AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

State coordinator will constantly monitor performance to ensure that time schedules are met, projected work by time periods is accomplished, and other performance objectives are achieved. Program outlays and income will be reported on an accrual basis. Project Performance Reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Reasons why established objectives were not met;

(3) Problems, delays, or adverse conditions which will affect the ability to meet the objectives of the grant during established time periods. This disclosure must include a statement of the action taken or planned to resolve the situation; and

(4) Objectives and timetable established for the next reporting period.

(q) *Audit requirements.* Audit reports will be prepared and submitted in accordance with §1942.17(q)(4) of subpart A of part 1942 of this chapter. The audit requirements only apply to the year(s) in which grant funds are received. Audits must be prepared in accordance with generally accepted government auditing standards using publication, ''Standards for Audits of Governmental Organizations, Programs, Activities and Functions.''

(r) *Grant cancellation.* Grants which have been approved and funds obligated may be cancelled by the grant approval official in accordance with §1942.12 of subpart A of part 1942 of this chapter. The State Director will notify the State coordinator that the grant has been cancelled.

(s) *Grant servicing.* Grants will be serviced in accordance with subparts E and O of part 1951 of this chapter.

(t) *Subsequent grants.* Subsequent grants will be processed in accordance with the requirements of this subpart for each additional time period a State is designated to participate in this program.

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

§ 1940.969 Forms, exhibits, and subparts.

Forms, exhibits, and subparts of this chapter (all available in any Rural Development office) referenced in this subpart, are for use in establishing a State economic development review panel and for administering the Panel Grant program associated with the panel.

§ 1940.970 [Reserved]

§ 1940.971 Delegation of authority.

The authority authorized to the State Director in this subpart may be redelegated.

§§ 1940.972–1940.999 [Reserved]

§ 1940.1000 OMB control number.

The collection of information requirements contained in this regulation has been approved by the Office of Management and Budget and assigned OMB control number 0575–0145. Public reporting burden for this collection of information is estimated to vary from 30 minutes to 48 hours per response with an average of 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART 1941 [RESERVED]

PART 1942—ASSOCIATIONS

Subpart A—Community Facility Loans

Sec.

1942.1 General.
1942.2 Processing applications.
1942.3 Preparation of appraisal reports.
1942.4 Borrower contracts.
1942.5 Application review and approval.
1942.6 Preparation for loan closing.
1942.7 Loan closing.

1942.8 Actions subsequent to loan closing.
1942.9 Planning, bidding, contracting, and constructing.
1942.10 Strategic economic and community development.
1942.11 [Reserved]
1942.12 Loan cancellation.
1942.13 Loan servicing.
1942.14 Subsequent loans.
1942.15 Delegation and redelegation of authority.
1942.16 State supplements and guides.
1942.17 Community facilities.
1942.18 Community facilities—Planning, bidding, contracting, constructing.
1942.19 Information pertaining to preparation of notes or bonds and bond transcript documents for public body applicants.
1942.20 Community Facility Guides.
1942.21 Statewide nonmetropolitan median household income.
1942.22–1942.29 [Reserved]
1942.30 Re-lending.
1942.31–1942.49 [Reserved]
1942.50 OMB control number.

Subpart B [Reserved]

Subpart C—Fire and Rescue and Other Small Community Facilities Projects

1942.101 General.
1942.102 Nondiscrimination.
1942.103 Definitions.
1942.104 Application processing.
1942.105 Environmental review requirements.
1942.106 Intergovernmental review.
1942.107 Priorities.
1942.108 Application docket preparation and review.
1942.109 [Reserved]
1942.110 Strategic economic and community development.
1942.111 Applicant eligibility.
1942.112 Eligible loan purposes.
1942.113 Rates and terms.
1942.114 Security.
1942.115 Reasonable project costs.
1942.116 Economic feasibility requirements.
1942.117 General requirements.
1942.118 Other Federal, State, and local requirements.
1942.119 Professional services and borrower contracts.
1942.120–1942.121 [Reserved]
1942.122 Actions prior to loan closing and start of construction.
1942.123 Loan closing.
1942.124–1942.125 [Reserved]
1942.126 Planning, bidding, contracting, constructing, procuring.
1942.127 Project monitoring and fund delivery.
1942.128 Borrower accounting methods, management reports and audits.
1942.129 Borrower supervision and servicing.
1942.130–1942.131 [Reserved]
1942.132 Subsequent loans.
1942.133 Delegation and redelegation of authority.
1942.134 State supplements and guides.
1942.135–1942.149 [Reserved]
1942.150 OMB control number.

Subparts D–H [Reserved]

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

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

Subpart A—Community Facility Loans

SOURCE: 50 FR 7296, Feb. 22, 1985, unless otherwise noted.

§ 1942.1 General.

(a) This subpart outlines the policies and procedures for making and processing direct loans for Community Facilities except fire and rescue and other small essential community facility loans and water and waste disposal facilities. This subpart applies to Community Facilities loans for fire and rescue and other small essential community facility loans only as specifically provided for in subpart C of this part. Water and waste loans are provided for in part 1780 of this title.

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

(2) The Agency shall cooperate fully with State, Tribal and local agencies in making loans to assure maximum support to the State and Tribal strategies for rural development. State Directors and their staffs shall maintain coordination and liaison with State agency and substate planning districts. Funds allocated for use under this subpart are also for the use of Indian tribes within the State, regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity to

participate in the benefits of these programs as compared with other residents of the State.

(3) Federal statutes provide for extending Agency financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes.

(4) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an Agency employee.

(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this subpart that affect applicant eligibility, the adequacy of Agency's security or the adequacy of service to users of the facility and all other requirements of this subpart must be met.

(c) Loans sold without insurance by RD to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

(d) The District Office will normally be the entry point for preapplications and serve as a local point. Applications will be filed with the District Office and loans will be processed to the maxium extent possible by the District Office staff. The applicant's governing body should designate one person to coordinate the activities of its engineer, architect, attorney, and any other professional employees and to act as contact person during loan processing. Agency personnel should make every effort to involve the applicant's contact person when meeting with the applicant's professional consultants and/or agents. The State Office staff will monitor community programs loanmaking and servicing, and will provide assistance to District Office personnel to the extent necessary to assure that the activities are being accomplished in an orderly manner consistent with Agency regulations.

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

[50 FR 7296, Feb. 22, 1985, as amended at 52 FR 38908, Oct. 20, 1987; 52 FR 43725, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987; 57 FR 21193, May 19, 1992; 58 FR 226, Jan. 5, 1993; 62 FR 33510, June 19, 1997; 68 FR 65830, Nov. 24, 2003; 79 FR 76007, Dec. 19, 2014; 81 FR 43935, July 6, 2016]

§ 1942.2 Processing applications.

(a) *Preapplications.* (1) The District Office may handle initial inquiries and provide basic information about the program. They are to provide the preappllcation, SF 424.2, ''Application for Federal Assistance (For Construction).'' The District Director will assist applicants as needed in completing SF 424.2, and in filing written notice of intent and priority recommendation with the appropriate clearinghouse. The District Director will inform the applicant that it may be necessary to apply for credit from commercial sources. It will be explained that if credit for the project is available from commercial sources at reasonable rates and terms the applicant is not eligible for RD financing. The District Director will meet with the applicant, whenever appropriate to discuss RD preapplication processing. Guidance and assistance will be provided by the State Director, as needed, for orderly application processing. The District Director will determine that the preapplication is

property completed and fully reviewed. The District Director will then forward to the State Director:

(i) Eligibility determination and recommendations.

(ii) One copy of SF 424.2.

(iii) State intergovernmental review comments and recommendations (clearinghouse comments), as outlined in 2 CFR part 400, if applicable.

(iv) Priority recommendations.

(v) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, or copies of organizational documents or existing debt instruments. The District Director will advise applicants on what documents are necessary. Applicants should not be required to expend significant amounts of money or time developing supporting documentation at the preapplication stage.

(2) The State Director will review each SF 424.2 along with other information that is deemed necessary to determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated, the State Director will instruct the District Director to so inform the applicant and recommend the applicant apply to commercial sources for financing. Projects may be funded jointly with other lenders provided the requirements of §1942.17 (g) of this subpart are met. Joint financing occurs when two or more lenders make separate loans to supply the funds required by one applicant for a project.

(i) In order to provide a basis for referral of preapplications of only those applicants who may be able to finance projects through commercial sources, State Directors should maintain liaison with representatives of banks, investment bankers, financial advisors, and other lender representatives in the State. State Directors with their assistance, should maintain criteria for determining preapplications which should be referred to commercial lenders. A list of lender representatives interested in receiving such referrals should be maintained.

(ii) The State Director shall maintain a working relationship with the State Office or official that has been designated as the single point of contact for the intergovernmental review process and give full consideration to their comments when selecting preapplications to be processed.

(iii) The State Director will review the District Director's eligibility determination and recommendations in sufficient time for the District Director's use in preparing and issuing Form AD–622.

(iv) Form AD–622 will be prepared by the District Director within forty-five (45) calendar days from receipt of the preapplication by RD, stating the results of the review action. The original will be signed and delivered to the applicant with a copy to the State Director.

(3) For preapplications eligible for Agency funding which have the necessary priority to compete with similar preapplications, the Agency will issue Form AD–622 inviting an application containing the following statement:

> You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered, or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process must occur prior to the issuance of the letter of conditions.

(4) The following statement must be added to Form AD–622 when notifying preapplicants who are eligible, but do not have the priority necessary for further consideration at this time:

> You are advised against incurring obligations which would limit the range of alternatives to be considered, or which cannot be fulfilled without Rural Development funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work, taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications, or inviting construction bids until notified by Rural Development to proceed.

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

(c) *Applications.* The District Director should assist the applicant in application assembly and processing.

(1) State Directors should have applications in process representing approximately 150 percent of the current State allocation.

(2) The application docket will include SF 424.2, and related forms, materials, and information. The application will be assembled in accordance with guide 15 of this subpart or State guides developed under §1942.16 of this subpart.

(3) When an applicant is notified to proceed with an application, the District Director should arrange for a conference with the applicant to provide copies of appropriate appendices and forms; furnish guidance necessary for orderly application processing; and to initiate a processing checklist for establishing a time schedule for completing items using Form RD 1942–39, ''Processing Check List (Other Than Public Bodies),'' or Form RD 1942–40, ''Processing Check List (Public Bodies),'' or other checklist adopted for use in the State. The District Director will confirm decisions made at this conference by letter to the applicant and by a copy of the processing checklist. The original and a copy of the processing checklist will be retained in the District Office and a copy will be forwarded to the State Office. The original and copy of the checklist retained in the District Office will be kept current as application processing actions are taken. The copy will be sent to the State Office to use in updating its copy of this form. The State Office will then return the District Office's copy. As the application is being processed, and the need develops for additional conferences, the District Director will arrange with the applicant for such conference to extend and update the processing checklist.

(d) *Review of decision.* If at any time prior to loan approval it is decided that favorable action will not be taken on a preapplication or application, the District Director will notify the applicant in writing of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by Rural Development may be requested by the applicant under subpart B of part 1900 of this chapter. The following statement will also be made on all notifications of adverse action.

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(e) *Joint funding.* Rural Development may finance projects jointly with funds from other sources, such as, commercial/private lenders, Federal agencies, State and local Governments, etc. Other departments, agencies, and executive establishments of the Federal Government may participate and provide financial and technical assistance jointly with Rural Development to any applicant to whom Rural Development is providing assistance. The amount of participation by the other department, agency, or executive establishment shall only be limited by its authorities except that any limitation on joint participation itself is superseded by section 125 of Pub. L. 95–334 (Section 347, Consolidated Farm and Rural Development Act, as amended).

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6786, Mar. 3, 1988; 54 FR 47197, Nov. 13, 1989; 55 FR 13503, 15304, Apr. 11, 1990; 57 FR 21194, May 19, 1992; 61 FR 6309, Feb. 20, 1996; 79 FR 76007, Dec. 19, 2014; 81 FR 11030, Mar. 2, 2016]

§1942.3 Preparation of appraisal reports.

When the loan approval official requires an appraisal, Form RD 442–10, ''Appraisal Report—Water and Waste Disposal Systems,'' may be used with appropriate supplements. Form RD 442–10 may be modified as appropriate or other appropriate format may be used for facilities other than water and waste disposal. Appraisal reports prepared for use in connection with the purchase of existing essential community facilities or when required by

§ 1942.17 (g)(2)(iii)(B)(*2*), (g)(3)(iii)(B)(*2*), and (j)(4) of this subpart, may be prepared by the RD engineer/architect or, if desired by the State Director, some other qualified appraiser. The loan approval official may require an applicant to provide an appraisal prepared by an independent qualified appraiser; however, the loan approval official must determine that the appraised value shown in such reports reflects the present market value.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6786, Mar. 3, 1988]

§ 1942.4 Borrower contracts.

The State Director will, with assistance as necessary by the Office of the General Counsel (OGC), concur in agreements between borrowers and third parties such as contracts for professional and technical services and contracts for the purchase of water or treatment of waste. State Directors are expected to work closely with representatives of engineering and architectural societies, bar associations, commercial lenders, accountant associations, and others in developing standard forms of agreements, where needed, and other such matters in order to expedite application processing, minimize referrals to OGC, and resolve problems which may arise.

§ 1942.5 Application review and approval.

(a) *Procedures for review.* The Rural Development staff review will proceed as applications are being developed. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the staff and approval officials. The engineering/architect reports and associated data are to be reviewed by the Rural Development staff engineer or architect, as appropriate, as soon as available but prior to the District Director's completion of the project summary. During the review the District Director in all cases will make certain that no low income or minority community within the service area has been omitted or discouraged from participating in the proposed project. The District Director will also determine how the service area was defined to assure that gerrymandering of specific communities or areas has not occurred. The findings should be documented in the running record. Prior to presenting the assembled application to the approval official, the assembled application ordinarily will be processed in the following sequence:

(1) The Rural Development manager will complete the project summary, including written analysis and recommendations, and will prepare a draft letter of conditions listing all the requirements that the applicant must agree to meet within a specific time.

(i) Requirements listed in letters of conditions will include the following unless inappropriate due to the particular type of funding or entity involved: Maximum amount of loan and/or grant which may be considered, scheduling of payments, term of loan and any deferment of principal which may be allowed, reserve requirements, compliance with section 504 of the Rehabilitation Act of 1973, number of users (members) and verification required, contributions rates and charges, interim financing, disbursement of funds, security requirements, graduation requirements, debt collection policies execution of Form RD 1910–11, ''Application Certification, Federal Collection Policies for Consumer or Commercial Debts,'' organization, business operations, insurance and bonding (including applicant/borrower and contractor), construction contract documents and bidding, accounts, records, and audit reports required (including requirements of OMB Circulars A–128 and A–110), adoption of Form RD 1942–47, ''Loan Resolution (Public Bodies),'' for public bodies or Form RD 1942–9, ''Loan Resolution (Security Agreement),'' for other than public bodies, closing instructions, and other requirements.

(ii) Each letter of conditions will contain the following paragraphs:

> This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in the project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by RD written amendment to this letter. Any changes not approved by RD shall

be cause for discontinuing processing of the application.

This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed $_____.

If (insert agency name) makes the loan, you may make a written request that the interest rate be the lower of the rate in effect at the time of loan approval or the time of loan closing. If you do not request the lower of the two interest rates, the interest rate charged will be the rate in effect at the time of loan approval. The loan will be considered approved on the date a signed copy of Form RD 1940–1, ''Request for Obligation of Funds,'' is mailed to you. If you want the lower of the two rates, your written request should be submitted to RD as soon as practical. In order to avoid possible delays in loan closing such a request should ordinarily be submitted at least 30 calendar days before loan closing.

Please complete and return the attached Form RD 1942–46, ''Letter of Intent to Meet Conditions,'' if you desire that further consideration be given your application.

(iii) Rural Development Managers may add the following:

If the conditions set forth in this letter are not met within _____ days from the date hereof, FmHA or its successor agency under Public Law 103–354 reserves the right to discontinue the processing of the application.

(2) The State staff engineer or architect, as appropriate, will include a written analysis and recommendations on the project summary.

(3) The Chief, Community Programs or Community and Business Programs, will review the assembled application and include in the project summary a written analysis and recommendations, including the availability of other credit and other eligibility determinations. The draft letter of conditions will be reviewed and any necessary modifications made.

(b) *Project requiring National Office review.* Prior National Office review is required for certain proposals (See subpart A of part 1901 of this chapter).

(1) The Rural Development Manager should assemble applications for the National Office review in the following order from top to bottom and forward them to the State Director for review and recommedation prior to submission to the National Office:

(i) Transmittal memorandum including:

(A) Recommendation.

(B) Date of expected obligation.

(C) Any unusual circumstances.

(ii) Copies of the following:

(A) Proposed letter of conditions.

(B) Applicable State Intergovernmental Review comments, if the program or activity has been selected under the State. RD Instruction 1970–I, available in any Rural Development office.

(C) Community Facilities Project Summary.

(D) Preliminary architectural or engineering report.

(E) Form RD 442–3, ''Balance Sheet,'' or a financial statement or audit that includes a balance sheet.

(F) For other essential community facility loan applicants whose proposals do not meet the assured income or tax based security requirements of §1942.17 (g)(2)(iii) and (g)(3)(iii) of this subpart, financial information for the last five years of operation will be submitted if available. The type of financial information to be submitted should be determined based on what is available and the following order of preference:

(*1*) Complete audits;

(*2*) Unaudited financial statements including balance sheets and statements of income and expenses;

(*3*) Lists of income and expenses.

(G) For other essential community facility loans secured under paragraph (b)(1)(ii)(F) of this section, submit a detailed explanation of the proposed security; evidence that the application cannot be processed and the loan secured under paragraph (b)(1)(ii)(F) of this section; evidence supporting the efforts by the applicant in persuading appropriate public bodies to provide the proposed facility and services and the results, and comments of the Regional Attorney concurring in the applicants' legal authority to give the proposed security.

(H) Financial Feasibility Report when required by §1942.17 (h)(1).

(I) Proposed lease agreements, management agreements, or other agreements when facility management will be provided by other than the applicant.

(J) Other forms and documents on which there are specific questions.

(K) Environmental impact analysis and documentation.

(2) For applications to be reviewed in the State or field, at least those items in paragraph (b)(1)(ii) of this section, should be available.

(c) *For all applications.* All letters of conditions will be addressed to the applicant, signed by the Rural Development Manager or other Agency representative designated by the State Director, and delivered to the applicant. Upon signing the letter of conditions, the Rural Development Manager will send two copies of the letter of conditions and two copies of the project summary to the State Director. The State Director will immediately send one copy of the project summary and a copy of the letter of conditions to the National Office, Attention: Community Programs. The Rural Development Manager, with assistance as needed from the State Office, will discuss the requirements of the letter of conditions with the applicant's representatives and afford them an opportunity to execute Form RD 1942–46.

(1) The letter of conditions should not ordinarily be issued unless the State Director expects to have adequate funds in the State allocation to fund the project within the next 12 months based on historic allocations or other reliable projections.

(2) If the applicant declines to execute Form RD 1942–46, the Rural Development Manager will immediately notify the State Director and provide complete information as to the reasons for such declination.

(3) If the applicant accepts the letter of conditions, the Rural Development Manager will forward the executed Form RD 1942–46 and a signed and an unsigned copy of Form RD 1940–1 to the State Director.

(d) *Loan approval and obligating funds.* Loans will be approved under this subpart and subpart A of part 1901 of this chapter (available in any Rural Development office). The loan will be considered approved on the date the signed copy of Form RD 1940–1 is mailed to the applicant. The State Director or designee may request an obligation of funds when available within their State allocation and according to the following:

(1) Form RD 1940–1, authorizing funds to be reserved, may be executed by the loan approval official providing the applicant has the legal authority to contract for a loan and to enter into required agreements and has signed Form RD 1940–1.

(2) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of Form RD 1940–1.

(3) The State Director or designee will request an obligation of loan and/or grant funds via the automated terminal system after signing Form RD 1940–1. The requesting official will furnish security identification as necessary. The requesting official will record the date, time of request, and their initials on the original Form RD 1940–1.

(4) The date the applicant is notified of loan and/or grant approval is six working days from the date funds are reserved unless an exception is granted by the National Office.

(5) Immediately after verifying that funds have been reserved, utilizing the Rural Development Field Office terminal system status inquiry function, the State Director or designee will notify by telephone, the Legislative and Public Affairs Staff in the Rural Development National Office as required by RD Instruction 2015–C, ''Announcement of Approval of Loans, Grants, or Guaranteed Loans for Rural Project,'' (available in any FmHA or its successor agency under Public Law 103–354 State Office).

(6) Loan approval and applicant notification will be accomplished by the State Director or designee by mailing to the applicant, 6 working days from the obligation date, a copy of Form RD 1940–1 which has been previously signed by the applicant and loan approval official. The date the applicant is notified is also the date the interest rate at loan approval is established. The State Director or designee will record the date of applicant notification and the interest rate in effect at that time on the original of Form RD 1940–1 and include it as a permanent part of the District Director project file with a copy placed in the State Office file.

