

DEPARTMENT OF AGRICULTURE**Rural Housing and Community Development Service****Rural Business and Cooperative Development Service****Rural Utilities Service****Consolidated Farm Service Agency****7 CFR Parts 1900, 1910, 1924, 1940, 1944, 1950, 1951, 1955, and 1965****RIN 0575-AB16 and RIN 0575-AA35****Single Family Rural Housing Loans**

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) is amending the regulations on Single Family Rural Housing Loans. Under the reorganization of the Department of Agriculture, RHCDS is the successor to the former Farmers Home Administration (FmHA) for the administration of rural housing (RH) programs under title V of the Housing Act of 1949. References to RHCDS will also include actions of FmHA prior to the reorganization. Regulations regarding Receiving and Processing Applications, Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts, and Security Servicing for Single Family Rural Housing Loans are also impacted by the proposed revisions. This action is taken to implement the provisions of section 315 of the Housing and Community Development Act of 1987, Pub. L. 100-242, to improve the delivery of the program to the public, provide for the orderly processing of loan applications, reduce workload of RHCDS field staffs, and to conform the RH direct loan program under section 502 of the Housing Act of 1949 with the Guaranteed Rural Housing Loan program and industry standards.

EFFECTIVE DATE: October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Betsy McDaniel, Senior Loan Specialist, Rural Housing and Community Development Service, USDA, Room 5346-S, South Agriculture Building, 14th and Independence SW, Washington, DC 20250, Telephone (202) 720-1486.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This rule has been reviewed under Executive Order 12866 and the Office of Management and Budget has determined that this is a "significant regulatory action." The rule provides significant changes which are customer friendly and have reduced the paperwork burden. Additionally, the cost of the program is reduced as a direct result of changing the method of subsidy determination. Size and cost containment restrictions on properties have been removed to allow applicants to choose a dwelling that meets their needs within their repayment ability. The result of this rule serves to limit the rate of subsidy and encourage the applicant to purchase a modestly priced property within their repayment ability.

Regulatory Flexibility Act

This final rule has been reviewed with respect to the Regulatory Flexibility Act (5 U.S.C. 601-612). The undersigned has determined that this action will not have a significant economic impact on a substantial number of small entities since the regulatory changes affect RHCDS processing of section 502 loans and individual applicant eligibility for the program.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHCDS that this 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 1949, Pub. L. 91-190, an Environmental Impact Statement is not required.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.410, Low Income Housing Loans.

Intergovernmental Consultation

For the reason set forth in the final rule related notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) all state and local laws and regulations that are in conflict with this

rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) pursuant to the Department of Agriculture Reorganization Act of 1994, Public Law 103-354 (October 13, 1994), administrative appeal proceedings must be exhausted before bringing suit in court challenging actions taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

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 0575-0059 in accordance with the Paperwork Reduction Act of 1980. The collection requirements have been reduced as a result of reducing the need for Form FmHA 1944-3, Budget and/or Financial Statement for loanmaking decisions relating to the applicant's repayment ability. The Agency is now relying on the use of ratios for determining repayment ability. The total reduction in burden is 247,000 hours, or 19 percent as a direct result of the changes in this rule. These results are in keeping with the National Performance Review goal of reducing burden imposed on the public by Government programs. This final rule does not impose any new information collection or recordkeeping requirement in addition to those approved by OMB.

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize the net benefits to society and minimize costs imposed by those regulations. The Department has utilized comments and suggestions from the public to develop this regulation in accordance with these principles.

Background

Section 534 of the Housing Act of 1949 requires that all rules and regulations issued pursuant to that Act will be effective 30 days from the publication date. The one exception is for a rule or regulation issued on an emergency basis. This action is effective

immediately. The justification for the immediate effectiveness of this regulation is based on the administrative problems and expense to operate the program which will arise if the funding for the Fiscal Year 1996 single family housing loan program is commenced under the old part 1944, subpart A, regulation and shortly after the beginning of the fiscal year a complete and inconsistent revision becomes effective, with the new requirements and new provisions. Secondly, the Agency's budget for Fiscal Year 1996 was submitted in anticipation that the revised regulation would become effective on October 1, 1995. The revised regulation reduces the cost of the program by decreasing the subsidy and therefore makes more money available for additional loans from the appropriated funds to assist low-income families. The most effective way to avoid undue expense of operating the program and inconsistencies is to apply the new rule to all loans made during the new fiscal year. For the same reasons the Agency finds that good cause exists for an immediate effective date under section 553 of the Administrative Procedure Act.

This final rule incorporates two proposed rules and includes issues and comments from both. Both proposed rules are being finalized in this single final rule. The proposed rule published in the Federal Register (60 FR 25629) on May 12, 1995, provided for a 60-day comment period which ended on July 11, 1995. This proposed rule was a complete revision of the entire regulation and incorporates the appropriate changes from the first proposed rule published in the Federal Register (58 FR 507) on January 6, 1993. The Agency wishes to thank all of the commenters who responded to the proposed rules. The comments were helpful in formulating this final rule.

Proposed Rule Published on May 12, 1995

This proposed rule proposed a complete revision to the regulation with major changes in determining the amount of maximum dollar limitation for the property financed, use of ratios to determine repayment ability, changes to the calculation of payment assistance, and revisions to the procedures for loan processing.

Interested persons have been afforded an opportunity to participate in the making of this rule. Due consideration has been given to the 52 comments received. Twenty six comments were from RHCDS or other federal agency personnel. Twenty six comments were

received from groups representing various public and private interest groups.

Many respondents issued strong support for the rule and requested that it be published as written. Other respondents were in support of the rule with particular suggested revisions. Several negative comments were received opposing the use of ratios as a replacement for the use of family budgets. Others supported the use of ratios with suggested changes to other percentages. Other negative comments were received regarding payment assistance calculations. These comments were reviewed and adjustments made. Other negative comments were received on restricting the loan amount so as not to exceed 85 percent of the maximum dollar limitation established under section 203(b) of the National Housing Act (12 U.S.C. § 1709). These comments were considered and changes made to allow the maximum amount under this law.

The proposed rule used the term "monthly obligation to income" (MOTI) defined as the principal, interest, taxes, insurance, (PITI) and homeowner and other assessments, and long term obligations. This term is generally not consistent with that used in the private sector and in subpart D of part 1980, Guaranteed Rural Housing Program. In order to be consistent, RHCDS has revised the final rule to change the term for this ratio from "MOTI" to "total debt" (TD).

Other administrative changes were made to the final rule as a result of comments received. RHCDS has defined "participation loans" and "payment assistance" in the definition section and has changed the term "disabled person" to "person with a disability."

Eleven comments were in favor of the use of ratios to determine repayment ability in lieu of the use of family budgets. Seven of these respondents felt the provisions of allowing the use of family budgets in unusual circumstances is not reasonable and too inconsistent to administer effectively. RHCDS concurs with these comments and has removed this language and replaced it with language describing compensating factors which may be used for exceptions to ratios. Family budgets may be used when an applicant presents documented evidence of having met housing related costs in the past six months that are equal to or greater than the projected housing costs after approval of the proposed loan. Several respondents felt that an applicant should provide documented evidence of having met housing related costs in the past 12 months. RHCDS has

considered this comment and has made the decision not to adopt it at this time because the proposed requirement of six months provides sufficient documentation to demonstrate repayment ability. A family budget may be used in conjunction with the ratios in justifying the need for allowing compensating factors.

Three respondents from high cost areas were concerned about the effect the PITI and TD ratios would have on the amount of loan that can be made and stated it would curtail loan making in the respondents' States. RHCDS has provided for these situations by allowing the use of documented evidence of having met related costs in the past 6 months that are equal to or greater than the projected housing costs after approval of the proposed loan.

Ten respondents contend the changes in this rule are not conducive to participation loans with other lenders, particularly with the change in the way payment assistance is calculated and the use of ratios to determine repayment ability. It was suggested that the ratios for participation loans be increased to 33 percent for principal, interest, taxes and insurance and 38 percent for total debt. RHCDS considered this request and made a determination that a revision to the ratios would be advantageous and justified the revision based on comments from affordable lenders in the industry. The Agency decided to use ratios of 33 percent PITI and 38 percent TD for all loans to low-income applicants (as opposed to very low-income applicants), whether such loans are participation loans or are fully RHCDS funded direct section 502 loans. Because very low-income applicants have less flexibility in covering their basic living expenses, the Agency will use a 29 percent PITI ratio and a 38 percent TD ratio for all RHCDS section 502 direct rural housing loans for very low-income applicants. This will assist very low- and low-income applicants while allowing for a reasonable percentage of income for housing payments. For participation loans the PITI ratio will include the applicant's payments of principal and interest on the participation loan.

Participation loans will be obtained by those low-income families with higher incomes who can better afford a higher PITI ratio of 33 percent. This ratio will give some flexibility to participation loans charging market interest rates. Payment assistance in connection with the RHCDS portion of a participation loan will always be based on the equivalent interest rate matching the applicant's percent of median income. The payment "floors"

will not be considered because in most cases the applicant will be exceeding the "floors" when including the participation loan. The change in ratios has been adopted in the final rule. Applicants receiving a participation loan are not eligible for deferred mortgage assistance.

Payment assistance subsidy is based the greater of either an equivalent interest rate based on the applicant's percentage of median income or on a minimum "floor" percentage of the applicant's adjusted income for principal, interest, taxes, and insurance. Other shelter costs such as utilities and maintenance, are not included as part of the calculation of subsidy. The Agency, in revising the regulation to streamline the process and model the regulations after industry practices, decided, like private industry, that other shelter costs are paid by the applicant over and above the PITI and TD expenses.

Twenty comments were received on the calculation of payment assistance and the use of "floors," which are the minimum percentages of adjusted family income for PITI. Ten respondents were completely in favor with the change as proposed. Several respondents had conducted their own studies based on data supplied from various section 502 user organizations in different geographic locations. The other respondents opposing the change used these studies as their basis for opposition. The studies showed that the impact was most severe for those with income between 50.01 and 65 percent of median. These respondents advised the use of step increases for the percentages of adjusted family income at 22, 23, 24, 25, and 26 percent. Their study showed that some applicants/borrowers will pay more than 30 percent for total shelter costs which includes PITI, utilities and maintenance.

RHCDS has considered these comments and has determined there is merit to making a change in the determination of payment assistance for the 50.01 to 65 percent of median income category mentioned in the preceding paragraph. The abrupt jump from 22 to 26 percent of adjusted family income could cause undue hardship to these applicants and borrowers and could possibly result in increased delinquency and foreclosure rates. RHCDS has adopted the use of an additional "floor" of 24 percent of adjusted family income for applicants falling above 50 and at or below 65 percent of median income.

Twenty nine comments were received on restricting the loan amount so as not to exceed 85 percent of the maximum dollar limitation established under

section 203(b) of the National Housing Act (12 U.S.C. § 1709). The majority of respondents felt 85 percent was too restrictive for their local market and would only provide financing for existing homes in their communities. The respondents were concerned that RHCDS financing could not be provided for new construction based on this cap. Several respondents were concerned that RHCDS would not be providing decent, safe and sanitary housing for eligible applicants as a result of this change. One respondent stated this change would effectively stop the program delivery in the respondents' particular community because there is no existing housing meeting decent, safe, and sanitary requirements falling at or below the prescribed loan maximum. All of these respondents wanted the cap to be set at 100 percent of the maximum dollar limitation established under section 203(b) of the National Housing Act (12 U.S.C. § 1709). Several respondents stated that the maximum dollar limitation established under section 203(b) is defined as modest housing by HUD and the section 502 Guaranteed Rural Housing program and that to limit this amount for the direct program is without reason and unfounded.

The Agency has considered these comments and has made the decision to increase the amount to the full amount of the maximum dollar limitation established under section 203(b). This decision was made because in most cases the limiting factor in the amount of the loan will be the affordability issue based on the percentage of the applicant's income as determined by the ratios. Loan amounts will be limited by the applicant's income and this change should not increase the cost of the program overall. There are provisions for exceptions to this limitation by the Administrator in rare circumstances.

Another respondent was concerned that 85 percent is too high in the respondent's community and will present opportunities for unnecessarily high loan amounts. RHCDS, in making this change, considered this possibility but has determined it will not affect the majority of applicants because of the use of ratios to determine repayment ability. An approved applicant will be presented a "Certificate of Eligibility" which states the amount of loan the applicant qualifies for based on current income and debt information. An applicant will be able to select a property that best suits the applicant's needs based on the applicant's resources.

Three respondents were concerned that RHCDS employees will no longer

do inspections of existing properties to determine repairs needed to make a house financed structurally sound and functionally adequate. Another respondent was concerned that a third party inspection would cause undue hardship on the buyer and seller to pay. Third party inspections are not required and RHCDS will continue to inspect the property if a third party disinterested party has not done an inspection to determine if there is adequate security for the loan; however, the buyer has always had the right to obtain his or her own inspections to protect the buyer's interests.

We received nine comments from natural gas distributors applauding the elimination of "prohibited features" in the existing 7 CFR § 1944.16(e) particularly the prohibition in paragraph (6) "Central air conditioning systems separate and apart from heat pumps." The natural gas industry has felt for a long time that this regulation was biased in the favor of electric space and water heating and has resulted in higher heating costs for consumers.

Two respondents were in favor of including loan packaging fees as an eligible loan purpose; however, they were both concerned with allowing State Directors discretion to determine what is reasonable within their jurisdiction. They continued by stating that in the past some State Directors and housing staffs opposed packaging fees. RHCDS believes the sections 1944.3(a)(17)(ii)(A), (B), and (C) give adequate guidance to allow geographic flexibility. RHCDS has added a sentence to § 1944.3(a)(17)(iii) to prohibit the amount from exceeding the amount prescribed in exhibit B of subpart B of part 1944.

One respondent commented that the RHCDS requirements for lending on manufactured homes are too restrictive and that any HUD approved unit should be accepted. No significant changes were proposed to be made to the existing regulations regarding manufactured housing. The requirements currently are, and have been since the inception of this authority, that the new unit must be built to the Federal Manufactured Home Construction and Safety Standards (FMHCSS) and RHCDS thermal requirements. FMHCSS standards are commonly known as the HUD standards for the construction, design, and performance of a manufactured home which meets the needs of the public including the need for quality, durability, and safety.

Eleven comments were received on the subject of deferred mortgage assistance. Two respondents stated that

the program is unreliable, difficult to interpret and puts the recipient in a worse position at the end of 15 years. They both recommended removing the entire section and eliminating deferred mortgage assistance. The deferred mortgage program provides a means of getting a home for applicants who would not otherwise qualify, however, it is correct that in many cases the borrower will owe a great deal on the property when it is sold due to interest credit recapture. This results from the tremendous reduction in interest received while making deferred payments. While RHCDS admits this assistance is potentially burdensome, there is a need for this type of assistance for very low-income applicants. At this time the section will not be eliminated.

Several respondents were concerned with the wording which allows deferred mortgage assistance to continue to a qualified borrower provided it is renewed without interruption. The intent of section 502(g) of the Housing Act of 1949 is to make this assistance available to qualified applicants at loan closing. RHCDS has determined that deferred mortgage assistance can be continued uninterrupted for up to 15 years. The purpose of deferred mortgage assistance is for very low-income applicants to obtain a loan initially. There are other servicing options available to borrowers whose deferred mortgage assistance has expired or whose income made them no longer eligible.

Two comments were received on the calculation of annual income. One respondent agreed with the use of historical data based on the previous 12 months or the last fiscal year when a projection could not logically be made. This decision by RHCDS is consistent with the private lending community.

Another respondent was concerned in § 1944.5(b) that persons seeking, but unable to find employment would have to use projected income from former employment. The intent of this paragraph is to prevent excluding income from employers that historically lay off seasonal employees and then rehire them at a later date. Annual family income should include projected income from this type of situation if the applicant or coapplicant has a recent history of this type of employment. An example of this would be a factory that seasonally shuts down production and lays employees off. These employees are later rehired to continue in the same job. If there is recent history of an applicant's employment at this factory, then this income should be included based on historical information unless the applicant provides a statement that

the person does not intend to resume employment in the foreseeable future or during the terms of the payment assistance agreement.

Two comments were received regarding credit history review, specifically related to collection accounts. The first respondent felt § 1944.9(f)(1)(ix) was too liberal in allowing an applicant to have collection accounts which were paid in full within 3 months prior to application. The respondent stated the limit should be increased to at least 6 months. RHCDS has considered this comment and has made the determination that the regulation as proposed provides a sufficient time period for satisfying unresolved collection accounts.

The second respondent agreed with the changes made to § 1944.9 to make credit history requirements more reasonable; however, the respondent wanted clarification on § 1944.9(f)(1)(viii). Upon review by RHCDS, it was noted that under certain circumstances this section and the following section seemed to be incompatible. A decision was made to eliminate this sentence entirely and renumber the paragraphs of this section. Another respondent wanted clarification on when bankruptcy will not indicate unacceptable credit history. The Agency considered this and adopted the respondent's proposed language in § 1944.9(f)(2)(ii). Another respondent wanted clarification on § 1944.9(f)(2)(iii) regarding the timeframe for satisfied judgments. Clarification was made in this section that a judgment satisfied more than 12 months before the date of application would not be considered unacceptable credit history.

One respondent commented that if RHCDS intends to emulate the private industry then § 1944.8(a)(2) should be changed to require an applicant to be employed at one place of employment for at least 12 months prior to submitting the application. RHCDS does not require income to be obtained only from employment. Additionally, commercial residential mortgage lenders do not require 12 month employment history with one employer prior to application. Each case must be evaluated to determine if the situation was beyond the applicant's control or if the change in employment was to better the applicant's situation. Also, an applicant who did not have any break in employment and paid all bills when due demonstrates an adequate, dependable income.

Two comments were received regarding the use of section 502 funds to refinance existing mortgages for

applicants. These comments fully supported the removal of the provision that a debt has to be delinquent to be eligible for refinancing.

One respondent commented that the wording in § 1944.17(a)(2) was confusing and could be misconstrued in relation to participation loans. It was suggested that the wording be changed to clarify the maximum loan amount when there is a senior loan. The Agency has considered this suggestion but has determined that the wording provides the necessary language to convey the maximum loan amount when there is a lien in a senior position to the RHCDS debt.

Two respondents commented that to change the language in the application processing section to "rejected" in § 1944.27(d)(2) is not customer-friendly. The use of the word "withdrawn" was suggested as an alternative. The Agency has considered this change and has adopted it in the final rule. A similar suggestion was made in § 1944.27(f) to change the wording from "the borrower/applicant will submit to a personal interview with RHCDS" to "RHCDS will conduct a personal interview with an applicant." This suggested language was incorporated in the final rule.

Comments were received regarding net family assets. A respondent commented on the statement in the preamble of the proposed rule where the Agency allowed that the provision of a net family asset limit for receiving payment assistance is removed. The respondent commented that the Agency still defines net family assets. The Agency will continue to include as income either the actual derived income from all family assets or a percentage of the value of such assets based on the current passbook savings rate. Another respondent wanted more examples on inclusions to net family assets. The Agency considered this and determined that the broad description already defining net family assets is the most appropriate method of description for interpretation on a nationwide basis.

In the preamble to the proposed rule the Agency requested comments on the idea of implementing a 20-year balloon payment using the 33 or 38 year amortization period. This concept was not included as part of the proposed rule other than in the preamble. Of the nine comments received, the comments were evenly split between support and opposition to this proposal. RHCDS has chosen not to implement the 20-year balloon payment provision at this time.

Three comments were received regarding rates and terms as written in the proposed rule. Two respondents were concerned about the provision

where RHCDS will charge the lower of the two interest rates in effect at the time of loan approval or loan closing. The comments were concerned that lenders should have the ability to lock into a rate when they have a commitment from a secondary lender. The final rule has not been changed as this process is only for the RHCDS loan. A participation lender will treat their portion of the loan the same as any other loan they would be making. The other respondent wanted a provision added for a 15-year term for loans of \$7,500 or less to be written with a best mortgage obtainable. The Agency considered this request and has elected not to adopt this suggestion at this time so as to better protect the Government's interest.

Seven comments were received regarding the use of HUD Handbook 4905-1 for repairs to existing properties. All respondents were opposed to using this handbook as it is rarely used by HUD anymore and establishes yet another guideline which is adequately covered in existing instructions. The Agency considered these comments and made the decision to remove the use of this handbook and replace it with a reference to subpart A of part 1924.

A comment was received regarding the definition of household or family concerning the language "* * * all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months * * *" It was suggested that the wording be changed to prevent the possibility of the borrower renting out a portion of the site for the placement of a mobile home or other dwelling on the property. The wording has been changed to clarify that the income from the entire property financed with a section 502 loan will be included in the income eligibility determination.

Six comments were received on site requirements. Several respondents commented that the paragraph under minimum adequate site, § 1944.11(c), would be more comprehensible if the sentences were reversed. The Agency considered this request and made the suggested change to the paragraph. Also changes were made to be consistent with the Agency's recent change to its regulation in subpart C of part 1924 of title 7. One respondent was concerned with the Agency's new description of minimum adequate site. The Agency determined this description would reduce the administrative burden on its field offices in requesting waivers for properties that exceed 1 acre. This criteria for a minimum adequate site also lessens the ability of local government to use zoning requirements

for lot size to deter agency financed single family housing.

The Agency received a number of comments regarding the unavailability of exhibit J in the published regulation regarding income exempted by Federal statute. This exhibit merely restates and summarizes Federal law and will not be published in the final rule; however, it is available in any Rural Economic and Community Development (RECD) field office. This is income which applicable Federal law provides cannot be used to determine eligibility for the loan or eligibility for payment assistance.

There were eight comments on rural area determinations. Most of the respondents were in favor of the more frequent reviews allowed by the revision to this section. Several respondents stated that RHCDS assistance should not be available in communities with populations between 10,000 and 20,000 and objected to the term "buffer" zone. The Agency has determined this type of provision is advisable to avoid untenable situations where a loan would be made on one side of a street and not on the other. Another respondent stated that in the respondent's particular county one town is ineligible due to population while another town is eligible but has Class I soils where subdivisions are being developed. Pursuant to title V of the Housing Act of 1949, the rural area eligibility is based on population and is unrelated to soil type.

Two respondents supported public notification when an area is being changed from rural to nonrural. Further, these respondents had concerns regarding applications and conditional commitments already submitted for financing in these redesignated areas in the community. The Agency has allowed provisions for continuing with applications in areas converted from rural to nonrural that were on hand prior to the redesignation, new and existing conditional commitments received prior to the redesignation, inventory properties, and subsequent loans.

One respondent wanted a provision for loans to be made for the purchase of a dwelling located on land owned by a community land trust. The Agency is complying with the law and has added provisions in § 1944.15(a)(4) and § 1944.42 giving guidance on this subject.

