

PART 1944 - HOUSING

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

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PART 1944 - HOUSING

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

§ 1944.151 Purpose.

This subpart contains the policies and procedures and delegates authority for making initial and subsequent insured loans under section 514 and grants under section 516 of the Housing Act of 1949, to provide housing and related facilities for domestic farm labor. This subpart also contains the policies and procedures for making grants under section 516 to encourage the development of farm labor housing. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Rural Housing Service (RHS) employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an RHS employee. (Revised 12-02-02, SPECIAL PN.)

§ 1944.152 Objective.

The basic objective of the RHS in making domestic Farm Labor Housing (LH) loans is to provide decent, safe, and sanitary housing for domestic farm labor to be located in areas where a need for farm labor exists and in making LH grants where there is a pressing need for such facilities in the area for farm laborers and there is a reasonable doubt that the housing can be provided without the grant assistance. (Revised 07-22-91, SPECIAL PN.)

§ 1944.153 Definitions. (Revised 07-22-91, SPECIAL PN.)

Agency. The Rural Housing Service, an agency of the U.S. Department of Agriculture which administers section 514 loans and section 516 grants. (Added 06-07-99, SPECIAL PN.)

Applicant. The applicant for or the recipient of an LH loan or grant.

Association of farmers. Two or more farmers acting as a single legal entity. Association members may include the individual members of farming partnerships or corporations.

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Loan and Grant Making
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Board and directors. Includes the governing body and members of the governing body of an organization.

Construct or repair. To construct new structures or facilities, or to acquire, relocate, or repair or improve existing structures or facilities.

Development cost. Includes the cost of constructing, purchasing, improving, altering, or repairing new or existing housing and related facilities, buying household furnishings, and purchasing or improving the necessary land. It includes necessary architectural, engineering, legal fees and charges, and other appropriate technical and professional fees and charges. It does not include fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitations of loans.

Domestic farm laborer. A person who receives a substantial portion of his or her income performing farm labor employment (not self-employed) in the United States, Puerto Rico, or the Virgin Islands and either is a citizen of the United States or resides in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence. This definition may include the immediate family members residing with such a person. (See the definition for self-employed in this section and/or Exhibit L of this subpart which is available in any Rural Housing Service Office.) (Revised 06-07-99, SPECIAL PN.)

Familial status. (See Subpart E of Part 1944 of this chapter or Exhibit B of Subpart C of Part 1930 of this chapter.) (Revised 08-30-93, SPECIAL PN.)

Family farm corporation or partnership. A private corporation or partnership in which at least 90 percent of the stock or interest is owned and controlled by members of the same family. These family members must be related by blood or law. If more than three separate households are supported by the farming operation, the family farm corporation or partnership must be:

- (1) Legally organized and authorized to own and operate a farm business within the State,
- (2) Legally able to carry out the Purposes of the loan, and
- (3) Prohibited from the sale or transfer of 90 percent of the stock or interest to other than family members by either the articles of incorporation, bylaws or by agreement between the stockholders or partners and the corporation or partnership.

§ 1944.153 (Con.)

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community. (Added 06-07-99, SPECIAL PN.)

Farm labor. For purposes of this subpart, farm labor includes services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity.

Farm Labor Contractor means any person--other than an agriculture employer, an agricultural association, or an employee of an agriculture employer or agriculture association--who, for any money or other valuable consideration paid or promised to be paid, recruits, solicits, hires, employs, furnishes, or transports any year round or migrant farm laborer.

Farmer. A person who is actually involved in day to day on-site operations of a farm and who devotes a substantial amount of time to personal participation in the conduct of the operation of a "farm".

Farm owner. A natural person or persons who are the owners of a "farm" as this term is further defined in this section. (Revised 06-07-99, SPECIAL PN.)

Home base. A home base State is a State which the farm laborer claims as his/her domicile.

Household furnishings. Such basic durable items as stoves, refrigerators, drapes, drapery rods, tables, chairs, dressers, and beds. Items such as bedding, linens, dishes, silverware, and cooking utensils are not included in this definition.

Housing. New or existing structures which are or will be suitable for decent, safe and sanitary dwelling use by domestic farm labor. "Housing" may include household furnishings and related facilities where appropriate.

HUD. The U.S. Department of Housing and Urban Development.
(Added 06-07-99, SPECIAL PN.)

Individual. A natural person. It may include the spouse.

Individual with handicap. (See Exhibit B of Subpart C of Part 1930 of this chapter.) (Added 08-30-93, SPECIAL PN.)

LH. Farm Labor Housing. (Added 06-07-99, SPECIAL PN.)

LH fund(s). May include either loan or grant monies or both in this subpart.

Local broad-based nonprofit organization. An organization, public or private, that operates in one employment area and which:

- (1) Is incorporated with the State, Puerto Rico, or Virgin Islands, or a Federally recognized Indian Tribe;
- (2) Is organized and operated on a nonprofit basis;
- (3) Is legally precluded from distributing any profits or dividends to its members or any private individual during its corporate lifetime;
- (4) Is not grower oriented (majority of board must be nonfarmers);
- (5) Pledges to administer the housing as a community service in the interest of the whole community, regardless of race, color, national origin, sex, religion, age, handicap, and marital or familial status;
- (6) Has at least 25 members for projects with a total development cost of up to \$100,000 and additional members for projects costing more than \$100,000; and
- (7) Has a membership reflecting a variety of interests of the area where the housing will be located.

Members and membership. Includes stockholders and stock when appropriate.

§ 1944.153 (Con.)

MFH. Multi-Family Housing. (Added 06-07-99, SPECIAL PN.)

Migrant agricultural laborers. Agricultural laborers and family dependents who establish a temporary residence while performing agriculture work at one or more locations away from the place he/she calls home or home base. (This does not include day-haul agricultural workers whose travels are limited to work areas within one day of their work locations.)

Mortgage. May include any appropriate form of security instrument.

NOFA. Notice of Funds Availability. (Added 06-07-99, SPECIAL PN.)

Nonprofit organization of farmworkers. A nonprofit organization which is incorporated with the State, Puerto Rico, or the Virgin Islands, which was local representation in the membership, and whose membership is composed of at least 51 percent farmworkers.

Off-Farm Labor Housing. Housing for farm laborers regardless of the farm where they work. (Added 06-07-99, SPECIAL PN.)

On-Farm Labor Housing. Housing for farm laborers specific to the farm where they work. (Added 06-07-99, SPECIAL PN.)

Organization. A broad-based nonprofit organization, a nonprofit organization of farmworkers, federally recognized Indian Tribe, or an agency or Political subdivision of State or local government.

Promissory note. May include a bond or other evidence of indebtedness.

Regional or statewide broad-based nonprofit organization. Any organization that operates or plans to operate in more than one employment area, that provides or is planning to provide labor housing to those areas and that meets the following criteria in addition to those in paragraphs (1) through (6) under the definition for "local broad-based nonprofit organization:"

(1) The membership of the organization must be broadly representative of the region or state by having representation from either the counties or employment areas in which it provides or is planning to provide labor housing; and

(2) The membership must include at least eight (8) members from the employment area to be served by the project who represent a variety of interests of the employment area. If the project is located in a community or dependent upon a community for essential services, at least four of the eight members must be residents of that community.

Related facilities. Includes community rooms or buildings, cafeterias, dining halls, infirmaries, child care facilities, assembly halls, and other essential service facilities such as central heating, sewerage, lighting systems, clothes washing facilities, trash disposal and safe domestic water supply. All related facilities must be reasonably necessary for proper use of the housing as dwellings for domestic farm labor occupants.

Retired or disabled domestic farm laborer. A "retired domestic farm laborer" is a person who is at least 55 years of age and who has spent the last 5 years prior to retirement as a domestic farm laborer or spent the majority of the last 10 years prior to retirement as a domestic farm laborer (self-certification and employer affidavits may be used as a last resort). A "disabled domestic farm laborer" is a person who is determined to have an impairment which is expected to be of long-continued, indefinite duration, and substantially impedes the person's ability to earn a livelihood from farm labor (as certified by a licensed physician) and who is a domestic farm laborer prior to disability.

RHS. Rural Housing Service. (Added 06-07-99, SPECIAL PN.)

Seasonal housing. Described in Exhibit I of Subpart A of Part 1924 of this chapter.

Self-employed. The determination of self-employed farm laborers is in accordance with the Common Law test used by the Internal Revenue Service to determine a employer-employee relationship. The Common Law Rules Factors are included in Exhibit L of this subpart and are available for review in any Rural Housing Service Office. Exhibit L is provided for situations when it is not clear an employee-employer relationship exists for eligible farm labor. The eligibility determination and use of the Common Law Rules Factors may be referred to the Loan Official or State Director for resolution. (Revised 06-07-99, SPECIAL PN.)

Subsequent LH loan or grant. A loan or grant to an applicant or borrower to complete the units planned with the initial loan or grant.

Substantial portion of income. That portion of income received which has been derived from farm labor performed by a farm laborer as defined in this section.

(1) To determine if income is considered substantial, the measure to be used will be:

(i) For housing rented to farm laborers and owned by public bodies and public or private nonprofit organizations when charging rent: (Revised 01-19-93, SPECIAL PN.)

§ 1944.153 (Con.)

Substantial portion of income. (1)(i) (Con.)

(A) Actual dollars earned from farm labor by domestic farm laborers other than migrant farmworkers must equal at least 65 percent of the annual income limits indicated for the standard Federal regions, as shown in Exhibit J of this subpart (available in any Rural Development office). For migrant farmworkers living in seasonal housing the actual dollars earned from farm labor by a domestic farm laborer must equal at least 50 percent of annual limits as shown in Exhibit J of this subpart.

(B) An alternate measure for determining substantial portion of income when actual earnings are not available may be the duration of time a farm laborer worked on a farm as a domestic farmworker during the preceding 12 months. In order to be considered as substantial the farm laborer must have worked at least 110 whole days in farm work. For purposes of this section one whole day is the equivalent of at least 7 hours. When using a period of more than one year, a yearly average amounting to at least 110 days per year must be computed.

(ii) For housing owned by a farmer, family-farm partnership, family-farm corporation, or an association of farmers which was initially provided on a nonrental basis, substantial portion of income is earned when housing is provided by the owner as part of employment compensation for farm labor. (Revised 01-19-93, SPECIAL PN.)

(2) When a natural disaster has occurred, such as a drought, flood, freeze, etc., figures for the last full year of work will be used to determine substantial portion of income under paragraph (1) of this definition.

