the fiscal year for which the Agency is making State allocations. Each criterion's value determined at the beginning of a fiscal year for a program will be used for that entire fiscal year, regardless of when that fiscal year's funding becomes available for the program.

(3) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(4) *Transition formula.* The transition provisions specified in § 1940.552(d) of this subpart apply to the programs identified in this section except as follows:

(i) The transition formula will be used only when the weight factors identified in paragraph (a)(2)(iii) of this section are modified; and

(ii) When the transition formula is used, there will be no upper limitation on the amount that a State's allocation can increase over its previous year's allocation and the maximum percentage that funding will be allowed to decrease for a State will be 10 percent from its previous year's allocation.

(5) *Base allocations.* See § 1940.552(e) of this subpart.

(6) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(7) *Reserve.* See § 1940.552(g) of this subpart.

(8) *Pooling of funds.* See § 1940.552(h) of this subpart.

(9) *Availability of allocation.* See § 1940.552(i) of this subpart.

(10) *Suballocation by the State Director.* Suballocation by the State Director is authorized for each program covered by this section.

(b) *Conditions for not allocating program funds to the States.* The Agency may elect to not allocate program funds to the States whenever one of the conditions identified in paragraphs (b)(1) or (b)(2) of this section occurs.

(1) Funds allocated in a fiscal year to a program identified in this section are insufficient, as provided for in § 1940.552(a) of this subpart.

(2) The Agency determines that it is in the best financial interest of the Federal Government not to make a

State allocation for any program identified in this section and that the exercise of this determination is not in conflict with applicable law.

[79 FR 56218, Sept. 19, 2014, as amended at 89 FR 34962, May 1, 2024]

§ 1940.589 Rural Energy for America Program.

The Agency will allocate funds to the States each Federal fiscal year for renewable energy system and energy efficiency improvement projects under the Rural Energy for America Program (REAP) using the procedures specified in paragraph (a) of this section. If the Agency determines that it will not allocate funds to the States for REAP in a particular Federal fiscal year, the Agency will announce this decision in a notice published in the FEDERAL REGISTER. The conditions under which the Agency will not allocate the program's funds to the States are identified in paragraph (b) of this section.

(a) *Procedures for allocating funds to the States.* Each Federal fiscal year, the Agency will use the amount available to the program and the procedures identified in paragraphs (a)(2) through (10) of this section to determine the amount of program funds to allocate to each of the States. The Agency will make this calculation each Federal fiscal year.

(1) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(2) *Basic formula criteria, data source, and weight.* See § 1940.552(b) of this subpart.

(i) The criteria used in the basic formula are:

(A) State's percentage of national rural population.

(B) State's percentage of national rural population with incomes below the poverty level.

(C) State's percentage of energy cost.

(ii) The data sources for each of the criteria identified in paragraph (a)(2)(i) of this section are:

(A) For the criterion specified in paragraph (a)(2)(i)(A), the most recent decennial Census data.

(B) For the criterion specified in paragraph (a)(2)(i)(B), 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data.

(C) For the criterion specified in paragraph (a)(2)(i)(C), the most recent U.S. Energy Information Administration data.

(iii) Each criterion is assigned a specific weight factor according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at State Factor (SF). The SF cannot exceed 0.05. The Agency may elect to use different weight factors than those identified in this paragraph by publishing a timely notice in the FEDERAL REGISTER.

$$\begin{aligned} SF = &\ (\text{criterion (a)(2)(i)(A)} \times 25 \text{ percent}) \\ &+ (\text{criterion (a)(2)(i)(B)} \times 50 \text{ percent}) \\ &+ (\text{criterion (a)(2)(i)(C)} \times 25 \text{ percent}) \end{aligned}$$

(iv) The Agency will recalculate, as necessary, each criterion specified in paragraph (a)(2)(i) of this section each year. In making these recalculations, the Agency will use the most recent data available to the Agency as of October 1 of the fiscal year for which the Agency is making State allocations. Each criterion's value determined at the beginning of a fiscal year for a program will be used for that entire fiscal year, regardless of when that fiscal year's funding becomes available for the program.

(3) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(4) *Transition formula.* The transition provisions specified in § 1940.552(d) of this subpart apply to the program(s) identified in this section except as follows:

(i) The transition formula will be used only when the weight factors identified in paragraph (a)(2)(iii) of this section are modified; and

(ii) When the transition formula is used, there will be no upper limitation on the amount that a State's allocation can increase over its previous year's allocation and the maximum percentage that funding will be allowed to decrease for a State will be 10 percent from its previous year's allocation.

(5) *Base allocations.* See § 1940.552(e) of this subpart.

(6) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive initial administrative allocations.

(7) *Reserve*. See § 1940.552(g) of this subpart.

(8) *Pooling of funds*. See § 1940.552(h) of this subpart.

(9) *Availability of the allocation*. See § 1940.552(i) of this subpart.

(10) *Suballocation by the State Director*. Suballocation by the State Director is authorized for this program.

(b) *Conditions for not allocating program funds to the States*. The Agency may elect to not allocate REAP program funds to the States whenever one of the conditions identified in paragraphs (b)(1) or (b)(2) of this section occurs.

(1) Funds allocated in a fiscal year to REAP are insufficient, as provided for in § 1940.552(a) of this subpart.

(2) The Agency determines that it is in the best financial interest of the Federal Government not to make a State allocation for REAP and that the exercise of this determination is not in conflict with applicable law.

[79 FR 56219, Sept. 19, 2014]

§ 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) The data source for the first criterion is the most recent decennial Census data. The data source for the second and third criteria is the 5-year data from the American Community Survey (ACS). 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 0.05.

Equation 1 to Paragraph (b)

$$SF = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

(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 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; 80 FR 9877, Feb. 24, 2015; 89 FR 34961, May 1, 2024]

§ 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) The data source for the first criterion is the most recent decennial Census data. The data source for the second criterion is the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. 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, as amended at 80 FR 9877, Feb. 24, 2015]

§ 1940.593 Other Rural Business-Cooperative Service programs.

If the Agency determines that it is in the best interest of the Federal government to allocate funds to States for existing RBS programs other than those identified in §§ 1940.588 and 1940.589 of this subpart and for programs new to RBS (e.g., through new legislation), the Agency will use the process identified in paragraph (a) or (b) of this section.

(a) If the Agency determines that one of the State allocation procedures in § 1940.588 and § 1940.589 is appropriate for the program, the Agency will publish a FEDERAL REGISTER notice identifying the program and which State allocation procedure will be used for the program.

(b) If the Agency determines that none of the procedures specified in § 1940.588 and § 1940.589 is appropriate for the program, the Agency will implement the following steps:

(1) The Agency will either develop a preliminary state allocation formula and administrative procedures specific to the requirements of the new program or use whichever of the procedures in § 1940.588 and § 1940.589 the Agency determines most closely matches the purpose of the program. The Agency will publish in the FEDERAL REGISTER the State allocation formula and adminstrative procedures that it will use initially for the new program.

(2) The Agency will develop a State allocation formula and administrative provisions specific to the new program and publish them as a proposed rule change to this part in the FEDERAL REGISTER for public comment.

(3) Until the program's State allocation formula and administrative requirements are finalized, the Agency will use the preliminary State allocation formula established under paragraph (b)(1) of this section to make State allocations and administer the new program.

[79 FR 56220, Sept. 19, 2014]

§§ 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*. Rural Development reemphasizes the nondiscrimination in use and occupancy and location requirements of 7 CFR 3560.104.

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 7 CFR part 3560, subpart B.

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 nonprofit organizations is contained in 7 CFR 3560.56. 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, as amended at 69 FR 69104, Nov. 26, 2004]

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 section 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 Rural Development 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 Rural Development 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 Rural Business—Cooperative Service, Rural Housing Service, or Rural Utilities Service.

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 Rural Development 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 Rural Development 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 Rural Development and funds obligated prior to the July 15 pooling established in § 1940.961(c) of this subpart;

(2) Initial submission of preapplications/applications from Rural Development to the panel and any subsequent submissions during the first year;

(3) How often during each FY thereafter should Rural Development 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 Rural Development 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 Rural Development.

(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 Rural Development 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 Rural Development.

(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 Rural Development.

§ 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 Rural Development 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 RD Instruction subpart L of part 1940, exhibit A, attachment 4, of this chapter (available in any RD State or District Office).

(2) Each FY, and normally within 30 days after the date Rural Development 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 RD 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 Rural Development regulations, available in any Rural Development 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 Rural Development without review by the panel. Preapplications/applications selected for further processing by Rural Development 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) *Rural Development 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, Rural Development 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 Rural Development 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.* Rural Development 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 Rural Development review of priority funding list.* Rural Developmentwill 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. Rural Development will provide a copy of all notifications to the State coordinator. The decisions of the panel are not appealable.

(f) *Obligation of funds.* Rural Development 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 Rural Development 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 Rural Development'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 Rural Development employees. Grant approval authorities are contained in subpart A of part 1901 of this chapter.

(d) *Joint funds.* Rural Development 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 review requirements.* Grants made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

(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 in 2 CFR parts 416 and 417, as appropriate.

(4) *Drug-free work place.* The State must provide for a drug-free workplace in accordance with the requirements of RD Instruction 1940–M (available in any Rural Development 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 Rural Development 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 RD 400–4, ''Assurance Agreement;''

(ii) Scope-of-work prepared by the applicant and approved by Rural Development;

(iii) Form RD 1940–1, ''Request for Obligation of Funds,'' with exhibit A, and

(iv) Certification regarding a drug-free workplace in accordance with RD Instruction 1940–M (available in any Rural Development 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 of this subpart (available from any Rural Development State Office) shall be attached to and become a permanent part of Form RD 1940–1 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 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 Rural Development. 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 RD 1940–1 and the required exhibit. Rural Development will retain the original of Form RD 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 RD 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 Rural Development 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 Rural Development for its share.

(m) *Costs.* Costs incurred under this grant program are subject to cost principles established in 2 CFR part 200, subpart E.

(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.

[57 FR 11559, Apr. 6, 1992, as amended at 81 FR 11030, Mar. 2, 2016; 85 FR 31938, May 28, 2020]

§ 1940.969 Forms, exhibits, and subparts.

Forms, exhibits, and subparts of this chapter (all available in any Rural Development 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 [RESERVED]

PART 1942—ASSOCIATIONS

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989.

EDITORIAL NOTES: Nomenclature changes to part 1942 appear at 80 FR 9878, Feb. 24, 2015.

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 direct 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.

(1) The policies and procedures in this subpart address both loans between the Agency and the applicant and between the Agency and an approved eligible re-lender who then relends the funds to eligible applicants for eligible projects under this subpart.

(2) The Agency shall cooperate fully with State, Tribal and local agencies in making loans to assure maximum support to the State and Tribal strategies 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.