One respondent wanted approval for planned unit developments and homeowners associations to be at the State Director level. This was the intent of the proposed rule and only if there is professional management employed will it be necessary to receive National

Office approval. The wording was changed in § 1944.3(b)(16) to clarify this requirement.

One respondent was concerned that Agency personnel under § 1944.18(b)(2) and (3) would require mortgage insurance as security on American Indian land. The Agency has stated this as an example but clearly implies this is not the only form of security which will be accepted. No change was made to this paragraph.

One respondent stated that an appraisal fee should be waived when RHCDS uses another lender's appraisal in conjunction with a section 502 participation loan. The Agency has made the decision that it will lend up to \$280 over the market value which includes funding for the appraisal fee. The money may be used at settlement to reimburse the applicant for the appraisal done by the participation lender for which the applicant previously paid.

One respondent commented that the definition of real estate taxes, which provides for reducing the amount due by any tax exemption available to the applicant, as too cumbersome in multi-county field offices. The respondent stated that the applicant should be counseled regarding the availability of tax exemptions. The Agency concurs that counseling the applicant is a part of the application process but does not agree that the exemption should only be used if the applicant has claimed it. It is the RECD field office's responsibility to know what tax exemptions are available in order to counsel applicants.

We received three comments regarding income from minors and students. The Department of Housing and Urban Development (HUD) recently changed its income eligibility restrictions. The Agency has made the final rule consistent with the HUD final rule which includes that income over \$480 from a full-time student is not included. Additionally, the Agency has added § 1944.5(f) to designate income which will not be included in annual income nor will it be considered in determining repayment ability. These are: income from live-in aides, income from minors, and income for educational scholarships.

One respondent discussed § 1944.8(a)(3)(i) using 5 percent of the current balance on all revolving credit cards and suggested that the minimum payment on all credit cards with activity in the past 3 months be used. The Agency considered this comment and has decided to not change this requirement at this time. Five percent of the current balance is usually more than the minimum payment due and

provides some means for paying off the credit card debt. However, the Agency does not want to use debt which is historical and not currently owed to determine the total debt ratio as this is not an equitable arrangement for the applicant.

One comment was received regarding alien status under § 1944.9(c) and recent changes made by the Immigration and Naturalization Service (INS). It is the Agency's policy that loans will only be made to United States citizens and those categories of non-citizens covered in Section 501(b) of the Housing Act of 1949.

Four comments were received regarding when repairs are to be done to existing houses. The proposed rule stated repairs must be done after loan closing. The Agency considered the comments received and has made a change to allow the buyer and the seller agree among themselves to work out when and by whom the repairs will be done, and provide documentation to that effect to the RECD field office. All parties concerned must understand that prior to obligation of funds, there is a risk in putting money into the property in case funding is not available at a later date.

Five comments were received regarding the provision that the date of loan closing is the date the mortgage is recorded rather than the date the note and mortgage are signed. The actual date of closing is the date the mortgage is recorded and not the date the note and mortgage are signed.

Several comments were received related to loan purposes (§ 1944.3). One respondent questioned the need for allowing housing to be occupied by a farm manager, tenants, sharecroppers, or farm laborers and the apparent redundancy with the Agency's Farm Labor Housing regulations. The Agency has made the determination to maintain this provision under loan purposes in the section 502 program.

Several comments were received including lender's fees in connection with participation loans. Respondents recommended that the wording be changed to be consistent with that used in subpart D of part 1980. The Agency considered this recommendations and has adopted the same language as in subpart D of part 1980.

A respondent remarked that a paragraph was removed from the loan restrictions section regarding an applicant having the ability to carry out the required obligations of the loan, and maintaining a former residence in a responsible manner. This paragraph was not deleted but was moved to § 1944.9(h).

Nine comments were received regarding participation loans. The general consensus was the proposed rule was silent to any provision other than lender fees. The respondents remarked that for this program to be successful provisions would have to be made to fund these loans as a priority. The final rule has incorporated funding priority for participation loans.

Several comments were received regarding mutual self-help housing. Two respondents commented that the language in § 1944.38 indicates only low-income applicants may build their homes by this method. The words low-income have been removed as this was not the intent; the program is available to both very low- and low-income applicants. Several respondents supported the addition of personal liability insurance for self-help borrowers as an eligible loan purpose.

Two comments were received regarding conditional commitments. One respondent stated the subtitle to § 1944.45(d) was misleading and did not convey the proper message for cases where the property is presold to an applicant and the seller is submitting the package. The Agency considered this comment and agreed that the wording was misleading. The wording has been changed for clarification. Another respondent questioned the reimbursement of the appraisal fee at loan closing. The applicant will be charged for the appraisal and since this amount is included in the conditional commitment contractor's fee, the contractor should logically be reimbursed for the appraisal.

One respondent commented that requirements for graduating borrowers had been removed and should be included in the regulation as required by subpart F of part 1951. The Agency considered this comment and has included a paragraph on graduation requirements in § 1944.44.

Three respondents commented on the use of HUD's Credit Alert Interactive Voice Response System (CAIVRS). They were all in agreement that an application should be held in suspense rather than rejected upon identification by CAIVRS of a delinquent Federal debt. The Agency agrees applicants will have to contact the Federal agency in question to resolve the delinquency and during this time the application will be held in suspense.

One commenter disagreed with the proposal to change subpart J of part 1944, paragraph 1944.457 (a)(2), which increases the section 504 grant limit from \$5,000 to \$7,500. The commenter stated that very often an individual applicant would be able to use \$7,500

to remove health and safety hazards, and this will cause the grant funds per grantee to increase. The commenter was concerned that unless there is going to be additional funding the Agency will not be able to assist as many families with this program. The Agency does not propose to change this revision because of this comment. The commenter's statement is correct, and the Agency has already considered this downside. The Agency believes this change is justified because inflation has increased more than the additional \$2,500 since the \$5,000 limit was established. There are more cases each year where \$5,000 will not remove all the health and safety hazards.

One commenter agreed with the changes proposed in subpart J of part 1944, § 1944.461. However, the commenter suggested that the wording in (b) and (c) of that section, "loans of \$2,500 or more" be changed to "loans that exceed \$2,500" to be consistent with section 502 regulations. The commenter also suggested that paragraph (b)(1) of that section be changed to clarify that subsequent section 504 loans are secured by a mortgage only when the subsequent and existing section 504 loan balance will exceed \$2,500.

The Agency cannot change this wording to "loans that exceed \$2,500" as section 504(a) of the Housing Act of 1949 exempts only loans for "less than \$2,500" from security requirements. We considered changing the section 502 regulation; however, that wording is simpler and would cause even more confusion than just leaving it alone. However, we do agree with the spirit of the last part of the commenter's suggestion and are changing the wording in paragraph (b)(1) to clarify that a mortgage will be taken when the subsequent and existing section 504 loan balance will be \$2,500 or more.

One commenter agreed with the changes proposed in subpart J of part 1944, § 1944.463. However, the commenter suggested that changes be made in paragraphs (d) and (e) of that section to clarify that appraisals and title clearance are only required when the total section 504 indebtedness exceeds \$7,500. The Agency agrees with the commenter and the changes are being made in paragraphs (d) and (e) to clarify that total section 504 indebtedness is all that is considered.

Three comments were received regarding the proposed changes to subpart G of part 1951. One comment objected to the provision stated in § 1951.313(e)(2)(ii) whereby payment assistance would not be renewed if the borrower's income exceeded the

moderate income limit for the area. The wording has been deleted from the final rule. Another respondent was concerned that the reorganization of offices would hinder the ability of RHCDS staff to hold personal interviews with borrowers to renew payment assistance. The Agency is aware of the reduction in staff in many areas of the country; however, this provision is being left in the final rule. Payment assistance renewals may be contracted out and the contractor will perform the direct borrower interview; although the ultimate decision on the continuation of and amount of payment assistance will remain with the Agency.

Sixteen comments were received on differing aspects of the provisions governing the calculation of applicant income. One respondent referred to the definition of live-in aides under section 1944.2(4) and requested that it be expanded. The commenter notes that, in many cases, live-in aides are actually household members who have gotten a divorce from their spouse in order to receive the financial resources needed to provide him or her essential care services. Under the regulations as currently written and present definition of terms, the former spouse's/live-in aide's income would not be counted as household annual income. The respondent feels that live-in aide's income should be considered in determining an applicant's annual income even if the aide is an ex-spouse providing essential care services. RHCDS does not concur with this recommended revision. While the respondent's observations may have merit, RHCDS is unable to make revisions to the provisions governing the definition of live-in aide and the exclusion of live-in aide's income from consideration. RHCDS is required under section 501(b)(5) of the Housing Act of 1949 to use the income guidelines and formulae established by HUD and the provisions in question were adopted in response to recent revisions to HUD's income guidelines and formulae. Another respondent referred to section 1944.5(d)(2)(v) and suggested that RHCDS should cite the specific Internal Revenue Service (IRS) publication related to allowable business expenses deductions. RHCDS does not concur with this recommendation. IRS publications may change on a periodic basis due to revisions to taxation legislation and/or regulatory revisions initiated by that Agency and, therefore, it would be inappropriate for RHCDS to cite any particular publication, as this information could easily become invalidated in the future. Information

about IRS publications can easily be obtained from the IRS if needed.

One commenter requested clarification of section 1944.5(e)(1), which states that payments received for the care of foster children or foster adults will not be included in annual income but will be considered in determining repayment ability, in cases where foster care payments may be the sole source of household income. This respondent also considers foster care payments analogous to welfare payments and feels that it is not equitable for one form of assistance to be considered income while the other is not. Whether or not the respondent's observations have merit, they are immaterial since RHCDS is unable to make revisions to the provisions governing foster care income. RHCDS is required to use the income guidelines and formulae established by (HUD) and the provisions in question were adopted in response to recent revisions to HUD's income guidelines and formulae.

One comment was received recommending that RHCDS provided a deduction from annual income for child support payments. Agency regulations include periodic allowances such as child support payments received in an applicant's household as a part of the applicant's gross annual income. However, child support payments are considered a financial obligation and, therefore, RHCDS does not concur that payment of child support by an applicant or other adult household member to a former spouse should be included in the Agency's guidelines as a deductible item in determining annual adjusted income. Child support payments made to an outside household are considered analogous to debts from bills or other miscellaneous expenses.

Six comments were received expressing concern about the provisions under § 1944.5(e)(2), which states that the income of an applicant's spouse who has been living separately from that applicant, or spousal income when court proceedings for a divorce or legal separation have been commenced, will not be included in annual income but will be considered in determining repayment ability. Four of these respondents recommended that the term "living apart" be removed from this provision, and the other commenters recommended that a minimum separation time be included to provide greater guidance in those cases where applicants and their spouses are apart or that the section be otherwise clarified. RHCDS does not concur with these recommendations. RHCDS must be a prudent lender, but, as a part of its supervisory credit mission and the

Department's goal to be customer friendly, the Agency must have the flexibility to accommodate adverse situations that its applicants may face. The Agency believes that these provisions are reasonable and that they will not present an undue burden to loan approval officials who are processing applications.

Two comments were received regarding the provisions under sections 1944.5(e)(6) and 1944.6(d)(1), which deal with the consideration of medical expenses. One of these respondents noted that the language under § 1944.6(d)(1), stating that amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses will not be included in annual income could be construed to include insurance premiums paid by the employer, and recommended clarification of this provision. RHCDS is unable to concur with this recommended revision. While the respondent's observations may have merit, the provision in question was adopted in response to recent revisions to HUD's income guidelines and formulae. The second commenter questioned why the medical expenses deduction is open only to elderly families, expressed concern that this may constitute discrimination, and recommended that the medical expenses deduction be open to all applicants. Again, while the respondent's observations may have merit, RHCDS is unable to make revisions to the provisions governing the definition of an elderly family or the provisions that limit the medical expenses deduction only to elderly families. RHCDS is required to use the income guidelines and formulae established by HUD and the provisions in question were adopted in response to recent revisions to HUD's income guidelines and formulae.

Four comments were received regarding the various provisions governing the consideration of loan co-signers. Two of these respondents recommended that RHCDS revise § 1944.8(c) so that co-signers will be required to meet the same creditworthiness requirements as applicants. The third respondent recommended that an applicant's principal, interest, taxes and insurance (PITI) be used in determining the co-signer's monthly obligations to income (MOTI) ratio. The fourth commenter recommended that entities be allowed to serve as loan co-signers as well as individuals. RHCDS has carefully considered all of these suggestions and concurs with the commenters' recommendations. Section 1944.8(c) has

been revised to incorporate these comments.

Three comments were received regarding differing aspects of the provisions under § 1944.9(f), which deal with the evaluation of applicant credit history, and the respondents generally favored the revisions to this section. However, one comment was received objecting to § 1944.9(f)(4)(ii), which requires RHCDS personnel, in cases where an applicant disputes credit information received from an on-line profile credit report made at the time of application, to determine if the applicant has subsequently provided conclusive proof that the report is in error. The commenter feels that errors could occur in interpreting creditor correspondence or court documents and the like which applicants submit to disprove the on-line report, and that misinterpretations of this type of information could lead to erroneous conclusions on RHCDS' part. The respondent recommends that the applicant be responsible for ensuring the veracity of materials used to invalidate information contained in the on-line report. RHCDS does not concur with this recommendation. The Agency recognizes that the information contained in such profile reports may not be complete or accurate. The use of profile reports is intended as an initial tool to assist applicants, who are in the preliminary stages of the consideration process, in removing any potential problems that could adversely affect them during the later stages of consideration, so that their chances of obtaining RHCDS credit are enhanced. A standard mortgage credit report must be requested at a later stage in the consideration process, and, therefore, we believe that it is appropriate for the loan approval official to use good judgment in reviewing materials submitted by the applicant to dispute erroneous profile report information.

One comment was received suggesting that RHCDS expand § 1944.9(f)(2)(ii), which outlines the circumstances under which a bankruptcy will not be considered an indication of an unacceptable credit history, to include specific information on the Chapter 7 and Chapter 13 bankruptcy processes. RHCDS concurs with this recommendation and has incorporated the respondent's proposed language in the final rule.

One comment was received objecting to the provisions contained under § 1944.9(g), which outline the circumstances under which an applicant may be considered for additional credit if the applicant had a previous RHCDS debt which was

settled, if the applicant was released from personal liability for the debt, or if the applicant is currently under consideration for debt settlement. The respondent feels that any applicant who is being considered for debt settlement under subpart B of part 1956 or was granted a debt settlement under this subpart should be ineligible for further assistance from RHCDS. RHCDS does not concur with this recommendation. The language under this section both clearly delineates and limits the circumstances under which an applicant who has not been successful with a present or previous RHCDS debt may be considered for additional credit. In such cases, the applicant must clearly demonstrate that the applicant's failure to meet the loan obligation was due to circumstances beyond the applicant's control and that the underlying reasons which created those circumstances will not reoccur. This is consistent with RHCDS' mission of assisting those individuals and families who have been denied economic advancement and who are unable to obtain conventional credit.

Thirteen comments were received on differing aspects of the provisions governing the processing of applications. One respondent referred to § 1944.27(a)(1) specifically with respect to Form FmHA 410-4, "Application for Rural Housing Assistance (Nonfarm Tract) Uniform Residential Loan Application" (URLA), and recommended that the URLA be completely revised for a number of reasons. While the commenter's suggestions may have merit, the URLA itself was not a part of the proposed rule and, therefore, it is not under consideration for revision as a part of the final rule process at this time. However, we will keep the respondent's comments on file should the URLA become subject to review in the future.

Two comments were received recommending that §§ 1944.27(b)(2) and 1944.27(d)(1) be revised to indicate that a processing priority will be provided to applicants who are leveraging RHCDS funds with other resources and, accordingly, that § 1944.26 be revised to include a set-aside reserve for leveraging purposes. RHCDS concurs with these respondents' recommendations and has adopted them in the final rule.

One comment was received recommending minor, grammatical improvements to § 1944.27(b)(4) and (b)(5). RHCDS has revised this section for greater clarity.

Two comments were received recommending that RHCDS conduct an application "open season," whereby public notice would be issued advertising a specific timeframe in

which applications would be accepted in RECD field offices for processing within any given fiscal year. These respondents felt that, in light of the reduced allocations for the program, an open season would facilitate application processing and assist in the reduction of application backlogs. RHCDS is unable to concur with this recommendation. A revision to the program of this nature which would permit rejection of applications made outside of specific dates would not be consistent with the mission of giving very low- and low-income applicants an opportunity for home ownership which is not provided through any other means.

Seven comments were received objecting to the provisions contained under § 1944.27(c)(1)(ii), regarding the requirement that where there are more than 50 unprocessed applications on hand, the RHCDS loan approval official will inform each applicant, at least every 6 months, of the current funding status and provide an estimate of when the loan is to be processed, and these respondents generally felt that this requirement would be unduly burdensome on field office personnel. RHCDS does not concur with the recommendation that this provision be removed. In order to provide the best possible service to RHCDS customers, RHCDS personnel have a responsibility to keep applicants informed of the status of their application and the potential availability of funds. Since the notification process occurs only on a biannual basis, RHCDS does not agree that it would be an undue burden for its field offices to prepare and circulate such routine correspondence with its applicants. One comment was received requesting further clarification of § 1944.27(c)(1)(ii) regarding the number of biannual notices to be provided to applicants, and whether applicants have the right to request an appeal if they should fail to respond to the biannual notice regarding their continued interest in participating in the program. This section clearly states that notification will be provided at least every 6 months to each applicant whose application has not been processed when there are more than 50 unprocessed applications on hand. Thus, as long as the number of unprocessed applications exceeds 50, there would be no limit on the number of biannual notices that could potentially be provided. The failure of an applicant to respond will be considered withdrawal of the application by the applicant.

One comment was received recommending that RHCDS add language to § 1944.27(c) to require the screening of all applicants for eligibility

under the Guaranteed Rural Housing (GRH) loan program, and that any applicant found eligible under the GRH program would be disqualified for a direct loan with payment assistance. RHCDS does not concur with this recommendation. Under the procedure, assessing an applicant's ability to obtain other credit is required during the applicant interview, which is conducted after all information needed to make a determination of eligibility has been obtained. Therefore, RHCDS does not feel that further additions to § 1944.27(c) are needed at this time.

One comment was received objecting to the provisions under § 1944.27(e)(1)(v) which require applicants to provide a copy of the divorce decree or other legal document in order for RHCDS to verify the amount of alimony or child support payments, and the respondent noted that this information should not be solicited by RHCDS because this action would constitute discrimination against divorced persons. In order to provide financial assistance only to applicants who need it and in the amounts needed, RHCDS is required under law to verify applicant income, including alimony or child support payments, to determine the applicant's and eligibility for program assistance, and, therefore, requesting a copy of a divorce decree or other legal document is not considered a discriminatory act, provided the request is solely for the purpose of verifying income. Loan approval officials cannot require this information from all applicants who are divorced; it may be required only when it is necessary to verify alimony or child support payments received. Loan approval officials should consider obtaining other means of verification, such as checks, etc., when it is feasible to do so.

One comment was received recommending that, prior to filing an application, direct loan applicants should be required to take a "Homebuyers' Education" course, similar to provisions included under subpart 1980-D as a part of the GRH program. While RHCDS agrees that this type of course is beneficial to potential homeowners, and, in fact, is requiring homebuyers' education in association with the direct loan program as a pilot initiative in a small number of states, we are unable to require such a measure at this time on a nationwide basis due to budgetary constraints. We encourage RHCDS loan approval officials to counsel their applicants on the homebuyers' education programs available to them within their communities.

One comment was received suggesting that § 1944.27(f)(1) be revised to include partial participation loans when discussing other credit options with applicants during the applicant interview. RHCDS does not concur with this recommendation; however, it is expected that loan approval officials in states with active partial participation loan programs will routinely discuss participation options with applicants.

Two comments were received regarding § 1944.27(b)(5) regarding the use of an on-line profile credit report as one of the steps to process applications. Both commenters felt that the use of on-line profile credit reports have merit, but that RHCDS loan approval officials should be provided with the latitude to make an eligibility determination on the basis of the information contained in the profile report if it contains adverse information. RHCDS does not concur with this recommendation. The information contained in the profile report may not be complete or accurate and, therefore, it would be inappropriate and premature for the loan approval official to proceed with an eligibility determination on the basis of such a report. The use of profile reports is intended as a tool to assist applicants, who are in the preliminary stages of the consideration process, in removing any potential problems that could adversely affect them during the latter stages of consideration so that their chances of obtaining RHCDS credit are enhanced.

Seven comments were in favor of the requirement that all applicants will be required to submit a complete, legible copy of their most recently filed Federal income tax return to verify income. Three of these respondents felt that the provision requiring returns to be stored in a secure place separate from the loan docket to prevent any wrongful release of the tax return information is a cumbersome and inconvenient requirement, with one of the commenters who objected to this provision noting that RHCDS' files are already protected under the Privacy Act of 1974 and, thus, are secure and not made available to the public. RHCDS does not concur with the comments that the separate storage of tax return information is unnecessary.

Two of the respondents requested clarification of this provision, questioning who would be responsible for the separate maintenance of the returns and, further, noting that RHCDS already controls its applicant files and restricts access to those files. In order to assure the confidentiality of this information the Agency has determined that it is necessary for field offices to

store tax return information separately in a locked storage facility as a result of Internal Revenue Service procedures governing taxpayer information.

One respondent recommended that RHCDS revise this provision and include language to require applicants to submit a copy of their most recent W-2 Form in addition to their return. RHCDS does not concur with this recommendation. W-2 Forms do not necessarily contain all information concerning an applicant's income. For example, certain types of business income not derived through the applicant's employer will not be revealed on the W-2 Form. For this reason, RHCDS believes that the applicant's tax returns are a more reliable tool for RHCDS' purposes and that they are a better source of comprehensive income information.

Another respondent recommended that RHCDS revise § 1944.27(a)(1) to indicate that a completed application will consist of Form FmHA 410-4, "Application for Rural Housing Assistance (Nonfarm Tract) Uniform Residential Loan application" (hereinafter called URLA) properly filled out, dated, and signed; an RHCDS form for verifying employment signed by the applicant or household member for each employer, all of which are available in any RECD field office; and a complete, legible copy of the applicant's most recently filed income tax return. The commenter suggests that this change would be consistent with the language included under § 1944.27(e) and industry standards. RHCDS does not concur with this suggestion. RHCDS does not believe that an applicant's tax return should be required to constitute a completed application because a tax return is not necessary in order to make a preliminary determination of eligibility for assistance. The tax return is intended to be used during the application processing phase as a means of verifying applicant income.