(7) If a transfer of obligation of funds is necessary, complete Form RD 450–10,

''Advice of Borrower's Change of Address, Name, Case Number, or Loan Number,'' and process via the Rural Development Field Office terminal system. An obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

(i) The substituted applicant is eligible to receive the assistance approved for the original applicant; and

(ii) The substituted applicant bears a close and genuine relationship to the original applicant (such as two organizations that are controlled by the same individuals); and

(iii) The need for and scope of the project and the purpose(s) for which Rural Development funds will be used remain substantially unchanged.

[50 FR 7296, Feb. 22, 1985, as amended at 50 FR 33332, Aug. 19, 1985; 50 FR 43378, Oct. 25, 1985; 53 FR 6787, Mar. 3, 1988; 54 FR 47196, Nov. 13, 1989; 63 FR 16089, Apr. 2, 1998; 67 FR 60584, Sept. 27, 2002; 67 FR 63019, Oct. 9, 2002; 76 FR 80730, Dec. 27, 2011; 79 FR 76007, Dec. 19, 2014; 79 FR 55967, Sept. 18, 2014]

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

§ 1942.6 Preparation for loan closing.

(a) *Obtaining closing instructions.* Completed dockets will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(b) *Verification of users and other funds.* (1) In connection with a loan for a utility type project to be secured by a pledge of user fees or revenues, the District Director will authenticate the number of users prior to loan closing or the commencement of construction, whichever occurs first. Such individual will review each signed user agreement and check evidence of cash contributions. If during the review any indication is received that all signed users may not connect to the system, there will be such additional investigation made as deemed necessary to determine the number of users who will connect to the system. The District Director will record the determination in a memorandum to the State Director.

(2) In all cases the availability and amounts of other funds to be used in the project will be verified by Rural Development.

(c) *Initial compliance review.* An initial compliance review should be completed under subpart E of part 1901 of this chapter.

(d) *Ordering loan checks.* Checks will not be ordered until:

(1) The applicant has complied with approval conditions and closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto; and

(2) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(e) *Multiple advances of Rural Development funds.* When Rural Development provides loan funds during the construction period using interim (temporary) instruments described in §1942.19(g) of this subpart, the following action will be taken prior to the issuance of the permanent instruments:

(1) The Finance Office will be notified of the anticipated date for retirement of the interim instruments and issuance of permanent instruments of debt.

(2) The Finance Office will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the District Director.

(3) The District Director will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The

permanent instruments and the cash collection will be forwarded to the Finance Office immediately, except that for promissory notes and single instrument bonds fully registered as to principal and interest, the original will be retained in the District Office and a copy will be forwarded to the Finance Office. In developing the permanent instruments, the sequence of preference set out in §1942.19(e) of this subpart will be followed.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988; 53 FR 26589, July 14, 1988]

§ 1942.7 Loan closing.

Loans will be closed in accordance with the closing instructions issued by the OGC and §1942.17(o) of this subpart and as soon as possible after receiving the check.

(a) *Authority to execute, file, and record legal instruments.* Area Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans.

(b) *Preparation of mortgages.* Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument.

(c) *Source of funds for insured loans.* All loans will be made from the Rural Development Insurance Fund (RDIF).

(d) *Unused funds.* Obligated funds planned for project development which remain after all authorized costs have been provided for will be disposed of in accordance with §1942.17(p)(6) of this subpart.

(e) *Loan disbursements.* Whenever a loan disbursement is received, lost, or destroyed, the Rural Development Manager will take appropriate actions outlined in Rural Development Instruction 2018–D.

(f) *Supervised bank accounts.* Supervised bank accounts will be handled under subpart A of part 1902 of this chapter.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988; 59 FR 54788, Nov. 2, 1994; 68 FR 61331, Oct. 28, 2003; 70 FR 19253, Apr. 13, 2005]

§ 1942.8 Actions subsequent to loan closing.

(a) *Mortgages.* Real estate or chattel mortages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will be retained in the borrower's case folder.

(b) *Notes and bonds.* When the debt instrument is a promissory note or single instrument bond fully registered as to principal and interest, a conformed copy will be sent to the Finance Office immediately after loan closing and the original instrument will be stored in the District Office. When other types of bonds are used, the original bond(s) will be forwarded to the Finance Office immediately after loan closing.

(c) *Multiple advances—bond(s).* When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper righthand corner of such paper by the District Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made except that for promissory notes and single instrument bonds fully registered as to principal and interest, the original will be retained in the District Office and a copy will be forwarded to the Finance Office.

(d) *Bond registration record.* Form RD 442–28, ''Bond Registration Book,'' may be used as a guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(e) *Disposition of title evidence.* All title evidence other than the opinion of title, mortgage title insurance policy, and water stock certificates will be returned to the borrower when the loan has been closed.

(f) *Material for State Office.* When the loan has been closed, the District Director will submit to the State Director:

(1) The complete docket; and

(2) A statement covering information other than the completion of legal documents showing what was done in carrying out loan closing instructions.

(g) *State Office review of loan closing.* The State Director will review the District Director's statement concerning loan closing, the security instruments, and other documents used in closing to determine whether the transaction was closed properly. All material submitted by the District Director, including the executed contract documents (if required by OGC) with the certification of the borrower's attorney, along with a statement by the State Director that all administrative requirements have been met, will be referred to OGC for post-closing review. OGC will review the submitted material to determine whether all legal requirements have been met. OGC's review of Rural Development's standard forms will be only for proper execution thereof, unless the State Director brings specific questions or deviations to the attention of OGC. It is not expected that facility development including construction will be held up pending receipt of the opinion from OGC. When the opinion from OGC is received, the State Director will advise the District Director of any deficiencies that must be corrected and return all material that was submitted for review.

(h) *Safeguarding bond shipments.* Rural Development's personnel will follow the procedures for safeguarding mailings and deliveries of bonds and coupons outlined in FmHA Instruction 2018–E (available in any FmHA or its successor agency under Public Law 103–354 office), whenever they mail or deliver these items.

(i) *Water stock certificates.* Water stock certificates will be filed in the loan docket in the District Office.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988]

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

§ 1942.9 Planning, bidding, contracting, and constructing.

(a) *Review of construction plans and specifications.* All plans and specifications will be submitted as soon as available to the State Office for review and comments.

(b) *Contract approval.* The State Director or designee is responsible for approving all construction contracts using legal advice and guidance of OGC as necessary. The National Office must concur with the use of a contracting method under § 1942.18(l) of this subpart exceeding $250,000. When an applicant requests such concurrence, the State Director will submit the following to the National Office:

(1) State Director's and Rural Development engineer/architect's comments and recommendations, and if noncompetitive negotiation per § 1942.18(k)(4) is accepted by the Agency, submit an evaluation of previous work of the proposed construction firm.

(2) Regional attorney's opinion and comments regarding the legal adequacy of the proposed procurement method and proposed contract documents.

(3) Copy of owner's written request and description of the procurement method proposed.

(4) Copy of the proposed contract.

(c) *Bid irregularities.* Any irregularities in the bids received or other matters pertaining to the contract award having legal implications will be cleared with OGC before the State Director consents to the contract award.

(d) *Noncompliance.* State Directors, upon receipt of information indicating borrowers or their officers, employees, or agents are not performing in compliance with § 1942.18(j)(1) of this subpart, may request the Regional Office of the Inspector General (OIG) to investigate the matter and provide a report. The State Director is responsible for resolving the issue.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988; 77 FR 29539, May 18, 2012]

§ 1942.10 Strategic economic and community development.

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

[85 FR 59393, Sept. 22, 2020]

§ 1942.11 [Reserved]

§ 1942.12 Loan cancellation.

Loans which have been approved and obligations which have been established may be canceled before closing as follows:

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

(b) *Notice of cancellation.* If the docket has been forwarded to Office of General Counsel that office will be notified of the cancellation by copy of Form Rural Development 1940–10. Any application for title insurance, if ordered, will be cancelled. The borrower's attorney and engineer/architect, if any, should be notified of the cancellation. The Rural Development Manager may provide the borrower's attorney and engineer/architect with a copy of the notification to the applicant. The State Director will notify the Director of Legislative Affairs and Public Information by telephone or electronic mail and give the reasons for such cancellation.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 26589, July 14, 1988; 54 FR 39727, Sept. 28, 1989; 59 FR 54788, Nov. 2, 1994; 70 FR 19254, Apr. 13, 2005]

§ 1942.13 Loan servicing.

Loans will be serviced under subpart E of part 1951 of this chapter.

§ 1942.14 Subsequent loans.

Subsequent loans will be processed under this subpart.

§ 1942.15 Delegation and redelegation of authority.

The State Director is responsible for implementing the authorities in this subpart and for issuing State supplements redelegating authorities. Loan and grant approval authority is in Subpart A of Part 1901 of this chapter. Except for loan and grant approval authority, Rural Development Manager may redelegate their duties to qualified staff members.

[70 FR 19254, Apr. 13, 2005]

§ 1942.16 State supplements and guides.

State Directors will obtain National Office clearance for all State supplements and guides under RD Instruction 2006–B (available in any Rural Development office).

(a) *State supplements.* State Directors may supplement this subpart to meet State and local laws and regulations and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to bids, contract awards, and materials more restrictive than those in § 1942.18 of this subpart.

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this subpart are not adequate. State Directors may prepare guides for items needed for the application; items necessary for the docket; and items required prior to loan closing or start of construction.

§ 1942.17 Community facilities.

(a) *General.* This section includes information and procedures specifically designed for use by applicants, including their professional consultants and/or agents who provide such assistance and services as architectural, engineering, financial, legal, or other services related to application processing and facility planning and development.

This section is made available as needed for such use. It includes Rural Development policies and requirements pertaining to loans for community facilities. It provides applicants with guidance for use in proceeding with their application. Rural Development shall cooperate fully with appropriate State agencies to give maximum support of the State's strategies for development of rural areas.

(b) *Eligibility.* Financial assistance to areas or communities adjacent to, or closely associated with, nonrural areas is limited by §1942.17(c) of this subpart.

(1) *Applicant.* (i) A public body, such as a municipality, county, district, authority, or other political subdivision of a state.

(A) Loans for water or waste disposal facilities will not be made to a city or town with a population in excess of 10,000 inhabitants. The population figure is obtained from the most recent decennial Census of the United States (decennial Census). If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

(B) Loans for essential community facilities will not be made to a city or town with a population in excess of 20,000 inhabitants according to the most recent decennial Census.

(ii) An organization operated on a not-for-profit basis, such as an association, cooperative, and private corporation. Applicants organized under the general profit corporation laws may be eligible if they actually will be operated on a not-for-profit basis under their charter, bylaws, mortgage, or supplemental agreement provisions as may be required as a condition of loan approval. Essential community facility applicants other than utility-type must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:

(A) Association with or controlled by a local public body or bodies, or broadly based ownership and controlled by members of the community.

(B) Substantial public funding through taxes, revenue bonds, or other local Government sources, and/or substantial voluntary community funding, such as would be obtained through a community-wide funding campaign.

(iii) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes.

(2) *Facility.* (i) Facilities must be located in rural areas, except for utility-type services such as water, sewer, natural gas, or hydroelectric, serving both rural and non-rural areas. In such cases, Rural Development funds may be used to finance only that portion serving rural areas, regardless of facility location.

(ii) Essential community facilities must primarily serve rural areas.

(iii) For essential community facilities, the terms *rural* and *rural area* will not include any area in any city or town with a population in excess of 20,000 inhabitants, but excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I). The population figure is obtained from the most recent decennial Census. If the applicable population figure cannot be obtained from the most recent decennial Census, RD will determine the applicable population figure based on available population data.

(3) *Credit elsewhere.* Applicants must certify in writing and Rural Development shall determine and document that the applicant is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms.

(4) *Legal authority and responsibility.* Each applicant must have or will obtain the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The applicant shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be exercised by the applicant even though the facility may be operated, maintained, or managed by a third party

under contract, management agreement, or written lease. Leases may be used when this is the only feasible way to provide the service and is the customary practice. Management agreements should provide for at least those items listed in guide 24 of this subpart (available in any Rural Development office). Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

(5) *Refinancing debt.* The Government shall require an agreement that if at any time it shall appear to the Government that the borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

(6) Expanded eligibility for timber-dependent communities in Pacific Northwest. In the Pacific Northwest, defined as an area containing national forest covered by the Federal document entitled, ''Forest Plan for a Sustainable Economy and a Sustainable Environment,'' dated July 1, 1993; the population limits contained §1942.17(b) are expanded to include communities with not more than 25,000 inhabitants until September 30, 1998, if:

(i) Part or all of the community lies within 100 miles of the boundary of a national forest covered by the Federal document entitled, ''Forest Plan for a Sustainable Economy and a Sustainable Environment,'' dated July 1, 1993; and

(ii) The community is located in a county in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, or forest-related industries such as recreation and tourism.

(c) *Priorities*—(1) *Truly rural areas.* Rural Development program assistance will be directed toward truly rural areas and rural communities. Normally, priority will not be given to preapplications for projects that will serve other than truly rural areas. Truly rural areas are areas other than densely settled areas or communities adjacent to, or closely associated with, a city or town with a population exceeding 10,000 residents for water or waste disposal assistance, or 20,000 residents for essential community facility assistance. When determining whether a rural area or rural community is adjacent to, or closely associated with, a city or town with a population exceeding 10,000 residents for water and waste disposal, or 20,000 residents for essential community facility assistance, minor open spaces such as those created by physical or legal barriers, commercial or industrial development, parks, areas reserved for convenience or appearance, or narrow strips of cultivated land, will be disregarded. An area or community shall be considered adjacent to or closely related with a nonrural area when it constitutes for general, social, and economic purposes a single community having a contiguous boundary.

(2) *Project selection process.* The following paragraphs indicate items and conditions which must be considered in selecting preapplications for further development. When ranking eligible preapplications for consideration for limited funds, Rural Development officials must consider the priority items met by each preapplication and the degree to which those priorities are met, and apply good judgement.

(i) *Preapplications.* The preapplication and supporting information submitted with it will be used to determine the proposed project's priority for available funds.

(ii) *State Office review.* All preapplications will be reviewed and scored and Form AD–622, ''Notice of Preapplication Review Action,'' issued within the time limits in §1942.2(a)(2)(iv) of this subpart. When considering authorizing the development of an application for funding, the State Director should consider the remaining funds in the State allocation, and the anticipated allocation of funds for the next fiscal year as well as the amount of time necessary to complete that application. Applicants whose

preapplications are found to be ineligible will be so advised. These applicants will be given adverse notice through Form AD–622 and advised of their appeal rights under subpart B of part 1900 of this chapter. Those applicants with eligible lower scoring preapplications which obviously cannot be funded within an eighteen month period of time, and are not within 150 percent of the State's allocation, should be notified that funds are not available; and requested to advise whether they wish to have their preapplication maintained in an active file for future consideration. The State Director may request an additional allocation of funds from the National Office for such preapplications. Such requests will be considered along with all others on hand.

(iii) *Selection priorities.* The priorities described below will be used by the State Director to rate preapplications. The priorities should be applied to water and waste disposal or community facilities preapplications as directed. The format found in part I of guide 26 of this subpart should be followed in scoring each preapplication. A copy of the score sheet should be placed in the case file for future reference.

(A) *Population priorities.* The following priorities apply to both Water and Waste Disposal and Community Facilities preapplications. Points will be distributed as indicated.

(*1*) The proposed project is located in a rural community having a population not in excess of 2,500—25 points.

(*2*) The proposed project is located in a rural community having a population not in excess of 5,500—20 points. (Points under this priority should not be assigned to a preapplication if points were assigned under paragraph (c)(2)(iii) (A)(*1*) of this section.)

(B) *Health priorities.* Points will be distributed as indicated.

(*1*) Water and Waste Disposal preapplications only. The proposed project is:

(*i*) Needed to alleviate the sudden unexpected diminution or deterioration of a water supply, or to meet health or sanitary standards which pertain to a community's water supply—25 points.

(*ii*) Required to correct an inadequate waste disposal system due to unexpected occurrences, or to meet health or sanitary standards which pertain to a community's waste disposal system—25 points.

(*2*) Community Facility preapplication only. The proposed project is required either to correct a health or sanitary problem, or to meet a health or sanitary standard—25 points.

(C) *Income priorities.* The following priorities apply to both Water and Waste Disposal and Community Facilities preapplications. Points will be distributed as indicated. The median income of the population to be served by the proposed facility is:

(*1*) Less than the poverty line for a family of four, as defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or less than 80 percent of the statewide nonmetropolitan median household income—25 points.

(*2*) Equal to or more than the poverty line and between 80% and 100%, inclusive, of the State's nonmetropolitan median household income—20 points.

(D) *Other factors.* Points will be distributed as indicated.

(*1*) Water and Waste Disposal preapplications only. The proposed project will: merge ownership, management, and operation of smaller facilities providing for more efficient management and economical service; and/or enlarge, extend, or otherwise modify existing facilities to provide service to additional rural residents—10 points.

(*2*) Community Facilities preapplications only. The purpose of the proposed project is to construct, enlarge, extend or otherwise improve the following types of facilities. (Select only the factor most applicable to the proposed project.)

(*i*) Public safety—10 points. (Examples include police services and fire, rescue and ambulance services as authorized by subpart C of this part 1942.)

(*ii*) Health care—5 points. (Examples include clinics, nursing homes, convalescent facilities, and hospital projects designed to make the facility conform with life/safety codes, medicare and medicaid requirements, and minor expansions needed to meet the

immediate requirements of the community. Points under this authority should not be awarded to a preapplication if points were awarded under §1942.17(c)(2)(iii)(B)(*2*) of this subpart.)

(*3*) Water and Waste Disposal and Community Facilities preapplications.

(*i*) Applicant is a public body or Indian tribe—5 points.

(*ii*) Project is located in a ''truly rural area'' as described in §1942.17(c)(1) of this subpart—10 points.

(*iii*) Amount of joint financing committed to the project is:

(*a*) 20% or more private, local or state funds except federal funds channeled through a state agency—10 points.

(*b*) 5%–19% private, local or state funds except federal funds channeled through a state agency—5 points.

(E) In certain cases the State Director may assign up to 15 points to a preapplication, in addition to those that may be scored under paragraphs (c)(2)(iii) (A) through (D), of this section. These points are primarily intended to address an unforeseen exigency or emergency, such as the loss of a community facility due to accident or natural disaster or the loss of joint financing if Rural Development funds are not committed in a timely fashion. However, the points may also be awarded to projects in order to improve compatibility/coordination between Rural Development's and other agencies' selection systems and to assist those projects that are the most cost effective. A written justification must be prepared and placed in the project file each time the State Director assigns these points.

(iv) *Results of State Office review.* After completing the review, the State Director will normally select the eligible preapplications with the highest scores for further processing. In cases where preliminary cost estimates indicate that an eligible, high scoring preapplication is unfeasible or would require an amount of funding from Rural Development that exceeds either 25 percent of a State's current annual allocation or an amount greater than that remaining in the State's allocation, the State Director may instead select the next lower scoring preapplication(s) for futher processing provided the high scoring applicant is notified of this action and given an opportunity to revise the proposal and resubmit it. If it is found that there is no effective way to reduce costs, the State Director, after consultation with applicant, may submit a request for an additional allocation of funds for the proposed project to the National Office. The request should be submitted during the fiscal year in which obligation is anticipated. Such request will be considered along with all others on hand. A written justification must be prepared and placed in the project file when an eligible preapplication with a higher rating is not selected for further processing. The State Director will notify the District Director of the results of the review action. The State Director will return the preapplication information with an authorization for the District Director to prepare and issue Form AD–622 in accordance with §1942.2(a)(2)(iv) of this subpart. Priority will be given to those preapplications and applications for funding which meet criteria in §1942.17(c)(2)(iii)(A) (*1*) or (*2*); and the criteria in §1942.17(c) (2)(iii)(B)(*1*) (*i*) or (*ii*) or (B)(*2*) of this subpart.

(v) *Application development.* Applications should be developed expeditiously following good management practices. Applications that are not developed in a reasonable period of time taking into account the size and complexity of the proposed project may be removed from the State's active file. Applicants will be consulted prior to taking such action.

(vi) *Project obligations.* To ensure efficient use of resources, obligations should occur in a timely fashion throughout the fiscal year. Projects may be obligated as their applications are completed and approved.

(vii) *Requests for additional funding.* All requests for additional allocations of funds submitted to the National Office must follow the formats found in parts I and II of guide 26. In selecting projects for funding at the National Office level, additional points may be scored based on the priority assigned to the project by the State Office.

These points will be scored in the manner shown below. Only the three highest priority projects can score points. In addition, the Administrator may assign up to 15 additional points to account for items such as geographic distribution of funds and emergency conditions caused by economic problems or natural disasters.

Priority	Points
1	5
2	3
3	1

(viii) *Cost overruns.* A preapplication may receive consideration for funding before others at the State Office level or at the National Office level, if funds are not available in the State Office, when it is a subsequent request for a previously approved project which has encountered cost overruns due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding or other means.

(d) *Eligible loan purposes.* (1) Funds may be used:

(i) To construct, enlarge, extend, or otherwise improve water or waste disposal and other essential community facilities providing essential service primarily to rural residents and rural businesses. Rural businesses would include facilities such as educational and other publicly owned facilities.