(3) The tenant who qualifies as a domestic farm laborer in order to reside or continue to reside in the project with a nonrestrictive farm labor clause in mortgage covenants (see § 1944.176(d)(5) of this subpart) must not have adjusted income which exceeds the moderate income limit as stated in Appendix 9 of HB-1-3550 (which is available in any Rural Development office), for the appropriate household size and appropriate geographical area. Tenants residing in housing which was initially

Substantial portion of income. (3) (Con.)

rent free without the nonrestrictive labor clause in the mortgage covenants (i.e. on-farm site projects where the tenant must work for the farm owner) need not certify income (see paragraph (1)(ii) of this definition), and need not be low or moderate income tenants in order to be eligible to occupy a unit. (Revised 01-23-03, SPECIAL PN.)

(i) Income for purposes of this subpart is defined under the terms annual income (describing inclusive and exempted income), adjusted annual income and adjusted monthly income in paragraph II of Exhibit B of Subpart C of Part 1930 of this chapter. (Revised 08-30-93, SPECIAL PN.)

(ii) For servicing purposes, an exception to the moderate income rule is permitted in accordance with paragraph VI of Exhibit B of Subpart C of Part 1930 of this chapter.

Technical assistance. The provision of services by an entity with farm labor housing and real estate development capacity to an applicant entity who lacks such a capacity. Such assistance may include, but is not limited to: (Added 12-02-02, SPECIAL PN.)

- (1) Performing outreach efforts to inform and recruit potential LH applicants.
- (2) Conducting site searches, negotiating and executing property acquisitions, and resolving planning and zoning issues.
- (3) Preparing market analyses, feasibility analyses, and financial proformas.
- (4) Packaging LH loan and grant applications, as well as applications from other funding sources.
- (5) Estimating construction costs and providing oversight during periods of construction.

Variety of interests. To meet the representation of a variety of interests in a broad-based nonprofit organization, members should be actively affiliated with or participating in civic, business, agricultural, or service organizations in their community; members' previous and current occupations may be considered in this determination. Individual members may represent multiple interests as well.

§ 1944.154 Priorities for tenants' occupancy. (Added 07-22-92, SPECIAL PN.)

(a) Tenant occupancy in labor housing is based on eligible farm labor and is prioritized in the following order:

(1) First priority is to be given to eligible farm laborer households based upon percent of total earnings from farm labor in the following ranked categories: 71 to 100 percent; 51 to 70 percent; 26 to 50 percent; and less than 25 percent.

(i) For LH units without Rental Assistance, occupancy priority within each ranking category is according to the household's income, very-low, low-, then moderate.

(ii) For LH units with Rental Assistance, tenant occupancy priority is given to all eligible very-low income farm worker households by ranked category, then to low income farm worker households by ranked category. Moderate income farm workers may be served without Rental Assistance, when there are no very-low or low-income eligible farm workers on the waiting lists, again by ranked category.

(2) Second priority is given to retired or disabled farm laborer households who were in the local farm market area at the time of retirement or becoming disabled. Occupancy priority will be by paragraph (a)(1)(i) or (ii) of this section without the application of the ranking category.

(3) Third priority is to be given to other retired or disabled farm laborer households. Occupancy priority will be by paragraph (a) (1) (i) or (ii) of this section without the application of the ranking category.

(b) When there is a diminished need for housing by persons or families in the above categories, such units may be made available to persons or families eligible for occupancy under the Section 515, Rural Rental Housing program. Section 515 tenants may occupy the labor housing until such time the units are again needed by persons or families eligible under paragraph (a) of this section. As the basis for the Agency's approval or disapproval of a borrower's determination of diminished need, the borrower must submit to the Agency a current analysis of need and demand, identical to the market survey required of applicants in Exhibit A-1 of this subpart. The borrower's determination and the State Director's recommendation should be forwarded to the National Office for concurrence.

(c) For additional guidance on occupancy and rental assistance, refer to RD Instruction 1930-C, Exhibit B VI, Renting Procedures, and Exhibit E, Rental Assistance Program. The Agency is required by statute to provide affordable housing to eligible farm workers and their families as a first program priority and to provide Rental Assistance as a second program priority. If it appears there is conflict in Agency Instructions concerning the housing of an eligible Domestic or Migrant Farm Worker, document the problem and consult the District Director. If necessary, the problem may be referred to the State Office and/or the National Office for resolution.

(d) Tenant Occupancy records. (Added 01-19-93, SPECIAL PN.)

(1) For tenants of housing owned by farm borrowers, rent is not charged and employment related occupancy restrictions do apply (reference § 1944.164(h) for additional guidance.) The borrower shall have each tenant execute a verification of occupancy and farm labor on Exhibit K-1, Verification of Domestic Farm Labor and Occupancy in Rent Free Housing, on initial occupancy of the dwelling unit. The borrower shall retain the properly completed forms and make them available for RHS Inspection only for the current tenant(s) and to supplement the annual reporting requirements required in the loan agreement. If the housing is not occupied on a year round basis, then the report should list the names of the migrants or seasonal farmworkers attached to Exhibit K-1.

(2) For tenants of housing when rent is charged and employment restrictions do not apply (reference § 1944.164(h) for additional guidance). The borrower shall be guided by the procedures referenced in paragraph (c) of this section.

(e) Ineligible occupants. (Added 01-19-93, SPECIAL PN.)

(1) For housing owned by farm borrowers. Ineligible occupants are immediate relatives of the borrower(s) and anyone who is not employed in domestic farm labor, as defined in § 1944.153 of this subpart. Normally, occupancy of labor housing owned by farm borrowers is restricted to employees of the farmer or is governed by an employment contract with the farmer. Occupancy of housing owned by farm borrowers, regardless of the site (on-farm or in town), may be occupied by ineligibles with the permission of the State Director.

(2) For housing owned by organizations. Ineligible occupants are described in Exhibit B of Subpart C of Part 1930 of this chapter.

§ 1944.155 Responsibility for LH processing and servicing.
(Revised 01-19-93, SPECIAL PN.)

All LH loan and/or LH grant application processing and servicing is the responsibility of the District Director with redelegation authority for on-farm labor housing loans.

§ 1944.156 General loan/grant processing requirements. (Added 12-23-96, SPECIAL PN.)

(a) All applicants will be informed of a decision regarding their request for assistance within 45 days of receipt of a complete request. If RHS cannot provide an eligibility determination within 45 days, the applicant will be notified within the 45-day timeframe when the determination will be made.

(b) Unlawful determination.

(1) The federal Equal Credit Opportunity Action (ECOA) prohibits creditors from discriminating against credit applicants based on race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), or because all or part of the applicant's income derives from any public assistance program. Department of Agriculture regulations provide that no agency, officer, or employee of the United States Department of Agriculture shall exclude from participation in, deny the benefits of, or subject to discrimination any person based on race, color, religion, sex, age, handicap, or national origin under any program or activity administered by such agency, officer, or employee. The Fair Housing Act prohibits discrimination in real estate-related transactions, or in the terms and conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin. If an applicant or borrower believes he or she has been discriminated against for any of these reasons, that person can write the Secretary of Agriculture, Washington, D.C. 20250. Applicants also cannot be denied a loan because the applicant has in good faith exercised his or her rights under the Consumer Credit Protection Act. If an applicant believes he or she was denied a loan for this reason, the applicant should contact the Federal Trade Commission, Washington, D.C. 20580.

(2) The ECOA paragraph set forth in paragraph (b)(1) of this section will be included in all written notifications of adverse actions.

(c) Form RD 410-9, "Statement Required by the Privacy Act," is required by all applicants who are individuals. A loan request is not considered complete without this form.

(d) Form RD 410-7, "Notification to Applicant on Use of Financial Information from Financial Institution," will be provided to all applicants within 3 business days of receipt of a complete request for assistance.

(e) All applicants must provide their taxpayer identification number. The taxpayer identification number for individuals who are not businesses is their Social Security Number.

(f) For all loans, grants, and credit sales to be secured by a first mortgage involving the purchase of an existing 1 to 4 family unit residential structure, or purchase of a building site and construction of 1 to 4 residential units, the booklet entitled "Settlement Costs," will be given or sent to the applicant within 3 business days after receipt of a complete request for assistance.

(g) A request for assistance may be withdrawn upon written request of an applicant at any time. RHS may return a request for assistance for failure of an applicant to provide necessary information to process same provided the applicant fails to respond to a written request which provides a reasonable time period to submit the information. The letter informing the applicant of the necessary information will contain the following, or essentially similar, statement: "If you fail to provide RHS with this information within ___ days from the date of this letter, we will assume this lack of response on your part to be an indication that you wish to have your request for assistance returned without further consideration. Continued processing will require a new application." This letter should be sent by certified mail, return receipt requested. If the applicant fails to respond within the specified timeframe, the applicant will be sent another letter indicating that their request for assistance has been returned without further consideration. This letter will contain applicable review rights to the National Appeals Division (NAD) and ECOA statement.

(h) If a request for assistance is denied because of information obtained from a credit report, the applicant will be advised of the reason for rejection, and:

- (1) The specific information in the credit report that led to the rejection (e.g., delinquent obligations, tax liens, or judgments).
- (2) The name and address of the credit reporting agency.

§ 1944.156(h) (Con.)

(3) A statement advising that a copy of the credit report may be obtained from RHS if requested by the applicant; however, any dispute regarding the accuracy of the information in the credit report must be resolved between the applicant and the credit reporting agency.

§ 1944.157 Eligibility requirements.

(a) Eligibility of applicant for an LH loan. To be eligible for an LH loan the applicant must:

(1) Be a farmowner, family farm partnership, family farm corporation, or an association of farmers whose farming operations demonstrate a need for farm labor housing, or an organization, as these terms are defined in § 1944.153 of this subpart, which will own the housing and operate it on a nonprofit basis; or a nonprofit limited partnership in which the general partner is a nonprofit entity. (Revised 06-07-99, SPECIAL PN.)

(2) Except for State and local public agencies, or a political subdivision thereof, be unable to provide the necessary housing from their own resources and be unable to obtain the necessary credit from any other source upon terms and conditions they could reasonably be expected to fulfill. If an association of farmers or family farm corporation or partnership, the individual members, individually and jointly, must be unable to provide the necessary housing by utilizing their own resources and be unable, by pledging their personal liability, to obtain other credit that would enable them to provide housing for farm workers at rental rates they can afford to pay. The individual resources of family farm corporation or partnership members with less than a ten percent corporate or partnership interest need not be considered.

The State Director may make an exception to the requirement that an individual farmowner, family farm corporation, family farm partnership or an association be unable to obtain the necessary credit elsewhere when all of the following conditions exist:

(i) There is a need in the area for housing for domestic farmworkers who are migrants and the applicant will provide such housing;

(ii) There are no qualified State or political subdivisions or public or private nonprofit organizations currently available or likely to become available within a reasonable period of time that are willing and able to provide the housing; and

(iii) The interest rate for such loans is in accordance with Subpart A of Part 1810 of this Chapter (RD Instruction 440.1).