Five comments were received on the provisions contained in the proposed rule governing the issuance of a certificate of eligibility to applicants. Two of the respondents were in favor of the certificate, but felt that it should be issued to all eligible applicants and that applicants who submit packaged applications which already contain information necessary to complete a real estate appraisal should not be excluded from receipt of such a certificate. RHCDS does not concur with this recommendation. The certificate of eligibility provides an applicant who has not submitted a contract for a house, information that is necessary to

complete an appraisal and the amount of loan the applicant can afford based on current income and ratios. It is expected that packagers participating in the program who are responsible for assisting applicants in preparing applications in connection with the sale of a specific house will be well familiar with the program and will advise their clients of the eligibility requirements of an RHCDS loan, as well as the maximum loan amount that the applicants will be able to afford. Applicants who submit packaged applications in connection with the information necessary to complete a real estate appraisal will be provided written notice of their eligibility by the loan approval official rather than the certificate of eligibility.

Two respondents were opposed to the certificate and felt that it would be a cumbersome process that would remove processing flexibility from RHCDS personnel. These commenters recommended that this provision be removed. RHCDS does not concur with this recommendation. RHCDS believes that the certificate of eligibility is a better method of providing applicants with information concerning their loan repayment and affordability limits. The certificate is designed to provide information tailored to each individual applicant.

One respondent expressed concern over the certificate of eligibility in terms of the provisions that allow a maximum of two 60-day extensions to applicants if they are unable to provide the information needed to complete a real estate appraisal within 90 days, but satisfactorily demonstrate to RHCDS that they are actively working on compiling the information requested. The commenter recommended that the provisions authoring extensions be removed. RHCDS does not concur with this request. The Agency's requirements governing the suitability of dwellings to be financed under the program have been substantially revised to provide applicants greater flexibility in locating appropriate housing. Because RHCDS' property requirements are more relaxed under the new guidelines, extensions to prolong the viability of certificates of eligibility should not be necessary on a frequent basis, and we expect that loan approval officials will exercise this authority only under very limited circumstances.

Proposed Rule Published on January 6, 1993

Twelve comments were received from a variety of sources on this proposed rule, including six RHCDS employees. This rule proposed changes to eligibility

restrictions, determination of annual income and payment assistance, and loan processing and servicing procedures.

The following changes were made in the final rule due to the comments received: (1) Earned income tax credits will be excluded in the determination of annual income; (2) income exempted by Federal statutes cannot be used to withhold an applicant's eligibility for assistance; (3) Income exclusion for Nazi victims has been included in this final rule; (4) The requirement that RHCDS post the selected Rural Housing applicants' names has been eliminated; (5) RHCDS's applicants are to submit Federal income tax returns as part of a completed loan application; and (6) revisions to the payment assistance regulation have been made.

All comments submitted with respect to this proposed rule were given due consideration and are discussed further in the following paragraphs:

One commenter indicated that the definition of income in § 1944.5(f)(3) needs to be revised in accordance with section 479B of the Higher Education Technical Amendments of 1987, Public Law 100-50, Act, as well as the changes required in Section 103 of the Housing and Community Development Act of 1992, Public Law 102-550. RHCDS agrees with this and has adopted the changes as final rule. This policy is consistent with current HUD regulations.

Regarding § 1944.5(e)(8) on earned income tax credit, section 11111(b) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, provided that the earned income tax credit may not be treated as income for purposes of title V of the Housing Act of 1949. One comment was received from an RHCDS employee. The employee supported the elimination of Earned Income Tax Credit as income because it caused the field offices to estimate earned income. This section excludes treating any earned income tax credit as income and is being adopted as a final rule.

Referencing § 1944.5(e)(7) on income exclusion for Nazi victims, Public Law 103-286, August 1, 1994, provided that payments made to individuals because of their status as victims of Nazi persecution must be disregarded in determining eligibility for and the amount of benefits under any federally assisted program which provides benefits or services based, in whole or in part, on need. We are therefore, adopting and including this exclusion in the final rule.

Of the three comments received regarding removing the posting of selected applicants' names on RECD

field office bulletin boards, the majority of commenters supported the provision as proposed. One commenter stated loan officers can simply refer applicants to real estate brokers and contractors when the applicants are informed of their selection for processing. Two commenters supported the proposal, but expressed concern about the unavailability of services. They felt that the instruction should be revised to provide notice to the public that applicants, or their representative, upon request, may obtain a list of such applicants, including date of application and priority listed. Under the Freedom of Information Act (FOIA) as interpreted in *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), RHCDS applicants have a right to privacy and publication of names of related RHCDS selected applicants who must have low- or very low- income violates this right.

The payment assistance regulation under § 1944.34 is being updated and discrepancies with previously published regulations are removed in the final rule. Revisions to the payment assistance regulation are made to: (1) Provide a method for the verification of income from sources other than employment to make verification of miscellaneous income easier for the RHCDS personnel; (2) allow existing borrowers whose incomes have risen above the Department of Housing and Urban Development's yearly published low income levels to continue to receive payment assistance; (3) revise the effective period of the payment assistance agreement in situations where the borrower is unemployed; (4) ensure that the Agency handles a reduction in income consistently between the servicing regulations and the payment assistance regulation; and (5) remove the provision for canceling payment assistance benefits to a family that improved its property beyond what is considered to be modest for the area.

The following material discusses the amendments to payment assistance by sections:

Of the three comments received on § 1951.313(f) regarding the cancellation of payment assistance agreements (reasons for cancellation), all commenters requested clarification regarding cancellation of payment assistance agreements when a borrower is living in a nursing home, but the borrower's household goods remain in their dwelling financed by RHCDS. Several commenters pointed out that sometimes a stay in a nursing home or other care facility is temporary. One commenter stated that non-occupancy should be defined. RHCDS has analyzed

all comments received on this proposal and based on that analysis and its own review, we are providing additional guidance as follows: (1) While nursing homes and specialized care facilities are considered full time residences, only indefinite and prolonged stays should be considered as non-occupancy of the dwelling. A short term or specifically limited stay at full-care facilities that does not exceed 6 months, such as when an individual is recuperating from a serious accident or illness, should not be grounds for terminating payment assistance. If the stay at a special facility exceeds 6 months, the borrower must supply appropriate medical documentation to support this situation.

Section 1951.313(f)(1) on indicators of non-occupancy is being amended to state that the primary indicators of non-occupancy are when the borrower and his or her household belongings are absent from the property and the borrower fails to maintain the property or to arrange for its care. Several comments were received on the various indicators of non-occupancy and clarification was requested. In listing various indicators of non-occupancy, it was intended that the loan approval official should consider the circumstances and obtain information, as needed, to determine the appropriate action.

One comment was received on § 1951.313(f)(3) concerning a borrower who provides fraudulent or materially inaccurate financial information in connection with a payment assistance application/renewal. The commenter recommended that this provision be eliminated because it conflicts with existing regulations (7 CFR section 1951.608(b)(2) of subpart M of part 1951) and because it grants RHCDS staff too much discretion in determining when information is materially inaccurate or fraudulently provided. RHCDS disagrees and we are not amending this section. The Departmental appeals procedure will provide for a review of the materiality of inaccurate or fraudulently provided information.

Other Affected Regulations

Due to the revisions in the final rule to subpart A of part 1944, conforming changes were necessary to the following regulations as noted.

List of Subjects in 7 CFR Parts 1900, 1910, 1924, 1940, 1944, 1950, 1951, 1955, and 1965

Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Rural areas.

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

1. The authority citation for parts 1900, 1950, 1951, 1955, and 1965 is revised to read as follows:

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

CHAPTER XVIII—[AMENDED]

2. 7 CFR chapter XVIII is amended by removing the words “interest credit” and adding in their place, the words “payment assistance”, in the following places:

- a. § 1950.105(c)
- b. § 1965.26(c)(2) introductory text
- c. § 1965.26(c)(3) (2 times)

§ 1955.66 [Amended]

3. Section 1955.66(e)(2) is amended by removing the words “interest credits” and adding in their place, the words “payment assistance”.

4. Section 1900.52(l) is added to read as follows:

§ 1900.52 Definitions.

* * * * *

(l) *Interest credit.* The terms “interest credit” and “interest credit assistance,” as they relate to Single Family Housing (SFH), are interchangeable with the term “payment assistance.” Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

PART 1910—GENERAL

5. The authority citation for part 1910 continues to read as follows:

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

Subpart A—Receiving and Processing Applications

6. Section 1910.1(d) is added to read as follows:

§ 1910.1 General.

* * * * *

(d) The terms “interest credit” and “interest credit assistance,” as they relate to Single Family Housing (SFH), are interchangeable with the term “payment assistance.” Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

7. Section 1910.4(a) is revised to read as follows:

§ 1910.4 Processing applications.

* * * * *

(a) *Completed RH applications.* Completed applications are those as described in § 1944.27 (copies available in any RECD office), and all applications

for Rural Housing loans will be processed as outlined in that instruction.

* * * * *

8. Section 1910.5 is amended in paragraph (c)(6) by revising the reference “§ 1944.4(c)” to read “§ 1944.9,” and revising “FmHA or its successor agency under Public Law 103–354” to read “CFSA or RHCDS,” and by adding paragraph (e) to read as follows:

§ 1910.5 Evaluating applications.

* * * * *

(e) *Delinquency on a Federal debt.* The Department of Housing and Urban Development Credit Alert Interactive Voice Response System (CAIVRS) will be used to help determine if an applicant is delinquent on any Federal debt.

§ 1910.6 [Amended]

9. Section 1910.6 is amended in the first sentence of paragraph (g) introductory by revising the words “Rural Housing” to read “RH” and by revising the reference “§ 1944.26” to read “§ 1944.27,” by revising the words “section 41” to “section 44” in the second sentence of paragraph (g)(1) and by revising the words “section 41 of Form FmHA” to read “section 44 of Form FmHA 1940–1;” in paragraph (j).

PART 1924—CONSTRUCTION AND REPAIR

10. The authority citation for part 1924 continues to read as follows:

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

Subpart A—Planning and Performing Construction and Other Development

§ 1924.6 [Amended]

11. Section 1924.6(c) introductory text is amended in the first sentence by removing the words “Exhibit E of.”

§ 1924.9 [Amended]

12. Section 1924.9(a) is amended in the second sentence by revising the references “§ 1944.17(a)(2)(iv)” to read “§ 1944.17(a)(2)(iii)” and “subpart A of part 2024 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office)” to read “FmHA Instruction 2024–A (available in any RECD field office),” and by revising “FmHA” to read “RHCDS” in the fourth and sixth (2 places) sentences.

PART 1940—GENERAL

13. The authority citation for part 1940 is revised to read as follows:

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

Subpart I—Truth in Lending—Real Estate Settlement Procedures

§ 1940.401 [Amended]

14. Section 1940.401(c)(3)(ii) is amended by revising the reference “§ 1951.314” to “§ 1951.315.”

Subpart S—Accountability Requirements of Persons Paid To Influence the Making of an FmHA Housing Loan and/or Grant

15. Section 1940.903 is amended by removing the definitions of “FmHA” and “FmHA housing loan and/or grant” by adding new definitions of “Interest Credit” and “RHCDS housing loan and/or grant” in alphabetical order to read as follows:

§ 1940.903 Definitions

* * * * *

Interest credit. The terms “interest credit” and “interest credit assistance,” as they relate to Single Family Housing (SFH), are interchangeable with the term “payment assistance.” Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

* * * * *

RHCDS housing loan and/or grant. Any loan: insured; direct or guaranteed, made pursuant to the Housing Act of 1949, as amended. The term includes rental assistance (RA) and interest credits. The term does not include contracts, such as procurement contracts, which are subject to the Federal Acquisition Regulation (FAR).

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PART 1944—HOUSING

16. The authority citation for Part 1944 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 42 U.S.C. 1480.

17. Subpart A of part 1944 is revised to read as follows:

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

Sec.

- 1944.1 General.
- 1944.2 Definitions.
- 1944.3 Loan purposes.
- 1944.4 Loan restrictions.
- 1944.5 Annual income.
- 1944.6 Adjusted annual income.
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- 1944.8 Income eligibility requirements.
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- 1944.10 Rural area designation.
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- 1944.13 National flood insurance.
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- 1944.15 Ownership requirements.
- 1944.16 Dwelling requirements.
- 1944.17 Maximum loan amounts.
- 1944.18 Security requirements.
- 1944.19–1944.21 [Reserved]
- 1944.22 Refinancing non-RHCDS debts.
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- 1944.24 Technical services.
- 1944.25 Rates and terms.
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- 1944.28–1944.30 [Reserved]
- 1944.31 Loan approval.
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- 1944.33 Loan closing.
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- 1944.35 Deferred mortgage payments.
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- 1944.37 Subsequent section 502 RH loans.
- 1944.38 Mutual Self-Help Housing loans.
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PART 1944—HOUSING

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1944.1 General.

This subpart sets forth the policies and procedures and delegates authority for making section 502 Rural Housing (RH) loans to individuals under section 502 of title V of the Housing Act of 1949, as amended. The objective of section 502 RH loans is to provide eligible persons who will live in rural areas with an opportunity to own adequate but modest, decent, safe, and sanitary dwellings and related facilities. The requirements of subpart E of part 1901 will be applied as appropriate. Loans and services provided under this subpart shall not be denied to any person or applicant based on race, sex, national origin, color, religion, marital status, familial status, age, physical or mental disability (applicant must possess the capacity to enter into a legal contract for services or have a court appointed guardian or conservator empowered to obligate the applicant in real estate matters), receipt of income from public assistance, or because the applicant or borrower has, in good faith, exercised any right under the Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.

(a) In compliance with the Fair Housing Act as amended and the Americans with Disabilities Act of 1990, reasonable accommodation must be given to individuals who are developmentally disabled so that they have the opportunity to become successful homeowners. When an applicant or an applicant’s representative indicates the existence of a disability during the loan process, e.g., by requesting the Rural Housing and Community Development Service (RHCDS) disability deduction to income due to mental or physical disability or through verification of income from a Federal or state government source because of mental or physical disability, RHCDS must ask the applicant or the applicant’s representative what reasonable accommodation should be made in order for the loan to be processed. The reasonable accommodation request must be provided to RHCDS by the applicant or the applicant’s representative. Reasonable accommodation can include allowing a court appointed guardian or conservator to execute appropriate loan making and loan closing documents on behalf of the applicant; the court order must show that the guardian or conservator has the power and responsibility to obligate the applicant in real estate matters and a copy of the court order must be made a part of the loan docket.

(b) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to RHCDS 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. Applicants for this assistance are required to identify any known relationship or association with an RHCDS employee.

(c) RHCDS will collect fees for credit reports, real estate appraisals, and conditional commitment applications when appropriate. RHCDS may use its own employees or other agents or institutions in carrying out its responsibilities under this subpart.

§ 1944.2 Definitions.

The following definitions apply to this subpart:

Annual payment borrowers. Borrowers who signed promissory notes providing for annual payments, including borrowers converted to monthly payments through the use of Form FmHA 1951–34, “Direct Payment Plan Change.”

Certificate of Eligibility. Certificate issued by RHCDS to applicants who have received a final determination of

eligibility after verification of all income. Applicants can present this to real estate agents, builders, and sellers to indicate their eligibility for an RH loan in the amount set forth on the certificate.

Conditional commitment. Assurance from RHCDS, in exchange for a specific fee, to an owner, qualified builder, or dealer-contractor that a dwelling offered for sale will be acceptable for purchase by a qualified RH loan applicant under specified limited conditions.

Cosigner. A party who joins in the execution of a promissory note to compensate for any deficiency in the borrower's repayment ability. The cosigner becomes jointly liable to comply with the terms of the note in the event of the borrower's default, but is not entitled to any interest in the security or borrower rights. If the security is transferred to the cosigner, the cosigner may assume the RHCDS indebtedness on program or nonprogram (NP) terms, as applicable.

Deficient housing. A dwelling which meets one or more of the following conditions:

- (1) Lacks complete plumbing; i.e. no bathtub or shower, wash basin, flush toilet, or hot running water for the exclusive use of the occupant;
- (2) Lacks adequate heating;
- (3) Is physically deteriorated or structurally unsound; i.e. roof leaks, falling plaster or sheetrock, extensive termite or wood rot damage, dangerous electrical service; or
- (4) Overcrowding situations which will be corrected after loan closing; i.e., more than 2 persons per bedroom.

Elderly family. An elderly family consists of one of the following:

- (1) A person who is the head, spouse, or sole member of a family and who is 62 years of age or older, or who is disabled, and is the applicant or borrower or the coapplicant or coborrower; or
- (2) Two or more persons who are living together, at least one of whom is age 62 or older, or disabled, and who is the applicant or borrower or coapplicant or coborrower; or
- (3) In the case of a family where the deceased borrower, coborrower, or spouse, was at least 62 years old, or disabled, the surviving household member shall continue to be classified as an "elderly family" for the purpose of determining adjusted income even though the surviving members may not meet the definition of elderly family on their own, provided:

(i) They occupied the dwelling with the deceased family member at the time of the death; and

(ii) If one of the surviving family members is the spouse of the deceased family member, the surviving family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of the death of the deceased family member, the dwelling was financed under title V of the Housing Act of 1949.

Equivalent interest rate. The interest rate charged under payment assistance. It is determined by a comparison of the borrower's adjusted annual income to the median income for the area where the security property is located, based on income figures published by the Department of Housing and Urban Development (HUD) as reflected in exhibit C (available in any RECD field office).

Existing dwelling. A dwelling which is:

- (1) More than 1 year old; or
- (2) Less than 1 year old but the dwelling is covered by an approved 10-year warranty plan as described in subpart A of part 1924 and the contractor provides complete plans and specifications, together with a certification that construction was completed in compliance with said plans and specifications, applicable building codes, and thermal performance standards (TPS) for new construction. In addition, the contractor must provide evidence that the contractor meets any licensing requirements in the state and is an approved builder in good standing under the approved 10-year warranty plan.

Extended family. A family unit comprised of adult relatives who live together with the other members of the household, for reasons of physical dependency, economics, or social custom, who, under other circumstances, could maintain separate households. An example would be parents living with their adult children.

Farm. Includes the total acreage of one or more tracts of land which:

- (1) Is owned by the applicant;
- (2) Is operated as a single unit;
- (3) Is in agricultural production; and
- (4) Annually will produce agricultural commodities for sale and home use with a gross annual value equivalent to \$400 in 1944.

Floor. A minimum percentage of adjusted family income which the borrower must pay for principal, interest, taxes and insurance.

Full-time student. A person who is carrying a subject load that is considered full-time for day students (excluding correspondence courses) under the standards and practices of the

educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Homeowners association. An association of individual unit owners that is responsible for the common property and improvements for the benefit of all the individual owners, and enforcement of the organization's rules and regulations.

Household or family. The applicant, coapplicant, and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months (excluding foster children placed in the home and live-in aides). Children who are members of the family, but have been removed and placed in foster care, will be counted as residents of the household. Children who are subject to a joint custody agreement and live in the unit at least 50 percent of the time are considered to be household members.

HUD. The Department of Housing and Urban Development.

Income. Income limits, the definitions of which are included below in order from the lowest to the highest are contained in exhibit C (available in any RECD office).

(1) **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 or MSA where the property is or will be located.

(2) **Low-income.** An adjusted annual income greater than the very low-income limit but that does not exceed the low income limit according to size of household as established by HUD for the county or MSA where the property is or will be located.

(3) **Moderate-income.** An adjusted annual income greater than the low-income limit but that does not exceed the maximum limit for moderate-income households.

(4) **Above moderate-income.** An adjusted annual income that exceeds the maximum limit for moderate-income households.

Insurance. The insurance required by RHCDS as a condition of loan approval, including homeowners insurance, fire and extended coverage insurance including flood insurance, when applicable.

Insured warranty. Plan which offers new homeowners varying degrees of protection against builder default or major structural defects in their home.

Live-in aides. Persons living in the household for the sole purpose of providing essential care and well being for an elderly, or household member

who is disabled. Live-in aides cannot be related to a household member and would not be living in the unit except to provide essential supportive services.

Market value. For the purposes of this instruction, market value is defined as the appraised value of the property as improved.

Median income. An adjusted median annual income for the size of household as established by HUD for the county or MSA where the property is or will be located.

Metropolitan Statistical Area (MSA). MSAs are defined according to a set of detailed standards prepared by the Federal Committee on MSAs. An area qualifies as an MSA if it contains a city of at least 50,000 population or an urbanized area of at least 50,000 with a total metropolitan population of at least 100,000. MSAs are defined in terms of entire counties, except in the six New England States where they are defined in terms of cities and towns. An MSA may also include additional counties having strong economic and social ties to the central county. The term Standard Metropolitan Statistical Area (SMSA) was in use prior to the June 30, 1983, effective date of the MSA terminology.

Minor. For the purposes of determining adjusted annual income, this definition is restricted to persons under 18 years of age. Neither the head of household nor spouse may be counted as a minor. Foster children are not counted as minors for determining annual or adjusted annual income.

Monthly payment borrowers. Borrowers who signed promissory notes providing for payment of monthly installments.

MSA. Metropolitan Statistical Area.

Net family assets. Include:

(1) The value of equity in real property (other than the dwelling or site); cash on hand; savings; checking accounts; demand deposits; and the market value of stocks, bonds, and other forms of capital investments, including voluntary retirement plans that are accessible to the applicant such as individual retirement accounts (IRAs), 401(k) plans, and Keogh accounts, as well as amounts that can be withdrawn from other retirement and pension funds without retiring or terminating employment, but *exclude*:

- (i) Interests in American Indian trust land,
- (ii) Cash on hand which will be used to reduce the amount of the loan,
- (iii) The value of necessary items of personal property such as furniture and automobile,
- (iv) The assets that are a part of the business, trade, or farming operation in the case of any member of the

household who is actively engaged in such operation, and

(v) The value of a trust fund that has been established where the trust is not revocable by, or under the control of, any member of the household, so long as the fund continues to be held in trust.

(2) The value of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) during the 2 years preceding the date of application, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be for less than fair market value if the household member receives important consideration not measurable in dollar terms.

Nonfarm tract. A parcel of land that is not a farm and is located in a rural area, or a building site that is part of a farm, and which secures an RH loan in accordance with § 1944.18(b)(10).

Payment assistance. The generic term for the subsidy provided to eligible borrowers to reduce mortgage payments. This term is used interchangeably with the terms "interest credit," "interest credit assistance," and "payment assistance in the form of interest credit."

Participation loan. A loan that is made by another lender in conjunction and simultaneously with a loan made under this part.

Person with a disability. A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or which: is expected to be of long or indefinite duration; substantially impede his or her ability to live independently; and is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in any substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. A person with a disability also includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity:

- (i) Self-care,
- (ii) Receptive and expressive language,
- (iii) Learning,
- (iv) Mobility,
- (v) Self-direction,
- (vi) Capacity for independent living,

or

(vii) Economic self-sufficiency; and
(5) Reflects the person's need for a combination and sequence of special care, treatment, or other services which are of lifelong or extended duration, and are individually planned and coordinated.

Place. An area containing a concentration of inhabitants within a determinable unincorporated area.