(3) Federal statutes 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.

(4) 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 Agency'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 RD 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. Agency 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 loanmaking 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 Agency regulations.

(e) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200 as the Department's policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result, this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities.

[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; 79 FR 76007, Dec. 19, 2014; 81 FR 43935, July 6, 2016]

§ 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 RD financing. The District Director will meet with the applicant, whenever appropriate to discuss RD 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), as outlined in 2 CFR part 400, if applicable.

(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 RD, 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 Agency funding which have the necessary priority to compete with similar preapplications, the Agency 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 Rural Development 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 Rural Development to proceed.

(b) *Environmental review requirements.* Loans made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970. Starting with the earliest discussions with prospective applicants or review of pre-applications and continuing through application processing, environmental issues must be considered.

(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 RD 1942–39, ''Processing Check List (Other Than Public Bodies),'' or Form RD 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 Rural Development 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*. Rural Development 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 Rural Development to any applicant to whom Rural Development 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, 15304, Apr. 11, 1990; 57 FR 21194, May 19, 1992; 61 FR 6309, Feb. 20, 1996; 79 FR 76007, Dec. 19, 2014; 81 FR 11030, Mar. 2, 2016]

§ 1942.3 Preparation of appraisal reports.

When the loan approval official requires an appraisal, Form RD 442–10, ''Appraisal Report—Water and Waste Disposal Systems,'' may be used with appropriate supplements. Form RD 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 RD 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.* The Rural Development 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 Rural Development 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 RD 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 RD 1942–47, ''Loan Resolution (Public Bodies),'' for public bodies or Form RD 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 RD written amendment to this letter. Any changes not approved by RD 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 (insert agency name) 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 RD 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 RD 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 RD 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, if the program or activity has been selected under the State. RD Instruction 1970–I, available in any Rural Development office.

(C) Community Facilities Project Summary.

(D) Preliminary architectural or engineering report.

(E) Form RD 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 RD 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 Rural Development office). The loan will be considered approved on the date the signed copy of Form RD 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 RD 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 RD 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 RD 1940–1.

(3) The State Director or designee will request an obligation of loan and/or grant funds via the automated terminal system after signing Form RD 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 RD 1940–1.

(4) The 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 Rural Development Field Office terminal system status inquiry function, the State Director or designee will notify by telephone, the Legislative and Public Affairs Staff in the Rural Development National Office as required by RD 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, 6 working days from the obligation date, a copy of Form RD 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 RD 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 RD 450–10, ''Advice of Borrower's Change of Address, Name, Case Number, or Loan Number,'' and process via the Rural

Development 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 Rural Development 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, Nov. 13, 1989; 63 FR 16089, Apr. 2, 1998; 67 FR 60584, Sept. 27, 2002; 67 FR 63019, Oct. 9, 2002; 76 FR 80730, Dec. 27, 2011; 79 FR 76007, Dec. 19, 2014; 79 FR 55967, Sept. 18, 2014]

EDITORIAL NOTE: At 80 FR 9879, Feb. 24, 2015, §1942.5 was amended in paragraph (a)(1)(ii) by removing ''FmHA or its successor agency under Public Law 103–354 reserves'' and adding ''Rural Development reserves'' in its place; however, the amendment could not be incorporated because the phrase did not exist in the paragraph.

§ 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 Rural Development.

(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 Rural Development funds.* When Rural Development 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.* Area Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans.

(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 disbursements.* Whenever a loan disbursement is received, lost, or destroyed, the Rural Development Manager will take appropriate actions outlined in Rural Development 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; 70 FR 19253, Apr. 13, 2005]

§ 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 RD 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 Rural Development'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.* Rural Development's 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]

EDITORIAL NOTE: At 80 FR 9879, Feb. 24, 2015, § 1942.8 was amended in paragraph (h) by removing ''FmHA or its successor agency under Public Law 103–354 Instruction'' and adding ''RD Instruction'' in its place; however, the amendment could not be incorporated because the phrase did not occur in the paragraph.

§ 1942.9 Planning, bidding, contracting, and constructing.

(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 National Office must concur with the use of a contracting method under § 1942.18(l) of this subpart exceeding $250,000. When an applicant requests such concurrence, the State Director will submit the following to the National Office:

(1) State Director's and Rural Development engineer/architect's comments and recommendations, and if noncompetitive negotiation per § 1942.18(k)(4) is accepted by the Agency, 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; 77 FR 29539, May 18, 2012]

§ 1942.10 Strategic economic and community development.

Applicants with projects that support the implementation of Strategic Community Investment Plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of Strategic Community Investment Plans on a multi-jurisdictional and multi-sectoral basis.

[85 FR 59393, Sept. 22, 2020]

§ 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 Rural Development 1940–10, ''Cancellation of U.S. Treasury Check and/or Obligation.''* The Rural Development Manager or State Director may prepare and execute Form Rural Development 1940–10, Cancellation of U.S. Treasury Check and/or Obligation, in accordance with the Forms Manual Insert (FMI). If the disbursement has been received or is subsequently received in the Area Office, the Rural Development Manager will return it as prescribed in Rural Development Instruction 2018–D.

(b) *Notice of cancellation.* If the docket has been forwarded to Office of General Counsel that office will be notified of the cancellation by copy of Form Rural Development 1940–10. Any application for title insurance, if ordered, will be cancelled. The borrower's attorney and engineer/architect, if any, should be notified of the cancellation. The Rural Development Manager 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; 70 FR 19254, Apr. 13, 2005]

§ 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, Rural Development Manager may redelegate their duties to qualified staff members.

[70 FR 19254, Apr. 13, 2005]

§ 1942.16 State supplements and guides.

State Directors will obtain National Office clearance for all State supplements and guides under RD Instruction 2006–B (available in any Rural Development 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 Rural Development policies and requirements pertaining to loans for community facilities. It provides applicants with guidance for use in proceeding with their application. Rural Development 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. The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

(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 most recent decennial Census.

(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, Rural Development 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 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, but excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I). The population figure is obtained from the most recent decennial Census. If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

(3) *Credit elsewhere*. Applicants must certify in writing and Rural Development 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 Rural Development office). Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

(5) *Refinancing debt.* The Government 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.* Rural Development 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, Rural Development 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 Rural Development funds are not committed in a timely fashion. However, the points may also be awarded to projects in order to improve compatibility/coordination between Rural Development'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 Rural Development 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. Additionally, a borrower is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

(*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 Rural Development.

(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 Rural Development 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 Rural Development 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 Rural Development approval to pay such obligations. Such requests may be approved if Rural Development 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 Rural Development; and

(D) All environmental requirements applicable to Rural Development 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. Rural Development may authorize payment of such obligations at the time of loan closing. Rural Development'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 Rural Development authorization for paying such obligations shall be in writing. If construction is started without Rural Development 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 Rural Development 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. Rural Development has guides available for these purposes in all Rural Development 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 Rural Development 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 RD Instruction 440.1, exhibits B and J (available in any Rural Development 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 Rural Development. The median household income of the service area and the nonmetropolitan median household income of the State will be determined from 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. If there is reason to believe that the ACS or other Census Bureau data does not accurately represent the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or Rural Development may obtain, additional information regarding such median household income data. Information must 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 Rural Development 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 a Rural Development 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 a Rural Development 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 Rural Development is jointly financing with another lender, the Rural Development 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 Rural Development 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 Rural Development 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 the United States taking another type. For projects utilizing joint financing with the same security to be shared by the United States and another lender, the United States 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 the United States 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 the United States. A trustee or other similar paying agent will not normally be used for the United States 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 United States funds must be clearly specified by written agreement and approved by the State Director and Regional Attorney. The United States 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 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 Rural Development, U.S. Department of Agriculture'' (see RD Instruction 2000–T, available in any Rural Development 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 Rural Development 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 the United States 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 the United States as additional security in any case in which the interest of the United States 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 Rural Development, U.S. Department of Agriculture'' (see RD Instruction 2000–T, available in any Rural Development 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 Rural Development 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 Rural Development.

(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 Rural Development; 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 Rural Development 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 Rural Development. 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 Rural Development 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 Rural Development 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 Rural Development 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. Rural Development 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 RD'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 Rural Development to assure that adequate insurance and fidelity bond coverage is maintained.

(B) Insurance and fidelity bond requirements by Rural Development shall normally not exceed those proposed by the applicant/borrower if the Rural Development 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 Rural Development 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 Rural Development 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 Rural Development. 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 Rural Development will normally approximate the total annual debt service requirements for the Rural Development loans.

(B) Form RD 440–24, ''Position Fidelity Schedule Bond'' may be used. Similar forms may be used if determined acceptable to Rural Development. Other types of coverage may be considered acceptable if it is determined by Rural Development that they fulfill essentially the same purpose as a fidelity bond.

(C) Fidelity bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies doing Business with the United States.''

(iii) *Insurance.* The following types of coverage must be maintained if appropriate for the type of project and entity involved. Insurance must be in amounts acceptable to the Agency and at least equivalent to coverage for real property and equipment acquired without Federal funds.

(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*) of this section. Ordinarily, Rural Development should be listed as mortgagee on

the policy when Rural Development 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 (RD 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. Rural Development may require an appraisal by an independent appraiser or Rural Development 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 RD 442–21, ''Rights-of-Way Certificate,'' and Form RD 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 RD 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 Rural Development 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 RD 1927–9, ''Preliminary Title Opinion,'' and Form RD 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 Rural Development 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 RD 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 RD prior to requesting closing instructions. RD will be provided a title insurance policy which will insure RD's interest in the property without any title defects or restrictions which have not been waived by RD.

(*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 Rural Development loan. The contract must provide that if the purchaser fails to make payment that Rural Development 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 Rural Development 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 Rural Development 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 RD 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 review requirements.* Loans made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

(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 Rural Development. 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 Rural Development. The applicant will provide Rural Development 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) Rural Development 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 Rural Development 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.* Rural Development 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 Rural Development loans, shared revenues may be used with Rural Development 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 Rural Development 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 Rural Development.

(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.* Rural Development 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 Rural Development 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 Agency financial assistance except as otherwise provided for in the Education Amendments of title IX. The 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 Agency 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 Agency concurrence. Form RD 1942–19, ''Agreement for Engineering Services,'' may be used when appropriate. Guide 20, ''Agreement for Engineering Services (Agency/EPA—Jointly Funded Projects)'' may be used on projects jointly funded by RD 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 the Agency 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 the Agency financing is not involved.

