DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1940 and 1944

RIN 0575–AC19

Processing Requests for Farm Labor Housing (LH) Loans and Grants

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 the Farm Labor Housing (LH) program. This action is taken to implement an annual competitive funding cycle for off-farm proposals that will be announced elsewhere in this **Federal Register**. The intended outcome is to improve the effectiveness and efficiency of the application process and enable the Agency to process applications in a more efficient and timely manner. This rule also implements the provision of Public Law 105–276, enacted October 21, 1998, that permits as an eligible LH borrower entity a limited partnership with a nonprofit general partner.

EFFECTIVE DATE: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Linda Armour, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, Room 5349—South Building, Stop 0781, 1400 Independence Avenue, SW, Washington, DC 20250–0781, telephone (202) 720–1604 (voice) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by 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 0575-0045, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB 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 regulation. This rule does not impose any additional burden on the public.

The new competitive application process should increase the number of applications each year, and only those applicants selected for further processing for funding within the fiscal year will need to submit a full application. The net effect is no new information collection requirements from those approved by OMB.

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) except as specifically provided, 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 Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 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 1 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 in part as a result 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 10.405, Farm Labor Housing Loans and Grants.

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.

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.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Background

The farm labor housing program has two authorities in Title V of the Housing Act of 1949: section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. As provided by the authorizing statute, section 514 loans are subsidized to borrowers to a one percent interest rate. The program also has tenant subsidies (rental assistance, or RA) available through section 521 (42 U.S.C. 1490a). Both ''on-farm'' and ''off-farm'' housing are financed by the LH program. Occupancy in both is restricted to United States citizens or aliens legally admitted for permanent residence.

On-farm housing is financed with section 514 loans to a farmer or farm entity. Housing built is typically a single family dwelling unit, and occupancy is restricted to farmworkers or a farmworker family with at least one member of the household employed by the farm. No tenant subsidies are available.

Off-farm housing proposals, which may be financed with both section 514 loans and section 516 grants, are typically designed like conventional apartment complexes; however, occupancy is restricted to farmworker households. Rental assistance is typically available to occupants to assure unit affordability.

On October 29, 1998, the Agency published a proposed rule in the **Federal Register** (63 FR 57932) to change to an annual competitive funding cycle from the current system of accepting and processing off-farm labor housing proposals on a first-come, first-served basis. These regulation changes do not affect on-farm housing loan requests, which will continue to be accepted and processed on a first-come, first-served basis.

Discussion of Comments

Fifteen commentors responded during the comment period, three of whom submitted duplicate letters. An additional comment was received after the comment period had closed, expressing support of another commentor's letter, making a total of sixteen responses. Commentors included State agencies, farm labor housing technical assistance providers, nonprofit groups, developers, and RHS field staff. The Agency wishes to thank all respondents for their thorough and constructive comments and suggestions. We have carefully considered all comments in developing this final rule.

The comments we received are summarized and discussed below by topic.

Annual Competitive Funding Cycle

The majority of commentors agreed with the Agency's proposal to adopt an annual competitive funding cycle, with only two commentors opposing this alternative to the current first-come, first-served application process. The Agency is implementing the annual competitive funding cycle as proposed.

Two commentors, while agreeing with the annual competitive process, felt that the proposed 60-to 90-day application period was too short, and offered suggestions for ways to give applicants more time to complete and submit their loan requests. The first commentor suggested that the Agency issue the notice of funding earlier in the year, based on preliminary appropriations estimates, before funds actually become available. The notice would specify that funds were subject to the amount of the final appropriations. The second commentor suggested that the Agency accept applications and issue letters of commitment in FY 1999 for FY 2000 funds; FY 1999 funds could then be used to fund applications on hand for which the Agency has already issued an AD–622, ''Notice of Preapplication Review Action'', inviting a formal application. A third commentor on this issue offered an opposing opinion, stating that the Agency should not announce the availability of funds prior to the appropriation of funds because funding levels can vary from year to year.

The Agency feels that the funding announcement can be made as soon as there is reasonable assurance of funding levels. The funding notice will be published in the **Federal Register** as quickly as possible thereafter to allow the maximum application period.