Real estate taxes. The amount of real taxes and the annual portion of assessments estimated to be due and payable on the dwelling and the dwelling site, reduced by the amount of any tax exemption available to the borrower, regardless of whether such an exemption is actually claimed. Tax exemptions may include such things as homestead exemptions, special exemptions for low-income families, senior citizens, veterans, and others.

Rehabilitation. Major repairs and improvements to existing dwellings such as the installation or completion of bathroom facilities, installation of major items of equipment, additions, or structural changes.

RHCDS. Rural Housing and Community Development Service.

Senior citizen. Is a person who is 62 years of age or older.

Town. Is a municipality similar to a city but does not include a New England-type town which resembles a township or county in most states.

Urban area. Either a town, village, city, place, or any associated combination thereof which, with the immediately adjacent densely settled areas, has a population in excess of the limits prescribed in § 1944.10(a)(2) (i) and (ii).

§ 1944.3 Loan purposes.

(a) A loan may be made to an eligible applicant for the following purposes:

- (1) To buy, build, rehabilitate, improve, or relocate a dwelling and provide related facilities for use by the applicant as a permanent residence;
- (2) To buy, build, rehabilitate, improve, or relocate a dwelling, and

provide related facilities for a farm owner to provide housing to be occupied by the farm manager, tenants, sharecroppers, or farm laborers; and

(3) To refinance secured debts or unsecured debts as provided in § 1944.22, except the Agency will not refinance debts for manufactured homes;

(b) A loan made under paragraph (a) (1) or (2) of this section may be used to:

(1) Purchase, in fee title, a minimum adequate site, as outlined in § 1944.11 on which the improvements are or will be located, if the applicant does not own an adequate site;

(2) Pay reasonable acquisition costs for a leasehold interest in a minimum adequate site at the time of making the initial RH loan;

(3) Provide an adequate and safe water supply or an adequate wastewater disposal facility;

(4) Provide site preparation, including grading, foundation plantings, seeding or sodding of lawns, trees, walks, yard fences, and driveways to building sites;

(5) Purchase and install essential equipment in the dwelling including items such as a range, refrigerator, clothes washer or clothes dryer, if these items are normally sold with dwellings in the area, and if purchase of these items is not the primary purpose of the loan;

(6) Provide special design features or equipment when necessary because of physical disability of the applicant or of a member of the household;

(7) Purchase and install 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;

(8) Provide storm cellars and similar protective structures;

(9) Pay incidental expenses such as legal fees, costs of title clearance, and loan closing services; appraisal, surveying, environmental, and tax monitoring; personal liability insurance fees for self-help housing applicants; and incidental expenses authorized in exhibit G (available in any RECD field office);

(10) Pay lender charges and fees in connection with participation loans, (except as provided in § 1944.4), provided they are the same as those charged other applicants for similar types of transactions;

(11) Pay reasonable connection fees for utilities such as water, sewer, electricity, and gas, which are required to be paid by the applicant and which cannot be paid from other funds;

(12) Pay the applicant's share of Social Security taxes and similar taxes for labor hired by the applicant in

connection with making the planned improvements;

(13) Pay real estate taxes which are due and payable on the building and site owned by the applicant at the time of closing an initial loan, if this amount is not a part of the loan;

(14) Establish escrow accounts for the payment of real estate taxes and property insurance premiums in those states where the use of escrow accounts is authorized by the National office;

(15) Provide living area for all members of the applicant's household, including "extended family;"

(16) Finance the purchase of single family housing units located in a condominium development, community land trust, or planned unit development with a homeowners association. If professional management is employed (prior National office approval is required);

(17) Pay fees for the development and packaging of loan applications and related actions to public and private nonprofit organizations which are tax exempt under the Internal Revenue Code of 1986 (except when restricted under § 1944.4) when:

(i) The loan has been packaged in accordance with exhibit A (available in any RECD field office) and the limitations of § 1944.17; and

(ii) The charges are reasonable considering:

(A) The amount and purpose of the assistance;

(B) The repayment ability of the recipient; and

(C) The cost of similar services in the same or a similar rural area.

(iii) The State Director may issue a State Supplement outlining what is considered a reasonable amount for the jurisdiction. In no case may the amount exceed that found in exhibit B of subpart B of part 1944 (available in any RECD office).

§ 1944.4 Loan restrictions.

Loan funds may not be used to:

(a) Make a new loan to pay off existing RHCDS debts in lieu of a transfer with assumption.

(b) Refinance:

(1) RHCDS debts, except as authorized under § 1951.316.

(2) Debts on a manufactured home.

(c) Purchase or improve income-producing land, or buildings to be used principally for income-producing purposes, or buildings not essential for RH purposes, or buy or build buildings which are either largely, or in part, specifically designed to accommodate a business or income-producing enterprise. (Home based operations such as child care, home/beauty product

sales, the production of crafts, etc., that do not require specifically designed features to accommodate the enterprise, are not restricted under this subpart; however, housing related expenses such as mortgage interest, real estate taxes, and insurance, which may be claimed as business expense deductions for income tax purposes, will not be allowed when determining annual income for RHCDS assistance.)

(d) Pay fees, charges, or commissions, such as finders' fees, fees for packaging the application (except as provided in § 1944.3), or placement fees for the referral of a prospective applicant to RHCDS.

(e) Pay packaging fees (as provided under § 1944.3) for the purchase of an RHCDS inventory property or where the packager is receiving a grant under subpart B of part 1944.

(f) Improve the entry of a homestead entryman or desert entryman prior to receipt of patent.

(g) Finance manufactured homes which are not constructed and installed in accordance with exhibit F of this subpart and exhibit J of subpart A of part 1924. (Both exhibits are available in any RECD field office.)

§ 1944.5 Annual income.

Annual income determinations will be thoroughly documented in the case file. Historical data based on the past 12 months or last fiscal year may be used if a determination of expected income cannot logically be made. Annual income will be calculated as follows:

(a) Current verified income, either part-time or full-time, received by the applicant and all adult members of the household including the spouse is derived by multiplying:

(1) An hourly wage by 2080 hours (for part-time employment use anticipated annual hours); or

(2) A weekly wage by 52 weeks; or

(3) A biweekly wage by 26 weeks; or

(4) A monthly wage by 12 months or a bimonthly wage by 24 pay periods.

(b) If the spouse or any other adult member of the household is not presently employed but there is a recent history of such employment, that person's income will be projected unless the applicant or the person involved signs a statement that the person is not presently employed and does not intend to resume employment in the foreseeable future, or, if payment assistance is involved, during the term of the payment assistance agreement.

(c) Income from such sources as seasonal work of less than 12 months duration, commissions, overtime, bonuses, and unemployment compensation will be computed as the

estimated annual amount of such income for the ensuing 12 months. Temporary income such as unemployment benefits, worker's compensation, etc., will be projected over 12 months when computing payment assistance on an annual basis. Historical data based on the past 12 months may be used if a determination of expected income cannot logically be made.

(d) The following *are* included in annual income:

(1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensations for personal services of all adult members of the household. If a cost of living allowance or a proposed increase in income has been estimated to take place on or before loan approval, loan closing, or the effective date of the payment assistance agreement, it will be included as income.

(2) The *net* income from the operation of a farm, business, or profession. The following provisions apply:

(i) Expenditures for business or farm expansion, capital improvements, or payments of principal on capital indebtedness shall not be used as deductions in determining income. A deduction is allowed in the manner prescribed by Internal Revenue Service (IRS) regulations only for interest paid in amortizing capital indebtedness.

(ii) Farm and nonfarm business losses are considered "0" in determining annual income.

(iii) A deduction, based on straight line depreciation, is allowed in the manner prescribed by IRS regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the operation of a trade, farm, or business by a member of the household. The deduction must be based on an itemized schedule showing the amount of straight line depreciation.

(iv) Any withdrawal of cash or assets from the operation of a farm, business, or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by a member of the household.

(v) A deduction is allowed for verified business expenses, such as lodging, meals, and fuel, for business trips made by salaried employees, such as long-distance truck drivers, who must meet these expenses without reimbursement.

(vi) Housing related expenses for the property being financed such as mortgage interest, real estate taxes, and insurance, which may be claimed as business expense deductions for income

tax purposes, will not be deducted from annual income.

(3) Interest, dividends, and other net income of any kind from real or personal property, including:

(i) The share received by adult members of the household from income distributed from a trust fund.

(ii) Any withdrawal of cash or assets from an investment except to the extent the withdrawal is reimbursement of cash or assets invested by a member of the household.

(iii) Where the household has net family assets, as defined in § 1944.2, in excess of \$5,000, the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by RHCDS.

(4) The full amount of periodic payments received from Social Security (including Social Security received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts. Amounts received from the United States Government which are attributable to underpayment of benefits for one or more prior months shall be excluded in the calculation of annual income as provided in 42 U.S.C. 1382b.

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay.

(6) Public assistance except as indicated in exhibit H (available in any RECD field office).

(7) Periodic allowances, such as:

(i) Alimony and child support awarded in a divorce decree or separation agreement, unless the applicant certifies the payments are not received, and the applicant provides documentation to RHCDS that a reasonable effort has been made to collect the payments through the official entity responsible for enforcing such payments; or

(ii) Recurring monetary gifts or contributions from someone who is not a member of the household.

(8) All regular pay, special pay (except for persons exposed to hostile fire), and allowances of a member of the armed forces who is the applicant or spouse, whether or not that family member lives in the home.

(e) The following *are not* included in annual income but may be considered in determining repayment ability:

(1) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated

to the applicant, who are unable to live alone);

(2) The income of an applicant's spouse, when the spouse has been living apart from the applicant for less than 3 months (for reasons other than military or work assignment), but not if court proceedings for divorce or legal separation have commenced;

(3) Temporary, nonrecurring, or sporadic income (including gifts);

(4) Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard, or worker's compensation policies, and settlements for personal or property losses (except as provided in paragraph (d)(5) of this section);

(5) Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses;

(6) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(7) Reparation payments paid by a foreign government arising out of the Holocaust. If an applicant for an RHCDS loan was deemed ineligible because the applicant's income exceeded the low income (moderate income for guaranteed loans) because of the applicant's Nazi persecution benefits, the RHCDS approval official should notify the applicant to reapply for a loan;

(8) Any earned income tax credit;

(9) Adoption assistance payments in excess of \$480 per adopted child;

(10) Deferred periodic payments of supplemental security income and Social Security benefits that are received in a lump sum;

(11) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(12) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; and

(13) Any other revenue which a Federal statute exempts shall not be considered income or used as a basis for determining eligibility for an RHCDS loan, payment assistance, or denying or reducing Federal financial assistance or benefits to which the recipient would otherwise be entitled. Additional financial assistance which is considered exempt income under Federal statutes. (See exhibit H available in any RECD field office).

(f) The following will not be counted when calculating annual income and

will not be considered in determination of repayment ability:

- (1) Income of live-in aides as described in 1944.2.
- (2) Income from employment of minors (including foster children) under 18 years of age. The applicant, coapplicant, or spouse may never be considered minors.
- (3) The full amount of student financial assistance paid directly to the student or to the educational institution.

§ 1944.6 Adjusted annual income.

Adjusted annual income is annual income as determined in § 1944.5 less the following:

(a) A deduction of \$480 for each member of the family residing in the household, as defined by § 1944.2, other than the applicant, coapplicant, or spouse who is:

- (1) Under 18 years of age; or
- (2) Eighteen years of age or older and is disabled; or
- (3) A full-time student, aged 18 or older.

(b) A deduction of \$400 for any elderly family.

(c) A deduction for the care of minors 12 years of age or under, to the extent necessary to enable a member of the applicant's family to be gainfully employed or to further the applicant's education. The deduction will be based only on moneys reasonably anticipated to be paid for care services and, if caused by employment, must not exceed the amount of income received from such employment. Payments for these services may not be made to persons whom the applicant is entitled to claim as dependents for income tax purposes.

(d) A deduction of the amount by which the aggregate of the following expenses of the household exceeds 3 percent of gross annual income:

(1) Medical expenses for any elderly family. This includes medical expenses, for any household member, the applicant anticipates incurring over the ensuing 12 months which are not covered by insurance. Examples of medical expenses are dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, the cost of home nursing care, the costs of transportation to and from medical treatment, monthly payments on accumulated major medical bills, and cost of full-time nursing or institutional care which cannot be provided in the home for a member of the household; and

(2) Reasonable attendant care and auxiliary apparatus expenses for each member of any household who is disabled to the extent necessary to

enable any member of such household (including such member who is disabled) to be employed.

§ 1944.7 [Reserved]

§ 1944.8 Income eligibility requirements.

(a) *Repayment ability.* An applicant is eligible for a section 502 RH loan only if the following requirements are met:

(1) *Income limit.* The adjusted annual income as defined in § 1944.6 at the time of loan approval does not exceed the applicable income limit. (See exhibit C available in any RECD field office).

(2) *Adequate and dependable income.* The applicant (and coapplicant if applicable) has adequate and dependably available income. The determination of income dependability will include consideration of the applicant's past history of annual income and the history of the typical annual income of others in the area with similar types of employment. Such income must be sufficient to meet the income ratios described in § 1944.8(a)(3), as modified by §§ 1944.34 and 1944.35.

(3) *Determining repayment ability.* In considering whether the applicant has adequate repayment ability, RHCDS must calculate the principal, interest, taxes, and insurance (PITI) and total debt (TD) ratios. If a participation loan is involved, the PITI will also include the principal and interest payments on the participation loan. The PITI ratio is calculated by dividing the monthly PITI for the proposed loan (less any payment assistance for which the applicant may qualify) by the gross monthly family income. The TD ratio is calculated by dividing the applicant's monthly obligations by total gross monthly family income.

(i) Total monthly debt consists of the PITI for the proposed loan (less any payment assistance for which the applicant may qualify), homeowner and other assessments, and long term obligations. Long term obligations include those obligations such as alimony, child support, child care, and other obligations with a remaining repayment period of more than 6 months, other shorter term obligations that are considered to have a significant impact on repayment ability, plus 5 percent of the current balance on all revolving credit cards.

(ii) Income, for the purpose of determining these ratios, includes the total gross monthly income of the applicant, coapplicant, and any other member of the household who will be a party to the note, including any income that may be excepted under § 1944.5.

(iii) The very low-income applicant is considered to have repayment ability when the proposed PITI and TD ratios are less than or equal to a PITI ratio of 29 percent and a TD ratio of 38 percent; however, the low-income applicant is considered to have repayment ability when the proposed PITI and TD ratios are less than or equal to a PITI ratio of 33 percent and a TD ratio of 38 percent as defined in § 1944.8(a)(3). Very low-income applicants whose PITI ratio exceeds the authorized ratio shall be considered for deferred mortgage assistance as provided in § 1944.35.

(iv) When the ratios do not support repayment of the proposed loan, at the applicant's request, RHCDS may make an exception to the above income ratio calculations under the following circumstances or compensating factors:

(A) When the applicant presents documented evidence of having met housing related costs in the past 6 months that are equal to or greater than the projected housing costs after approval of the proposed loan. These housing costs must have been maintained when the applicant's household income was equal to or less than the current annual income, and the applicant's household debt load was equal to or greater than the current debt load. Projected housing costs will include the RHCDS monthly payment after application of any payment assistance for which the applicant may qualify, projected real estate taxes and assessments, premiums for required property and flood insurance, estimated utility and maintenance costs, and any other costs expected to be incurred with home ownership.

(B) If the applicant's TD ratio and/or PITI ratio exceed the maximum authorized ratio, the State Director may allow a higher ratio based on compensating factors. Acceptable compensating factors include, but are not limited to, the applicant has recently entered a profession, in which the applicant has adequate schooling, that would historically lead to significant pay increases, the applicant has accumulated savings which, when added to the applicant's housing expense shows a capacity to make payments on the proposed loan, and the availability of overtime income to increase the applicant's income. A low TD ratio, by itself, does not compensate for a high PITI ratio.

(b) *Additional coapplicant.* Applicants applying who do not meet the requirements of paragraph (a)(2) of this section will be considered ineligible unless other adults in the household have adequate income and wish to join in the application as a coapplicant. The

combined incomes and obligations shall then be considered in determining repayment ability.

(c) *Cosigner.* RHCDS will also consider the use of a cosigner when the applicant applying for assistance does not meet the requirements of paragraph (a)(2) of this section. Cosigners must have adequate and dependably available income sufficient to repay the applicant's monthly installment with applicable payment assistance. Cosigners are subject to the same determination of repayment ability outlined in paragraph (a)(3) of this section as the applicant, with the amount of the applicant's monthly installment with applicable payment assistance considered as part of the cosigner's PITI ratio.

The cosigner may be an individual or an entity but may not be a member of the applicant's household.

§ 1944.9 Other eligibility requirements.

In addition to the income eligibility requirements of § 1944.8, the applicant must:

(a) Qualify as one of the following:

(1) A person who does not own a dwelling, (except for refinancing purposes), or owns a dwelling which is not structurally sound, functionally adequate, or large enough to accommodate the needs of the applicant, or,

(2) A farmowner without decent, safe, and sanitary housing for the farmowner's own use or for the use of farm tenants, sharecroppers, farm laborers, or farm manager.

(b) Be without sufficient resources to provide the necessary housing or related facilities, and be unable to secure the necessary credit from other sources upon terms and conditions which the applicant could reasonably be expected to fulfill.

(1) If the applicant has only an undivided interest in the land to be improved, those co-owners whose execution of the mortgage is required under § 1944.18(b)(8) must also be unable to provide the improvement with their own resources or obtain the necessary credit elsewhere, either individually or jointly with the applicant.

(2) Applicants are expected to reduce the need for loan funds by utilizing available nonessential assets and/or cash on hand; however, IRAs, Simplified Employee Pensions (SEPs), 401(k) plans, and similar personal retirement accounts do not have to be liquidated when considering other resources. Reasonable reserves may be retained for unforeseen events.

(3) RHCDS will provide information on area lenders participating in the section 502 guaranteed RH loan program and section 502 participation RH loan program to all applicants who are required to seek other credit.

(c) Be a natural person (individual) who resides as a citizen in any of the 50 States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands, or a noncitizen who resides in one of the foregoing areas after being legally admitted in one of the alien entry categories set forth in section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. 1436a. An applicant who is not a United States citizen is required to submit evidence that the applicant has been lawfully admitted to the country as a resident in one of the categories specified in the preceding sentence. Verification is only required when the applicant is not a U.S. citizen.

(d) Possess legal capacity to incur the loan obligation (or have a court appointed guardian or conservator who is empowered to obligate the applicant in real estate matters), and have reached the legal age of majority in the State, or have had the disability of minority removed.

(e) Have the potential ability to personally occupy the home on a permanent basis. Due to the probability of transfer, or moving after graduation, military personnel on active duty and full-time students will not be granted loans unless:

(1) The applicant, if military personnel, will be discharged at an early date (usually within 1 year). The family must continue to occupy the home in case the borrower is transferred to another duty station before discharge;

(2) The applicant intends to make the home a permanent residence and there are reasonable prospects that employment will be available in the area after graduation; and

(3) An adult member of the household will be available to make inspections as the home is being constructed and to sign checks for work performed.

(f) Have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due.

(1) Any or all of the following are indicators of an unacceptable credit history unless RHCDS determines that the cause was beyond the applicant's control (except for Federal judgments described in paragraph (f)(1)(i) of this

section), and satisfies the criteria in paragraph (f)(3) of this section:

(i) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for any loan or grant until the judgment is paid in full or otherwise satisfied. RHCDS loan or grant funds may not be used to satisfy the judgment. The Administrator may waive the rejection of an application based on verification of an outstanding Federal judgment upon specific determination that it is in the best interest of the Government to do so. Verification of delinquent Federal debt and processing of applications with such debt must comply with § 1944.27(b)(4).

(ii) Incidents of more than two debt payments being more than 30 days late if the incidents have occurred within the last 12 months. This includes more than two late payments on a single account. Instances of more than two late payments may be waived in the event that the RHCDS loan will result in a significant reduction in shelter costs, which will contribute to improved debt payment ability.

(iii) Loss of security due to a foreclosure if the foreclosure has been completed within the last 36 months.

(iv) An outstanding IRS tax lien.

(v) Other outstanding tax liens with no satisfactory arrangements for payments.

(vi) A court-created or affirmed obligation (judgment), caused by non-payment, that is currently outstanding or has been outstanding within the last 12 months, not including hospital or State motor vehicle liens described under § 1944.17.

(vii) Two or more rent payments paid 30 days or more past due, that have occurred within the last 2 years. Notwithstanding the previous sentence, if there have been no other credit problems in the applicant's last 2 years general credit history, only the past rental year will be considered. Instances of more than two late payments may be waived in the event that the RHCDS loan will result in a significant reduction in shelter costs, which will contribute to improved debt payment capability.

(viii) Collection accounts outstanding with no satisfactory, reasonable arrangements for repayment, or collection accounts which have been outstanding within the last 12 months which were paid in full within 6 months of an eligibility determination for RHCDS assistance, where there is no record of regular payments being

maintained on the account prior to receipt of the final payment.

(ix) Non-Agency debts written off within the last 36 months.

(x) Agency debts (including debts to predecessors of the Agency) which were debt settled pursuant to subpart B of part 1956, or by release from personal liability under subpart A of part 1955 or subpart C of part 1965, or debt settlement is being considered except where the conditions of paragraph (g) of this section can be met.

(2) The following will not indicate an unacceptable credit history:

(i) "No history" of credit transactions by the applicant.

(ii) A bankruptcy in which the debts were discharged (Chapter 7) more than 36 months prior to the date of the application or where an applicant successfully completed a bankruptcy debt restructuring plan or Chapter 13 plan, and has demonstrated a willingness to meet obligations when due for the past 12 months prior to the date of application.

(iii) A judgment satisfied more than 12 months before the date of application, or foreclosure with no monetary loss which was completed more than 12 months before the date of application.

(3) When an applicant has an unacceptable credit history, an exception may be considered by the loan approval official (except for Federal judgments described in paragraph (f)(1)(i) of this section) when the applicant provides documentation that:

(i) The circumstances were of a temporary nature, were beyond the applicant's control, and have been removed. Examples: loss of job; delay or reduction in benefits, or other loss of income; increased expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(4) Applicants will be advised of adverse credit which is discovered as a result of an on-line profile credit report at the time of application and will be provided the telephone number and address of the credit repository so that the applicant may contact the repository directly to correct the negative or incorrect information or discuss the circumstances of the credit problem with the RHCDS staff. Applicants will not be rejected on the basis of information contained in an on-line credit report; however, once a full written credit report is received by

RHCDS, it will be the responsibility of the applicant to work directly with the credit repository to correct any erroneous credit bureau records. The credit history cannot be determined satisfactory until:

(i) The credit repository issues a corrected report, showing that the error has been removed, or

(ii) The credit repository has not issued a corrected report within 30 days of the applicant's submission of disputed credit information but the applicant submits conclusive proof, acceptable to RHCDS, that the report is in error, such as creditor correspondence, court documents, etc.

