

**DEPARTMENT OF AGRICULTURE****Rural Housing Service****Rural Business-Cooperative Service****Rural Utilities Service****Farm Service Agency****7 CFR Parts 1930, 1944, 1951, and 1965**

RIN 0575-AC15

**Rural Rental Housing (RRH) Assistance**

**AGENCIES:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCDS), a successor Agency to the Farmers Home Administration (FmHA), amends its regulations for the Rural Rental Housing (RRH) program to implement legislative reforms mandated by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1997, Public Law 104-180, enacted August 6, 1996 (hereinafter referred to as the Act.) The following revisions are included in this rule: Prioritization of assistance; assurances that the amount of assistance provided is no more than is necessary; assurance that project transfers are in the best interest of the tenants and the government; elimination of the occupancy surcharge; changes to the equity loan program; and implementation of penalties for equity skimming by project owners and managers. The intended effect of these reforms is to improve the effectiveness of the Section 515 Rural Rental Housing Program.

**DATES:** The effective date of this interim final rule is May 7, 1997. Written comments must be received on or before July 7, 1997.

**ADDRESSES:** Written comments may be submitted, *in duplicate*, to the Director, Support Services Division, U.S. Department of Agriculture, Stop 0743, 1400 Independence Avenue SW, Washington, D.C. 20250. Comments may be submitted via the Internet by addressing them to "comments@rus.usda.gov" and must contain the word "reforms" in the subject. All written comments will be available for public inspection at the above address during normal working hours.

**FOR FURTHER INFORMATION CONTACT:**

Linda Armour or Carl Wagner, Senior Loan Specialists, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, Room 5349—South Building, Stop 0781, Washington, D.C. 20250, telephone (202) 720-1608.

**SUPPLEMENTARY INFORMATION:****Classification**

This rule has been determined to be significant for purposes of Executive Order 12886 and therefore has been reviewed by the Office of Management and Budget.

**Paperwork Reduction Act**

The information collection requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575-0047 in accordance with the Paperwork Reduction Act of 1995. This rule does not impose any new information collection requirements.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations.

**Civil Justice Reform**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires

RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Discussion of Use of Interim Final Rule**

It is the policy of this Department that rules relating to public property loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the purpose of the change is to comply with mandatory statutory provisions and any delay would be contrary to the public interest. The Act requires six reforms to the MFH program in direct response to reports issued by the General Accounting Office (GAO), Surveys and Investigations Staff of the House Appropriations Committee, and USDA Office of the Inspector General (OIG). These reports highlighted program deficiencies and the potential for fraud and waste. Congress mandated immediate action on all reforms, and specifically directed the Agency to implement one reform within 60 days through negotiated rulemaking. The Agency was not able to accomplish the 60-day deadline because the negotiated rulemaking process takes an estimated 18 months; however, this provides further documentation of Congress' intent that these regulations be implemented without delay. In addition, the effect of including these reforms in the Agency's appropriation bill precludes the Agency from obligating any loan funds for new construction until the reforms are enacted, with the result being that many very-low and low income families are being denied access to decent, safe and sanitary housing. In addition, our other partners in the development of affordable housing such as state housing financing agencies administering low-income housing tax credits, and other loan and grant programs are adversely affected by the Agency's inability to make loan commitments on jointly financed proposals. And finally, there are provisions of the Act that affect the management of our existing loan portfolio. Their immediate implementation will serve to reduce unnecessary outlays of federal

resources, reduce paperwork burden, improve program performance, and impose stricter penalties on program abusers.

Due to its exigency, this rule also constitutes an emergency for purposes of section 534(c) of the Housing Act of 1949 and thus is an exception to the proposed rulemaking requirements in section 534(a) of the Housing Act of 1949. Comments are being solicited on this interim final rule and will be considered in the development of the final rule.

#### **Programs Affected**

The affected programs are listed in the Catalog of Federal Domestic Assistance under Numbers 10.405, Farm Labor Housing Loans and Grants, 10.415, Rural Rental Housing Loans and 10.427, Rural Rental Assistance Payments.

#### **Intergovernmental Consultation**

This program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940-J.

#### **Environmental Impact Statement**

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

#### **Civil Rights Impact Analysis**

This document has been reviewed in accordance with RD Instruction 2006-P, "Civil Rights Impact Analysis." It is the determination of RHS that this document complies with the requirements of this Instruction.

#### **Background and Information**

The Act included reforms in six areas of the multi-family housing program. Four of the six reforms were directive and could be implemented as enacted without the need for public comment. For example, the Act eliminated occupancy surcharge. Two of the reforms, however, provided for substantive changes in the manner in which MFH loan requests are processed and gave the Secretary administrative discretion in their implementation. The Act required that one of these reforms, determining the amount of assistance necessary to develop the proposed

rental housing, be implemented within 60 days through negotiated rulemaking as a means of assuring that the public was both informed and consulted regarding the Agency's intentions and requirements that would impact them as potential users of the program. Unfortunately, such process takes an estimated 18 months and could not be accomplished within the confines of the law (that is, within 60 days of enactment). In order to meet the spirit of negotiated rulemaking, the Agency sought extensive public input through several informal meetings with developers, major housing groups, and Agency personnel so that the Agency would gain a full measure of public input before developing the regulations. The Act further required the Agency to follow 5 U.S.C. 557 if negotiated rulemaking could not be accomplished. Therefore, in accordance with 5 U.S.C. 557, the Agency is publishing the rule for notice and comment.

Following is a discussion of each of the six reforms included in this rule:

(1) *Limitation on Project Transfers.* If a borrower fails to perform the duties contained in their RHS security instruments, the Agency can authorize the transfer of the property to an operator who is able to protect the housing and the health and safety of the tenants. Borrowers demonstrating a record of substantial noncompliance on one or more projects may be ineligible for financial assistance from the government. Borrowers must be in compliance and operating successfully on loans or be successfully operating on a workout plan in order to qualify for federal assistance. Furthermore, the government must evaluate the proposed costs and impacts associated with rehabilitation efforts. The government is seeking to ensure that rehabilitation costs are reasonable, that the efforts will minimize tenant displacement, and that the community will benefit by achieving decent, safe, sanitary, modest, and affordable housing for very low-, low-, and moderate income rural residents. Since 1994, RHS has taken an aggressive stance toward servicing delinquent and problem borrowers. Delinquencies of 180 days or more have dropped 28%, while the overall program delinquency rate for the past two years has stayed at or near 2.6%, a very low rate for this type of portfolio. The reform amendments formalize the Agency's role in servicing these accounts by stipulating that the Agency will determine if a project transfer is in the best interest of the tenants and the government. 7 CFR part 1965, subpart B, "Security Servicing for Multiple

Housing Loans," is revised to implement this provision.

