

producers approve the order as proposed to be amended by proceedings concerning the Class II price (59 FR 64524) and the M-W price (60 FR 7290).

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that a referendum be conducted to determine whether the issuance of the order regulating the handling of milk in the Paducah, Kentucky, marketing area, as amended by decisions issued on December 2, 1994 (59 FR 64524) and on January 27, 1995 (60 FR 7290), is approved by at least two-thirds of the producers, or by producers who produced at least two-thirds of the total milk produced during the representative period.

The month of February 1995 is hereby determined to be the representative period for the conduct of such referendum.

Donald R. Nicholson is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda (7 CFR 900.300 et seq.).

Such referendum shall be completed on or before 15 days from the issuance of this referendum order.

List of Subjects in 7 CFR Part 1099

Milk marketing orders.

Authority: 7 U.S.C. 601-674.

Dated: May 8, 1995.

David R. Shipman,

Acting Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95-11791 Filed 5-11-95; 8:45 am]

BILLING CODE: 3410-02-P

Rural Housing and Community Development Service

Rural Business and Cooperative Development Service

Rural Utilities Service

Consolidated Farm Service Agency

7 CFR Parts 1910, 1944, 1951, and 1965

RIN 0575-AA35

Single Family Rural Housing Loans

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service and Consolidated Farm Service Agency; USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing and Community Development Service

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

Note: The Department of Agriculture Reorganization Act of 1994, Pub. L. 103-354, was signed on October 13, 1994. This established a National Appeals Division (NAD) which replaced the FmHA National Appeals Staff. The National Appeals Division is currently in the process of writing new regulations. The Final Rule will be made consistent with any new regulations promulgated by the National Appeals Division.

DATES: Comments must be received on or before July 11, 1995.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Rural Economic and Community Development, U.S. Department of Agriculture, Ag Box 0743, Room 6348, South Agriculture Building, 14th and Independence SW., Washington, DC 20250. All written comments will be available for public inspection at the above address during normal working hours.

FOR FURTHER INFORMATION CONTACT: Betsy McDaniel, Senior Loan Specialist, Rural Housing and Community Development Service, USDA, Ag Box 0783, Room 5334, South Agriculture Building, 14th and Independence SW., Washington, DC 20250, Telephone (202) 720-1474.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Administrator of Rural Housing and Community Development Service has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulatory changes affect RHCDS processing of section 502 loans and individual applicant eligibility for the program.

Environmental Impact Statement

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

Programs Affected

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

Intergovernmental Consultation

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

Civil Justice Reform

This proposed regulation has been reviewed in light of E.O. 12778 and meets the applicable standards provided in sections 2(a) and 2(b) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0575-0134, 0575-0099, and 0575-0062, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This proposed rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB, for those mentioned above. The revised information collection contained in 0575-0059 and 0575-0060 will be submitted for approval to OMB. Public reporting for this collection of information is estimated to vary from 5 minutes to 1.5 hours per response, with an average of .41 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send written comments on the information collection aspect of the rule to the Office of Information Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA, RECD, Ag Box 0743, Washington, DC 20250.

Discussion

Background

Many of Rural Housing and Community Development Service's (RHCDS's) single family housing size and amenity restrictions have been criticized as being too rigid and restrictive to best serve the housing needs of low income families as well as providing adequate security for the Agency. In the past, these restrictions served to limit the size and cost of properties financed, and to control the associated home ownership costs of RHCDS applicants/borrowers. RHCDS feels that a different approach can provide the control necessary to allow applicants the freedom to select the home of their choice which best suits their individual needs and still ensure that RHCDS meets its mission and that its financial interest is adequately secured.

During Fiscal Year (FY) 1991, FmHA published regulations in connection with the Cranston-Gonzales National Affordable Housing Act for its Guaranteed RH program. Those regulations provided that the amount of the RHCDS guaranteed loan may not exceed the maximum dollar limitation of section 203(b) of the National Housing Act (12 U.S.C. 1702). RHCDS now proposes to use 85 percent of the same maximum dollar limitations applicable to the guaranteed program for the direct single family RH program. The Agency has determined that an 85 percent limitation for the direct single family housing program should curtail luxury type amenities, size, and cost,

and will generally result in modest housing similar to that presently financed by the Agency under this program. This will greatly simplify and standardize the properties acceptable under the section 502 single family housing program and achieve the balance previously discussed. This change will result in the elimination of specific characteristics, amenities, and restrictions relative to "modest housing," and substitute reliance by the Agency on the percentile of maximum dollar limitation established by the Housing and Urban Development (HUD), hereafter called "CAPs," for determining the type and dollar amount of housing to be financed. In conjunction with this change, the Agency recognizes the need to change the manner in which subsidy is provided on these loans.

In order to provide sufficient subsidy to enable low-income applicants/borrowers to show repayment ability but at the same time make the applicant/borrower the true decision-maker concerning all aspects of the property that meets his or her housing needs, RHCDS proposes to provide subsidy which will result in a reduced payment based on the adjusted family income percentile of the area median income or the minimum percentage of adjusted family income, whichever is greater. The minimum percentage of adjusted family income will be based on the income category the applicant/borrower falls into and will include principal, interest, taxes, and insurance. These percentages are reasonable amounts to pay for housing expenses. This would provide for a maximum rate of subsidy and encourage the family to purchase a modestly priced property within its repayment ability.

At the same time, the Agency desires to move away from the use of a "budget" when determining the applicant/borrower's repayment ability and proposes to use payment ratios in the general manner as set forth in its guaranteed housing instructions. This is more in line with industry standards and it is anticipated that this change will remove much of the subjectivity and controversy related to its current method of determining repayment ability. The Agency proposes to use a principal, interest, taxes, and insurance (PITI) ratio of 29 percent and a monthly obligation to income (MOTI) ratio of 41 percent in the direct single family housing program.

In addition to the above changes, RHCDS proposes to revise its application loan processing procedures to provide that State Directors will hold a separate reserve of loan funds for

priority loan applications which will be processed immediately upon receipt. Priority applications include hardships, as determined by the State Director on a case-by-case basis, including applications from persons living in deficient housing for more than 6 months; applications for refinancing of non-RHCDS loans, servicing type loan applications including financing for the purchase of Government-owned inventory properties and subsequent loans for essential improvements or repairs, and applications for mutual Self-Help Housing loans. It is anticipated that this will direct loan funds to those applicants with the greatest need, reduce backlogs of applications on hand, and better meet Agency objectives.

The Agency has conducted an in-depth study involving 25 counties in California, Delaware, Florida, Georgia, Iowa, Maine, Maryland, Mississippi, and Nevada. These states were selected because of the volume of loans closed in these states and their geographic diversity, and to provide a diversified range of income ranges and housing costs in order to determine appropriate income ratios, loan limits, and payment assistance to utilize in this proposal. Ninety-four percent of this sample control group would continue to qualify for payment assistance under the proposed terms. The Agency has provided for increased payment assistance in high cost areas, exceptions to published ratios in special situations, increased loan limits for larger or disabled families, and in areas where the applicant is unable to obtain lower cost housing. These provisions will result in assisting applicants who do not qualify within the new parameters, so they can be handled on an individual basis. RHCDS feels confident that the single family housing loan program will continue to serve the same clientele as it has historically served. The data generated as a result of this study supports the proposed revisions, which will result in stimulation economic growth, providing objectivity in the administration of the single family housing program, making the program more equitable to RHCDS applicants and borrowers, and expanding housing choices for RHCDS applicants, based on their repayment ability, so that they can maximize their housing benefits to their individual needs.

The Agency is considering the possibility of implementing a 20 year balloon payment using a 33 or 38 year amortization in the final regulation. This proposal is consistent with the position that the Section 502 program is temporary financing to enable a very

low- or low-income family to obtain affordable housing. The objective of the program is to eventually graduate the borrower to other conventional sources of credit. The majority of RHCDS existing borrowers pay their loans in full within 12 years of loan closing. In addition to this, the provision related to this topic in the text is Section 1944.25 Rates and terms, paragraph (b) Amortization.

Prior Requests for Comments

In order to allow the public an opportunity to voice their concerns regarding the proposed revisions, FmHA published an Advance Notice of Proposed Rule Making in the **Federal Register** on Tuesday, April 28, 1992, (57 FR 17858), which outlined the major issues proposed for revision and provided for a 30-day comment period which ended on May 28, 1992.

Note: At the time of the Advance Notice of Proposed Rule Making, the Agency referred to its "Interest Credit Assistance" program for single family housing loans. This rule proposes to rename this program to "Payment Assistance" and all future references in this proposal are under that title.

Twenty-five comments were received in response to the Advance Notice of Proposed Rule Making. Fourteen comments were from RHCDS or other Federal Agency personnel. Two comments were received from groups representing public utilities (electric and gas companies). In addition, nine comments were received from individuals and various public interest groups. All of the comments received were considered in the development of this proposed rule. Comments were on the following issues which were addressed in the Advance Notice of Proposed Rule Making:

I. Use of the HUD "CAPs" in Defining "Modest" Housing

As stated previously, existing RHCDS single family housing regulations have restricted the type of housing financed by limiting the size, design, and amenities of the dwelling. The Advance Notice proposed eliminating all such restrictions relative to "modest" housing and proposed that financing be limited to the dollar "CAP" established by HUD. Twenty-four respondents commented on this proposal. Fifteen of the respondents submitted comments in support of this revision; five respondents were against the proposal; and four had mixed feelings. Most respondents had both pro and con comments. Those respondents who supported the concept of the proposal, felt that the revision would improve

RHCDS's image, remove the stigma of "subsidized" housing, provide for flexibility of architectural design, provide freedom of choice for RHCDS applicants, reduce the number of appeals, simplify procedures, provide greater time savings, and provide uniformity in the definition of modest housing nationwide. In addition, these respondents felt that the proposal would provide for appreciation in the market value of RHCDS properties and increased equity for homeowners, and would alleviate problems with local governments and help to promote low-income housing.

Several of the respondents had problems with the use of the HUD "CAPs" stating they were not equitable, being too high in some areas and too low in others and that they were inflexible and hard to change, providing bias to existing homeowners and Real Estate Brokers. Based on these comments, the Agency proposes to use 85 percent of the HUD mortgage limits but has incorporated procedures for increasing the CAPs in certain situations. Other respondents felt that the CAPs would result in higher priced housing which, together with market inflation, would result in a need for higher subsidies. One respondent felt that it would force lower income families into older, cheaper units.

Based on the study done by the Agency to measure the effects of the use of HUD CAPs, proposed changes to the payment assistance program, and the use of income ratios for determining repayment ability, the Agency feels that the price of housing financed would be limited not only by the HUD CAP, but by the market value of the property as reflected on a current real estate appraisal, and the applicant's repayment ability based on the proposed income ratios and the revised method of granting payment assistance. The study does not indicate that this change will result in lower-income families being forced into older, cheaper units.

Several respondents expressed concern that RHCDS programs were becoming more like HUD programs and that the use of the CAPs would result in less control for RHCDS. Many of the respondents felt that the use of the HUD CAPs discriminates against "one person" and "large" households and felt that the use of CAPs would eliminate RHCDS financing in some areas where the CAPs are not in line with the cost of housing in the area. The Agency has revised the proposal to address these concerns in § 1944.17. There was also concern expressed regarding potential size and additional cost items if the

definition of modest housing is changed. The Agency feels that increased housing costs will be limited due to the new method of calculating payment assistance.

In accordance with the Energy Policy Act of 1992, Public Law 102-486, the Agency has adopted the Council of American Building Officials (CABO) Model Energy Code, 1992 (MEC-92) for new construction of single family homes other than manufactured homes. The Agency has deleted specific loan approval authorities in the field, relying instead on the established HUD CAP limits adopted. In addition, the Agency has agreed to grant a waiver to allow the loan to exceed market value for handicapped-accessible homes by no more than the cost of the amenities.