(m) *Applying for the Agency loans*—(1) *Preapplication*. Applicants desiring loans will file SF 424.2 and comments from the appropriate A–95 clearinghouse agency normally with the appropriate Agency 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, RD will tentatively determine eligibility including the likelihood of credit elsewhere at reasonable rates and terms and availability of agency 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 Rural Development); the repayment potential of the applicant; long-term cost to the applicant; and average user or other charges. In those cases where Rural Development determines that loans at reasonable rates and terms should be available from commercial sources, Rural Development will notify the applicant so that it may apply for such financial assistance. Such applicants may be reconsidered for Rural Development 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 Rural Development.

(4) *Results of preapplication review.* After Rural Development 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 Rural Development for an application conference to provide a basis for orderly application assembly. Rural Development 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 Rural Development. 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 Rural Development 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 Rural Development forms, the letter of conditions, and other items will be revised. Decreases in Rural Development funds will be based on revised project costs and current number of users, however, other factors including Rural Development 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 RD 1942–47, ''Loan Resolution (Public Bodies),'' or Form RD 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 Rural Development'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 RD 400–4, ''Assurance Agreement,'' and Form RD 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)(A) To place the proceeds of the loan on deposit in a manner approved by the Government. Funds must be deposited and maintained in insured accounts whenever possible. Funds must be maintained in interest bearing accounts, unless the following apply:

(*1*) The borrower receives less than $120,000 in Federal awards per year;

(*2*) The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances;

(*3*) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources; and,

(*4*) A foreign government or banking system prohibits or precludes interest bearing accounts.

(B) Interest earned on Federal payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $500 per year may be retained by the non-Federal entity for administrative expense.

(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 Rural Development.

(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 Rural Development

funds. Guide 1 or guide 1a, as appropriate, may be used to inform the private lender of Rural Development's commitment. When interim commercial financing is used, the application will be processed, including obtaining construction bids, to the stage where the Rural Development loan would normally be closed, that is immediately prior to the start of construction. The Rural Development 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 a Rural Development Water and Waste Disposal grant is included, any interim financing involving a fixed term must be for the total Rural Development 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 Rural Development loan proceeds (including advances) will be used to retire the interim commercial indebtedness. Before the Rural Development loan is closed, the applicant will be required to provide Rural Development 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 Rural Development 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 Rural Development 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 Rural Development loan funds. If this is not possible, funds will be disbursed on a pro rata basis. Rural Development 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 Rural Development 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 Rural Development.

(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 Rural Development 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 RD 440–11, ''Estimate of Funds Needed for 30 Day Period Commencing _____,'' to show the amount of funds needed during the 30-day period.

(iii) Rural Development 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.* Rural Development 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 Rural Development has a Memorandum of Understanding with another agency that provides for the use of supervised bank accounts, or when Rural Development 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. Rural Development shall not be accountable to the source of the other funds nor shall Rural Development 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 Rural Development of the bills or vouchers upon which warrants will be

drawn, so that the payments from loan funds can be controlled and Rural Development records kept current. If a supervised bank account is not used, use Rural Development 402–2, ''Statement of Deposits and Withdrawals,'' or similar form to monitor funds. Periodic reviews of nonsupervised accounts shall be made by Rural Development at the times and in the manner as Rural Development 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 Rural Development offices.

(4) *Development inspections.* The District Director will be responsible for monitoring the construction of all projects being financed, wholly or in part, with Rural DevelopmentFmHA 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 Rural Development 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 RD 1924–12, ''Inspection Report.'' The original Form RD 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 RD 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 RD 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 the Agency, 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 agency loan and no agency grant, funds that are not needed will be applied as an extra payment on the RD indebtedness unless other disposition is required by the bond ordinance, resolution, or State statute.

(B) On projects that involve an agency grant, all remaining agency 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) *Annual financial statements.* Borrowers are required to provide the Agency with annual financial statements for the life of the loan as outlined in the Letter of Conditions issued by the Agency. The financial statements are the responsibility of the borrower's governing body. The type of statement required is dependent on the amount of Federal financial assistance received during the borrower's fiscal year. Federal financial assistance includes Federal assistance that a non-Federal entity received or administered during the entity's fiscal year in the form of grants, loans, and loan guarantees. A Federal award is Federal financial assistance a non-Federal entity received directly from Federal awarding agencies or indirectly from pass-through entities. Federal awards expended generally pertain to events that require the non-Federal entity to comply with Federal Statues, regulations, and terms and conditions of federal awards, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to sub-recipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

(2) *Method of accounting and preparation of financial statements.* Annual organization-wide financial statements must be prepared on the accrual basis of accounting, in accordance with Generally Accepted Accounting Principles (GAAP), unless State statute, tribal law or regulatory agencies provide otherwise, or an exception is granted by the Agency. An organization may maintain its accounting records on a basis other than accrual accounting, and make the necessary adjustments so that annual financial statements are presented on the accrual basis.

(3) *Record retention.* Each Applicant will retain all records, books, and supporting material for 3 years after the issuance of the audit or management reports, or for a time period required by other agencies or common business practice, whichever is longer. Upon request, this material will be made available to Rural Development, OIG, USDA, the Comptroller General, or to their assignees.

(4) *Audits.* Any applicant that expends $1 million or more in Federal financial assistance during their fiscal year must submit an audit report conducted in accordance with 2 CFR part 200, subpart F, ''Audit Requirements.'' Applicants expending less than $1 million in Federal financial assistance per fiscal year are exempt from 2 CFR part 200 audit requirements. All audits are to be performed in accordance with the latest revision of the Generally Accepted Government Accounting Standards (GAGAS), developed by the Comptroller General of the United States. Further guidance on preparing an acceptable audit can be obtained from any Agency office. It is not intended that audits required by this part 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. Audits should be supplied to the Processing Official within the timeframes stated in paragraph (f) of this section. OMB Circulars and Agency Compliance Supplements are available in any USDA/Agency office or OMB's website. Any state, local government, or Indian tribe that is required by constitution or state statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits biennially, pursuant to 2 CFR 200.504(a). This requirement must still be in effect for the biennial period. Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits biennially, pursuant to 2 CFR 200.504(b). All biennial audits must cover both years within the biennial period.

(5) *Exemption from audits.* Except as noted in 2 CFR 200.503, ''Relation to other audit requirement,'' public bodies or nonprofits expending less than $1 million in Federal awards during its fiscal year, whose payments are current, and are having no signs of operational or financial difficulty may submit a management report. A management report, at a minimum, will include a balance sheet and income and expense statement. Financial information may be reported on Form RD 442–2, ''Statement of Budget, Income and Equity'' and RD Form 442–3, ''Balance Sheet'', or similar. The following management data will be submitted by the borrower to the servicing office. Records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(6) *Deadlines for submitting audits and management reports.* In accordance with 2 CFR part 200, audits must be submitted no later than 9 months after the end of the fiscal year or 30 days after the borrower's receipt of the auditor's reports, whichever is earlier. Management reports must be submitted no later than 2 months after the end of the borrower's fiscal year.

(7) *Additional information to be submitted with audits and management reports.* (i) *Insurance.* Agency borrowers will maintain adequate insurance coverage as required by the loan resolution and § 1942.17(j)(3). The servicing official is required to monitor insurance annually after the initial insurance verification.

(ii) *Reserve account(s).* Borrowers will provide documentation that the Agency required reserve account(s) is properly funded;

(iii) *Property tax information.* If applicable, documentation that property taxes have been paid and are current.

(iv) *A list of directors and officers.*

(8) *Quarterly reports.* A quarterly management report will be required for the first full year of operations for new borrowers, and existing borrowers operating a new facility, starting a new type of operation or proposing a significant expansion of an existing facility. Borrowers should submit the following to the Servicing Official:

(i) One copy of Form RD 442–2, or equivalent, Schedule 1, page 1, columns 4–6, as appropriate, and page 2. This information should be received in the Servicing Office 30 days after the end of each of the first three quarters of the fiscal year.

(ii) The Servicing Office may request a borrower experiencing financial or management problems to submit quarterly copies of Form RD 442–2, or equivalent, Schedule 1, pages 1 and 2.

[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 at *www.govinfo.gov.*

§ 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 Rural Development 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 Rural Development.

(d) *Design policies.* Facilities financed by Rural Development 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. The Agency's environmental review requirements are found at 7 CFR part 1970.

(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 Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C 470), as implemented by 36 CFR part 800, and Executive Order 11593, ''Protection and Enhancement of the Cultural Environment.'' 7 CFR part 1970 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 Rural Development 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 Rural Development. 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 Rural Development will have metering devices for each connection. An exception to this requirement may be granted by the Rural Development's 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 Rural Development. When Rural Development'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 Rural Development, 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 Rural Development 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 Rural Development. The Rural Development

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 Rural Development State Director or designee. To the extent practical, Rural Development review and approval of such contracts should take place prior to their execution by the owner. Form RD 442–30, ''Water Purchase Contract,'' may be used when appropriate. If the Rural Development loan will be repaid from system revenues, the contract will be pledged to Rural Development 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 Rural Development 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 RD 442–7, ''Operating Budget''; and

(*3*) Form RD 442–3, ''Balance Sheet''; and

(*4*) Preliminary Engineering Report; and

(*5*) Proposed Contract.

(C) Owner and Rural Development 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 Rural Development 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 Rural Development 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 Rural Development 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 Rural Development 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 Rural Development funds. No employee, officer or agent of the owner shall participate in the selection, award, or administration of a contract supported by Rural Development 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, Rural Development 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 Rural Development 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, Rural Development 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 Rural Development 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 for securing services, supplies or other property, costing in the aggregate not more than the Simplified Acquisition Threshold. 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 Rural Development National Office.

(l) *Alternate 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. Alternate contracting methods which combine or rearrange design, inspection or construction services (such as design/build or construction management/constructor) may be used with Rural Development written approval.

(1) The owner will request Rural Development approval by providing the following information to the State Office for review and approval by the State Architect:

(i) The owner's written request to use an unconventional contracting method with a description of the proposed method.

(ii) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. This would include a nontechnical statement summarizing the work to be performed by the contractor, the expected results, the sequence in which the work is to be performed, and a proposed construction schedule.

(iii) A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be responsible for any extra cost which may result from errors or omissions in the services provided under the contract and compliance with all Federal, State, and local requirements effective on the contract execution date.

(iv) An evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

(v) 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.

(vi) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.

(vii) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by Rural Development prior to the start of construction.

(viii) 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.

(2) The State Office may approve design/build or construction management/constructor projects if the contract amount is equal to or less than $250,000.

(3) If the contract amount exceeds $250,000, National Office prior concurrence must be obtained in accordance with § 1942.9(b) of this subpart. Additional information, such as plans and specifications, may be requested by the National Office.

(4) The Design/Build method of construction is one in which the architectural and engineering services, normally provided by an independent consultant to the owner, are combined with those of the General Contractor under a single source contract. These services are commonly provided by a Design/Build firm, a joint venture between an architectural firm and a construction firm, or a company providing pre-engineered buildings and design services.

