

the facility does not utilize complicated construction techniques, materials or equipment for facilities such as small fire stations, storage buildings or minor utility extensions, and that an experienced District Office staff representative will be present. The inspection results will be recorded on Form RD 1924-12, "Inspection Report," and a copy provided to all appropriate parties.

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

(7) *Change in development plans.* (i) Changes in development plans may be approved by Rural Development when requested by owners, provided:

(A) Funds are available to cover any additional costs; and

(B) The change is for an authorized loan purpose; and

(C) It will not adversely affect the soundness of the facility operation or Rural Development's security; and

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

(ii) Changes will be recorded on Form RD 1924-7, "Contract Change Order," or, other similar forms may be used with the prior approval of the State Director or designee. Regardless of the form, change orders must be approved by the Rural Development State Director or a designated representative.

(iii) Changes should be accomplished only after Rural Development approval on all changes which affect the work and shall be authorized only by means of contract change order. The change order will include items such as:

(A) Any changes in labor and material and their respective cost.

(B) Changes in facility design.

(C) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule.

(D) Any increase or decrease in the time to complete the project.

(iv) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change

orders will not be included in payment estimates until approved by all parties.

[50 FR 7296, Feb. 22, 1985, as amended at 52 FR 8035, Mar. 13, 1987; 53 FR 6791, Mar. 3, 1988; 54 FR 14334, Apr. 11, 1989; 54 FR 18883, May 3, 1989; 61 FR 65156, Dec. 11, 1996; 77 FR 29539, May 18, 2012; 79 FR 76001, Dec. 19, 2014; 81 FR 11030, Mar. 2, 2016]

**§ 1942.19 Information pertaining to preparation of notes or bonds and bond transcript documents for public body applicants.**

(a) *General.* This section includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, herein referred to as bonds). This section is made available to applicants as appropriate for application processing and loan docket preparation.

(b) *Policies related to use of bond counsel.* Preparation of the bonds and the bond transcript documents will be the responsibility of the applicant. Public body applicants will obtain the services and opinion of recognized bond counsel with respect to the validity of a bond issue, except as provided in (b) (1) through (3) below. The applicant normally will be represented by a local attorney who will obtain the assistance of a recognized bond counsel firm which has experience in municipal financing with such investors as investment dealers, banks, and insurance companies.

(1) *Issues of \$250,000 or less.* At the option of the applicant for issues of \$250,000 or less, bond counsel may be used for the issuance of a final opinion only and not for the preparation of the bond transcript and other documents when the applicant, Rural Development, and bond counsel have agreed in advance as to the method of preparation of the bond transcript documents. Under such circumstances the applicant will be responsible for the preparation of the bond transcript documents.

(2) *Issues of \$50,000 or less.* At the option of the applicant and with the prior approval of the Rural Development State Director, the applicant need not use bond counsel if:

(i) The amount of the issue does not exceed \$50,000 and the applicant recognizes and accepts the fact that processing the application may require additional legal and administrative time.

(ii) There is a significant cost saving to the applicant particularly with reference to total legal fees after determining what bond counsel would charge as compared with what the local attorney will charge without bond counsel.

(iii) The local attorney is able and experienced in handling this type of legal work.

(iv) The applicant understands that, if it is required by Rural Development to refinance its loan pursuant to the statutory refinancing requirements, it will probably have to obtain at its expense a bond counsel's opinion at that time.

(v) All bonds will be prepared in accordance with this regulation and will conform as nearly as possible to the preferred methods of preparation stated in paragraph (e) of this section but still be consistent with State law.

(vi) Many matters necessary to comply with Rural Development requirements such as land rights, easements, and organizational documents will be handled by the applicant's local attorney. Specific closing instructions will be issued by the Office of the General Counsel of the U.S. Department of Agriculture for the guidance of Rural Development.