RHCDS has decided not to adopt recommendations to restrict financing on housing constructed prior to 1953 in order to avoid problems with lead based paint, provide safeguards describing minimum standards allowed under RHCDS financing, establish RHCDS CAPs based on the State Directors' knowledge of their individual areas, and require 40 percent of very low-income housing on all conditional commitments. However, the Agency has provided for waivers on CAP limits under certain circumstances and has included a requirement that repairs required as a condition of loan approval will be performed, after loan closing, in accordance with HUD Handbook 4905-1, "1-4 Family Living Units," (available in any RHCDS field office). The Agency will continue to adhere to its present requirements contained in subpart A of part 1924 of this chapter regarding new construction and will require all dwellings repaired with RH loan funds to be structurally sound, functionally adequate, and placed in good repair. All dwellings financed must still provide decent, safe, and sanitary housing.

II. The Use of Income Ratios Instead of a Family Budget for Determining Repayment Ability

In the past, RHCDS has utilized a family budget to determine debt repayment. Twenty-one respondents commented on the proposal to eliminate the family budget as a determinant of repayment ability and instead rely on the use of income ratios similar to those used in the single family guaranteed housing program. Ten respondents were in favor of this proposal and ten opposed. The remaining respondent indicated a need for additional information before making a decision.

Those respondents who supported this revision felt that adoption of this proposal would result in considerable

savings in time and effort, would provide for simplification of the eligibility process, would result in fewer appeals, and would eliminate subjectivity. In addition, there were several comments that the family budget is subjective in nature, difficult to defend, and useless without clear guidelines for individual cost items. It was generally felt by these respondents that adopting the use of income ratios as a determinate of an applicant's repayment ability would be consistent with industry standards and a benefit to RHCDS and loan applicants.

Several of the respondents opposed to this measure stated that income ratios were not appropriate for RHCDS clientele. It was felt that the low- and very low-income groups that RHCDS assists live within their TOTAL income and not a percent of their income, and that these were high risk loans requiring a high degree of accuracy when determining repayment ability. Several respondents felt that income ratios would result in loans to people without repayment ability due to their high percentage of living expenses. Another area of concern was the difficulty of developing ratios which would work for households, in all situations, nationwide. They felt that ratios were inflexible and would rule out those who do not fit the mold but who have repayment ability, and it was feared that the use of ratios would eliminate many very low- and low-income families. There were recommendations that flexibility be built into the income ratios for adjustments where projected costs are equal to or less than current rent, that "non-income" benefits be incorporated into the calculation, that compensating factors such as used by Fannie Mae be included, and that an allowance be provided for the lower end of the income structure.

Two respondents suggested an in-depth study be made to analyze where the PITI and MOTI ratios should be set, and one respondent suggested combining ratios with the family budget for borderline cases with justification for expenses which are deemed by RHCDS to be abnormally low. In addition, there were several recommendations relative to actual ratios which should be used.

All of these comments were taken under consideration when arriving at the ratios established. The study undertaken by the Agency supports the use of a 29 percent PITI ratio; 94 percent of existing RHCDS borrowers would still qualify using this ratio. The decision to use a 29 percent ratio is supported by the fact that it is the same ratio used in the Agency's guaranteed housing loan

program. The Agency proposes to establish the MOTI ratio at 41 percent. Both ratios will be based on the applicant's gross income.

The Agency's experience with income ratios in the guaranteed housing program and the study recently conducted indicates the proposed system should provide consistency in determining repayment ability in a better, less subjective manner that will improve our underwriting criteria and loan portfolio and be consistent with industry standards. Based on the comments received and the results of the study conducted, the Agency has incorporated exceptions to the use of income ratios when repayment ratios do not support adequate repayment ability for the proposed loan, if the applicant can demonstrate a history of meeting equal or greater housing related costs in the past 6 months in similar financial circumstances than projected housing costs, or where the applicant demonstrates that the use of a budget is a better determinant of repayment ability than ratios for their particular circumstances. Income ratios proposed are contained in § 1944.8(a)(3).

Other objections to this proposal included concerns that the Agency would no longer be a source of supervised credit, would lose valuable skills in money management that are still needed for loan servicing, and would require additional training to adapt to the new system. The Agency feels that a supervisory counseling role is fundamental to its mission and does not foresee a change in this regard. RHCDS will continue to be a "hands on" Agency and will provide credit and financial counseling to suit each applicant's individual needs to assure the applicant's success as a homeowner. Where the applicant does not demonstrate adequate repayment ability, or otherwise meet loan making criteria, RHCDS is prepared to discuss and advise the applicant regarding other alternatives such as reducing amenities, increasing sources of income, reduction of debt load, obtaining a cosigner, or constructing the home by the self-help method.

III. Revision of the Payment Assistance Calculation

RHCDS proposes to revise their method of providing "payment assistance" on new loans. As noted previously, this program was formerly known as "interest credit assistance." Under this proposal, only procedures for payment assistance that will be processed in connection with loan processing will be included in subpart A of part 1944. All other payment

assistance and deferred mortgage payment actions, including renewals and other servicing actions are transferred to subpart G of part 1951.

(a) Existing Payment Assistance System

Currently, RHCDS calculates the amount of payment assistance needed based on a formula which takes into consideration the annual real estate taxes and property insurance premiums to be paid by the applicant/borrower and their adjusted family income. Under the current program, a borrower pays 20 percent of the borrower's adjusted family income for PITI (but never less than the loan amortized at a 1 percent interest rate). This procedure has given the applicant little incentive to look for an inexpensive home since the payment by the borrower generally did not increase drastically as a result of a higher loan amount. Under this program, an applicant/borrower must have a very low- or low-adjusted income to initially receive payment assistance. However, many applicants/borrowers with acceptable income levels who obtain small loans, will often not qualify for payment assistance under the present procedure since their PITI is less than 20 percent. This has resulted in inequities in the system.

(b) Proposed Payment Assistance System

As explained above, under the current method of providing payment assistance, many families attempting to purchase inexpensive homes are denied assistance if the formula does not indicate that PITI will exceed 20 percent of adjusted family income. Conversely, many other applicants, purchasing homes in the higher cost ranges, receive maximum payment assistance even though their incomes are often in the higher ranges allowable under the program. To eliminate these inequities, the proposed method will provide a range of equivalent rates of interest for all new loans (including assumptions), and subsequent loans of existing borrowers based on area median income, regardless of the amount of the loan. The chart for determining the appropriate interest rate paid by RHCDS applicants/borrowers on loans closed after this rule becomes effective, is defined in § 1944.34(c). Exceptions have been incorporated which will provide for additional assistance where needed to allow very low- and low-income applicants to obtain or retain housing or to allow very low-, low-, or moderate-income RHCDS borrowers to retain housing.

The proposed payment assistance system includes floors which are

minimum percentages of adjusted gross income. The floor for very low-income is 22 percent and for low-income is 26 percent of adjusted family income. A new borrower will pay PITI at the minimum percentage floor of adjusted gross income or at the equivalent interest rate, whichever is greater. For loans closed under the proposed system, the borrower will never pay more than the note interest rate for the monthly installment.

It is intended that this proposal will encourage applicants to shop for a home within their repayment ability instead of relying on the higher cost of a home to drive the equivalent interest rate down to 1 percent which often results under the current system of payment assistance.

The interest rates established for each income level were based on the results of a study conducted by the Agency. The Agency ran a comparison between the proposed system and the old system on a control group in nine states. The new system will result in slightly higher payments for new borrowers in the higher range of income. Existing RHCDS borrowers who are currently receiving payment assistance, will continue under the system in effect prior to the effective date of this rule.

Under the current system, the payment assistance agreement is effective for a 12-month period based on the applicant/borrower's projected, verified income. The Agency proposes to revise the renewal period for self-employed borrowers to coincide with the borrower's business fiscal year. The Agency also proposes to eliminate the limit on the amount of net family assets an applicant/borrower may have when qualifying for payment assistance.

(c) Responses to the Advance Notice of Proposed Rule Making

Nineteen respondents commented on this proposal. Five of these comments supported the proposal, eight were opposed, and six respondents indicated they needed more information before deciding. Those respondents who supported this concept stated they felt the proposal would save considerable effort and time, would simplify the process, would be more fair, would be easier to define and defend, would provide an incentive to seek less costly housing, would stimulate the rural economy and save on subsidy, and would provide the applicant/borrower a means to see the range of payments up front so they could budget future costs accordingly.

Of those respondents who were not in support of this proposal, several felt that the lowest-income families would be

penalized since they pay the largest portion of income toward housing costs and this method could result in families paying more than 30 percent for their housing costs. One respondent felt that the system would be ineffective in their area since median income is skewed due to a large population of low-income college students. Several respondents felt that the proposed system would be nonresponsive to individual applicant/borrower's needs, would exclude more families than it includes, did not provide for an applicant/borrower's future loss of income, and could result in more loan failures. There were also comments that there would be high costs involved in retraining RHCDS employees in the new system.

The original proposal provided that applicants/borrowers whose homes were located in a high cost area as established by HUD would automatically qualify for a reduction in their equivalent interest rate of 1 percent. One respondent felt that the Agency was experiencing problems in high cost and high real estate tax areas in the single family housing guaranteed program which would be intensified in the section 502 loan program. Several respondents were not clear how the additional 1 percentage point subsidy in a high cost area would help. The Agency has re-examined this issue and has decided to revise this provision by providing exception authority for a reduction in the equivalent rate of interest by 1 percentage point, when applicants in high cost areas lack repayment ability without additional payment assistance.

In addition to the above, there were two recommendations for specific subsidy rates to be utilized. There was also a suggestion to calculate annual income on the basis of past earnings rather than on projected income. The Agency is mandated to utilize the same calculations for annual income as are used by HUD, therefore, this suggestions was not adopted. There appeared to be an opinion that once the equivalent interest rate was set based on the family's income at the time of loan approval it could never be changed downward, and that only applicants/borrowers living in high cost areas would be eligible for an equivalent interest rate of 1 percent. Neither of these assumptions are correct.

There was a recommendation that RHCDS allow a change in payment assistance when a borrower's income increases; this will be handled under the sliding scale, the same as a loss of income. One respondent suggested a change in the recapture calculation and this regulation is in the process of being

revised. There was a recommendation that the payment assistance agreement, deferral, and recapture forms be consolidated. The Agency has partially accepted this recommendation by use of a separate payment assistance/deferral/repayment form for applicants/borrowers receiving deferral assistance.

We urge all readers to thoroughly review this proposal and provide us with their detailed recommendations for any changes suggested.

IV. Revision of the Method Used for Selection and Processing of Applications

The Agency intends to streamline its method of selecting and processing loan applications. When this section was revised, "Fund Allocation" was included under § 1944.26 and "Application Processing" was completely revised and transferred to § 1944.27. Those instructions for application processing located in subpart A of part 1910 which were exclusive to Single Family Housing applications have been moved to subpart A of part 1944, which already contained some application processing instructions. This section now contains a clear definition of a complete RH application and guidance for dealing with an incomplete RH application.

In the past, RHCDS has often required that an application package include a credit report fee as well as information on the house to be financed at the time of application, despite the fact that there were often large backlogs of applications on hand or a lack of loan funds. This resulted in delays to prospective sellers of property and the need for reverification of information, sometimes at additional cost. Under the proposed rule, RHCDS will access HUD's Credit Alert Interactive Voice Response System (CAIVRS) to determine if the applicant is delinquent on a Federal debt. If a delinquent Federal debt is identified through CAIVRS, processing on the application will be suspended and the applicant notified to contact the appropriate Federal agency to resolve the delinquency. An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for loan assistance until the judgment is paid in full or otherwise resolved. When the delinquency has been paid in full or otherwise resolved, processing of the application will be continued; RHCDS loan funds may not be used to satisfy an outstanding judgment. If a judgment remains outstanding or the applicant is unable to resolve a Federal debt delinquency, the

application will be rejected and the applicant notified of the rights of appeal. In addition, RHCDS will order an on-line profile credit report, where available, on each application received. Derogative credit reported will be discussed with the applicant and information on the address and telephone number of the credit repository provided so that the applicant may resolve potential credit problems. Applicants will not be rejected on the basis of the on-line credit report; this service is provided for the primary purpose of allowing the applicant to identify potential credit problems prior to paying a fee for a credit report and to clarify the difference between eligibility for program assistance and loan approval. RHCDS will make a preliminary determination of eligibility upon receipt of an application based on the information provided on the application form and the information received as a result of the CAIVRS inquiry and on-line credit report. A final determination of eligibility will be made after the application is selected for processing and all information necessary to determine eligibility for the RH program has been verified.