(g) Meet the following conditions if the applicant had any previous RHCDS debt settled pursuant to subpart B of part 1956, or by release from personal liability under subpart A of part 1955 or subpart C of part 1965, or debt settlement is being considered:

(1) RHCDS must determine that failure to pay the debt was the result of circumstances beyond the applicant's control, or the conditions which necessitated the debt settlement or release, other than weather hazards, disasters, or price fluctuations, have been or will be removed by making the loan, and

(2) Before causing the applicant to incur any expense in connection with the loan, with the exception of the cost of a credit report, RHCDS must determine the applicant's eligibility and notify the applicant of same.

(h) Have the ability to carry out the required obligations of the loan. If the applicant has demonstrated inability to do so by recent failure to maintain a former residence in a habitable and responsible manner, or by unauthorized conversion or alteration of the structure, or by creating a public nuisance in or around a former residence, RHCDS must determine that the reasons contributing to such inability have been removed and are not likely to recur.

(i) Provide accurate and truthful application and financial information to RHCDS at the time of application. Applicants who have failed to fully disclose financial and application information will be denied program assistance.

§ 1944.10 Rural area designation.

(a) For the purposes of this subpart, a rural area is:

(1) Open country which is not part of or associated with an urban area.

(2) Any town, village, city, or place, including the immediately adjacent densely settled area, which is not part of or associated with an urban area and which:

(i) Has a population not in excess of 10,000 if it is rural in character, or

(ii) Has a population in excess of 10,000 but not in excess of 20,000, and
(A) Is not contained within an MSA, and

(B) Has a serious lack of mortgage credit for low- and moderate-income households as determined by the Secretary of Agriculture and the Secretary of HUD.

(3) An area classified as a rural area prior to October 1, 1990, (even if within an MSA), with a population exceeding 10,000, but not in excess of 25,000, which is rural in character, and has a serious lack of mortgage credit for low- and moderate-income families. This is effective through receipt of census data for the year 2000.

(b) A determination that open country, or any town, village, city, or place is not part of or associated with an urban area must include a finding that any densely populated section of the area in question is separated from the densely populated section of any adjacent urban area by open spaces. Open spaces include undeveloped, agricultural, or sparsely settled areas. Other spaces such as physical barriers (e.g., rivers, canals), public parks, commercial and industrial developments, small areas reserved for recreational purposes, recognized open spaces for which development is planned, and similar nonresidential areas, are not considered open spaces for the purpose of this program. RHCDS files must contain documentation that local planning boards, where available, were contacted at the time of each review to verify that areas considered as open spaces are not scheduled for development in the next 5 years.

(c) Two or more towns, villages, cities, and places may have contiguous boundaries, and each be considered separately if they are not otherwise associated with each other, and their densely populated areas are not contiguous, as determined after consideration of paragraphs (a) and (b) of this section.

(d) Population count in any area will be taken from the decennial U.S. Census of Population, national population updates published by the Bureau of the Census, any special population census conducted by the Bureau of the Census, and the following:

(1) Significant new development on the periphery of ineligible areas which requires a change in boundaries.

(2) Redesignation of corporate limits by local authorities which affects the eligibility status of an area.

(e) In determining population count for area eligibility, consideration must

be given to developed areas in counties or states which are contiguous to, and, therefore, a part of developed areas in other counties or states. This determination must be made in agreement between the State Directors concerned.

(f) In order to ensure that the RH program is limited to eligible areas, RHCDS will periodically review areas under their jurisdiction. If the review shows that an area is not rural, RHCDS will limit the RH program in that area after the date of the decision, to the loan purposes prescribed in paragraph (i) of this section.

(g) [Reserved]

(h) [Reserved]

(i) If an area designation is changed from rural to nonrural, loans may be made only in the following instances:

(1) Applications received by RHCDS prior to the change of designation may be processed.

(2) New conditional commitments may be issued and existing conditional commitments will be honored only in conjunction with the approval of RH loan applications which were received prior to the date the area was designated nonrural.

(3) Inventory property sales and transfers by assumption may be processed in such areas as authorized by § 1955.103 or § 1965.126, respectively.

(4) Subsequent loans may be made on property in an area where the designation was changed from rural to nonrural after the initial loan was made:

(i) To make necessary repairs.

(ii) To pay equity in connection with an assumption and transfer of an RH loan.

§ 1944.11 Site requirements.

(a) *Location.* The property on which the loan is made must be located in a designated rural area as defined in § 1944.10, or in an area where the designation has been changed as provided in § 1944.10(i) and must also meet the requirements of §§ 1944.12 and 1944.13. A nonfarm tract to be purchased or improved with loan funds must not include farm service buildings; however, a small outbuilding such as a storage shed may be included.

(b) *Access.* The property must be contiguous to and have direct access from a street, road, or driveway that meets the applicable requirements of § 1924.115(b).

(c) *Minimum adequate site.* The site must be of a size that it cannot be subdivided into two or more adequate sites under existing zoning ordinance requirements for the area. A site on which a loan is to be made must have an adequate water and/or wastewater

disposal system, other related facilities, and a yard, or those items must be provided with loan funds.

(1) The water and/or wastewater disposal system whether individual, central or privately owned and operated must meet the applicable water and wastewater disposal system requirements of subpart C of part 1924 as well as the design requirements of the state Department of Health or comparable reviewing and regulatory agency.

(2) Written verification must be obtained from the regulatory agency that the wastewater disposal systems comply with the Safe Water Drinking Act and the Clean Water Act, respectively. There must be assurance of continuous service at reasonable rates for central water and wastewater disposal systems. A system owned or operated by a private party must have a legally irrevocable agreement which allows interested third parties to enforce the obligation of the operator to provide satisfactory service at reasonable rates.

§ 1944.12 Environmental requirements.

All applications shall receive the appropriate level of environmental review in accordance with subpart G of part 1940.

§ 1944.13 National flood insurance.

Flood insurance in accordance with 7 CFR part 1806, subpart B must be obtained and maintained for the life of the loan for all property located in a special flood hazard area as determined by the Federal Emergency Management Agency (FEMA). If flood insurance is not available in a special flood hazard area, the property is not eligible for federal financial assistance.

§ 1944.14 [Reserved]

§ 1944.15 Ownership requirements.

(a) After the loan is closed, the borrower must have an interest in the property to be purchased, improved, or refinanced, which qualifies as one of the following:

(1) Full marketable title with a deed vesting a fee interest in the property to the borrower. (The buyer and the seller will convert the purchaser's interest under a recorded land purchase contract to a deed/mortgage situation with full marketable title prior to loan closing.)

(2) An undivided interest if the co-owners meet the security requirements imposed by § 1944.18(b)(8).

(3) A life estate interest with rights of present possession, control, and beneficial use of the property if the remaindermen meet the security requirements imposed by § 1944.18(b)(9).

(4) Leasehold interest, including loans made for the purchase of a dwelling located on land owned by a community land trust as described in § 1944.42, if all of the following conditions are met:

(i) The applicant is unable to obtain fee title to the property and the rent charged for the lease does not exceed the rate being paid for similar leases.

(ii) The lessor owns the fee simple title. This provision does not apply to American Indians with leasehold interests on tribal allotted or trust land.

(iii) Neither the leasehold nor the fee simple title is subject to a prior lien unless RHCDS authorizes acceptance of the prior lien prior to approval of the loan. The amount of the RH loan plus any prior liens shall not exceed the market value of the leasehold.

(iv) The lease is in writing and contains the following provisions:

(A) The lessor's consent to the RH mortgage.

(B) Reasonable security of tenure. The borrower's interest must not be subject to summary forfeiture or cancellation.

(C) The right of RHCDS to foreclose the RH mortgage and sell without restrictions that would adversely affect the market value of the security.

(D) The right of RHCDS to bid at foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(E) The right of RHCDS, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell for cash or credit. In case of an inventory property sale of the leasehold, the right of RHCDS to take a mortgage with rights similar to those under the original RH mortgage.

(F) The right of the borrower, in the event of default or inability to continue with the lease and the RH loan, to transfer the leasehold, subject to the RH mortgage, to an eligible transferee with assumption of the RH debt.

(G) Advance written notice of at least 90 days to RHCDS of the lessor's intention to cancel or terminate the lease.

(H) Negotiated provisions as to the liability of RHCDS for unpaid rentals or other charges accrued at the time RHCDS acquires possession of the property or title to the leasehold, and those which become due during RHCDS's possession or ownership, pending further servicing or liquidation.

(v) An unexpired term which is at least 150 percent of the term of the RHCDS loan, unless the RHCDS loan is guaranteed by a public authority, Indian tribe, or Indian Housing Authority, in

which case the unexpired term of the lease must be at least 2 years longer than the repayment period of the loan; *Provided that:* in no event may the unexpired term of the lease be less than 15 years.

(5) Possessory rights on an American Indian reservation or State-owned land if the security requirements imposed by § 1944.18 are met.

(6) The interest of an American Indian in land held in severalty under trust patents or deeds containing restrictions against alienation if the security requirements imposed by § 1944.18(b)(3) are met.

(b) If an applicant's title to any part of the property does not qualify as an ownership interest under paragraph (a) of this section, an RH loan may nevertheless be made, if:

(1) The defect cannot be cured at a reasonable cost, and

(2) No improvements to be constructed or repaired with loan funds will be located on the parcel to which title is defective, and

(3) No security value will be accorded to the parcel to which title is defective.

§ 1944.16 Dwelling requirements.

Dwellings financed must provide modest, decent, safe, and sanitary housing. Costs of dwellings financed cannot exceed the maximum dollar limitation established under section 203(b) of the National Housing Act (12 U.S.C. 1709) (available from any HUD office) for the area in which the property is located unless authorized by RHCDS under § 1944.17(g). Loans shall not be approved for dwellings containing in-ground swimming pools or structures designed for income-producing facilities or purposes.

(a) *New dwellings.* Construction must meet the requirements contained in subpart A of part 1924 including the thermal performance standards for new construction outlined in exhibit D of subpart A of part 1924.

(b) *Existing dwellings.* Consideration should be given to financing existing dwellings in areas with a good supply of competitively priced, suitable housing. Homes financed should be affordable to the applicant, including operating and maintenance costs.

(1) Loans will not be made on an existing manufactured home unless it is already financed by RHCDS or is being sold from RHCDS inventory.

(2) Existing homes, including those already financed with an existing section 502 direct loan, must be inspected by RHCDS or by a disinterested third party inspector satisfactory to RHCDS who will determine and certify to RHCDS and the

applicant that the dwelling meets the criteria outlined in paragraphs (b)(2)(i), (ii), and (iii) of this section. The sales agreement must identify the party (i.e., purchaser or seller) who has accepted responsibility for obtaining and paying for these inspections and certifications. Inspections are not required on public water and wastewater disposal systems. RHCDS inventory property will be inspected and repaired in accordance with subpart B of part 1955. The inspector will:

(i) Determine and certify to RHCDS and the applicant that the dwelling is structurally sound, functionally adequate, in good repair, or will be placed in good repair with loan funds, and meets the "General" requirements in Guide 2 of subpart A of part 1924 (available in any RECD field office).

(ii) Certify to RHCDS and the applicant that the dwelling meets thermal performance standards for existing dwellings required in exhibit D of subpart A of part 1924.

(iii) Certify to RHCDS and the applicant that the dwelling has adequate electrical, heating, plumbing, water, and wastewater disposal systems, and is free of termites and other wood damaging pests and organisms.

(c) *Repairs.* Any dwelling repaired with RH funds must be structurally sound, functionally adequate, and be placed in good repair with loan funds. If the loan is not more than \$7,500 and is scheduled for repayment in not more than 15 years from the date of the note, the dwelling, after repair, may lack some equipment or features such as a complete bath, kitchen cabinets, closets, or completed finished interior in some rooms. Such dwellings must meet the housing needs of the applicant and provide decent, safe, and sanitary living conditions when the improvements financed with the loan are completed. Repairs required as a condition of loan approval will be performed in accordance with subpart A of part 1924. The applicant in cooperation with the seller will establish and provide documentation regarding who is responsible for the required repairs and when the repairs will be completed for RHCDS inspection. Repairs on manufactured homes are limited to those financed by a subsequent loan for existing homes currently financed with a section 502 RH loan, inventory property sales, and transfers.

(d) *Improvements.* Improvements financed with loan funds must be on land which, after loan closing, is part of a tract owned by the borrower in accordance with § 1944.15(a), or on an easement appurtenant to such a tract.

(e) *Manufactured homes.* Exhibit F (available in any RECD field office) contains supplemental information concerning construction requirements for manufactured homes.

§ 1944.17 Maximum loan amounts.

The amount of the loan may not exceed the maximum dollar limitation of section 203(b) of the National Housing Act (12 U.S.C. 1709) (available from any HUD office) unless authorized by RHCDS as an exception. Applicants are expected to reduce the need for loan funds by using available non-essential assets including cash on hand as outlined under § 1944.9.

(a) The amount will be the lesser of the cost of:

(1) The acquisition and any necessary development or

(2) The market value of the security, less the unpaid principal balance and past-due interest of any other liens against the security property, plus an appraisal fee, for the following types of dwellings:

(i) An existing dwelling, as described in § 1944.2, including one being financed by transfer or inventory property sale, except as provided in exhibit F (available in any RECD field office).

(ii) A new dwelling when any one of the following conditions exist:

(A) A conditional commitment was issued in accordance with § 1944.45.

(B) The RH loan will be closed prior to the start of construction, and construction conforms to the requirements contained in subpart A of part 1924.

(C) The required construction inspections were made by the Federal Housing Administration (FHA) or Veterans Administration (VA). If qualified under this paragraph, a complete set of plans and specifications must be submitted together with copies of construction phase inspection reports or certification by FHA or VA indicating the dwelling was built in accordance with approved plans and specifications. The builder will also furnish a certification of compliance with RHCDS thermal standards for new construction. (See exhibit D of subpart A of part 1924 available in any RECD office.)

(D) The manufactured home and site meet the requirements. (See exhibits F and J of subpart A of part 1924 available in any RECD office.)

(b) A loan will be limited to 90 percent of the market value of the security, plus an appraisal fee, for any dwelling that does not meet the requirements of paragraph (a) of this section, with the exception of manufactured housing units.

(c) Notwithstanding the provisions of paragraph (a) of this section, a loan on a dwelling which causes the total secured indebtedness to exceed the requirements of paragraph (a) of this section, may be made when the excess indebtedness is all or part of a lien held by a public body (except for a lien arising out of a judgment against the applicant in favor of the United States in a Federal Court other than the United States Tax Court), hospital, or welfare institution for advances made for medical bills, welfare payments, or provided:

(1) The applicant is unable to settle or compromise such lien sufficiently to avoid exceeding the market value;

(2) The lien securing the excess amount will at all times be inferior to the RHCDS mortgage securing the initial loan and any subsequent loan or advances determined by the RHCDS to be reasonably necessary to carry out the purpose of the initial loan or to protect the Government's financial interest;

(3) The existence of the excess lien will not jeopardize the security or servicing so as to preclude the making of a sound RH loan;

(4) The applicant has the ability to meet any payments on the excess debt as they become due or are likely to become due.

(d) Notwithstanding the provisions of paragraph (a) of this section, when a subsequent loan for closing costs only is made simultaneously with an inventory property sale (as provided in § 1955.117(f)) or a transfer, the total indebtedness may exceed the sale price or market value of the security property, whichever is less, by no more than 1 percent.

(e) Notwithstanding the provisions of paragraph (a) of this section, when RHCDS is refinancing the loan of an existing RHCDS borrower in accordance with § 1951.316, the debt may exceed the market value of the security property to the extent necessary to refinance the borrower's outstanding indebtedness plus closing costs required in connection with the refinancing.

(f) Notwithstanding the provisions of paragraph (a) of this section, when a subsequent loan is needed for repairs essential to protect the Government's security interest, the total RHCDS indebtedness may exceed the market value of the security by no more than the amount of the subsequent loan consisting of the cost of essential repairs and reasonable closing costs.

(g) RHCDS may grant exceptions to allow the amount of the loan to exceed the maximum dollar limitation of section 203(b) of the National Housing

Act (12 U.S.C. 1709) under the following conditions:

(1) RHCDS may increase the loan amount in selected areas when the existing mortgage limit is insufficient to provide adequate housing for applicants and modest housing costs in the area exceed maximum loan limits or where different maximum loan limits exist in adjacent areas of the same community, for example: One limit on one side of the street compared to a higher limit on the other side.

(2) RHCDS may increase the loan amount where necessary to accommodate the specific needs of the family such as a larger home to correct overcrowding situations for exceptionally large households and reasonable accommodation for a household member who is disabled. When the request is to allow reasonable accommodation for a household member who is disabled, the additional loan amount will not exceed the cost of the special features provided and the amount of the appraisal fee.

§ 1944.18 Security requirements.

(a) *Adequate security.* Except as provided below, to protect the interests of RHCDS, all loans must be adequately secured. Except as provided in § 1944.17(c) and paragraph (b) of this section, a loan is adequately secured only when all of the following requirements are met:

(1) RHCDS obtains at closing a mortgage on all ownership interests in the entire tract.

(2) No liens prior to the RHCDS mortgage exist at the time of closing, and no junior liens are likely to be taken immediately subsequent to or at the time of closing.

(3) The provisions of subpart B of part 1927 regarding title clearance and the use of legal services are complied with.

(4) The property improvements and proposed improvements are totally on the site and do not encroach on adjoining property. RHCDS may require a survey, at the buyer's or seller's expense.

(b) *Exceptions.* Exceptions to the usual security requirements will be made only as follows:

(1) *Note only.* A loan of \$2,500 or less, scheduled for repayment in not more than 10 years from the date of the note, that is not subject to recapture of subsidy in accordance with subpart I of part 1951, may be secured by the borrower's promissory note alone when RHCDS determines that:

(i) The applicant has a credit history which indicates an ability and willingness to pay debts when they are due;

(ii) The applicant will have sufficient income to readily meet all obligations; and

(iii) The applicant's equity in the real estate as improved, equals, or exceeds the amount of the proposed loan.

(2) *Mortgage insurance.* When the applicant is the holder of possessory rights on an American Indian reservation or State-owned land, adequate security is required. This may include mortgage insurance guaranteeing payment from a State agency or American Indian tribe. States will issue a State Supplement covering special security and title clearance requirements needed for loans of this type.

(3) *American Indian land.* American Indian land in trust or restricted status acquired with an RH loan will remain in trust or restricted status. These mortgages must be approved by the Secretary of the Interior. A State Supplement will be issued to prescribe the actions to be taken by RHCDS personnel to implement the making of loans under such conditions.

(4) *Best mortgage obtainable.* Loans of \$7,500 or less scheduled for repayment in not more than 15 years from the date of the note and subsequent loans made for minimal essential repairs necessary to preserve the Government's security must be secured by a mortgage, except as provided in paragraph (b)(1) of this section, but title clearance and the use of legal services in accordance with subpart B of part 1927 are not required unless the loan approval official determines that the procedures in subpart B of part 1927 are necessary to assure repayment or accomplish the objective of the loan. Evidence of ownership must be in accordance with § 1944.24(d)(2).

(5) *Leasehold.* When the applicant owns only a leasehold interest will treat the lessee's interest like any other type of ownership interest in determining whether a mortgage on the leasehold is required. The lease must meet the requirements of § 1944.15(a)(5)(iv) and (v). In any state in which applicants are likely to own a leasehold interest, the State Director will issue a state supplement outlining the technical requirements for making such loans.

(6) *Security by junior lien.* RHCDS may take a junior mortgage as security for an RH loan if the tract, which will secure the RHCDS mortgage, provides adequate security for the entire prior lien debt and the RH loan, and

(i) The prior mortgage does not contain provisions that may jeopardize the RHCDS security position or the applicant's ability to repay the loan, such as provisions for future advances,

forfeiture, cancellation, foreclosure without adequate notice to junior lienholders, attorney's fees exceeding those customary for the area in cases of foreclosure; or

(ii) Such provisions are satisfactorily limited, modified, or waived; and

(iii) The conditions set forth in subpart B of part 1927 are met.

(7) *Liens junior to RHCDS lien.* Liens junior to the RHCDS lien will be allowed at closing or immediately subsequent to closing only when:

(i) The junior lien will not interfere with the purpose or repayment of the RH loan, and

(ii) The total amount of the RH loan, the junior lien, and any prior liens will not exceed the market value of the security except as provided in § 1944.17(c), and

(iii) The conditions set forth in subpart B of part 1927 are met.

(8) *Undivided interest.* When the applicant owns an undivided interest in the property, the co-owners' interests need not be included in the mortgage in the following instances:

(i) When one or more of the co-owners are not legally competent (and there is no representative who can legally consent to the mortgage) or cannot be located, or the ownership rights are divided among such a large number of co-owners that it is not practical for all their interests to be mortgaged, the mortgaging of interests not exceeding 50 percent may be excluded from the security requirements upon prior approval by RHCDS. All legally competent co-owners using or occupying the property will be required to sign the mortgage. Co-owners will be required to sign the note when necessary for a sound loan or to obtain the required security. The loan may not exceed the value of the percentage of the market value of the property represented by the interests of the owners who sign the mortgage. In determining such value, consideration will be given to any adverse effect which might result from sale of the mortgaged interests separately from the nonmortgaged interests.

(ii) When the applicant owns only an undivided interest in a building site which will be a part of the farm, the interest of the applicant's co-owners may be excluded from the security requirements upon approval by RHCDS if:

(A) The market value of the jointly owned tract is at least equal to the debts against it (including the RHCDS loan), and

(B) The applicant's participation in the joint ownership of part of the farm

and its operations has been and is likely to continue to be successful.

(9) *Life estate.* When the applicant owns a life estate interest in the property, the remainder interests need not be included in the mortgage if one or more of the persons holding remainder interests are not legally competent (and there is no representative who can legally consent to the mortgage) or cannot be located, or if the remainder rights are divided among such a large number of people that it is not practicable to obtain the signatures of all the remainder interests. In the instance of numerous heirs, the mortgaging of remainder interests, not exceeding 50 percent of the total remainder interest may be excluded from the security requirements upon prior approval by RHCDS. In such cases, the loan may not exceed the value of the property interests owned by the persons executing the mortgage.

(10) *Farm dwelling.* When the applicant is the owner of a farm, a mortgage may be taken only on the dwelling and dwelling site provided the following conditions can be met:

(i) The tract to be mortgaged must not include farm service buildings, must be in a good residential location, be otherwise suitable as a residential type of nonfarm tract, provide adequate security for the loan, be contiguous to and have direct access to a public road, or

(ii) The tract to be mortgaged must contain at least enough land to clearly provide adequate security for the loan and to make the tract readily saleable in the area.