Several commentors stated that a minimum of 90 days should be allowed for the application cycle to allow smaller or inexperienced applicants time to complete their applications. We agree that a 90-day Notice of Funds Availability (NOFA) is preferable and will make every effort to accommodate this recommendation by publishing NOFA as soon as funding levels are known. The Agency will also attempt to ensure, through outreach efforts, that potential applicants are aware of the program's annual funding cycle so that preliminary groundwork can be done prior to the Agency's funding announcement.

Three-Stage Application Process

The Agency proposed adopting a three-stage application process with a preliminary proposal stage. The majority of commentors were opposed to this and recommended retaining the current two-stage process. They noted that the preliminary stage was nearly as extensive as the Agency's current first stage (preapplication) requirements and unnecessarily complicated the process. Two commentors also noted that, if the applicant is applying for other funds to leverage with RHS funds, the information required in the Agency's current preapplication stage is generally required by the other lenders. Based on these comments, the Agency has decided to retain the current two-stage application process.

Description of Proposed Financing

Three respondents commented on the provisions of § 1944.170(a)(2)(ii), ''Description of proposed financing.'' One questioned whether the requirement that leveraged funds not exceed the cost of 100 percent LH loan financing was realistic. Based on our experience with the section 515 Rural Rental Housing program, we have found this to be a realistic requirement, with many applicants obtaining grants, deferred loans, or 1 percent loans. We have modified this provision, however, to indicate that this condition applies only if RHS Rental Assistance is being provided. Regarding the provisions for donated land, one commentor felt that the requirement that site costs cannot exceed the cost of purchasing and developing an alternative site was too inflexible, citing instances where no other site is available or the site is mandated by local conditions. The Agency agrees there may be exceptional cases; however, these will be handled on a case-by-case exception basis. A third commentor objected to the requirement that the funding dates of leveraged funds permit funding within the current funding cycle, noting that this was not appropriate for on-going operating subsidies. The same commentor also noted that, for many leveraged sources, the funds may be committed but not actually received in the funding cycle. The Agency feels there is merit to these criticisms and has modified the language for this requirement accordingly.

Environmental Review

Two commentors recommended that the Agency require Form RD 1940–20, ''Request for Environmental Information,'' at the initial application stage and consider requiring a Phase I Environmental Review at this stage. The Agency agrees that the environmental process should begin with the initial loan request. Form RD 1940–20 is required with the preapplication submission, and Agency staff will be required to conduct a site visit to establish preliminary site eligibility and to identify potential environmental concerns. In coordination with the environmental site review, Agency staff will be required to conduct a civil rights impact analysis in accordance with RD Instruction 2006-P.

Appraisal Requirements

One commentor noted that § 1944.169(a)(1) requires appraisals to be performed by RHS employees and questioned whether this precluded contract appraisals. We agree that the

Agency may wish to use contract appraisers in some instances and have changed the wording in this section to remove the reference to RHS employees.

Loan Selection Criteria

The Agency proposed awarding points in nine different loan selection categories: (1) the presence and extent of leveraged assistance; (2) units to be built in communities with a high need for farmworker housing; (3) proposals in support of an Agency initiative announced in Notice of Funds Availability (NOFA); (4) proposals with support services; (5) proposals with a minimum ten percent private agriculture producer leveraged funds; (6) projects whose occupants will derive the highest percentage of income from on-farm agriculture work; (7) proposals in market areas not previously served by LH projects; (8) seasonal, temporary, or migrant housing; and (9) for FY 1999 and FY 2000, proposals that were issued an AD–622, ''Notice of Preapplication Review Action,'' inviting a formal application, or had been reviewed and authorized by the National Office prior to October 29, 1998 (the date the proposed rule was published in the **Federal Register**). The comments on each category are discussed below:

The presence and extent of leveraged assistance, and proposals with a minimum ten percent private agriculture producer leveraged funds. The majority of commentors felt that the two criteria dealing with leveraged assistance should be combined into one, both to simplify the process and to preclude giving too much weight to leveraged assistance. In addition, commentors felt that the Agency should establish point ranges for percentages of leveraging, rather than the proposed method of comparing applications to each other. The Agency agrees with both of these suggestions and has adopted them in this rule.