Under current regulations, the Agency assigns a processing priority to each application. The County Supervisor selects a number of applications to be processed each quarter based on assigned priority and availability of loan funds. The Agency has determined that this system does not adequately serve the neediest applicants and facilitate efficient loan processing.

The Agency proposes to provide for a separate reserve of loan funds to be held by the State Director for priority applications. This reserve will include hardship cases as determined by the State Director, including applicants living in deficient housing, applications for refinancing of debts, servicing type loans to existing RHCDS borrowers for essential improvements or repairs, loans for the purchase of Government-owned inventory properties, subsequent loans in connection with assumptions of existing RHCDS loans, and mutual self-help housing loans. These priority applications as well as applications for the purchase of Government-owned inventory property or assumption of existing RHCDS loans, will be processed immediately, and will not compete for the same pool of funds as other applications. All other applications will be considered for processing in date order.

If an applicant is clearly not eligible, an applicant may be rejected upon receipt of the application. Applications

received from persons who appear to meet basic eligibility requirements for the program will be held until funding is available. Each quarter the County Supervisor, with guidance from the District Office, will select enough applicants/borrowers to potentially fund 175 percent of the anticipated quarterly allotment. This figure is an administrative determination based on information available for applications on hand, percent of applications rejected and withdrawn, and number of loans closed per quarter. It is anticipated that almost half of the applications selected for processing will not be processed to the point of loan closing due to ineligibility, marital changes, lack of interest, and other reasons.

Applicants/borrowers selected will be advised in writing that they have 30 days to supply information needed for verifying data submitted on their applications, including any fees for credit reports, so a final determination of eligibility can be made. Detailed guidance is provided regarding the means of verifying data. The proposed regulation continues RHCDS's general policy that written income verification is the preferred method of income verification. When an applicant/borrower's eligibility for an RH loan is determined, the income verification must not be more than 90-days old. In addition, RHCDS will continue to require a copy of the applicant/borrower's most recently filed income tax return and will randomly spot-check reported wages through wage matching sources, where available, for 5 percent of all applications where all adult members of the household are employed full-time. Income for all other applicants/borrowers, including those with non-taxable income, will be confirmed through this source where it is available. Applicants/borrowers who are supposed to receive court ordered alimony or child support but who actually do not receive it, may certify that they have exhausted all efforts to collect same, and in such cases, the alimony/child support will not be included in the applicant/borrower's annual income. The applicant interview section has been expanded to include discussion of all new requirements such as income ratios, HUD CAPs, and penalties connected with providing false information.

Once a final determination of eligibility has been made, the Agency will issue a "Certificate of Eligibility," valid for 90 days, to eligible RH applicants who have been selected for processing. The applicant may take the certificate to real estate agents, builders,

and sellers to verify eligibility for an RHCDS loan. The certificate will not guarantee that adequate funds are available, but is intended to assist applicants in locating an adequate home within their repayment ability and reduce application processing time. The applicant will be required to submit information on the dwelling to be financed within 90 days or the application will be withdrawn unless an extension is granted. There will be a maximum of two 60-day extensions allowed if the applicant is actively working on supplying the requested information.

Time guidelines for RHCDS actions have been added. Appraisals will generally be completed within 30 days of submission of information requested by RHCDS. After the appraisal is completed and required loan approval information has been received, a loan will usually be approved within 30 days. If no funding is available, it will be held as an approved loan until the next quarter's funding becomes available.

Sixteen comments were received as a result of the summary of proposed revisions published as a Notice of Proposed Rule Making; eight supported the proposal, three opposed it, and five indicated they did not have enough information to make an evaluation. Those who supported the proposal felt it was a positive approach, would reduce and help manage backlogs of applications, would address the most urgent cases according to need, would result in considerable time savings and be less difficult to explain, and would result in greater assurance of fund availability for Self-Help Housing applications.

Of those respondents who did not support this proposal, several felt the proposed system had potential for discrimination, that it would extend the selection/approval period by an additional 30 days and there was no provision for people living in substandard housing to be handled as a priority. It should be noted that the hardship reserve established by the State Director does include applicants living in substandard housing and there has been no extension of the application selection/approval time. The Agency finds no basis for the comment regarding the potential for discrimination.

There were also comments that the Certificate of Eligibility would create a lot of extra work for RHCDS with little or no benefit and was valueless since RHCDS was the lender. The certificate will provide information on the maximum loan limit, the repayment

ratios, and the effective interest rate based on the applicant's projected income. It will be the responsibility of the Real Estate Broker, contractor, or packager to work with the applicant to find a suitable home that fits within the repayment parameters of the certificate. RHCDS feels there is little extra work created by this form, that it will encourage Real Estate Brokers and contractors to work with an applicant in finding suitable housing, and would provide for the orderly processing of loan applications.

One respondent felt that 175 percent of the allocation for loan processing was too restrictive, and another felt that the number of applications processed should be left to the discretion of the State Director based on local conditions. The Agency states that 175 percent is the minimum required and is, therefore, not restrictive. It was also decided to make this a nationwide requirement in order to provide consistency in the program.

A recommendation was made to retain the National Office's annual "pooling" of loan funds; there is no plan to eliminate this provision. Another recommendation was made to provide for sufficient funds in the priority reserve pool; the proposal allows the State Director to determine the amount retained in this pool based on historical or other data available. Other suggestions included restricting the Certificate of Eligibility to applicants who have submitted all information necessary for loan processing, requiring a sales agreement for a completed application, and limiting the Certificate of Eligibility renewal to one 90-day period.

Restricting the certificate as requested, would negate the purpose for the form. The information on the Certificate will assist the applicant to find suitable housing at a price the applicant can afford. Once the house is found, data necessary for an appraisal and loan processing is submitted to the RHCDS field office. Extensions to this 90-day period will only be granted when the applicant presents evidence that the applicant is actively working on supplying the information requested. There will be a maximum of two 60-day extensions allowed.

One respondent requested a definition of hardship so as to eliminate politics, and to include persons living in substandard housing as a hardship. The definition of hardship is left to the discretion of the State Director on a case-by-case basis but will include persons living in deficient housing as defined in § 1944.2 for more than 6 months. The Agency feels that it would

be too restrictive to place a definition on what constitutes a hardship since it is impossible to address every situation, but a new definition for deficient housing has been included.

The last comment was a suggestion to separate low- and very low-income application processing. The Agency feels this would be too cumbersome and has not included this suggestion in the proposed rule.

Other Changes Proposed

In addition to the four issues addressed in the Advance Notice of Proposed Rule, the Agency proposes to make the following changes in subpart A of part 1944 regarding single family housing loans:

General

The section dealing with denial of loans and services on a discriminatory basis has been revised to include the term "familial status" as required under the Fair Housing Amendments Act of 1988. This section has also been revised to provide that applicants for assistance are required to identify any known relationship or association with an RHCDS employee and provides for reasonable accommodations for applicants with developmental disabilities as required under the 1988 amendments to the Fair Housing Act and the Americans with Disabilities Act of 1990. This revision also provides for the collection of fees for real estate appraisals.

Definitions

Several new definitions have been added and some existing definitions have been revised to more clearly describe annual payment borrowers, certificate of eligibility, conditional commitment, cosigners, deficient housing, elderly family, existing dwellings, household or family, income, insurance, live-in aides, median income, minors, monthly payment borrowers, net family assets, payment assistance, and real estate taxes.

Loan Purposes

The proposed change incorporates the provisions of § 315 of the Housing and Community Development Act of 1987, Pub.L. 100-242, which added § 501(i) of the Housing Act of 1949; loan funds may be used to pay loan packaging fees when the application is packaged by qualified public or private nonprofit organizations exempt under the Internal Revenue Code of 1986. Packaging fees are not authorized for inventory property sales. In addition, the cost of personal liability insurance for Self-Help Housing applicants/borrowers has

been added as an authorized loan purpose. A section has also been included to allow the purchase of single family housing units located in Planned Unit Developments (PUDs) under certain conditions.

Loan Restrictions

The restriction against income-producing property has been revised to more clearly define those types of home-based operations that will be allowed under certain conditions, such as the production of crafts, child care facilities, etc. Small businesses which are run from the home which do not require specifically designed features to accommodate the enterprise will not be restricted; however, housing related expenses which are claimed as business expense deductions for income tax purposes, such as real estate taxes, mortgage interest, etc., will not be allowed when determining income eligibility for RHCDS assistance.

The restriction against packaging fees has been lifted as it pertains to public and private non-profit organizations. Restrictions regarding loans to former RHCDS borrowers who sold their homes within the last 2 years have been deleted. Restrictions regarding applicants/borrowers who have demonstrated an inability to carry out the required obligations of the loan have been removed and transferred to the section dealing with other eligibility requirements.

The Agency has further clarified that funds may not be used to refinance debts on a manufactured home and that loan funds may not be used to pay off existing RHCDS debts in lieu of an assumption.

Income

RHCDS is required by the Housing Act of 1949, as amended, to use income definitions established by HUD; however, several definitions have been revised or added for clarification purposes. Income definitions have been revised to include cost of living allowances (COLAs) or other proposed increases in income expected to take place on or before loan approval, loan closing, or the effective date of the payment assistance agreement. Clarification has been added regarding allowance of deductions for verified business related expenses which are not reimbursed for salaried employees. Revisions have been made to allow the applicant/borrower to certify that court awarded alimony and/or child support is not being received after all reasonable efforts for enforcing same have been exhausted. Amounts received for educational scholarships and allowable

deductions have been more clearly defined. Income which a Federal statute exempts has been removed from this section and transferred to exhibit J (available in any RHCDS field office). Income of live-in aides is defined.

The 6-month waiting period is being removed where the spouse is living apart from the household and separation or divorce proceedings have not been initiated. The proposal clarifies that medical expenses anticipated for an elderly family may be for any household member.

Income Eligibility Requirements

As noted previously, the Agency has moved from determining repayment ability on the basis of a budget and is relying on income ratios. As a result of the study conducted by the Agency, where ratios do not support adequate repayment for the proposed loan, exceptions to the use of ratios have been added where the applicant can present evidence of meeting similar costs in similar circumstances over the past 6 months or where the use of a budget is a better method of determining repayment ability for a particular applicant/borrower's circumstances. Income ratios have been defined in § 1944.8(a)(3). The proposal also clarifies the responsibilities of a cosigner on an RHCDS loan.

Other Eligibility Requirements

The Agency has included a provision that applicants will be expected to utilize nonessential liquid assets to reduce the amount of loan needed. Information on verification of alien status has been transferred to exhibit B (available in any RHCDS field office).

Credit history standards have been slightly liberalized to allow up to two debt payments more than 30 days late within the last 12 months and to allow one rent payment paid 30 days or more past due within the last 2 years. In addition, the section dealing with outstanding collection accounts has been rewritten to clarify that collection accounts paid off within 3 months of filing an application for RHCDS assistance will be considered as an indicator of an unacceptable credit history unless there is a record of regular payments maintained prior to the final payment. This clarification was necessary to prohibit persons with unsatisfactory credit from paying off this indebtedness for the sole purpose of obtaining an RHCDS loan.

Pursuant to the Federal Debt Collection Act of 1990, Pub. L. 101-647 (Nov. 29, 1990), prohibits making a loan to an applicant/borrower who has a judgment which is or could become a

lien against the debtor's property for a debt owed to the United States Government until the judgment is paid in full or otherwise satisfied. The RHCDS Administrator may waive this requirement upon making a determination that it is in the best interest of the Government to do so.

In addition to referral for criminal prosecution, RHCDS plans to debar applicants/borrowers who have falsified applications and/or income information submitted to RHCDS for program eligibility purposes. Applicants/borrowers who have a documented history of inability to carry out the required obligations of a RHCDS RH loan will be denied assistance.

Rural Areas

This section has been revised to require a "buffer" zone of open space incorporated as an ineligible area when new boundaries are drawn. Rapid growth areas and eligible areas within an Metropolitan Statistical Area (MSA) will be reviewed for eligibility every 3 years or more often as needed, instead of the 5-year review required for other areas. In addition, RHCDS is now required to consult with local planning boards, where available, at the time of each review to assure that open spaces identified are not scheduled for development in the near future. These changes are a direct result of recommendations made by the Office of Inspector General (OIG) during past audits.