(3) Provide from its own resources the borrower contribution required by § 1944.160 of this subpart, and have sufficient initial operating capital to pay costs such as property and liability insurance premiums, fidelity bond premiums if required, utility hookup deposits, maintenance equipment, movable furnishings and equipment, printing lease forms, and other initial expenses. LH loans made to nonprofit organizations and to State or local public agencies or political subdivisions thereof may include up to 2 percent of the development cost for initial operating expenses. (Revised 06-07-99, SPECIAL PN.)

(4) After the loan is made, have income sufficient to pay operating expenses, make necessary capital replacements, make the payments on the loan and other authorized debts, and accumulate reasonable reserves as required.

(5) Possess the legal and actual capacity, character, ability, and experience to carry out the undertakings and obligations required for the loan, including the obligation to maintain and operate the housing and related facilities for the purpose for which the loan is made. Organizations operating in more than one local area will be required to indicate their ability to provide local management and supervision of the day-to-day operation of the housing project.

(6) Intend to use the housing for labor to be used in the farming operations of the applicant or farming operations of its members if an individual farmowner, family farm corporation or partnership, or an association of farmers.

(7) Own the housing and related land or become the owner when the loan is closed. An owner may include, in addition to the

owner of full marketable title, a lessee of a tract of land owned by a State, political subdivision, public body or public agency, or Indian tribal lands which are not available for purchase. It may also include a lease of land when the State Director determines that long-term leasing of sites by nonpublic bodies is a well established practice and such leaseholds are fully marketable in the area, provided:

- (i) The applicant is unable to obtain fee title to the property.
- (ii) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security.
- (iii) The amount of the labor housing (LH) loan against the property will not exceed the maximum security value or maximum debt limit (MDL) determined in accordance with Subpart E of Part 1922 or Subparts B and C of Part 1922 of this chapter, as appropriate. (Revised 08-25-93, PN 211.)
- (iv) The unexpired term of the lease on the date of loan approval is at least 25 percent longer than the repayment period of the loan and rental charged for the lease should not exceed the rate charged for similar leases in the area.
- (v) The borrower's interest may not be subject to summary foreclosure or cancellation.
- (vi) The lease must:
 - (A) Not restrict the right to foreclose the LH mortgage or to transfer the lease.
 - (B) Permit RHS to bid at foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.
 - (C) Permit RHS 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 to sublet the property and to sell the leasehold for cash or credit.
 - (D) Permit the borrower, in the event of default or inability to continue with the lease and the LH loan, to transfer the leasehold, subject to the LH mortgage, to a transferee with assumption of the LH debt and grant obligation.

(vii) The advice of the Office of the General Counsel (OGC) will be obtained as to legal sufficiency of the lease. When the State Director is uncertain as to whether a loan can be made on a leasehold, the request should be submitted to the National Office for evaluation and instructions.

(8) If it is a private broad-based nonprofit organization or a nonprofit organization of farmworkers, meet the following additional requirements:

(i) In the event of its dissolution, be legally bound to transfer its net assets to a nonprofit organization of a similar type or a public body for use for domestic farm labor housing or other public purposes if the need for farm labor housing no longer exists. (Renumbered 9-30-83, SPECIAL PN.)

(ii) Responsibility for management of the housing must be vested in the applicant's board of directors.
(Renumbered 9-30-83, SPECIAL PN.)

(A) A broad-based nonprofit organization must be governed by a board of directors of not less than five members who are experienced in such fields as real estate management, finance, or related businesses and who will not be users of the farm workers housed in the project.
(Renumbered 9-30-83, SPECIAL PN.)

(B) A nonprofit organization of farmworkers must have representation on the board from the area where the housing is located. Directors may be elected who are not members of the organization but are experienced in such fields as real estate management, finance, or related businesses provided member directors represent a majority of the board. (Renumbered 9-30-83, SPECIAL PN.)

(iii) Be prohibited from requiring or preventing employment on any particular farm or farms as a condition of occupancy.
(Renumbered 9-30-83, SPECIAL PN.)

(iv) Except for an organization of farmworkers, be certified as exempt from Federal income taxation. (Renumbered 9-30-83, SPECIAL PN.)

(9) Be an individual farmowner who is a citizen of the United States, the Commonwealth of Puerto Rico, the virgin Islands, the territories and possessions of the United States, or the trust territory of the Pacific Islands or residents in one of the foregoing areas after being legally admitted for permanent

residence or on indefinite parole. If the applicant is an organization, other than a State or political subdivision, the majority of the members and controlling interests must be individuals who meet the citizenship requirements for individual farmowners as stated above.

(b) Eligibility of applicant for an LH grant. To be eligible for an LH grant the applicant must meet the applicable requirements in § 1944.157 (a) and:

(1) Be an organization, as defined in § 1944.153 with an assured life over a period of years sufficient to carry out the purpose of providing low-rent housing for domestic farm labor. This should not be less than the anticipated useful life of the project as suitable housing for domestic farm labor, assuming proper maintenance and repair of the property. Ordinarily, this should not be less than 50 years. (Revised 07-22-91, SPECIAL PN.)

(2) When the grant is closed, be the owner (as defined in this Subpart) of the housing and related facilities, including the site.

(3) Be unable to provide the necessary housing from its own resources, including any power to levy taxes, assessments, or charges, and be unable to obtain the necessary credit through an LH loan or from other sources upon terms and conditions the applicant could reasonably be expected to fulfill.

(4) Possess the legal and actual capacity, ability, and experience to incur and carry out the undertakings and obligations required, including the obligations to maintain and operate the housing and related facilities for the purpose for which the grant is made.

(5) Legally obligate itself not to divert income from the housing to any other business, enterprise, or purpose.

(c) Eligibility of applicant for an LH technical assistance grant. To be eligible for an LH technical assistance grant, the applicant must: (Added 12-02-02, SPECIAL PN.)

(1) Be a private or public nonprofit agency;

(2) Have the knowledge, ability, technical expertise, or practical experience necessary to develop and package loan and grant applications for LH under the section 514 and 516 programs; and,

§ 1944.157(c) (Con.)

(3) Possess the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a timely and cost efficient manner. The grantee may arrange for other nonprofit agencies to provide services on its behalf; however, RHS will expect the grantee to provide the overall management necessary to ensure the objectives of the grant are met. Nonprofit agencies acting on behalf of the grantee must also meet the above stated eligibility requirements.

(d) Authorized representative of applicant. RHS will deal only with the applicant or its bona fide representative and technical advisers. The authorized representative of the applicant must be a person who has no pecuniary interest in the award of the architectural or construction contracts, management contracts, the purchase of equipment, or the purchase of land for the housing site. (Renumbered 12-02-02, SPECIAL PN.)

§1944.158 Loan and grant purposes.

LH loans and grants may be made to qualified applicants to:

(a) Build, buy, improve or repair housing as defined in §1944.153 (b).

(b) Purchase and improve the necessary land on which the housing will be located.

(1) The cost of land purchased with loan or grant funds may not exceed its present market value in its present condition. Present market value will be determined by a current appraisal in accordance with Subpart B of Part 1922 of this Chapter.

(2) Loan or grant funds will not be used to buy land from a member of an applicant-organization, or from another organization in which any member of the applicant-organization has an interest, without prior approval of the State Director. In granting this approval the State Director should be sure that the purchase price does not exceed the present market value.

(3) Loan or grant funds may not be used to acquire land in excess of that needed for the housing, including related facilities, except when the applicant cannot acquire only the needed land at a fair price, can justify the acquisition, agrees to sell the excess land as soon as practicable and apply proceeds on the loan, and has legal authority to acquire and administer the land.

(c) Develop and install water supply, sewage disposal, streets, storm water retention facilities or areas, and heat and light systems necessary in connection with the housing. If the facilities are located offsite, the following requirements must be met:

(1) The applicant will hold the title to the facility or have a legally assured adequate right to use of the facility for at least the life of the loan or grant and such title or right can be transferred to any subsequent owner of the site.

(2) The facilities are provided for the exclusive use of the LH project or funds are limited to the prorated part of the total cost of the facility according to the use and benefit to the project. The applicant will agree in writing to the application of extra payments on the LH loan of any subsequent collection by the applicant from other users or beneficiaries of the facility.

(3) Adequate security can be obtained with or without a mortgage based on the offsite facilities.

(d) Construct other related facilities in connection with the housing such as:

- (1) Maintenance workshop and storage facilities.
- (2) Recreation center including lounge if the project is large enough to justify such a facility.
- (3) Central cooking and dining facilities when the project is large enough to justify such services.
- (4) Small infirmary for emergency care only when justified.
- (5) Laundry room and equipment, including clotheslines, if not provided in the individual units.
- (6) Appropriate outdoor recreational facilities and other facilities to meet essential needs.
- (7) Child day care facilities when needed and feasible.
- (8) Trash retention areas if necessary.
- (9) Outdoor lighting in pedestrian areas where use is anticipated after sunset.

(e) Construct office and living quarters for the resident manager and other operating personnel if needed and advantageous to the project and the Government.

(f) Purchase and install ranges, refrigerators, drapes, drapery rods, clothes washers, and clothes dryers. If individual washer and dryer hookups are provided, clothes washers and clothes dryers may be installed in individual rental units only if the inclusion of such items in individual units is needed and is customary in the area for the type of housing involved and is consistent with the requirement that the construction be undertaken in an economical manner and not constitute elaborate or extravagant items. Otherwise, the clothes washers and clothes dryers must be installed in a central laundry room. The number of washers and dryers must be adequate to serve the tenant needs. Whenever practical, this equipment should be attached to the real property in a manner to prevent easy removal.

(g) Purchase and install essential equipment which upon installation becomes a part of the real estate.

§ 1944.158 (Con.)

(h) Provide landscaping, foundation planting, seeding or sodding of lawns, and necessary facilities related to buildings such as walks, yards, fences, parking areas, and driveways.

(i) Provide loan/grant funds to enable a nonprofit group or public body to be reimbursed for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist the nonprofit applicant entity in the development and packaging of its loan/grant docket and project. (Revised 02-21-95, SPECIAL PN.)

(1) Loan and grant funds may also be used to reimburse any appropriate and necessary legal, architectural, engineering, technical, and professional fees.

(2) Costs incurred by the nonprofit applicant entity for development and packaging of its own loan/grant docket and project may also be reimbursed. Any costs incurred by the entity for its own formation and incorporation are not reimbursable.

(3) The amount to be reimbursed for developing and packaging the loan/grant docket and project are limited by the total development cost (excluding initial operating and capital expenses). Reimbursed costs may range from 2 to 4 percent of total development costs and should reflect costs that are reasonable and typical for the area. In no case will the Agency reimburse in excess of 4 percent.

