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DEPARTMENT OF AGRICULTURE

Rural Housing and Community Development Service

7 CFR Part 1944

RIN: 0575-AB47

Rural Business and Cooperative Development Service, Rural Utilities Service, Consolidated Farm Service Agency; Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing and Community Development Service (RHCDS) a successor Agency to the Farmers Home Administration (FmHA) for these programs hereby amends its Farm Labor Housing (LH) Loan and Grant regulations. This action needed to change the basic rules of the regulations concerning packaging costs. These changes are intended to initiate the use of loan and grant funds to defray the costs of packaging and/or developing applications by nonprofit groups or public bodies.

EFFECTIVE DATE: February 21, 1995.

FOR FURTHER INFORMATION CONTACT: Mary Fox, Loan Specialist, Multi-Family Housing Processing Division, Rural Housing and Community Development Service, USDA, Room 5337—South Agriculture Building, Washington, DC 20250, telephone (202) 720-1606.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not-significant for purposes of Executive

Order 12866 and therefore has not been reviewed by OMB.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575-0045 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This final rule does not revise or impose any new information collection requirement from those approved by OMB.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (E.O.) 12778. It is the determination of this Agency that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the E.O.

Background

This is to revise regulations to add reimbursement for application costs as an eligible loan and grant purpose for nonprofit groups or public bodies. The intended effect is to enable an applicant to be reimbursed with loan/grant funds for their costs in packaging and/or developing an application for an LH facility.

This regulation will clarify the use and amount of loan/grant funds for the assistance of developing and packaging applications. Prior to this revision, this use of funds was limited to reimbursement of packaging services provided by another nonprofit organization with experience in housing or community development. This revised regulation allows for reimbursement of reasonable costs incurred by the applicant's in-house personnel. In addition, the revised rule also provides better guidance of the limitations of such costs, either by in-house personnel or by another nonprofit.

Payments for technical assistance from the proceeds of loan/grant funds will be limited and must be documented. If the services are performed by in-house personnel, there should be an Agency approved plan as part of this proposal and documentation of when that assistance was performed.

Payments can be made when the labor housing application is funded and loan and/or grant agreements have been executed.

Discussion of Comments

A proposed rule was published in the **Federal Register** (58 FR 48330) on September 15, 1993, and invited comments for 60 days ending November 15, 1993. Twelve letters were received commenting on the various aspects on the changes in the proposed rule. All letters were received within the comment period and were very supportive of the Agency's policies and direction.

Two respondents suggested that packaging fees should be changed to "development fee" since the work involved encompasses much more than packaging preapplication/applications. This Agency does not consider these costs as either packaging or development "fees." The Agency's intentions is to reimburse strictly on an as-needed and documented cost basis, not on an automatic "fee" basis.

One respondent suggested that fees should be paid directly to the non-profit sponsor, as opposed to a requirement that such a fee is available only to a third party development consultant. The revised regulation does include reimbursement directly to non-profit sponsor for their own costs or a third-party development consultant.

Six respondents asked to clarify the preamble language limiting packaging fees to 1 percent for packaging and development of proposed project cost or whatever is reasonable in a typical area or use a scale for such calculation. Based upon recommendations from the respondents, some of whom are the Agency's Technical Assistance Contractors, the Agency has revised the regulations by limiting the packaging costs to 2 to 4 percent of the total development costs or whatever is reasonable in the typical area, not to exceed 4 percent. This provides a more reasonable and flexible range of cost-reimbursement to cover staff and associated costs in developing the labor housing proposal.

Several respondents suggested that the rule be flexible to allow a combination of an outside technical assistance provider/packager and the nonprofit applicant to both receive reimbursement of packaging/staff fees. The Agency's revision permits

reimbursement of costs for the development and packaging of the docket and project whether it is by outside technical assistance or by the applicant itself.

Two respondents suggested wording change to permit paying for technical assistance from a for-profit organization. This is not possible since, in accordance with the Housing Act of 1949, this assistance is limited to eligible *nonprofit* private and public agencies, not *for-profit* entities. This does not impact for-profit firms providing architectural, engineering and other specific services as they do now.