Site Requirements

Currently, RHCDS generally restricts financing to sites of 1 acre or less. Due to the large number of exceptions which have been requested, the Agency proposes to broaden its definition of an adequate site to include those sites which cannot be subdivided into two or more sites under current zoning ordinance requirements for the area. In addition, the proposal clarifies the requirements for other than central waste and water disposal systems, and requires a legally binding agreement which allows interested third parties to enforce the obligation of the owner/operator of privately owned water and waste/water disposal systems to provide satisfactory service at reasonable rates.

Ownership Requirements

Buyers and sellers under a recorded land purchase contract must convert the purchaser's interest to a deed/mortgage or trust deed situation prior to loan closing.

Conditions for allowable leases are simplified and changed to require that unless the loan is guaranteed by a

public agency or Indian housing authority, the remaining term of the lease must be at least 150 percent greater than the term of the RHCDS loan. If the loan is guaranteed by a public agency or Indian housing authority, the remaining term must be at least 2 years longer than the repayment period of the RHCDS loan. In no case may the remaining term of the lease be less than 15 years.

Dwelling Requirements

All references to modest housing, characteristics of new dwellings, dwelling designs and materials, prohibited features and amenities, and permitted features have been removed. Homes financed must still provide decent, safe, and sanitary housing but loan amounts will be limited to 85 percent of the HUD established mortgage limits unless an exception is granted. In-ground swimming pools and income producing properties are still prohibited except as discussed under loan restrictions. The section on existing dwellings has been revised to provide for inspections by RHCDS or disinterested third parties. Repairs to existing dwellings will be done after loan closing and performed in accordance with HUD Handbook 4905.1, "1-4 Family Living Units."

Maximum Loan Amounts

RHCDS recognizes that the revision allowing fees for appraisals as an authorized loan purpose will likely result in the need for loan funds in excess of the purchase price of the dwelling. Most applicants/borrowers would not be expected to have the resources to pay this additional cost. RHCDS believes it is necessary to allow the financing of this fee. The Agency proposes a revision to permit loans in excess of the appraised value or the purchase price of the dwelling (whichever is less) for most program type loans.

The loan amount may not exceed 85 percent of the maximum dollar limitation of section 203(b) of the National Housing Act (12 U.S.C. 1702), unless authorized by the State Director or RHCDS Administrator. These amounts are the HUD established CAPs and are available from any HUD office. Exceptions to these loan limits are provided for where the existing HUD mortgage limit is insufficient to provide adequate housing for RHCDS applicants/borrowers or where different mortgage limits exist in adjoining areas of the same community. Exceptions have also been provided for the needs of larger families or to accommodate a disabled or disabled household member.

Security Requirements

The section on mortgage insurance has been revised to clarify what is needed in State supplements when financing is provided to a holder of possessory rights on an American Indian reservation or State-owned land.

The section on best mortgage obtainable has been revised to provide that title clearance and legal services required under subpart B of part 1927 are waived when taking a real estate mortgage to secure a subsequent loan to an existing RHCDS borrower for minimal essential repairs which are necessary to preserve the Government's security.

The proposed regulation contains a new provision regarding the amount of attorney fees permitted for foreclosures on prior mortgages when RHCDS is requested to take a subordinate lien position. The current regulation prohibits the charge of a flat fee of more than 5 percent; the proposal will limit these costs to that customary for the area.

The section on life estates has been revised to provide for a guardian or conservator for the remainder interests of a person who is not legally competent. Land purchase contracts must be converted to a deed/mortgage situation to be considered for financing.

Refinancing Non-RHCDS Debts

This section has been renamed and the section dealing with refinancing of RHCDS debts has been moved to the section dealing with loan restrictions. This section has been revised to clarify that refinancing of non-RHCDS debts is not permitted on manufactured homes. In addition, this section has been broadened to permit refinancing of a debt that is not currently delinquent when it is clear that the applicant will be unable to continue to maintain payments for reasons beyond the applicant's control, and this will likely result in the applicant's loss of the dwelling at an early date if the debt is not refinanced. The Agency has removed its restriction on the use of loan funds to refinance non-RHCDS debts on building sites without a dwelling under certain conditions.

Loans to Farm Ownership (FO), Individual Soil and Water (SW) and Recreation (RL) Borrowers

This section has been removed from subpart A of part 1944 as being unnecessary. There are no restrictions on such loans.

Technical Services

As noted previously, there will be an appraisal fee charged for each

application involving an appraisal. Sales of a Government-owned inventory property do not require an appraisal, and, therefore, no appraisal fee will be charged in these cases. This fee will be the applicant/borrower's responsibility and may be included as a loan cost if the applicant/borrower chooses. Appraisals will generally be completed within 30 days of receipt of the information requested when the Certificate of Eligibility is issued to the applicant.

The collection of appraisal fees has been waived for appraisals done for subsequent loans being made to existing RHCDS borrowers for minimal essential repairs necessary to protect the Government's security.

The limit on total indebtedness necessitating a real estate appraisal has been raised from \$7,500 to \$15,000. There has also been a change to indicate that a real estate appraisal is not required when making a loan to an existing RHCDS borrower where the existing real estate appraisal indicates the property value is sufficient to secure the total real estate indebtedness when the total debt, including the planned loan, does not exceed the amount of the original loan.

Rates and Terms

This section has been revised to remove the paragraph regarding the source of funds, reword the section on eligibility for 38-year terms, and remove the section dealing with Repair and Rehabilitation loans. Under the revised payment assistance method, there is no benefit in making these loans and the authority for same is removed.

Preparation of Loan Docket

This section has been removed from the body of the instruction and transferred to exhibit E (available in any RHCDS field office).

Loan Approval

Time guidelines have been included to provide that loans will generally be approved within 30 days of receipt of information needed to complete the loan docket.

Loan Closing

This section has been revised to require that all new loans will be closed on a monthly basis with the exception of existing RHCDS borrowers who have annual payment promissory notes.

Deferred Mortgage Payments

This section has been revised to clarify the provisions of the program. The Agency has increased the percentage of PITI used in the

calculation to determine eligibility for deferred mortgage payments from 20 percent of adjusted family income to 29 percent of gross annual income. Applicants whose PITI ratio exceeds 29 percent of gross annual income will be considered for a longer term loan; if the PITI ratio, calculated at a 1 percent equivalent rate of interest for the maximum loan term still exceeds 29 percent of gross annual income, the applicant will qualify for additional subsidy in the amount of .25 percent of the payment at the 1 percent equivalent rate of interest.

Subsequent Loans

A requirement that a new credit report will be obtained for all applicants for subsequent loans has been included. Reference has been made to the waiver of title clearance and appraisal fees for subsequent loans made for essential repairs as provided in §§ 1944.18 and 1944.24.

Mutual Self-Help Housing

This section has been rewritten for clarification.

Housing Demonstration Programs

Section 1944.41 has been added to this subpart to authorize demonstration housing programs. In the past, demonstration programs have been utilized to study the effects of various ways to provide housing to meet the objectives of the RHCDS RH program in ways that could not have been accomplished otherwise based on existing regulations. Demonstration programs will be announced prior to implementation.

Conditional Commitments

A conditional commitment is assurance by the Agency to an owner, qualified builder, or dealer-contractor that a dwelling offered for sale will be acceptable for purchase by a qualified RH loan applicant under specified limited conditions. In the past, commitments has been limited to the construction of new housing or the rehabilitation of existing housing. The Agency has revised this section to allow a conditional commitment on an existing house, with or without repairs. This will allow a seller of a home to obtain a conditional commitment prior to finding a buyer for the property.

The loan limit for a conditional commitment is currently the appraised value of the property, less closing costs. Based on the revision of the maximum loan amount discussed previously, the Agency proposes to remove the requirement that the commitment amount be reduced by the amount of

loan closing costs. In addition, the Agency proposes to increase the charge for a conditional commitment fee to cover the cost of a real estate appraisal and required inspections. The holder of the conditional commitment will be reimbursed for the appraisal portion of the fee at the time of loan closing in an amount equal to the appraisal fee charged to the RHCDS loan applicant.

Existing houses will be eligible for conditional commitments to address the needs in those areas with an abundance of existing, eligible housing. The restriction on 15 outstanding conditional commitments in any one County has been removed.

An exception has been incorporated under certain conditions to allow construction to begin prior to obligation of loan funds for a qualified loan applicant. These exceptions will generally be limited to situations where it is necessary to begin construction because of impending weather conditions, and it is likely that funding will be forthcoming shortly. Under this type of exception, sales agreements must be modified to outline the circumstances under which the loan has been approved, and provide an option for the contractor to terminate the sales agreement if the loan is not funded and closed within 90 days. In these situations, the conditional commitment issued on the property to be constructed will be honored by RHCDS for the remaining commitment period to allow the commitment holder the opportunity of finding another eligible loan applicant. The prior RHCDS loan applicant will be issued a Certificate of Eligibility so that the applicant may locate another suitable dwelling.

Rural Housing Disaster Loans and Construction Financing for Builders by Private Credit Sources

These sections have been deleted from this subpart.

Exhibits to Subpart A of Part 1944.

The exhibits to this regulation are not required to be published. They contain administrative requirements and will be available at any RHCDS field office upon publication of the regulation.

Other Affected Regulations

Conforming changes which are necessary to other regulations as a result of revisions proposed to subpart A of part 1944 will be done at publication of the Final Rule. Revisions were necessary to the following regulations as noted, due to the revisions proposed to subpart A of part 1944:

Subpart A of Part 1910—Receiving and Processing Applications

Section 1910.4 has been revised to remove information on what constitutes a completed RH application and verification of information supplied with the application and to make minor editorial changes. This information is now contained in subpart A of part 1944 of this chapter. Other revisions made to conform with revisions to subpart A of part 1944 of this chapter.

Subpart J of Part 1944—Section 504 Rural Housing Loans and Grants

This section has been revised to provide a definition of "owner-occupant," allow payment of environmental and tax monitoring expenses as an authorized loan purpose, limit packaging fees to \$300, and provide for the use of a guardian or conservator for incompetent applicants. When evaluating an applicant's personal resources to meet their housing needs, the Agency proposes to increase the limit for liquid assets from \$5,000 to \$7,500; however, excess real estate must be included in this evaluation. In addition, subsequent loans in areas where the designation has recently changed from rural to nonrural, will be limited to essential repairs.

Due to the increased cost of materials and labor, the Agency has found it difficult to remove all major health and safety hazards under existing loan and grant limits. For this reason, the maximum amount of section 504 loan and grant assistance has been raised; the maximum loan outstanding to any owner/occupant may not exceed \$20,000 and the maximum lifetime grant assistance to any owner/occupant may not exceed \$7,500. In addition, the Agency has increased the amount of total indebtedness where a real estate appraisal is required to \$20,000.

Subpart G of Part 1951—Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts

A new section has been added for payment assistance. Corrections, renewals, and cancellations of payment assistance agreements and payment assistance granted as a servicing action on existing loans will be handled under this section.

Clarification has been added regarding the preparation of payment assistance agreements for applicants/borrowers who claim to have no income and situations where the coapplicant/coborrower has left the dwelling due to domestic discord.

While loans may be made only to low- or very low-income applicants who will

receive payment assistance, this assistance will also be available to existing RHCDS borrowers with incomes that do not exceed the moderate income limit. Corrections on existing agreements will be processed when information is available to indicate a change in family income that would change the amount of authorized payment assistance in accordance with § 1944.34(c). Applicants/borrowers will be required to present a copy of their most recently filed federal income tax return unless exempted from filing a return.

Subpart C of Part 1965—Security Servicing for Single Family Rural Housing Loans

Minor changes have been made to bring this instruction into line with proposed changes to subpart A of part 1944 relative to minimum adequate sites and modest housing.

List of Subjects in 7 CFR Parts 1910, 1944, 1951, and 1965

Accounting servicing, Administrative practice and procedure, Aged, Applications, Credit, Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development, Housing standards, Low- and moderate-income housing, Low- and moderate-income housing—rental, Low- and moderate-income housing—Servicing, Marital status discrimination, Mobile homes, Mortgages, Nonprofit organizations, Rural areas, Rural housing, Sex discrimination, Subsidies.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1910—GENERAL

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

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

Subpart A—Receiving and Processing Applications

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

§ 1910.4 Processing applications.