(2) *Eliminating the Occupancy Surcharge.* Occupancy surcharges were enacted as a mechanism to build an equity reserve fund to defray some of the costs of guaranteed equity takeout loans. The surcharge program adds \$2 to the monthly rental rate for each rental unit each year, thereby increasing the amount of rental assistance (RA) RHS must provide tenants who receive RA, and reducing the amount of available RA. The reform amendments eliminated the requirement to collect occupancy surcharges. The elimination of the occupancy surcharge will reduce the amount of RA provided to tenants by nearly \$600,000 per month. The Agency is amending 7 CFR part 1951, subpart K, "Predetermined Amortization Schedule System (PASS) Account Servicing;" part 1930, subpart C, "Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients;" and part 1965, subpart B, "Security Servicing for Multiple Housing Loans" to implement these changes. Rural Development Administrative Notice (AN) 3301 (1930-C) was issued on December 18, 1996, to provide guidance to Agency field offices on how to implement the process to repeal the occupancy surcharge. At this time, no determination has been made regarding occupancy surcharges previously collected by the Agency.

(3) *Revising the Equity Loan Program.* The equity loan program was enacted as an incentive for owners not to prepay their RHS loans and to keep their projects in use as low- and very low-income housing for the full terms of their loans. This rule includes revisions to 7 CFR part 1965, subpart E, "Prepayment and Displacement Prevention of Multi-Family Housing Loans," to implement statutory provisions that allow any owner with a pre-1989 loan to apply for an equity loan. The primary focus of this reform is to ensure that any developer who has restrictive-use provisions currently on its property would not be eligible to receive any incentives, including equity loans, until their existing restrictive-use provisions have expired. An additional change to the statute, to improve program consistency, allows owners with post-1979 but pre-1989 loans to obtain equity loans once their restrictive use period expires. Prior to this statutory change, the program allowed only owners with pre-1979 loans to recover some of their equity through low-interest government loans. A significant number of owners will now become eligible for equity loans with this change once their restrictive use

period expires, but given current and projected funding levels, RHS's ability to finance these loans is severely limited.

The Act also contained language which appeared to make farm labor housing borrowers eligible for equity loans. Specifically, the Act contained language providing authority to make equity loans to farm labor housing borrowers under "section 514(j)" of the Housing Act of 1949. However, section 514(j) of the Housing Act does not pertain to equity loans; it deals specifically with equity skimming penalties for farm labor housing borrowers who abuse rent receipts, physical property, etc. Since the Act did not provide clear authority for equity loans to farm labor housing borrowers, this provision could not be implemented.

(4) *Preventing equity skimming by project owners and managers.* RHS has implemented numerous administrative measures to prevent owners and managers from defrauding the government by "equity skimming" (misusing rent receipts, physical property, and reserve accounts.) In addition, under current law, owners and managers found defrauding the government may be prevented from doing business with the federal government for a certain number of years (debarment). However, the administration of these measures varies from case to case and depends on the servicing arrangements between the government and the operator. The Act enhances the Agency's ability to deter waste, fraud, and abuse by making equity skimming a criminal offense, punishable by a fine of up to \$250,000 or up to 5 years in prison, or both. This provision has been added to 7 CFR part 1930, subpart C, "Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients," and will provide a strong and consistent deterrent to defrauding the government.

(5) *Prioritization of Assistance.* Prior to the passage of the Act, the Agency used a point system that heavily weighted proposals for projects in areas at least 20 miles from an urban center. This system, designed to ensure that truly rural areas receive housing assistance, was criticized for placing too much emphasis on the proximity of a community to an urban center and not fully reflecting a rural community's need for housing. The new legislation allows the Agency a more proactive role in selecting areas of greatest need based on specific criteria contained in the Act. The regulation, developed with input from program users, contains specific criteria and parameters for selecting

areas, provides guidance on optional criteria permitted by the law, and establishes the timing for area selection and for selection of loans within such areas. The Agency has developed a ranking system for selecting and designating places for which loan requests will be invited, based on the following objective measures required by the Act: The incidence of poverty; the lack of affordable housing and the existence of substandard housing; the lack of mortgage credit; and the rural characteristics of the location. Loan requests received for designated places will be scored and ranked using objective criteria developed by the Agency. The highest ranked loan requests within the State's funding levels will be further processed.

(6) *Necessary Assistance.* Responding to the concern that rural rental housing developers may be earning excessive profits through government subsidies, the reform legislation provides that the Agency can adjust the amount of its loan if excess assistance is being provided. RHS already has in place a provision that each State will enter into a memorandum of understanding (MOU) with state housing agencies agreeing to coordinate the award of program benefits. In developing regulations to implement the reform legislation, input was obtained from program users in determining appropriate caps to use for builder's profit, general overhead, and general requirements; calculation of a maximum allowable developer's fee; the timing of the determination of the amount of necessary assistance; and the process to be used in determining the amount of necessary assistance. The regulations will require an evaluation of the subsidy being provided to the proposed project, using a computer-based analysis. That evaluation will be shared with the state housing finance agency providing tax credits and with other participants in the financing of the proposal. If indicated by the evaluation, RHS will work with other participants to reduce their contribution, or as a final step, will reduce the amount of RHS resources to ensure that excess assistance is not provided.

This rule also makes other minor revisions and clarifications of a housekeeping nature, such as correcting certain references to applicable Civil Rights legislation or regulatory cross-references.

#### **Implementation Proposal**

This rule changes the manner in which multi-family housing loan requests are processed; adds provisions to ensure that the amount of assistance

provided is no more than is necessary; reinforces the Agency's role in project transfers; eliminates the occupancy surcharge; revises the equity loan parameters; and institutes measures to prevent equity skimming. All provisions of the rule become effective the date of publication of this interim final rule. Loan requests on hand and existing loans will be reviewed for compliance with the revised regulations.

Concurrently, upon publication of this rule, the Agency will discontinue its priority point system and change to a NOFA (Notice of Funds Availability) system which is published elsewhere in this issue of the **Federal Register**. Under the NOFA system, the amount of available funds and application deadlines will be announced each funding cycle in the **Federal Register**. Loan requests will be reviewed and selected based on objective criteria in accordance with the new regulations; loan requests not selected for funding will be returned to the applicant.