(A) *Water or waste disposal facilities* include water, sanitary sewerage, solid waste disposal, and storm waste-water facilities.

(B) *Essential community facilities* are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including but not limited to:

(*1*) Health services;

(*2*) Community, social, or cultural services;

(*3*) Transportation facilities, such as streets, roads, and bridges;

(*4*) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for Rural Electrification Administration (REA) financing;

(*5*) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for Rural Electrification Administration financing. Additionally, a borrower is permitted to use up to 10 percent of the amount provided under this subpart to construct, improve, or acquire broadband infrastructure related to the project financed, subject to the requirements of 7 CFR part 1980, subpart M.

(*6*) Natural gas distribution systems; and

(*7*) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(C) *Otherwise improve* includes but is not limited to the following:

(*1*) The purchase of major equipment, such as solid waste collection trucks and X-ray machines, which will in themselves provide an essential service to rural residents;

(*2*) The purchase of existing facilities when it is necessary either to improve or to prevent loss of service;

(*3*) Payment of tap fees and other utility connection charges as provided in utility purchase contracts prepared under § 1942.18(f) of this subpart.

(ii) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (d)(1)(i) of this section.

(iii) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (d)(1)(i) of this section.

(iv) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraphs (d)(1)(i), (d)(1)(ii) and (d)(1)(iii) of this section.

(A) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys

and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(B) Interest on loans until the facility is self-supporting, but not for more than three years unless a longer period is approved by the National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than two years unless a longer period is approved by the National Office; and interest on interim financing, including interest charges on interim financing from sources other than Rural Development.

(C) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control necessary for development of the facility.

(D) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(E) Initial operating expenses for a period ordinarily not exceeding one year when the borrower is unable to pay such expenses.

(F) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(*1*) The debts being refinanced are a secondary part of the total loan;

(*2*) The debts are incurred for the facility or service being financed or any part thereof;

(*3*) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(G) Prepay costs for which Rural Development grant funds were obligated provided there is:

(*1*) No conflict with the loan resolution, State statutes, or any other loan requirements; and

(*2*) Full documentation showing that:

(*i*) Loan funds will only be utilized on a temporary basis; and

(*ii*) All Rural Development loan funds are restored at a later date for purpose(s) for which they were obligated.

(v) To pay obligations for construction incurred before loan approval. Construction work should not be started and obligations for such work or materials should not be incurred before the loan is approved. However, if there are compelling reasons for proceeding with construction before loan approval, applicants may request Rural Development approval to pay such obligations. Such requests may be approved if Rural Development determines that:

(A) Compelling reasons exist for incurring obligations before loan approval; and

(B) The obligations will be incurred for authorized loan purposes; and

(C) Contract documents have been approved by Rural Development; and

(D) All environmental requirements applicable to Rural Development and the applicant have been met; and

(E) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic, material, or other liens that may attach to the security property. Rural Development may authorize payment of such obligations at the time of loan closing. Rural Development's authorization to pay such obligations, however, is on the condition that it is not committed to make the loan; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan approval requirements. The applicant's request and Rural Development authorization for paying such obligations shall be in writing. If construction is started without Rural Development approval, post approval in accordance with this section may be considered.

(2) Funds may not be used to finance:

(i) On-site utility systems or business and industrial buildings in connection with industrial parks.

(ii) Facilities to be used primarily for recreation purposes.

(iii) Community antenna television services or facilities.

(iv) Electric generation or transmission facilities or telephone systems, except as provided in paragraph (d)(1)(i)(B)(*4*), or (d)(1)(i)(B)(*5*) of this section; or extensions to serve a particular essential community facility as provided in paragraph (d)(1)(ii) or (d)(1)(iii) of this section.

(v) Facilities which are not modest in size, design, and cost.

(vi) Loan or grant finder's fees.

(vii) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, Pub. L. 97–348.

(viii) New combined sanitary and storm water sewer facilities.

(ix) That portion of a water and/or waste disposal facility normally provided by a business or industrial user.

(e) *Facilities for public use.* All facilities financed under the provisions of this subpart shall be for public use.

(1) Utility-type service facilities will be installed so as to serve any user within the service area who desires service and can be feasibly and legally served. Applicants and borrowers must obtain written concurrence of the Rural Development prior to refusing service to such user. Upon failure to provide service which is reasonable and legal, such user shall have direct right of action against the applicant/borrower. A notice of the availability of this service should be given by the applicant/borrower to all persons living within the area who can feasibly and legally be served by the phase of the project being financed.

(i) If a mandatory hookup ordinance will be adopted, the required bond ordinance or resolution advertisement will be considered adequate notification.

(ii) When any portion of the income will be derived from user fees and a mandatory hookup ordinance will not be adopted, each potent user will be afforded an opportunity to request service by signing a Users Agreement.

Those declining service will be afforded an opportunity to sign a statement to such effect. Rural Development has guides available for these purposes in all Rural Development offices.

(2) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, handicap, or national origin.

(3) This does not preclude:

(i) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time; and

(ii) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system and not by considering the cost of separate extensions to or parts thereof; the applicant publicly announces a plan for extending service to areas not initially receiving service from the system; and potential users located in the areas not to be initially served receive written notice from the applicant that service will not be provided until such time as it is economically feasible to do so, and

(iii) Extending services to industrial areas when service is made available to users located along the extensions.

(4) The State Director will determine that, when feasibly and legally possible, inequities within the proposed project's service area for the same type service proposed (*i.e.*, water or waste disposal) will be remedied by the owner on or before completion of the project that includes Rural Development funding. Inequities are defined as flagrant variations in availability, adequacy or quality of service. User rate schedules for portions of existing systems that were developed under different financing, rates, terms or conditions, as determined by the State Director, do not necessarily constitute inequities.

(5) Before a loan is made to an applicant other than a public body, for other than utility type projects, the articles of incorporation or loan agreement will include a condition similar to the following:

In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more nonprofit corporations or public bodies as may be selected by the board of directors of this corporation and approved by at least 75 percent of the users or members to be used for, and devoted to, the purpose of a community facility project or other purpose to serve the public welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, directors, stockholders, or others having financial or managerial interest in the corporation either for the reimbursement of any sum subscribed, donated or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

(f) *Rates and terms*—(1) *General.* Each loan will bear interest at the rate prescribed in RD Instruction 440.1, exhibit B (available in any Rural Development office). The interest rates will be set by Rural Development at least for each quarter of the fiscal year. All rates will be adjusted to the nearest one-eighth of 1 percent. The applicant may submit a written request prior to loan closing that the interest rate charged on the loan be the lower of the rate in effect at the time of loan approval or the rate in effect at the time of loan closing. If the interest rate is to be that in effect at loan closing, the interest rate charged on a loan involving multiple advances of Rural Development funds, using temporary debt instruments, shall be that in effect on the date when the first temporary debt instrument is issued. If no written request is received from the applicant prior to loan closing, the interest rate charged on the loan will be the rate in effect at the time of loan approval.

(2) *Poverty line rate.* The poverty line interest rate will not exceed 5 per centum per annum. The provisions of paragraph (f)(2)(i) of this section do not apply to health care and related facilities that provide direct health care to the public. Otherwise, all loans must comply with the following conditions:

(i) The primary purpose of the loan is to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards. Documentation will be obtained from the appropriate regulatory agency with jurisdiction to establish the standard, to verify that a bonafide standard exists, what that standard is, and that the proposed improvements are needed and required to meet the standard; and

(ii) The median household income of the service area is below the poverty line for a family of four, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), or below 80 percent of the Statewide nonmetropolitan median household income.

(3) *Intermediate rate.* The intermediate interest rate will be set at the poverty line rate plus one-half of the difference between the poverty line rate and the market rate, not to exceed 7 percent per annum. It will apply to loans that do not meet the requirements for the poverty line rate and for which the median household income of the service area is below the poverty line or not more than 100 percent of the nonmetropolitan median household income of the State.

(4) *Market rate.* The market interest rate will be set using as guidance the average of the Bond Buyer Index for the four weeks prior to the first Friday of the last month before the beginning of the quarter. The market rate will apply to all loans that do not qualify for a different rate under paragraph (f)(2) or (f)(3) of this section. It may be adjusted as provided in paragraph (f)(5) of this section.

(5) *Prime farmland.* For essential community facilities loans, the rate indicated by paragraphs (f)(2), (f)(3) or (f)(4) of this section will be increased by two per centum per annum if the project being financed will involve the use of, or construction on, prime or unique farmland in accordance with RD Instruction 440.1, exhibits B and J (available in any Rural Development office).

(6) *Income determination.* The income data used to determine median household income should be that which most accurately reflects the income of the service area. The service area is that area reasonably expected to be served by the facility being financed by Rural Development. The median household income of the service area and the nonmetropolitan median household income of the State will be determined from 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. If there is reason to believe that the ACS or other Census Bureau data does not accurately represent the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or Rural Development may obtain, additional information regarding such median household income data. Information must consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may only be updated on a national

basis by the Rural Development National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census or other reliable sources. Bureau of the Census areas would include areas such as: Counties, County Subdivisions, Cities, Towns, Townships, Boroughs, and other places.

(7) *Repayment terms.* The loan repayment period shall not exceed the useful life of the facility, State statute or 40 years from the date of the note(s) or bond(s), whichever is less. Where FmHA or its successor agency under Public Law 103–354 grant funds are used in connection with a Rural Development loan, the loan will be for the maximum term permitted by this subpart, State statute, or the useful life of the facility, whichever is less, unless there is an exceptional case where circumstances justify making a Rural Development loan for less than the maximum term permitted. In such cases, the reasons must be fully documented. In all cases, including those in which the Rural Development is jointly financing with another lender, the Rural Development payments of principal and interest should approximate amortized installments.

(i) Principal payments may be deferred in whole or in part for a period not to exceed 36 months following the date the first interest installment is due. If for any reason it appears necessary to permit a longer period of deferment, the State Director may authorize such deferment with the prior approval of the National Office. Deferments of principal will not be used to:

(A) Postpone the levying of taxes or assessments.

(B) Delay collection of the full rates which the borrower has agreed to charge users for its services as soon as major benefits or the improvements are available to those users.

(C) Create reserves for normal operation and maintenance.

(D) Make any capital improvements except those approved by Rural Development determined to be essential to the repayment of the loan or to the obtaining of adequate security thereof.

(E) Accelerate the payment of other debts.

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

(g) *Security.* Loans will be secured by the best security position practicable in a manner which will adequately protect the interest of Rural Development during the repayment period of the loan. Specific requirements for security for each loan will be included in a letter of conditions.

(1) *Joint financing security.* For projects utilizing joint financing, when adequate security of more than one type is available, the other lender may take one type of security with the United States taking another type. For projects utilizing joint financing with the same security to be shared by the United States and another lender, the United States will obtain at least a parity position with the other lender. A parity position is to ensure that with joint security, in the event of default, each lender will be affected on a proportionate basis. A parity position will conform with the following unless an exception is granted by the National Office:

(i) *Terms.* It is not necessary for loans to have the same repayment terms to meet the parity requirements. Loans made by other lenders involved in joint financing with the United States for facilities should be scheduled for repayment on terms similar to those customarily used in the State for financing such facilities.

(ii) *Use of trustee or other similar paying agent.* The use of a trustee or other

similar paying agent by the other lender in a joint financing arrangement is acceptable to the United States. A trustee or other similar paying agent will not normally be used for the United States portion of the funding unless required to comply with State law. The responsibilities and authorities of any trustee or other similar paying agent on projects that include United States funds must be clearly specified by written agreement and approved by the State Director and Regional Attorney. The United States must be able to deal directly with the borrower to enforce the provisions of loan and grant agreements and perform necessary servicing actions.

(iii) *Regular payments.* In the event adequate funds are not available to meet regular installments on parity loans, the funds available will be apportioned to the lenders based on the respective current installments of principal and interest due.

(iv) *Disposition of property.* Funds obtained from the sale or liquidation of secured property or fixed assets will be apportioned to the lenders on the basis of the pro rata amount loaned, but not to exceed their respective outstanding balances; provided, however, funds obtained from such sale or liquidation for a project that included grant funds will be apportioned as may be required by the grant agreement.

(v) *Protective advances.* Protective advances are payments made by a lender for items such as insurance or taxes, to protect the financial interest of the lender, and charged to the borrower's loan account. To the extent consistent with State law and customary lending practices in the area, repayment of protective advances made by either lender, for the mutual protection of both lenders, should receive first priority in apportionment of funds between the lenders. To ensure agreement between lenders, efforts should be made to obtain the concurrence of both lenders before one lender makes a protective advance.

(2) *Public bodies.* Loans to such borrowers will be evidenced by notes, bonds, warrants, or other contractual obligations as may be authorized by relevant State statutes and by borrower's documents, resolutions, and ordinances.

(i) Utility-type facilities such as water and sewer systems, natural gas distribution systems, electric systems, etc., will be secured by:

(A) The full faith and credit of the borrower when the debt is evidenced by general obligation bonds; and/or

(B) Pledges of taxes or assessments; and/or

(C) Pledges of facility revenue and, when it is the customary financial practice in the State, liens will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts, and similar property rights, including leasehold interest, used or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds; and/or

(D) In those cases involving water and waste disposal projects where there is a substantial number of other than full-time users and facility costs result in a higher than reasonable rate for such full-time users, the loan will be secured by the full faith and credit of the borrower or by an assignment or pledge of taxes or assessments from public bodies or other organizations having the authority to issue bonds or pledge such taxes or assessments.

(ii) *Solid waste systems.* The type of security required will be based on State law and what is determined adequate to protect the interest of the United States during the repayment period of the loan.

(iii) *Other essential community facilities* other than utility type, such as those for public health and safety, social, and cultural needs and the like will meet the following security requirements:

(A) Such loans will be secured by one or a combination of the following and in the following order of preference:

(*1*) General obligation bonds.

(*2*) Assessments.

(*3*) Bonds which pledge other taxes.

(*4*) Bonds pledging revenues of the facility being financed when such bonds provide for the mandatory levy and

collection of taxes in the event revenues later become insufficient to properly operate and maintain the facility and to retire the loan.

(*5*) Assignment of assured income which will be available for the life of the loan, from such sources as insurance premium rebates, income from endowments, irrevocable trusts, or commitments from industries, public bodies, or other reliable sources.

(*6*) Liens on real and chattel property when legally permissible and an assignment of the borrowers income from applicants who have been in existence and are able to present evidence of a financially successful operation of a similar facility for a period of time sufficient to indicate project success. National Office concurrence is required when the applicant has been in existence for less than five years or has not operated on a financially successful basis for five years immediately prior to loan application.

(*7*) Liens on real and chattel property when legally permissible and an assignment of income from an organization receiving Health and Human Services (HHS) operating grants under the ''Memorandum of Understanding Between Health Resources and Services Administration, U.S. Department of Health and Human Services and Rural Development, U.S. Department of Agriculture'' (see RD Instruction 2000–T, available in any Rural Development office.)

(*8*) Liens on real and chattel property when legally permissible and an assignment of income from an organization proposing a facility whose users receive reliable income from programs such as social security, supplemental security income (SSI), retirement plans, long-term insurance annuities, medicare or medicaid. Examples are homes for the handicapped or institutions whose clientele receive State or local government assistance.

(*9*) When the applicant cannot meet the criteria in paragraph (g)(2)(iii)(A) (*1*) through (*8*) of this section, such proposals may be considered when all the following are met:

(*i*) The applicant is a new organization or one that has not operated the type of facility being proposed.

(*ii*) There is a demonstration of exceptional community support such as substantial financial contributions, and aggressive leadership in the formation of the organization and proposed project which indicates a commitment of the entire community.

(*iii*) The State Director has determined that adequate and dependable revenues will be available to meet all operation expenses, debt repayment, and the required reserve.

(*iv*) Prior National Office review and concurrence is obtained.

(B) Real estate and chattel property taken as security in accordance with paragraphs (g)(2)(iii)(A) (*6*) through (*9*) of this section:

(*1*) Ordinarily will include the property that is used in connection with the facility being financed; and

(*2*) Will have an as-developed present market value determined by a qualified appraiser equal to or exceeding the amount of the loan to be obtained plus any other indebtedness against the proposed security; and

(*3*) May have one of the lien requirements deleted when the loan approval official determines that the loan will be adequately secured with a lien on either the real estate or chattel property.

(C) When security is not available in accordance with paragraphs (g)(2)(iii)(A) (*1*) through (*5*) of this section and State law precludes securing the loan with liens on real or chattel property, the loan will be secured in the best manner consistent with State law and customary security taken by private lenders in the State, such as revenue bonds, and any other security the loan approval official determines necessary for a sound loan. Such loans will otherwise meet the requirements of (g)(2)(iii)(A) (*6*) through (*9*) of this section as appropriate.

(3) *Other-than-public bodies.* Loans to other-than-public body applicants will be secured as follows:

(i) Utility-type facilities eligible for Rural Development assistance under paragraph (d) of this section such as water and sewer systems, natural gas distribution systems, electric systems, etc., will be secured as follows:

(A) Assignments of borrower income will be taken and perfected by filing, if legally permissable; and

(B) A lien will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts and similar property rights, including leasehold interest, used, or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds. In unusual circumstances where it is not feasible to obtain a lien on such land (such as land rights obtained from Federal or local government agencies, and from railroads) and the loan approval official 'determines that the interest of the United States otherwise is secured adequately, the lien requirement may be omitted as to such land rights.

(C) When the loan is approved or the acquisition of real property is subject to an outstanding lien indebtedness, the next highest priority lien obtainable will be taken if the loan approval official determines that the loan is adequately secured.

(D) *Other security*. Promissory notes from individuals, stock or membership subscription agreements, individuals member's liability agreements, or other evidences of debt, as well as mortgages or other security instruments encumbering the private property of members of the association may be pledged or assigned to the United States as additional security in any case in which the interest of the United States will not be otherwise adequately protected.

(E) In those cases where there is a substantial number of other than full-time users and facility costs result in a higher than reasonable rate for such full-time users, the loan will be secured by an assignment or pledge of general obligation bonds, taxes, or assessments from public bodies or other organizations having the authority to issue bonds or pledge such taxes, or assessments.

(ii) *Solid waste systems*. The type of security required will be based on State law and what is determined adequate to protect the interest of the United States during the repayment period of the loan.

(iii) *Essential community facilities* other than utility type such as those for public health and safety, social, and cultural needs and the like will meet the following security requirements:

(A) Such loans will be secured by one or a combination of the following and in the following order of preference:

(*1*) An assignment of assured income that will be available for the life of the loan, from sources such as insurance premium rebates, income from endowments, irrevocable trusts, or commitments from industries, public bodies, or other reliable sources.

(*2*) Liens on real and chattel property with an assignment of income from applicants who have been in existence and are able to present evidence of a financially successful operation of a similar facility for a period of time sufficient to indicate project success. National Office concurrence is required when the applicant has been in existence for less than five years or has not operated on a financially successful basis for at least the five years immediately prior to loan application.

(*3*) Liens on real and chattel property and an assignment of income from an organization receiving HHS operating grants under the ''Memorandum of Understanding Between Health Resources and Services Administration, U.S. Department of Health and Human Services and Rural Development, U.S. Department of Agriculture'' (see RD Instruction 2000–T, available in any Rural Development office).

(*4*) Liens on real and chattel property when legally permissible and an assignment of income from an organization proposing a facility whose users receive reliable income from programs such as social security, supplemental security income (SSI), retirement plans, long-term insurance annuities, medicare or medicaid. Examples are homes for the handicapped or institutions whose clientele receive State or local government assistance.

(*5*) When the applicant cannot meet the criteria in paragraphs (g)(3)(iii)(A)(*1*) through (*4*) of this section, such proposals may be considered when all the following are met:

(*i*) The applicant is a new organization or one that has not operated the type of facility being proposed.

(*ii*) There is a demonstration of exceptional community support such as substantial financial contributions, and aggressive leadership in the formation of the organization and proposed project which indicates a commitment of the entire community.

(*iii*) The State Director has determined that adequate and dependable revenues will be available to meet all operation expenses, debt repayment, and the required reserve.

(*iv*) Prior National Office review and concurrence is obtained.

(*6*) Additional security may be taken as determined necessary by the loan approval official.

(B) Real estate and chattel property taken as security:

(*1*) Ordinarily will include the property that is used in connection with the facility being financed; and

(*2*) Will have an as-developed present market value determined by a qualified appraiser equal to or exceeding the amount of the loan to be obtained plus any other indebtedness against the proposed security; and

(*3*) May have one of the lien requirements deleted when the loan approval official determines that the loan will be adequately secured with a lien on either the real estate or the chattel property.

(h) *Economic feasibility requirements.* All projects financed under the provisions of this section must be based on taxes, assessments, revenues, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the Rural Development staff and approval official. If the primary use of the facility is by business and the success or failure of the facility is dependent on the business, then the economic viability of that business must be assessed. The number of users for a rural business will be based on equivalent dwelling units, which is the level of service provided to a typical rural residential dwelling.