(5) The Construction Management/constructor (CMc), acts in the capacity of a General Contractor and is actually responsible for the construction. This type of construction management is also referred to as Construction Manager ''At Risk.'' The construction contract is between the owner and the CMc. The CMc, in turn, may subcontract for some or all of the work.

(6) The National Office may approve other alternative contact methods, such as Construction Management/advisor (CMa), with a recommendation from the State Office. The recommendation shall indicate the circumstances which prove this method advantageous to the applicant and the Government. A CMa acts in an advisory capacity to the owner, and the actual contract for construction is between the owner and a prime contractor or multiple prime contractors. When a contract for an architect and a CMa are being provided, it is important to make sure that separate professionals are not being paid to provide similar services. Further, paragraph (e)(3) of this section discourages separate contracts for construction.

(7) All alternate contracting method projects must comply with the requirements for ''maximum open and free competition'' in paragraph (j)(2) of this section. Choosing an alternate contracting method is not a way to avoid competition. Further information on procurement methods, which must be followed, is provided in paragraph (k) of this section.

(m) *Contracts awarded prior to preapplications.* Owners awarding construction or other procurement contracts prior to filing a pre-application with Rural Development must comply with the following:

(1) *Evidence.* Provide conclusive evidence that the contract was entered into without intent to circumvent the requirements of Rural Development 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 Rural Development 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 Rural Development 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 Rural Development 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 RD 1924–10, ''Release by Claimants,'' and Form RD 1924–9, ''Certificate of Contractor's Release,'' may be obtained at the local Rural Development office and used for this purpose. The United States, acting through Rural Development, 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 Rural Development.

(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, Rural Development, 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 Rural Development.

(9) *Rural Development concurrence.* All contracts must contain a provision that they shall not be effective unless and until the Rural Development 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 Rural Development 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 Rural Development 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 Rural Development 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 RD 1924–16, ''Record of Preconstruction Conference,'' and the discussion and agreements will be documented. Form RD 1924–16 may be used for this purpose.

(2) *Monitoring reports.* Each owner will be required to monitor and provide reports to Rural Development on actual performance during construction for each project financed, or to be financed, in whole or in part with Rural Development 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 Rural Development 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 Rural Development assistance.

(3) *Inspection*. Full-time resident inspection is required for all construction unless a written exception is made by Rural Development 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 Rural Development 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 Rural Development 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 RD 1924–18, ''Partial Payment Estimate,'' are available on request from Rural Development.

(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 Rural Development 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 Rural Development State Office staff representative, preferably the State Staff architect or engineer. Prefinal inspections may be made without Rural Development 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 RD 1924–12, ''Inspection Report,'' and a copy provided to all appropriate parties.

(6) *Final inspection*. A final inspection will be made by Rural Development before final payment is made.

(7) *Change is development plans*. (i) Changes in development plans may be approved by Rural Development 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 Rural Development's security; and

(D) The change is within the scope of the contract.

(ii) Changes will be recorded on Form RD 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 Rural Development State Director or a designated representative.

(iii) Changes should be accomplished only after Rural Development 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; 77 FR 29539, May 18, 2012; 79 FR 76001, Dec. 19, 2014; 81 FR 11030, Mar. 2, 2016]

§ 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, Rural Development, 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 Rural Development 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 Rural Development 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 Rural Development 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 Rural Development.

(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 Rural Development requirements should be discussed with the Rural Development 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 Rural Development:

(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 Rural Development 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 Rural Development funds.

(e) *Permanent instruments for Rural Development loans to repay interim commercial financing.* Rural Development loans will be evidenced by the following types of instruments chosen in accordance with the following order of preference:

(1) *First preference—Form RD 440–22, ''Promissory Note (Association or Organization)''.* If legally permissible use Form RD 440–22 for insured loans.

(2) *Second preference—single instruments with amortized installments.* If Form RD 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 Rural Development advance on the reverse thereof or on an attachment to the instrument. Form RD 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 Rural Development 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 Rural Development 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 Rural Development 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 Rural Development funds using permanent instruments.* Where interim financing from commercial sources is not available, Rural Development 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 Rural Development 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 Rural Development loan funds and will be for the full amount of the Rural Development 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 Rural Development 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 Rural Development. 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 Rural Development will be registered in the name of ''United States of America, Rural Development,'' and will remain so registered at all times while the bonds are held or insured by the United States. The address of Rural Development for registration purposes will be that of the appropriate Rural Development 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 Rural Development. 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 Rural Development 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 Rural Development payments when joint financing is involved*. In all cases in which Rural Development is participating with another lender in the joint financing of the project to supply funds required by one applicant, the Rural Development

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 Rural Development, 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 Rural Development 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 RD 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 RD 1940–1, ''Request for Obligation of Funds'', of the action.

(i) *Bidding by Rural Development.* Bonds offered for public sale shall be offered in accordance with State law, in such a manner to encourage public bidding. Rural Development will not submit a bid at the advertised sale unless required by State law, nor will reference to Rural Development's rates and terms be included. If no acceptable bid is received, Rural Development 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 officials in administering this program.

(1) Guide 1 and 1a—Guide Letter for Use in Informing Private Lender of Agency'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 Department of Agriculture Pertaining to EDA Public Works Projects Assisted by an Agency loan.

(13) Guide 13—Memorandum of Understanding Between the Economic Development Administration—Department of Commerce and the 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—Agency Supplemental General Conditions.

(19) Guide 19—Construction Contract Documents.

(20) Guide 20—Agreement for Engineering Services (Agency/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 Environmental Protection Agency and the Agency.

(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 Agency 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 Agency. 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 Agency 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]

§§ 1942.22–1942.29 [Reserved]

§ 1942.30 Re-lending.

The provisions in this section establish the process by which the Agency may make loans to eligible re-lenders who then in turn re-loan the funds to eligible applicants for eligible projects under this subpart. This section may be supplemented by provisions in annual notices published in the FEDERAL REGISTER. In such notices, the Agency may impose, among other things, limits on the total amount of funds to be used through this process and the amount of the loan funding that will be provided to each re-lender.

(a) *Re-lender eligibility*. Re-lenders must meet each of the following requirements:

(1) Demonstrate the legal authority necessary to make and service loans involving community infrastructure and development similar to the type of projects listed in § 1942.17(d);

(2) Meet federal, state and local requirements in accordance with § 1942.17(k);

(3) As specified in the annual FEDERAL REGISTER notice, demonstrate that a percent of its portfolio is for projects located in or serving Persistent Poverty County(ies) or High Poverty Areas, or that the Re-lender has a minimum amount of experience making loans for projects located in or serving Persistent Poverty County(ies) or High Poverty Area(s);

(4) Agree to provide adequate collateral, as determined by the Agency, to support the loan request;

(5) Provide a Letter of Intent from a financial institution that an Irrevocable Letter of Credit (or performance guarantee) acceptable to the Agency will be issued by the financial institution if the Re-lender is approved for funding;

(6) As specified in the annual FEDERAL REGISTER notice, agree to provide an Irrevocable Letter of Credit (or performance guarantee) acceptable to the Agency in the minimum amount equal to the principal and interest installments due the Agency during the first five (5) years of the loan, prior to receiving loan disbursements;

(7) Demonstrate one of the following, as provided in the annual FEDERAL REGISTER notice:

(i) Re-lender is regulated and supervised by a Federal or State Banking Regulatory Agency that is subject to credit examination, AND the institution, its subsidiaries, holding companies, and affiliates are not on their respective regulatory agency's watch list

and have no regulatory actions outstanding against them;

(ii) Re-lender has a strong Financial Strength and Performance Rating as specified in the annual FEDERAL REGISTER notice. The achieved rating must indicate financial strength, performance, and risk management practices that consistently provide for safe and sound operations; or

(iii) At the time of application, Re-lender provides written documentation, acceptable to the Agency, from a financial institution that an Irrevocable Letter of Credit (or performance guarantee) acceptable to the Agency will be issued by the financial institution, if the Re-lender is approved for funding; and the Re-lender:

(A) Obtains a strong Financial Strength and Performance Rating as specified in the Annual FEDERAL REGISTER notice prior to any funds being advanced; or

(B) Proves to be a financially sound institution as determined by the Agency in accordance with the annual FEDERAL REGISTER notice;

(8) Be a legal, non-governmental entity at the time of application (with the exception of Tribal governmental entities);

(9) Be a member of a national organization that provides training, technical assistance and credit evaluation of member organizations, such as FDIC, NCUA or other similar organizations; or be certified by a Government agency as having a primary mission of promoting community development in low-income target markets and perform training and technical assistance as part of that mission;

(10) Agrees to loan a majority of Agency funds, as specified in the annual FEDERAL REGISTER notice, to applicants whose projects are located in or serve Persistent Poverty County(ies) or High Poverty Area(s); and

(11) Meet any other criteria specified by the Agency in the annual Notice published in the FEDERAL REGISTER.

(b) *Applicant and project eligibility*. To be eligible for a CF Direct loan from a re-lender under this section,

(1) The applicant must meet the eligibility requirements found in this subpart, including but not limited to those in §1942.2(a)(2) regarding the inability to obtain credit elsewhere and §1942.17(b) and (k);

(2) The applicant must comply with any other criteria specified by the Agency in the annual Program Notice published in the FEDERAL REGISTER; and

(3) The project must:

(i) Meet all of the eligibility requirements for a project found in this subpart, including but not limited to §1942.17(b)(2), (d), (e), and (g) and all environmental review requirements as specified in §1942.2(b) and 7 CFR part 1970; and

(ii) Meet any additional requirements that may be specified in the program's annual Notice published in the FEDERAL REGISTER.

(c) *Application submission requirements*. To apply for funds under this section, a Re-lender must timely submit all items as specified in the annual FEDERAL REGISTER notice.

(d) *Evaluation criteria*. The Agency will score and rank all eligible and complete Re-lender applications based upon the evaluation factors set out in the annual FEDERAL REGISTER notice, including but not limited to: Lending experience and strength of the re-lender, poverty and project service area, and Administrator's discretionary points.

(e) *Other Re-lender requirements*. Prior to receiving a direct loan from the Agency, the eligible re-lender must:

(1) Enter into a Re-lender's agreement provided by the Agency;

(2) Execute a promissory note;

(3) Provide an Agency approved Irrevocable Letter of Credit (or performance guarantee) acceptable to the Agency in the minimum amount equal to the principal and interest installments due during the first five (5) years of the loan, prior to receiving any loan disbursements;

(4) Provide adequate collateral satisfactory to the agency; and

(5) Meet any other loan conditions as described in the annual Notice published in the FEDERAL REGISTER.