(4) The packaging costs are not required to be considered a part of the security value of the project.

(5) Related project costs as listed in § 1944.169 of this subpart are not included as a part of the costs for development and packaging of the loan/grant docket and project.

(j) Pay interest which will accrue during the estimated construction period if interim financing is used or if the loan will be closed using multiple advances on daily interest accrual (DIAS) with annual installment and deferred principal. In the case of multiple advances when the loan is closed on a predetermined amortization schedule system (PASS) or on DIAS with monthly installments, loan funds will not be used for construction interest. Accrued interest during the construction period will be capitalized when construction is substantially complete and the project is ready for full operation. (Revised 05-01-85, SPECIAL PN.)

(k) Pay normal charges necessary to obtain interim financing.

(l) Pay initial operating expenses up to 2 percent of the development cost for any type applicant except an individual farmowner, family farm corporation or partnership, or an association of farmers.

(m) Pay for related costs incurred in compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and in accordance with § 1944.164(q) of this subpart.

(n) To make advances in accordance with § 1965.217(d) of Subpart E of Part 1965 of this chapter to nonprofit corporations and public agencies to avert prepayment of the loan. (Added 08-20-93, SPECIAL PN.)

(o) Encourage the development of farm labor housing. RHS may award "technical assistance" grants to eligible private and public nonprofit agencies. These grant recipients will, in turn, assist other organizations obtain loans and grants for the construction of farm labor housing. Technical assistance services may not be funded under both this paragraph and paragraph (i) of this section. In addition, technical assistance may not be funded by RHS when an identity of interest exists between the technical assistance provider and the loan or grant applicant. Requests for Proposals (RFP) may be periodically published in the Federal Register by RHS inviting eligible nonprofit organizations to submit LH technical assistance grant proposals. RFPs will contain the amount of available funding, the method of allocating or distributing funds, where to submit proposals, proposal requirements, the deadline for the submission of proposals, the selection criteria, and the grant agreement to be entered into between RHS and the grantee. (Added 12-02-02, SPECIAL PN.)

§ 1944.159 Rates and terms.

(a) Amortization period. Each loan will be scheduled for payment in installments within a period, not to exceed 33 years, as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security.

(b) Interest rate. Upon request of the applicant, the interest rate charged by the Agency will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in Exhibit B of RD Instruction 440.1 (available in any Agency Office). (Revised 02-25-86, SPECIAL PN.)

§ 1944.159 (Con.)

(c) Amortization schedule. LH loans, including subsequent loans closed after May 1, 1985, must be on PASS, if the project has year-round occupancy and monthly income. LH loans requiring annual installments due to seasonal income may be closed on the daily interest accrual system (DIAS) with monthly or annual payments. All loans on any project receiving a subsequent loan on or after May 1, 1985, must be converted to PASS if the subsequent loan is on PASS. Accounting and processing payments for PASS loans will be handled under Subpart K of Part 1951 of this chapter. (Added 05-01-85, SPECIAL PN.)

§ 1944.160 Off-farm loan limits. (Added 06-07-99, SPECIAL PN.)

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

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

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

§§ 1944.161- 1944.162 [Reserved]

§ 1944.163 Conditions under which an LH grant may be made:

A grant may be made to an eligible applicant only when all of the following requirements can be met:

(a) The applicant will contribute at least one-tenth of the total development cost, obtained from its own resources, including any power to levy taxes, assessments, or charges, with funds from other sources, or with an LH loan. The applicant's contribution must be available at the time of grant closing. If a LH loan is needed, the applicant will file an application for a combination loan and grant at the same time.

(b) The housing and related facilities will fulfill a pressing need in the area in which the housing is or will be located and there is reasonable doubt that such housing can be provided without the grant.

(1) The applicant will furnish factual evidence of fulfilling a pressing need. This need will be documented in accordance with Exhibits A-1 or A-2 of this Subpart, as applicable, and using Exhibit A-4 as a guidance if appropriate.

(2) When appropriate, the District Director may check with sources such as the State Department of Labor, Bureau of Employment Security, and other reliable sources to verify the information submitted.

(3) If, after evaluating the information furnished by the Applicant and additional information that may be provided, the District Director determines that the housing will fulfill a pressing need and that a reasonable doubt exists that the housing can be provided without the grant, the District Director will prepare a narrative statement to support these conclusions.

(c) The housing will be constructed in accordance with Exhibit A-3 of this Subpart.

(d) The housing will be constructed in an economical manner and will not be of elaborate or extravagant design or material.

(e) The housing must be durable and suitable for year-round use unless the need for such housing is seasonal and year-round occupancy is not practical and will not be needed. Construction of seasonal farm labor housing will be permitted upon a finding of persistent need for migrant farmworker housing in the area and such housing will be used solely by migrant farmworkers while they are away from their residence. Seasonal farm labor housing that will be occupied for six months or less per year by migrant farmworkers while they are away from their residence, will be constructed in accordance with Exhibit I to Subpart A of Part 1924. Farm labor housing that is to be occupied less than year-round but more than six months shall be in substantial conformance with and be easily convertible to the applicable development standard as required by § 1924.5(d)(1) of Subpart A of Part 1924 of this chapter. Such projects that are to be occupied less than year round but more than six months may be approved after review of the savings in construction costs, the plan for conversion to full compliance with development standards and the long term need for such housing. (Revised 05-12-87, SPECIAL PN.)

§ 1944.163 (Con.)

(f) Housing will be constructed and designed with the consideration given to selecting the most economic, energy efficient heating (and cooling, if applicable) systems including, but not limited to, insulation in excess of the requirements of Exhibit D of Subpart A of Part 1924, of this Chapter (RD Instruction 1924-A, Exhibit D); active/passive solar design; building orientation; and sun control measures.

§ 1944.164 Limitations and conditions.

(a) Limitations on use of loan and grant funds. Among the purposes for which loan and grant funds will not be used are the following:

- (1) Providing housing for the members of the immediate family of the applicant when the applicant is an individual farmowner, family farm corporation, or partnership, or an association of farmers. (Immediate family in this instance includes mother, father, brothers, sisters, sons and daughters of applicant(s) and spouse.)
- (2) Housing, related facilities, or household furnishings which are elaborate or extravagant in design or material.
- (3) Refinancing debts of the applicant.
- (4) Movable-type furnishings or equipment except household furnishings as defined in § 1944.153(c).
- (5) Payment of any fees, charges, or commissions to any broker, negotiator, or other person for the referral of a prospective applicant or solicitation of the loan.
- (6) Payment of any fee, salary, commission, profit, or compensation to an applicant, or any officer, director, trustee, stockholder, member, or agent of the applicant, except as provided in § 1944.158(i).

(b) Maximum amount of grant. The amount of any grant may not exceed the lesser of: (Revised 06-07-99, SPECIAL PN.)

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

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

(c) Advance of grant funds. The times for requesting Treasury Checks representing LH grant funds and depositing such checks in the applicant's supervised bank account will be determined in accordance with § 1944.175. When other funds to help finance the labor housing are being supplied by the applicant from its own resources or from a loan, such other funds will be used before a grant check is requested from the Treasury or deposited in or disbursed from the supervised bank account, as appropriate to comply with § 1944.175.

(d) Obligations incurred before loan or grant closing. When the applicant files an application for a loan or grant, the Loan Official will advise the applicant that construction must not be started and obligations for work materials or land must not be incurred or made before the loan or grant is closed, and that it is the policy of RHS not to permit loan or grant funds to be used to pay such obligations or reimburse the applicant for such payments. If, nevertheless, the applicant incurs expenses or makes payments for such purposes before the loan or grant is closed, the State Director may authorize the use of loan or grant funds to pay such expenses or reimburse the applicant only when the State Director finds that all the following conditions exist:
(Revised 06-07-99, SPECIAL PN.)

(1) The expenses were incurred: (Revised 06-07-99, SPECIAL PN.)

(i) After the applicant filed a written application for a loan with RHS; or

(ii) Before the date of application as part of a predevelopment loan specifically intended as interim financing from a public agency or nonprofit organization and prior concurrence of the National Office is obtained; or

(iii) Before the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and prior concurrence of the National Office is obtained.

§ 1944.164(d) (Con.)

(2) The applicant is unable to pay such expenses from its own resources or from credit from other sources, and failure to authorize the use of loan or grant funds to pay such expenses or reimburse the applicant would impair the applicant's financial position.

(3) The expenses were incurred or payments were made for authorized loan and grant purposes.

(4) Contracts, materials, construction and any land purchase meet Rural Development standards.

(5) Payment of the expenses will remove any liens which have attached and any basis for liens that may attach to the property on account of such expenses.

(e) Grant resolution. A resolution will be adopted by the applicant's Board of Directors and a certified copy included in the grant docket before a grant is approved.

(1) For a grant accompanied by an LH loan, the form of resolution attached as Exhibit E to this Subpart will be used with any necessary changes required or approved by OGC. For a grant not accompanied by an LH loan, the form of resolution will be provided or approved by the National Office, following Exhibit E as closely as feasible.

(2) The form of resolution to be adopted by the applicant will contain policy and procedural requirements which should be read and be fully understood by the applicant's Board of Directors and officers. Included in the resolution will be provisions authorizing Rural Development to prescribe requirements regarding the operation of the housing and related facilities and other provisions including the following:

(i) The rentals charged domestic farm labor will not exceed such amounts as are approved by Rural Development after considering the income of the occupants and the necessary costs of operation, debt service, and adequate maintenance of the housing.

(ii) The housing will be maintained at all times in a safe and sanitary condition in accordance with standards prescribed by State and local law, and as required by Rural Development.

(iii) In granting occupancy of the housing an absolute priority will be given at all times to domestic farm labor.

(3) The resolution will also authorize the appropriate officers of the applicant to execute a "Labor Housing Grant Agreement," in the format of Exhibit F of this Subpart. If changes are required in Exhibit F, they must be approved by OGC.

(f) Conditional obligations to repay grants. The obligations incurred by the applicant as a condition of the grant will be in accordance with Exhibit F of this Subpart.

(g) Loan resolution or loan agreement.

(1) An organization will have its Board of Directors adopt a loan resolution and furnish a certified copy for the loan docket before loan approval. The resolution will be substantially in the format of Exhibit C of this Subpart. Any necessary changes must be approved by OGC.

(2) All other loan applicants will execute a loan agreement in substantially the same format as Exhibit D of this subpart (for rental units) or Exhibit K of this subpart (for nonrental units). Any necessary changes must be approved by OGC. (Revised 01-19-93, SPECIAL PN.)