(1) *Financial feasibility reports.* All applicants will be expected to provide a financial feasibility report prepared by a qualified firm or individual. These financial feasibility reports will normally be:

(i) Included as part of the preliminary engineer/architectural report using guides 6 through 10 as applicable; or

(ii) Prepared by a qualified firm or individual not having a direct interest in the management or construction of the facility using guide 5 when:

(A) The project will significantly affect the applicant's financial operations and is not a utility-type facility but is dependent on revenues from the facility to repay the loan; or

(B) It is specifically requested by Rural Development.

(2) *Applicants for loans for utility-type facilities* dependent on users fees for debt payment shall base their income and expense forecast on realistic user estimates in accordance with the following:

(i) In estimating the number of users and establishing rates or fees on which the loan will be based for new systems and for extensions or improvements to existing systems, consideration should be given to the following:

(A) An estimated number of maximum initial users should not be used when setting user fees and rates since it may be several years before all residents in the community will need the services provided by the system. In establishing rates a realistic number of initial users should be employed.

(B) User agreements from individual vacant property owners will not be considered when determining project feasibility unless:

(*1*) The owner has plans to develop the property in a reasonable period of time and become a user of the facility; and

(*2*) The owner agrees in writing to make a monthly payment at least equal to the proportionate share of debt service attributable to the vacant property until the property is developed and the facility is utilized on a regular basis. A bond or escrowed security deposit must be provided to guarantee this monthly payment and to guarantee an amount at least equal to the owner's proportionate share of construction costs. If a bond is provided, it

must be executed by a surety company that appears on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State where the project is located. The guarantee shall be payable jointly to the borrower and the Rural Development; and

(*3*) Such guarantee will mature not later than 4 years from the date of execution and will be finally due and payable upon default of a monthly payment or at maturity, unless the property covered by the guarantee has been developed and the facility is being utilized on a regular basis.

(C) Income from other vacant property owners will be considered only as extra income.

(ii) Realistic user estimates will be established as follows:

(A) Meaningful potential user cash contributions. Potential user cash contributions are required except:

(*1*) For users presently receiving service, or

(*2*) Where Rural Development determines that the potential users as a whole in the applicant's service area cannot make cash contributions, or

(*3*) Where State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes, or ordinances.

(B) The amount of cash contributions required in paragraph (h)(2)(ii)(A) of this section will be set by the applicant and concurred in by Rural Development. Contribtions should be an amount high enough to indicate sincere interest on the part of the potential user, but not so high as to preclude service to low income families. Contributions ordinarily should be an amount approximating one year's minimum user fee, and shall be paid in full before loan closing or commencement of construction, whichever occurs first. Once economic feasibility is ascertained based on a demonstration of meaningful potential user cash contributions, the contribution, membership fee or other fees that may be imposed are not a requirement of Rural Development under this section. However, borrowers do have an additional responsibility relating to generating sufficient revenues as set forth in paragraph (n)(2)(iii) of this section.

(C) Enforceable user agreement. Except for users presently receiving service, an enforceable user agreement with a penalty clause is required unless State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes or ordinances.

(iii) In those cases where all or part of the borrower's debt payment revenues will come from user fees, applicants must provide a positive program to encourage connection by all users as soon as service is available. The program will be available for review and approval by Rural Development before loan closing or commencement of construction, whichever occurs first. Such a program shall include:

(A) An aggressive information program to be carried out during the construction period. The borrower should send written notification to all signed users at least three weeks in advance of the date service will be available, stating the date users will be expected to have their connections completed, and the date user charges will begin.

(B) Positive steps to assure that installation services will be available. These may be provided by the contractor installing the system, local plumbing companies, or local contractors.

(C) Aggressive action to see that all signed users can finance their connections. This might require collection of sufficient user contributions to finance connections. Extreme cases might necessitate additional loan funds for this purpose; however, loan funds should be used only when absolutely necessary and when approved by Rural Development prior to loan closing.

(3) *Utility-type facilities for new developing communities or areas.* Developers are normally expected to provide utility-type facilities in new or developing areas and such facilities shall be installed in compliance with appropriate State statutes and regulations. Rural Development will be considered to an eligible applicant in such cases when failure to complete development would

result in an adverse economic condition for the rural area (not the community being developed); the proposal is necessary to the success of an area development plan; and loan repayment can be assured by:

(i) The applicant already having sufficient assured revenues to repay the loan; or

(ii) Developers providing a bond or escrowed security deposit as a guarantee sufficient to meet expenses attributable to the area in question until a sufficient number of the building sites are occupied and connected to the facility to provide enough revenues to meet operating, maintenance, debt service, and reserve requirements. Such guarantees from developers will meet the requirements in paragraph (h)(2)(i)(B) of this section; or

(iii) Developers paying cash for the increased capital cost and any increased operating expenses until the developing area will support the increased costs; or

(iv) The full faith and credit of a public body where the debt is evidenced by general obligation bonds; or

(v) The loan is to a public body evidenced by a pledge of tax assessments; or

(vi) The user charges can become a tax lien upon the property being served and income from such lien can be collected in sufficient time to be used for its intended purposes.

(i) *Reserve requirements.* Provision for the accumulation of necessary reserves over a reasonable period of time will be included in the loan documents and in assessments, tax levies, or rates charged for services. In those cases where statutes providing for extinguishing assessment liens of public bodies when properties subject to such liens are sold for delinquent State or local taxes, special reserves will be established and maintained for the protection of the borrower's assessment lien.

(1) *General obligation or special assessment bonds.* Ordinarily, the requirements for reserves will be considered to have been met if general obligation or other bonds which pledge the full faith and credit of the political subdivision are used, or special assessment bonds are used, and if such bonds provide for the annual collection of sufficient taxes or assessments to cover debt service, operation and maintenance, and a reasonable amount for emergencies and to offset the possible nonpayment of taxes or assessments by a percentage of the property owners, or a statutory method is provided to prevent the incurrence of a deficiency.

(2) *Other than general obligation or special assessment bonds.* Each borrower will be required to establish and maintain reserves sufficient to assure that loan installments will be paid on time, for emergency maintenance, for extensions to facilities, and for replacement of short-lived assets which have a useful life significantly less than the repayment period of the loan. It is expected that borrowers issuing bonds or other evidences of debt pledging facility revenues as security will ordinarily plan their reserve to provide for a total reserve in an amount at least equal to one average loan installment. It is also expected the ordinarily such reserve will be accumulated at the rate of at least one-tenth of the total each year until the desired level is reached.

(j) *General requirements*—(1) *Membership authorization.* For organizations other than public bodies, the membership will authorize the project and its financing except that the State Director may, with the concurrence of OGC, accept the loan resolution without such membership authorization when State statutes and the organization's charter and bylaws do not require such authorization; and

(i) The organization is well established and is operating with a sound financial base; or

(ii) For utility-type projects the members of the organization have all signed an enforceable user agreement with a penalty clause and have made the required meaningful user cash contribution, except for members presently receiving service or when State statutes or local ordinances require mandatory use of the facility.

(2) *Planning, bidding, contracting, constructing.* (See § 1942.18).

(3) *Insurance and fidelity bonds.* The purpose of RD's insurance and fidelity bond requirements is to protect the government's financial interest based

on the facility financed. The requirements below apply to all types of coverage determined necessary. The National Office may grant exceptions to normal requirements when appropriate justification is provided establishing that it is in the best interest of the applicant/borrower and will not adversely affect the government's interest.

(i) *General.* (A) Applicants must provide evidence of adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage in accordance with this section must then be maintained for the life of the loan. It is the responsibility of the applicant/borrower and not that of Rural Development to assure that adequate insurance and fidelity bond coverage is maintained.

(B) Insurance and fidelity bond requirements by Rural Development shall normally not exceed those proposed by the applicant/borrower if the Rural Development loan approval or servicing official determines that proposed coverage is adequate to protect the government's financial interest. Applicants/borrowers are encouraged to have their attorney, consulting engineer/architect, and/or insurance provider(s) review proposed types and amounts of coverage, including any deductible provisions. If the FmHA or its successor agency under Public Law 103–354 official and the applicant/borrower cannot agree on the acceptability of coverage proposed, a decision will be made by the State Director.

(C) The use of deductibles, *i.e.*, an initial amount of each claim to be paid by the applicant/borrower, may be allowed by Rural Development providing the applicant/borrower has financial resources which would likely be adequate to cover potential claims requiring payment of the deductible.

(D) Borrowers must provide evidence to Rural Development that adequate insurance and fidelity bond coverage is being maintained. This may consist of a listing of policies and coverage amounts in yearend reports submitted with management reports required under §1942.17(q)(2) or other documentation. The borrower is responsible for updating and/or renewing policies or coverage which expire between submissions to Rural Development. Any monitoring of insurance and fidelity bond coverage by FmHA or its successor agency under Public Law 103–354 is solely for the benefit of FmHA or its successor agency under Public Law 103–354, and does not relieve the applicant/borrower of its obligation under the loan resolution to maintain such coverage.

(ii) *Fidelity bond.* Applicants/borrowers will provide fidelity bond coverage for all persons who have access to funds. Coverage may be provided either for all individual positions or persons, or through ''blanket'' coverage providing protection for all appropriate employees and/or officials. An exception may be granted by the State Director when funds relating to the facility financed are handled by another entity and it is determined that the entity has adequate coverage or the government's interest would otherwise be adequately protected.

(A) The amount of coverage required by Rural Development will normally approximate the total annual debt service requirements for the Rural Development loans.

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

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

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

(A) *Property insurance.* Fire and extended coverage will normally be maintained on all structures except as noted in paragraphs (j)(3)(iii)(A)(*1*) and (*2*) of this section. Ordinarily, Rural Development should be listed as mortgagee on

the policy when Rural Development has a lien on the property. Normally, major items of equipment or machinery located in the insured structures must also be covered. Exceptions:

(*1*) Reservoirs, standpipes, elevated tanks, and other structures built entirely of noncombustible materials if such structures are not normally insured.

(*2*) Subsurface lift stations except for the value of electrical and pumping equipment therein.

(B) *Liability and property damage insurance, including vehicular coverage.*

(C) *Malpractice insurance.* The need and requirements for malpractice insurance will be carefully and thoroughly considered in connection with each health care facility financed.

(D) *Flood insurance.* Facilities located in special flood- and mudslide-prone areas must comply with the eligibility and insurance requirements of subpart B of part 1806 of this chapter (RD Instruction 426.2).

(E) *Worker's compensation.* The borrower will carry worker's compensation insurance for employees in accordance with State laws.

(4) *Acquisition of land, easements, water rights, and existing facilities.* Applicants are responsible for acquisition of all property rights necessary for the project and will determine that prices paid are reasonable and fair. Rural Development may require an appraisal by an independent appraiser or Rural Development employee.

(i) *Title for land, rights-of-way, easements, or existing facilities.* The applicant must certify and provide a legal opinion relative to the title to rights-of-way and easements. Form RD 442–21, ''Rights-of-Way Certificate,'' and Form RD 442–22, ''Opinion of Counsel Relative to Rights-of-Way,'' may be used.

(A) *Rights-of-way and easements.* Applicants are responsible for and will obtain valid, continuous and adequate rights-of-way and easements needed for the construction, operation, and maintenance of the facility. Form RD 442–20, ''Right-of-Way Easement,'' may be used. When a site is for major structures for utility-type facilities such as a reservoir or pumping station and the applicant is able to obtain only a right-of-way or easement on such a site rather than a fee simple title, the applicant will furnish a title report thereon by the applicant's attorney showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any. It is the responsibility of the applicant to obtain and record such releases, consents or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the facility and give Rural Development the required security.

(B) *Title for land or existing facilities.* Title to land essential to the successful operation of facilities or title to facilities being purchased, must not contain any restrictions that will adversely affect the suitability, successful operation, security value, or transferability of the facility. Title opinions must be provided by the applicant's attorney. The opinions must be in sufficient detail to assess marketability of the property. Form RD 1927–9, ''Preliminary Title Opinion,'' and Form RD 1927–10, ''Final Title Opinion,'' may be used to provide the required title opinions. If other forms are used they must be reviewed and approved by Rural Development and OGC.

(*1*) In lieu of receiving title opinions from the applicant's attorney, the applicant may use a title insurance company. If a title insurance company is used, the company must provide RD a title insurance binder, disclosing all title defects or restrictions, and include a commitment to issue a title insurance policy. The policy should be in an amount at least equal to the market value of the property as improved. The title insurance binder and commitment should be provided to RD prior to requesting closing instructions. RD will be provided a title insurance policy which will insure RD's interest in the property without any title defects or restrictions which have not been waived by RD.

(*2*) The loan approval official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility. If the District Director is the loan approval official

and is unable to waive the defect or restriction, the title opinion or title insurance binder will be forwarded to the State Director. If the State Director, with the advice of the OGC, determines that the defect or restriction cannot be waived, the defect or restriction must be removed.

(ii) *Water rights.* When legally permissible, an assignment will be taken on water rights owned or to be acquired by the applicant. The following will be furnished as applicable:

(A) A statement by the applicant's attorney regarding the nature of the water rights owned or to be acquired by the applicant (such as conveyance of title, appropriation and decree, application and permit, public notice and appropriation and use).

(B) A copy of a contract with another company or municipality to supply water; or stock certificates in another company which represents the right to receive water.

(iii) *Land purchase contract:* (A) A land purchase contract (known in some areas as a contract for deed) is an agreement between two or more parties which obligates the purchaser to pay the purchase price, gives the purchaser the rights of immediate possession, control, and beneficial use of the property, and entitles the purchaser to a deed upon paying all or a specified part of the purchase price.

(B) Applicants may obtain land through land purchase contracts when all of the following conditions are met:

(*1*) The applicant has exhausted all reasonable means of obtaining outright fee simple title to the necessary land.

(*2*) The applicant cannot obtain the land through condemnation.

(*3*) There are not other suitable sites available.

(*4*) National Office concurrence is obtained in accordance with paragraph (j)(4)(iii)(D)(*2*) of this section.

(C) The land purchase contract must provide for the transfer of ownership by the seller without any restrictions, liens or other title defects. The contract must not contain provisions for future advances (except for taxes, insurance, or other costs needed to protect the security), summary cancellations, summary forfeiture, or other clauses that may jeopardize the Government's interest or the purchaser's ability to pay the Rural Development loan. The contract must provide that if the purchaser fails to make payment that Rural Development will be given at least 90 days written notice with an option to cure the default before the contract can be cancelled, terminated or foreclosed. Then Rural Development must have the option of making the payment and charging it to the purchaser's account, making the payment and taking over the ownership of the purchase contract, or taking any other action necessary to protect the Government's interest.

(D) Prior to loan closing or the beginning of construction, whichever occurs first, the following actions must be taken in the order listed below:

(*1*) The land purchase contract and any appropriate title opinions must be reviewed by the Regional Attorney to determine if they are legally sufficient to protect the interest of the Government.

(*2*) The land purchase contract, the Regional Attorney's comments, and the State Director's recommendations must be submitted to the National Office for concurrence.

(*3*) The land purchase contract must be recorded.

(5) *Lease agreements.* Where the right of use or control of real property not owned by the applicant/borrower is essential to the successful operation of the facility during the life of the loan, such right will be evidenced by written agreements or contracts between the owner(s) of the property and the applicant/borrower. Lease agreements shall not contain provisions for restricted use of the site of facility, forfeiture or summary cancellation clauses and shall provide for the right to transfer and lease without restriction. Lease agreements will ordinarily be written for a term at least equal to the term of the loan. Such lease contracts or agreements will be approved by the Rural Development loan approval official with the advice and counsel of the Regional Attorney, OGC, as to the legal sufficiency of such documents. A copy of the lease contract or agreement will be included in the loan docket.

(6) *Notes and bonds.* Notes and bonds will be completed on the date of loan

closing except for the entry of subsequent multiple advances where applicable. The amount of each note will be in multiples of not less than $100. The amount of each bond will ordinarily be in multiples of not less than $1,000.

(i) Form RD 440–22, ''Promissory Note (Association or Organization),'' will ordinarily be used for loans to nonpublic bodies.

(ii) Section 1942.19 contains instructions for preparation of notes and bonds evidencing indebtedness of public bodies.

(7) *Environmental review requirements.* Loans made under this subpart must comply with the environmental review requirements in accordance with 7 CFR part 1970.

(8) *Health care facilities.* The applicant will be responsible for obtaining the following documents:

(i) A statement from the responsible State agency certifying that the proposed health care facility is not inconsistent with the State Medical Facilities Plan.

(ii) A statement from the responsible State agency or regional office of the Department of Health and Services certifying that the proposed facility meets the standards in §1942.18(d)(4).

(9) *Public information.* Applicants should inform the general public regarding the development of any proposed project. Any applicant not required to obtain authorization by vote of its membership or by public referendum, to incur the obligations of the proposed loan or grant, will hold at least one public information meeting. The public meeting must be held after the preapplication is filed and not later than loan approval. The meeting must give the citizenry an opportunity to become acquainted with the proposed project and to comment on such items as economic and environmental impacts, service area, alternatives to the project, or any other issue identified by Rural Development. The applicant will be required, at least 10 days prior to the meeting, to publish a notice of the meeting in a newspaper of general circulation in the service area, to post a public notice at the applicant's principal office, and to notify Rural Development. The applicant will provide Rural Development a copy of the published notice and minutes of the public meeting. A public meeting is not normally required for subsequent loans which are needed to complete the financing of the project.

(10) *Service through individual installation.* Community owned water or waste disposal systems may provide service through individual installations or small clusters of users within the applicant's service area. When individual installations or small clusters are proposed, the loan approval official should consider items such as: quantity and quality of the individual installations that may be developed; cost effectiveness of the individual facility compared with the initial and long term user cost on a central system; health and pollution problems attributable to individual facilities; operational or management problems peculiar to individual installations; and permit and regulatory agency requirements.

(i) Applicants providing service through individual facilities must meet the eligibility requirements in §1942.17(b).

(ii) Rural Development must approve the form of agreement between the owner and individual users for the installation, operation and payment for individual facilities.

(iii) If taxes or assessments are not pledged as security, owners providing service through individual facilities must obtain security as necessary to assure collection of any sum the individual user is obligated to pay the owner.

(iv) Notes representing indebtedness owed the owner by a user for an individual facility will be scheduled for payment over a period not to exceed the useful life of the individual facility or the loan, whichever is shorter. The interest rate will not exceed the interest rate charged the owner on the Rural Development indebtedness.

(v) Owners providing service through individual or cluster facilities must obtain:

(A) Easements for the installation and ingress to and egress from the facility; and

(B) An adequate method for denying service in the event of nonpayment of user fees.

(11) *Funds from other sources.* Rural Development loan funds may be used along with or in connection with funds provided by the applicant or from other sources. Since ''matching funds'' is not a requirement for Rural Development loans, shared revenues may be used with Rural Development funds for project construction.

(k) *Other Federal, State, and local requirements.* Each application shall contain the comments, necessary certifications and recommendations of appropriate regulatory or other agency or institution having expertise in the planning, operation, and management of similar facilities. Proposals for facilities financed in whole or in part with Rural Development funds will be coordinated with appropriate Federal, State, and local agencies in accordance with the following:

(1) *Compliance with special laws and regulations.* Except as provided in paragraph (k)(2) of this section applicants will be required to comply with Federal, State, and local laws and any regulatory commission rules and regulations pertaining to:

(i) Organization of the applicant and its authority to construct, operate, and maintain the proposed facilities;

(ii) Borrowing money, giving security therefore, and raising revenues for the repayment thereof;

(iii) Land use zoning; and

(iv) Health and sanitation standards and design and installation standards unless an exception is granted by Rural Development.

(2) *Compliance exceptions.* If there are conflicts between this subpart and state or local laws or regulatory commission regulations, the provisions of this subpart will control.

(3) *State Pollution Control or Environmental Protection Agency Standards.* Water and waste disposal facilities will be designed, installed, and operated in such a manner that they will not result in the pollution of water in the State in excess of established standards and that any effluent will conform with appropriate State and Federal Water Pollution Control Standards. A certification from the appropriate State and Federal agencies for water pollution control standards will be obtained showing that established standards are met.

(4) *Consistency with other development plans.* Rural Development financed facilities will not be inconsistent with any development plans of State, multijurisdictional areas, counties, or municipalities in which the proposed project is located.

(5) *State agency regulating water rights.* Each Rural Development financed facility will be in compliance with appropriate State agency regulations which have control of the appropriation, diversion, storage and use of water and disposal of excess water. All of the rights of any landowners, appropriators, or users of water from any source will be fully honored in all respects as they may be affected by facilities to be installed.

(6) *Civil Rights Act of 1964.* All borrowers are subject to, and facilities must be operated in accordance with, title VI of the Civil Rights Act of 1964 and subpart E of part 1901 of this chapter, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by §1901.202(e) of subpart E of part 1901 of this chapter.

(7) *Title IX of the Education Amendments of 1972.* No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or education activity receiving Agency financial assistance except as otherwise provided for in the Education Amendments of title IX. The State Director will provide guidance and technical assistance to carry out the intent of this paragraph.

(8) *Section 504 of the Rehabilitation Act of 1973.* Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Agency financial assistance.