(f) *Loan origination and servicing*—(1)*Re-lenders*. After the Agency loan is made to the Re-lender, the Re-lender is responsible for:

(i) Presenting to the Agency eligible CF direct loan applications in accordance with this subpart and any additional terms established in the applicable annual Notice published in the FEDERAL REGISTER;

(ii) Underwriting and servicing each loan reviewed and approved by the Agency under this section;

(iii) Submitting reports to the Agency after any loan disbursement as specified in the annual FEDERAL REGISTER notice;

(iv) Certifying to the Agency that the Re-lender and Borrower have met the requirements of 7 CFR 3575.42 and 3575.43 for planning, bidding, contracting and construction, as specified in the annual FEDERAL REGISTER Notice;

(v) Complying with other Agency requirements as specified in the annual FEDERAL REGISTER notice concerning environmental, civil rights, and other applicable Federal state, and local law;

(vi) Obtaining disbursement of loan funds according to this section and the annual FEDERAL REGISTER notice within 5 years. Any loan funds not disbursed within that time will be deobligated and become unavailable for disbursement.

(2) *Agency responsibilities*. (i) Based on the information presented by the Relender and any additional information that may be requested by the Agency, the Agency will determine the eligibility of the applicant and project under this subpart.

(ii) The Agency will notify the relender of its determination and any administrative review or appeal rights for Agency decisions made under this subpart. Programmatic decisions based on clear and objective statutory or regulatory requirements are not appealable; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). The applicant and re-lender may appeal any Agency decision that directly and adversely impacts them. For an adverse decision that impacts the applicant, the re-lender and applicant must jointly execute a written request for appeal for an alleged adverse decision made by the Agency. An adverse decision that only impacts the re-lender may be appealed by the re-lender only. A decision by a re-lender adverse to the interest of an applicant or borrower is not a decision by the Agency, whether or not concurred in by the Agency. Appeals will be conducted by USDA NAD and will be handled in accordance with 7 CFR part 11.

(iii) For approved eligible borrowers and projects, the Agency will confirm that all environmental requirements as specified in this subpart and 7 CFR part 1970 have been met and that the Re-lender has provided adequate security for its loan, before the Agency will disburse funds to the Re-lender;

(iv) The Agency will service each relender's loan in accordance with 7 CFR part 1951, subpart E. The Agency may suspend further disbursements, and pursue any other available and appropriate remedies, if any of the re-lender loans become troubled, delinquent, or otherwise in default status, or if the relender is not meeting the terms of its Relender's Agreement.

[81 FR 43936, July 6, 2016]

§§ 1942.31–1942.49 [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 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.

(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 RD'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 requirements.

Loans made under this subpart must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970.

[81 FR 11031, Mar. 2, 2016]

§ 1942.106 Intergovernmental review.

(a) Loans under this subpart are subject to intergovernmental review requirements set forth in U. S. Department of Agriculture regulations 7 CFR 3015, subpart V and RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.

(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; 76 FR 80730, Dec. 27, 2011]

§ 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 Agency 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 RD 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 RD 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 RD 1942–52, ''Cash Flow Projection,'' instead of Form RD 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 [Reserved]

§ 1942.110 Strategic economic and community development.

Applicants with projects that support the implementation of Strategic Community Investment Plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of Strategic Community Investment Plans on a multi-jurisdictional and multi-sectoral basis.

[85 FR 59393, Sept. 22, 2020]

§ 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 RD.

(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 Agency approval to pay such obligations. Such requests may be approved if RD 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 RD; and

(iv) All environmental requirements applicable to RD 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. RD may authorize payment of such obligations at the time of loan closing. RD'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 Agency authorization for paying such obligations shall be in writing. If construction or procurement is started without Agency 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 RD 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 Agency 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. RD may require an appraisal by an independent appraiser or Agency 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 Agency 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 RD Office), or

(b) Prepared by the applicant using Form RD 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 Agency 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 RD 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 RD 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 Office of the Deputy Chief Financial Officer 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 Rural Development Manager.

(3) The Rural Development Manager 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 Office of the Deputy Chief Financial Officer immediately, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the Area Office and a copy will be forwarded to the Office of the Deputy Chief Financial Officer. In developing the permanent instruments, the sequence of preference set out §1942.19(e) of subpart A of part 1942 of this chapter will be followed.

(i) *Bond registration record*. Form RD 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 disbursements*. Whenever a loan disbursement is received, lost, or destroyed, the Rural Development Manager will take the appropriate actions outlined in Rural Development Instruction 2018–D.

(k) *Safeguarding bond shipments*. Agency personnel will follow the procedures for safeguarding mailings and deliveries of bonds and coupons outlined in RD Instruction 2018–E (available in any RD office), whenever they mail or deliver these items.

(l) *Review of loan closing*. When the loan has been closed, the Rural Development Manager 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 Rural Development Manager'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 Rural Development 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 Rural Development Manager 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; 70 FR 19254, Apr. 13, 2005]

§§ 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 Agency 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 RD 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 RD office) may be used.

(2) *Final reports.* Detailed final plans and specifications are required for all construction and must receive Agency 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, RD 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 RD 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 RD 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 RD 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 RD, 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 RD 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 RD. The Agency 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 Agency 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 RD 1924–5, ''Invitation for Bid (Construction Contract),'' and Form RD 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 RD 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 RD 1924–16, ''Record of Preconstruction Conference,'' and the

discussions and agreements will be documented. Form RD 1924–16 may be used for this purpose.

(2) *Monitoring reports.* Each owner will be required to monitor and provide reports to RD on actual performance during construction for each project financed, or to be financed, in whole or in part with Agency 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 RD 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 Agency 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 RD 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 RD 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 Agency District Director. Guide 11 of subpart A of this part 1942 (available in any Rural Development 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 RD 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 RD 1924–12, ''Inspection Report,'' and a copy provided to all interested parties, including the Agency State Director.

(5) *Final inspection.* A final inspection will be made by RD before final payment is made.

(6) *Changes in development plans.* (i) Changes in development plans may be

approved by RD 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 RD's security; and

(D) The change is within the scope of the contract; and

(E) Any applicable requirements of 7 CFR part 1970 have been met.

(ii) Changes will be recorded on Form RD 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 Agency District Director.

(iii) Changes should be accomplished only after Agency 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, as amended at 81 FR 11031, Mar. 2, 2016]

§ 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 RD 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 RD 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 RD 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 Agency 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, RD 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 RD 1942–53, ''Cash Flow Report,'' instead of page one of schedule one and schedule two of Form RD 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 RD Instruction 2006–B (available in any Rural Development 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.

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PART 1943 [RESERVED]

PART 1944—HOUSING

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EXHIBIT D TO SUBPART N OF PART 1944—PROJECT SELECTION CRITERIA-OUTLINE RATING FORM

EXHIBIT E TO SUBPART N OF PART 1944—GUIDE FOR QUARTERLY PERFORMANCE REPORT

AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 1480.

EDITORIAL NOTE: Nomenclature changes to part 1944 appear at 80 FR 9885, Feb. 24, 2015.

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 Rural Development housing assistance programs available to very low- and low-income rural residents in colonias and designated counties. Rural Development 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 Rural Development offices and officials and should be read as prefaced by Rural Development. 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 Rural Development 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. The counties meet the following criteria:

(1) Twenty percent or more of the county population is at or below the poverty level based on the most recent 5-year survey of the American Community Survey of the Census Bureau or other Census Bureau data if needed; and

(2) Ten percent or more of the occupied housing units are substandard based on the most recent decennial Census of the United States.

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.

[58 FR 58643, Nov. 3, 1993, as amended at 80 FR 9885, Feb. 24, 2015]

§ 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 Rural Development 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 RD Instruction 1940–Q (available in any Agency office), Departmental Regulation 2400–5, 2 CFR part 200 as adopted by USDA through 2 CFR part 400 apply to grantees under this subpart.

(c) Grants made under the subpart must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970.

(d) The grantee will retain records for 3 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(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 2 CFR part 200 as adopted by USDA through 2 CFR part 400 and OMB Circular A–128.

(2) Nonprofit organizations will complete an audit in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(f) Performance reports, as required, will be submitted in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

[58 FR 58643, Nov. 3, 1993, as amended at 61 FR 39851, July 31, 1996; 79 FR 76008, Dec. 19, 2014; 81 FR 11031, Mar. 2, 2016]

§ 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 Rural Development'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 a Rural Development 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 Rural Development office and retained in accordance with RD Instruction 2033–A (available in any Rural Development 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 Rural Development 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 RD 400–1, ''Equal Opportunity Agreement,'' and RD 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 Rural Development 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 Rural Development 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 a 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 agency procedures (available in any Rural Development office).

[70 FR 7651, Feb. 15, 2005]

§ 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 7 CFR 3560.53 (o).

(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.

[58 FR 58643, Nov. 3, 1993, as amended at 69 FR 69104, Nov. 26, 2004]

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.

[69 FR 69104, Nov. 26, 2004]

EXHIBIT D TO SUBPART B OF PART 1944—DESIGNATED COUNTIES FOR HOUSING APPLICATION PACKAGING GRANTS

Exhibit D of Subpart B - Designated Counties for Housing Application Packaging Grants

Alabama (2)	Alaska (4)	Arizona (8)	Arkansas (1)
Perry	Bethel Census Area	Apache County	Newton County
Wilcox	Dillingham Census Area	Coconino County	
	Wade Hampton Census Area	Graham County	
	Yukon-Koyukuk	La paz County	
		Navajo County	
		Pinal County	
		Santa Cruz County	
		Yuma County	

California (7)	**Colorado (2)**	**Florida (3)**	**Georgia (2)**
Alpine	Costilla County	DeSota County	Candler County
Fresno	Saguache County	Hardee County	Hancock County
Imperial County		Hendry County	
Kings County			
Merced County			
Sutter County			
Tulare County			

Idaho (1)	**Louisiana (1)**	**Mississippi (10)**	**Montana (2)**
Madison County	Plaquemines Parish	Benton County	Big Horn County
		Bolivar County	Glacier County
		Claiborne County	
		Holmes County	
		Humpheys County	
		Issaquena County	
		Noxubee County	
		Scott County	
		Sharkey County	
		Sunflower County	

Nebraska (1)	**New Mexico (8)**	**North Dakota (3)**	**South Dakota (9)**
Thurston County	Cibola County	Benson County	Bennett County
	Dona Ana County	Rolette County	Buffalo County
	Luna County	Sioux County	Corson County
	McKinley County		Dewey County
	Mora County		Jackson County
	Otero County		Mellette County
	Sandoval County		Shannon County
	San Juan County		Todd County
			Ziebach County