The Agency intends to fund eligible loan requests on hand that were issued an AD-622, "Notice of Preapplication Review Action," inviting a formal application prior to November 7, 1996 (the date Agency staff were advised that no further AD-622s be issued pending implementation of the new statutory provisions), in date order of complete application received, provided the applications comply with the new statutory requirements and are in designated areas in accordance with the new regulations. In these instances, the Agency will not invite further loan requests for designated areas where a loan request has been issued an AD-622. Since regulations in effect prior to this rulemaking action allowed States to authorize applications up to either 150 or 200 percent of their annual allocation, existing applications will be considered until the beginning of FY 1999. At that time, any remaining outstanding applications authorized prior to November 7, 1996, which have not been reached for funding will be returned to the applicant.

Loan requests that have been issued an AD-622 inviting a formal application that are not located in a designated place in accordance with the new requirements will be returned to the applicant. The Agency recognizes the impact on applicants thus affected; however, we are mandated by Congress to institute measures to ensure assistance is provided only to those rural areas with the greatest need.

Loan requests on hand that have not been issued an AD-622 inviting a formal application will be returned to the applicant. Loan requests thus

returned may, of course, be submitted for consideration with other loan requests when the availability of funds is announced, if they are located in communities on the State's list of designated places.

### List of Subjects

#### 7 CFR Part 1930

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

#### 7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—housing and community development, Low and moderate income housing, Mortgages, Nonprofit organizations, Rent subsidies, Rural areas.

#### 7 CFR Part 1951

Accounting, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Rural areas.

#### 7 CFR Part 1965

Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Rural areas.

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

1. 7 CFR chapter XVIII is amended by revising the word “preapplication” to read “loan request” in the following places:

- a. Part 1944, § 1944.211(a)(13)(i)
- b. Part 1944, introductory text of § 1944.213(b)
- c. Part 1944, § 1944.213(d)(1)(i)
- d. Part 1944, § 1944.213(d)(1)(ii)
- e. Part 1944, § 1944.224(a)(4)
- f. Part 1944, § 1944.224(a)(6)
- g. Part 1944, § 1944.224(a)(7)
- h. Part 1944, introductory text of § 1944.235(h)
- i. Part 1944, subpart E, Exhibit A, paragraph IV.B.4.
- j. Part 1944, subpart E, Exhibit A, paragraph IV.B.22.
- k. Part 1944, subpart E, Exhibit A–7, paragraph I.A.(4)
- l. Part 1944, subpart E, Exhibit E, paragraph III
- m. Part 1944, subpart E, Exhibit E, introductory text of paragraph V.A.
- n. Part 1944, subpart E, Exhibit E, introductory text of paragraph V.B.
- o. Part 1944, subpart E, Exhibit E, introductory text of paragraph V.D.

- p. Part 1944, subpart E, Exhibit E, introductory text of paragraph V.E.
- q. Part 1944, subpart E, Exhibit E, paragraph VII

2. 7 CFR chapter XVIII is amended by removing the words “, occupancy surcharge” in the following places:

- a. Part 1930, subpart C, Exhibit B, paragraph XIII.C.2.f(1)
  - b. Part 1951, § 1951.517(b)(4)(i)(A)
  - c. Part 1951, § 1951.517(b)(4)(i)(B)
  - d. Part 1951, § 1951.517(b)(4)(ii)(A)
  - e. Part 1951, § 1951.517(b)(4)(ii)(B)
  - f. Part 1951, § 1951.517(b)(4)(iii)
3. 7 CFR chapter XVIII is amended by removing the words “and occupancy surcharge” in the following places:
- a. Part 1930, subpart C, Exhibit B, introductory text of paragraph XIV.A.5.b
  - b. Part 1930, subpart C, Exhibit B, paragraph XIV.A.5.b(1)(i)(A)—2 times
  - c. Part 1930, subpart C, Exhibit B, paragraph XIV.A.5.b(1)(i)(B)
  - d. Part 1930, subpart C, Exhibit B, paragraph XIV.A.5.b(2)(vi)(A)—2 times
  - e. Part 1930, subpart C, Exhibit B–1, paragraph 4.b
  - f. Part 1930, subpart C, Exhibit B–1, heading of paragraph 6
  - g. Part 1930, subpart C, Exhibit B–1, paragraph 6.a
  - h. Part 1930, subpart C, Exhibit E, paragraph II.A.2

4. 7 CFR chapter XVIII is amended by removing the words “or occupancy surcharge” in part 1951, § 1951.506(a)(3).

5. 7 CFR chapter XVIII is amended by removing the words “, as well as the occupancy surcharge” in the following places:

- a. Part 1930, subpart C, Exhibit B, paragraph XIV.A.5.b(1)(v)(C)
- b. Part 1930, subpart C, Exhibit B, paragraph XIV.A.5.b(2)(iv)

### PART 1930—GENERAL

6. The authority citation for part 1930 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 42 U.S.C. 1480.

#### Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

7. Section 1930.105 is amended by revising paragraph (b)(10) to read as follows:

#### § 1930.105 Objective of management and supervision.

\* \* \* \* \*

(10) Operate the facilities according to applicable Civil Rights laws, Title VI of

the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Executive Order 11246, the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975.

\* \* \* \* \*

8. Section 1930.106 is added to read as follows:

#### § 1930.106 Project operations.

Project operations shall be conducted to meet the actual needs and necessary expenses of the property or for any other purpose authorized under Agency regulations. Whoever willfully uses, or authorizes the use, of any part of the rents, assets, proceeds, income, or other funds derived from such property for unauthorized purposes is subject to penalty. This includes an owner, agent, or manager, or person who is otherwise in custody, control, or possession of property that is security for a multi-family housing loan. Those violating these provisions are subject to penalties set out under Agency regulations and the law. Under law (42 U.S.C. 1484 and 1485), federal penalties consisting of fines of not more than \$250,000 or imprisonment of not more than five years, or both, may be imposed for operating a project in a manner inconsistent with the provisions of this section.