(3) *For loans of less than \$500,000.* The applicant shall not be required to use bond counsel in a straight mortgage-note situation where competitive bidding is not required for the sale of the debt instrument, unless a complicated financial situation exists with the applicant. In addition, if there is a known backlog in a particular OGC regional office the applicant will be advised of such backlog and it will be suggested to the applicant that the appointment of bond counsel may be more expeditious. However, it will be the decision of the applicant whether or not to appoint bond counsel. The applicant must comply with (b)(2) (iii) through (vi) of this section.

(c) *Bond transcript documents.* Any questions with respect to Rural Development requirements should be dis-

cussed with the Rural Development representatives. The bond counsel (or local counsel where no bond counsel is involved) is required to furnish at least two complete sets of the following to the applicant, who will furnish one complete set to Rural Development:

(1) Copies of all organizational documents.

(2) Copies of general incumbency certificate.

(3) Certified copies of minutes or excerpts therefrom of all meetings of the applicant's governing body at which action was taken in connection with the authorization and issuance of the bonds.

(4) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding of a favorable bond election, if such an election is necessary in connection with bond issuance.

(5) Certified copies of the resolution or ordinances or other documents, such as the bond authorizing resolutions or ordinance and any resolution establishing rates and regulating the use of the improvement, if such documents are not included in the minutes furnished.

(6) Copies of official Notice of Sale and affidavit of publication of Notice of Sale where a public sale is required by State statute.

(7) Specimen bond, with any attached coupons.

(8) Attorney's no-litigation certificate.

(9) Certified copies of resolutions or other documents pertaining to the bond award.

(10) Any additional or supporting documents required by bond counsel.

(11) For loans involving multiple advances of Rural Development loan funds a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered on or before the first advance of loan funds and state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan subject only to changes during

the advance of funds such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates.

(12) Preliminary approving opinion, if any, and final unqualified approving opinion of recognized bond counsel (or local counsel if no bond counsel is involved) including opinion regarding interest on bonds being exempt from Federal and any State income taxes. On approval of the Administrator, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinions to contain language referring to the last sentence of section 306(a)(1) or to section 309A(h) of the Consolidated Farm and Rural Development Act [7 U.S.C. 1926(a)(1) or 1929a(h)], and providing that if the bonds evidencing the indebtedness in question are required by the Federal Government and sold on an insured basis from the Agriculture Credit Insurance Fund, or the Rural Development Insurance Fund, the interest on such bonds will be included in gross income for the purpose of the Federal income tax statutes.

(d) *Interim financing from commercial sources during construction period for loans of \$50,000 or more.* In all cases where it is possible for funds to be borrowed at current market interest rates on an interim basis from commercial sources, such interim financing will be obtained so as to preclude the necessity for multiple advances of Rural Development funds.

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

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

(2) *Second preference—single instruments with amortized installments.* If Form RD 440.22 is not legally permissible, use a single instrument providing for amortized installments. Show the full amount of the loan on the face of the document and provide for entering

the date and amount of each Rural Development advance on the reverse thereof or on an attachment to the instrument. Form RD 440-22 should be followed to the extent possible. When principal payment is deferred, no attempt should be made to compute in dollar terms the amount of interest due on these installment dates. Rather the instrument should provide that “interest only” is due on these dates. The appropriate amortized installment computed as follows will be shown due on the installment date thereafter.

(i) Annual payments—Subtract the due date of the *last annual interest only* installment from the due date of the final installment to determine the number of annual payments applicable. When there are no interest only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in Rural Development Amortization Tables and round to the next higher dollar. Example of Computation of Annual Payment:

Date of Loan Closing: 7-5-1976  
 Amount of Loan: \$100,000.00  
 Interest Rate: 5%  
 Amortization Period: 40 years  
 Interest Only Installments: 7-5-1977 and 7-5-1978  
 First Regular Installment: 7-5-1979  
 Final Installment: 7-5-2016  
 Computation:  
 $2016 - 1978 = 38$  annual payments  
 $\$100,000.00 \times .05929 = \$5,929.00$  annual payment due