(h) Restrictions on conditions of occupancy. No organizational borrower, other than an association of farmers or family farm corporation or partnership, will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing. Tenant selection should be in accordance with Exhibit B of Subpart C of Part 1930 of this chapter. No borrower will discriminate, or permit discrimination by any agent, lessee, or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, sex, age, handicap, marital or familial status, or National origin. Each borrower will comply with Subpart E of Part 1901 of this Chapter and prepare and submit Form HUD 935.2, "Affirmative Fair Housing Marketing Plan," which is available in any Rural Development office. (Revised 02-22-90, SPECIAL PN.)

(i) Supervisory assistance. Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government. The provision of Subpart C of Part 1930 of this Chapter (RD Instruction 1930-C) will be followed.

§ 1944.164 (Con.)

(j) Location of housing.

(1) Multifamily type housing designed for year-round occupancy will meet the location requirements as explained in Exhibit A-3 of this Subpart.

(2) Single family type housing designed for year-round occupancy, as explained in Exhibit A-3 of this subpart, will be located:

(i) On plotted lots within a subdivision which complies with all local requirements and is developed in accordance with subpart C of part 1924 of this chapter, or
(Revised 6-22-87, SPECIAL PN.)

(ii) On scattered sites located to meet the location requirements of 7 CFR part 3550 and subpart C of part 1924 of this chapter. (Revised 01-23-03, SPECIAL PN.)

(3) Housing designed for seasonal occupancy, whether single family or multifamily type housing may be located on the farm as long as it is not located near farm service buildings and will be situated to allow for possible conversion to full-year occupancy should the need for migrant farmworkers in the area change.

(k) Intergovernmental review. Intergovernmental consultation should be carried out in accordance with 7 CFR part 3015 subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities" for 25 units or more. See RD Instruction 1940-J, available in any Rural Development Office. (Revised 12-23-83, SPECIAL PN.)

(l) Guidelines for preparing environmental assessment and environmental impact statements. All projects shall comply with Subpart G of Part 1940 of this chapter. (Revised 1-30-84, SPECIAL PN.)

(m) Guidelines for projects affecting floodplains. The provisions of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 apply to the agencies authorities permitting financing of LH now located in or to be located in special flood or mudslide prone areas as designated by the Federal Emergency Management Administration. Subpart B of Part 1806 of this chapter (RD Instruction 426.2) applies. It should be emphasized, however,

that Rural Development's response to floodplain development is not limited to the Flood Insurance Program. Pursuant to Executive Order 11988, "Floodplain Management," Rural Development shall not fund any housing projects which impact a floodplain unless there is no practicable alternative siting of the project. Applicants, therefore, should concentrate in the early planning stages of this proposal to locating sites which do not impact floodplains. See Subpart G of Part 1940 of this chapter for applicable environmental requirements. (Revised 6-22-87, SPECIAL PN.)

(n) LH loans to American Indians secured by trust or restricted land. Loans to individuals will be secured by a mortgage on the leasehold interest held by the applicant. The leasehold interest must meet the conditions of 7 CFR part 3550. Loans to tribes or tribal corporations will be secured in accordance with §§ 1823.409 and 1823.414(a) of Subpart N of Part 1823 of this chapter (FSA transferred Instruction 442.11, paragraphs IX and XIV A). (Revised 01-23-03, SPECIAL PN.)

(o) Refinancing LH loans. Each borrower must agree to refinance the unpaid balance of the LH loan at the request of Rural Development whenever it appears to Rural Development that the borrower is able to obtain a loan from responsible cooperative or private credit sources at rates and terms which Rural Development considers reasonable, and still rent the units to eligible occupants at rental rates within their payment ability. The refinancing of an LH loan must comply with the restrictions indicated in § 1944.176(d)(2) of this subpart. The provisions of Subpart E of Part 1965 of this chapter must be followed before the State Director or other designated official can approve or accept prepayment or refinancing of the Rural Development loan. (Revised 08-20-93, SPECIAL PN.)

(p) Restrictive-use provisions for LH loans. The acceptance of a farm labor housing loan will make the borrower subject to the restrictive-use provisions contained in Exhibit A-1 of Subpart E of Part 1965 of this chapter. (Revised 08-20-93, SPECIAL PN.)

(q) Uniform Relocation Assistance and Real Property Acquisition Act of 1970. Compliance with the requirements of this Act applies to public bodies and agencies which have the power of eminent domain and/or condemnation. It will be the responsibility of the applicant to provide assistance required for relocation of displaced persons from the site on which a LH project will be located. Rural Development loan funds may be increased to cover costs incurred in the relocation of displaced persons from the site over and above the appraised value of the property. Until national RD Instructions are published the Department regulations found at Part 21 of this Chapter should be followed and the National Office should be consulted for guidance in developing an LH loan for a project affected by this Act. However, the following should be considered:

§ 1944.164(q) (Con.)

(1) Generally, sites which will involve relocation of displaced persons should not be considered if alternatives sites are available.

(2) For the purpose of determining the appraisal value of the site to be acquired in respect to LH projects which involve relocation of displaced persons, the designated Rural Development multiple family housing appraiser or such other agency designated appraiser shall be used.

§§ 1944.165 - 1944.167 [Reserved]

§ 1944.168 Security requirements.

(a) General. Each loan will be secured to adequately protect the financial interest of the Government in the loan during its repayment period. The amount of the loan may not exceed the value of the security for the loan as determined by an appraisal, less the unpaid principal balance, plus past due interest of any prior liens that will or will likely exist against the security after the loan is closed. If the State Director determines it necessary or advisable to encumber household furnishings purchased with loan funds, the State Director will, with the advice of OGC, issue appropriate instructions setting forth the manner in which household furnishings will be secured.

(b) Loan to an organization or an association of farmers.

(1) A loan to an organization or an association of farmers which can give a real estate mortgage will be secured by a mortgage on good and marketable title to the real estate including the housing, the related facilities, and the site, subject to any exceptions that may be waived as provided in Subpart B of Part 1927 of this Chapter. (Revised 03-31-92, SPECIAL PN.)

(2) If a first mortgage cannot be obtained, a junior mortgage may be taken provided:

(i) The prior mortgage as affected by the State law does not contain such provisions for future advances, payment schedules, forfeiture or cancellation, foreclosure without adequate notice to junior lienholders, or other matters which may jeopardize Rural Development's security position or the borrower's ability to pay the loan; or

(ii) Such provisions are satisfactorily limited, modified, waived, or subordinated.

(3) If it is impossible for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible.

(4) In individual cases, additional security may be advisable to ensure that the loan objectives will be carried out. For example, to provide for more effective management and operation, one or more of the following types of security may be required.

(i) A mortgage on other real estate owned by the applicant.

(ii) A pledge, assignment, mortgage, or other security interest in income from the housing.

(iii) A cosigner on the promissory note, letter of credit, endorsements, assessments, user agreements, personal liability agreements, or membership subscription agreements.

(5) As a general policy, personal liability will be required of the members of an association of farmers.

(c) Loan to an individual farmowner or family farm corporation or partnership. For every loan to an individual farmowner or family farm corporation or partnership, a real estate mortgage will be taken on the farm, whenever practicable, in accordance with Subpart B of Part 1927 of this chapter. However, if requested by the applicant, a mortgage may be taken on the units and at least enough land to clearly provide adequate security for the loan as determined by an appraisal. In such cases, the loan must meet the following conditions: (Revised 03-31-92, SPECIAL PN.)

(1) If the tract to be mortgaged is covered by a prior lien which also applies to other land, the tract to be given as security must either:

(i) Be released from the prior lien or subordinated to permit a first lien for the LH loan, or

(ii) Provide adequate security for the entire prior lien debt and the LH loan and comply with 7 CFR part 3550
(Revised 01-23-03, SPECIAL PN).

(2) Personal liability will be required of all stockholders or partners.

§ 1944.169 Technical, legal, and other services.

(a) Appraisals.

(1) An appraisal is required when real estate is taken as security. The appraisal must be made in accordance with the Uniform Standards of Professional Appraisal Practices (available in any Rural Development office). (Revised 06-07-99, SPECIAL PN.)

(2) If the loan includes funds for purchasing household furnishings or equipment which will not become part of the real estate, a narrative type appraisal, identifying the items, will be prepared by the employee preparing the real estate appraisal. The value placed on such furnishings will be based on comparable selling prices in the area.

(b) Architectural and engineering services. Housing and related facilities will be planned and designed to meet the needs of the type of occupants who will likely occupy it. A written contract for architectural or engineering services will be required as outlined in subpart A of part 1924.

(c) Construction and development policies.

(1) Planning and construction. Housing and related facilities will be planned in accordance with subpart A of part 1924 and Exhibit A-3. Construction and development will be performed in accordance with subpart A of part 1924.

(2) Labor standards provisions. Construction financed with the assistance of an LH grant will be subject to the provisions of the Davis-Bacon and other related Acts, which are published in the Department of Labor regulations (29 CFR, parts 1, 3, and 5). (Revised 10-30-96, PN 267.)

(3) Compliance with local codes and regulations. Planning construction, and operation of housing financed with the LH loan or grant will conform with all applicable Federal, State, and local laws, ordinances, codes, and regulations governing such matters as zoning, construction, heating, plumbing, electrical installation, fire prevention, health and safety, and sanitation. If there are no local or State codes and regulations governing these matters, the State Director will issue appropriate guidelines to insure that the facilities meet all RHS requirements.

(4) Land use objectives. Location of projects shall, to the extent practicable, result in the preservation of Important Farmlands and Forestlands, Prime Rangeland and Wetlands. State Directors will assure that RHS actions, investments, and programs on non-Federal lands are consistent with State and local land use plans and programs to the extent practicable. In carrying this out, State Directors will:

(i) Attempt to integrate departmental and State and local land use policies and programs.

(ii) Identify and minimize to the extent practicable adverse environmental, economic, and social effects of RHS projects and programs.

(iii) Provide landholders and other concerned people information about the alternatives to, and the associated environmental, social, and economic implications of proposed actions.

(iv) Refrain from enabling others to irreversibly convert these lands or encroaching or enabling other encroachments on flood plains unless there are no practicable alternatives.

(v) In unusual circumstances when the State Director is unable to make a determination regarding land classification, the State Director will request assistance from the Chief of the Natural Resource Conservation Service in Washington, D.C.
(Revised 10-30-96, PN 267.)

(d) Optioning of land. If a loan or grant includes funds to purchase real estate, an acceptable option to purchase or purchase agreement will be included in the application. After the loan is approved, the District Director will have Form RD 440-35, "Acceptance of Option," or other appropriate form of acceptance, completed, signed, and mailed to the seller.

(e) Insurance. The State Director will determine the minimum amounts and types of insurance the applicant will carry.

§ 1944.169(e) (Con.)

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with Subpart A of Part 1806 of this chapter (RD Instruction 426.1).