(11) *Land purchase contract.* When the ownership interest is by virtue of a land purchase contract (as described in § 1927.52), the ownership interest must be converted to a deed/mortgage interest prior to loan closing and meet the conditions of § 1944.22(b)(6) prior to loan closing.

(c) *Additional security.* When necessary to supplement the applicant's equity in the farm or nonfarm tract on which the dwelling is located, or to facilitate servicing of the loan, RHCDS may also require a mortgage on other real estate owned by the applicant.

(d) *Assignment of income from real estate to be mortgaged.* Income to be received by the applicant from royalties, leases, or other existing agreements under which the value of the real estate security will be depreciated will be assigned and disposed of in accordance with applicable portions of subpart C of part 1965, and the provisions for written consent of any prior lienholder. In small nonfarm tract cases, RHCDS may authorize withholding transmittal of

assignments to lessees for execution until production begins.

§§ 1944.19–1944.21 [Reserved]

§ 1944.22 Refinancing non-RHCDS debts.

(a) Loan funds may be used for refinancing non-RHCDS debts on a dwelling (except for manufactured homes) if the debt was incurred by the applicant prior to the date the application was filed and the following conditions can be met:

(1) The debt was incurred for purposes for which a section 502 RH loan could be made or is a protective advance by the mortgagee for items covered by the mortgage to be refinanced, including accrued interest, insurance premiums, real estate tax advances, or preliminary foreclosure costs.

(2) The debt must be a lien against the property which will be security for the RH loan. The promissory note and security instrument for the debt to be refinanced must represent rates and terms that were typical and customary for long-term residential financing in the area at the time the debt was incurred.

(3) A loan to refinance a qualified secured debt may also include short-term or unsecured debts, if necessary to establish a sound repayment ability, if such short-term or unsecured debts were incurred for authorized section 502 RH loan purposes and are not a significant portion of the loan.

(4) Payments on the debt are so seriously delinquent or, if not delinquent, it must be evident that the applicant will be unable to continue to maintain payments, for reasons beyond the control of the applicant, and the applicant is likely to lose the dwelling at an early date if the debt is not refinanced. Such delinquency must be due to loss of employment or household income, illness, other similar events, or unforeseen circumstances.

(5) A statement must be obtained from the creditor for each debt to be refinanced showing the purpose for which the debt was incurred, the date on which it was incurred, the final due date, interest rate, amount and frequency of installments, unpaid principal and accrued interest, and amount of delinquency, if any.

(6) Refinancing such debts will not jeopardize the required priority of the RHCDS security instrument.

(b) Loan funds may be used for refinancing non-RHCDS debts on a building site without a dwelling when the applicant is unable to pay the debt from personal resources and failure to authorize the use of RH funds to pay

such costs would prevent the applicant from acquiring decent, safe, and sanitary housing and the following conditions can be met:

(1) The site meets the conditions prescribed in § 1944.11(c).

(2) The debt was incurred prior to the date of application for the sole purpose of purchasing the site.

(3) The debt is a lien against the property which will be used as security for the RH loan. The promissory note and security instrument for the debt represent rates and terms that were typical and customary for short-term residential financing in the area at the time the debt was incurred.

(4) The refinancing loan will include adequate funds for constructing a modest dwelling on the site for the use of the applicant, which conforms with the requirements of § 1944.16(a).

(5) A statement must be obtained from the creditor for each debt to be refinanced showing the purpose for which the debt was incurred, the date on which it was incurred, the final date due, interest rate, amount and frequency of installments, unpaid principal and accrued interest, and amount of delinquency, if any.

(6) Refinancing such debts will not jeopardize the required priority of the RHCDS security instrument.

(c) If a loan of \$5,000 or more is necessary for repairs to correct major deficiencies and make the dwelling decent, safe, and sanitary, an existing lien which meets the requirements of paragraphs (a)(1), (2), (3), and (5) of this section may be refinanced regardless of delinquency, if necessary for the applicant to have repayment ability for the existing loan and the requested loan for repairs.

(d) Debts or costs incurred after the date of application may be refinanced if the costs were incurred for:

(1) Fees for legal, and other technical services, or

(2) Materials, construction, or site acquisition.

(e) RHCDS may authorize the use of RH funds to pay costs provided for in paragraphs (d) (1) and (2) of this section only when RHCDS retains the same lien priority as the debt to be refinanced and all of the following conditions exist:

(1) The costs were incurred after the applicant filed a written application for a loan but before the loan was closed. In the event of a subsequent loan to complete improvements previously planned, the costs must have been incurred after the initial loan was closed.

(2) The applicant is unable to pay such costs from personal resources or to obtain credit from other sources, and

failure to authorize the use of RH funds to pay such costs would jeopardize the applicant's capability of repaying the loan.

(3) The construction or repair work conforms to that shown on the building plans and specifications or the RHCDS Development Plan, when applicable, and the costs were incurred for authorized section 502 RH loan purposes.

§ 1944.23 [Reserved]

§ 1944.24 Technical services.

(a) *Planning and performing construction work.* Any construction work will be planned and completed in accordance with subpart A of part 1924 or a lesser standard as may be prescribed by RHCDS for demonstration type loans.

(b) *Planning and performing site development work.* Any site development will be planned and completed in accordance with subpart C of part 1924, except as provided for manufactured homes in exhibit J of subpart A of part 1924.

(c) *Appraisals.* Appraisals will be required as follows:

(1) When a mortgage will be taken to secure a total indebtedness of more than \$15,000, an appraisal of the security property will be made to ensure that the security requirements of the Agency are satisfied. The loan can exceed the market value of the security by the amount of an appraisal fee. A fee will be charged for each application for a section 502 RH loan when an appraisal is needed for initial and subsequent loans and assumptions. Fees will be waived for appraisals done for subsequent loans to existing borrowers for minimal essential repairs that are necessary to protect the Government's security property. The fee will be collected at loan closing by the closing agent.

(2) When the total indebtedness will be \$15,000 or less, an appraisal of the real estate or leasehold interest is not required unless RHCDS is uncertain as to the adequacy of the security.

(3) Real estate mortgaged as additional security will be appraised when it represents a substantial portion of the security for the loan or when requested by the loan approving official.

(d) *Title clearance and legal services.*

(1) When real estate will be taken as security (including a mortgage on a leasehold), except on a best mortgage obtainable basis, title clearance and legal services for making and closing the loan will be provided in accordance with subpart B of part 1927. Title clearance and legal services will not be requested until the loan is approved.

(2) When real estate will not be mortgaged or when the best real estate mortgage obtainable is taken as security without title clearance or use of legal services, the applicant will be required to submit evidence of ownership of the farm or nonfarm tract. When RHCDS is uncertain as to whether or not the applicant is a qualified owner, such action will be taken as RHCDS considers necessary, such as requiring the applicant to furnish additional information. No loan will be made if RHCDS has actual knowledge that the applicant does not have valid title to the property.

§ 1944.25 Rates and terms.

(a) *Interest rate.* The interest rate charged by RHCDS will be the lower of the rates in effect at the time of loan approval or loan closing. Interest rates are specified in exhibit B of FmHA Instruction 440.1 (available in any RECD field office).

(b) *Amortization.* Loans will be scheduled for repayment over a period that will not exceed the expected useful life of the property as a dwelling. Only one of the amortization periods listed in this paragraph may be used for a borrower. Each loan will be scheduled for repayment from the date of the promissory note, for a period not to exceed one of the following as applicable:

(1) Thirty-three years for initial and subsequent loans.

(2) Thirty-eight years for initial loans (subsequent loans may be made for a period not to exceed the remaining years of the initial loan) when the following conditions are met:

(i) Adjusted annual income does not exceed 60 percent of the median income for the area as reflected in exhibit C, (available in any RECD field office), and

(ii) The longer term is necessary to show repayment ability, with or without mortgage payment deferral.

(3) Thirty years for manufactured homes.

(4) Ten years for loans not exceeding \$2,500 which are not secured by a real estate mortgage.

(c) *Payment assistance.* Applicants may be eligible for a non-cash credit which may reduce the applicant's scheduled payment to a level equivalent to amortizing the loan to as low as 1 percent. The policies for granting and servicing payment assistance are set forth in § 1944.34 and subpart G of part 1951, respectively.

§ 1944.26 Fund allocation.

State Directors will maintain an adequate reserve to fund hardship applications, servicing type loans, the

State's portion of funds for Mutual Self-Help Housing loans and the RHCDS portion of participation loans. Reserve funds will be used for:

(a) *Hardship applications.*

(1) Hardship as determined by the State Director on a case-by-case basis, including applications from persons living in deficient housing as defined in § 1944.2, for more than 6 months.

(2) Refinancing non-RHCDS debts in accordance with § 1944.22(a) and RHCDS debts in accordance with § 1951.316.

(b) *Servicing type loans.*

(1) Financing for the purchase of Government-owned inventory properties;

(2) Subsequent loans for essential improvements or repairs;

(3) Subsequent loans in connection with inventory property sales or transfers with assumption of the RHCDS indebtedness.

(c) *Mutual Self-Help Housing loans.*

Homes must be located in an RHCDS approved self-help project.

(d) *Participation loans.* Loans made by RHCDS in conjunction with another lender for the purchase of a dwelling.

§ 1944.27 Application processing.

(a) *Accepting applications.* RHCDS will accept completed applications in accordance with subpart A of part 1910.

(1) *Complete applications.* A completed application will consist of Form FmHA 410-4, "Application for Rural Housing Assistance (Nonfarm Tract) Uniform Residential Loan Application," (URLA) and an RHCDS form for verifying employment, for each employer, all of which are available in any RECD field office.

(2) *Incomplete applications.* If the application is not dated and signed or sections are not properly completed, it may be returned for completion.

(3) *Packaged applications.* Builders, brokers, contractors, the applicant, and others, including not-for-profit organizations, may package loan applications in accordance with exhibit A (available in any RECD field office). Builders and sellers holding conditional commitments may also assist applicants in applying for an RH loan.

(b) *Processing steps.*

(1) [Reserved]

(2) Complete applications will be processed in the order received, in accordance with subpart A of part 1910 and subpart E of part 1901, except that preference will be given to applications for Mutual Self-Help Housing loans, loan servicing purposes, purchase of an inventory property, assumption of an existing RHCDS loan, and to applicants who qualify as a hardship, as outlined

in § 1944.26. Veterans preference, as outlined in subpart A of part 1910, will apply.

(3) [Reserved]

(4) If HUD's Credit Alert Interactive Voice Response System (CAIVRS) identifies a delinquent Federal debt, RHCDS will immediately suspend processing of the application and the applicant will be notified in writing of the suspension and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides RHCDS with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued. After 30 days from the suspension notification, if CAIVRS indicates the existence of an unsatisfied judgment in the favor of the United States, or if the applicant remains delinquent on a Federal debt and is unable to resolve the delinquency, the applicant will be rejected. The RHCDS Administrator may grant an exception to this requirement if it is in the best interest of the Government to do so.

(5) If an on-line profile credit report, where available, reveals adverse credit information, the applicant will be given the opportunity to correct the adverse information. Applications will not be rejected or withdrawal encouraged based on information provided in the on-line credit report. This service is provided for the sole purpose of providing assistance to the applicant by identifying any credit problems at the beginning of the loan process and to clarify the difference between eligibility for program assistance and loan approval.

(c) *Determination of eligibility and notification to applicant.* Eligibility determination will be made regardless of ranking or funding levels. If an applicant is determined ineligible because the applicant's income is too high, RHCDS may advise the applicant that applicant may qualify for the purchase of a Government inventory property or the assumption of an existing RHCDS borrower's loan on NP terms and may be counseled regarding the RH guaranteed loan program. If an applicant is given an adverse decision, the applicant will be given appeal rights to the Departmental National Appeals Division under Pub. L. 103-354.

(1) *Delayed processing.* When available loan funds are not adequate to complete the processing of all applications as they are received, or a large backlog of applications exists which prohibits immediate processing of the application, a preliminary

determination of eligibility may be made based on the information provided by the applicant.

(i) If available funds are not adequate, applicants who appear eligible at the time of application will be advised in writing within 30 days of filing of the application of their *preliminary* eligibility determination and the estimated waiting period. They should be further advised that a final determination of eligibility will be made when loan funds are available for the processing of their application.

(ii) Where there are more than 50 unprocessed applications on hand, RHCDS will inform each applicant, at least every 6 months, of the current funding status and provide an estimate of when the loan is anticipated to be processed. At that time, the applicant should be advised to contact RHCDS if they are still interested in funding, and that the application will be withdrawn in 30 days if there is no response.

(2) *Immediate processing.* Where there is no backlog, available loan funds are adequate, and the application can be processed in a timely manner, RHCDS shall make a preliminary determination of eligibility based on information submitted by the applicant and will request additional information as necessary to make a final determination of eligibility.

(i) On-line profile credit reports may be used to allow a means for the loan approval official to determine if there is adverse credit information on the applicant's record prior to payment of the credit report fee.

(ii) The age of the applicant will not be considered except as provided in § 1944.9.

(iii) Repayment ability will be evaluated in accordance with § 1944.8.

(iv) RHCDS will apply the objective standards of credit evaluation, outlined in § 1944.9, for each applicant. All applications will be considered under the same standards.

(v) [Reserved]

(d) *Selection for processing.*

(1) Completed applications for a reserve funding category, as set out in § 1944.26, as well as applications for the assumption of an existing RHCDS loan, will be processed upon receipt.

(2) All other completed applications will be selected for processing in the order received, as funding becomes available. Selected applicants have 30 days to provide information required under paragraph (e) of this section (including any fees for credit reports) for a final determination of eligibility. Selected applicants who do not respond to this 30-day notice will be withdrawn. Applications selected will be funded in

the order that information is received, until all available loan funds are exhausted. Selected applicants who respond affirmatively to the first notice, but who are not funded within the quarter will be held over and counted as a selected applicant for the next quarterly allotment and will be so notified in writing. If all requested information is not received within 45 days after the second written selection notification, the application will be withdrawn.

(e) *Verification of information.*

(1) *Income verification.* All applicants will be required to submit a complete, legible copy of their most recently filed Federal income tax return (showing the applicant's signature) unless exempted from filing a return. In cases where a tax preparer has provided the applicant with copies of the return which was filed, one of the copies with the original signature of the tax preparer should be submitted. In Puerto Rico, applicants must submit a signed photocopy of the most recently filed State income tax returns. Applicants who do not have photocopies of their filed Federal returns should contact their Regional Internal Revenue Service. In addition to copies of tax returns, other income verification may be required.

(i) Applicants will complete such forms as required by RHCDS. A form will be used to verify employment income of each applicant except for self-employment.

(ii) RHCDS may confirm reported wages and earnings, including "non-taxable income" with the Department of Labor or similar agency where this information is available.

(iii) Applicants deriving their income from a farming or business enterprise, must provide current documentation of income and expenses. This information must not be older than the previous fiscal year.

(iv) Applicants must provide a copy of the most recent award or benefit letter prepared and signed by the authorizing agency to verify Social Security, pension, and disability income. In addition, the Cost-of-Living (COLA) in Social Security Benefits and Supplemental Security Income Payments Notice, Social Security Benefit Statement, Forms SSA-1099 and SSA-1042, or Notice of Change in Benefits may be required for documentation of Social Security and Supplemental Security Income.

(v) The applicant must provide a copy of the divorce decree or other legal document indicating the amount of the payments to verify alimony and child support payments. When the applicant states that less than the amount awarded

is received, RHCDS may request documentation from the official entity through which payments are received, or other third parties capable of providing the verification when payment is not made through an official entity, indicating the dates and amounts of payments made to the applicant during the previous 12 months.

(vi) Income information that cannot be obtained by use of forms provided by RHCDS will be obtained in writing from knowledgeable third parties to the extent possible. When it is not feasible to verify income through third parties, RHCDS may accept an affidavit from the applicant; in the case of child support or alimony, the affidavit must state the effort made to collect the amount awarded, and the amounts and dates of payments received during the previous 12 months.

(2) *Verification of alien status.* Aliens are required to present documentation of their status. Exhibit B (available in any RECD field office) outlines the acceptable forms of documentation.

(3) *Verification of disability.* Form FmHA 1944-4, "Certification of Disability or Handicap," is used to verify disability in cases where State Review Boards or Social Security records are not available. When Form FmHA 1944-4 contains information which could affect the applicant's eligibility, the applicant may be required to furnish a physician's written opinion regarding the applicant's capacity to incur the loan obligation.

(f) *Applicant interview.* After verification of all information necessary for making a final determination of eligibility but prior to issuance of the Certificate of Eligibility, RHCDS will conduct a personal interview with the applicant. The applicant may be accompanied by an advisor but the applicant or court appointed guardian or conservator must be personally responsive to all questions or issues during the interview. During the interview, RHCDS and the applicant will:

(1) Verify information concerning persons who will occupy the dwelling and on whose income eligibility for the loan and payment assistance is based. Applicants who may be able to obtain other credit will be told they are expected to apply for same from a lender making loans for similar purposes. If requested, the applicant will have the lender indicate the amount, interest rate, and terms of housing credit the lender would be willing to extend to the applicant.

(2) Reach an understanding that failure of the applicants to fully disclose financial and application information or

material falsification or concealment of such information will result in a denial of assistance and possible penalties.

(g) *Issuance of "Certificate of Eligibility."* Once all information has been verified and eligibility has been determined, a "Certificate of Eligibility" will be issued to all applicants selected for further processing. The certificate will be valid for a period not to exceed 90 days. The certificate will not be issued to applicants who have submitted packaged applications that already contain information necessary to complete a real estate appraisal.

(1) *Appraisals.* After the Certificate of Eligibility is issued the applicant has 90 days to provide information needed to complete the real estate appraisal on the property to be financed.

(i) Information requested will include a copy of the option or sales agreement; a legal description of the property; a direction map; certified building plans and specifications or repair estimates as appropriate; copies of existing surveys, title information, and tax bills; and other information deemed necessary by the appraiser.

(ii) The applicant must advise RHCDS if they wish to have the cost of the real estate appraisal included in the loan funds.

(iii) Appraisals will generally be completed within 30 days of the date information requested is received.

(2) *Environmental review.* The Agency must complete the environmental review process pursuant to subpart G of part 1940 prior to loan approval or obligation, whichever occurs first.

(3) *Extensions or withdrawals.* At the end of 90 days, if the applicant has not submitted the information requested, the application will be deemed withdrawn unless an extension is approved based on evidence that the applicant is actively working on supplying the necessary information. A maximum of two 60-day extensions can be approved.

(h) *Appeals.* If the decision on the applicant's request for assistance is unfavorable, the applicant will be notified of the appropriate appeal rights under Pub. L. 103-354 to the National Appeals Division. The applicant will be notified that a new application may be filed when curative action is taken to remove the reasons for rejection.

(i) *Accountability.* Applicants should be made aware of the accountability requirements of persons paid to influence the making of an RHCDS housing loan or grant as set out in subpart S of part 1940.

§§ 1944.28–1944.30 [Reserved]

§ 1944.31 Loan approval.

(a) RHCDS employees are authorized to approve or disapprove loans, as delegated, in accordance with subpart A of part 1901.

(b) All loan approvals are subject to the availability of funds.

(c) [Reserved]

(d) [Reserved]

(e) If title evidence is required in accordance with subpart B of part 1927 or in accordance with any special requirements for the loan but is not included in the docket, the loan may be approved subject to the applicant furnishing the required title evidence. When the applicant furnishes required title evidence, RHCDS will proceed with processing the loan. In those cases in which the title evidence does not comply with the conditions specified, the docket will be reconsidered by the approval official.

§ 1944.32 [Reserved]

§ 1944.33 Loan closing.

(a) *Reverification of income.* If a loan made on program terms will be closed or the payment assistance agreement will be executed more than 90 days after the date of the last verification of employment, or if there is evidence to indicate the applicant's financial status has changed significantly, the applicant's income will be reverified in accordance with § 1944.27 and the amount of payment assistance will be determined on the basis of the applicant's new income, based on the schedules contained at § 1944.34(c). If the adjusted income is such that the applicant is no longer eligible for payment assistance, the loan may be closed if there is documented evidence to clearly indicate other credit is not available and the applicant has adequate repayment ability based on the revised income for the proposed loan. Payment assistance may be granted if the applicant's income was at or below the low-income level at the time of loan approval but payment assistance will not be granted if the adjusted income exceeds the moderate-income limit set

forth in exhibit C (available in any RECD field office).

(b) *Promissory note.* An RHCDS approved "Promissory Note" will be prepared and signed in accordance with subpart B of part 1927. Payments of principal and interest will be deferred during the period the dwelling is not suitable for occupancy as a residence because of construction or repairs. If the loan is closed before any funds are advanced by RHCDS or loan funds are distributed by multiple advance, accrued interest is added to principal and repaid in regular amortized installments (payment alternative I) after the deferment period. The monthly payment provision will be used for all applicants except those who are existing RHCDS borrowers with previous loans which were made on an annual payment basis. If the annual payment provision is used and installments are not to be deferred, the amount of the first installment will be determined by RHCDS after considering the immediate debt paying ability of the applicant. The amount of the first installment may not be less than an amount equal to interest on the loan from the date of loan closing to the next January 1.

(c) *Real estate mortgage.* An RHCDS approved real estate mortgage form will be used for loans to be secured by a real estate mortgage.

(d) *Collection of the first installment.* If the annual payment provision of the note is used and payments are not to be deferred, the first installment of a loan closed during December will be paid at the time of loan closing.

(e) *Homeowners or fire and extended coverage insurance.* Buildings on the property taken as security for the loan will be insured in accordance with subparts A and B of part 1806. The policy and a paid receipt for 1 full year's premium must be presented by the applicant at loan closing.

(i) *Effective date of loan closing.* A loan secured by a real estate mortgage is closed when the mortgage is filed for record and the expected lien is obtained. In other cases, a loan is closed when the applicant executes the note and any other required instruments.

§ 1944.34 Payment assistance.

(a) *General.* It is the policy of RHCDS to grant payment assistance on loans to qualified applicants to assist them in obtaining and retaining decent, safe, and sanitary dwellings and related facilities. This section pertains to the granting of payment assistance connected with loan making activities. All other provisions dealing with payment assistance are contained in subparts G and I of part 1951.

(b) *Approval authority.* Officials who are authorized to approve section 502 RH loans are also authorized to approve payment assistance.

(c) *Amount of payment assistance.* Payment assistance granted will be the difference between the installment due on the promissory note and the amount the greater of the payment amortized at the equivalent interest rate related to the applicant's income or the payment calculated based on the floor related to the applicant's income.

(1) The floor is a minimum percentage of adjusted family income which the borrower must pay for PITI as follows:

(i) Very low-income borrowers will pay a minimum of 22 percent;

(ii) Low-income borrowers with adjusted family income below 65 percent of median income will pay a minimum of 24 percent;

(iii) Low-income borrowers with incomes between 65 percent to 80 percent of median will pay a minimum of 26 percent.