High-need areas for farmworker housing. Seven commentors objected to the proposed loan score factor for projects that would be located in high need areas for farmworker housing as identified in the state Consolidated Plan or state needs assessment. It was noted that many states do not identify farmworker housing needs at all, or do not give these needs any special priority. Several commentors noted that the Agency should rely on the market analysis to determine need and demand. Because of the strong opposition by commentors, and in the absence of uniformly available data or state plans, the Agency is not adopting this factor.

Agency initiative. Five comments were received on the proposal to award zero to twenty points for an optional Agency initiative announced in NOFA. One commentor suggested that the Agency announce any initiative well in advance of NOFA and keep the same initiative for more than one year. Three commentors noted that, since applicants would not be able to plan ahead for the initiative, twenty points gave it too much weight. Another commentor objected to the range of scores, feeling that the proposal would either comply with the initiative or not. The Agency appreciates these comments and concerns and will take them into consideration in developing any Agency initiatives. In addition, we have modified the point score for this factor so that ten points will be awarded to proposals that support the Agency initiative and zero points for those that do not.

Supportive services. Commentors expressed a variety of opinions on the proposal to award five points for one supportive service and ten points for two or more. One commentor supported this factor as proposed, while two others felt the Agency needed to better define supportive services and should differentiate between simple and more complex services. One suggested using a range of points for each service based on the financial investment or value. One commentor noted that a services package should be required of all multi-family housing and updated every few years. Another commented that services should not be required on-site if they are available in close proximity to the housing and the service providers have committed that the services are available, accessible, and affordable to farmworkers and their families. Still another commentor suggested a change in regulations to make the provision of services an eligible operating expense. Although the suggestions varied, all commentors agreed that a supportive services package is critical to the successful operation of multi-family housing. Based on this and the lack of consensus on a fair way to distinguish between services in awarding points, the Agency has decided not to use this as a loan scoring factor but, instead, will require a supportive services plan as part of the application. Services may be provided on-site or through cooperative agreements with service providers in the community. At the initial application stage, letters of intent from service providers will be acceptable documentation.

Highest percentage of income from on-farm agricultural work. Five respondents commented on this factor. All five objected to its inclusion in the loan selection criteria, pointing out the difficulty in projecting future occupancy and the lack of reliable data. One of the commentors further noted that this factor is more appropriate as a preliminary eligibility assessment. The Agency feels these are valid criticisms and, therefore, has not adopted this factor in the final rule.

Market areas not previously served by LH projects. We received two comments on this loan scoring factor. Both recommended that the Agency modify this category to reflect the degree of need for farmworker housing in the market area based on the number of farmworker households and available housing units. We considered this suggestion but decided against adopting it because of the difficulty in obtaining accurate data on farmworker housing needs. We agree, however, that housing should go to areas of greatest need based on the market analysis, which may or may not have existing LH units. Therefore, we have not adopted this factor in the final rule.

Seasonal, temporary, or migrant housing. The proposed rule provided that five points would be awarded for proposals with up to 50 percent of its units serving seasonal, temporary, or migrant farmworkers, and ten points for 51 percent or more. Three commentors felt that more weight should be given to this factor, with one noting that this factor should be on a par with leveraged assistance to help accomplish a balanced program. Two of these commentors suggested a point range of zero to twenty points, based on the percentage of units serving seasonal, temporary, or migrant farmworkers. As mentioned above (under the heading ''The presence and extent of leveraged assistance and proposals with a minimum 10 percent private agriculture producer leveraged funds''), the two proposed leveraging factors have been combined into one, reducing the maximum points for leveraging from forty to twenty. Few applications will receive the maximum twenty points, so we do not believe leveraging will arbitrarily outweigh other factors. With limited program funds, we have attempted to balance the need for leveraging with other Agency objectives. Therefore, we have retained the points for seasonal, temporary, or migrant housing as proposed.