9. Subpart C, Exhibit B is amended in paragraph II by removing the definition of “Occupancy surcharge” and by removing the words “, including occupancy surcharge,” in the definition of “Tenant contribution”; in paragraph V F 1 a by removing the last sentence; in paragraph V F 1 b by removing the last sentence; in paragraph VII F 6 (c) in the second sentence by removing the words “as well as maximum occupancy surcharge”; in paragraph VII F 6 d in the third sentence by removing the words “and occupancy surcharges”; by removing paragraph VIII A 3; by redesignating paragraphs VIII A 4 through VIII A 8 as paragraphs VIII A 3 through VIII A 7 respectively; in the introductory text of paragraph VIII B by revising the words “paragraphs 1, 4b, 4d, 4e, 5, and 7” to read “paragraphs VIII B 1, VIII B 4 b, VIII B 4 d, VIII B 4 e, VIII B 5, and VIII B 7;” in paragraph VIII B 4 by revising the word “Occupancy” to read “Cooperative occupancy” and by revising the words “paragraphs VII B 4 b, d, and e” to read “paragraphs VIII B 4 b, VIII B 4 d, and VIII B 4 e”; in paragraph VIII D 2 by removing the words “, including occupancy surcharge levied, if any”; in paragraph XIII B 2 a (2) by removing the words “occupancy surcharge monies,”; in paragraph XIII B 2 a (3) by removing

the words "including occupancy surcharge"; in paragraph XIV A 5 b (1) (i) (B) by removing the words "or to pay the occupancy surcharge"; in paragraph XIV A 5 b (2) (vi) (B) by removing the words "or the occupancy surcharge"; in paragraph XIV A 5 B(1)(I)(b) by removing the words "or to pay the occupancy surcharge"; in paragraph XIV A 5 b (2) (vi) (C) by removing the words "and reimbursement for occupancy surcharge"; and in paragraph II by revising the definition of "Shelter cost" to read as follows:

#### EXHIBITS TO SUBPART C

\* \* \* \* \*

#### EXHIBIT B—MULTIPLE HOUSING MANAGEMENT HANDBOOK

\* \* \* \* \*

##### II \* \* \*

*Shelter cost.* Consists of basic or note rate rent plus utility allowance when used. Basic or note rate rent must be shown on the project budget for the year and approved according to paragraph XII of this exhibit. Utility allowances, when required, must be determined and approved according to part 1944, subpart E, Exhibit A-6, of this chapter. Any change in rental rates or utility allowances must be processed according to Exhibit C of this subpart. The shelter cost in a cooperative housing project will consist of occupancy charge plus utility allowance.

\* \* \* \* \*

10. Subpart C, Exhibit E is amended by revising paragraph II K to read as follows:

\* \* \* \* \*

#### EXHIBIT E—RENTAL ASSISTANCE PROGRAM

\* \* \* \* \*

##### II \* \* \*

K *Shelter cost.* The approved shelter cost consists of basic or note rate rent plus utility allowance when used. Basic or note rate rent must be shown on the project budget for the year and approved according to §1930.122(b)(1). Utility allowances, when required, are determined and approved according to part 1944, subpart E, Exhibit A-6, of this chapter. Any change in rental rates or utility allowances must be processed according to Exhibit C of this subpart.

\* \* \* \* \*

#### PART 1944—HOUSING

11. The authority citation for part 1944 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 42 U.S.C. 1480.

#### Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

12. Section 1944.205 is amended in the definition of "Rural area" by revising the words "\$1944.10 of subpart

A of part 1944 of this chapter" to read "\$3550.10 of this title" and by adding in alphabetical order definitions to read as follows:

#### §1944.205 Definitions.

\* \* \* \* \*

*Agency.* The Rural Housing Service within the Rural Development mission area of the U.S. Department of Agriculture or its successor agency which administers Section 515 loans and Section 521 rental assistance.

\* \* \* \* \*

*Census Designated Place (CDP).* An unincorporated population center identified by the Census Bureau.

\* \* \* \* \*

*Consolidated Plan.* A plan developed by a community or state addressing community planning and development that is used to support requests for assistance from the Department of Housing and Urban Development.

\* \* \* \* \*

*HUD.* The U.S. Department of Housing and Urban Development.

\* \* \* \* \*

*LIHTC.* Low-income housing tax credits.

\* \* \* \* \*

*MFH.* Multi-Family Housing.

\* \* \* \* \*

*NOFA.* Notice of funds availability.

\* \* \* \* \*

*RCH.* Rural Cooperative Housing.

\* \* \* \* \*

*RHS.* Rural Housing Service.

*RRH.* Rural Rental Housing.

\* \* \* \* \*

*Section 515.* Section 515 of title V of the Housing Act of 1949 (42 U.S.C. 1485 et seq.).

\* \* \* \* \*

#### § 1944.213 [Amended]

13. Section 1944.213 is amended in the introductory text of paragraph (b) in the second sentence by revising the words "\$1944.231(k)" to read "\$1944.231(h)", and in the third sentence by removing the words "Form AD-622, 'Notice of Preapplication Review Action,' or any other"; in the introductory text of paragraph (d) in the first sentence by revising the words "preapplication for a loan" to read "loan request" and adding the words "and the environmental requirements of part 1940, subpart G, of this chapter" following the words "of this subpart" and in the second sentence by removing the word "preapplication"; and by revising paragraph (a), the heading of paragraph (f), and paragraphs (f)(2)(i) and (f)(3) to read as follows:

#### §1944.213 Limitations.

(a) *Loan limits.* The Agency must certify that assistance provided any housing project is not more than is necessary to make the project affordable to potential tenants and the Government. The applicant must disclose, during each stage of the process, all other assistance proposed for the project, including all other government assistance as defined in §1944.205.

(1) *Fee norms.* RHS has established the fee norms below for purposes of analysis. The total of the three fees may not exceed 21 percent.

(i) Builder's profit: up to 10% of the construction contract.

(ii) General overhead: up to 4% of the construction contract.

(iii) General requirements: up to 7 % of the construction contract.

(iv) Developer's fee: up to 15% of the total development costs authorized for tax credit purposes on new construction or rehabilitation; up to 8% of the acquisition costs only for the acquisition rehabilitation costs.

(2) *Other fee norms.* (i) RHS has established the new construction and rehabilitation fee norm for a developer's fee at up to 15% of the total development cost authorized for tax credit purposes. (A developer's fee is not an authorized Section 515 loan purpose.)

(ii) For transfer proposals that include acquisition costs, RHS has established the developer's fee on the acquisition costs at up to 8% of the acquisition costs only when authorized by the state agency and only for tax credit purposes. (A developer's fee is not an authorized Section 515 loan purpose.)

(3) *Analysis of loan requests to determine the minimum amount of assistance.*

(i) The fee structure of the state agency administering low-income housing tax credits will be used in the RHS analysis of the amount of assistance that is necessary for a proposal.

(ii) In all cases where the results of an analysis indicate that there will be excess assistance (defined as more than the lesser of \$25,000 or 1 percent of the total development cost as authorized by the state agency), RHS will consult with the applicant, as well as with the state agency, to strive to reach an agreement for reducing the excess assistance.

(iii) In the event that excess assistance is not reduced through an agreement with the applicant, RHS will adjust the amount of equity contribution by the amount of excess assistance (through the reduction of the loan) to ensure that assistance provided is not more than is

necessary to provide affordable housing after taking into account assistance from all Federal, state and local sources.