(2) Suitable Workman's Compensation Insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged, or may be required when appropriate, to obtain liability insurance.

(f) Title clearance and legal services. When the applicant is an organization, or has special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from the OGC. In other cases, the provisions of Subpart B of Part 1927 of this chapter regarding title clearance and legal services apply. (Revised 03-31-92, SPECIAL PN.)

(g) Use of and accountability for loan and grant funds. Loan and grant funds and any funds furnished by the borrower for authorized purposes will be deposited and handled in accordance with Subpart A of Part 1902 of this chapter.

(1) Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan or grant funds could not be used, should not be deposited in the supervised bank account with loan or grant funds.

(2) For all organizations collateral will be pledged by the financial institution for any loan or grant funds or borrower contribution in accordance with Section 1902.7 of Subpart A of Part 1902. (Revised 7-6-81, SPECIAL PN.)

(3) Funds may be disbursed from the supervised bank account only for authorized loan or grant purposes.

(h) Bond counsel. All public bodies offering bonds as security for the LH loan are required to obtain the services of recognized bond counsel in the preparation of evidence of indebtedness in accordance with § 1942.19 of Subpart A of Part 1942 of this chapter except as provided in paragraph 1 of Exhibit H of this subpart.

(i) Surety Bonding and Fidelity Coverage. (Revised 08-30-93, SPECIAL PN.)

(1) The provisions of Subpart A of Part 1924 of this chapter pertaining to surety bonds are applicable to LH loans and grants.

(2) If the applicant is an organization, it will provide fidelity coverage for any personnel entrusted with the receipt, custody, and disbursement of any project monies, securities, or readily saleable personal property other than money or securities. Fidelity coverage will be in force as soon as there are assets in the organization in accordance with the provisions described in paragraph XV A of Exhibit B of Subpart C of Part 1930 of this chapter.
(Revised 08-30-93, SPECIAL PN.)

(j) Contracts for legal services. On projects requiring extensive legal services, the applicant will be required to have a written contract for these services. All such contracts will be subject to review and approval by RHS and, therefore, should be submitted to RHS before execution by the applicant. Contracts will provide for the types of service to be performed and the amount of the fees to be paid, either in lump-sum on the completion of all services or in installments as services are performed. "Legal Service Agreement," Exhibit G of this subpart, may be used.

§ 1944.170 Preapplication requirements and processing. (Revised 06-07-99, SPECIAL PN.)

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

(a) Preapplications for new units in off-farm facilities.

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

§ 1944.170(a) (Con.)

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

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

- (1) The preapplication was received by the submission deadline specified in NOFA;
- (2) The preapplication is complete as specified in NOFA;
- (3) The applicant is an eligible entity and is not currently debarred, suspended, or delinquent on any Federal debt; and
- (4) The proposal is for authorized purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 1944.170(c)(1) (Con.)

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

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

(d) Selection of preapplications for further processing.

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

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

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

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

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

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

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(Added 06-07-99, SPECIAL PN)

(07-10-80) SPECIAL PN

(4) The National Office will notify States of the preapplications that have been selected for further processing.

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

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

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

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

§ 1944.170 (Con.)

(f) Actions by State Director. (Renumbered and Revised 06-07-99,
SPECIAL PN.)

(1) If the applicant is an organization adopting without change the "Articles and Bylaws" prescribed by State supplements, the preapplication need not be submitted to OGC.

(2) In all other cases involving loans or grants to organizations, the docket, with any questions or comments of the State Director, will be submitted to OGC for a preliminary opinion as to whether the applicant and the proposed loan meet or can meet the requirement of State law and this Subpart.

(3) An original and one copy of the appropriate environmental review document required by Subpart G of Part 1940 must be completed prior to submitting the docket to the National Office for review. (Added 10-19-88, SPECIAL PN.)

(4) In cases not receiving a National Office review, the following statement is to be added to the Form AD-622: "You are advised against taking any actions or incurring any obligations which would either limit the range of alternatives to be considered, or which would have an adverse effect on the environment. Satisfactory completion of the environmental review process in accordance with Subpart G of Part 1940 of this chapter must occur prior to loan approval. The issuance of this review action does not constitute site approval." (Added 10-19-88, SPECIAL PN.)

(5) Determining amount of grant.

(i) General. The State Director will determine the amount the applicant can obtain from other sources, including an LH loan, and the amount of the grant to be made, within the limits set forth in § 1944.164(b) of this subpart. The State Director will make this determination after thoroughly analyzing the information in the docket and receiving authorization from the National Office.

(ii) Method of determining amount of grant.

(A) The State Director will examine the income of the project based on the estimated rental charges and operating costs of the housing when in full

operation to determine the soundness of the operations. When there is any doubt as to the probable soundness due to unrealistic planning of income or operating expenses, or for other reasons, the housing project and its operation will be discussed with the applicant to determine changes which can be made to correct the deficiencies.

(B) When a sound plan of operation has been agreed upon, the State Director will determine the amount of funds that can be expected to be available from other sources, including a LH loan. The State Director will also determine the amount of income available for loan repayments after allowing for reasonable and necessary maintenance costs, payments on debts of the applicant, and the orderly accumulation of an adequate reserve.

(C) The amount of the grant will be the difference between the amount of funds to be provided in accordance with paragraph (f)(5)(ii)(A) of this section, plus any funds available from the applicant's own resources and the total development cost of the project. In no case, however, may the amount of the grant exceed 90 percent of the total development cost.

(6) When the State Director considers it necessary, any preapplication may be sent to the National Office for evaluation and instructions. (Renumbered 10-19-88, SPECIAL PN.)

§ 1944.171 Preparation of completed loan and/or grant docket.

(a) Information needed. If the applicant has been requested to file an application, SF 424.2 (For Application Submission) and the additional information as outlined in Exhibit A-1 or A-2, as applicable, will be submitted to the District Director. (Revised 04-11-90, SPECIAL PN.)

§ 1944.171 (Con.)

(b) District Director's responsibility. As the information for the loan docket is being developed, the District Director will work closely with the applicant. The District Director will review and verify the information furnished for correctness, adequacy, and completeness. The District Director will determine that the market survey is adequate and that the market survey report is accurate. The District Director will evaluate the manner in which the applicant plans to conduct its business and financial affairs and comment on the adequacy of the management.

(c) County Committee certification. County Committees will not be used to review LH loan and/or grant applications.

(d) Assembly, review, and distribution of complete loan and/or grant docket items. When all items required for the complete loan and/or grant docket have been furnished, they will be examined thoroughly by the Rural Development official who will approve the loan and/or grant to make sure they are properly and accurately prepared and are complete in

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(Added 10-19-88, SPECIAL PN)

(07-10-80) SPECIAL PN

all aspects, including dates and signatures. The loan and/or grant docket items will be assembled in the following order for distribution after approval: (Revised 5-1-85, SPECIAL PN.)

Form Number	Name of Form or Document	Total No. of Copies	Signed by Borrower	Number for Docket	Copy for Borrower
SF424.2	Application for Federal Assistance (For Construction) (For preapplication submission)	3	1	2-0&1C	1-C
**Exhibit A-1 [or Exhibit A-2]	Information to be Submitted for Labor Housing (LH) Loan or Grant	2	0	1-0	1-C
**	Memorandum from the National Office authorizing development of loan docket and loan or grant approval if required by §1944.170 (c)	1	-	1-0	-
AD-622	Notice of Preapplication Review Action	3	-	2-C	1-0
SF-424.2	Application for Federal Assistance (For Construction) (For application submission)	3	1	2-0&1C	1-C
RD 1910-11	Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts	2	1	1-0	1-C
**Exhibit A-1 [or Exhibit A-2]	Information to be Submitted for an LH Loan or Grant	2	0	1-0	1-C
RD 1944-50	Multiple Family Housing Borrower/Project Characteristics	1	-	1-0	-

RD Instruction 1944-D
 §1944.171 (d) (Con.)

Form Number	Name of Form or Document	Total No. of Copies	Signed by Borrower	Number for Docket	Copy for Borrower
RD 1944-51	Multiple Family Housing Obligation - Fund Characteristics	3	3-0 and 2C	1-0	1
RD 400-1	Equal Opportunity Agreement	2	-	1-0	1-C
**RD 400-3	Notice of Contractors and Applicants	2	-	2-0&1C	1-C
RD 400-4	Assurance Agreement	2	1	1	1
**RD 400-6	Compliance Statement	3	-	2-0&1C	1-C
HUD 935.2	Affirmative Fair Housing Market Plan	2	-	2-0&1C	-
	**Evidence of Legal Authority (copies or citation provisions of State constitution and statutory authority)	2	1	1-0	1-C
	Appraisal report with attachments	1	-	1-0	-
**RD 1940-20	Request for Environmental Information	1	1	1-0	-
**RD 1940-21	Environmental Assessment for Class I Action	1	1	1-0	-
**RD 1940-22	Environmental Checklist for Categorical Exclusions	1	-	1-0	1
	**Exhibit H, Subpart G Part 1940	1	-	1-0	1
RD 426-1	Valuation of Buildings	1	-	1-0	-
**RD 440-9	Supplementary Payment Agreement	2	1	1-0	1-C

Form Number	Name of Form or Document	Total No. of Copies	Signed by Borrower	Number for Docket	Copy for Borrower
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Other Loan Docket Items. Preliminary Title Opinion or a title insurance binder, and a copy of deed, purchase contract, or other instrument of ownership, or an option.

*Proof of Organization (Certified copy of charter or articles or incorporation)	2	1	1-0	1-C
*Certified copies of bylaws or regulations	2	1	1-0	1-C
*List of names, and ad- dresses of officers, directors, and members and membership interest held by each	2	1	1-0	1-C

Form Number	Name of Form or Document	Total No. of Copies	Signed by Borrower	Number for Docket	Copy for Borrower
	*Certified copy of Loan Resolution	1	1	1-0	-
	**Loan Agreement	2	1	1-0	1-C
	**Survey of land given as security, plans, specifications, cost estimates, and proposed manner of construction	2	1	1-0	1-C
**Exhibit A-5	Statement of Budget, and Cash Flow	2	1	1-0	1-C
**RD 431-2	Farm and Home Plan	2	1	1-0	1-C

When applicable, include copy of lease or occupancy agreement to be used, report of lien search, option or foreclosure notice agreement, and items of information concerning prior mortgage(s).

For subsequent loans made in conjunction with transfers to nonprofit corporations or public agencies to avert prepayment, follow the additional directions in §1965.65 (f) of Subpart B of Part 1965 of this chapter. For advances made to nonprofit corporations or public agencies to avert prepayment, follow the directions in §1965.217 of Subpart E of Part 1965 of this chapter. (Added 08-20-93, SPECIAL PN.)