Loan requests that have been issued an AD–622. The proposed rule provided that, for Fiscal Years 1999 and 2000, ten points would be awarded to applications or loan requests that had been issued an AD–622, ''Notice of Preapplication Review Action,'' inviting a formal application, or had been authorized by the National Office prior

to October 29, 1998 (the date the proposed rule was published). Five respondents commented on this issue. Two agreed with this provision, with one stressing support for the two-year limitation. One commentor disagreed with this provision, stating that each proposal should compete on its own merits. Another commentor felt that proposals with an AD–622 should not have to compete with other proposals, since they were developed under the previous regulations. The fifth commentor suggested funding only those proposals with AD–622s in fiscal year 1999 and implementing the new process in fiscal year 2000.

Commentors were divided on this issue and, after considering the comments and arguments on both sides, the Agency has decided to implement this measure as proposed, i.e., to give preference to loan requests that were issued an AD–622 or authorized by the National Office by awarding points for two funding cycles. However, to address the concerns of commentors who felt AD–622s should be given more consideration, we have increased the number of points from ten to fifteen.

Other Suggested Loan Selection Criteria

Several commentors suggested other loan selection criteria for the Agency's consideration. Two commentors suggested project readiness and development team experience; others suggested cost effectiveness and construction quality. The Agency considered these and similar criteria in drafting the proposed rule; however, we found it impossible to develop standards for factors that require subjective judgments, such as an assessment of quality or experience. In addition, we were concerned that the readiness to proceed factor could result in delays or obstacles by communities that oppose the development of farm labor housing. Therefore, we have not adopted these suggestions.

Point-score Ties

The proposed rule provided that, in case of point-score ties for requests from the same State, the proposal with the most supportive services would be given priority, with further same-State ties determined by lottery. One commentor objected to these tie breakers, proposing instead that, with limited funds and the emphasis on leveraging, primary priority be given to requests that are the most cost effective and have the most leveraged assistance, with secondary priority to requests with the greatest market need for LH units. The same commentor felt the regulation should also address point-score ties between requests from different States. With regard to the ''most supportive services'', we are not adopting this loan scoring factor in the final rule, so it is no longer appropriate as a tie breaker (see discussion above under ''Loan Selection Criteria''). With regard to the suggested tie breakers, we believe it would be difficult to obtain reliable and objective data to establish ''most cost effective'' and ''greatest market need''. We agree, however, that there is merit to using the actual percentage of leveraged assistance as a tie-breaker. In addition, the Agency believes there is merit to giving a preference to applications to develop units in states that have no existing RHS-financed off-farm LH units. Therefore, the actual percentage of leveraged assistance will be used as a tie-breaker for point-score ties within the State; in the case of point-score ties in the National ranking, preference will be given to applications in States that have no existing RHS-financed off-farm LH units. In the event of further point-score ties at the National level, preference will be given to States that have not been selected in the current cycle.

Geographic Diversity

The proposed rule provided that the Agency could select a lower scoring loan request over one with a higher score in order to achieve geographic diversity. Five commentors strongly objected to this provision, stating that it undermined the objectivity of the point system. We agree that the selection process should be fair and objective and, therefore, we have not adopted this provision in the final rule.

Statutory Amendments

Public Law 105–276, enacted October 21, 1998, included two amendments to the Farm Labor Housing (LH) program. The first extends eligibility for low-income housing tax credit financing to the LH program by adding as eligible borrowers for section 514 loans ''any nonprofit limited partnership in which the general partner is a nonprofit entity''. This wording is interpreted by the Agency to mean ''any limited partnership in which the general partner is a nonprofit entity.'' We have included this provision in the final rule and will interpret ''nonprofit limited partnership'' to mean ''any limited partnership in which the general partner is a nonprofit entity.'' This will be consistent with the wording found in section 515(w) (42 U.S.C. 1485(w)). The second LH legislative amendment provides that rental assistance payments may be used for project operating costs in housing for migrant farmworkers financed under section 514 or section 516. This provision is not included in this rule because of the need to make changes to the Agency's project management regulations and automated systems but will be included in the Agency's reinvented regulation, which is scheduled to be published as a proposed rule in fall of 1999.