(9) *Age Discrimination Act of 1975.* This Act provides that no person in the United States shall on the basis of age,

be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. This Act also applies to programs or activities funded under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et. seq.). This Act does not apply to: (i) age distinctions contained in Federal, State or local statutes or ordinances adopted by an elected, general purpose legislative body which provide benefits or assistance based on age; (ii) establish criteria for participation in age-related terms; (iii) describe intended beneficiaries or target groups in age-related terms; and, (iv) any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA) (29 U.S.C. 801 *et. seq.*).

(l) *Professional services and contracts related to the facility*—(1) *Professional services.* Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Professional services of the following may be necessary: Engineer, architect, attorney, bond counsel, accountant, auditor, appraiser, and financial advisory or fiscal agent (if desired by applicant). Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to Agency concurrence. Form RD 1942–19, ''Agreement for Engineering Services,'' may be used when appropriate. Guide 20, ''Agreement for Engineering Services (Agency/EPA—Jointly Funded Projects)'' may be used on projects jointly funded by RD and EPA. Guide 14 may be used in the preparation of the legal services agreement.

(2) *Bond counsel.* Unless otherwise provided by §1942.19(b), public bodies are required to obtain the service of recognized bond counsel in the preparation of evidence of indebtedness.

(3) *Contracts for other services.* Contracts or other forms of agreements for other services including management, operation, and maintenance will be developed by the applicant and presented to the Agency for review and approval. Management agreements should provide at least those items in guide 24.

(4) *Fees.* Fees provided for in contracts or agreements shall be reasonable. They shall be considered to be reasonable if not in excess of those ordinarily charged by the profession for similar work when the Agency financing is not involved.

(m) *Applying for the Agency loans*—(1) *Preapplication.* Applicants desiring loans will file SF 424.2 and comments from the appropriate A–95 clearinghouse agency normally with the appropriate Agency County Office. The County Supervisor will immediately forward all documents to the District Office. The District Director has prime responsibility for all community program loan making and servicing activities within the District.

(2) *Preapplication review.* Upon receipt of the preapplication, RD will tentatively determine eligibility including the likelihood of credit elsewhere at reasonable rates and terms and availability of agency loan funds. The determination as to availability of other credit will be made after considering present rates and terms available for similar proposals (not necessarily based upon rates and terms available from Rural Development); the repayment potential of the applicant; long-term cost to the applicant; and average user or other charges. In those cases where Rural Development determines that loans at reasonable rates and terms should be available from commercial sources, Rural Development will notify the applicant so that it may apply for such financial assistance. Such applicants may be reconsidered for Rural Development loans upon their presenting satisfactory evidence of inability to obtain commercial financing at reasonable rates and terms.

(3) *Incurring obligations.* Applicants should not proceed with planning nor obligate themselves for expenditures until authorized by Rural Development.

(4) *Results of preapplication review.* After Rural Development has reviewed the preapplication material and any additional material that may be requested, Form AD–622 will be sent to the applicant. Ordinarily the review will not exceed 45 days.

(5) *Application conference.* Before starting to assemble the application and after the applicant selects its professional and technical representatives, it should arrange with Rural Development for an application conference to provide a basis for orderly application assembly. Rural Development will provide applicants with a list of documents necessary to complete the application. Guide 15 may be used for this purpose. Applications will be filed with the District Office.

(6) *Application completion and assembling.* This is the responsibility of the applicant with guidance from Rural Development. The applicant may utilize their professional and technical representatives or other competent sources.

(7) *Review of decision.* If an application is rejected, the applicant may request a review of this decision under subpart B of part 1900 of this chapter.

(n) *Actions prior to loan closing and start of construction*—(1) *Excess Rural Development loan and grant funds.* If there is a significant reduction in project cost, the applicant's funding needs will be reassessed before loan closing or the start of construction, whichever occurs first. In such cases applicable Rural Development forms, the letter of conditions, and other items will be revised. Decreases in Rural Development funds will be based on revised project costs and current number of users, however, other factors including Rural Development regulations used at the time of loan/grant approval will remain the same. Obligated loan or grant funds not needed to complete the proposed project will be deobligated.

(2) *Loan resolutions.* Loan resolutions will be adopted by both public and other-than-public bodies using Form RD 1942–47, ''Loan Resolution (Public Bodies),'' or Form RD 1942–9, ''Loan Resolution (Security Agreement).'' These resolutions supplement other provisions in this subpart. The applicant will agree:

(i) To indemnify the Government for any payments made or losses suffered by the Government on behalf of the association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source.

(ii) To comply with applicable local, State and Federal laws, regulations, and ordinances.

(iii) To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, establishment of adequate reserves, and to continually operate and maintain the facility in good condition. Except for utility-type facilities, free service use may be permitted. If free services are extended no distinctions will be made in the extension of those services because of race, color, religion, sex, national origin, marital status, or physical or mental handicap.

(iv) To acquire and maintain such insurance coverage including fidelity bonds, as may be required by the Government.

(v) To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof in such a manner as may be required by the Government and to provide the Government without its request, a copy of each such audit and to make and forward to the Government such additional information and reports as it may, from time to time, require.

(vi) To provide the Government at all reasonable times, access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the association is complying with the provisions hereof and of the instruments incident to the making or insuring of the loan.

(vii) To provide adequate service to all persons within the service area who can feasibly and legally be served and to obtain Rural Development's concurrence prior to refusing new or adequate services to such persons. Upon failure of the applicant to provide services

which are feasible and legal, such person shall have a direct right of action against the applicant organization.

(viii) To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds or notes or other debt instruments or other such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.

(ix) To refinance the unpaid balance, in whole or in part, of its debt upon the request of the Government if at any time it should appear to the Government that the association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms.

(x) To provide for, execute, and comply with Form RD 400–4, ''Assurance Agreement,'' and Form RD 400–1, ''Equal Opportunity Agreement,'' including an ''Equal Opportunity Clause,'' which is to be incorporated in or attached as a rider to each construction contract and subcontract in excess of $10,000.

(xi)(A) To place the proceeds of the loan on deposit in a manner approved by the Government. Funds must be deposited and maintained in insured accounts whenever possible. Funds must be maintained in interest bearing accounts, unless the following apply:

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

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

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

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

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

(xii) Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof or interest therein, and not to permit others to do so, without the prior written consent of the Government.

(xiii) Not to borrow any money from any source, enter into any contract or agreement, or incur any other liabilities in connection with making enlargements, improvements or extensions to, or for any other purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to repay the debt to Rural Development.

(xiv) That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government, at its option, may:

(A) Declare the entire principal amount then outstanding and accrued interest, due and payable;

(B) For the account of the association (payable from the source of funds pledged to pay the bonds or notes or any other legally permissiable source), incur and pay reasonable expenses for repair, maintenance and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default; and/or

(C) Take possession of the facility, repair, maintain and operate, or otherwise dispose of the facility. Default under the provisions of the resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the association and default under any such instrument may be construed by the Government to constitute default hereunder.

(3) *Interim financing.* In all loans exceeding $50,000, where funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be obtained so as to preclude the necessity for multiple advances of Rural Development

funds. Guide 1 or guide 1a, as appropriate, may be used to inform the private lender of Rural Development's commitment. When interim commercial financing is used, the application will be processed, including obtaining construction bids, to the stage where the Rural Development loan would normally be closed, that is immediately prior to the start of construction. The Rural Development loan should be closed as soon as possible after the disbursal of all interim funds. Interim financing may be for a fixed term provided the fixed term does not extend beyond the time projected for completion of construction. For this purpose, a fixed term is when the interim lender cannot be repaid prior to the end of the stipulated term of the interim instruments. When a Rural Development Water and Waste Disposal grant is included, any interim financing involving a fixed term must be for the total Rural Development loan amount. Multiple advances may be used in conjunction with interim commercial financing when the applicant is unable to obtain sufficient funds through interim commercial financing in an amount equal to the loan. The Rural Development loan proceeds (including advances) will be used to retire the interim commercial indebtedness. Before the Rural Development loan is closed, the applicant will be required to provide Rural Development with statements from the contractor, engineer, architect, and attorney that they have been paid to date in accordance with their contracts or other agreements and, in the case of the contractor, that any suppliers and subcontractors have been paid. If such statements cannot be obtained, the loan may be closed provided:

(i) Statements to the extent possible are obtained;

(ii) The interest of Rural Development can be adequately protected and its security position is not impaired; and

(iii) Adequate provisions are made for handling the unpaid accounts by withholding or escrowing sufficient funds to pay such claims.

(4) *Obtaining closing instructions.* After loan approval, the completed docket will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(5) *Applicant contribution.* An applicant contributing funds toward the project cost shall deposit these funds in its construction account on or before loan closing or start of construction, whichever occurs first. Project costs paid prior to the required deposit time with applicant funds shall be appropriately accounted for.

(6) *Evidence of and disbursement of other funds.* Applicants expecting funds from other sources for use in completing projects being partially financed with Rural Development funds will present evidence of the commitment of these funds from such other sources. This evidence will be available before loan closing, or the start of construction, whichever occurs first. Ordinarily, the funds provided by the applicant or from other sources will be disbursed prior to the use of Rural Development loan funds. If this is not possible, funds will be disbursed on a pro rata basis. Rural Development funds will not be used to pre-finance funds committed to the project from other sources.

(o) *Loan closing*—(1) *Closing instructions.* Loans will be closed in accordance with the closing instructions issued by OGC.

(2) *Obtaining insurance and fidelity bonds.* Required property insurance policies, liability insurance policies, and fidelity bonds will be obtained by the time of loan closing or start of construction, whichever occurs first.

(3) *Distribution of recorded documents.* The originals of the recorded deeds, easements, permits, certificates of water rights, leases, or other contracts and similar documents which are not to be held by Rural Development will

be returned to the borrower. The original mortgage(s) and water stock certificates, if any, if not required by the recorder's office will be retained by Rural Development.

(4) *Review of loan closing.* In order to determine that the loan has been properly closed the loan docket will be reviewed by the State Director and OGC.

(p) *Project monitoring and fund delivery during construction*—(1) *Coordination of funding sources.* When a project is jointly financed, the State Director will reach any needed agreement or understanding with the representatives of the other source of funds on distribution of responsibilities for handling various aspects of the project. These responsibilities will include supervision of construction, inspections and determinations of compliance with appropriate regulations concerning equal employment opportunities, wage rates, nondiscrimination in making services or benefits available, and environmental compliance. If any problems develop which cannot be resolved locally, complete information should be sent to the National Office for advice.

(2) *Multiple advances.* In the event interim commercial financing is not legally permissible or not available, multiple advances of Rural Development loan funds are required. An exception to this requirement may be granted by the National Office when a single advance is necessitated by State law or public exigency. Multiple advances will be used only for loans in excess of $50,000. Advances will be made only as needed to cover disbursements required by the borrower over a 30-day period. Advances should not exceed 24 in number nor extend longer than two years beyond loan closing. Normally, the retained percentage withheld from the contractor to assure construction completion will be included in the last advance.

(i) Section 1942.19 contains instructions for making multiple advances to public bodies.

(ii) Advances will be requested by the borrower in writing. The request should be in sufficient amounts to pay cost of construction, rights-of-way and land, legal, engineering, interest, and other expenses as needed. The applicant may use Form RD 440–11, ''Estimate of Funds Needed for 30 Day Period Commencing _____,'' to show the amount of funds needed during the 30-day period.

(iii) Rural Development loan funds obligated for a specific purpose, such as the paying of interest, but not needed at the time of loan closing will remain in the Finance Office until needed unless State statutes require all funds to be delivered to the borrower at the time of closing. Loan funds may be advanced to prepay costs under paragraph (d)(1)(iv)(G) of this section. If all funds must be delivered to the borrower at the time of closing to comply with State statutes, funds not needed at loan closing will be handled as follows:

(A) Deposited in an appropriate borrower account, such as the debt service account, or

(B) Deposited in a supervised bank account under paragraph (p)(3)(i) of this section.

(3) *Use and accountability of funds*—(i) *Supervised bank account.* Rural Development loan funds and any funds furnished by the applicant/borrower to supplement the loan including contributions to purchase major items of equipment, machinery, and furnishings may be deposited in a supervised bank account if determined necessary as provided in subpart A of part 1902 of this chapter. When Rural Development has a Memorandum of Understanding with another agency that provides for the use of supervised bank accounts, or when Rural Development is the primary source of funds for a project and has determined that the use of a supervised bank account is necessary, project funds from other sources may also be deposited in the supervised bank account. Rural Development shall not be accountable to the source of the other funds nor shall Rural Development undertake responsibility to administer the funding program of the other entity. Supervised bank accounts should not be used for funds advanced by an interim lender.

(ii) *Other than supervised bank account.* If a supervised bank account is not used, arrangements will be agreed upon for the prior concurrence by Rural Development of the bills or vouchers upon which warrants will be

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

(iii) *Use of minority owned banks.* Applicants are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members) for the deposit and disbursement of funds. A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, DC 20230 and is also available in all Rural Development offices.

(4) *Development inspections.* The District Director will be responsible for monitoring the construction of all projects being financed, wholly or in part, with Rural DevelopmentFmHA or its successor agency under Public Law 103–354 funds. Technical assistance will be provided by the State Director's staff. Project monitoring will include construction inspections and a review of each project inspection report, each change order and each partial payment estimate and other invoices such as payment for engineering/architectural and legal fees and other materials determined necessary to effectively monitor each project. These activities will not be performed on behalf of the applicant/borrower, but are solely for the benefit of Rural Development and in no way are intended to relieve the applicant/borrower of corresponding obligations to conduct similar monitoring and inspection activities. Project monitoring will include periodic inspections to review partial payment estimates prior to their approval and to review project development in accordance with plans and specifications. Each inspection will be recorded using Form RD 1924–12, ''Inspection Report.'' The original Form RD 1924–12 will be filed in the project case folder and a copy furnished to the State Director. The State Director will review inspection reports and will determine that the project is being effectively monitored. The District Director is authorized to review and accept partial payment estimates prepared by the contractor and approved by the borrower, provided the consulting engineer or architect, if one is being utilized for the project, has approved the estimate and certified that all material purchased or work performed is in accordance with the plans and specifications, or if a consulting engineer or architect is not being utilized, the District Director has determined that the funds requested are for authorized purposes. If there is any indication that construction is not being completed in accordance with the plans and specifications or that any other problems exist, the District Director should notify the State Director immediately and withhold all payments on the contract.

(5) *Payment for construction.* Each payment for project costs must be approved by the borrower's governing body. Payment for construction must be for amounts shown on payment estimate forms. Form RD 1924–18, ''Partial Payment Estimate,'' may be used for this purpose or other similar forms may be used with the prior approval of the State Director or designee. However, the State Director or designee cannot require a greater reporting burden than is required by Form RD 1924–18. Advances for contract retainage will not be made until such retainage is due and payable under the terms of the contract. The review and acceptance of project costs, including construction partial payment estimates by the Agency, does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(6) *Use of remaining funds.* Funds remaining after all costs incident to the basic project have been paid or provided for will not include applicant contributions. Applicant contributions will be considered as funds initially expended for the project. Funds remaining, with exception of applicant contributions, may be considered in direct proportion to the amount obtained

from each source. Remaining funds will be handled as follows:

(i) *Agency loan and/or grant funds.* Remaining funds may be used for purposes authorized by paragraph (d) of this section, provided the use will not result in major changes to the facility design or project and that the purposes of the loan and/or grant remains the same.

(A) On projects that only involve an agency loan and no agency grant, funds that are not needed will be applied as an extra payment on the RD indebtedness unless other disposition is required by the bond ordinance, resolution, or State statute.

(B) On projects that involve an agency grant, all remaining agency funds will be considered to be grant funds up to the full amount of the grant. Grant funds not expended under paragraph (p)(6)(i) of this section will be deobligated.

(ii) *Funds from other sources.* Funds remaining from other sources will be handled according to rules, regulations and/or the agreement governing their participation in the project.

(q) *Borrower accounting methods, management reporting and audits.* (1) *Annual financial statements.* Borrowers are required to provide the Agency with annual financial statements for the life of the loan as outlined in the Letter of Conditions issued by the Agency. The financial statements are the responsibility of the borrower's governing body. The type of statement required is dependent on the amount of Federal financial assistance received during the borrower's fiscal year. Federal financial assistance includes Federal assistance that a non-Federal entity received or administered during the entity's fiscal year in the form of grants, loans, and loan guarantees. A Federal award is Federal financial assistance a non-Federal entity received directly from Federal awarding agencies or indirectly from pass-through entities. Federal awards expended generally pertain to events that require the non-Federal entity to comply with Federal Statues, regulations, and terms and conditions of federal awards, such as: expenditure/expense transactions associated with grants, cost-reimbursement contracts, cooperative agreements, and direct appropriations; the disbursement of funds passed through to sub-recipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or consumption of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and, the period when insurance is in force.

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

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

(4) *Audits.* Any applicant that expends $750,000 or more in Federal financial assistance during their fiscal year must submit an audit report conducted in accordance with 2 CFR part 200, subpart F, ''Audit Requirements.'' Applicants expending less than $750,000 in Federal financial assistance per fiscal year are exempt from 2 CFR part 200 audit requirements. All audits are to be performed in accordance with the latest revision of the Generally Accepted Government Accounting Standards (GAGAS), developed by the Comptroller General of the United States. Further guidance on preparing an acceptable audit can be obtained from any Agency office. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the

audit work should be done in conjunction with those audits. Audits should be supplied to the Processing Official within the timeframes stated in paragraph (f) of this section. OMB Circulars and Agency Compliance Supplements are available in any USDA/Agency office or OMB's Web site. Any state, local government, or Indian tribe that is required by constitution or state statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits biennially, pursuant to 2 CFR 200.504(a). This requirement must still be in effect for the biennial period. Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits biennially, pursuant to 2 CFR 200.504(b). All biennial audits must cover both years within the biennial period.

(5) *Exemption from audits.* Except as noted in 2 CFR 200.503, Relation to other audit requirement, public bodies or nonprofits expending less than $750,000 in Federal awards during its fiscal year, whose payments are current, and are having no signs of operational or financial difficulty may submit a management report. A management report, at a minimum, will include a balance sheet and income and expense statement. Financial information may be reported on Form RD 442–2, ''Statement of Budget, Income and Equity'' and RD Form 442–3, ''Balance Sheet'', or similar. The following management data will be submitted by the borrower to the servicing office. Records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(i) *Annual management reports.* Thirty days prior to the beginning of each fiscal year the following will be submitted to the Servicing Official:

(A) One copy of the proposed annual budget. The borrower will submit two copies of Form RD 442–2, or equivalent, Statement of Budget, Income and Equity, Schedule 1, page 1; and Schedule 2, Projected Cash Flow. The only data required at this time is Schedule 1, page 1, Column 3, annual budget, and all of Schedule 2, Projected Cash Flow.

(B) An annual audit report may be submitted in lieu of Forms RD 442–2 and 442–3.

(ii) [Reserved]

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

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

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

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

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

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

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

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

[50 FR 7296, Feb. 22, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1942.17, see the List of CFR Sections Affected, which appears in the

Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 1942.18 Community facilities—Planning, bidding, contracting, constructing.

(a) *General.* This section is specifically designed for use by owners including the professional or technical consultants and/or agents who provide assistance and services such as architectural, engineering, inspection, financial, legal or other services related to planning, bidding, contracting, and constructing community facilities. These procedures do not relieve the owner of the contractual obligations that arise from the procurement of these services. For this section, an owner is defined as an applicant, borrower, or grantee.

(b) *Technical services.* Owners are responsible for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the owner's ''in house'' engineer or architect or through contract, subject to Rural Development concurrence. Architects and engineers must be licensed in the State where the facility is to be constructed.

(c) *Preliminary reports.* Preliminary architectural and engineering reports must conform with customary professional standards. Preliminary report guidelines for water, sanitary sewer, solid waste, storm sewer, and other essential community facilities are available from Rural Development.

(d) *Design policies.* Facilities financed by Rural Development will be designed and constructed in accordance with sound engineering and architectural practices, and must meet the requirements of Federal, State and local agencies.

(1) *Natural resources.* Facility planning should be responsive to the owner's needs and should consider the long-term economic, social and environmental needs as set forth in this section. The Agency's environmental review requirements are found at 7 CFR part 1970.

(2) Historic preservation. Facilities should be designed and constructed in a manner which will contribute to the preservation and enhancement of sites, structures, and objects of historical, architectural, and archaeological significance. All facilities must comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C 470), as implemented by 36 CFR part 800, and Executive Order 11593, ''Protection and Enhancement of the Cultural Environment.'' 7 CFR part 1970 sets forth procedures for the protection of historic and archaeological properties.

(3) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90–480) as implemented by the General Services Administration regulations 41 CFR 101–19.6 and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112) as implemented by 7 CFR parts 15 and 15b.

(4) *Health care facilities.* The proposed facility must meet the minimum standards for design and construction contained in the American Institute of Architects Press Publication No. ISBN 0–913962–96–1, ''Guidelines for Construction and Equipment of Hospital and Medical Facilities,'' 1987 Edition. The facility must also meet the life/safety aspects of the *1985* edition of the National Fire Protection Association (NFPA) 101 Life Safety Code, or any subsequent code that may be designated by the Secretary of HHS. All publications referenced in this section are available in all Rural Development State Offices. Under § 1942.17(j)(8)(ii) of this subpart, a statement by the responsible regulatory agency that the facility meets the above standards will be required. Any exceptions must have prior National Office concurrence.