\* \* \* \* \*

(f) *New loans in areas with RHS, the Department of Housing and Urban Development (HUD), or similar type rental housing assistance.*

\* \* \* \* \*

(2) \* \* \*

(i) Another RRH or RCH loan request in the same market area has been selected for further processing; or

\* \* \* \* \*

(3) *Status.* When a loan proposal or project exists in the market area which meets any of the criteria in paragraph (f)(2) of this section, loan requests in the same market area will be returned to the applicant in accordance with §1944.231. This does not affect the processing of loan requests in other market areas.

\* \* \* \* \*

#### § 1944.215 [Amended]

14. Section 1944.215 is amended in paragraph (a)(1) in the ninth sentence by removing the word "preapplication" and by revising the words "in this paragraph" to read "in accordance with §1944.213(a)(1)(iii) and (a)(1)(iv)" and by removing the last three sentences; in paragraph (r)(1) by adding the words "persons with disabilities," following the words "elderly persons"; in paragraph (r)(2) by revising the words "should promote an equal opportunity" to read "are to promote equal access"; in the introductory text of paragraph (r)(4) by revising the words "priority points" to read "preference"; in paragraph (r)(4)(i) by revising the words "meets all FmHA or its successor agency under Public Law 103-354 site criteria" to read "meets the site criteria of this paragraph (r) and the environmental requirements of part 1940, subpart G, of this chapter"; in the last sentence of paragraph (r)(4)(ii) by revising the words "additional priority points" to read "preference"; in paragraph (r)(4)(vii) by revising the words "§ 1944.231(i)(6)" to read "§ 1944.231(e)"; and in paragraph (r)(7) by revising the words "§ 1944.10 of subpart A of part 1944 of this chapter" to read "7 CFR 3550.10", by revising the word "preapplications" to read "loan requests", and by removing the phrase "including rating and ranking for potential authorization".

#### § 1944.224 [Amended]

15. Section 1944.224 is amended in the introductory text of paragraph (a)(5) in the second sentence by revising the words "paragraph III of exhibit J of subpart C of part 1930 of this chapter"

to read "part 1930, subpart C, exhibit J, paragraph V, of this chapter".

16. Section 1944.228 is added to read as follows:

#### §1944.228 Ranking of rural places based on greatest need for Section 515 housing.

The Agency will rank rural places based on greatest need for Section 515 housing in accordance with this section. Places may be incorporated population centers such as cities, boroughs, towns, and villages; or unincorporated population centers identified by the Census Bureau (known as Census Designated Places (CDPs)). States must be consistent state-wide in their use of place types that are included in the list of designated places. Ranking will be based on the following:

(a) Qualifies as a rural area in accordance with 7 CFR 3550.10.

(b) Lacks mortgage credit for borrowers in accordance with §1944.211(a)(2).

(c) Demonstrates a need for multi-family housing based on the following factors, with equal weight given to each. Data for this purpose will be provided to States by the National Office from the most recent rural place data obtained from the Census Bureau. If Census data is not available for an eligible rural place, the State may request authority from the National Office to include the place on the list of designated places established in accordance with § 1944.229, provided the place meets the requirements of § 1944.229(b) and it can be demonstrated that there is a high need for assisted multi-family housing based on information obtained from reliable local or state sources. The State may request authority from the National Office to use other state-wide data if it is objective and consistent with the Housing Act of 1949, as amended.

(1) The incidence of poverty, measured by determining households below 60 percent of the county rural median income.

(2) The existence of substandard housing, measured by determining the number of occupied housing units that lack complete plumbing or have more than one occupant per room.

(3) The lack of affordable housing, measured by determining households below 60 percent of county rural median income paying more than 30 percent of income in rent.

17. Section 1944.229 is added to read as follows:

#### § 1944.229 Establishing the list of designated places for which Section 515 applications will be invited.

States will compile a list of designated places for which Section 515

applications will be invited, in accordance with the provisions of this section and the ranking process described in § 1944.228. Inclusion on the list of designated places does not indicate that market need and demand has been established; this will be a loan feasibility determination. Once placed on the list of designated places, places will be considered equal, with no regard to their ranking on the ranking list or order of selection. In exceptional circumstances, there may be an instance when a place with an urgent need for multi-family housing is not reflected in the ranking process in § 1944.228; for example, a place that has had a substantial increase in income-eligible population since the most recent decennial Census data because of a new industry, a place that has experienced a loss of affordable housing because of a natural disaster, or a community within the limits of an Indian reservation or tribal allotted or trust land with a demonstrated need for multifamily housing. With concurrence from the National Office, the State may include the place on the list of designated places.

(a) *Establishing the number of designated places.* Initially, the number of designated places may equal up to 5 percent of the state's total eligible rural places ranked in accordance with § 1944.228, but must equal, in all cases, at least 10 places. For example, in a state with 1,000 total rural places, the State may designate up to 5 percent, or 50 places. However, in a state with 60 total rural places, the State would use the minimum number of 10 places, since 5 percent of 60 equals 3. In states where 5 percent equals more than the minimum number of 10, consideration in determining the number of places to include on the list should be given to the size and population of the state, funding levels, and the potential for leveraging. States that anticipate high loan activity because of leveraging may designate a number of places higher than 5 percent or the minimum 10 places with the concurrence of the National Office.

(b) *Requirements for inclusion on the list of designated places.* Places selected for the list of designated places:

(1) Must have 250 or more households as a minimum feasibility threshold for multi-family housing; and

(2) May not have any of the "build and fill" conditions described in § 1944.213(f)(2). Places thus identified will be deferred for inclusion on the current year's list of designated places. Deferred places will be reviewed annually and, at such time that the "build and fill" conditions no longer

exist, will be considered for inclusion on the list for the next fiscal year in accordance with this section. To the extent practicable, States will consult with HUD and other state or local agencies or entities that provide very low- or low-income rental housing to determine places where loan proposals have been approved or are in process.

(c) *Selection of designated places.* Places meeting the requirements of paragraph (b) of this section will be selected from the ranking list as follows:

(1) At least 90 percent of the State's total designated places must be selected in rank order from the list.