Implementation Proposal

Under the annual competitive system that is being implemented with this rule, the amount of available funds and application deadlines will be announced each funding cycle in the **Federal Register** through a NOFA. Loan requests received by the application deadline will be reviewed and selected based on objective criteria in accordance with the revised regulations. Loan requests not selected for funding will be returned to the applicant.

Applications on hand are subject to the new competitive process. In fiscal years 1999 and 2000, points will be awarded to applications on hand that were issued an AD–622 inviting a formal application or that had been reviewed and authorized by the National Office as of October 29, 1998 (the publication date of the proposed rule). A new proposal that ranks higher under the selection criteria than an existing application will take priority over the existing one.

Agency staff were directed by the proposed rule to return proposals on hand that had not been issued an AD–622 or reviewed and authorized by the National Office as of October 29, 1998 (the publication date of the proposed rule). Loan requests thus returned may, of course, be submitted for consideration during the application period announced in NOFA.

List of Subjects

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—housing and community development, Loan programs—agriculture, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1944

Grant programs—housing and community development, Loan programs—housing and community development, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

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

PART 1940—GENERAL

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

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

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Revise section 1940.579 to read as follows:

§ 1940.579 Multiple Family Housing appropriations not allocated by State.

Funds are not allocated to States. The following program funds are kept in a National Office reserve and are available as determined administratively:

(a) Section 514 Farm Labor Housing Loans.

(b) Section 516 Farm Labor Housing Grants.

PART 1944—HOUSING

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

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

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

4. Amend section 1944.153 in the definition of ''Domestic farm laborer'' by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''Rural Housing Service''; in the definition of ''Farm owner'' by revising the words ''subpart A of part 1944 of this chapter'' to read ''this section''; in the definition of ''Self-employed'' by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''Rural Housing Service'' and the words ''District or State Director'' to read ''Loan Official or State Director''; and by adding in alphabetical order definitions to read as follows:

§ 1944.153 Definitions.

Agency. The Rural Housing Service, an agency of the U.S. Department of Agriculture which administers section 514 loans and section 516 grants.

* * * * *

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

* * * * *

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

* * * * *

LH. Farm Labor Housing.

* * * * *

MFH. Multi-Family Housing.

* * * * *

NOFA. Notice of Funds Availability.

* * * * *

Off-Farm Labor Housing. Housing for farm laborers regardless of the farm where they work.

On-Farm Labor Housing. Housing for farm laborers specific to the farm where they work.

* * * * *

RHS. Rural Housing Service.

* * * * *

5. Amend section 1944.157 to revise paragraphs (a)(1) and (a)(3) to read as follows:

§ 1944.157 Eligibility requirements.

(a) * * *

(1) Be a farmowner, family farm partnership, family farm corporation, or an association of farmers whose farming operations demonstrate a need for farm labor housing, or an organization, as these terms are defined in § 1944.153, which will own the housing and operate it on a nonprofit basis; or a nonprofit limited partnership in which the general partner is a nonprofit entity.

* * * * *

(3) Provide from its own resources the borrower contribution required by § 1944.160 and have sufficient initial operating capital to pay costs such as property and liability insurance premiums, fidelity bond premiums if required, utility hookup deposits, maintenance equipment, movable furnishings and equipment, printing lease forms, and other initial expenses. LH loans made to nonprofit organizations and to State or local public agencies or political subdivisions thereof may include up to 2 percent of the development cost for initial operating expenses.

* * * * *

6. Add section 1944.160 to read as follows:

§ 1944.160 Off-farm loan limits.

(a) For all applicants, including its members, who will be receiving any benefits from Low-Income Housing Tax Credits (LIHTC), the amount of the RHS loan will be limited to no more than 95 percent of the total development cost or 95 percent of the security value, whichever is less.

(b) For all applicants, including its members, not receiving any benefits from LIHTC, who are nonprofit entities or State or local public agencies, the amount of the RHS loan will be limited to the total development cost or the security value, whichever is less, plus the 2 percent initial operating capital.