Texas (39	Utah (1)	Washington (1)	Wisconsin (1)
Atascosa County	San Juan County	Yakima County	Menominee County
Bee County			
Brooks County			
Cameron County			
Crosby County			
Dawson County			
Crosby County			
Dawson County			
Deaf Smith County			
Dimmit County			
Duval County			
Edwards County			
El Paso County			
Floyd County			
Frio County			
Gaines County			
Hall County			
Hidalgo County			
Hudspeth County			
Jim Hogg County			
Jim Wells County			
Kinney County			
Kleberg County			
La Salle County			
Lynn County			
McMullen County			
Maverick County			
Pecos County			
Presidio County			
Reeves County			
San Patricio County			
Starr County			
Uvalde County			
Val Verde County			
Webb County			
Willacy County			
Zapata County			

Designated Counties for Housing Application Packaging Grants

American Samoa (4)	North Marianas (3)	Puerto Rico (64)	Virgin Islands (2)
Eastern District	Rota Municipality	Adjuntas Municipio	St. Croix Island
Manu'a District	Saipan Municipality	Aguas Buenas Municipio	St. Thomas Island
Swains Island	Tinian Municipality	Albonito Municipio	
Western District		Atasco Municipio	
		Arecibo Municipio	
		Arroyo Municipio	
		Barramqiotas Municipio	
		Cabo Rojo Municipio	
		Cagias Municipio	
		Camuy Municipio	
		Canvanas Municipio	
		Carolina Municipio	
		Cayey Municipio	
		Ceiba Municipio	
		Ciales Municipio	
		Cidra Municipio	
		Coamo Municipio	
		Comerfo Municipio	
		Corozal Municipio	
		Culebra Municipio	
		Fajardo Municipio	
		Florida Municipio	
		Gubnica Municipio	
		Guayama Municipio	
		Guayanilla Municipio	
		Gurabo Municipio	
		Hatillo Municipio	
		Humacao Municipio	
		Isabela Municipio	
		Jayuya Municipio	
		Juana Dfaz Municipio	
		Juncos Municipio	
		Lajas Municipio	
		Lares Municipio	
		Las Marfas Municipio	
		Las Marfas Municipio	
		Las Piedras Municipio	
		Lofza Municipio	
		Luquillo Municipio	

Designated Counties for Housing Application Packaging Grants

		Puerto Rico (64) (continued)	
		Manaff Municipio	
		Maricao Municipio	
		Maunabo Municipio	
		Mayagnez Municipio	
		Moca Municipio	
		Morovis Municipio	
		Neguabo Municipio	
		Orocovis Municipio	
		Patillas Municipio	
		Petuelas Municipio	
		Ponce Municipio	
		Quebradillas Municipio	
		Rfo grande Municipio	
		Sabana Grande Municipio	
		Salinas Municipio	
		San German Municipio	
		San Lorenzo Municipio	
		San Sebastiban Municipio	
		Santa Isabel Municipio	
		Utuado Municipio	
		Vega Alta Municipio	
		Vieques Municipio	
		Villalba Municipio	
		Yabucoa Municipio	
		Yauco Municipio	

[70 FR 29927, May 25, 2005]

Subparts C–E [Reserved]

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 non-discrimination 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 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. 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.

Rural Development 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 Rural Development 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 Rural Development 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 Rural Development financed home in the area plus the actual or projected costs of an acceptable site and site development. If Rural Development 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 Rural Development.

(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 Rural Development 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 Rural Development 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 Rural Development 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(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.

[55 FR 41833, Oct. 16, 1990, as amended at 79 FR 76009, Dec. 19, 2014]

§ 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. These requirements are set forth in U. S. Department of Agriculture regulations 7 CFR 3015, subpart V and RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site, 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; 76 FR 80730, Dec. 27, 2011]

§ 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400. 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(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) Documentation required in accordance with 7 CFR part 1970.

(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 pre-application information and, as appropriate, the environmental review documentation required in 7 CFR part 1970 to the Area Office, the Area 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 Rural Development 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 Rural Development.

(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 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(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; 79 FR 76009, Dec. 19, 2014; 81 FR 11031, Mar. 2, 2016]

§ 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(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 RD 400–4, ''Assurance Agreement.''

(e) The grantee has fidelity bonding as covered in 2 CFR part 200 as adopted by USDA through 2 CFR part 400 if a nonprofit organization or, if a State or local government, to the extent required in 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(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 Rural Development 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; 79 FR 76010, Dec. 19, 2014]

§ 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
RD 1940–1	Request for Obligation of Funds	4	2	3–O and 2C	1–C
RD 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 RD 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 RD 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 RD 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 RD 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 RD 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 Rural Development.

(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 Rural Development 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 Rural Development. Person(s) authorized by resolution may sign for the applicant.

§ 1944.417 Servicing actions after grant closing.

Rural Development 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 Rural Development 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 RD 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 RD 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 RD 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 Rural Development 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 Rural Development 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 Rural Development is available to assist and provide the name and address of an organization that is under contract with Rural Development 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 Rural Development. The State Director may use Rural Development employees or an organization under contract to Rural Development 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 Rural Development District Office annually (or biennially if a State or local government with authority to do a less frequent audit requests it) and the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of the grantee's audit period. 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400 and Rural Development 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 Rural Development requirements in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400. 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 Rural Development 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 Rural Development 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400. The grantee will forward completed audits to the appropriate Federal Cognizant agency and a copy to the Rural Development District Director. ''Cognizant agency'' for audits is defined at 2 CFR 200.18 as the Federal agency designated to carry out the responsibilities described in § 200.513 Responsibilities, paragraph (a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit may be found at the FAC Web site. Within USDA, the 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 Rural Development provided the major portion of Federal financial assistance, the State Director will contact the appropriate USDA OIG Regional Inspector General. Rural Development 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(2) State and local and Indian tribes that receive less than $25,000 a year in Federal financial assistance shall be exempt from 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(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, as amended at 79 FR 76010, Dec. 19, 2014; 81 FR 7698, Feb. 16, 2016]

§ 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 Rural Development's eligibility requirements but must understand that only Rural Development can approve or deny an applicant assistance. Grantee must work cooperatively with Rural Development in the 502 loan approval process and must work within the regulations for the 502 program and recognize Rural Development'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 Rural Development'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 Rural Development 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, Rural Development 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 Rural Development to recover any unauthorized expenditures.

(4) The grantee will provide Rural Development 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 Rural Development.

(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). 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 2 CFR part 200 as adopted by USDA through 2

CFR part 400. 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 Rural Development 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. Rural Development 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 Rural Development 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 Rural Development.

[55 FR 41833, Oct. 16, 1990, as amended at 67 FR 78328, Dec. 24, 2002; 68 FR 61331, Oct. 28, 2003; 79 FR 76010, Dec. 19, 2014]

§ 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400.

(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

	In percent—		
	With slab on grade	With crawl space	With basement
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
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

	In percent—		
	With slab on grade	With crawl space	With basement
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 RD 3560–51, ''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.

[55 FR 41833, Oct. 16, 1990, as amended at 69 FR 69105, Nov. 26, 2004; 79 FR 76010, Dec. 19, 2014]

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 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. 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) Rural Development 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 Rural Development 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 Rural Development 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) Rural Development 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 Rural Development's policies of targeting Rural Development resources to areas of greatest need within their States.

(d) Rural Development 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 adequate 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 Rural Development offices and officials and should be read as prefaced by Rural Development. 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 Rural Development 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 Rural Development 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 management; 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 adequate 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 Rural Development 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.

Rural Development 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: Rural Development has designated the District Office as the primary point of contact for all matters relating to the TSA program and as the office responsible 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 Rural Development 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 Rural Development. 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 Rural Development 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 Rural Development 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:

The policies of 7 CFR part 1970 apply to grants made under this subpart regarding historic properties and environmental compliance.

[81 FR 11031, Mar. 2, 2016]

§ 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 Rural Development housing loan funds), those States with the highest degree of substandard housing and persons in poverty in rural areas eligible to receive Rural Development 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 Rural Development 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) Environmental review documentation in accordance with 7 CFR part 1970.

(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 documentation in accordance with 7 CFR part 1970, and attach to the application.

(ii) Complete an historical and archaeological review in accordance with 7 CFR part 1970, and attach to the application.

(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 regarding the appropriate level of environmental review in accordance with 7 CFR part 1970.

(ii) Complete an historical and archaeological review in accordance with 7 CFR part 1970, and attach to the application.

(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 2 CFR part 200 as adopted by USDA through 2 CFR part 400. See RD Instruction 1970–I available in any Rural Development 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).

(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, 13504, Apr. 11, 1990; 55 FR 50081, Dec. 4, 1990; 76 FR 80730, Dec. 27, 2011; 79 FR 76010, Dec. 19, 2014; 81 FR 11031, Mar. 2, 2016]

§ 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

Rural Development 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400. See RD Instruction 1970–I, available in any Rural Development 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; 76 FR 80731, Dec. 27, 2011; 79 FR 76011, Dec. 19, 2014]

§ 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400. See RD Instruction 1970–I, available in any Rural Development Office.

(4) SF 424.1.

(5) OGC legal determination made pursuant to § 1944.526(c)(3).

(6) Grant Agreement.

(7) Form RD 1940–1, ''Request for Obligation of Funds.''

(8) Form RD 400–1, ''Equal Opportunity Agreement.''

(9) Form RD 400–4, ''Assurance Agreement.''

(10) Environmental review documentation and historical and archaeological review in accordance with 7 CFR part 1970.

(11) The detailed budget for the agreement period based upon the needs outlined in the proposal and the comments and recommendations by Rural Development.

[47 FR 40400, Sept. 14, 1982, as amended at 48 FR 29121, June 24, 1983; 49 FR 3763, Jan. 30, 1984; 55 FR 13503, 13504, Apr. 11, 1990; 76 FR 80731, Dec. 27, 2011; 79 FR 76011, Dec. 19, 2014; 81 FR 11031, Mar. 2, 2016]

§ 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 RD 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 RD 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 RD 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, Legislative and Public Affairs Staff (LAPAS), in the Rural Development 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 RD 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 RD 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 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 RD 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 RD 440–57.

(iv) Form RD 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 RD 1940–1 will be sent to the applicant along with an

executed copy of the Grant Agreement and scope of work 6 working days from the date funds are obligated.

(i) The actual date of applicant notification will be entered on the original of Form RD 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 Rural Development.

(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 (LAPAS) by telephone or electronic mail, giving the reasons for such action. The Director, LAPAS, 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 RD 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, LAPAS.

(6) Upon receipt from the grantee of a properly completed SF–270, Form RD 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 RD 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; 79 FR 55967, Sept. 18, 2014]

§ 1944.534 [Reserved]

§ 1944.535 Cancellation of an approved grant.

(a) The District Director will prepare Form RD 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 RD 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 RD 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 RD 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 Rural Development 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 Rural Development 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 RD 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, Apr. 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 Rural Development,

(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 RD 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 Rural Development. 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 Rural Development 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 Rural Development 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 Rural Development 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 RD 1940–1.