* * * * *

(a) *Completed RH applications.* Completed applications are those as described in § 1944.27 of subpart A of part 1944 (copies available in any RHCDS field office), and all applications for Rural Housing loans will be processed as outlined in that instruction.

* * * * *

3. Section 1910.5 is amended by revising the reference "1944.4(c)" to read "1944.9." in the last sentence of paragraph (c)(6) and by adding a new paragraph (e) to read as follows:

§ 1910.5 Evaluating applications.

* * * * *

(e) *Delinquency on a Federal debt.*

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

§ 1910.6 [Amended]

4. Section 1910.6(g) is amended in the first sentence by revising the words "Rural Housing" to read "RH" and by revising the reference "§ 1944.26" to read "§ 1944.27."

PART 1944—HOUSING

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

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

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

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

Sec.

- 1944.1 General.
- 1944.2 Definitions.
- 1944.3 Loan purposes.
- 1944.4 Loan restrictions.
- 1944.5 Annual income.
- 1944.6 Adjusted annual income.
- 1944.7 [Reserved]
- 1944.8 Income eligibility requirements.
- 1944.9 Other eligibility requirements.
- 1944.10 Rural area designation.
- 1944.11 Site requirements.
- 1944.12–1944.14 [Reserved]
- 1944.15 Ownership requirements.
- 1944.16 Dwelling requirements.
- 1944.17 Maximum loan amounts.
- 1944.18 Security requirements.
- 1944.19–1944.21 [Reserved]
- 1944.22 Refinancing non-RHCDS debts.
- 1944.23 [Reserved]
- 1944.24 Technical services.
- 1944.25 Rates and terms.
- 1944.26 Fund allocation.
- 1944.27 Application processing.
- 1944.28–1944.30 [Reserved]
- 1944.31 Loan approval.
- 1944.32 [Reserved]
- 1944.33 Loan closing.
- 1944.34 Payment assistance.
- 1944.35 Deferred mortgage payments.
- 1944.36 [Reserved]
- 1944.37 Subsequent section 502 RH loans.
- 1944.38 Mutual Self-Help Housing.
- 1944.39 RH loans to RHCDS employees and loan closing officials.
- 1944.40 [Reserved]
- 1944.41 Housing demonstration programs.
- 1944.42–1944.44 [Reserved]

- 1944.45 Conditional commitments.
- 1944.46 Appeals.
- 1944.47–1944.48 [Reserved]
- 1944.49 FmHA Instructions.
- 1944.50 [Reserved]

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

§ 1944.1 General.

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

(a) In compliance with the 1988 amendments to the Fair Housing Act and the Americans with Disabilities Act of 1990, reasonable accommodations must be given to individuals who are developmentally disabled so that they have the opportunity to become successful homeowners. When an applicant or an applicant's representative indicates the existence of a disability during the loan process, e.g. by requesting the Rural Housing and Community Development Service (RHCDS) disability deduction to income due to mental or physical disability or through verification of income from a Federal or state government source because of mental or physical disability, RHCDS must ask the applicant or the applicant's representative what reasonable accommodations should be made in order for the loan to be processed. The reasonable accommodation request must be provided to RHCDS by the applicant or the applicant's representative. Reasonable accommodations can include allowing a court appointed guardian or conservator to execute appropriate loan making and loan

closing documents on behalf of the applicant; the court order must show that the guardian/conservator has the power and responsibility to obligate the applicant in real estate matters and a copy of the court order must be made a part of the loan docket.

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

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

§ 1944.2 Definitions.

The following definitions apply to this subpart:

Annual payment borrowers.

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

Certificate of Eligibility. Certificate issued by RHCDS to applicants who have received a final determination of eligibility after verification of all income. Applicants can present this to real estate agents, builders and sellers to provide their eligibility documentation.

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

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

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

- (1) Lacks complete plumbing; i.e. no bathtub or shower, wash basin, flush toilet, or hot running water for the exclusive use of the occupant;

(2) Lacks adequate heating;
 (3) Is physically deteriorated or structurally unsound; i.e. roof leaks, falling plaster or sheetrock, extensive termite or wood rot damage, dangerous electrical service; or

(4) Overcrowding situations which will be corrected after loan closing; i.e. more than 2 persons per bedroom.

Disabled person. A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or which has lasted or is expected to last for a continuous period of not less than 12 months. The disability is expected to be of long or indefinite duration; substantially impede his/her ability to live independently; and is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in any substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. A disabled person also includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

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

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

(3) Is likely to continue indefinitely;

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

(i) Self-care,

(ii) Receptive and expressive language,

(iii) Learning,

(iv) Mobility,

(v) Self-direction,

(vi) Capacity for independent living,

(vii) Economic self-sufficiency; and

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

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

(1) A person who is the head, spouse or sole member of a family and who is 62 years of age or older, or who is

disabled and is the applicant/borrower or the coapplicant/coborrower; or

(2) Two or more persons who are living together, at least one of whom is age 62 or older, disabled and who is the applicant/borrower or coapplicant/coborrower; or

(3) In the case of a family where the deceased borrower, coborrower, or spouse, was at least 62 years old, disabled, the surviving household member shall continue to be classified as an "elderly family" for the purpose of determining adjusted income even though the surviving member or members may not meet the definition of elderly family on their own, provided:

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

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

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

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

Existing dwelling. A dwelling which is:

(1) More than 1 year old; or

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

Extended family. A family unit comprised of adult relatives who live together with the other members of the household, for reasons of physical dependency, economics, and/or social custom, who, under other circumstances, could maintain separate

households. A typical example would be parents living with their adult children.

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

(1) Is owned by the applicant/borrower;

(2) Is operated as a single unit;

(3) Is in agricultural production; and
 (4) Annually will produce agricultural commodities for sale and home use with a gross annual value equivalent to \$400 in 1944.

Full-time student. A person who is carrying a subject load that is considered full-time for day students (excluding correspondence courses) under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

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

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

(1) *Very-low income.* An adjusted annual income that does not exceed the very low-income limit according to size of household as established by HUD for the county or Metropolitan Statistical Area ("MSA") where the property is or will be located.

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

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

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

Insurance. The insurance required by RHCD as a condition of loan approval, including fire and extended coverage

insurance and flood insurance when applicable.

Live-in aides. Persons living in the household for the sole purpose of providing essential care and well being for an elderly, or disabled household member. Live-in aides cannot be related to a household member and would not be living in the unit except to provide essential supportive services.

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

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

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

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

Net family assets. Include:

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

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

the case of any member of the household who is actively engaged in such operation, and

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

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

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

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

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

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

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

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

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

§ 1944.3 Loan purposes.

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

(1) To buy, build, rehabilitate, improve, or relocate a dwelling in

provide related facilities for use by the applicant/borrower as a permanent residence.

(2) To buy, build, rehabilitate, improve, or relocate a dwelling, and provide related facilities for a farm owner to provide housing to be occupied by the farm manager, tenants, sharecroppers, or farm laborers.

(3) To refinance secured debts or unsecured debts as provided in § 1944.22, except for manufactured homes.

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

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

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

(3) Provide an adequate and safe water supply or an adequate waste/water disposal facility.

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

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

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

(7) Purchase and install approved energy saving measures and approved furnaces and space heaters which use a type of fuel that is commonly used, and is economical and dependably available.

(8) Provide storm cellars and similar protective structures.

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

(10) Pay lender fees and points in connection with participation loans, (except as provided in § 1944.4), which are customary, reasonable, and do not exceed the amount typical for the area.

(11) Pay reasonable connection fees for utilities such as water, sewer, electricity and gas, which are required

to be paid by the borrower and which cannot be paid from other funds.

(12) Pay the borrower's share of Social Security taxes for labor hired by the borrower in connection with making the planned improvements.

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

(14) Establish escrow accounts for the payment of real estate taxes or property insurance premiums in those States where the use of escrow accounts is authorized by the National Office.

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

(16) Finance the purchase of single family housing units located in a Planned Unit Development with a Homeowners' Association that has employed professional management, with prior National Office approval.

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

(i) The loan has been packaged in accordance with exhibit A to FmHA instruction 1944-A (available in any RHCDS field office) and the limitations of § 1944.17, and

(ii) The charges are reasonable considering:

(A) The amount and purpose of the assistance,

(B) The repayment ability of the recipient, and

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

(iii) The State Director may issue a State Supplement outlining what is considered a reasonable amount for his/her jurisdiction.

§ 19 44.4 Loan restrictions.

Loan funds may not be used to:

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

(b) Refinance:

(1) RHCDS debts, except as authorized under § 1951.318.

(2) Debts on a manufactured home.

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

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

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

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

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

(g) Finance manufactured homes which are not constructed and installed in accordance with exhibit F to FmHA instruction 1944-A and exhibit J of subpart A of part 1924. (Both exhibits are available in any RHCDS field office.)

§ 1944.5 Annual income.

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

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

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

(2) A weekly wage by 52 weeks; or

(3) A biweekly wage by 26 weeks; or

(4) A monthly wage by 12 months.

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

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

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

(d) The following are included in annual income:

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

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

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

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

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

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

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

(vi) Housing related expenses for the property being financed such as

mortgage interest, real estate taxes, and insurance, which may be claimed as business expense deductions for income tax purposes, will not be deducted from annual income.

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

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

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

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

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

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

(6) Public assistance except as indicated in exhibit J to FmHA instruction 1994-A (available in any RHCDS field office).

(7) Periodic allowances, such as:

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

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

(8) Any amount of educational grants or scholarships or Veterans Administration (VA) benefits available for subsistence after deducting expenses for tuition, fees, books, and equipment.

(9) All regular pay, special pay (except for persons exposed to hostile

fire), and allowances of a member of the armed forces who is the applicant/borrower or spouse, whether or not that family member lives in the home.

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

(1) Income over \$1,000 from employment of minors (including foster children) under 18 years of age. The applicant/borrower, coapplicant/coborrower, or spouse may never be considered minors.

(2) Payments received for the care of foster children.

(3) The income of an applicant/borrower's spouse, when the spouse has been living apart from the applicant/borrower (for reasons other than military or work assignment), or court proceedings for divorce or legal separation have been commenced.

(4) Casual, sporadic, or irregular cash gifts.

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

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

(7) The full amount of student financial assistance paid directly to the student or to the educational institution;

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

(9) Any earned income tax credit will not be counted as part of annual income, but will remain part of the applicant's income for purposes of repayment ability.

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

(f) Income of live-in aides as described in § 1944.2, will not be counted when calculating annual

income and will not be considered in determination of repayment ability.

§ 1944.6 Adjusted annual income.

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

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

- (1) Under 18 years of age; or
- (2) Eighteen years of age or older and is disabled as defined in § 1944.2; or
- (3) A full-time student aged 18 or older.

(b) A deduction of \$400 for any elderly family as defined in § 1944.2.

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

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

(1) Medical expenses for any elderly family as defined in § 1944.2. This includes medical expenses, for any household member, the applicant/borrower anticipates incurring over the ensuing 12 months which are not covered by insurance. Examples of medical expenses are dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, the cost of home nursing care, the costs of transportation to and from medical treatment, monthly payments on accumulated major medical bills, and cost of full-time nursing or institutional care which cannot be provided in the home for a member of the household; and

(2) Reasonable attendant care and auxiliary apparatus expenses for each disabled member of any household to the extent necessary to enable any member of such household (including such disabled member) to be employed.

§ 1944.7 [Reserved]

§ 1944.8 Income eligibility requirements.

(a) *Repayment Ability.* An applicant/borrower is eligible for a section 502 RH

loan only if the following requirements are met:

(1) *Income limit.* The adjusted annual income as defined in § 1944.6 at the time of loan approval does not exceed the applicable income limit in exhibit C to FMHA instruction 1944-A (available in any RHCDS field office).

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

(3) *Determining repayment ability.* In considering whether the applicant/borrower has adequate repayment ability, RHCDS must calculate the principal, interest, taxes, and insurance (PITI) and monthly obligation to income (MOTI) ratios. The PITI ratio is calculated by dividing the monthly PITI for the proposed loan (less any payment assistance for which the applicant/borrower may qualify) by the gross monthly family income. The MOTI ratio is calculated by dividing the applicant/borrower's monthly obligations by total gross monthly family income.