(c) For all other applicants, including its members, not receiving any benefits from LIHTC, the amount of the RHS loan will be limited to no more than 97 percent of the development cost or the security value, whichever is less.

7. Amend section 1944.164 in the introductory text of paragraph (d) in the first sentence to revise the words ''District Director'' to read ''Loan Official'' and the words ''FmHA or its successor agency under Public Law 103–354'' to read ''RHS''; in paragraph (d)(1)(i) by revising the words ''FmHA or its successor agency under Public Law 103–354'' to read ''RHS''; and to revise paragraph (b) to read as follows:

§ 1944.164 Limitations and conditions.

* * * * *

(b) *Maximum amount of grant*. The amount of any grant may not exceed the lesser of:

(1) Ninety percent of the total development cost; or

(2) That portion of the total cash development cost which exceeds the sum of any amount the applicant can provide from its own resources plus the amount of a loan which the applicant will be able to repay, with interest, from income from rentals which low-income farmworker families can be reasonably expected to be able to pay. The availability of rental assistance and HUD section 8 subsidies will be considered in determining the rentals that farmworkers will pay.

* * * * *

8. Amend section 1944.169 to revise paragraph (a)(1) to read as follows:

§ 1944.169 Technical, legal, and other services.

(a) * * *

(1) An appraisal is required when real estate is taken as security. The appraisal must be made in accordance with the Uniform Standards of Professional Appraisal Practices (available in any Rural Development office).

* * * * *

9. Amend section 1944.170 to redesignate paragraph (c) as paragraph (f); in newly redesignated paragraph (f)(5)(i) to revise the reference ''§ 1944.164(b)(2)'' to read ''§ 1944.164(b)'', in newly redesignated paragraph (f)(5)(ii)(B) to revise the words ''an LH loan'' to read ''a LH loan''; in newly redesignated paragraph

(f)(5)(ii)(C) to revise the reference ''paragraph (c)(5)(ii)(A)'' to read ''paragraph (f)(5)(ii)(A)''; to remove newly redesignated paragraph (f)(7); to revise the section heading, the introductory text, and paragraphs (a) and (b); and to add new paragraphs (c) through (e) to read as follows:

§ 1944.170 Preapplication requirements and processing.

A two-stage application process is used. In stage one, applicants submit a preapplication, which is used to determine preliminary eligibility and feasibility. Preapplications selected for further processing will be invited to submit an application. The preapplication consists of SF–424.2, ''Application for Federal Assistance (For Construction)'' and the information listed in exhibit A–1 or A–2 of this subpart, as applicable. Preapplications for off-farm new construction loans and grants will be accepted and processed in accordance with this section when NOFA is announced in the **Federal Register**. Applicants are advised to read the notice carefully for any restrictions on loan or grant amounts. Preapplications for repair and rehabilitation of existing off-farm LH units and new units of on-farm housing may be submitted any time during the year and will be processed on a first-come, first-served basis in accordance with subpart L of part 1940 of this chapter.

(a) *Preapplications for new units in off-farm facilities.* (1) The Agency will publish NOFA annually in the **Federal Register** with deadlines for submitting preapplications. The notice will include the amount of funds available, any limit on the amount of individual loan and grant requests, any limit on the amount of funds that any one State may receive, and the loan scoring criteria.

(2) The preapplication must be submitted in accordance with NOFA and consists of SF–424.2, ''Application for Federal Assistance (For Construction)'', and the information required by exhibit A–1 of this subpart. The preapplication will be used by the Agency to determine preliminary eligibility and to score and rank proposals.

(b) *Preliminary eligibility assessment of preapplications received in response to NOFA.* The Agency will make a preliminary eligibility assessment using the following criteria:

(1) The preapplication was received by the submission deadline specified in NOFA;

(2) The preapplication is complete as specified in NOFA;

(3) The applicant is an eligible entity and is not currently debarred, suspended, or delinquent on any Federal debt; and

(4) The proposal is for authorized purposes.

(c) *Scoring and ranking off-farm preapplications.* The Agency will score and rank off-farm preapplications for new units that meet the criteria of paragraph (b) of this section.