§ 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 Rural Development 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 Rural Development when the technical and supervisory assistance involves rural housing programs other than Rural Development 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 Rural Development 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 Rural Development 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 Rural Development 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 RD 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 Rural Development. The grantee will perform self-evaluations by preparing periodic project performance reports in accordance with § 1944.541. Rural Development 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 Rural Development 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400 for State and local governments and 2 CFR part 200 as adopted by USDA through 2 CFR part 400 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 2 CFR part 200 as adopted by USDA through

2 CFR part 400 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400 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 U.S.C. 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. Environmental review documentation in accordance with 7 CFR part 1970.

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, 13504, Apr. 11, 1990; 79 FR 76011, Dec. 19, 2014; 81 FR 11031, Mar. 2, 2016]

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. Environmental review documentation in accordance with 7 CFR part 1970.

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; 81 FR 11031, Mar. 2, 2016]

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

Subparts L–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 RD 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 RD 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 RD Instruction 1940–M (available in any Rural Development 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 Thermal Standards for existing structures adopted by the locality/jurisdiction and applicable development standards for existing housing recognized by RHS in subpart A of part 1924 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 (Pub. L. 93–638) or under the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92–512);

(3) A private nonprofit organization, including faith-based and community organizations, 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, including faith-based and community 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 USDA Rural Development 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. Guidance is provided at 7 CFR 3560.155(e). These guidelines should result in an ideal range of persons per housing unit.

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 Thermal Standards adopted by the locality/jurisdiction for new or existing structures and applicable development standards for new or existing housing recognized by RHS in subpart A of part 1924 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; 69 FR 69105, Nov. 26, 2004; 72 FR 70221, Dec. 11, 2007; 73 FR 36268, June 26, 2008]

§ 1944.657 Restrictions on lobbying.

All applicants must comply with RD Instruction 1940–Q (available in any Rural Development 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400 (available in any Rural Development office), as appropriate, and comply with the grant agreement and Rural Development 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; 79 FR 76011, Dec. 19, 2014]

§ 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 Rural Development point of contact.

(a) Rural Development 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 Rural Development 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 Rural Development 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 Rural Development 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 Rural Development. 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 Rural Development 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 Rural Development 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 Rural Development 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 2 CFR part 200, as adopted by USDA through 2 CFR part 400, apply to the acceptance and use of HPG funds.

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26210, May 13, 1997; 79 FR 76011, Dec. 19, 2014]

§ 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 Rural Development 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400. 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; 79 FR 76011, Dec. 19, 2014]

§ 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 Rural Development 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 Rural Development 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. Rural Development 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 Rural Development office).

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26210, May 13, 1997]

§ 1944.672 Environmental review requirements.

Grants made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

(a) The approval of an HPG grant for the repair, rehabilitation, or replacement of dwellings is classified as a Categorical Exclusion, pursuant to § 1970.53. As part of their pre-application materials, applicants shall submit environmental documentation in accordance with 7 CFR part 1970, for the geographical areas proposed to be served by the program. The applicant shall refer to part 1944 subpart N exhibit F–1.

(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 Rural Development. 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 an HPG proposal does not qualify as a categorical exclusion under § 1970.53 and may require either an environmental report under § 1970.54 or an environmental assessment, the applicant will immediately contact the RHS office designated to service the HPG grant. Prior to approval of HPG assistance to the recipient by the applicant, RHS must complete the environmental review process in accordance with 7 CFR part 1970, with the assistance of the applicant, as necessary.

(e) If Rural Development 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 Rural Development'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 a Rural

Development 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 Rural Development prior to actual usage of funds by the grantees under § 1944.664 (c)(11) of this subpart. Rural Development must complete the appropriate level of environmental review in accordance with part 1970 of this chapter.

[58 FR 21894, Apr. 26, 1993, as amended at 62 FR 26210, May 13, 1997; 81 FR 11031, Mar. 2, 2016; 82 FR 19319, Apr. 27, 2017]

§ 1944.673 Historic preservation and replacement housing requirements and procedures.

(a) Rural Development 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 RD Instruction 2000–FF (available in any Rural Development 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 Rural Development 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 Rural Development 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 Rural Development.

[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 Rural Development.

(c) The HPG program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. These requirements are set forth in U.S. Department of Agriculture regulations 7 CFR part 3015, subpart V, and RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.

Prospective applicants for HPG grants must submit its statement of activities to the State single point of contact prior to submitting their preapplication to Rural Development. 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 Rural Development office. This section does not apply to American Indian tribes, bands, groups, etc., as noted in § 1944.656 of this subpart.

[58 FR 21894, Apr. 26, 1993, as amended at 76 FR 80731, Dec. 27, 2011]

§ 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 Rural Development office. A preapplication package, including SF–424.1, is available in any Rural Development office.

(b) All preapplications shall be accompanied by the following information which Rural Development 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 (RD Instruction 2000–FF available in any Rural Development 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 Rural Development office), or another process supplying similar information acceptable to Rural Development;

(iv) The development standard(s) the applicant will use for the housing preservation work; and, if not the Rural Development 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 nonminority 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 2 CFR part 200 as

adopted by USDA through 2 CFR part 400, when the applicant has another source of federal funding in addition to the 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 Rural Development 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) Grants made under this subpart must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970.

(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, RD Instruction 2000–FF, available in any Rural Development 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 Rural Development office), or another process supplying similar information acceptable to Rural Development.

(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 Rural Development 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 RD 400–1, ''Equal Opportunity Agreement,'' and Form RD 400–4, ''Assurance Agreement,'' in accordance with § 1944.674(c) of this subpart.

[58 FR 21894, Apr. 26, 1993, as amended at 79 FR 76011, Dec. 19, 2014; 81 FR 11031, Mar. 2, 2016]

§ 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 Rural Development 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, Rural Development 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 Rural Development 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 at least one or more years experience successfully managing and operating a rehabilitation or weatherization type program: 10 points.

(ii) The organization or a member of its staff has at least one 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 Rural Development 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.

[58 FR 21894, Apr. 26, 1993, as amended at 73 FR 36269, June 26, 2008]

§ 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 Rural Development 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 Rural Development offices processing HPG preapplications/applications will review the preapplications and applications submitted. Further review and actions will be taken by Rural Development personnel in accordance with exhibit C of this subpart (available in any Rural Development office). Exhibit G of this subpart (available in any Rural Development 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 Rural Development office). In addition, Rural Development 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 Rural Development 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 Rural Development 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 RD 1940–1, ''Request for Obligation of Funds,'' and exhibit A of this subpart (available in any Rural Development office). The applicant will be sent a copy of the executed grant agreement and Form RD 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, Rural Development 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 RD 1940–1, Rural Development 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 Rural Development 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 Rural Development 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 Rural Development. 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, Rural Development 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 Rural Development 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 Rural Development 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 Rural Development 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 Rural Development 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 Rural Development 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 Rural Development. 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 Rural Development 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 Rural Development prior to modifying its operation from the approved statement of activities.

(d) Exhibit B of this subpart (available in any Rural Development 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 Rural Development. The grantee will perform self-evaluations by preparing quarterly performance reports in accordance with § 1944.683 of this subpart. Rural Development 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. Rural Development 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, Rural Development may allow necessary and reasonable costs for an audit.

(c) Grantees will have the opportunity to appeal a suspension or termination under Rural Development'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 2 CFR part 200 as adopted by USDA through 2 CFR part 400, as applicable. As part of its final report, the grantee will address and resolve all audit findings.

[58 FR 21894, Apr. 26, 1993, as amended at 79 FR 76011, Dec. 19, 2014]

§ 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 2 CFR part 200 as adopted by USDA through 2 CFR part 400 during the effective period of the grant agreement.

(b) The grantee is required to make available to Rural Development any such information as requested by Rural Development concerning the above. The grantee shall submit to the Rural Development 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.

[58 FR 21894, Apr. 26, 1993, as amended at 79 FR 76011, Dec. 19, 2014]

§ 1944.690 Exception authority.

The Under Secretary for Rural Development (or designee) 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 Rural Development 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, and 2 CFR part 200, as adopted by USDA through 2 CFR part 400.

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 Rural Development 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 at least one 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 at least one 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 _____

[58 FR 21894, Apr. 26, 1993, as amended at 73 FR 36269, June 26, 2008; 79 FR 76011, Dec. 19, 2014]

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 1946 [RESERVED]

PART 1948—RURAL DEVELOPMENT

Subpart A [Reserved]

Subpart B—Section 601 Energy Impacted Area Development Assistance Program

Sec.

1948.51 General.
1948.52 Objectives.
1948.53 Definitions.
1948.54 Eligible applicants.
1948.55 Source of funds.
1948.56 Program purposes.
1948.57 Eligible activities.
1948.58 [Reserved]
1948.59 Ineligible activities.
1948.60 Delegation and redelegation of authority.
1948.61 State supplements and guides.
1948.62 Environmental impact requirements.
1948.63 Historic preservation requirements.
1948.64 Equal opportunity requirements.
1948.65 Relocation Act requirements.
1948.66 [Reserved]
1948.67 Procedure for designation.
1948.68 Criteria for designation.
1948.69 [Reserved]
1948.70 Designation approval.
1948.71 [Reserved]
1948.72 Industry reports.
1948.73–1948.77 [Reserved]
1948.78 Growth management and housing planning projects.
1948.79 Application procedure for planning grants.
1948.80 Planning grant selection criteria.
1948.81 State Investment Strategy for Energy Impacted Areas.
1948.82 Plan and State Investment Strategy approval procedure.
1948.83 Performance of site development work.
1948.84 Application procedure for site development and acquisition grants.
1948.85 [Reserved]
1948.86 Site development and acquisition grant selection criteria.
1948.87 [Reserved]
1948.88 Direct land acquisition by Rural Development.
1948.89 Land condemnation by Rural Development.
1948.90 Land transfers.
1948.91 Inspections of development.
1948.92 Grant approval and fund obligation.
1948.93 Appeal procedure.
1948.94 Reporting requirements.
1948.95 Grant monitoring.
1948.96 Audit requirements.
1948.97 Grant closing and fund disbursement.
1948.98 Grant agreements.
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
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

Subpart C [Reserved]

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1932 note.

EDITORIAL NOTE: Nomenclature changes to part 1948 appear at 80 FR 9888, Feb. 24, 2015.

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 Rural Development will fully consider all A–95 clearing-house review comments and recommendations in selecting applications for funding. 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.

[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 policymaking 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 Rural Development, 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 Rural Development.