(5) *Energy conservation.* Facility design should consider cost effective energy saving measures or devices.

(6) *Lead base paints.* Lead base paints shall not be used in facilities designed for human habitation. Owners must comply with the Lead Base Paints Poisoning and Prevention Act of 1971 (42 U.S.C. 4801) and the National Consumer Health Information and Health Promotion Act of 1976 (Pub. L. 94–317) with reference to paint specifications used

according to exhibit H of subpart A of part 1924 of this chapter.

(7) *Fire protection*. Water facilities must have sufficient capacity to provide reasonable fire protection to the extent practicable.

(8) *Growth capacity*. Facilities must have sufficient capacity to provide for reasonable growth to the extent practicable.

(9) *Water conservation*. Owners are encouraged, when economically feasible, to incorporate water conservation practices into a facility's design. For existing water systems, evidence must be provided showing that the distribution system water losses do not exceed reasonable levels.

(10) *Water quality*. All water facilities must meet the requirements of the Safe Drinking Water Act (Pub. L. 93–523) and provide water of a quality that meets the current Interim Primary Drinking Water Regulations (40 CFR part 141).

(11) *Combined sewers*. New combined sanitary and storm water sewer facilities will not be financed by Rural Development. Extensions to existing combined systems can only be financed when separate systems are impractical.

(12) *Compliance*. All facilities must meet the requirements of Federal, State, and local agencies having the appropriate jurisdiction.

(13) *Dam safety*. Projects involving any artificial barrier which impounds or diverts water, or the rehabilitation or improvement of such a barrier, should comply with the provisions for dam safety as discussed in the Federal Guidelines for Dam Safety (Government Printing Office stock No. 041–001–00187–5) as prepared by the Federal Coordinating Council for Science, Engineering and Technology.

(14) *Pipe*. All pipe used shall meet current American Society for Testing Materials (ASTM) or American Water Works Association (AWWA) standards.

(15) *Water system testing*. For new water systems or extensions to existing water systems, leakage shall not exceed 10 gallons per inch of pipe diameter per mile of pipe per 24 hours when tested at 1½ times the working pressure or rated pressure of the pipe, whichever is greater.

(16) *Metering devices*. Water facilities financed by Rural Development will have metering devices for each connection. An exception to this requirement may be granted by the Rural Development's State Director when the owner demonstrates that installation of metering devices would be a significant economic detriment and that environmental consideration would not be adversely affected by not installing such devices.

(17) *Seismic safety*. (i) All new building construction shall be designed and constructed in accordance with the seismic provisions of one of the following model building codes or the latest edition of that code providing an equivalent level of safety to that contained in latest edition of the National Earthquake Hazard Reduction Program's (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions):

(A) 1991 International Conference of Building Officials (ICBO) Uniform Building Code;

(B) 1993 Building Officials and Code Administrators International, Inc. (BOCA) National Building Code; or

(C) 1992 Amendments to the Southern Building Code Congress International (SBCCI) Standard Building Code.

(ii) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications will be evidence of compliance with the seismic requirements of the appropriate building code.

(e) *Construction contracts.* Contract documents must be sufficiently descriptive and legally binding in order to accomplish the work as economically and expeditiously as possible.

(1) *Standard construction contract documents* are available from Rural Development. When Rural Development's standard construction contract documents are used, it will normally not be necessary for the Office of the General Counsel (OGC) to perform a detailed legal review. If the construction contract documents utilized are not in the format of guide forms previously approved by Rural Development, OGC's review of the construction contract

documents will be obtained prior to their use.

(2) *Contract review and approval.* The owner's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are adequate, and that the persons executing these documents have been properly authorized to do so. The contract documents, bids bonds, and bid tabulation sheets will be forwarded to Rural Development for approval prior to awarding. All contracts will contain a provision that they are not in full force and effect until they have been approved by Rural Development. The Rural Development State Director or designee is responsible for approving construction contracts with the legal advice and guidance of the OGC when necessary.

(3) *Separate contracts.* Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting and multiplicity of small contracts on the same job), should be avoided whenever it is practical to do so. Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the job site in a finished or semifinished state such as perfabricated buildings and lift stations. Contracts may also be awarded for material delivered to the job site and installed by a patented process or method.

(f) *Utility purchase contracts.* Applicants proposing to purchase water or other utility service from private or public sources shall have written contracts for supply or service which are reviewed and approved by the Rural Development State Director or designee. To the extent practical, Rural Development review and approval of such contracts should take place prior to their execution by the owner. Form RD 442–30, ''Water Purchase Contract,'' may be used when appropriate. If the Rural Development loan will be repaid from system revenues, the contract will be pledged to Rural Development as part of the security for the loan. Such contracts will:

(1) Include a commitment by the supplier to furnish, at a specified point, an adequate quantity of water or other service and provide that, in case of shortages, all of the supplier's users will proportionately share shortages. If it is impossible to obtain a firm commitment for either an adequate quantity or sharing shortages proportionately, a contract may be executed and approved provided adequate evidence is furnished to enable Rural Development to make a determination that the supplier has adequate supply and/or treatment facilities to furnish its other users and the applicant for the foreseeable future; and

(i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(ii) A suitable alternative supply could be arranged within the repayment ability of the borrower if it should become necessary; or

(iii) Prior approval is obtained from the National Office. The following information should be submitted to the National Office:

(A) Transmittal memorandum including:

(*1*) Alternative supplies considered; and

(*2*) Recommendations and comments; and

(*3*) Any other necessary supporting information.

(B) Copies of the following:

(*1*) Proposed letter of conditions; and

(*2*) Form RD 442–7, ''Operating Budget''; and

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

(*4*) Preliminary Engineering Report; and

(*5*) Proposed Contract.

(C) Owner and Rural Development engineer's comments and recommendations.

(D) Documentation and statement from the supplier that it has an adequate supply and treatment facilities available to meet the needs of its users and the owner for the foreseeable future.

(2) Set out the ownership and maintenance responsibilities of the respective parties including the master meter if a meter is installed at the point of delivery.

(3) Specify the initial rates and provide some kind of escalator clause which will permit rates for the association to be raised or lowered proportionately as certain specified rates for the supplier's regular customers are raised or lowered. Provisions may be made for altering rates in accordance with the decisions of the appropriate State agency which may have regulatory authority.

(4) Run for a period of time which is at least equal to the repayment period of the loan. State Directors may approve contracts for shorter periods of time if the supplier cannot legally contract for such period, or if the owner and supplier find it impossible or impractical to negotiate a contract for the maximum period permissible under State law, provided:

(i) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(ii) The contract contains adequate provisions for renewal; or

(iii) A determination is made that in the event the contract is terminated, there are or will be other adequate sources available to the owner that can feasibly be developed or purchased.

(5) Set out in detail the amount of connection or demand charges, if any, to be made by the supplier as a condition to making the service available to the owner. However, the payment of such charges from loan funds shall not be approved unless Rural Development determines that it is more feasible and economical for the owner to pay such a connection charge than it is for the owner to provide the necessary supply by other means.

(6) Provide for a pledge of the contract to Rural Development as part of the security for the loan.

(7) Not contain provisions for:

(i) Construction of facilities which will be owned by the supplier. This does not preclude the use of money paid as a connection charge for construction to be done by the supplier.

(ii) Options for the future sale or transfer. This does not preclude an agreement recognizing that the supplier and owner may at some future date agree to a sale of all or a portion of the facility.

(g) *Sewage treatment and bulk water sales contracts.* Owners entering into agreements with private or public parties to treat sewage or supply bulk water shall have written contracts for such service and all such contracts shall be subject to Rural Development concurrence. Paragraph (f) of this section should be used as a guide to prepare such contracts.

(h) *Performing construction.* Owners are encouraged to accomplish construction through contracts with recognized contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer or architect prepares design drawings and specifications and inspects construction and furnishes inspection reports as required by paragraph (o) of this section. For other than utility-type facilities, inspection services may be provided by individuals as approved by the Rural Development State Director. In either case, the requirements of paragraph (j) of this section apply. Payments for construction will be handled under § 1942.17(p)(5) of this part.

(i) *Owner's contractual responsibility.* This subpart does not relieve the owner of any contractual responsibilities under its contract. The owner is responsible for the settlement of all contractural and administrative issues arising out of procurements entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the local, State, or Federal authority as may have jurisdiction.

(j) *Owner's procurement regulations.* Owner's procurement regulations must comply with the following standards:

(1) *Code of conduct.* Owners shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Rural Development funds. No employee, officer or agent of the owner shall participate in the selection,

award, or administration of a contract supported by Rural Development funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

(i) The owner's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties of subagreements.

(ii) To the extent permitted by State or local law or regulations, the owner's standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the owner's officers, employees, agents, or by contractors or their agents.

(2) *Maximum open and free competition.* All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: Placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying material(s), the owner and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. For a water or waste disposal facility, Rural Development shall consider fully any recommendation made by the loan applicant or borrower concerning the technical design and choice of materials to be used for such a facility. If Rural Development determines that a design or material, other than those that were recommended should be considered by including them in the procurement process as an acceptable design or material in the water or waste disposal facility, Rural Development shall provide such applicant or borrower with a comprehensive justification for such a determination. The justification will be documented in writing.

(3) *Owner's review.* Proposed procurement actions shall be reviewed by the owner's officials to avoid the purchase of unnecessary or duplicate items. Consideration should be given to consolidation or separation of procurement items to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, owners are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(4) *Solicitation of offers,* whether by competitive sealed bids or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brands which must be met by offerors shall be clearly stated.

(ii) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(5) *Small, minority, and women's businesses and labor surplus area firms.* (i) affirmative steps should be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(A) Include qualified small and minority businesses on solicitation lists.

(B) Assure that small and minority businesses are solicited whenever they are potential sources.

(C) When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(D) Where the requirement permits, establish delivery schedules which will encourage participation by small and minority businesses.

(E) Use the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the Department of Commerce.

(F) If any subcontracts are to be let, require the prime contractor to take the affirmative steps in paragraphs (j)(5)(i) (A) through (E) of this section.

(ii) Owners shall take similar appropriate affirmative action in support of women's businesses.

(iii) Owners are encouraged to procure goods and services from labor surplus areas.

(iv) Owners shall submit a written statement or other evidence to Rural Development of the steps taken to comply with paragraphs (j)(5)(i) (A) through (F), (j)(5)(ii), and (j)(5)(iii) of this section.

(6) *Contract pricing.* Cost plus a percentage of cost method of contracting shall not be used.

(7) *Unacceptable bidders.* The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(i) An engineer or architect as an individual or firm who has prepared plans and specifications or who will be responsible for monitoring the construction;

(ii) Any firm or corporation in which the owner's architect or engineer is an officer, employee, or holds or controls a substantial interest;

(iii) The governing body's officers, employees, or agents;

(iv) Any member of the immediate family or partners in paragraphs (j)(7)(i), (j)(7)(ii), or (j)(7)(iii) of this section; or

(v) An organization which employs, or is about to employ, any person in paragraph (j)(7)(i), (j)(7)(ii), (j)(7)(iii) or (j)(7)(iv) of this section.

(8) *Contract award.* Contracts shall be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall include but not be limited to matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts shall not be made with parties who are suspended or debarred.

(k) *Procurement methods.* Procurement shall be made by one of the following methods: small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method for construction contracts.

(1) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property, costing in the aggregate not more than the Simplified Acquisition Threshold. If small purchase procedures are used for a procurement, written price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) *Competitive sealed bids.* In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method the following shall apply:

(i) At a sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of qualified sources. In addition, the invitation shall be publicly advertised.

(ii) The invitation for bids, including specifications and perinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation under paragraph (j)(4) of this section.

(iii) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(iv) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs shall be considered in determining which bid is lowest.

(v) Any or all bids may be rejected by the owner when it is in their best interest.

(3) *Competitive negotiation.* In competitive negotiations, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching agreement on the technical quality, price, other terms of the proposed contract and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

(i) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(ii) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required, and their relative importance.

(iii) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(iv) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner, price and other factors considered. Unsuccessful offerors should be promptly notified.

(v) Owners may utilize competitive negotiation procedures for procurement of architectural/engineering and other professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation.

(4) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive sealed bids (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(i) The item is available only from a single source; or

(ii) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or

(iii) After solicitation of a number of sources, competition is determined inadequate; or

(iv) No acceptable bids have been received after formal advertising; or

(v) The procurement of architectural/engineering and other professional services.

(vi) The aggregate amount does not exceed $50,000.

(5) *Additional procurement methods.* Additional innovative procurement methods may be used by the owner with prior written approval of the Rural Development National Office.

(l) *Alternate contracting methods.* The services of the consulting engineer or architect and the general construction contractor shall normally be procured from unrelated sources in accordance with paragraph (j)(7) of this section. Alternate contracting methods which combine or rearrange design, inspection or construction services (such as

design/build or construction management/constructor) may be used with Rural Development written approval.

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

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

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

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

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

(v) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.

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

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

(viii) The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.

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

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

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

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

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

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

followed, is provided in paragraph (k) of this section.

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

(1) *Evidence.* Provide conclusive evidence that the contract was entered into without intent to circumvent the requirements of Rural Development regulations. The evidence will consist of at least the following:

(i) The lapse of a reasonable period of time between the date of contract award and the date of filing the preapplication which clearly indicates an irreconcilable failure of previous financial arrangements; or

(ii) A written statement explaining initial plans for financing the project and reasons for failure to obtain the planned credit.

(2) *Modifications.* Modify the outstanding contract to conform with the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Rural Development financing. When all construction is complete and it is impracticable to modify the contracts, the owner must provide the certification required by paragraph (m)(4) of this section.

(3) *Consultant's certification.* Provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications.

(4) *Owner's certification.* Provide a certification by the owner that the contractor has complied with all statutory and executive requirements related to Rural Development financing for construction already performed even though the requirements may not have been included in the contract documents.

(n) *Contract provisions.* In addition to provisions defining a sound and complete contract, any recipient of Rural Development funds shall include the following contract provisions or conditions in all contracts:

(1) *Remedies.* Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should also be included.

(2) *Termination.* All contracts exceeding $10,000, shall contain provisions for termination by the owner including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions when the contract may be terminated because of circumstances beyond the control of the contractor.

(3) *Surety.* In all contracts for construction or facility improvements awarded exceeding $100,000, the owner shall require bonds, a bank letter of credit or cash deposit in escrow assuring performance and payment, each in the amount of 100 percent of the contract cost. The surety will normally be in the form of performance bonds and payment bonds; however, when other methods of surety may be necessary, bid documents must contain provisions for such alternative types of surety. The use of surety other than performance bonds and payment bonds requires concurrence by the National Office after submission of a justification by the State Director together with the proposed form of escrow agreement or letter of credit. For contracts of lesser amounts, the owner may require surety. When a surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Form RD 1924–10, ''Release by Claimants,'' and Form RD 1924–9, ''Certificate of Contractor's Release,'' may be obtained at the local Rural Development office and used for this purpose. The United States, acting through Rural Development, will be named as co-obligee on all surety unless prohibited by State law. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on

Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the facility is located.

(4) *Equal Employment Opportunity*. All contracts awarded in excess of $10,000 by owners shall contain a provision requiring compliance with Executive Order 11246, entitled, ''Equal Employment Opportunity,'' as amended by Executive Order 11375, and as supplemented by Department of Labor regulations 41 CFR part 60.

(5) *Anti-kickback*. All contracts for construction shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874). This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report all suspected or reported violations to Rural Development.

(6) *Records*. All negotiated contracts (except those of $2,500 or less) awarded by owners shall include a provision to the effect that the owner, Rural Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan program for the purpose of making audits, examinations, excerpts, and transcriptions. Owners shall require contractors to maintain all required records for three years after owners make final payments and all other pending matters are closed.

(7) *State Energy Conservation Plan*. Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

(8) *Change orders*. The construction contract shall require that all contract change orders be approved in writing by Rural Development.

(9) *Rural Development concurrence*. All contracts must contain a provision that they shall not be effective unless and until the Rural Development State Director or designee concurs in writing.

(10) *Retainage*. All construction contracts shall contain adequate provisions for retainage. No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the contractor. The retainage shall not be less than an amount equal to 10 percent of an approved partial payment estimate until 50 percent of the work has been completed. If the job is proceeding satisfactory at 50 percent completion, further partial payments may be made in full, however, previously retained amounts shall not be paid until construction is substantially complete. Additional amounts may be retained if the job is not proceeding satisfactorily, but in no event shall the total retainage be more than 10 percent of the value of the work completed.

(11) *Other compliance requirements*. Contracts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to Rural Development and to the U.S. Environmental Protection Agency, Assistant Administrator for Enforcement. Solicitations and contract provisions shall include the requirements of 40 CFR part 15.4(c) as set forth in guide 18 of this subpart which is available in all Rural Development offices.

(o) *Contract administration*. Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(1) *Preconstruction conference*. Prior to beginning construction, the owner will schedule a preconstruction conference where Rural Development will review

the planned development with the owner, its architect or engineer, resident inspector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form RD 1924–16, ''Record of Preconstruction Conference,'' and the discussion and agreements will be documented. Form RD 1924–16 may be used for this purpose.

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

(i) A comparison of actual accomplishments with the construction schedule established for the period. The partial payment estimate may be used for this purpose.

(ii) A narrative statement giving full explanation of the following:

(A) Reasons why established goals were not met.

(B) Analysis and explanation of cost overruns or high unit costs and how payment is to be made for the same.

(iii) If events occur between reports which have a significant impact upon the project, the owner will notify Rural Development as soon as any of the following conditions are met:

(A) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives or prevent the meeting of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(B) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected or which will result in cost underruns or lower unit costs than originally planned and which may result in less Rural Development assistance.

(3) *Inspection.* Full-time resident inspection is required for all construction unless a written exception is made by Rural Development upon written request of the owner. Unless otherwise agreed, the resident inspector will be provided by the consulting architect/engineer. Prior to the preconstruction conference, the architect/engineer will submit a resume of qualifications of the resident inspector to the owner and to Rural Development for acceptance in writing. If the owner provides the resident inspector, it must submit a resume of the inspector's qualifications to the project architect/engineer and Rural Development for acceptance in writing prior to the preconstruction conference. The resident inspector will work under the general supervision of the project architect/engineer. A guide format for preparing daily inspection reports (Guide 11 of this subpart) and Form RD 1924–18, ''Partial Payment Estimate,'' are available on request from Rural Development.

(4) *Inspector's daily diary.* The resident inspector will maintain a record of the daily construction progress in the form of a daily diary and daily inspection reports as follows:

(i) A complete set of all daily construction records will be maintained and the original set furnished to the owner upon completion of construction.

(ii) All entries shall be legible and shall be made in ink.

(iii) Daily entries shall include but not be limited to the date, weather conditions, number and classification of personnel working on the site, equipment being used to perform the work, persons visiting the site, accounts of substantive discussions, instructions given to the contractors, directions received, all significant or unusual happenings involving the work, any delays, and daily work accomplished.

(iv) The daily entries shall be made available to Rural Development personnel and will be reviewed during project inspections.

(5) *Prefinal inspections.* A prefinal inspection will be made by the owner, resident inspector, project architect or engineer, representatives of other agencies involved, the District Director and a Rural Development State Office staff representative, preferably the State Staff architect or engineer. Prefinal inspections may be made without Rural Development State Office staff participation if the State Director or a designee determines that

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

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

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

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

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

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

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

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

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

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

(B) Changes in facility design.

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

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

(iv) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) *Bond transcript documents.* Any questions with respect to Rural Development requirements should be discussed with the Rural Development representatives. The bond counsel (or local counsel where no bond counsel is involved) is required to furnish at least two complete sets of the following to the applicant, who will furnish one complete set to Rural Development:

(1) Copies of all organizational documents.

(2) Copies of general incumbency certificate.

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

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

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

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

(7) Specimen bond, with any attached coupons.

(8) Attorney's no-litigation certificate.

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

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

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

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

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

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

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

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

(2) *Second preference—single instruments with amortized installments.* If Form RD 440.22 is not legally permissible, use a single instrument providing for amortized installments. Show the full amount of the loan on the face of the document and provide for entering the date and amount of each Rural Development advance on the reverse thereof or on an attachment to the instrument. Form RD 440–22 should be followed to the extent possible. When principal payment is deferred, no attempt should be made to compute in dollar terms the amount of interest due on these installment dates. Rather the instrument should provide that ''interest only'' is due on these dates. The appropriate amortized installment computed as follows will be shown due on the installment date thereafter.

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

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

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

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

Interest Only Installments: 7–5–1977 and 7–5–1978
First Regular Installment: 7–5–1979
Final Installment: 7–5–2016
Computation:
2016 − 1978 = 38 × 2 = 76 semiannual periods
$100,000.00 × .02952 = $2,952.00 semiannual payment due

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

Date of Loan Closing: 7–5–1976
Amount of Loan: $100,000.00
Interest Rate: 5%
Amortization Period: 40 years
Interest Only Installments: 7–5–1977 and 7–5–1978
First Regular Installment: 7–5–1979
Final Installment: 7–5–2016
Computation:
2016 − 1978 = 38 × 12 = 456 monthly payments
$100,000.00 × .00491 = $491.00 monthly payment due

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

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

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

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

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

(*1*) Billed delinquent interest,

(*2*) Past due interest installments,

(*3*) Past due principal installments,

(*4*) Interest installment due, and

(*5*) Principal installment due.