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

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

(iii) The applicant/borrower is considered to have repayment ability when the proposed PITI and MOTI ratios are less than or equal to a PITI ratio of 29 percent and a MOTI ratio of 41 percent as defined in § 1944.8(a)(3). Applicants whose PITI ratio exceeds the ratio shall be considered for deferred

mortgage assistance as provided in § 1944.35.

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

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

(B) When the applicant/borrower presents evidence that, due to unusual circumstances a budget form should be utilized to determine repayment ability in lieu of repayment ratios. In these circumstances, a budget will be prepared jointly between RHCDS and the applicant/borrower to determine the applicant/borrower's repayment ability.

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

(c) *Cosigner.* RHCDS will also consider the use of a cosigner when the applicant/borrower applying for assistance does not meet the requirements of paragraph (a)(2) of this section. Cosigners must have adequate and dependably available income sufficient to repay any deficit in the applicant/borrower's repayment ability. Cosigners are subject to the same determination of repayment ability outlined in paragraph (a)(3) of this section as the applicant/borrower, with the amount of the applicant/borrower's repayment deficiency considered as part of the cosigner's PITI ratio. The cosigner may be an individual or an entity but may not be a member of the applicant/borrower's household.

§ 1944.9 Other eligibility requirements.

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

(a) Qualify as one of the following:

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

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

(b) Be without sufficient resources to provide the necessary housing or related facilities, and be unable to secure the necessary credit from other sources upon terms and conditions which the applicant/borrower could reasonably be expected to fulfill. If the applicant/borrower has only an undivided interest in the land to be improved, those co-owners whose execution of the mortgage is required under § 1944.18(b)(8) must also be unable to provide the improvement with their own resources or obtain the necessary credit elsewhere, either individually or jointly with the applicant/borrower. Applicants/borrowers are expected to reduce the need for loan funds by utilizing available nonessential assets and/or cash on hand; however, IRAs, SEPs, 401(k) plans, and similar personal retirement accounts do not have to be liquidated when considering other resources. Reasonable reserves may be retained for unforeseen events.

(c) Be a natural person (individual) who resides as a citizen in any of the 50 states, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands, or a noncitizen who resides in one of the foregoing areas after being legally admitted for permanent residence or on parole. An applicant who indicates that the applicant is not a United States citizen on the application is required to submit evidence that the applicant has been lawfully admitted to the country as a permanent resident. Exhibit B (available in any RHCDS field office) provides additional information for evaluating alien status for these applicants. Verification is *only* required when the applicant indicates the applicant is not a U.S. citizen.

(d) Possess legal capacity to incur the loan obligation (or have a court appointed guardian/conservator who is

empowered to obligate the applicant in real estate matters), and have reached the legal age of majority in the state, or have had the disability of minority removed.

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

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

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

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

(1) Any or all of the following are indicators of an unacceptable credit history unless RHCDS determines that the cause was beyond the applicant/borrower's control (except for Federal judgments described in paragraph (f)(1)(i) of this section), and satisfies the criteria in paragraph (f)(3) of this section:

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

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

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

(iv) An outstanding IRS tax lien.

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

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

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

(viii) Accounts which have been converted to collections within the last 12 months (utility bills, medical debts, etc.).

(ix) Collection accounts outstanding with no satisfactory, reasonable arrangements for repayment, or collection accounts which have been outstanding within the last 12 months which were paid in full within 3 months of filing an application for RHCDS assistance, where there is no record of regular payment being maintained on the account prior to receipt of the final payment.

(x) Non-RHCDS debts written off within the last 36 months.

(xi) RHCDS debts which were debt settled pursuant to subpart B of part 1956, or by release from personal liability under subpart A of part 1955 or subpart C of part 1965, or debt settlement is being considered except where the conditions of § 1944.9(g) can be met.

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

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

(ii) A bankruptcy in which the applicant received a discharge more than 36 months before the date of application.

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

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

the applicant/borrower provides documentation that:

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

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

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

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

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

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

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

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

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

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

§ 1944.10 Rural area designation.

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

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

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

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

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

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

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

(b) A determination that open country, or any town, village, city, or place is not part of or associated with an urban area must include a finding that any densely populated section of the area in question is separated from the densely populated section of any adjacent urban area by open spaces. Open spaces include undeveloped, agricultural, or sparsely settled areas. Other spaces such as physical barriers (e.g., rivers, canals), public parks, commercial and industrial developments, small areas reserved for recreational purposes, recognized open spaces for which development is planned, and similar nonresidential areas, are not considered open spaces for the purpose of this program. RHCDS

files must contain documentation that local planning boards, where available, were contacted at the time of each review to verify that areas considered as open spaces are not scheduled for development in the next 5 years.

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

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

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

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

(e) In determining population count for area eligibility, consideration must be given to developed areas in counties or states which are contiguous to, and, therefore, a part of developed areas in other counties or states. This determination must be made in agreement between the State Directors concerned.

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

(i) of this section.

(g) [Reserved]

(h) [Reserved]

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

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

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

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

(4) Subsequent loans may be made on property in an area where the

designation was changed from rural to nonrural after the initial loan was made:

(i) To make necessary repairs.

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

§ 1944.11 Site requirements.

(a) *Location.* The property on which the loan is made must be located on a farm, or in a designated rural area as defined in § 1944.10, or in an area where the designation has been changed as provided in § 1944.10(i) and must also meet the requirements of subpart G of part 1940. A nonfarm tract to be purchased or improved with loan funds must not include farm service buildings.

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

(c) *Minimum adequate site.* A nonfarm tract on which a loan is to be made must have an adequate water and/or wastewater disposal system, other related facilities, and a yard, or those items must be provided with loan funds. The site must be of a size that it cannot be subdivided into two or more adequate sites under existing zoning ordinance requirements for the area.

(1) When the site is served by a centrally owned and operated water and/or wastewater disposal system, the system must meet the applicable water and wastewater disposal system requirements of subpart C of part 1924 as well as the design requirements of the state Department of Health or comparable reviewing and regulatory agency.

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

§§ 1944.12–1944.14 [Reserved]

§ 1944.15 Ownership requirements.

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

(1) Full marketable title.

(2) The buyer and the seller will convert the purchaser's interest under a

recorded land purchase contract to a deed/mortgage situation with full marketable title prior to loan closing.

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

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

(5) Leasehold interest if all of the following conditions are met:

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

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

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

(iv) The written lease contains the following provisions:

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

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

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

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

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

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

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

(H) Negotiated provisions as to the liability of RHCDS for unpaid rentals or other charges accrued at the time RHCDS acquires possession of the

property or title to the leasehold, and those which become due during RHCDS's possession or ownership, pending further servicing or liquidation.

(I) [Reserved]

(v) An unexpired term which is at least 150 percent of the term of the RHCDS loan, unless the RHCDS loan is guaranteed by a public authority, Indian tribe, or Indian Housing Authority, in which case the unexpired term of the lease must be at least 2 years longer than the repayment period of the loan; *provided that*: in no case may the unexpired term of the lease be less than 15 years.

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

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

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

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

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

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

§ 1944.16 Dwelling Requirements.

Dwellings financed must provide decent, safe, and sanitary housing. Costs of dwellings financed cannot exceed 85 percent of the maximum dollar limitation established under section 203(b) of the National Housing Act (12 U.S.C. § 1702) (available from any HUD office) unless authorized by RHCDS under § 1944.17(g). Loans shall not be approved for dwellings containing in-ground swimming pools or structures designed for income-producing facilities or purposes.

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

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

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

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

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

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

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

(c) *Repairs.* Any dwelling repaired with RH funds must be structurally sound, functionally adequate, and be placed in good repair with loan funds. If the loan is not more than \$7,500 and is scheduled for repayment in not more than 15 years from the date of the note, the dwelling may lack some equipment or features such as a complete bath, kitchen cabinets, closets, or completed finished interior in some rooms. Such dwellings must meet the housing needs of the applicant/borrower and provide decent, safe, and sanitary living conditions when the improvements financed with the loan are completed. Repairs required as a condition of loan approval will be performed in accordance with HUD Handbook 4905.1, "1-4 Family Living Units" (available in any RHCDS field office), after loan closing. Repairs on manufactured homes are limited to those financed by a subsequent loan for existing homes currently financed with a section 502 RH loan, inventory property sales, and transfers.

(d) *Improvements.* Improvements financed with loan funds must be on land which, after loan closing, is part of a tract owned by the borrower in

accordance with § 1944.15(a), or on an easement appurtenant to such a tract.

(e) *Manufactured homes.* Exhibit F to FMHA instruction 1944-A (available in any RHCDS field office) contains supplemental information concerning construction requirements for manufactured homes.

§ 1944.17 Maximum loan amounts.

The amount of the loan may not exceed 85 percent of the maximum dollar limitation of section 203(b) of the National Housing Act (12 U.S.C. § 1702) (available from any HUD office) unless authorized by RHCDS as an exception. A loan may exceed the market value or the equity value in the security property by the appraisal fee. Applicants/borrowers are expected to reduce the need for loan funds by using available non-essential assets including cash on hand as outlined under § 1944.9.

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

(1) The acquisition and any necessary development or

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

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

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

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

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

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

(D) The manufactured home and site meet the requirements in exhibit F and exhibit J of subpart A of part 1924 of

this chapter. (These exhibits are available in any RHCDS field office.)

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

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

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

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

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

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

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

(e) Notwithstanding the provisions of paragraph (a) of this section, when RHCDS is refinancing the loan of an existing RHCDS borrower in accordance with § 1951.318, the debt may exceed the market value of the security property to the extent necessary to refinance the borrower's outstanding indebtedness plus closing costs required in connection with the refinancing.

(f) Notwithstanding the provisions of paragraph (a) of this section, when a subsequent loan is needed for repairs essential to protect the Government's

security interest, the total RHCDS indebtedness may exceed the market value of the security by no more than the amount of the subsequent loan consisting of the cost of essential repairs and reasonable closing costs.

(g) RHCDS may grant exceptions to allow the amount of the loan to exceed 85 percent of the maximum dollar limitation of section 203(b) of the National Housing Act (12 U.S.C. § 1702) may be granted under the following conditions:

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

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

§ 1944.18 Security requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) *Leasehold.* When the applicant/borrower owns only a leasehold interest will treat the lessee's interest like any other type of ownership interest in determining whether a mortgage on the leasehold is required. The lease must meet the requirements of § 1944.15(a)(5) (iv) and (v). In any state in which applicants/borrowers are likely to own a

leasehold interest, the State Director will issue a State Supplement outlining the technical requirements for making such loans.

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

(i) The prior mortgage does not contain provisions that may jeopardize RHCDS's security position or the applicant/borrower's ability to repay the loan, such as provisions for future advances, forfeiture, cancellation, foreclosure without adequate notice to junior lienholders, attorney's fees exceeding those customary for the area in cases of foreclosure; or

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

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

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

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

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

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

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

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

mortgaged interests separately from the nonmortgaged interests.

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

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

(B) The applicant/borrower's participation in the joint ownership of part of the farm and its operations has been and is likely to continue to be successful.

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

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

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

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

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

(c) *Additional security.* When necessary to supplement the applicant/borrower's equity in the farm or

nonfarm tract on which the dwelling is located, or to facilitate servicing the loan, RHCDS may also require a mortgage on other real estate owned by the applicant/borrower.

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

§§ 1944.19–1944.21 [Reserved]

§ 1944.22 Refinancing non-RHCDS debts.

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

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

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

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

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

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

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

(b) Loan funds may be used for refinancing non-RHCDS debts on a building site without a dwelling when the applicant is unable to pay the debt from personal resources and failure to authorize the use of RH funds to pay such costs would prevent the applicant from acquiring decent, safe, and sanitary housing and the following conditions can be met:

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

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

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

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

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

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

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

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

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

(2) Materials, construction, or site acquisition.

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

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

(2) The applicant is unable to pay such costs from personal resources or to obtain credit from other sources and failure to authorize the use of RH funds to pay such costs would jeopardize the applicant's capability of repaying the loan.

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

§ 1944.23 [Reserved]

§ 1944.24 Technical services.

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

(b) *Planning and performing site development work.* Any site development will be planned and completed in accordance with subpart C of part 1924, except as provided for manufactured homes in exhibit J of subpart A of part 1924. Subdivisions will be accepted by RHCDS without further processing when the developer provides written evidence of current subdivision acceptance by HUD or VA and the developer provides proof of compliance with exception conditions established by HUD or VA.