One respondent asked what type of plan would be needed to implement the reimbursement, and who would have the authority to approve such a plan? The revised regulation now includes a revision to Exhibit A-1, advising that projected technical assistance and in-house costs should be incurred only after negotiation with the State/District Office staff as soon as possible in the applicant's process of developing a preapplication. Based upon what is typical in the area, the Agency will respond in writing approving the packaging plan and a range of costs in advance. The State Director or the delegated official will have the authority to approve the packaging plan. The cost breakdown submitted with the preapplication will also include the negotiated and agreed upon costs for such plan.

One respondent asked whether current applications would allow documented retroactive costs be reimbursed. The revised rule will be effective 30 days after publication and the agency will permit reimbursement on a case-by-case basis for projects authorized and not yet obligated as of the effective date.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of the Agency that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants, and as provided for in 7 CFR, part 1940 subpart J, is subject to the provisions of

Executive Order 12372 which requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 1944

Farm labor housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, and Rural housing.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

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

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

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

2. Section 1944.158 is amended by revising paragraph (i) to read as follows:

§ 1944.158 Loan and grant purposes.

* * * * *

(i) Provide loan/grant funds to enable a nonprofit group or public body to be reimbursed for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist the nonprofit applicant entity in the development and packaging of its loan/grant docket and project.

(1) Loan and grant funds may also be used to reimburse any appropriate and necessary legal, architectural, engineering, technical, and professional fees.

(2) Costs incurred by the nonprofit applicant entity for development and packaging of its own loan/grant docket and project may also be reimbursed. Any costs incurred by the entity for its own formation and incorporation are not reimbursable.

(3) The amount to be reimbursed for developing and packaging the loan/grant docket and project are limited by the total development cost (excluding initial operating and capital expenses). Reimbursed costs may range from 2 to 4 percent of total development costs and should reflect costs that are reasonable and typical for the area. In no case will the Agency reimburse in excess of 4 percent.

(4) The packaging costs are not required to be considered a part of the security value of the project.

(5) Related project costs as listed in § 1944.169 of this subpart are not included as a part of the costs for

development and packaging of the loan/grant docket and project.

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3. Exhibit A to subpart D is amended by adding a new paragraph immediately following the first undesignated paragraph to read as follows:

Exhibit A—Labor Housing Loan and Grant Application Handbook

Introduction

* * * * *

Payments for technical assistance incurred by a nonprofit group or public body applicant entity for developing and packaging an application will be reimbursed with loan and grant funds. If the services are performed, the proceeds will be limited and must be documented. The reimbursable costs should be negotiated and approved by the Agency in advance of the applicant entity's process of packaging and developing a preapplication. Based upon what is typical in the area, the Agency will respond in writing approving the packaging plan and a range of costs in advance.

* * * * *

4. Exhibit A-1 to subpart D is amended in the first sentence of paragraph II D. by revising the reference "Subpart A of Part 1804 of this chapter (FmHA Instruction 1924-A)" to read "subpart A of part 1924 of this chapter" and by revising paragraph II. E. to read as follows:

Exhibit A-1—Information to be Submitted by Organizations and Associations of Farmers for Labor Housing Loan or Grant

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II. * * *

E. A detailed cost breakdown of the project for items such as land purchase, right-of-ways, building construction, equipment, utility connections, on-site improvements, architectural and/or engineering services, and legal services. Also, if applicable, the cost breakdown should include the costs incurred for the development and packaging of its own application. These costs may range from 2 to 4 percent of total development cost (excluding initial operating and capital expenses) and should reflect costs that are reasonable and typical for the area. Costs in excess of 4 percent will not be reimbursed. The cost breakdown should itemize labor and material unit costs. If an LH grant is proposed, construction will be subject to the provisions of the Davis-Bacon Act. LH grant applicants should, therefore, obtain a copy of Subpart D of Part 1901 of this chapter which explains the Davis-Bacon requirements.

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Dated: December 29, 1994.

Michael V. Dunn,

Acting Under Secretary for Rural Economic and Community Development.

[FR Doc. 95-1420 Filed 1-19-95; 8:45 am]

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