(2) The equivalent interest rate is determined by a comparison of the borrower's adjusted annual income as determined in § 1944.6 to the median income for the area where the security property is located, based on income figures published by HUD as reflected in exhibit C (available in any RECD field office). The following chart is to be used for determining the equivalent interest rate paid by the applicant when eligible for payment assistance, for loan making and loan servicing for loans closed after the effective date of this subpart. In determining percentages, rounding should *not* be used.

PERCENTAGE OF MEDIAN INCOME AND EQUIVALENT RATE OF INTEREST

When the applicant's adjusted income is:		
Equal to or more than	But less than	Then the equivalent rate of interest is**
00 percent	50.01 percent of median income	1 percent.
50.01 percent	55 percent of median income	2 percent.
55 percent	60 percent of median income	3 percent.
60 percent	65 percent of median income	4 percent.
65 percent	70 percent of median income	5 percent.

PERCENTAGE OF MEDIAN INCOME AND EQUIVALENT RATE OF INTEREST—Continued

When the applicant's adjusted income is:		
Equal to or more than	But less than	Then the equivalent rate of interest is**
70 percent	75 percent of median income	6 percent.
75 percent	80.01 percent of median income	6.5 percent.
80.01 percent	90 percent of median income	7.5 percent.
90 percent	100 percent of median income	8.5 percent.
100 percent	110 percent of median income	9 percent.
110 percent	Or more than median income	9.5 percent.

** Or note rate, whichever is less; in no case will the effective interest rate be less than 1 percent except as provided in § 1944.35.

(3) Payments for existing borrowers receiving subsequent loans approved after the effective date of this publication or whose loans are being reamortized with a change in the term will be determined under payment assistance.

(4) Present RHCDS borrowers who are currently receiving payment assistance as of the effective date of this subpart, will continue to be reviewed under the system in effect prior to the effective date of this issuance. Any other exception to the use of these interest rates or minimum percentages of adjusted family income will be made by the RHCDS Administrator under paragraph (h) of this section. Median income is that reflected in exhibit C (available in any RECD field office).

(d) *Recapture.* Borrowers must agree to provisions for recapture of any payment assistance the borrower may receive during the life of the loan. See subpart I of part 1951.

(e) *Eligibility.* To be eligible for payment assistance, an applicant must qualify for a section 502 RH loan, must personally occupy the dwelling, and must meet the following additional requirements:

(1) *Initial loans including inventory property sales.* Payment assistance may be granted at loan closing if:

(i) The applicant's adjusted annual income, at the time of loan approval, did not exceed the applicable low-income limit contained in exhibit C (available in any RECD field office).

(ii) The term of the loan will not be less than 25 years.

(2) *Subsequent loans.* Payment assistance may be granted on subsequent loans which meet the terms of paragraph (e)(1) of this section. If payment assistance is presently being granted on the initial loan and the applicant's adjusted income does not exceed the moderate-income limit, it may also be granted on a subsequent loan, providing the term of the subsequent loan is 25 years or more.

(3) *Assumptions.* Payment assistance may be granted to an applicant assuming an RH loan on new rates and terms, provided the assuming parties qualify according to paragraph (e)(1) of this section. Payment assistance may only be granted on "same term" assumptions if the original loan was approved on or after August 1, 1968.

(f) *Processing payment assistance.* The adjusted payment for which an applicant qualifies after application of payment assistance will be stated in the most current payment assistance agreement. Payment assistance agreements will be for a 12-month period, with the following exceptions:

(1) *Self-employed applicants.* For a self-employed applicant, the initial payment assistance agreement will run from the effective date to 3 months after the end of the applicant's business fiscal year, but not more than a 12-month period. This will allow subsequent agreements to coincide with the applicant's business fiscal year with a 3-month over-lap to provide sufficient time for the applicant to supply verification of the previous year's income.

(2) *Unemployed applicants.* For an applicant receiving unemployment benefits, the agreement will be effective for the period during which the applicant will receive unemployment benefits, or, if the period is unknown, no longer than 6 months. The expiration date of the agreement will be established by RHCDS.

(3) *Annual payment applicants.* For an applicant currently paying an annual installment, who receives a subsequent loan, the initial payment assistance agreement including the subsequent loan will be in effect until the next January 1.

(g) *Applicant notice of right to appeal.* All applicants who request and are denied payment assistance may appeal in accordance with Pub. L. 103-354 to the National Appeals Division, USDA.

(h) *Exceptions.* RHCDS may make exceptions to proposed transactions in

which the conditions prescribed in the foregoing paragraphs of this section cannot be met. This paragraph is primarily intended to be used for those cases in which the granting of payment assistance is necessary for the applicant to retain or obtain a dwelling for the applicant's own use, and there are no other means to do so. RHCDS may authorize a further reduction of the equivalent rate of interest in high cost areas as determined by HUD when there is evidence to indicate that there is no adequate, lower-cost housing available to the applicant which would reduce the applicant's need for additional subsidy; the housing to be financed is comparable in cost to housing financed for very low-income applicants in the area; and the applicant will be unable to acquire adequate housing unless additional subsidy is authorized. This exception is limited to an additional one percentage point reduction in the equivalent rate of interest but in no event may the equivalent rate of interest be less than 1 percent except as authorized in § 1944.35. A high cost area is an area which has been designated as high cost by HUD under the maximum dollar limitation of section 203(b) of the National Housing Act (12 U.S.C. 1709) (available from any HUD office).

§ 1944.35 Deferred mortgage payments.

(a) *General.* It is the policy of RHCDS to defer up to 25 percent of the installment amount at the 1 percent equivalent interest rate to qualified RHCDS applicants, to assist them in obtaining decent, safe, and sanitary dwellings and related facilities. Only principal and interest can be deferred.

(b) *Approval authority.* Officials authorized to approve section 502 RH loans are also authorized to approve the deferral.

(c) *Eligibility.* In order to qualify for deferred mortgage payments under this section, the following conditions must exist:

(1) The applicant's adjusted family income, at the time of initial loan approval, must not exceed the applicable very low-income limits in exhibit C (available in any RECD field office);

(2) The term of the loan is 38 years, or 30 years for manufactured housing units;

(3) The applicant qualifies for the maximum payment assistance (equivalent to an interest rate of no more than 1 percent) allowable under § 1944.34;

(4) The applicant's PITI, calculated at 1 percent equivalent interest rate for 38 years, exceeds 29 percent of the adjusted annual income; and

(5) The initial deferral assistance under this section is granted in connection with the initial loan closing; or deferral assistance is being renewed, without interruption, during the 15-year period from the effective date of the initial agreement.

(d) *Amount and terms of deferral.*

(1) The deferral amount is determined as follows:

(i) The applicant will be at the maximum payment assistance allowable under § 1944.34.

(ii) RHCDS will calculate the applicant's PITI based on the equivalent 1 percent interest rate for 38 years (30 years for manufactured housing units), and the annual real estate taxes and insurance due for the current year (or escrow amounts for real estate taxes and insurance premiums due during the current year, where applicable).

(A) If the amount of real estate taxes due for the initial agreement is less than a typical year's taxes (such as in new construction), then "eligibility" for deferral assistance will be determined based on the amount of taxes due in a typical year but the "amount" of deferral for which the applicant qualifies will always be based upon *actual* taxes due for the current year. This may result in the applicant being eligible for assistance but not having anything deferred during the first year. Although there may not be any portion of the payment deferred in the first year, the 15-year period for assistance will still be calculated from the date of loan closing.

(B) For renewals of deferral assistance, only the regularly scheduled PITI due for the current year calculated at 1 percent equivalent interest rate for 38 years, will be considered when calculating the deferral amount. Protective advances, additional payment agreements, and other payment agreements will not be considered in this calculation.

(iii) If the reduced PITI calculated at 1 percent for 38 years (30 years for manufactured housing units) still exceeds 29 percent of gross annual income, the deferred mortgage payment will be 75 percent of the monthly installment amount at the 1 percent equivalent interest rate amortized over 38 years.

(2) Deferred mortgage payments will be effective for a 12-month period. The effective date will coincide with the anniversary date of the payment assistance agreement. Deferred mortgage assistance may be continued, without interruption, for up to 15 years after the date of loan closing. A borrower who no longer qualifies for deferred mortgage assistance because of an increase in income, will not receive deferred mortgage assistance again, even if income decreases at a later date.

(e) *Review process.* The borrower's income, taxes, and insurance will be reviewed annually to determine eligibility for continued deferred mortgage assistance and payment assistance. The review for both types of assistance shall be performed simultaneously. It is not the responsibility of RHCDS to monitor changes in the borrower's income. If a borrower whose payments are being deferred experiences a change in income that qualifies under subpart G of part 1951 for a change in payment assistance, the borrower should request a review for deferred mortgage payment assistance. Adjustments to deferred mortgage assistance and payment assistance will be effective as of the date of income change.

(1) *Annual review.* The annual review will be scheduled to take place during the payment assistance review period as defined in subpart G of part 1951 (available in any RECD field office).

(2) *Responsibilities of the applicant.* Before a deferral will be approved, the applicant must:

(i) Provide RHCDS with income verification, as described in § 1944.27;

(ii) Provide RHCDS with information needed to complete the deferral section of the Payment Assistance/Deferred Mortgage Assistance Agreement;

(iii) Review and sign the appropriate RHCDS forms and documents, and

(iv) Participate in an interview to review the deferral information.

(f) *Cancellation of deferral.* Deferral under this section may be canceled for any of the conditions for which payment assistance may be canceled in § 1951.313. Once a borrower goes off deferred mortgage payments, the borrower is not eligible to receive this assistance again. Deferred payments may only be continued for up to 15

years after the effective date of the loan closing.

(g) *Recapture.* The amount deferred is subject to repayment and recapture in accordance with subpart I of part 1951.

(h) *Appeal/review rights.* Because the deferred mortgage regulations are based on the objective application of formulas, deferred mortgage payment calculations are not appealable; however, a review may be requested in accordance with subpart B of part 1900. Applicants who request and are denied deferred mortgage payments, or whose deferral amount has been reduced, canceled, or not renewed based on contested income calculations, may appeal that decision in accordance with Pub. L. 103-354 to the National Appeals Division, U.S.D.A.

§ 1944.36 [Reserved]

§ 1944.37 Subsequent section 502 RH loans.

Subsequent section 502 RH loans may be made to existing borrowers for the same purposes and under the same conditions and limitations as an initial loan, except as provided in this section. A new credit report is required for all applicants for subsequent loans in accordance with § 1944.27.

(a) The subsequent loan will be processed in the same manner as an initial loan, except that a new appraisal report will be required in accordance with § 1944.24 only when real estate will be taken as security and at least one of the following conditions exists:

(1) The property was not appraised in connection with the initial loan;

(2) The latest appraisal report of the real estate is over 2 years old;

(3) The physical characteristics of the property have changed significantly;

(4) RHCDS is uncertain of the adequacy of the security; or

(5) The subsequent loan is in connection with a transfer of an existing loan subject to subsidy recapture in accordance with subpart I of part 1951.

(b) A subsequent RH loan may be made on a note-only basis, provided the amount of the subsequent loan plus the unpaid principal balance of any prior note-only RH loans do not exceed \$2,500. Applicants for such loans must meet the requirements of § 1944.18.

(c) [Reserved]

(d) The subsequent loan will bear interest at a rate determined in accordance with exhibit B of FmHA Instruction 440.1 (available in any RECD field office).

(e) A subsequent loan may be made to permit the remaining borrower, if eligible, to purchase the equity of a departing cosigner.

(f) When an area designation has been changed from rural to nonrural,

subsequent RH loans may be made only in accordance with the provisions of § 1944.10.

(g) The loan approval official may authorize reamortization of a prior RH loan at the time a subsequent loan is made in those cases in which it is determined that the borrower cannot reasonably be expected to meet installments due unless the account is reamortized. If the account is reamortized, the reamortization must be in accordance with subpart G of part 1951.

(h) Title clearance and appraisal fees for subsequent loans to existing RHCDS borrowers for minimal essential repairs to protect the Government's security will be handled in accordance with §§ 1944.18 and 1944.24.

§ 1944.38 Mutual Self-Help Housing loans.

Applicants may build their homes by participating in a Mutual Self-Help Housing project sponsored by an RHCDS self help housing grantee. See subpart I of part 1944 for the requirements for an organization to become a self-help housing grantee.

§ 1944.39 RH loans to RHCDS employees and loan closing officials.

RHCDS employees, and loan closing agents, or members of their families may obtain a section 502 RH loan subject to the provisions of this subpart:

(a) Written evidence indicating the applicant's inability to obtain the needed credit elsewhere will be included in the application.

(b) Applications will be processed and loans will be serviced according to subpart D of part 1900.

(c) Loans, inventory property sales, or assumption agreements will not be approved under this authority for any of the following purposes:

(1) Buying RHCDS inventory property;

(2) Buying RHCDS security property from a borrower; or

(3) Buying RHCDS security property at foreclosure sale.

§ 1944.40 [Reserved]

§ 1944.41 Housing demonstration programs.

RHCDS may authorize limited demonstration programs that may not be consistent with some of the provisions of this chapter. Those demonstration programs will be clearly identified as such.

§ 1944.42 Condominium and community land trust requirements.

(a) *Condominiums.* A loan may be made on an existing condominium unit when the project has been approved or

accepted by Housing and Urban Development (HUD), Federal National Mortgage Association (Fannie Mae), or Federal Home Loan Mortgage Corporation (Freddie Mac) provided the applicant and loan meet all other requirements in accordance with this subpart. Official documentation from the approving agency must be submitted with the sales contract. The condominium documents must ensure the following:

(1) The condominium project has been created and exists in full compliance with the requirements of the condominium enabling statute and all other applicable laws of the jurisdiction where the condominium project is located.

(2) Any right of first refusal in the condominium documents will not impair the rights of Rural Housing and Community Development Service (RHCDS) to:

(i) foreclose or take title to a condominium unit pursuant to the remedies in the mortgage;

(ii) accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; and

(iii) sell or lease a unit acquired by RHCDS.

(3) If RHCDS obtains title to a condominium unit pursuant to the remedies in its mortgage or through foreclosure, RHCDS will not be liable for more than 3 months of the unit's unpaid regularly budgeted dues or charges accrued before acquisition of the title to the unit by RHCDS. The homeowners association's lien priority may not include costs of collecting unpaid dues.

(4) In case of condemnation or substantial loss to the units or common elements of the condominium project, unless at least two-thirds of the first mortgagees or unit owners of the individual condominium units have given their consent, the homeowners association may not:

(i) By act or omission seek to abandon or terminate the condominium project;

(ii) Change the pro rata interest or obligations of any condominium unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each condominium unit in the common elements;

(iii) Partition or subdivide any condominium unit;

(iv) Seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements by act or omission; (the granting of easements for public utilities or other public purposes consistent with the intended use of the

common elements by the condominium project is not a transfer within the meaning of this clause); or

(v) Use hazard insurance proceeds for losses to any condominium property (whether units or common elements) for other than the repair, replacement, or reconstruction of the condominium property.

(5) The project, including all common elements and amenities, is complete. All amenities are covered by the mortgage at least to the same extent as the common elements.

(6) All taxes, assessments, and charges that may become liens prior to the first mortgage under local law relate only to the individual condominium units and not to the condominium project as a whole.

(7) No provision of the condominium documents gives a condominium unit owner or any other party priority over any rights of RHCDS as first or second mortgagee of the condominium unit pursuant to its mortgage in the case of a payment to the unit owner of insurance proceeds or condemnation awards for losses to or taking of condominium units or common elements.

(8) If the condominium project is on a leasehold the underlying lease provides adequate security of tenure.

(9) At least 70 percent of the units have been sold. Multiple purchases of condominium units by one owner are counted as one sale when determining if the sales requirement has been met.

(10) No more than 15 percent of the unit owners are more than 1 month delinquent in payment of homeowners association's dues or assessments at the time of delivery of the mortgage to RHCDS.

(b) *Community land trusts.* Loans may be made to finance the purchase of a dwelling located on land owned by a community land trust, provided the applicant and the loan meet all other requirements in accordance with this subpart.

(1) Community land trust is defined as a community housing development organization which is a private nonprofit organization, including State or locally chartered nonprofit organization. In addition to the statutory requirements the ownership requirements must be consistent with the leasehold provisions in § 1944.15(a)(5) of this subpart. The leasehold must be appraised in accordance with subpart C of part 1922 (available in any RECD office).

(2) The ownership requirements must be consistent with the leasehold provisions in § 1944.15(a)(5). The leasehold must be appraised in

accordance with subpart C of part 1922 (available in any RECD field office).

(i) The rights are held only by a governmental body or eligible nonprofit organization and exercised by them or someone they have identified as an eligible purchaser;

(ii) Any right is exercised within 45 days after the holder of these rights may exercise them (for example, the rights are often triggered by a notice of sale from the borrower); and

(iii) Any option price allows the borrower to recover the borrower's investment plus a reasonable share of appreciation. The national office may approve option rights to be held and exercised by another person or entity on a case-by-case basis.

(3) All restrictions relating to community land trusts that are allowed by RHCDS must automatically and permanently terminate upon foreclosure and deed-in-lieu of foreclosure. The relevant legal documents must have language that accomplishes this result. Merely subordinating the restrictions to the mortgage is not sufficient. The restrictions cannot come back in force upon subsequent resale by RHCDS.

§ 1944.43 [Reserved]

§ 1944.44 Borrower graduation.

Borrowers will be asked to refinance RH loans when the Agency determines that credit likely will be available at rates and terms prevailing in the area and on terms which the borrower can reasonably be expected to meet. Borrowers will be required to apply for a refinancing loan from one or more locally active lenders when asked and, if approved by a lender, accept such credit to pay the RHCDS loan in full.

§ 1944.45 Conditional commitments.

(a) *General.* A conditional commitment is assurance from RHCDS to a qualified builder, dealer-contractor, or seller that a dwelling to be offered for sale will be acceptable for purchase by qualified RH loan applicants if accepted by RHCDS and/or built or rehabilitated in accordance with RHCDS approved plans, specifications, and regulations, and priced at not more than a specified amount. The conditional commitment does not reserve funds nor does it assure that an eligible loan applicant will be available to buy the dwelling. The conditional commitment is not effective if the area does not remain rural.

(b) *Eligibility.* To be eligible for conditional commitments, the builder, dealer-contractor, or seller must:

(1) Be the owner as defined in § 1944.15, prior to the beginning of any planned construction, of the site on

which the dwelling is located or to be built, except as set out in subpart G of part 1822 (FmHA Instruction 444.8).

(2) Have the experience and ability to complete any proposed work in a competent and professional manner.

(3) Be financially responsible and have the ability to finance or obtain financing for any proposed construction or rehabilitation.

(4) Comply with the requirements of subpart E of part 1901 and all applicable laws, regulations, and Executive Orders relating to equal opportunity.

(5) Plan to build or rehabilitate dwellings which will qualify for purchase by RH applicants and which will be in compliance with all applicable laws, ordinances, and codes.

(6) Have the legal capacity to enter into the required agreements and the actual capacity to carry them out.

(c) *Limitations.*

(1) Conditional commitments will be issued only in cases where the commitment applicant's selling price does not exceed the commitment price, which will never be more than the lower of the appraised value or the maximum loan amount as contained in § 1944.17.

(2) Conditional commitments will be issued by RHCDS for new homes to be constructed, new manufactured homes, or existing homes (other than manufactured).

(3) Conditional commitments for new or substantially rehabilitated dwellings will not be issued after construction has started.

(4) The total number of conditional commitments issued in any locality will not exceed the number of homes for which there is an immediate and ready market in that locality. In addition, the total number of conditional commitments outstanding in the area served by an RECD field office will not exceed the number on which the approval official can reasonably expect to be able to approve RH loans within 3 months after the houses covered by the commitments are completed, considering the availability of loan funds, and the number of applications in any RECD field office.

(5) The period of the conditional commitment will be for 12 months from the date of issuance. The commitment may be extended for an additional 6 months because of unexpected delays in construction caused by such factors as bad weather, materials shortages, or marketing difficulties.

(6) When five or more conditional commitments have been issued to one recipient during a 12-month period, an affirmative marketing plan will be

required in accordance with § 1901.203(c).

(d) *Conditional commitments where the dwelling is presold to a specific applicant.* In cases where the dwelling is presold and is to be constructed for sale only to a specific applicant and the information on the house and the loan applicant is submitted at the same time, all of the following conditions must be met:

(1) The conditional commitment will not be approved until the RH loan has been approved;

(2) Construction will not begin until loan funds are obligated for the RH loan. RHCDS may make an exception to this requirement when it appears likely that funding will be forthcoming and it is necessary to begin construction because of weather conditions or similar circumstances *provided* the commencement of construction prior to closing the RH loan will not jeopardize RHCDS's lien priority.

(i) The sales agreement must indicate that the loan has been approved but not funded and must provide that if the loan is not closed within 90 days of the date of approval, the contractor may, in writing, terminate the sales agreement and sell the home to another party. If the sales agreement is terminated, the conditional commitment will be honored for another eligible RHCDS loan applicant for the remaining period of the commitment, providing the contractor has met all other requirements of this subpart.

(ii) If the sales agreement is terminated, a Certificate of Eligibility will be issued to the loan applicant in accordance with § 1944.27.

(3) The RH loan will be closed only after the dwelling is constructed or the required rehabilitation completed and final inspection has been made.

(e) *Fees.* Each commitment applicant will pay a fee for each conditional commitment at the time an application is submitted. Fees are established in exhibit G (available in any RECD field office). Conditional commitment contractors will be reimbursed at the time the section 502 RH loan is closed for an amount equal to the fee the section 502 RH applicant is charged for the real estate appraisal.

(f) *Processing applications.*

(1) *Application submission.* Applications for conditional commitments will be submitted on a form provided by the Agency. Attachments, as required by the form, will be included for each individual dwelling for which a conditional commitment is requested.

(2) [Reserved]

(3) *Evaluation of applications.* The commitment applicant must meet the requirements of paragraphs (b) and (c) of this section, and the dwelling and site must meet the requirements of this subpart and subpart A of part 1924 and comply with all local codes and ordinances. The property must meet the requirements of subpart C of part 1924 and subpart G of part 1940. If the commitment applicant, dwelling, and site qualify, an appraisal will be obtained in accordance with subpart C of part 1922.

(4) *Failure of applicant or dwelling to qualify.* If the application is denied for failure to meet the requirements of paragraph (b)(2) or (3) of this section, the applicant may appeal in accordance with Pub. L. 103-354 to the National Appeals Division, U.S.D.A.

(i) The application fee will be refunded if for any reason preliminary inspection of the property or investigation of the commitment applicant indicates that a conditional commitment will not be issued.