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

(1) When a mortgage will be taken to secure a total indebtedness of more than \$15,000, an appraisal of the security property will be made. The loan can exceed the market value of the security by the amount of an appraisal fee. A fee will be charged for each application for a section 502 RH loan when an appraisal is needed for initial and subsequent loans and assumptions. Fees will be waived for appraisals done for subsequent loans to existing RHCDS

borrowers for minimal essential repairs that are necessary to protect Government security property. The fee will be collected at loan closing by the closing agent.

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

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

(d) *Title clearance and legal services.*

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

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

§ 1944.25 Rates and terms.

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

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

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

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

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

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

(3) Thirty years for manufactured homes.

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

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

§ 1944.26 Fund allocation.

State Directors will maintain an adequate reserve to fund hardship applications, servicing type loans, and the state's portion of funds for Mutual Self-Help Housing loans. Reserve funds will be used for:

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

(2) Refinancing non-RHCDS debts in accordance with §§ 1944.22(a) and 1951.315.

(b) *Servicing type loans.* (1) Financing for the purchase of Government-owned inventory properties;

(2) Subsequent loans for essential improvements or repairs;

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

(c) *Mutual Self-Help Housing Loans.* Homes must be located in an RHCDS approved self-help project.

§ 1944.27 Application processing.

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

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

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

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

(b) *Processing steps.* (1) [Reserved]

(2) Complete applications will be processed in the order received, in accordance with subpart A of part 1910 and subpart E of part 1901, except that preference will be given to applications for Mutual Self-Help Housing loans, loan servicing purposes, purchase of an inventory property, assumption of an existing RHCDS loan, and to applicants who qualify as a hardship, as outlined in § 1944.26; veterans preference, as outlined in subpart A of part 1910, will apply.

(3) [Reserved]

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

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

(c) *Determination of eligibility and notification to applicant.* Eligibility determination will be made regardless

of ranking or funding levels. If an applicant/borrower is determined ineligible because the applicant's income is too high, RHCDS may advise the applicant/borrower that applicant may qualify for the purchase of a Government inventory property or the assumption of an existing RHCDS borrower's loan on nonprogram terms and may be counseled regarding the RH guaranteed loan program. If an applicant/borrower is given an adverse decision, the applicant/borrower will be given appeal rights as provided in subpart B of part 1900. The letter will contain the Equal Credit Opportunity Act (ECOA) paragraph set forth in subpart A of part 1910.

(1) *Delayed processing.* When available loan funds are not adequate to complete the processing of all applications as they are received, or a large backlog of applications exists which prohibits immediate processing of the application, a preliminary determination of eligibility may be made based on the information provided by the applicant/borrower.

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

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

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

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

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

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

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

(v) [Reserved]

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

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

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

(e) *Verification of information.* (1) *Income verification.* All applicants/borrowers will be required to submit a complete, legible copy of their most recently filed Federal income tax return (showing the applicant's signature) unless exempted from filing a return. The return shall be stored in a secure place separate from the loan docket to prevent any wrongful release of the tax return information. In cases where a tax preparer has provided the applicant with copies of the return, one of the copies which has the original signature of the tax preparer should be signed by the applicant and submitted. In Puerto Rico applicants/borrowers must submit a signed photocopy of the most recently filed state income tax returns. Applicants who do not have signed photocopies of their Federal returns should contact their Regional Internal Revenue Service. In addition to copies of tax returns, other income verification may be required.

(i) Applicant/borrowers will complete such forms as required by RHCDS. A form will be used to verify employment

income of each borrower/applicant except for self-employment.

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

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

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

(v) The applicant must provide a copy of the divorce decree or other legal document indicating the amount of the payments to verify alimony and/or child support payments. When the applicant/borrower states that less than the amount awarded is received, RHCDS may request documentation from the official entity through which payments are received, or other third parties capable of providing the verification when payment is not made through an official entity, indicating the dates and amounts of payments made to the applicant/borrower during the previous 12 months.

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

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

(3) *Verification of disability or handicap.* Form FmHA 1944-4, "Certification of Disability or Handicap," is used to verify disability or handicap in cases where State Review Boards or Social Security records are not available. When Form FmHA 1944-4 contains information

which could affect the applicant/borrower's eligibility, the applicant/borrower may be required to furnish his/her physician's written opinion regarding the applicant/borrower's capacity to incur the loan obligation.

(4) [Reserved]

(5) [Reserved]

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

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

(2) Reach an understanding that failure of the applicants/borrowers to fully disclose financial and application information or material falsification or concealment of such information will result in a denial of assistance and possible penalties.

(3) [Reserved]

(4) [Reserved]

(5) [Reserved]

(6) [Reserved]

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

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

(i) Information requested will include a copy of the option or sales agreement; a legal description of the property; a direction map; certified building plans

and specifications or repair estimates as appropriate; copies of existing surveys, title information, and tax bills; and other information deemed necessary by the appraiser.

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

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

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

(h) *Appeals.* If the decision on the applicant/borrower's request for assistance is unfavorable, the applicant/borrower will be notified of the appropriate appeal rights in accordance with subpart B of part 1900. The applicant/borrower will be notified that a new application may be filed when curative action is taken to remove the reasons for rejection.

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

§§ 1944.28–1944.30 [Reserved]

§ 1944.31 Loan approval.

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

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

(c) [Reserved]

(d) [Reserved]

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

§ 1944.32 [Reserved]

§ 1944.33 Loan closing.

(a) *Reverification of income.* If a loan made on program terms will be closed

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

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

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

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

(e) *Hazard insurance.* Buildings on the property taken as security for the loan will be insured in accordance with subparts A and B of part 1806 (FmHA Instructions 426.1 and 426.2 as appropriate). The policy and a paid receipt for 1 full year's premium must be presented by the applicant/borrower at loan closing.

- (f) [Reserved]
- (g) [Reserved]
- (h) [Reserved]

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

§ 1944.34 Payment assistance.

(a) *General.* It is the policy of RHCDS to grant payment assistance on loans to qualified applicants to assist them in obtaining and retaining decent, safe, and sanitary dwellings and related facilities. This section pertains to the granting of payment assistance connected with loan

making activities. All other provisions dealing with payment assistance are contained in subparts G and I of part 1951.

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

(c) *Amount of Payment Assistance.* Payment assistance granted will be the difference between the installment due on the promissory note and the amount the borrower would pay if the note were amortized at a rate equivalent to that relating to the borrower's income range or the amount of principal and interest due based on the floor calculation in accordance with this section. The floor is a minimum percentage of adjusted family income which the borrower must pay for PITI. Very low-income borrowers will pay a minimum of 22 percent and low-income borrowers will pay a minimum of 26 percent of their adjusted family income for PITI or the payment determined at the equivalent interest rate, whichever is greater. The equivalent interest rate is determined by

a comparison of the borrower's adjusted annual income as determined in § 1944.6 to the median income for the area where the security property is located, based on income figures published by HUD as reflected in exhibit C (available in any RHCDS field office). The following chart is to be used for determining the equivalent interest rate paid by the applicant/borrower when eligible for payment assistance, for loan making and loan servicing for loans closed after the effective date of this issuance. EXCEPTION: Present RHCDS borrowers who are currently receiving payment assistance as of the date of this issuance, will be reviewed under the system in effect prior to the effective date of this issuance. Any other exception to the use of these interest rates or minimum percentages of adjusted family income will be made by the RHCDS Administrator under § 1944.34(h). Median income is that reflected in Exhibit C to FmHA instruction F144-A (available in any RHCDS field office). In determining percents, rounding should not be used.

PERCENTAGE OF MEDIAN INCOME—EQUIVALENT RATE OF INTEREST

When the applicant/borrower's adjusted income is—

Equal to or more than—	But less than—	Then the equivalent rate of interest is— ¹
00 percent	50.01 percent of median income	1 percent.
50.01 percent	55 percent of median income	2 percent.
55 percent	60 percent of median income	3 percent.
60 percent	65 percent of median income	4 percent.
65 percent	70 percent of median income	5 percent.
70 percent	75 percent of median income	6 percent.
75 percent	80.01 percent of median income	6.5 percent.
80.01 percent	90 percent of median income	7.5 percent.
90 percent	100 percent of median income	8.5 percent.
100 percent	110 percent of median income	9 percent.
110 percent	or more than median income	9.5 percent.

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

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

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

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

(i) The applicant/borrower's adjusted annual income, at the time of loan approval, did not exceed the applicable low-income limit in exhibit C to FMHA

instruction 1944-A (available in any RHCDS field office).

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

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

(3) *Assumptions.* Payment assistance may be granted to an applicant/borrower assuming an RH loan on new rates and terms, provided the assuming parties qualify according to paragraph

(e)(1) of this section. Payment assistance may only be granted on "same term" assumptions if the original loan was approved on or after August 1, 1968.

(f) *Processing payment assistance.* (1) *General.* The adjusted payment for which an applicant/borrower qualifies after application of payment assistance will be stated in the most current payment assistance agreement. Payment assistance agreements will be for a 12-month period, with the following exceptions:

(i) *Self-employed borrowers.* For a self-employed applicant/borrower, the initial payment assistance agreement will run from the effective date to 3 months after the end of the applicant/borrower's business fiscal year, but not more than a 12-month period. This will

allow subsequent agreements to coincide with the applicant/borrower's business fiscal year with a 3-month over-lap to provide sufficient time for the applicant/borrower to supply verification of the previous year's income.

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

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

(2) [Reserved]

(3) [Reserved]

(g) *Applicant notice of right to appeal.* All applicants/borrowers who request and are denied payment assistance may appeal in accordance with subpart B of part 1900.

(h) *Exceptions.* RHCDS may make exceptions to proposed transactions in which the conditions prescribed in the foregoing paragraphs of this section cannot be met. This paragraph is primarily intended to be used for those cases in which the granting of payment assistance is necessary for the applicant/borrower to retain or obtain a dwelling for the applicant/borrower's own use, and there are no other means to do so. RHCDS may authorize a further reduction of the equivalent rate of interest in high cost areas as determined by HUD when there is evidence to indicate that there is no adequate, lower-cost housing available to the applicant which would reduce the applicant's need for additional subsidy; the housing to be financed is comparable in cost to housing financed for very low-income applicants in the area; and the applicant will be unable to acquire adequate housing unless additional subsidy is authorized. This exception is limited to an additional percentage point reduction in the equivalent rate of interest but in no event may the equivalent rate of interest be less than 1 percent except as authorized in § 1944.35. A high cost area is an area which has been designated as high cost by HUD under the maximum dollar limitation of section 203(b) of the National Housing Act (12 U.S.C. 1702) (available from any HUD office).

§ 1944.35 Deferred mortgage payments.

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

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

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

(1) The applicant/borrower's adjusted family income, at the time of initial loan approval, must not exceed the applicable very low-income limits in exhibit C to FMHA instruction 1944-A (available in any RHCDS field office);

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

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

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

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

(d) *Amount and terms of deferral.* (1) The deferral amount is determined as follows:

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

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

(A) If the amount of real estate taxes due for the initial agreement is less than a typical year's taxes (such as in new construction), then "eligibility" for deferral assistance will be determined based on the amount of taxes due in a typical year but the "amount" of deferral for which the applicant/borrower qualifies will always be based upon *actual* taxes due for the current year. This may result in the applicant/

borrower being eligible for assistance but not qualifying for deferral in the first year. Although there may not be any portion of the payment deferred in the first year, the 15-year period for assistance will still be calculated from the date of loan closing.

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

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

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

(3) Any principal deferred will accrue interest at rate of 1 percent per annum. Interest deferred under this section will not accrue interest and will not be converted to principal through reamortization or other servicing action.

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

(1) *Annual review.* The annual review will be scheduled to take place during the payment assistance review period as

defined in subpart G of part 1951 (available in any RHCDS field office).

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

- (i) Provide RHCDS with income verification, as described in § 1944.27;
- (ii) Provide RHCDS with information needed to complete the deferral section of the Payment Assistance/Deferral/Repayment Agreement;
- (iii) Review and sign appropriate RHCDS forms and documents, and
- (iv) Participate in an interview to review the deferral information.