(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) Rural Development 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 Rural Development authorities under other Rural Development 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, Rural Development 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, Rural Development 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 Rural Development 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, Rural Development 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, Rural Development 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 Rural Development State Director is responsible for implementing the authorities contained in this subpart and may issue State supplements redelegating these authorities to appropriate Rural Development employees.

§ 1948.61 State supplements and guides.

Rural Development State Directors will obtain National Office clearance for all State supplements and guides in accordance with paragraph VIII of RD Instruction 2006–B, (available in any Rural Development 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.

[44 FR 35984, June 19, 1979, as amended at 80 FR 9888, Feb. 24, 2015]

§ 1948.62 Environmental impact requirements.

(a) Issuance of grants and other actions taken under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

(b) Subsequent to an energy impact area designation by the Governor and establishment of priorities, the Rural Development 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; 81 FR 11032, Mar. 2, 2016]

§ 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 Rural Development State Director. The Rural Development State Director shall forward one copy to the Office of Area Development Assistance in the Rural Development 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 Rural Development on approval;

(c) Notify the Governor and the Under Secretary for Rural Development 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. Rural Development 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 Rural Development office. A copy should also be filed with the Governor's office of the appropriate State. This form is available in all Rural Development offices. Local governments and councils of local governments shall submit preapplications to the appropriate Rural Development District Office. State governments shall apply to the appropriate Rural Development State Office. The Rural Development 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 Form RD 400–1, ''Equal Opportunity Agreement,'' and Form RD 400–4, ''Assurance Agreement;'' and

(5) A statement regarding other financial resources available to the area for this planning.

(e) District and State Rural Development 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 Rural Development Offices receiving preapplications will also provide written comments reflecting planning grant selection criteria listed in this subpart.

(g) The Rural Development 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 Rural Development State Director within 10 working days of receipt of the preapplication.

(h) Upon receipt of a preapplication, the Rural Development 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 Rural Development State Office by all applicants.

(j) The Rural Development 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 Rural Development 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 RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.

(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 RD 1940–1, ''Request for Obligation of Funds;''

(9) Form RD 400–1;

(10) Form RD 400–4;

(11) Historic Preservation Assessment;

(12) District, where appropriate, and State Rural Development 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, 13504, Apr. 11, 1990; 76 FR 80731, Dec. 27, 2011]

§ 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 RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.)

[44 FR 35984, June 19, 1979, as amended at 48 FR 29121, June 24, 1983; 76 FR 80731, Dec. 27, 2011]

§ 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 Rural Development for approval.

(b) The Governor shall consult with the Rural Development 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 Rural Development State Director of the appropriate State before July 15, 1979. A copy should also be forwarded to the Under Secretary for Rural Development.

§ 1948.82 Plan and State Investment Strategy approval procedure.

(a) Any plan submitted for Rural Development 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 Rural Development 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 Rural Development 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 Rural Development for approval.

(e) During fiscal year 1979 the Governor may submit existing plans to Rural Development 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 Rural Development -approved comprehensive growth management plan for the designated area in which the project is located.

(f) The Rural Development State Director shall review all plans and the State Investment Strategy for Energy Impacted Areas and provide comments on the following:

(1) Appropriateness of Rural Development assistance under this section as called for in the plans;

(2) Appropriateness of Rural Development 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 Rural Development State Director shall submit all plans received from the Governor, the State Investment Strategy Energy Impacted Areas, and any comments to the Rural Development 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 Rural Development 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 Rural Development National Office.

(i) The Rural Development State Office shall notify the appropriate State Director of all plans that have been approved by the Under Secretary for Rural Development.

(j) Upon approval of the plans and State Investment Strategies for Energy Impacted Areas by the Under Secretary for Rural Development, the Rural Development 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 Rural Development State Office shall notify the Governor and the appropriate District Directors of all plans approved by the Under Secretary for Rural Development.

(l) Modifications to approved plans shall be approved by the Under Secretary for Rural Development following the above procedure.

(m) The Governor's modification to the State Investment Strategy for Energy Impacted Areas may be approved by the Rural Development State Director provided the modification is consistent with Rural Development approved plans.

§ 1948.83 Performance of site development work.

Site development work will be done in accordance with § 1942.18 of RD 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 Rural Development 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 Rural Development office. A copy should also be filed with the Governor's office of the appropriate State.

(b) The Rural Development 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. (Rural Development District offices will send each preapplication to the Rural Development State Offices for review before replying to the applicant. Rural Development District offices will send a copy of Form AD–622 to the Rural Development State Office at the time the Form 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 RD Instruction 1970–I, 'Intergovernmental Review,' available in any Agency office or on the Agency's Web site.)

(d) Applicants shall file an original and one copy of SF 424.2, with the appropriate Rural Development office. Local governments and councils of

local government shall submit applications to the Rural Development District Office and State governments to the Rural Development 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 RD 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) Grants made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

(9) An original and one copy of Form RD 400–1 and Form RD 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 Rural Development Offices receiving applications shall:

(1) Determine if the project is in accordance with a Rural Development approved growth management and/or housing plan covering the approved designated area;

(2) Comply with environmental review requirements in accordance with 7 CFR part 1970;

(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 Rural Development Offices receiving applications shall also provide written comments reflecting site development and acquisition grant selection criteria (§ 1948.86) listed in this subpart.

(g) The Rural Development District Office shall forward the original of the application and accompanying documents including those required in paragraph (e) of this section to the Rural Development State Director within 10 working days of receipt of the application.

(h) Upon receipt of an application, the Rural Development 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 Rural Development 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 RD Instruction 1970–I, 'Intergovernmental Review,' available

in any Agency office or on the Agency's Web site.)

(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 RD 1940–1;

(11) Form RD 400–1;

(12) Form RD 400–4;

(13) Environmental review documentation in accordance with 7 CFR part 1970.

(14) Historic Preservation Assessment;

(15) A copy of the State Investment for Energy Areas; and

(16) District, where appropriate, and State Rural Development 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, 13504, Apr. 11, 1990; 67 FR 78329, Dec. 24, 2002; 76 FR 80731, Dec. 27, 2011; 81 FR 11032, Mar. 2, 2016]

§ 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 Rural Development approved plan;

(2) The Rural Development 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 Rural Development.

(a) Rural Development 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. Rural Development 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 Rural Development State Director. The following conditions must be met prior to the submission of a request for direct acquisition by Rural Development:

(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 Rural Development approved plan;

(4) The site is specifically identified by a Rural Development 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) Rural Development 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 Rural Development State Director may acquire real property by purchase to trade for other real property when Rural Development 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 Rural Development and evidence of the State's legal authority to enter into this agreement with Rural Development to accept the real property and repay Rural Development for the fair market value of the real property for the intended purpose.

(g) Real property acquired by Rural Development 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 Rural Development in accordance with part 1955, subpart B of this chapter.

(i) The State Director shall inform the Governor that Rural Development 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 Rural Development acquisition of real property.

§ 1948.89 Land condemnation by Rural Development.

(a) If Rural Development attempts to acquire real property at the request of a Governor through purchase or trade and is unable to do so, Rural Development may take action to condemn the real property by the following procedures:

(1) A request for condemnation shall be submitted by the Rural Development State Director to the Under Secretary for Rural Development, Washington, DC 20250 at the request of the Governor of the appropriate State. A copy of the Governor's request for Rural Development real property condemnation and the State Attorney General's opinion that State and local government condemnation authority is lacking shall be attached to the Rural Development State Director's request.

(2) The Under Secretary for Rural Development shall forward all requests for Federal condemnation to the OGC, USDA with a recommendation for action.

(3) The Under Secretary for Rural Development shall inform the Governor of any action on the request for condemnation.

(4) Real property condemned by Rural Development 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 Rural Development in accordance with part 1955, subpart B of this chapter.

(b) Rural Development may not condemn Indian Trust Land or U.S. Forest Service Land.

§ 1948.90 Land transfers.

(a) Transfers of real property acquired by Rural Development.

(1) A request for Rural Development acquisition of real property by a Governor of a State constitutes an agreement by that State to receive said real property and to reimburse Rural Development 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 Under Secretary for Rural Development and the appropriate Governor. These terms and conditions will be agreed upon by Rural Development and the State prior to Rural Development attempting to acquire the property. These agreements shall be prepared after consulting with OGC, and forwarded for prior approval by the Rural Development National Office.

(3) All funds from real property transfers received by Rural Development 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 Rural Development 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 Rural Development concurrence before changes or modifications; and assures Rural Development 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 Rural Development 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 Rural Development State Engineer or other employee designated by the Rural Development 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 Rural Development State Office shall review the docket to determine whether the proposed grant complies with this subpart and that funds are available.

(b) The Rural Development 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 Rural Development 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 Rural Development may be requested by the applicant in accordance with RD Instruction 1900–B.

(d) If a grant is recommended, Form RD 1940–1 and the proposed grant agreement and scope of work will be prepared and forwarded to the applicant for signature.

(e) When Form RD 1940–1 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 RD Instruction 2015–C (available in any Rural Development office) will be prepared by the State Director and sent to the Director, Legislative and Public Affairs Staff (LAPAS), in the Rural Development National Office.

(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 Rural Development 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 Rural Development State Office that funds are not available. The obligation date will be the date the request for obligation is processed.

(4) The Finance Office will send Form RD 440–57, ''Acknowledgement of Obligated Funds/Check Request,'' to the Rural Development 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 RD 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 RD 1940–1 will be sent the Rural Development National Office.

(7) The State Director shall notify the Director, LAPAS, in the Rural Development 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 6 working days from 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 Rural Development. 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 Rural Development.

(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 Rural Development State Director will notify the Director, LAPAS by telephone or electronic mail giving the reasons for such action. The Director, LAPAS, 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 RD 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, LAPAS.

(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; 79 FR 55967, Sept. 18, 2014]

§ 1948.93 Appeal procedure.

Any grantee or applicant for Rural Development assistance under this subpart who has been directly and adversely affected by an administrative decision by Rural Development may appeal such decision in accordance with RD 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 Rural Development District Office. When the grantee is a State, an original should be submitted to the appropriate Rural Development 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 RD Instruction 1902–A (available in any Rural Development 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 Rural Development to include the final advance not later than 90 days after the final advance.

§ 1948.95 Grant monitoring.

Each grant will be monitored by Rural Development 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 Rural Development.

§ 1948.96 Audit requirements.

(a) Audit requirements for Site Development and Acquisition Grants will be made in accordance with RD 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 Rural Development 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 RD 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 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.

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 U.S.C. 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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For changes to this volume of the CFR prior to this listing, consult the annual edition of the monthly List of CFR Sections Affected (LSA). The LSA is available at *www.govinfo.gov*. For changes to this volume of the CFR prior to 2001, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000'' published in 11 separate volumes. The ''List of CFR Sections Affected 1986–2000'' is available at *www.govinfo.gov*.

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