* When applicant is an organization.

** When applicable.

(e) Submission of docket to State Office. (Revised 5-1-85, SPECIAL PN.)

(1) The loan and/or grant docket needing State Office approval, including comments and recommendations by the District Director, will be submitted to the State Office. The State Director will prepare and include in the docket a memorandum to the District Director which will either require additional information if the material submitted is inadequate or will set forth the conditions of loan approval. The proposed conditions of loan

approval must indicate if construction will be financed by multiple advances or interim financing, if the loan will be closed on DIAS or PASS, and when the payment will be made, if an annual payment is indicated due to seasonal income.

(Added 5-1-85, SPECIAL PN.)

(i) Loans for multiple advance construction on PASS or DIAS monthly installments will include the cost of construction less the cost of interest during construction. To determine the recommended loan amount the District Director should determine the authorized loan amount including construction interest, then subtract the estimated construction interest from the loan amount. Interest during construction will be capitalized as authorized in §1944.158 (j) of this subpart.

(Added 5-1-85, SPECIAL PN.)

(ii) Loans for interim financed construction may include the cost of interest during construction as authorized in §1944.158 (j) of this subpart. (Added 5-1-85, SPECIAL PN.)

(iii) Loans for multiple advance construction on DIAS, with annual installment and deferred principal payments, may include the cost of interest during construction as authorized in §1944.158 (j) of this subpart.

(Added 5-1-85, SPECIAL PN.)

(2) The advice of the Office of the General Counsel (OGC) should be obtained for all loans and/or grants to organizations and associations of farmers and their comments included in the memorandum to the State Director. If the State Director determines that the loan and/or grant should be approved, the State Director will approve the loan and/or grant and sign the memorandum to the District Director as required by paragraph (e)(1) of this section.

(Added 5-1-85, SPECIAL PN.)

(f) Submission of docket to National Office. The final loan and/or grant docket need not be submitted to the National Office unless required by an authorizing memorandum resulting from compliance with §1944.170.

(g) Announcement. When it is determined that a loan and/or grant can be approved, project information will be prepared in accordance with RD Instruction 2015-C which is available in the Rural Development State and National Offices. (Revised 8-19-83, SPECIAL PN.)

(h) Establishing borrower/project data. Prior to loan approval, the State Director, District Director or a designee will input into the accounting system through field office terminals, the information contained in Form RD 1944-50. (Added 5-1-85, SPECIAL PN.)

§1944.172 [Reserved]

§1944.173 Loan and grant approval - delegation of authority.

The State Director and District Director are authorized to approve loans and/or grants in accordance with this Subpart and Subpart A of Part 1901 of this Chapter. The State Director may delegate loan or grant approval in writing to State Office employees other than District Directors. No LH grant may be approved by the State Director without the prior consent of the National Office.

(a) Action before loan or grant approval. The loan or grant approval official is responsible for reviewing the docket to determine that the proposed loan and grant complies with all pertinent regulations, instructions, and directives. In making this review, the approval official will determine that:

- (1) The applicant is eligible.

- (2) The funds are requested for authorized purposes.
- (3) The proposed loan or grant is sound.
- (4) The security is adequate for the loan.
- (5) All preapproval requirements have been met.
- (6) Compliance with Title VI of the Civil Rights Act will be met.
- (7) All other requirements will be met.

(b) Approval of loan or grant. When a loan or grant is approved:

- (1) The approving official will prepare and sign Form RD 1944-51 in an original and one copy. The State Director, District Director or a designee will obligate loan and/or grant funds for the project through a field office terminal in accordance with the FMI for Form RD 1944-51 and the MFH User Procedure. (Revised 5-1-85, SPECIAL PN.)
- (2) The individual obligating the loan or grant will record the date and time of the obligation and sign Form RD 1944-51 in accordance with the FMI. (Revised 5-1-85, SPECIAL PN.)
- (3) The obligation date of loan and/or grant funds will be confirmed through use of field terminals the following work day. (Revised 5-1-85, SPECIAL PN.)
- (4) The Finance Office will mail the State Office Form RD 1944-57, "Multiple Family Housing Acknowledgement of Obligated Funds/Check Request," confirming the reservation of funds with the obligation date inserted as required by the FMI for Form RD 1944-57. Form RD 1944-57 will be prepared and distributed in accordance with the FMI. (Revised 5-1-85, SPECIAL PN.)
- (5) Form RD 1944-51 will not be mailed to the Finance Office unless there is an excessive time period in which the terminals are not operable. Immediately after confirming the reservation of funds for not-for-profit organizations and public bodies, through use of the terminal operating station, the State Director will call the Information Division in the National Office as required by Subpart C of Part 2015 of this chapter. Notice of approval to the applicant will be accomplished by mailing the applicant's signed copy of Form RD 1944-51 on the obligation date. The State Director, District Director or a designee will record the actual date of applicant notification on the original of Form RD 1944-51 and include the original of the form as a permanent part of the District Office project file with a copy in the State Office file. (Revised 5-1-85, SPECIAL PN.)

§1944.173 (b) (Con.)

(6) Determine the maximum rental rates to be charged domestic farm labor for occupancy of the housing, and advise the applicant, in writing, of these maximum rates. In determining the maximum rental rates due consideration must be given to the income and earning capacity of the prospective occupants of the housing and the cost of operating and maintaining such housing. As a general guide, the rental charges should not exceed 25 percent of the occupant families' estimated adjusted annual income. (Revised 5-1-85, SPECIAL PN.)

(c) Disapproval of or adverse action on a loan or grant. When a loan and/or grant is disapproved or if adverse action is taken, the reasons for such action will be shown on the original Form RD 1944-51. Form RD 1944-51 will be initialed and dated. The District Director will notify the applicant in writing of the disapproval of or adverse action on the loan or grant and the reasons therefore and advise them of their right to appeal in accordance with Subpart B or Part 1900 of this Chapter. The disapproved docket will then be handled in accordance with RD Instruction 2033-A which is available in any Rural Development office. Any appeals as a result of disapproval or adverse action will be handled in accordance with Subpart B of Part 1900 of this Chapter. (Revised 5-1-85, SPECIAL PN.)

§1944.174 Distribution of loan and/or grant approval documents.

For a loan to an organization, or in special cases, the approved loan or grant docket, including any title evidence, will be sent to OGC by the State Office for preparation of closing instructions and any special legal documents required for closing. The original executed, witnessed loan and grant resolution, or a certified copy of the required loan and grant resolution must be supplied by the applicant in time to be include the proposed grant agreement for OGC review. No docket will be considered which fails to include such a required resolution or Proposed agreement. OGC will route the docket, including closing instructions and any such legal documents, to the District Office through the State Office for review and for inclusion of any further instructions needed in closing the loan.

§1944.175 Actions subsequent to loan and/or grant approval.

(a) Interim financing from commercial sources. Interim financing may be used when a loan or combination loan and grant exceeds \$50,000 provided funds can be borrowed at reasonable interest rates from commercial sources for the construction period. When interim commercial financing is used:

(1) The docket will be processed to the stage where the Rural Development loan or combination loan and grant would normally be closed. Rural Development loan or combination loan and grant funds will be obligated before the applicant proceeds with the final arrangements for interim commercial financing.

(2) The State Director or District Director may deliver a copy of Form RD 1944-57 as evidence of the Rural Development commitment, if necessary, or a letter stating that funds in specified amounts have been obligated and will be available to retire the interim financing if the applicant complies with the approval conditions. See Exhibit I of this Subpart for a sample letter that may be used. (Revised 5-1-85, SPECIAL PN.)

(3) Rural Development will undertake similar functions as if Rural Development funds had been advanced from the standpoint of approving construction contracts and the monitoring of construction.

(4) The supervised bank account will normally not be used for funds obtained through interim commercial financing. However, the District Director will approve Form RD 1924-18, "Partial Payment Estimate," to insure that funds are used for authorized purposes. (Revised 5-12-87, SPECIAL PN.)

(5) When the interim financing funds have been expended, the Rural Development loan or combination loan and grant will be closed and permanent instruments will be issued to evidence the Rural Development indebtedness. The Rural Development loan or combination loan and grant proceeds will be used to retire the interim commercial indebtedness.

(6) Before the Rural Development loan or combination loan and grant is closed, the applicant will be required to provide the District Director with statements from the contractor(s), engineer, and attorney that they have been paid in full in accordance with their contracts or other agreements and that there are no unpaid obligations outstanding in connection with the construction of the project. See in addition §1924.6 of Subpart A of Part 1924.

(b) Multiple advances of LH loan and/or grant funds. In the event Rural Development provides grant only assistance, or if interim commercial financing is not available for a loan combination loan and grant in excess of \$50,000, multiple advances will be used subject to the following:

(1) When relatively large amounts of funds are to be expended for purchases of real estate or for other reasons at the time of closing, separate checks for such purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing such funds in the supervised bank account and reduce the amount of required collateral.

(2) Except as indicated in paragraph (b)(1) of this section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, the advances should not exceed 24 in number or extend longer than 2 years beyond loan closing. The retained percentage withheld from the contract or to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering, or architectural costs, interest when authorized, and other expenses, as needed. The borrower will prepare Form RD 440-11, "Estimate of Funds Needed for 30-day Period Commencing _____," modified as needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director. After the District Director determines that the estimates prepared by the borrower are adequate, the District Director will indicate the amount on Form RD 1944-57 in accordance with the FMI and request the amount through field office terminals in accordance with the MFH User Procedures. As an example, for a loan and/or grant of \$100,000, the advances may be made as follows: Assuming that the loan and/or grant will be closed on July 1, the borrower will complete Form RD 440-11 in sufficient time so that the funds will be available on the day of Loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	\$30,000
Land Acquisition	5,000
Architectural	4,000
Legal	<u>1,000</u>
	\$40,000

An advance in the amount of \$40,000 would then be available on July 1, the date of loan closing. The second advance will also be based on the borrower's estimate prepared on Form RD 440-11, and will be prepared in sufficient time so that the estimate of funds might be broken down as follows:

Construction	\$20,000
Architectural	<u>1,000</u>
Total	\$21,000

The amount will be indicated on Form RD 1944-57 and requested through field office terminals. The same procedure will be followed for each advance until the Project is completed. (Revised 5-1-85, SPECIAL PN.)

§1944.175 (b) (Con.)

(3) Any deviation from the multiple advance procedure must have the prior approval of the National Office. (Revised 5-1-85, SPECIAL PN.)

(c) Requesting a check. When loan approval conditions can be met, including any real estate lien required, and a date for loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with either paragraphs (a) or (b) of this section. The District Director's delegate will then order the loan and/or grant check through the field office terminal so that it will be available on or just before the date set for loan closing. (Revised 5-1-85, SPECIAL PN.)