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

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

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

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

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

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

(2) The interest rate.

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

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

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

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

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

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

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

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

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

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

(B) Multiply the daily accrual factor determined in (A) by the number of days from the date of advance or last installment date to the next installment due date; this is the individual coupon amount.

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

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

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

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

(6) [Reserved]

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

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

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

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

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

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

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

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

(iv) Provisions that amend convenants contained in Forms RD 1942–47, ''Loan Resolution (Public Bodies),'' or FmHA 1942–9, ''Loan Resolution Security Agreement.''

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

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

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

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

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

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

§ 1942.20 Community Facility Guides.

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

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

(2) Guide 2—Water Users Agreement.

(3) Guide 3—Service Declination Statement.

(4) Guide 4—Bylaws.

(5) Guide 5—Financial Feasibility Report.

(6) Guide 6—Preliminary Architectural Feasibility Report.

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

(8) Guide 8—Preliminary Engineering Report Sewerage Systems.

(9) Guide 9—Preliminary Engineering Report Solid Waste Disposal Systems.

(10) Guide 10—Preliminary Engineering Report Storm Waste-Water Disposal.

(11) Guide 11—Daily Inspection Report.

(12) Guide 12—Memorandum of Understanding Between the Economic Development Administration—Department of Commerce and the Department of Agriculture Pertaining to EDA Public Works Projects Assisted by an Agency loan.

(13) Guide 13—Memorandum of Understanding Between the Economic Development Administration—Department of Commerce and the Department of Agriculture Regarding Supplementary Grant Assistance for the Construction of Public Works and Development Facilities.

(14) Guide 14—Legal Services Agreement.

(15) Guide 15—Community Facility Borrower's Application.

(16) Guide 16—Community Facility Loan Docket.

(17) Guide 17—Construction Contract Documents—Short Form.

(18) Guide 18—Agency Supplemental General Conditions.

(19) Guide 19—Construction Contract Documents.

(20) Guide 20—Agreement for Engineering Services (Agency/EPA Jointly Funded Projects).

(21) Guide 21—Review of Audit Reports.

(22) Guide 22—Delinquent Accounts Positive Action Plan.

(23) Guide 23—Agreement for Joint Use of Electric System Poles.

(24) Guide 24—Minimum Suggested Contents of Management Agreements.

(25) Guide 25—Joint Policy Statement Between Environmental Protection Agency and the Agency.

(26) Guide 26—Community Programs Project Selection Criteria.

(27) Exhibit A—Circular No. A–128.

(28) Exhibit B—Department of Agriculture Regional Inspector General (OIG).

(b) These guides and exhibits are for use by Agency officials, applicants and applicant's officials and/or agents on certain matters related to the planning, development, and operation of essential community facilities which involve the use of loans and/or grants from Agency. This includes activities related to applying for and obtaining such financial assistance. These guides and exhibits are not published in the FEDERAL REGISTER, however, they are available in any Agency office.

[50 FR 7296, Feb. 22, 1985, as amended at 53 FR 6787, Mar. 3, 1988]

§ 1942.21 Statewide nonmetropolitan median household income.

Statewide nonmetropolitan median household income means the median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places, of 50,000 or more population.

[69 FR 65519, Nov. 15, 2004]

§§ 1942.22–1942.29 [Reserved]

§ 1942.30 Re-lending.

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

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

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

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

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

making loans for projects located in or serving Persistent Poverty County(ies) or High Poverty Area(s);

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

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

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

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

(i) Re-lender is regulated and supervised by a Federal or State Banking Regulatory Agency that is subject to credit examination, AND the institution, its subsidiaries, holding companies, and affiliates are not on their respective regulatory agency's watch list and have no regulatory actions outstanding against them;

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

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

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

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

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

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

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

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

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

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

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

(3) The project must:

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

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

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

(d) *Evaluation criteria*. The Agency will score and rank all eligible and

complete Re-lender applications based upon the evaluation factors set out in the annual FEDERAL REGISTER notice, including but not limited to: Lending experience and strength of the re-lender, poverty and project service area, and Administrator's discretionary points.

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

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

(2) Execute a promissory note;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[81 FR 43936, July 6, 2016]

§§ 1942.31–1942.49 [Reserved]

§ 1942.50 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0015. Public reporting burden for this collection of information is estimated to vary from five minutes to 15 hours per response, with an average of 2.7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0015), Washington, DC 20503.

[60 FR 11019, Mar. 1, 1995]

Subpart B [Reserved]

Subpart C—Fire and Rescue and Other Small Community Facilities Projects

SOURCE: 52 FR 43726, Nov. 16, 1987, unless otherwise noted.

§ 1942.101 General.

This subpart provides the policies and procedures for making and processing insured Community Facilities (CF) loans for facilities that will primarily provide fire or rescue services and other small essential community facility projects and applies to fire and rescue and other Community Facilities loans for projects costing $300,000 and under. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Rural Development employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with a Rural Development employee. Community Facilities loans for other types of facilities, and those costing in excess of $300,000, are defined in subpart A of this part.

[68 FR 65830, Nov. 24, 2003]

§ 1942.102 Nondiscrimination.

(a) Federal statutes provide for extending Agency financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap. The participants must possess the capacity to enter into legal contracts under State and local statutes.

(b) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes are eligible to apply for and are encouraged to participate in this program. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this subpart that affect applicant eligibility, the adequacy of RD's security or the adequacy of service to users of the facility and all other requirements of this subpart must be met.

§ 1942.103 Definitions.

Agency. The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture.

Approval official. An official who has been delegated loan or grant approval authorities within applicable programs, subject to certain dollar limitations.

Construction. The act of building or putting together a facility that is a part of, or physically attached to, real estate. This does not include procurement of major equipment even though the equipment may be custom built to meet the owner's requirements.

Owner. An applicant or borrower.

Processing office. The office designated by the State program official to accept and process applications for Community Facilities projects.

Regional Attorney or OGC. The head of a Regional Office of the General Counsel (OGC).

Small Community Facilities projects. Community Facilities loans costing $300,000 and under.

[68 FR 65830, Nov. 24, 2003]

§ 1942.104 Application processing.

(a) *General.* Prospective applicants should request assistance by filing SF 424.2, ''Application for Federal Assistance (For Construction),'' with the Local or Area Rural Development Office. When practical, approval officials should meet with prospective applicants before an application is filed to discuss eligibility and Rural Development requirements and processing procedures. Throughout loan processing, Rural Development should confer with applicant officials as needed to ensure that applicant officials understand the current status of the processing of their application, what steps and determinations are necessary, and what is required from them. Rural Development should assist the applicant as needed and generally try to develop and maintain a cooperative working relationship with the applicant.

(b) *Unfavorable decision.* If, at any time prior to loan approval, it is decided that favorable action will not be taken on an application, the approval official will notify the applicant, in writing, of the reasons why the request was not favorably considered. The notification to the applicant will state that a review of this decision by Rural Development may be requested by the applicant in accordance with subpart B of part 1900 of this chapter. The following statement will also be made on all notifications of adverse action:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

[52 FR 43726, Nov. 16, 1987, as amended at 54 FR 47197, Nov. 13, 1989; 55 FR 13504, Apr. 11, 1990; 68 FR 65830, Nov. 24, 2003; 68 FR 69001, Dec. 11, 2003]

§ 1942.105 Environmental review requirements.

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

[81 FR 11031, Mar. 2, 2016]

§ 1942.106 Intergovernmental review.

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

(b) State intergovernmental review agencies that have selected community facility loans as a program they want to review may not be interested in reviewing proposed loans for fire and rescue facilities. In such cases, the State Director should obtain a letter from the State single point of contact exempting fire and rescue loans from intergovernmental consultation review. A copy of the letter should be placed in the case file for each fire and rescue facility application in lieu of completing the intergovernmental review process.

(c) When an application is filed and adverse comments are not expected, the District Director should proceed with application processing pending intergovernmental review. The loan should not be obligated until any required review process has been completed.

(d) Funds allocated for use under this subpart are also for the use of eligible Indian tribes within the State, regardless of whether State development strategies include Indian reservations. Eligible Indian tribes must have equal opportunity to participate in the program as compared with other residents of the State.

[52 FR 43726, Nov. 16, 1987, as amended at 61 FR 6309, Feb. 20, 1996; 76 FR 80730, Dec. 27, 2011]

§ 1942.107 Priorities.

(a) Eligible applications must be selected for processing in accordance with § 1942.17(c) of subpart A of this part 1942.

(b) The District Director must score each eligible application in accordance with §1942.17(c)(2)(iii) of subpart A of this part 1942. The District Director must then notify the State Director of the score, proposed loan amount, and other pertinent data. The State Director should determine as soon as possible if the project has sufficient priority for further processing and notify the District Director. Normally, this consultation should be handled by telephone and documented in the running record.

(c) Applicants who appear eligible but do not have the priority necessary for further consideration at this time should be notified that funds are not available, requested to advise whether they wish to have their application maintained for future consideration and given the following notice:

You are advised against incurring obligations which would limit the range of alternatives to be considered, or which cannot be fulfilled without Agency funds until the funds are actually made available. Therefore, you should refrain from such actions as initiating engineering and legal work, taking actions which would have an adverse effect on the environment, taking options on land rights, developing detailed plans and specifications, or inviting construction bids until notified by RD to proceed.

§ 1942.108 Application docket preparation and review.

(a) *Guides.* Application dockets should be developed in accordance with §1942.2(c) of subpart A of this part 1942.

(b) [Reserved]

(c) *Budgets.* All applicants must complete Form RD 442–7, ''Operating Budget,'' except as provided in this paragraph. Applicants with annual incomes not exceeding $100,000 may, with concurrence of the District Director, use Form RD 1942–52, ''Cash Flow Projection,'' instead of Form RD 442–7. Projections should be provided for the current year and each year thereafter until the facility is expected to have been in operation for a full year and a full annual installment paid on the loan.

(d) *Letter of conditions.* The District Director should prepare and issue a letter of conditions in accordance with §1942.5 (a)(1) and (c) of subpart A of this part 1942.

(e) *Organizational review.* As early in the application process as practical, the approval official should obtain copies of organization documents from each applicant and forward them through the State Office to the Regional Attorney for review and comments. The Regional Attorney's comments should be received and considered before obligation of funds.

(f) *National Office review.* Applications that require National Office review will be submitted in accordance with §1942.5(b) of subpart A of this part 1942.

(g) *State Office review.* The State Office must monitor fire and rescue and other small community facility project loanmaking and servicing and provide guidance, assistance, and training as necessary to ensure the activities are accomplished in an orderly manner consistent with the Agency's regulations. The processing office should request advice and assistance from the State Office as needed. The State Director may require all or part of a specific application docket to be submitted to the State Office for review at any time. The State Director may determine that one or more of the processing office staffs do not have adequate training and expertise to routinely complete application dockets without State Office review. In such cases, the State Director should establish guidelines by memorandum or by State supplement to the subpart for the necessary State Office reviews.

(h) *Loan approval and fund obligation.* Loans must be approved and obligated in accordance with §1942.5(d) of subpart A of this part 1942 and subpart A of part 1901 of this chapter.

[52 FR 43726, Nov. 16, 1987, as amended at 54 FR 47197, Nov. 13, 1989; 67 FR 60854, Sept. 27, 2002; 68 FR 65830, Nov. 24, 2003]

§ 1942.109 [Reserved]

§ 1942.110 Strategic economic and community development.

Applicants with projects that support the implementation of Strategic Community Investment Plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of Strategic Community Investment

Plans on a multi-jurisdictional and multi-sectoral basis.

[85 FR 59393, Sept. 22, 2020]

§ 1942.111 Applicant eligibility.

(a) *General.* Loans under this subpart are subject to the provisions of § 1942.17(b) of subpart A of this part 1942.

(b) *Credit elsewhere determinations.* The approval official must determine whether financing from commercial sources at reasonable rates and terms is available. If credit elsewhere is indicated, the approval official should inform the applicant and recommend the applicant apply to commercial sources for financing. To provide a basis for referral of only those applicants who may be able to finance projects through commercial sources, approval officials should maintain liaison with representatives of lenders in the area. The State Director should keep approval officials informed regarding lenders outside the area who might make loans in the area. Approval officials should maintain criteria for determining applications that should be referred to commercial lenders and maintain a list of lender representatives interested in receiving such referrals.

(c) *Public use.* Loans under this subpart are subject to the provisions of § 1942.17(e) of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987, as amended at 68 FR 65830, Nov. 24, 2003]

§ 1942.112 Eligible loan purposes.

(a) Funds may be used:

(1) To construct, enlarge, extend, or otherwise improve essential community facilities primarily providing fire or rescue services primarily to rural residents and rural business. Rural businesses would include facilities such as educational and other publicly owned facilities. ''Otherwise improve'' includes but is not limited to the following:

(i) The purchase of major equipment, such as fire trucks and ambulances, which will, in themselves, provide an essential service to rural residents.

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

(iii) The construction or development of an essential community facility requisite to the beneficial and orderly development of a community operated on a nonprofit basis in accordance with § 1942.17(d) of this subpart. This subpart includes those projects meeting the definition of a small community facility project.

(2) To pay the following expenses, but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraph (a)(1) of this section:

(i) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting but not for more than 3 years unless a longer period is approved by the National Office; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than 2 years unless a longer period is approved by the National Office; and interest on interim financing, including interest charges on interim financing from sources other than RD.

(iii) Costs of acquiring interest in land, rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding 1 year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are a secondary part of the total loan;

(B) The debts are incurred for the facility or service being financed or any part thereof; and

(C) Arrangements cannot be made with the creditors to extend or modify

the terms of the debts so that a sound basis will exist for making a loan.

(3) To pay obligations for construction or procurement incurred before loan approval. Construction work or procurement actions should not be started and obligations for such work or materials should not be incurred before the loan is approved. However, if there are compelling reasons for proceeding with construction or procurement before loan approval, applicants may request Agency approval to pay such obligations. Such requests may be approved if RD determines that:

(i) Compelling reasons exist for incurring obligations before loan approval; and

(ii) The obligations will be incurred for authorized loan purposes; and

(iii) Contract documents have been approved by RD; and

(iv) All environmental requirements applicable to RD and the applicant have been met; and

(v) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic, material or other liens that may attach to the security property. RD may authorize payment of such obligations at the time of loan closing. RD's authorization to pay such obligations, however, is on the condition that it is not committed to make the loan; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan approval requirements. The applicant's request and Agency authorization for paying such obligations shall be in writing. If construction or procurement is started without Agency approval, post approval in accordance with this section may be considered.

(b) Funds may not be used to finance:

(1) Facilities which are not modest in size, design, and cost.

(2) Loan finder's fees.

(3) Projects located within the Coastal Barriers Resource system that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, Pub. L. 97–348.

[52 FR 43726, Nov. 16, 1987, as amended at 57 FR 21195, May 19, 1992; 68 FR 65831, Nov. 24, 2003]

§ 1942.113 Rates and terms.

Rates and terms for loans under this subpart are as set out in § 1942.17(f) of subpart A of this part 1942.

§ 1942.114 Security.

Specific requirements for security for each loan will be included in the letter of conditions. Loans must be secured by the best security position practicable, in a manner which will adequately protect the interest of RD during the repayment period of the loan, and in accordance with the following;

(a) Security must include one of the following:

(1) A pledge of revenue and a lien on all real estate and major equipment purchased or developed with the Agency loan; or

(2) General obligation bonds or bonds pledging other taxes.

(b) Additional security may be required as determined necessary by the loan approval official. In determining the need for additional security the loan approval official should carefully consider:

(1) The estimated market value of real estate and equipment security.

(2) The adequacy and dependability of the applicant's revenues, based on the applicant's financial records, the project financial feasibility report, and the project budgets.

(3) The degree of community commitment to the project, as evidenced by items such as active broad based membership, aggressive leadership, broad based fund drives, or contributions by local public bodies.

(c) Additional security may include, but is not limited to, the following:

(1) Liens on additional real estate or equipment.

(2) A pledge of revenues from additional sources.

(3) An assignment of assured income in accordance with § 1942.17(g)(3)(iii)(A)(*1*) of subpart A of this part 1942.

(d) Review and approval or concurrence in the State Office is required if the security will not include a pledge of taxes and the applicant cannot provide evidence of the financially successful operation of a similar facility for the 5 years immediately prior to loan application.

(e) Review and concurrence in the National Office is required if the security will not include a pledge of taxes, the applicant cannot provide evidence of the financially successful operation of a similar facility for the 5 years immediately prior to loan application, and the amount of the loan will exceed $250,000.

(f) Loans under this subpart are subject to the provisions of § 1942.17(g)(1) of subpart A of this part 1942, regarding security for projects utilizing joint financing.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

§ 1942.115 Reasonable project costs.

Applicants are responsible for determining that prices paid for property rights, construction, equipment, and other project development are reasonable and fair. RD may require an appraisal by an independent appraiser or Agency employee.

§ 1942.116 Economic feasibility requirements.

All projects financed under this section must be based on taxes, assessments, revenues, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the Agency staff and approval official. All applicants will be expected to provide a financial feasibility report. These financial feasibility reports will normally be:

(a) Included as part of the preliminary engineer/architectural report using guide 6 to subpart A of this part 1942 (available in any RD Office), or

(b) Prepared by the applicant using Form RD 1942–54, ''Applicant's Feasibility Report.''

§ 1942.117 General requirements.

(a) *Reserve requirements.* Loans under this subpart are subject to the provisions of § 1942.17 (i) of subpart A of this part 1942.

(b) *Membership authorization.* The membership of organizations other than public bodies must authorize the project and its financing except the District Director may, with the concurrence of the State Director (with advice of OGC as needed), accept the loan resolution without such membership authorization when State statutes and the organization charter and bylaws do not require such authorization.

(c) *Insurance and bonding.* Loans under this subpart are subject to the provisions of § 1942.17(j)(3) of subpart A of this part 1942.

(d) *Acquisition of land and rights.* Loans under this subpart are subject to the provisions of § 1942.17(j)(4) of subpart A of this part 1942.

(e) *Lease agreements.* Loans under this subpart are subject to the provisions of § 1942.17(j)(5) of subpart A of this part 1942.

(f) *Notes and bonds.* Loans under this subpart are subject to the provisions of §§ 1942.17(j)(6) and 1942.19 of subpart A of this part 1942.

(g) *Public information.* Loans under this subpart are subject to the provisions of § 1942.17 (j)(9) of subpart A of this part 1942.

(h) *Joint funding.* Loans under this subpart are subject to the provisions of §§ 1942.2 (e) and 1942.17 (j)(11) of subpart A of this part 1942.

§ 1942.118 Other Federal, State, and local requirements.

(a) Loans under this subpart are subject to the provisions of § 1942.17 (k) of subpart A of this part 1942.

(b) An initial compliance review should be completed under subpart E of part 1901 of this chapter.

§ 1942.119 Professional services and borrower contracts.

(a) Loans under this subpart are subject to the provisions of § 1942.17 (l) of subpart A of this part 1942.

(b) The District Director will, with assistance as necessary by the State Director and OGC, concur in agreements between borrowers and third parties such as contracts for professional and technical services. The State Director may require State Office review of such documents in accordance with § 1942.108 (g) of this subpart. State Directors are expected to work closely with representatives of

engineering and architectural societies, bar associations, commercial lenders, accountant associations, and others in developing standard forms of agreements, where needed, and other matters to expedite application processing, minimize referrals to OGC, and resolve problems which may arise. Standard forms should be reviewed by and approved by OGC.

§§ 1942.120–1942.121 [Reserved]

§ 1942.122 Actions prior to loan closing and start of construction.

(a) *Excess Agency loan funds.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(1) of subpart A of this part 1942.

(b) *Loan resolutions.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(2) of subpart A of this part 1942.

(c) *Interim financing.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(3) of subpart A of this part 1942.

(d) *Applicant contribution.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(5) of subpart A of this part 1942 this chapter.

(e) *Evidence of and disbursement of other funds.* Loans under this subpart are subject to the provisions of § 1942.17 (n)(6) of subpart A of this part 1942.

(f) *Assurance agreement.* All applicants must execute Form RD 400–4, ''Assurance Agreement,'' at or before loan closing.

§ 1942.123 Loan closing.

(a) *Ordering loan checks.* Checks will not be ordered until:

(1) Form RD 440–57, ''Acknowledgement of Obligated Funds/Check Request,'' has been received from the Finance Office.

(2) The applicant has complied with approval conditions and any closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto.

(3) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(b) *Public bodies and Indian tribes.* (1) After loan approval the completed docket will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(2) Loans will be closed in accordance with the closing instructions issued by OGC and § 1942.19 of subpart A of this part 1942.