(1) The following criteria will be used to score project proposals:

(i) The presence and extent of leveraged assistance, including donated land, for the units that will serve program-eligible tenants, calculated as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. Leveraged assistance includes, but is not limited to, funds for hard construction costs, Section 8 or other non-RHS tenant subsidies, and state or federal funds. A minimum of ten percent leveraged assistance is required to earn points. (0 to 20 points)

(A) To count as leveraged funds for purpose of the selection criteria:

(*1*) A commitment of funds must be received within a timeframe that permits processing of the loan request within the current funding cycle (the latest commitment date for leveraged funds will be announced in NOFA); and

(*2*) If RHS RA is being provided, the interest cost to the project using leveraged loan funds may not exceed the cost of 100 percent LH loan financing.

(B) For donated land to be scored as leveraged assistance, all of the following conditions must be met.

(*1*) Based on a preliminary review, the land is suitable and meets Agency requirements. Final site acceptance is subject to a completed environmental review.

(*2*) Site development costs do not exceed what they would be to purchase and develop an alternative site.

(*3*) The overall cost of the project is reduced by the donation of the land.

(C) Points for leveraged assistance will be awarded in accordance with the following table. Percentages will be rounded to the nearest whole number, rounding up at .50 and above and down at .49 and below. For example, 25.50 becomes 26; 25.49 becomes 25. If the total percentage of leveraged assistance is less than ten percent, and it includes donated land, two points will be awarded for the donated land.

Percentage	Points
75 or more	20
60–74	18
50–59	16
40–49	12
30–39	10
20–29	8
10–19	5
0–9	0
Donated land in proposals with less than ten percent total leveraged assistance	2

(ii) The loan request is in support of an Agency initiative announced in NOFA. (10 points)

(iii) Seasonal, temporary, or migrant housing. (5 points for up to and including 50 percent of the units; 10 points for 51 percent or more)

(iv) For Fiscal Year 1999 and Fiscal Year 2000 funding cycles, outstanding applications or requests that were issued an AD–622, ''Notice of Preapplication Review Action,'' inviting a formal application, or had been reviewed and authorized by the National Office prior to October 29, 1998. (15 points)

(2) The Agency will rank preapplications by point score. For point-score ties within the State, rank order will be determined by giving first preference to the application with the greatest actual percentage of leveraged assistance. In case of further same-State ties, rank order will be determined by lottery.

(d) *Selection of preapplications for further processing.* (1) States will make a preliminary eligibility and feasibility assessment, score and rank the preapplications, and provide this information to the National Office with their review comments.

(2) The National Office will rank the preapplications nationwide. In case of point-score ties in the National ranking, first preference will be given to a preapplication to develop units in a state that does not have existing RHS-financed off-farm LH units; second preference to a preapplication from a State that has not yet been selected in the current funding cycle. In the event there are multiple preapplications in either category, one preapplication from each State (the highest State-ranked) will compete by computer-based random lottery. If necessary, the process will be completed until all same-pointed preapplications are selected or funds are exhausted.

(3) The Agency will not select a preapplication for a new LH loan in an area with competing or problem projects when:

(i) The Agency has selected another LH proposal in the same market area for further processing;

(ii) A previously authorized or approved Agency, HUD, or similar assisted MFH project in the same market area serving farmworkers has not been completed or reached its projected occupancy level; or

(iii) An existing Agency, HUD, or similar assisted MFH project in the same market area serving farmworkers is experiencing high vacancy levels, unless such vacancy is planned as part of the occupancy cycle of a seasonally-operated migrant farmworker facility.

(4) If any selected preapplications cannot meet the processing deadlines established by the Agency to enable processing and fund obligation within the current funding cycle, or if requested leveraged funds are not committed within the timeframe established in NOFA, the Agency will select the next ranked preapplication for processing.

(e) *Notification to applicants.* States will notify all applicants of the results of the selection process.

(1) Applicants selected for further processing will be notified and processed in accordance with this section and § 1944.171.

(2) Project proposals not selected for further processing, including incomplete proposals or those that failed to meet NOFA requirements, or those that could not be reached because of insufficient funds, will be returned to the applicant with the reason they were not selected.