(2) With concurrence from the National Office, up to 10 percent of the State's designated places may be selected in accordance with the following guidelines: *Provided*, That such places fall within the top-ranked 10 percent of the state's total rural places (or a minimum of 20 places) meeting the requirements of paragraph (b) of this section. For example, in a state with 1,000 total rural places, the State has elected to select designated places equal to the maximum 5 percent, or 50 places. Of the 50 places, at least 90 percent, or 45 places, must be selected from the places that meet the requirements of paragraph (b) of this section in order of their ranking. Up to 10 percent, or 5 places, may be selected from the top-ranked 100 places (10 percent of the total rural places in the state) that meet the requirements of paragraph (b) of this section, as follows:

(i) Places that provide geographic diversity in the state. Places thus selected must be the highest ranked place in each geographic division designated by the State. Geographic divisions must correspond with established State divisions, such as districts, regions, or servicing areas.

(ii) Places that have been identified as high need areas for multi-family housing in the state Consolidated Plan or similar state plan or needs assessment report.

(d) *Length of designation.* Places will remain on the list of designated places for three years or until a loan request is selected for funding, whichever occurs first. A place where a loan request is selected for Section 515 funding will be reevaluated for potential inclusion on the next fiscal year's list of designated places when the complex is completed, in accordance with the "build and fill" provisions of § 1944.213(f)(2). A place may be removed from the list prior to the end of the 3-year designation period because of a substantial loss of income-eligible population or an increase in the affordable rental housing supply, for example, a place that experiences the

closing of a military base or other major employer.

(e) *List of designated places.* A list of designated places may be obtained by contacting the State Office or any Rural Development office in the state.

18. Section 1944.230 is added to read as follows:

**§ 1944.230 Application submission deadline and availability of funds.**

(a) *Application submission and funding cycle.* Dates governing the submission and funding cycle of Section 515 loan requests will be published annually in the **Federal Register** and may be obtained from any Rural Development office.

(b) *Availability of funds.* The amount of funds available for each State, as well as any limits on the amount of individual loan requests, will be published as a notice annually in the **Federal Register**.

19. Section 1944.231 is revised to read as follows:

**§ 1944.231 Processing loan requests.**

(a) *Actions by the applicant.* Loan requests may be submitted for designated areas when the availability of funds is announced. The loan request will consist of an application form prescribed by the Agency and the items listed in Exhibit A-7 of this subpart. If an application is selected, the applicant will be required to provide the additional items required by Exhibit A-9 of this subpart within the timeframes established by the Agency.

(b) *Actions by the Agency.*—(1) *Actions by the Agency on loan requests received.* Loan requests received after the deadline announced in the **Federal Register** will not be considered for funding in that funding cycle and will be returned to the applicant.

(2) *Review and scoring of loan requests.* Loan requests will be reviewed:

(i) To determine if the loan request is complete and includes the additional information required in NOFA;

(ii) To determine if the request is for an authorized purpose; and

(iii) To establish a point score based on the following factors:

(A) The presence and extent of leveraged assistance (including services, abatement of taxes, etc.) for the units that will serve RHS income-eligible tenants, not including tax credits or donated land. Scoring will be based on the presence and extent of leveraged assistance for each loan request compared to the other loan requests being reviewed, computed as a percent of the total development cost of the units that will serve RHS income-

eligible tenants. A total monetary value will be determined for leveraged assistance in order to compare such items equitably with leveraged funds. As part of the loan application, the applicant must include specific information on the source and value of the services for this purpose. Proposals will then be ranked in order of the percent of leveraged funds and assigned a point score accordingly. (0 to 20 points)

(B) The loan request is for units to be developed in a colonia, tribal land, or EZ/EC community, or in a place identified in the state Consolidated Plan or state needs assessment as a high need community for multi-family housing. (20 points)

(C) The loan request is in support of a National Office initiative announced in NOFA. (20 points)

(D) The loan request is in support of an optional factor developed by the State that promotes compatibility with special housing initiatives in conjunction with state-administered housing programs such as HOME funds or low income housing tax credits.

A factor thus developed cannot duplicate factors already included in this paragraph and must be provided to the National Office prior to the funding cycle for concurrence and inclusion in NOFA. (20 points)

(E) The loan request includes donated land meeting the provisions of § 1944.215(r)(4). (5 points)

(3) *Point score ties and ranking of loan requests.* Loan requests will be ranked in order of highest point score or, where there are point score ties, in order of highest point score and number assigned as follows:

(i) If one of the same-pointed requests is from an entity meeting the requirements of paragraph (e) of this section, it will be denoted with a #1 following the point score. If two or more are from entities meeting these requirements, a lottery will be held. The first drawn request will be denoted #1, the second drawn #2, etc.

(ii) After all requests from entities meeting the requirements of paragraph (e) of this section have been numbered, the next sequential number will be assigned to a loan request from an entity not meeting the requirements of paragraph (e) of this section. If there are two or more requests from entities not meeting the requirements of paragraph (e) of this section, a lottery will be held and each request numbered in the order it is drawn, beginning with the next sequential number.

(4) *Preliminary eligibility and feasibility review.* In order of ranking, a preliminary review of eligibility and



feasibility will be made on the highest ranked requests, including:

(i) A review of the preliminary plans and cost estimates.

(ii) A market feasibility review, including the Agency's review of the market, a review of HUD's (and similar lender's, if applicable) feedback on the market area, and a review to ensure compliance with the "build and fill" provisions of §1944.213(f).

(iii) A site visit and preliminary review to determine if the site criteria of §1944.215(r) can be met.

(iv) A review of the Affirmative Fair Housing Marketing Plan.

(v) Analysis of a current (within 6 months) credit report.

(5) *Selection of loan requests for further processing.* The Agency will select loan requests for further processing from loan requests determined preliminarily eligible and feasible, in ranking order, taking into consideration the amount of available funds.

(i) If any selected loan requests are later withdrawn, rejected, or delayed for a period of time that will not permit funding in the current funding cycle, the Agency will select additional loan requests in ranking order as funding levels permit. For this purpose, the State may keep the next highest ranked loan request until it is determined that all selected loan requests will be funded. Applicants whose loan requests are held for this purpose will be advised that their loan request was not selected but ranked sufficiently high to be retained in the event a selected request is withdrawn or rejected in the current funding cycle.

(ii) Loan requests not funded in the funding cycle, including incomplete requests, or requests not meeting the requirements of Exhibit A-7 of this subpart or NOFA, will be returned to the applicant with the reason it was not considered.

(c) *Additional requirements for selected loan requests.* For selected loan requests, the applicant must provide the additional information required by Exhibit A-9 of this subpart and any additional State requirements within the timeframes established by the Agency. If the applicant fails to meet established timeframes, the Agency may grant an extension if the delay appears reasonable and granting the extension will still permit funding of the loan request in the current funding cycle.