(c) *Organizations other than public bodies and Indian tribes.* District Directors are authorized to close loans to organizations other than public bodies and Indian tribes without closing instructions from OGC. State Directors, in consultation with OGC, should develop standard closing procedures and forms as needed. Assistance with loan closing and a certification regarding the validity of the note and mortgage or other debt instruments should be provided by the applicant's attorney. Appropriate title opinion or title insurance is required as provided in § 1942.17 (j)(4)(i)(B) of subpart A of this part 1942.

(d) *Authority to execute, file, and record legal instruments.* District Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans. This includes, as appropriate, mortgages and other lien instruments, as well as affidavits, acknowledgements, and other certificates.

(e) *Mortgages.* Unless otherwise required by State law or unless an exception is approved by the State Director with advice of the OGC, only one mortgage will be taken even though the indebtedness is to be evidenced by more than one instrument. The real estate or chattel mortgages or security instruments will be delivered to the recording office for recordation or filing, as appropriate. A copy of such instruments will be delivered to the borrower. The original instrument, if returnable after recording or filing, will

be retained in the borrower's case folder.

(f) *Notes and bonds.* When the debt instrument is a note or single instrument bond fully registered as to principal and interest a conformed copy will be sent to the Finance Office immediately after loan closing and the original instrument will be stored in the District Office. When other types of bonds are used, the original bond(s) will be forwarded to the Finance Office immediately after loan closing.

(g) *Disposition of title evidence.* All title evidence other than the opinion of title and mortgage title insurance policy, will be returned to the borrower when the loan has been closed.

(h) *Multiple advances.* When temporary paper, such as bond anticipation notes or interim receipts, is used to conform with the multiple advance requirement, the original temporary paper will be forwarded to the Finance Office after each advance is made to the borrower. The borrower's case number will be entered in the upper right-hand corner of such paper by the Distict Office. The permanent debt instrument(s) should be forwarded to the Finance Office as soon as possible after the last advance is made, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the District Office and a copy will be forwarded to the Finance Office. The following actions will be taken prior to issuance of the permanent instruments:

(1) The Finance Office will be notified of the anticipated date for the retirement of the interim instruments and the issuance of permanent instruments of debt.

(2) The Office of the Deputy Chief Financial Officer will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the Rural Development Manager.

(3) The Rural Development Manager will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be forwarded to the Office of the Deputy Chief Financial Officer immediately, except that for notes and single instrument bonds fully registered as to principal and interest the original will be retained in the Area Office and a copy will be forwarded to the Office of the Deputy Chief Financial Officer. In developing the permanent instruments, the sequence of preference set out §1942.19(e) of Subpart A of Part 1942 of this chapter will be followed.

(i) *Bond registration record.* Form RD 442–28, ''Bond Registration Book,'' may be used as a guide to assist borrowers in the preparation of a bond registration book in those cases where a registration book is required and a book is not provided in connection with the printing of the bonds.

(j) *Loan disbursements.* Whenever a loan disbursement is received, lost, or destroyed, the Rural Development Manager will take the appropriate actions outlined in Rural Development Instruction 2018–D.

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

(l) *Review of loan closing.* When the loan has been closed, the Rural Development Manager will submit the completed loan closing documents and a statement showing what was done in closing the loan to the State Director. The State Director will review the documents and the Rural Development Manager's statement to determine whether the transaction was closed properly. For loans to public bodies or Indian tribes the State Director will forward all documents, along with a statement that all administrative requirements have been met, to the Regional Attorney. The Regional Attorney will review the submitted material to determine whether all legal requirements have been met. The Regional Attorney should review Rural Development standard forms only for proper execution, unless the State Director brings attention to specific questions. Facility development should not be

held up pending receipt of the Regional Attorney opinion. When the review of the State Director has been completed, and for public bodies and Indian tribes the Regional Attorney's opinion has been received, the State Director must advise the Rural Development Manager of any deficiencies that must be corrected and return all material that was submitted for review.

(m) *Loan cancellation.* Loans under this subpart are subject to the provisions of §1942.12 of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987, as amended at 59 FR 54788, Nov. 2, 1994; 70 FR 19254, Apr. 13, 2005]

§§ 1942.124–1942.125 [Reserved]

§ 1942.126 Planning, bidding, contracting, constructing, procuring.

(a) *General.* This section provides procedures and requirements for planning, bidding, contracting, constructing and procuring facilities financed under this subpart. These procedures do not relieve the owner of contractual obligations that arise from procurement of services.

(b) *Technical services.* Owners are responsible for providing the engineering or architectural services necessary for planning, designing, bidding, contracting, inspecting and constructing their facilities. Services may be provided by the owner's ''in-house'' engineer or architect or through contract, subject to Agency concurrence. Architects and engineers must be licensed in the State where the facility is to be located.

(1) *Preliminary reports.* A preliminary architectural or engineering report conforming with customary professional standards is required for all construction, except that RD may waive the requirement for a preliminary architectural/engineering report or accept a brief report if the cost of the construction does not exceed $100,000. Guide 6 to subpart A of this part 1942 (available in any RD office) may be used.

(2) *Final reports.* Detailed final plans and specifications are required for all construction and must receive Agency concurrence. When negotiated procurement is used for construction costing not more than $100,000 the final plans and specifications may be provided by the contractor who submits the successful proposal. The plans and specifications must be prepared by or under the supervision of an architect or engineer who is licensed in the State where the facility is to be located and should include all materials and work to be provided under the contract. Some work and material may be omitted from the contract provided the owner furnishes detailed cost estimates for whatever is needed to fully complete the facility and will complete the facility in accordance with paragraph (e) of this section and the small purchase procedures set out in §1942.18(k)(1) of subpart A of this part 1942. In such cases, RD may determine that it is not necessary to require the applicant to hire a consulting architect/engineer; however, if a second contract that does not qualify for small purchase procedures is needed to complete the facility, the owner must provide for an architect/engineer to design the entire facility. When the contractor provides the plans and specifications, the contract will be considered a design/build procurement method under §1942.18(1) of subpart A of this part 1942.

(3) *Major equipment.* An architect/engineer is not required for major equipment if RD determines the owner has the ability to develop an adequate request for proposal and evaluate the proposals received or can obtain adequate assistance from other sources, such as State or Federal agencies or trade associations.

(c) *Design policies.* Facilities financed by RD must be designed and constructed in accordance with sound engineering and architectural practices, and must meet the requirements of Federal, State and local agencies. All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90–480) as implemented by the General Services Administration regulations 41 CFR 101–19.6 and section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112) as implemented by 7 CFR parts 15 and 15b.

(d) *Construction contracts.* Contract documents must be sufficiently descriptive and legally binding to accomplish the work as economically and expeditiously as possible.

(1) *Standard construction contract documents.* When standard construction contract documents available from RD are used, or when the amount of the contract does not exceed $100,000, it will normally not be necessary for the Regional Attorney to perform a detailed legal review. If construction contract documents used are not in the format of guide forms approved by RD, and the contract amount exceeds $100,000, the Regonal Attorney must review the documents before their use.

(2) *Contract review and approval.* The owner's attorney will review executed contract documents, including performance and payment bonds, and certify that they are adequate, legal and binding, and that the persons executing the documents have been authorized to do so. The contract documents, bid bonds, and bid tabulation sheets will be forwarded to RD for approval prior to awarding. All contracts will contain a provision that they are not in full force and effect until they have been approved by RD. The Agency District Director is responsible for approving construction contracts with advice and guidance of the State Director and Regional Attorney when necessary.

(3) *Separate contracts.* Arrangements which split responsibility of contractors (separate contracts for labor and material, extensive subcontracting and multiplicity of small contracts on the same job) should be avoided whenever it is practical to do so. Contracts may be awarded to suppliers or manufacturers for furnishing and installing certain items which have been designed by the manufacturer and delivered to the job site in a finished or semifinished state such as prefabricated buildings. Contracts may also be awarded for material delivered to the job site and installed by a patented process or method.

(e) *Performing construction.* Owners are encouraged to accomplish construction through contracts with recognized contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer or architect prepares design drawings and specifications and inspection is provided in accordance with paragraph (l)(3) of this section.

(f) *Owner's contractual responsibility.* Loans under this subpart are subject to the provisions of §1942.18(i) of subpart A of this part 1942.

(g) *Owner's procurement regulations.* Loans under this subpart are subject to the provisions of §1942.18(j) of subpart A of this part 1942.

(h) *Procurement methods.* Unless the Agency National Office gives prior written approval of another method, procurement must be made by one of the following methods:

(1) Small purchase procedures as provided in §1942.18(k)(1) of subpart A of this part 1942.

(2) Competitive sealed bids as provided in §1942.18(k)(2) of subpart A of this part 1942. Competitive sealed bids is the preferred procurement method of construction projects, except for buildings costing $100,000 or less when the owner desires to use a ''preengineered'' or ''packaged'' building.

(3) Competitive negotiation as provided in §1942.18(k)(3) of subpart A of this part 1942. Competitive negotiation is the preferred procurement method of buildings not exceeding $100,000 in cost when the owner desires to use a ''preengineered'' or ''packaged'' building and for major equipment.

(4) Noncompetitive negotiation as provided in §1942.18(k)(4) of subpart A of this part 1942.

(i) *Contracting methods.* Loans under this subpart are subject to the provisions of §1942.18(1) of subpart A of this part 1942.

(j) *Contracts awarded prior to preapplications.* Loans under this subpart are subject to the provisions of §1942.18(m) of subpart A of this part 1942.

(k) *Construction contract provisions.* Construction contracts for loans under this subpart are subject to the provisions of §1942.18(n) of subpart A of this part 1942. Construction contracts for loans under this subpart are also subject to the provisions of §1901.205 of subpart E of part 1901 of this chapter,

regarding nondiscrimination in construction, except that guides 18 and 17 or 19 to subpart A of this part 1942 of this chapter will normally be used instead of Form RD 1924–5, ''Invitation for Bid (Construction Contract),'' and Form RD 1924–6, ''Construction Contract.'' When guide 18 is used with a design/build type contract, section 4, ''Conflict of Interest,'' may need revision.

(l) *Construction contract administration.* Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(1) *Preconstruction conference.* Prior to beginning construction the owner will schedule a preconstruction conference where RD will review the planned development with the owner, its architect or engineer, project inspector, attorney, contractor(s), and other interested parties. The conference will thoroughly cover applicable items included in Form RD 1924–16, ''Record of Preconstruction Conference,'' and the discussions and agreements will be documented. Form RD 1924–16 may be used for this purpose.

(2) *Monitoring reports.* Each owner will be required to monitor and provide reports to RD on actual performance during construction for each project financed, or to be financed, in whole or in part with Agency funds. The reports are to include:

(i) A comparison of actual accomplishments with the construction schedule established for the period. The partial payment estimate may be used for this purpose.

(ii) A narrative statement giving full explanation of the following:

(A) Reasons why established goals were not met.

(B) Analysis and explanation of cost overruns or high unit costs and how payment is to be made for the same.

(iii) If events occur between reports which have a significant impact upon the project, the owner will notify RD as soon as any of the following conditions are known:

(A) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives or prevent the meeting of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(B) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected or which will result in cost underruns or lower unit costs than originally planned and which may result in less Agency assistance.

(3) *Inspection.* The borrower must provide for inspection of all construction. When the borrower enters into an agreement for technical services with an engineer/architect, the agreement should provide for general engineering/architectural inspection of the construction work. When no such agreement exists, or RD or the borrower determines the inspection services of the engineer/architect may not be sufficient, the owner must provide a project inspector. Prior to the preconstruction conference, the borrower must submit a résumé of qualifications of the project inspector to RD for acceptance in writing. The project inspector will be responsible for making inspections necessary to protect the borrower's interest and for providing written inspection reports to the borrower with copies to the Agency District Director. Guide 11 of subpart A of this part 1942 (available in any Rural Development office) may be used as a guide format for inspection reports. For new buildings, additions to existing buildings, and rehabilitation of existing buildings, the project inspector should make inspections at the following stages of construction and at other stages of construction as determined by the District Director and the borrower. Inspections by RD are solely for its benefit as lender.

(i) An initial inspection should be made just prior to or during the placement of concrete footings or monolithic footings and floor slabs. At this point, foundation excavations are complete, forms or trenches and steel are ready for concrete placement and the subsurface installation is roughed in. If the building design does not include concrete footings the initial inspection

should be made just after or during the placement of poles or other foundation materials.

(ii) An inspection should be made when the building is enclosed, structural members are still exposed, roughing in for heating, plumbing and electrical work is in place and visible, and wall insulation and vapor barriers are installed.

(iii) A final inspection should be made when all development of the structure has been completed and the structrure is ready for its intended use.

(4) *Prefinal inspections.* A prefinal inspection will be made by the owner, project inspector, owner's architect or engineer, representatives of other agencies involved, and the District Director. The inspection results will be recorded on Form RD 1924–12, ''Inspection Report,'' and a copy provided to all interested parties, including the Agency State Director.

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

(6) *Changes in development plans.* (i) Changes in development plans may be approved by RD when requested by owners, provided:

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

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

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

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

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

(ii) Changes will be recorded on Form RD 1924–7, ''Contract Change Order,'' or other similar forms may be used with the prior approval of the District Director. Regardless of the form, change orders must be approved by the Agency District Director.

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

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

(B) Changes in facility design.

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

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

(iv) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987, as amended at 81 FR 11031, Mar. 2, 2016]

§ 1942.127 Project monitoring and fund delivery.

(a) *Coordination of funding sources.* When a project is jointly financed, the District Director will reach any needed agreement or understanding with the representatives of the other source of funds on distribution of responsibilities for handling various aspects of the project. These responsibilities will include supervision of construction, inspections and determination of compliance with appropriate regulations concerning equal employment opportunities, wage rates, nondiscrimination in making services or benefits available, and environmental compliance. If any problems develop which cannot be resolved locally, complete information should be sent to the State Office for advice.

(b) *Multiple advances.* Loans under this subpart are subject to the provisions of § 1942.17 (p)(2) of subpart A of this part 1942.

(c) *Use and accountability of funds.* Loans under this subpart are subject to the provisions of § 1942.17 (p)(3) of subpart A of this part 1942.

(d) *Development inspections.* Loans under this subpart are subject to the provisions of § 1942.17(p)(4) of subpart A of this part 1942.

(e) *Payment for project costs.* Each payment for project costs must be approved by the borrower's governing body.

(1) *Construction.* Payment for construction must be for amounts shown on payment estimate forms. Form RD 1924–18, ''Partial Payment Estimate,'' may be used for this purpose or other similar forms may be used with the prior approval of the District Director.

However, the District Director cannot require more reporting burden than is required by Form RD 1924–18. Advances for contract retainage will not be made until such retainage is due and payable under the terms of the contract. The review and acceptance of project cost, including construction partial payment estimates, by RD does not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(2) *Major equipment.* Payment for major equipment should generally coincide with delivery of the usable equipment, along with any necessary title or certifications, to the borrower. Borrowers may not use Agency loan funds to make deposits on equipment not ready for delivery. If a borrower purchases a truck chassis from one supplier and another supplier will complete the development of a fire or rescue vehicle, RD may release funds to pay for the chassis when title to the chassis is transferred to the borrower.

(f) *Use of remaining funds.* Loans under this subpart are subject to the provisions of § 1942.17 (p)(6) of subpart A of this part 1942.

[52 FR 43726, Nov. 16, 1987; 52 FR 47097, Dec. 11, 1987]

§ 1942.128 Borrower accounting methods, management reports and audits.

(a) Loans under this subpart are subject to the provisions of § 1942.17(q) of subpart A of this part 1942 except as provided in this section.

(b) Borrowers with annual incomes not exceeding $100,000 may, with concurrence of the District Director, use Form RD 1942–53, ''Cash Flow Report,'' instead of page one of schedule one and schedule two of Form RD 442–2, ''Statement of Budget, Income, and Equity.'' When used for budgeting, the cash statement should be projected for the upcoming fiscal year. When used for quarterly or annual reports, the cash flow report should include current year projections and actual data for the prior year, the quarter just ended, and the current year to date.

§ 1942.129 Borrower supervision and servicing.

Loans under this subpart are subject to the provisions of § 1942.17(r) of subpart A of this part 1942 and subpart E of part 1951 of this chapter.

§§ 1942.130–1942.131 [Reserved]

§ 1942.132 Subsequent loans.

Subsequent loans will be processed under this subpart.

§ 1942.133 Delegation and redelegation of authority.

Loan approval authority is in subpart A of part 1901 of this chapter. State Directors may delegate approval authority to District Directors to approve fire and rescue loans regardless of whether authority to approve other community facility loans is delegated. Except for loan approval authority, District Directors may redelegate their duties to qualified staff members.

§ 1942.134 State supplements and guides.

State Directors will obtain National Office clearance for all State supplements and guides under RD Instruction 2006–B (available in any Rural Development office).

(a) *State supplements.* State Directors may supplement this subpart to meet State and local laws and regulations and to provide for orderly application processing and efficient service to applicants. State supplements shall not contain any requirements pertaining to bids, contract awards, and materials more restrictive than those in this subpart.

(b) *State guides.* State Directors may develop guides for use by applicants if the guides to this subpart and subpart A of part 1942 are not adequate. State Directors may prepare guides for items needed for the application; items necessary for the docket; and items required prior to loan closing or construction starts.

§§ 1942.135–1942.149 [Reserved]

§ 1942.150 OMB control number.

The collection of information requirements in this regulation have

been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0120.

Subparts D–H [Reserved]

PART 1943 [RESERVED]

PART 1944—HOUSING

Subpart A [Reserved]

Subpart B—Housing Application Packaging Grants

Sec.

1944.51 Objective.
1944.52 Definitions.
1944.53 Grantee eligibility.
1944.54–1944.61 [Reserved]
1944.62 Authorized representative of the applicant.
1944.63 Authorized use of grant funds.
1944.64–1944.65 [Reserved]
1944.66 Administrative requirements.
1944.67 Ineligible activities.
1944.68 [Reserved]
1944.69 Agency point of contact.
1944.70 Targeting of HAPG funds to States.
1944.71 Term of grant.
1944.72 Application packaging orientation and training.
1944.73 Package submission.
1944.74 Debarment or suspension.
1944.75 Exception authority.
1944.76–1944.99 [Reserved]
1944.100 OMB control number.
EXHIBIT A TO SUBPART B OF PART 1944 [RESERVED]
EXHIBIT B TO SUBPART B OF PART 1944—HOUSING APPLICATION PACKAGING GRANT (HAPG) FEE PROCESSING
EXHIBIT C TO SUBPART B OF PART 1944—REQUIREMENTS FOR HOUSING APPLICATION PACKAGES
EXHIBIT D TO SUBPART B OF PART 1944—DESIGNATED COUNTIES FOR HOUSING APPLICATION PACKAGING GRANTS

Subparts C–E [Reserved]

Subpart F—Congregate Housing Services Program

1944.251 Purpose.
1944.252 Definitions.
1944.253 Notice of funding availability, application process and selection.
1944.254 Program costs.
1944.255 Eligible supportive services.
1944.256 Eligibility for services.
1944.257 Service coordinator.
1944.258 Professional assessment committee.
1944.259 Participatory agreement.
1944.260 Cost distribution.
1944.261 Program participant fees.
1944.262 Grant agreement and administration.
1944.263 Eligibility and priority for 1978 Act recipients.
1944.264 Evaluation of Congregate Housing Services Programs.
1944.265 Reserve for supplemental adjustment.
1944.266 Other Federal requirements.

Subparts G–H [Reserved]

Subpart I—Self-Help Technical Assistance Grants

1944.401 Objective.
1944.402 Grant purposes.
1944.403 Definitions.
1944.404 Eligibility.
1944.405 Authorized use of grant funds.
1944.406 Prohibited use of grant funds.
1944.407 Limitations.
1944.408 [Reserved]
1944.409 Executive Order 12372.
1944.410 Processing preapplications, applications, and completing grant dockets.
1944.411 Conditions for approving a grant.
1944.412 Docket preparation.
1944.413 Grant approval.
1944.414 [Reserved]
1944.415 Grant approval and other approving authorities.
1944.416 Grant closing.
1944.417 Servicing actions after grant closing.
1944.418 [Reserved]
1944.419 Final grantee evaluation.
1944.420 Extension or revision of the grant agreement.
1944.421 Refunding of an existing grantee.
1944.422 Audit and other report requirements.
1944.423 Loan packaging and 502 RH application submittal.
1944.424 Dwelling construction and standards.
1944.425 Handling and accounting for borrower loan funds.
1944.426 Grant closeout.
1944.427 Grantee self-evaluation.
1944.428–1944.449 [Reserved]
1944.450 OMB control number.
EXHIBIT A TO SUBPART I OF PART 1944—SELF-HELP TECHNICAL ASSISTANCE GRANT AGREEMENT
EXHIBIT B TO SUBPART I OF PART 1944—EVALUATION REPORT OF SELF-HELP TECHNICAL ASSISTANCE (TA) GRANTS
EXHIBIT B–1 TO SUBPART I OF PART 1944—INSTRUCTIONS FOR PREPARATION OF EVALUATION REPORT OF SELF-HELP TECHNICAL ASSISTANCE GRANTS
EXHIBIT B–2 TO SUBPART I OF PART 1944—BREAKDOWN OF CONSTRUCTION DEVELOPMENT FOR DETERMINING PERCENTAGE CONSTRUCTION COMPLETED