(ii) Semiannual payments—Multiply by two the number of years between the due date of the *last annual interest only* installment and the due date of the final installment to determine the correct number of semiannual periods applicable. When there are no interest only installments, multiply by two the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in Rural Development Amortization Tables and round to the next higher dollar. Example of Computation of Semiannual Payment:

Date of Loan Closing: 7-5-1976  
 Amount of Loan: \$100,000.00  
 Interest Rate: 5%  
 Amortization Period: 40 years

## § 1942.19

## 7 CFR Ch. XVIII (1-1-23 Edition)

Interest Only Installments: 7-5-1977 and 7-5-1978

First Regular Installment: 7-5-1979

Final Installment: 7-5-2016

Computation:

$2016 - 1978 = 38 \times 2 = 76$  semiannual periods

$\$100,000.00 \times .02952 = \$2,952.00$  semiannual payment due

(iii) Monthly payments—Multiply by twelve the number of years between the due date of the *last annual interest only* installment and the final installment to determine the number of monthly payments applicable. When there are no interest only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the amount of the note by the applicable amortization factor shown in Rural Development Amortization Tables and round to the next higher dollar. Example of Computation of Monthly Payment:

Date of Loan Closing: 7-5-1976

Amount of Loan: \$100,000.00

Interest Rate: 5%

Amortization Period: 40 years

Interest Only Installments: 7-5-1977 and 7-5-1978

First Regular Installment: 7-5-1979

Final Installment: 7-5-2016

Computation:

$2016 - 1978 = 38 \times 12 = 456$  monthly payments

$\$100,000.00 \times .00491 = \$491.00$  monthly payment due

(3) *Third preference—single instrument with installments of principal plus interest.* If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the unmatured principal balance. The principal should be in an amount best adapted to making principal retirement and interest payments which closely approximate equal installments of combined interest and principal as required by the first two preferences.

(i) The repayment terms concerning interest only installments described in paragraph (e)(2) of this section, “Second preference” applies.

(ii) The instrument shall contain in substance the following provisions:

(A) A statement of principal maturities and due dates.

(B) Payments made on indebtedness evidenced by this instrument shall be applied to the interest due through the next installment due date and the balance to principal in accordance with the terms of the bond. Payments on delinquent accounts will be applied in the following sequence:

- (1) Billed delinquent interest,
- (2) Past due interest installments,
- (3) Past due principal installments,
- (4) Interest installment due, and
- (5) Principal installment due.

Extra payments and payments made from security depleting sources shall be applied to the principal last to come due or as specified in the bond instrument.

(4) *Fourth preference—serial bonds with installments of principal plus interest.* If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be delivered in the order of their numbers. Such bonds will conform with the minimum requirements of paragraph (h) of this section. Rules for application of payments on serial bonds will be the same as those for principal installment single bonds as set out in the preceding paragraph (e)(3) of this section.

(f) *Multiple advances of Rural Development funds using permanent instruments.* Where interim financing from commercial sources is not available, Rural Development loan proceeds will be disbursed on an “as needed by borrower” basis in amounts not to exceed the amount needed during 30-day periods.

(g) *Multiple advances of Rural Development funds using temporary debt instrument.* When none of the instruments described in paragraph (e) of this section are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advance of Rural Development loan funds and will be for the full amount of the Rural Development loan. The instrument will be prepared by bond counsel (or local counsel if bond counsel is not involved) and approved by the State Director and OGC. At the same time Rural Development delivers the last advance, the borrower

will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

(1) The date from which each advance will bear interest.

(2) The interest rate.

(3) A payment schedule providing for interest on outstanding principal at least annually.

(4) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instrument(s).

(h) *Minimum bond specifications.* The provisions of this paragraph are minimum specifications only, and must be followed to the extent legally permissible.

(1) *Type and denominations.* Bond resolutions or ordinances will provide that the instrument(s) be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than \$1000). Single bonds may provide for repayment of principal plus interest or amortized installments; amortized installments are preferable from the standpoint of Rural Development. Coupon bonds will not be used unless required by State statute.