* * * * *

10. Exhibit A to subpart D is amended by revising the first paragraph to read as follows:

Exhibit A to Subpart D—Labor Housing Loan and Grant Application Handbook

Introduction

The section 514 Labor Housing loan and section 516 Labor Housing grant programs are administered by the Rural Development's Rural Housing Service (RHS), herein referred to as the Agency. Interested parties are advised to contact any Rural Development office processing Labor Housing (LH) loans and grants to obtain information on program and application requirements prior to developing an application. Notice of Funds Availability (NOFA) for off-farm facilities will be announced annually in the Federal Register, along with application requirements and the deadline for applying. Requests received during the application period will be selected competitively, based on the objective selection criteria in the regulation and announced in the NOFA. Applications for on-farm facilities are accepted any time during the year and are funded on a first-come, first-served basis, based on the availability of funds.

* * * * *

11. Exhibit A–1 to subpart D is amended by revising paragraphs I.A.1 and I.A.3, the introductory text of paragraph I.B., paragraph I.B.3, the text of paragraph I.B.6 preceding the note, paragraph I.C., and paragraph I.E. to read as follows:

Exhibit A–1 to Subpart D—Information To Be Submitted by Organizations and Associations of Farmers for Labor Housing Loan or Grant

I. Information to be submitted with SF 424.2 (for preapplication submission).

A. * * *

1. Financial Statement—A current, dated, and signed financial statement showing assets and liabilities with information on the repayment schedule and status of all debts. If the applicant is an association of farmers, a current financial statement will also be required from each member who holds an interest in the association in excess of 10 percent. If the applicant is a limited partnership, financial statements are required from each general partner who holds an interest in the organization, and from each limited partner who will have 10 percent or more ownership. The financial statement must reflect sufficient financial capacity to meet the initial operating capital requirements. Loan or grant funds may be used to provide the required initial operating capital for nonprofit entities and State or local public agencies. If the applicant is a limited partnership, the financial statement must also demonstrate sufficient capacity to meet the applicant's equity contribution.

* * * * *

3. If a Labor Housing (LH) grant is requested, the applicant should provide a statement on their projected use of Rental Assistance (RA) and their need for a LH grant. This statement should include preliminary estimates of the rents required with and without a grant and the relative need for a grant if RA is provided to supplement market rents for eligible farmworkers. [LH grants and RA are not available to associations of farmers; LH grants are not available to limited partnerships.]

* * * * *

B. * * *

A preliminary survey should be conducted to identify the supply and demand for LH in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. The applicant must provide documentation to justify need within the intended market area. The market survey should address or include the following items:

* * * * *

3. General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers (i.e., prospects for mechanization, etc.). Information may be available from the local U.S. Department of Agriculture (USDA) Cooperative, State, Research, Education and Extension Service office or from the Farm Service Agency.

* * * * *

6. A description of the units proposed, including number, type, size, rental rates, amenities such as carpets and drapes, related facilities such as a laundry room or community room and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants such as a health clinic or day care facility; estimated development timeline; estimated total development cost and applicant contribution. If the application includes leveraged funds, include documentation of the dollar amount, source, and commitment status.

* * * * *

C. Environmental Information

The applicant will complete Form RD 1940–20, ''Request for Environmental Information,'' along with a description of anticipated environmental issues or concerns.

* * * * *

E. Additional Information

1. Evidence of site control such as an option or sales contract; a map and description of the proposed site, including the availability of water, sewer, and utilities, and proximity to community facilities and services such as shopping, schools, transportation, doctors, dentists, and hospitals.

2. Preliminary plans and specifications, including plot plans, building layouts, and type of construction and materials.

3. A supportive services plan describing services that will be provided on-site or made available to tenants through cooperative agreements with service providers in the community, such as a health clinic or day care facility. Off-site services must be accessible and affordable to farmworkers and their families. Letters of intent from service providers are acceptable documentation at the preapplication stage.

* * * * *

Dated: April 29, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–11256 Filed 5–5–99; 8:45 am]

BILLING CODE 3410–XV–U