(3) [Reserved]

(4) [Reserved]

(f) *Cancellation of deferred mortgage payments.* Deferred mortgage payments may be canceled for any of the conditions in subpart G of part 1951. Once a borrower goes off of deferred mortgage payments, the borrower is not eligible to receive this assistance again. Deferred payments may only be continued for up to 15 years after the effective date of the initial payment assistance agreement.

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

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

§ 1944.36 [Reserved]

§ 1944.37 Subsequent section 502 RH loans.

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

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

- (1) The property was not appraised in connection with the initial loan;
- (2) The latest appraisal report of the real estate is over 2 years old;

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

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

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

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

(c) [Reserved]

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

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

(f) When an area designation has been changed from rural to non-rural, subsequent RH loans may be made only in accordance with the provisions of § 1944.10.

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

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

§ 1944.38 Mutual Self-Help Housing.

Low-income applicants may build their homes by participating in a Mutual Self-Help Housing project.

(a) An eligible organization must file a preapplication with the District Office for a Self-Help Technical Assistance grant. RHCDS will issue Form AD-622, "Notice of Preapplication Review Action," if the grant request is approved. If the grantee is eligible but there are no available grant and/or loan funds, processing of RH applications will not begin until authorized by RHCDS.

(b) The value of homes financed under this section must be no greater than the equivalent value of most modest homes built in the area, as described in § 1944.403.

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

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

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

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

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

- (1) Buying RHCDS inventory property;
- (2) Buying RHCDS security property from a borrower; or
- (3) Buying RHCDS security property at foreclosure sale.

§ 1944.40 [Reserved]

§ 1944.41 Housing demonstration programs.

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

§§ 1944.42-1944.44 [Reserved]

§ 1944.45 Conditional commitments.

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

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

(1) Be the owner as defined in § 1944.15, prior to the beginning of any planned construction, of the site on which the dwelling is located or to be built, except as set out in subpart G of part 1822 (FmHA Instruction 444.8).

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

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

(4) Comply with the requirements of subpart E of part 1901 and all applicable

laws, regulations, and Executive Orders relating to equal opportunity.

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

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

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

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

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

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

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

(6) When five or more conditional commitments have been issued to one recipient during a 12-month period, an affirmative marketing plan will be required in accordance with § 1901.203(c).

(d) *Conditional commitments involving packaging of applications.* A conditional commitment may be made to a seller, builder, or dealer-contractor who packages a RH application for an applicant to buy the property. In cases where the dwelling is presold and is to be constructed for sale only to a specific applicant and the information on the house and the loan applicant is submitted at the same time, all of the following conditions must be met:

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

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

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

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

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

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

(f) *Processing applications.* (1) Applications for conditional commitments will be submitted on Form FmHA 1944-36, "Application for Conditional Commitment." Attachments as required by on the form will be included for each individual dwelling for which a conditional commitment is requested.

(2) [Reserved]

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

site qualify, an appraisal will be obtained in accordance with subpart C of part 1922.

(4) *Failure of applicant or dwelling to qualify.* If the application is denied for failure to meet the requirements of paragraph (b) (2) or (3) of this section, the applicant may appeal in accordance with subpart B of part 1900.

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

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

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

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

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

(i) *Cancellation of outstanding conditional commitments.*

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

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

(j) [Reserved]

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

§ 1944.46 Appeals.

Any applicant/borrower who requests and is denied assistance or who has a right denied, reduced, or canceled may appeal the action in accordance with subpart B of part 1900. If a decision is not appealable, such as decisions based on verified income or clear and objective statutory or regulatory requirements, the applicant/borrower may request review rights pursuant to subpart B of part 1900.

§ 1944.47-1944.48 [Reserved]

§ 1944.49 FmHA Instructions.

Detailed FmHA Instructions for administering this subpart are available in any RHCDS field office.

§ 1944.50 [Reserved]

Subpart J—Section 504 Rural Housing Loans and Grants

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

§ 1944.453 Definitions.

* * * * *

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

10. Section 1944.456 is amended by inserting ", environmental, tax monitoring," after the word "architectural" in paragraph (i); by inserting ", not to exceed \$300," after the word "fees" in paragraph (m) introductory text; by removing paragraph (m)(2); by redesignating paragraph (m)(3) as paragraph (m)(2); and by adding a new paragraph (m)(3) to read as follows:

§ 1944.456 Loan and grant purposes.

* * * * *

(m) * * *

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

11. Section 1944.457 is amended by revising the heading; by inserting the word "loan" after the word "Maximum" in paragraph (a)(1); by removing the

word "individual" in paragraphs (a)(1) and (2) and inserting the words "owner/occupant" in its place; by revising "\$15,000" to read "\$20,000" at the end of paragraph (a)(1); by revising "\$5,000" to read "\$7,500" at the end of paragraph (a)(2); and by revising paragraph (a)(4) to read as follows:

§ 1944.457 Loan and grant restrictions and record keeping.

* * * * *

(a) * * *

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

- (i) Grantee's names, address, and case number;
(ii) Amount of the grant; and
(iii) Date grant was closed.

* * * * *

12. Section 1944.458(d)(1) is revised to read as follows:

§ 1944.458 Eligibility requirements.

* * * * *

(d) * * *

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

* * * * *

13. Section 1944.461(b)(3) introductory text is amended by removing the word "remaindermen's" before the word "interests" in the first sentence and inserting the word "remainder" in its place, and by revising paragraphs (b)(3)(i), (iii), and (iv) to read as follows:

§ 1944.461 Security and other requirements.

* * * * *

(b) * * *

(3) * * *

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

* * * * *

(iii) All legally competent persons (or the guardian or conservator for any

person who is not legally competent) holding remainder interests who are using or occupying the dwelling sign the mortgage; and,

(iv) The loan does not exceed the market value of the portion of the property represented by the remainder interests of the persons signing the mortgage.

* * * * *

14. Section 1944.463 is amended by inserting the words "and/or other construction development" after the words "safety hazards" in the first sentence of paragraph (a) introductory text; by inserting the words "security is taken and" after the word "when," and by revising "\$7,500" to read "\$15,000" in the first sentence of paragraph (d) introductory text, by removing the word "Total FMHA indebtedness" from the first sentence of paragraphs (e)(1) and (e)(2) and inserting the word "assistance" in their place, and by revising paragraph (d)(1) to read as follows:

§ 1944.463 Technical services.

* * * * *

(d) * * *

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

* * * * *

15. Section 1944.467 is amended by removing paragraphs (a)(3), (d), and (h); by removing and reserving paragraph (c) by redesignating paragraphs (e), (f), and (g) as paragraphs (d), (e), and (f) respectively; by revising the introductory text of paragraph (a), and by adding a new paragraph (a)(3) to read as follows:

§ 1944.467 Processing applications.

(a) *Application.* Application for Section 504 assistance will be made on Form FmHA 410-4, "Application for Rural Housing Assistance (Non-farm Tract) Uniform Residential Loan Application", (hereafter called URLA)

which is available at any RHCDS field offices, and the application will be processed in accordance with § 1944.27 using applicable forms from exhibit E, available in any RHCDS field office.

* * * * *

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

* * * * *

(c) [Reserved]

§ 1944.468 [Amended]

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

§ 1944.469 [Amended]

17. Section 1944.469 is amended by removing and reserving paragraphs (b) and (c):

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

§ 1944.472 Subsequent Section 504 loans and/or grants.

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

PART 1951—GENERAL

19. The authority citation for Part 1951 continues to read as follows:

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

Subpart G—Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts

§§ 1951.313–1951.319 [Redesignated as §§ 1951.314–1951.320]

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

§ 1951.313 Payment assistance.

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

(b) [Reserved]

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

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

(2) The borrower personally occupies the dwelling unless determined

uninhabitable by RHCDS or is temporarily not occupied for reasons such as seasonal or migratory employment, military call-up, or hospitalization.

(3) The borrower's adjusted annual income does not exceed the moderate-income limit contained in exhibit C to FmHA Instruction 1944A (available in any RHCDS field office).

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

(ii) [Reserved]

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

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

(B) Legal papers have been filed to commence divorce or legal separation, a restraining order has been obtained, or one coborrower has not been living in the dwelling for at least 3 months. Payment assistance will not be granted if separation is due to work assignment or military order.

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

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

(6) Payment assistance may be granted retroactively for up to 6 months if the conditions described in paragraphs (c)(1) through (c)(5) of this section existed at the time.

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

(1) *Change in income.* RHCDS is not responsible for monitoring changes in a borrower's income. If RHCDS becomes

aware of income changes outside of the renewal period that will change the amount of authorized payment assistance as defined in § 1944.34(c), a new 12-month agreement will be prepared effective the due date following the date RHCDS became aware of the change.

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

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

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

(2) [Reserved]

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

(ii) *Determination of eligibility.* Adjusted annual income will be determined and documented in the file. All borrowers will be required to submit a copy of their most recent Federal income tax return. In addition, income for wage earning borrowers will be verified by use of an RHCDS form (available in any RHCDS field office), and wage matching, if available.

Borrowers receiving social security or retirement benefits must provide copies of their most recent benefit/award letters. Payment assistance will not be renewed if the borrower's adjusted family income exceeds the moderate-income limit, (available in any RHCDS field office) or if the borrower does not occupy the dwelling.

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

(3) *Termination of foreclosure action.* If a payment assistance agreement expired after a problem case report recommending foreclosure was submitted and the foreclosure action was terminated prior to sale or payment

in full, payment assistance will be renewed effective as of the expiration date of the previous agreement if RHCDS is to continue with the loan.

(4) [Reserved]

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

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

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

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

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

(5) *The borrower sells or title to the security property is otherwise transferred.* Cancellation will be effective the payment due date prior to the date title transferred. When security property is acquired by RHCDS, cancellation will be effective the payment due date prior to the date of acquisition.

(g) [Reserved]

(h) *Notice of right for review or appeal.* All borrowers who request and are denied payment assistance or whose payment assistance is reduced, canceled, or not renewed may appeal or request a review in accordance with subpart B of part 1900 of this chapter.

(i) [Reserved]

(j) *Hardship waiver.* The approval official may submit to the District Director any situation in which the borrower cannot meet the conditions of paragraphs (c) and (e) of this section and it is determined that without payment assistance the borrower would experience extreme hardship or lose the property through foreclosure. A waiver may be granted if the above can be determined and the borrower has no other means of retaining the dwelling.

PART 1965—REAL PROPERTY

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

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

Subpart C—Security Servicing for Single Family Rural Housing Loans

§ 1965.126 [Amended]

22. Section 1965.126 is amended by removing the words “serve as a minimum adequate site for another dwelling.” and inserting the words “be subdivided and sold.” in their place at the end of the first sentence of paragraph (b)(3); by removing the second, third, and fourth sentences and the word “however” and the comma preceding it in the last sentence of paragraph (b)(4)(i); and by adding the words “except as provided in § 1944.17 of subpart A of part 1944 of this chapter,” following the words “being assumed” in the first sentence of paragraph (b)(8).

Dated: March 23, 1995.

Michael V. Dunn,

Acting Under Secretary for Rural Economic and Community Development.

[FR Doc. 95-11308 Filed 5-11-95; 8:45 am]

BILLING CODE 3410-07-U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH-233; Amendment Number 69R]

Ohio Regulatory Program; Revision of Administrative Rules

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period.

SUMMARY: OSM is reopening the public comment period for a revised amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977. This revised amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations concerning appeal procedures for remedial actions regarding prohibited financial interests.

This document sets forth the times and locations that the Ohio program and the proposed amendment to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that

will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m., E.D.T. on May 30, 1995. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m., E.D.T. on May 22, 1995. Requests to speak at the hearing must be received on or before 4:00 p.m., E.D.T. on May 19, 1995.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand-delivered to Mr. Robert H. Mooney, Acting Director, Columbus Field Office, at the address listed below.

Copies of the Ohio program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Mooney, Acting Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submissions, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Proposed Amendment

The Ohio Department of Natural Resources, Division of Reclamation (Ohio) submitted proposed Program Amendment Number 69 by letter dated September 22, 1994 (Administrative Record No. OH-2059). In this amendment, Ohio proposed to revise two rules at Ohio Administrative Code (OAC) sections 1501:13-1-03 and 13-7-