(ii) Application fees will not be refunded for any property on which the required appraisal has been made.

(5) *Conditional commitment price.* The commitment price may not exceed the loan approval authority for section 502 RH loans. See subpart A of part 1901.

(g) *Inspections.* Failure to correct any deficiencies or to complete the work in accordance with plans and specifications approved by RHCDS will be a basis for canceling the conditional commitment. The applicant must allow RHCDS access for the purpose of inspection. See subpart A of part 1924.

(h) *Changes in plans, specifications, or commitment price.* RHCDS may approve changes in plans and specifications that are consistent with the applicable development standard and exhibit D of subpart A of part 1924. If the changes are requested after an option has been executed by an RH applicant, the change will be approved only if the applicant and the commitment holder agree to the request in writing. If a change will reduce or increase the appraised value of the property, RHCDS will revise the commitment price and inform the commitment holder. Also, in cases when the holder of a commitment reports to RHCDS that costs associated with the construction or repair of a dwelling have increased, RHCDS may increase the commitment price provided the property has not been optioned by an RH applicant, and RHCDS determines that the increase is clearly justified, the circumstances causing the price increase were beyond the

commitment holder's control, and the value of the property is adequate to permit the increased commitment price and the price does not exceed the maximum cost established pursuant to § 1944.16. A revised appraisal report will be prepared.

(i) *Cancellation of outstanding conditional commitments.*

(1) Conditional commitments may be canceled when construction of the dwelling is not begun within 60 days after the commitment is issued.

(2) Conditional commitments will be canceled when construction is not in accordance with all RHCDS requirements, approved plans, specifications, or the applicable development standards, and the builder does not make corrections necessary for compliance.

(j) [Reserved]

(k) *Builder's warranty.* The builder or seller, as appropriate, will execute an RHCDS approved "Builder's Warranty," or provide a 10-year insured warranty when construction is completed or the loan to buy the dwelling is closed.

§ 1944.46 Appeals.

Any applicant who requests and is denied assistance or who has a right denied, reduced, or canceled may appeal the action in accordance with Pub. L. 103-354 to the National Appeals Division, U.S.D.A.

§§ 1944.47-1944.48 [Reserved]

§ 1944.49 Administrative instructions.

Detailed administrative instructions for administering this subpart are available in any RECD field office.

§ 1944.50 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 0575-0059. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 1.5 hours per response, with an average of .41 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, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575-0059), Washington, D.C. 20503.

Subpart J—Section 504 Rural Housing Loans and Grants

§ 1944.452 [Amended]

18. Section 1944.452 is amended by removing the word "handicap" and adding the words "physical or mental disability" in their place and by revising "FmHA" to read "RHCDS".

19. Section 1944.453(d) is added to read as follows:

§ 1944.453 Definitions.

* * * * *

(d) *Owner-occupant.* Adults living in the household who have ownership rights in the property at the time a loan or grant is closed.

20. Section 1944.456 is amended by removing "County Supervisor" and replacing it with "loan approval official" in paragraphs (a)(1) and (2); by inserting ", environmental, tax monitoring," after the word "architectural" in paragraph (i); by removing the wording "handicapped or disabled persons" and inserting "persons who are developmentally disabled" in paragraph (l); by inserting ", not to exceed \$300," after the word "fees" in paragraph (m) introductory text; by removing existing paragraph (m)(2); and by redesignating paragraph (m)(3) as paragraph (m)(2); and by adding a new paragraph (m)(3) to read as follows:

§ 1944.456 Loan and grant purposes.

* * * * *

(m) * * *

(3) The package is acceptable and the request is funded.

21. Section 1944.457 is amended by revising the heading; by inserting the word "loan" after the word "Maximum" in paragraph (a)(1); by removing the word "individual" in paragraphs (a) (1) and (2) and inserting the words "owner-occupant;" by revising "\$15,000" to read "\$20,000" at the end of paragraph (a)(1); by revising "\$5,000" to read "\$7,500" at the end of paragraph (a)(2); and by revising paragraph (a)(4) to read as follows:

§ 1944.457 Loan and grant restrictions and record keeping.

* * * * *

(a) * * *

(4) Document the amount of grant provided each grantee on a list of section 504 recipients and retain it in the office operational file. The list will contain the names of all owner-occupants at the time of the grant closing. The list must include the following information recorded at the time a section 504 grant is made:

(i) Grantee's names, address, and case number;

- (ii) Amount of the grant; and
- (iii) Date grant was closed.

* * * * *

22. Section 1944.458 is amended by revising "District Director" to read "next level approval official" in paragraph (d)(3), and paragraphs (d) (1) and (2) are revised to read as follows:

§ 1944.458 Eligibility requirements.

(d) * * *

(1) Evaluation of personal resources will exclude the dwelling and a minimum adequate site, personal automobile, household goods, and liquid assets up to \$7,500. Liquid assets are cash or other assets that can be converted to cash in 90 days or less. Real estate acreage larger than a minimum adequate site will not be excluded from the evaluation.

(2) In cases where the family is experiencing unusually high medical expenses, the next level approval official may waive requiring the use of liquid assets down to \$7,500.

23. Section 1944.461 is amended by revising the term "County Supervisor" to read "loan approval official" in paragraphs (a)(1)(iii)(A) and (d)(2), by revising the term "County Supervisors" to read "loan approval officials" in the introductory text of paragraph (a), by removing the words "loan plus any outstanding" and inserting in their place "and existing section 504" in paragraph (b)(1), by removing the word "remaindermen's" before the word "interests" and inserting the word "remainder" in its place in paragraph (b)(3) introductory text, and by revising paragraphs (b)(3), (i), (iii), and (iv) to read as follows:

§ 1944.461 Security and other requirements.

(b) * * *

(3) * * *

(i) One or more of the holders of remainder interests is not legally competent (and there is no guardian or conservator who can consent to the mortgage), cannot be located, or the remainder rights are divided among such a large number of people that it is not practical to obtain the signatures of all the remainder interests;

(iii) All legally competent persons (or the guardian or conservator for any person who is not legally competent) holding remainder interests who are using or occupying the dwelling sign the mortgage; and,

(iv) The loan does not exceed the market value of the portion of the

property represented by the remainder interests of the persons signing the mortgage.

24. Section 1944.463 is amended by inserting the words "or other construction development" after the words "safety hazards" and by revising "FmHA" to read "RHCDS" in the first sentence of paragraph (a) introductory text; by inserting the words "security is taken and the total section 504 indebtedness will be" after the word "when," by removing "(including land sale contracts) is" and by revising "\$7,500" to read "\$15,000" in the first sentence of paragraph (d) introductory text; by removing the words "Total FmHA indebtedness" from the first sentence of paragraphs (e)(1) and (e)(2) and inserting the words "section 504 assistance" in their place; by revising the term "County Supervisor" to read "loan approval official" in the second sentence of paragraph (e)(1); and by revising paragraph (d)(1) to read as follows:

§ 1944.463 Technical services.

(d) * * *

(1) On a nonfarm tract or small farm, or on a leasehold interest in a nonfarm tract or small farm, an estimate of value (limited vs. complete appraisal) will be done in accordance with subpart C of part 1922, based on the direct sales comparison approach only, utilizing the most recent comparable sales data available. The Uniform Residential Appraisal Report (URAR) will be used for this purpose. These appraisals will be done by RHCDS employees having a good understanding of appraisal concepts and adequate appraisal training. A small farm, for the purpose of this subpart, is a farm as defined in § 1944.2 which has value primarily as a residence rather than for the production of agricultural commodities, and repayment of the RH loan is not dependent on farm income.

25. Section 1944.467 is amended by removing paragraph (d); by removing and reserving paragraph (c) by redesignating paragraphs (e), (f), (g) and (h) as paragraphs (d), (e), (f) and (g) respectively; by revising the term "County Supervisor" to read "loan approval official" in paragraph (a)(1) and newly redesignated paragraph (e); and by revising the introductory text of paragraph (a), and paragraph (a)(3) to read as follows:

§ 1944.467 Processing applications.

(a) *Application.* Application for Section 504 assistance will be made on

a form provided by the Agency. The application will be processed in accordance with § 1944.27 using applicable forms from exhibit E, available in any RECD field office.

(3) Actions taken under this subpart are subject to the environmental requirements of subpart G of part 1940.

§ 1944.468 [Amended]

26. Section 1944.468 is amended by removing the words "must not be over 90 days old." at the end of paragraph (b) and inserting the words "are as prescribed in subpart A of this part."

§ 1944.469 [Amended]

27. Section 1944.469 is amended by revising the term "County Supervisor" to read "loan approval official" in the introductory paragraph; by removing and reserving paragraphs (b) and (c) and by adding the words "or Deed of Trust" to the name of Form FmHA 1927-1 after the word "Mortgage" in paragraph (d).

28. Section 1944.472 is amended by adding new language at the end of the paragraph to read as follows:

§ 1944.472 Subsequent Section 504 loans and/or grants.

* * * If the area designation has changed from rural to nonrural, subsequent loans and grants will be made only for essential repairs.

29. Section 1944.500 is revised to read as follows:

§ 1944.500 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0062. Public reporting burden for this collection of information is estimated to average 5 minutes 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, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575-0062), Washington, D.C. 20503.

PART 1951—GENERAL**Subpart D—Final Payment on Loans****§ 1951.155 [Amended]**

30. Section 1951.155(c) introductory text is amended to remove “FmHA” and replace it with “RHCDS, RBCDS, RUS, and/or CFSA” in the next to the last sentence of the paragraph.

Subpart G—Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts**§ 1951.301 [Amended]**

31. Section 1951.301 is amended by revising “Farmers Home Administration or its successor agency under Public Law 203–354” to read “Rural Housing and Community Development Service (RHCDS) or its successor agency,” by revising “FmHA or its successor agency under Public Law 103–354” to read “RHCDS,” and replacing the word “handicap” with “disability”.

32. Section 1951.304(d) is added to read as follows:

§ 1951.304 Definitions.

* * * * *

(d) *Interest credit.* The terms “interest credit” and “interest credit assistance,” as they relate to Single Family Housing (SFH), are interchangeable with the term “payment assistance.” Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.”

§ 1951.312 [Amended]

33. Section 1951.312, in paragraph (b), the heading is revised to read “Payment Assistance” and the words “and § 1951.313 of this subpart” are added at the end of the paragraph.

§§ 1951.313–1951.319 [Amended]

34. Sections 1951.313 through 1951.319 are redesignated as §§ 1951.314 through 1951.320, and a new § 1951.313 is added to read as follows:

§ 1951.313 Payment assistance.

(a) *General.* The correction, renewal, and cancellation of payment assistance agreements and payment assistance granted as a servicing action on existing loans is handled under this section. Payment assistance granted under this section will be approved and computed in accordance with subpart A of part 1944 of this chapter. Recapture of payment assistance will be calculated and repaid in accordance with subpart I of this part.

(b) [Reserved]

(c) *Existing loans.* Payment assistance may be granted at any time after loan closing if the following conditions are met.

(1) The loan was approved on or after August 1, 1968.

(2) The borrower personally occupies the dwelling unless determined uninhabitable by RHCDS or is temporarily not occupied for reasons such as seasonal or migratory employment, military call-up, or hospitalization.

(3) The borrower’s adjusted annual income does not exceed the moderate-income limit contained in exhibit C of subpart A of Instruction 1944 (available in any RECD field office).

(i) If there is not a reasonable expectation that current income will continue for 12 months, income will be projected for the period expected rather than for 12 months. For example, if a borrower is receiving unemployment benefits, the payment assistance agreement will be effective for the period of the benefits. At the end of the benefit period or earlier if circumstances change, the borrower’s situation will be reviewed and appropriate action taken based on current circumstances.

(ii) [Reserved]

(iii) If one coborrower has left the dwelling due to domestic discord, payment assistance may be based on the remaining borrower’s income if the following conditions are met:

(A) The remaining coborrower is occupying the dwelling, owns a legal interest in the property, is liable for the debt, and agrees to notify RHCDS if the other coborrower returns.

(B) Legal papers have been filed to commence divorce or legal separation, a restraining order has been obtained, or one coborrower has not been living in the dwelling for at least 3 months.

(iv) Payment assistance will not be granted if separation is due to work assignment or military orders.

(4) The term of the loan at closing was at least 25 years. If an account has been reamortized and the term of the loan was at least 25 years initially, payment assistance may be granted even though the term of the reamortized loan is less than 25 years. If the term of the loan was less than 25 years prior to reamortization, the reamortized term must be at least 25 years.

(5) The amount of payment assistance granted will be based upon the borrower’s adjusted family income compared to median income for the area where the property is located as determined by § 1944.34(c).

(6) Payment assistance may be granted retroactively for up to 6 months if the conditions described in paragraphs

(c)(1) through (c)(5) of this section existed at the time.

(d) *Correction.* A corrected payment assistance agreement will be prepared under the following circumstances.

(1) *Change in income.* RHCDS is not responsible for monitoring changes in a borrower’s income. If RHCDS becomes aware of income changes outside of the renewal period that will change the amount of authorized payment assistance as defined in § 1944.34(c), a new 12-month agreement will be prepared effective the due date following the date RHCDS became aware of the change.

(2) *Insufficient payment assistance.* If a borrower received less payment assistance than the borrower was eligible to receive, a corrected agreement will be prepared. The effective date of the corrected agreement will be the same date as the agreement being replaced.

(3) *Unauthorized assistance.* If a borrower received unauthorized payment assistance, the account will be serviced in accordance with Subpart M of this part. This includes situations where the borrower did not advise RHCDS of income increases as required on the Payment Assistance/Deferral/Repayment form.

(e) *Renewal.*

(1) *Contractors.* State Directors are authorized to enter into contracts for the processing of payment assistance renewals. Renewal contracts will cover all required actions except approval or cancellation of payment assistance.

(2) *Annual renewal period.* Monthly, the Finance Office will provide each County Office or contractor a list of borrowers whose payment assistance agreements expire in approximately 120 days.

(i) *Borrower Interview.* The borrower must be available for an interview during each renewal period.

(ii) *Determination of eligibility.* Adjusted annual income will be determined and documented in the file. All borrowers will be required to submit a copy of their most recent Federal income tax return. In addition, income for wage earning borrowers will be verified by use of an RHCDS form (available in any RECD field office), and wage matching, if available. Borrowers receiving social security or retirement benefits must provide copies of their most recent benefit/award letters. Payment assistance will not be renewed if the borrower’s adjusted family income exceeds the moderate-income limit, (available in any RECD field office) or if the borrower does not occupy the dwelling.

(iii) *Renewals not completed prior to expiration of existing agreement.* If not due to RHCDS error, the effective date of the renewal will be the next due date after the date of approval. If due to RHCDS error, the effective date will be the expiration date of the previous agreement.

(3) *Termination of foreclosure action.* If a payment assistance agreement expired after a problem case report recommending foreclosure was submitted and the foreclosure action was terminated prior to sale or payment in full, payment assistance will be renewed effective as of the expiration date of the previous agreement if RHCDS is to continue with the loan.

(f) *Cancellation.* Payment assistance will be canceled when any of the following conditions occur:

(1) The borrower has never occupied the dwelling and RHCDS will not continue with the loan. Cancellation will be effective as of the date of loan closing or amortization effective date, whichever is applicable.

(2) The borrower ceases to occupy the dwelling. Cancellation will be effective the payment due date following the date of non-occupancy if known; otherwise, the payment due date following the date RHCDS became aware of non-occupancy.

(3) The borrower has received improper payment assistance as determined in accordance with subpart M of this part and a corrected agreement will not be submitted. Cancellation will be effective the payment due date following the date RHCDS became aware of the situation.

(4) The borrower is no longer eligible for payment assistance due to an increase in income. Cancellation will be effective the payment due date following the date RHCDS became aware of the increase.

(5) The borrower sells the property or title to the security property is otherwise transferred. Cancellation will be effective the payment due date subsequent to the date title transferred. When security property is acquired by RHCDS, cancellation will be effective the payment due date prior to the date of acquisition.

(g) *[Reserved]*

(h) *Notice of right for review or appeal.* All borrowers who request and are denied payment assistance or whose payment assistance is reduced, canceled, or not renewed may appeal or request a review in accordance with Pub. L. 103-354 to the National Appeals Division, U.S.D.A.

(i) *[Reserved]*

(j) *Hardship waiver.* The approval official may submit to the District

Director any situation in which the borrower cannot meet the conditions of paragraphs (c) and (e) of this section and it is determined that without payment assistance the borrower would experience extreme hardship or lose the property through foreclosure. A waiver may be granted if the above can be determined and the borrower has no other means of retaining the dwelling.

§ 1951.314 [Amended]

35. Section 1951.314 is amended by revising the reference “§ 1944.5(d)(11)” to lead “§ 1944.5(e)(2)” in paragraph (e).

§ 1951.330 [Amended]

36. Section 1951.330(b)(4) is amended by revising the reference “§ 1944.34” to read “§ 1951.313(d)(1)” and by removing “FmHA or its successor agency under Public Law 103-35” and replace it with “RHCDS.”

37. Section 1951.330(c) is amended by revising the reference “§§ 1951.313 and 1951.314” to read “§§ 1951.314 and 1951.315”.

Subpart I—Recapture of Section 502 Rural Housing Subsidy

38. Section 1951.401 is revised to read as follows:

§ 1951.401 Purpose.

This subpart outlines the policies and procedures for the recapture of interest credits or Homeownership Assistance Program (HOAP) subsidy granted on initial and subsequent section 502 Rural Housing (RH) loans, transfers, and credit sales approved on or after October 1, 1979. The terms “interest credit” and “interest credit assistance,” as they relate to Single Family Housing (SFH), are interchangeable with the term “payment assistance.” Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

Subpart J—Management and Collection of Nonprogram (NP) Loans

39. Section 1951.457(b) is revised as follows:

§ 1951.457 Payments.

(b) Payments not received when due. NP borrowers are expected to make scheduled payments when due. The Agency personnel are not required to provide program supervision, servicing, management or credit counseling in accordance the agency servicing instructions if payments are not received when due. To ensure consistency, a series of contacts will be made when servicing delinquent accounts. All actions taken, agreements

reached and recommendations made in the servicing of the borrower’s account are to be documented. When appropriate, the Agency may work out a reasonable agreement with an NP borrower to cure a delinquency; however, such an agreement will not usually exceed 1 year. Failure to make payments as agreed will result in actions determined by the agency to best protect the Government’s interest. Collection of a delinquency from an Internal Revenue Service (IRS) offset will be used to the extent permitted by law.

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

40. Section 1951.602 is amended by redesignating paragraphs (g), (h), and (i) as paragraphs (h), (i), and (j), respectively; and adding a new paragraph (g) to read as follows:

§ 1951.602 Definitions.

(g) *Interest credit.* The terms “interest credit” and “interest credit assistance,” as they relate to SFH, are interchangeable with the term “payment assistance.” Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.”

§ 1951.604 [Amended]

41. Section 1951.604(a)(1)(iv)(E) is amended by revising “§ 1944.2(h)” to read “§ 1944.2.”

42. Section 1951.608 is amended by revising the last sentence of paragraph (a)(3)(ii) to read as follows:

§ 1951.608 Decision on servicing actions.

(a) * * *
 (3) * * *
 (ii) * * * A form provided by the Agency must be submitted simultaneously with the lump sum payment to cancel payment assistance or adjust the amount of payment assistance for each period of time unauthorized payment assistance was granted.

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

43. Section 1955.3 is amended by adding the definition of “Interest credit” to read as follows:

§ 1955.3 Definition.

* * * * *

Interest credit. The terms “interest credit” and “interest credit assistance,” as they relate to Single Family Housing (SFH) loans, are interchangeable with the term “payment assistance.” Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

* * * * *

§ 1955.15 [Amended]

44. Section 1955.15(d)(2)(iv) is amended in the next to last sentence by revising the reference “§ 1951.314” to read “§ 1951.315.”

Subpart B—Management of Property**§ 1955.63 [Amended]**

45. In § 1955.63, paragraph (c) introductory text is amended by removing the words “except the requirements relating to size and/or design features will not be considered”, and by revising the phrase “the Agency” to read “RHCDS”. Paragraph (c)(1) is amended by removing the words “in size, design and/or cost.”

PART 1965—REAL PROPERTY**Subpart A—Servicing of Real Estate Security For Farmer Program Loans and Certain Note-Only Cases****§ 1965.26 [Amended]**

46. Section 1965.26(c)(2)(iv)(C) is amended by revising the reference to paragraph “(c)(iv)(A)” in the first sentence to read “(c)(2)(iv)(A)” and to replace “FmHA or its successor agency

under Public Law 103–354” with “RHCDS” each time it appears.

47. Section 1965.26(c)(3) is amended by revising the reference to “§ 1951.314” to read “§ 1951.315” in the last sentence of the paragraph.

Subpart C—Security Servicing for Single Family Rural Housing Loans

48. Section 1965.101 is revised to read as follows:

§ 1965.101 Purpose.

This subpart prescribes policies and procedures for servicing actions related to real estate which secures section 502 and section 504 Rural Housing (RH) loans on nonfarm tracts or on farms when the borrower is indebted to Rural Housing and Community Development Service (RHCDS) for the RH loan only herein referred to as Single Family Housing (SFH) loans. Security servicing for RH loans when the borrower is also indebted for Farmer Program loans is under subpart A of part 1965 of this chapter. Security servicing for nonprogram (NP) loans on a single family residence will be according to subpart J of part 1951 of this chapter. The terms “interest credit” and interest credit assistance,” as they relate to SFH in this subpart, are interchangeable with the term “payment assistance.” Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

§ 1965.126 [Amended]

49. Section 1965.126 is amended as follows:

a. In paragraph (b)(3) by removing the phrase “FmHA or its successor agency under Public Law 103–354” each time it appears and inserting the term “RHCDS” in its place and by removing the words “serve as a minimum adequate site for another dwelling,” and inserting the words “be subdivided and sold.” in their place at the end of the first sentence.

b. In paragraph (b)(4)(i) by removing the term “FmHA” in the first sentence and inserting the term “RHCDS” and by removing the second, third, and fourth sentences and the word “however;” and the comma preceding it in the last sentence.

c. In paragraph (b)(4)(ii)(A) by removing the word “clearly,” and by removing the words “size, design, and/or cost.” and inserting in their place the word “value.”

d. In paragraph (b)(8) by removing the phrase “FmHA or its successor agency under Public Law 103–354” each time it appears and replacing it with the term “RHCDS” and by adding the words “except as provided in § 1944.17 of subpart A of part 1944 of this chapter,” following the words “being assumed” in the first sentence.

Dated: October 13, 1995.

Jill Long Thompson,

Under Secretary for Rural Economic and Community Development.

Dated: October 13, 1995.

Dallas Smith,

Deputy Under Secretary for Farm and Foreign Agriculture Services.

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