(i) To compute the value of each coupon when the bond denomination is consistent:

(A) Multiply the amount of the loan or advance by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment date.

(C) Divide the interest computed in (B) by the number of bonds securing the advance; this is the individual coupon amount.

(ii) to compute the value of each coupon when the bond denomination varies:

(A) Multiply the denomination of the bond by the interest rate and divide the product by 365 days.

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next install-

ment due date; this is the individual coupon amount.

(2) *Bond registration.* Bonds will contain provisions permitting registration as to both principal and interest. Bonds purchased by Rural Development will be registered in the name of "United States of America, Rural Development," and will remain so registered at all times while the bonds are held or insured by the United States. The address of Rural Development for registration purposes will be that of the appropriate Rural Development State Office.

(3) *Size and quality.* Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(4) *Date of bond.* Bonds will preferably be dated as of the day of delivery, however, may be dated another date at the option of the borrower and subject to approval by Rural Development. If the date of delivery is other than the date of the bond, the date of delivery will be stated in the bond. In all cases, interest will accrue from the date of delivery of the funds.

(5) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law. If consistent with the foregoing, monthly payments will be required and will be enumerated in the bond, other evidence of indebtedness, or other supplemental agreement. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual P&I bonds will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months, respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

(6) [Reserved]

(7) *Redemptions.* Bonds should contain customary redemption provisions, subject, however, to unlimited right of redemption without premium of any

## § 1942.20

bonds held by Rural Development except to the extent limited by the provisions under the “Third Preference” and “Fourth Preference” in paragraph (e) of this section.

(8) *Additional revenue bonds.* Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless the net revenues (that is, unless otherwise defined by the State statute, gross revenues less essential operation and maintenance expense) for the fiscal year preceding the year in which such parity bonds are to be issued, were 120 percent of the average annual debt service requirements on all bonds then outstanding and those to be issued; provided, that this limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan agreement.

(9) *Scheduling of Rural Development payments when joint financing is involved.* In all cases in which Rural Development is participating with another lender in the joint financing of the project to supply funds required by one applicant, the Rural Development payments of principal and interest should approximate amortized installments.

(10) *Precautions.* The following types of provisions in debt instruments should be avoided.

(i) Provisions for the holder to manually post each payment to the instrument.

(ii) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than Rural Development, may post the date and amount of each advance or repayment on the instrument.

(iii) Defeasance provisions in loan or bond resolutions. When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes Rural Development from requiring graduation before the final maturity date, it represents a violation of the statutory refinancing requirement, therefore it is disallowed.

## 7 CFR Ch. XVIII (1–1–23 Edition)

(iv) Provisions that amend covenants contained in Forms RD 1942-47, “Loan Resolution (Public Bodies),” or FmHA 1942-9, “Loan Resolution Security Agreement.”

(11) *Multiple Loan Instruments.* The following will be adhered to when preparing debt instruments:

(i) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments.

(ii) Loan funds obligated in different fiscal years and those obligated with different interest rates or terms in the same fiscal year will be evidenced by separate debt instruments.

(iii) Loan funds obligated for the same loan type in the same fiscal year at the same interest rate and term may be combined in the same debt instrument; provided the borrower has been notified on Form RD 1940-1, “Request for Obligation of Funds”, of the action.

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

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6791, Mar. 3, 1988; 54 FR 18883, May 3, 1989; 56 FR 29168, June 26, 1991; 68 FR 61331, Oct. 28, 2003]

## § 1942.20 Community Facility Guides.

(a) The following documents are attached and made part of this subpart and may be used by officials in administering this program.

(1) Guide 1 and 1a—Guide Letter for Use in Informing Private Lender of Agency’s Commitment.

(2) Guide 2—Water Users Agreement.

(3) Guide 3—Service Declination Statement.

(4) Guide 4—Bylaws.

(5) Guide 5—Financial Feasibility Report.

(6) Guide 6—Preliminary Architectural Feasibility Report.

(7) Guide 7—Preliminary Engineering Report Water Facility.