(d) *Site rejections.* Site rejections will be handled as follows:

(1) Applicants will be given 15 calendar days from the date of the Agency's site rejection letter to submit a new site option. If the applicant

appeals the decision but submits a new site option within 15 days, the new site option will be accompanied by a copy of their letter to the National Appeals Division withdrawing their appeal request. If the new site is acceptable, processing will continue. If the new site is not acceptable, the loan request will be rejected.

(2) If the applicant does not submit a new site option within 15 days, and has appealed the Agency's decision, the Agency will not delay processing of loan requests in other market areas pending the outcome of the appeal. The next ranked loan request, within available funding limits, will be selected for further processing.

(3) If the applicant prevails in the appeal, the loan request will be considered in the next funding cycle. The applicant will be given the opportunity to amend their loan request consistent with NOFA.

(e) *Nonprofit or public body preference.* Preference in ranking loan requests will be provided to an entity that meets all of the following conditions:

(1) Is a local nonprofit organization, public body, or Indian Tribe whose principal purposes include the planning, development, and management of low-income housing;

(2) Is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code (26 U.S.C. 501(c)(3) or 501(c)(4));

(3) Is not wholly or partially owned or controlled by a for-profit or limited-profit type entity;

(4) Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity;

(5) Is not co-venturing with another entity; and

(6) The entity or its members will not be receiving any direct or indirect benefits pursuant to LIHTC.

(f) *RCH loan requests.* (1) Loan requests for RCH assistance will be processed in the order in which a complete loan request was received.

(2) All loan requests for RCH assistance will be reviewed for eligibility and feasibility. In cases where the proposal is not eligible or feasible, the proposal will be rejected. Proposals which appear eligible and feasible will be forwarded to the National Office for review and authorization.

(3) If authorized by the National Office, the State will notify the applicant that the proposal appears eligible and feasible. The applicant will be requested to provide the additional information required by Exhibit A-9 of this subpart and any additional State requirements.

(4) If funds are not available in the current funding cycle, the loan request will be considered for funding in the next funding cycle.

(g) *General guidance on processing requests for Multi-Family Housing (MFH) Assistance.* (1) All applicants must provide their taxpayer identification number. The taxpayer identification number for individuals who are not businesses is their Social Security Number.

(2) A loan request for MFH assistance may be withdrawn upon written request of the applicant at any time. The Agency may withdraw a loan request for failure of an applicant to provide necessary information to process a request for assistance should the applicant fail to respond to a written request which provides the applicant with a reasonable time period to submit the information.

#### § 1944.237 [Amended]

20. Section 1944.237 is amended in paragraph (a) in the second sentence by revising the words "be rated and ranked" to read "compete for funding" and by removing the words "the priority point system contained in", and in the last sentence by removing the words "under the priority point system".

21. Exhibit A of subpart E is amended in section IV. A. in the first sentence by revising the words "When an applicant is authorized to submit a formal application" to read "When a loan request is selected for further processing"; in the introductory text of section IV. B. in the last sentence by revising the word "preapplication" to read "loan request" and the words "when developing an application" to read "for loan requests selected for further processing"; and in section VIII in the contents listing for exhibit A-7 by revising the word "Preapplication" to read "a Loan Request", in the contents listing for exhibit A-9 by adding the word "Additional" before the word "Information", by removing the words "with Application", and by revising the word "Loans" to read "Loan Requests", and by removing and reserving the contents listing for Exhibit A-10; and by revising sections II. and III. to read as follows:

#### Exhibits to Subpart E

#### EXHIBIT A—HOW TO BRING RENTAL AND COOPERATIVE HOUSING TO YOUR TOWN

\* \* \* \* \*

#### II. APPLYING FOR A LOAN

A. An individual, organization, or group organizing to provide housing may contact any Rural Development office processing Section 515 loan requests to obtain



information and necessary forms. The Section 515 program is administered by Rural Development's Rural Housing Service (RHS).

B. Each funding cycle, RHS will publish in the **Federal Register** a notice of the availability of funds (NOFA) for Section 515 loans and a list of designated places (communities) for which loan requests may be submitted. The list of designated places is also available from any Rural Development office processing Section 515 loan requests. Designated places are rural places identified by RHS as having the greatest potential need for Section 515 housing. Except in unusual circumstances, places are designated for a period of three years or until a loan has been selected for funding, whichever occurs first.

C. Applicants must submit a loan request by the deadline announced in the **Federal Register**, and available in any Rural Development office, to be considered in the funding cycle. Section III of this exhibit provides information on the loan review and selection process. In addition, applicants are advised to read this subpart, which provides detailed information on the Section 515 program.

D. The loan request consists of SF-424.2, "Application for Federal Assistance (For Construction)," the supporting material or information listed in exhibit A-7 of this subpart, and any additional information required in NOFA. This information will enable the Agency to determine:

1. The eligibility of the applicant;
2. The feasibility (economic, environmental, and architectural) of the proposed housing;

3. That prospective cooperative members have read and understand their responsibilities as outlined in "What is Cooperative Housing?" (available in any Rural Development office) before agreeing to a cooperative housing project;

4. Whether the proposed housing can appropriately be financed by RHS; and
5. Its Civil Rights impact.

E. This information usually can be furnished by the applicant without hiring extensive professional services. However, fees for professional packaging services rendered to a nonprofit organization can be made a part of loan development costs.

### III. REVIEW OF THE LOAN REQUEST

A. Loan requests received by the deadline announced in the NOFA will be reviewed, scored, and ranked based on the loan selection criteria announced in the NOFA. Requests that rank sufficiently high will be reviewed for eligibility and feasibility.

B. Upon completion of the loan review process, applicants will be advised of RHS' decision. Applicants whose loan requests are selected for further processing will be notified of the additional steps that need to be taken. Loan requests not selected for further processing in the current funding cycle will be returned to the applicant.

22. Exhibit A-7 of subpart E is amended in the introductory text by removing the words "(for preapplication submission)"; in paragraph I.A.(6) by removing the last sentence; in paragraph

I.A.(7)(A) by removing the words "preapplication or"; and by revising the heading of the exhibit and paragraphs IV.C. and VI to read as follows:

\* \* \* \* \*

#### **EXHIBIT A-7—INFORMATION TO BE SUBMITTED WITH A LOAN REQUEST FOR A RURAL RENTAL HOUSING (RRH) OR A RURAL COOPERATIVE HOUSING (RCH) LOAN**

\* \* \* \* \*

##### **IV. \* \* \***

C. The size and type of other facilities to be included in the project, such as laundry rooms, storage spaces, etc., and a justification for any related facilities to be financed wholly or in part by RHS funds.

\* \* \* \* \*

##### **VI. Form RD 1940-20, "Request for Environmental Information."**

\* \* \* \* \*

23. Exhibit A-9 of subpart E is amended by removing the introductory text; in paragraph 5 by revising the words "since the applicant submitted the market analysis" to read "since the market analysis was completed"; by removing paragraph 15 and by redesignating paragraph 16 as paragraph 15; and by revising the heading of the exhibit and paragraph 10 to read as follows:

\* \* \* \* \*

#### **EXHIBIT A-9—ADDITIONAL INFORMATION TO BE SUBMITTED FOR RURAL RENTAL HOUSING (RRH) AND RURAL COOPERATIVE HOUSING (RCH) LOAN REQUESTS**

\* \* \* \* \*

10. The applicant will submit all proposed agreements for architectural, engineering, and legal services.

\* \* \* \* \*

#### **EXHIBIT A-10—[REMOVED AND RESERVED]**

24. Subpart E, Exhibit A-10, is removed and reserved.

### **PART 1951—SERVICING AND COLLECTIONS**

25. The authority citation for part 1951 continues to read as follows:

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

#### **Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing**

##### **§ 1951.504 [Amended]**

26. Section 1951.504 is amended by removing the alphabetic paragraph designations and placing the definitions in alphabetical order and by removing the definition for "Occupancy surcharges".

##### **§ 1951.506 [Amended]**

27. Section 1951.506 is amended by removing paragraph (a)(5)(iv); by redesignating paragraph (a)(5)(v) as paragraph (a)(5)(iv); and in newly redesignated paragraph (a)(5)(iv) in the third sentence by removing the words ", occupancy surcharges" and in the fourth sentence by removing the words ", occupancy surcharge".

##### **§ 1951.509 [Removed]**

28. Section 1951.509 is removed and reserved.

#### **Exhibit B—[Removed and Reserved]**

29. Part 1951, subpart K, Exhibit B, is removed and reserved.

### **PART 1965—REAL PROPERTY**

30. The authority citation for part 1965 continues to read as follows:

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

#### **Subpart B—Security Servicing for Multiple Housing Loans**

31. Section 1965.65 is amended by revising the introductory text of paragraph (a) to read as follows:

##### **§ 1965.65 Transfer of real estate security and assumption of loans.**

(a) *General.* The transfer may be approved only if it is determined that the transfer would ensure the further availability of the housing and related facilities for very-low, low, and moderate income families or persons and would be in the best interests of the residents and the Federal Government.

\* \* \* \* \*

##### **§ 1965.68 [Amended]**

32. Section 1965.68 is amended by removing paragraph (c)(9).

#### **Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans**

33. Section 1965.210 is revised to read as follows:

##### **§ 1965.210 Loans approved prior to December 15, 1989—RHS actions when processing prepayment requests.**

For loans approved prior to December 15, 1989, that have not subsequently accepted prepayment incentives, the Servicing Office or other designated office must evaluate the need for the housing to determine the level of incentives to be offered, including equity loans, and whether the prepayment may be legally accepted with or without restrictive-use provisions. A reasonable effort must be made to enter into an agreement with

the borrower to maintain the housing for low-income use that takes into consideration the economic loss the borrower may suffer by foregoing prepayment. When developing an incentive offer, the Servicing Office or other designated office must first offer incentives other than equity loans, unless it is determined that alternative incentives are not adequate to provide a fair return to the borrower, prevent prepayment of the loan, or prevent displacement of the tenants. The guidance provided in §§ 1965.213 and 1965.214 and Exhibit E of this subpart (available in any Rural Development State or District Office) will be used to determine the appropriate incentive package. Once an incentive offer has been accepted on a project, the project will be considered ineligible for future incentive offers until such time as the restrictive-use period associated with the incentive offer has expired.

#### **§ 1965.213 [Amended]**

34. Section 1965.213 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (b), (c) and (d) respectively; and by adding a new paragraph (a) and by revising the introductory text of newly redesignated paragraph (b) and paragraph (b)(1) to read as follows:

#### **§ 1965.213 Offer of incentives to borrowers.**

\* \* \* \* \*

(a) *Availability of incentives.* Incentives may be offered only if the restrictive period has expired for any RRH project loan.

(b) *Available incentives.* One or more of the following incentives will be offered to the borrower. The amount of incentives will be determined in accordance with Exhibits D and E of this subpart (available in any Rural Development State or District Office).

(1) *Equity loans.* In RRH projects, a subsequent loan may be offered for equity for the difference between the current unpaid loan balance and a maximum of 90 percent of the project's value appraised as unsubsidized conventional housing. Equity loans may not be offered unless the servicing official determines that other incentives offered under this paragraph are not adequate to provide a fair return on the investment of the borrower, to prevent prepayment of the loan, or to prevent the displacement of project tenants.

\* \* \* \* \*

Dated: May 1, 1997.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 97-11817 Filed 5-6-97; 8:45 am]

BILLING CODE 3410-XV-U

## **DEPARTMENT OF AGRICULTURE**

### **Rural Housing Service**

### **Rural Business-Cooperative Service**

### **Rural Utilities Service**

### **Farm Service Agency**

#### **7 CFR Part 1944**

**RIN 0575-AB93**

#### **Processing Requests for Section 515 Rural Rental Housing (RRH) Loans**

**AGENCIES:** Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCDS), a successor Agency to the Farmers Home Administration (FmHA), amends its regulations for processing loan requests for Rural Rental Housing (RRH) assistance. This action is taken to improve loan processing procedures to better accomplish the program's purpose of providing rental housing to rural areas of greatest need.

In a future rulemaking document the comment period will be reopened for the proposed market study revisions (Exhibit A-8 of 7 CFR part 1944, subpart E) only.

**DATES:** The effective date of this final rule is June 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Linda Armour, Senior Loan Specialist, Multi-Family Housing Processing Division, RHS, U.S. Department of Agriculture, Room 5349—South Building, Stop 0781, Washington, D.C. 20250, telephone (202) 720-1608.

#### **SUPPLEMENTARY INFORMATION:**

##### **Classification**

This rule has been determined to be significant for purposes of Executive Order 12886 and therefore has been reviewed by the Office of Management and Budget.

##### **Paperwork Reduction Act**

The information collection requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575-0047, in accordance with the Paperwork Reduction Act of 1995. This rule does not impose any new information collection requirements.

## **Civil Justice Reform**

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

### **Unfunded Mandate Reform Act**

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### **National Performance Review**

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

### **Programs Affected**

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans.

### **Intergovernmental Consultation**

For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940-J.