(d) Increase or decrease in the amount of the loan. If it becomes necessary for the amount of the loan and/or grant to be increased or decreased before loan closing, the loan approval official or District Director will request that all distributed docket forms be returned to the District Office. The loan docket will be revised accordingly and reprocessed.

(e) Cancellation of loan. Loans and/or grants may be canceled after approval and before loan closing as follows: (Revised 7-12-88, PN 89.)

(1) The District Director will prepare Form RD 1944-53, "Multiple Family Housing Cancellation of U. S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert (FMI) as prescribed in RD Instruction 1951-B (available in any Rural Development Office).

(2) If the loan or grant check is received in the District Office, the District Director will return the check as prescribed in RD Instruction 2018-D. (Revised 11-02-94, PN 236.)

(3) All interested parties will be notified of cancellation as provided in Subpart B of Part 1927 of this Chapter. (Revised 03-31-92, SPECIAL PN.)

(f) Handling the loan or grant check. The loan or grant check will be handled in accordance with RD Instruction 2018-D and Subpart A of Part 1902 of this chapter. (Revised 11-02-94, PN 236.)

(g) Property insurance. Buildings will be insured in accordance with Subpart A of Part 1806 of this chapter (RD Instruction 426.1).

§1944.176 Loan and/or grant closing.

(a) Applicable instructions. LH loans and/or grants will be closed in accordance with applicable provisions of Subpart B of Part 1927 of this chapter and State supplements. Loan dockets for an organization and loan dockets for an individual in special cases will be sent to OGC for additional closing instructions. A family farm corporation or partnership or an association of farmers applicant may use its attorney to close the loan in accordance with applicable loan closing instructions provided the attorney is not a member, officer, director, trustee, stockholder, or partner of the applicant entity. Nonprofit organizations may use an attorney who is a member of their organization. The cost incurred by the organization for legal services must be reasonable and competitive for the area.

(Revised 03-31-92, SPECIAL PN.)

(b) LH grant agreement. A LH grant agreement, prepared and authorized as provided in §1944.164 (e), will be dated and executed by the applicant on the date of grant closing. The executed agreement will be filed with the mortgage or other security instrument in the County Office case file.

(c) LH loan agreement. A LH loan agreement, prepared and authorized as provided in §1944.164 (g) of this subpart will be dated and executed by the applicant on the date of loan approval. The executed agreement will be filed with the mortgage or other security instrument in the District Office case file. (Added 01-19-93, SPECIAL PN.)

(d) Mortgage. Unless the OGC determines the form to be inappropriate, real estate mortgage Form RD 1927-1 (State), "Real Estate Mortgage for _____," will be used. For loans and/or grants to organizations, Form RD 1927-1, will be modified as prescribed by or with the advice of the OGC with respect to the name, address, and other identification of the borrower, style of execution, acknowledgement, and any other provisions.

(Renumbered 01-19-93, SPECIAL PN.)

(1) The mortgage or other instrument will contain the following covenant:

"The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer."

(2) For all LH loans, the restrictive-use provisions contained in Exhibit A-1 of Subpart E of Part 1965 of this chapter will be included in the mortgage. (Revised 08-20-93, SPECIAL PN.)

(3) When a loan resolution or loan agreement is used, an additional paragraph will be included in the mortgage to read as follows: (Renumbered 08-20-93, SPECIAL PN.)

"This instrument also secures the obligations and covenants of Borrower set forth in Borrower's Loan Resolution (Loan Agreement) of (Date) , which is hereby incorporated herein by reference."

(4) When the borrower is an organization the mortgage will include the following provision: (Renumbered 08-20-93, SPECIAL PN.)

"Borrower will not require any occupant of the housing or related facilities, as a condition of occupancy, to work or be employed on any particular farm or other place, or work for or be employed by any particular person, firm, or interest."

(5) For a grant made at the same time as an LH loan, the mortgage securing the loan will contain a provision making it also secure the applicant's obligations under the LH grant agreement. For a grant not made at the same time as an LH loan, the type of security instrument will be determined by the National Office based upon the State Director's recommendation and the advice of OGC. (Renumbered 08-20-93, SPECIAL PN.)

(e) Promissory Note. (Renumbered 01-19-93, SPECIAL PN.)

(1) Form RD 1944-52, "Multiple Family Housing Promissory Note," will be used for all LH loans except those secured by bonds. Payments on LH loans will be scheduled on a monthly or annual basis in accordance with the excepted schedule of income from the project. If periodic payments are desired on an annual note they may be scheduled on Form RD 440-9). (Revised 5-1-85, SPECIAL PN.)

(2) The note will be dated the date of loan closing as authorized in Subpart B of Part 1927 of this Chapter. (Revised 03-31-92, SPECIAL PN.)

(3) In the case of multiple advances on PASS or DIAS monthly installments, payments will be deferred for the period of construction and any remaining period until the project is operational. When construction is substantially complete and/or the project is ready for full operation or interest plus principal reaches the "Maximum Debt Limit (MDL) at Amortization Effective Date (AED)," the accrued interest on advances will be capitalized establishing a new loan amount. The MDL at AED will be established according to §1944.157 (a)(7)(iii) of this subpart. The borrower's payment of principal and interest will be established according to the FMI, for Form RD 1944-52. At loan closing the Finance Office will be notified of the projected AED and the MDL at AED on Form RD 1944-57. When the MDL at AED is reached or the loan is fully advanced, Finance Office will: (Revised 5-1-85, SPECIAL PN.)

(i) Capitalize the construction interest. When there is a remaining obligation balance, the remaining obligation will be cancelled by the Finance Office. (Added 5-1-85, SPECIAL PN.)

(ii) Notify the District Office of the new loan amount and the borrower's scheduled loan payment. (Added 5-1-85, SPECIAL PN.)

(iii) Prepare and forward to the District Office Form RD 1944-7, "Multiple Family Housing Interest Credit and Rental Assistance Agreement" if RA has been obligated for the project. (Added 5-1-85, SPECIAL PN.)

(iv) The District Office will complete Forms RD 1944-52 and RD 1944.7 according to the FMI's. (Added 5-1-85, SPECIAL PN.)

(4) Deferred principal payments may be permitted up to 2 years when determined to be necessary and advisable. Accrued interest must be paid annually when the loan is closed on DIAS; however, smaller than regular payments of principal or no payments of principal may be provided for the first and second installments after loan closing. (Revised 5-1-85, SPECIAL PN.)

(5) The promissory note(s) will be signed in accordance with Subpart B of Part 1927 of this chapter and any supplemental instruction from OGC. (Revised 03-31-92, SPECIAL PN.)

(6) After loan closing the original note and copies will be distributed according to the FMI. The loan closing information will be transmitted via the field office terminals when the loan is closed with a promissory note. (Revised 5-1-85, SPECIAL PN.)

(7) For a loan to a public body the forms of obligation will be determined in accordance with Exhibit H to this Subpart. (Added 5-1-85, SPECIAL PN.)

(f) Recorded mortgage. When the real estate mortgage is returned by the recording official, the District Director will retain the original in the borrower's case folder. If the original is retained by the recording official for the county records, a conformed copy including the recording data showing the date and place of recordation and book and page number will be prepared and filed in the borrower's case folder. A copy of the mortgage, conformed as to all matters except the recording date, will be delivered to the borrower. (Renumbered 01-19-93, SPECIAL PN.)

(g) Date of closing - establishment of account.
(Renumbered 01-19-93, SPECIAL PN.)

(1) An LH loan and/or grant is considered closed when the security instrument is filed of record or, if no security instrument is filed of record, when the loan or grant funds are deposited in the supervised bank account or otherwise made available to the borrower after the borrower executes and delivers the note and any other required instruments.

(2) After the loan and/or grant is closed, the account and case folder will be established in accordance with applicable Rural Development regulations (RD Instructions 1905-A which is available in any Rural Development office and RD Instruction 2033-A which is available in the Rural Development State and National Offices.) (Revised 4-16-86, PN 7.)

§1944.177 Coding loans and grants as to initial or subsequent.

A borrower may obtain financing for more than one project. Each project will be coded as an initial loan or grant when the total number of units are built or purchased at one place at one time. A subsequent loan or grant will be so coded when an additional loan or grant is necessary to complete the units planned with the initial loan or grant. As an example, the borrower may obtain initial loans or grant for more than one project in the same district, in different counties under the same District Office jurisdiction, or in more than one District Office jurisdiction. Codes to be used will be in accordance with the FMI for Forms RD 1944-51 and RD 1944-57. (Revised 5-1-85, SPECIAL PN.)

§1944.178 Complaints regarding discrimination in use and occupancy of Labor Housing. (Revised 2-22-90, SPECIAL PN.)

Any tenant or prospective tenant seeking occupancy or use of LH or related facilities who believes he/she has been discriminated against because of age, race, color, religion, sex, marital or familial status, handicap or National origin may file a complaint in person with, or by mail to the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development (HUD), Washington, DC 20410 or any HUD Office, or to the Secretary of Agriculture, Washington, DC. If the complaint is made to an Rural Development county, district or State office, it must be directed to the Director of Equal Opportunity Staff, National Office, by the Rural Development employee in charge of that office. When a complaint is sent to Rural Development-EOS by a county or district office, the State Director will be made aware of the complaint.

- (a) Personnel in Rural Development field offices will provide assistance to the aggrieved party when filling out required forms and filing a complaint.
- (b) Each complaint must contain the following information:
 - (1) The name and address of the respondent.
 - (2) The name and address of the aggrieved person.
 - (3) A description and the address of the dwelling which is involved, if appropriate.

§1944.178 (b) (Con.)

(4) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory housing practice.

(c) Participants in Rural Development's housing program failing to comply with the requirements of Title VIII, as amended by the Civil Rights Act of 1968, and respective Affirmative Fair Housing Marketing Plan will make themselves liable to sanction authorized by law, regulations, agreements, rules and/or policies governing the program pursuant to which the application was made. All complaints will be handled in accordance with prescribed procedure.

§§1944.179 - 1944.180 [Reserved]

§1944.181 Loan servicing. (Revised 01-19-93, SPECIAL PN.)

(a) For general purposes, LH loans and grants will be serviced in accordance with this Subpart B of Part 1924, Subpart C of Part 1930, and Subpart D of Part 1944 of this chapter. Requests for rent increases will be processed in accordance with Exhibit C of Subpart C of Part 1930 of this chapter for nonprofit organizations.

(b) For special servicing of LH loans when the Loan Agreement was waived. There will be many instances where the loan agreement was waived because of a loan agreement waiver provision in this regulation that was in effect for more than 10 years. As a result of regulation change, the State Director shall notify all LH loan farm borrowers within 180 days of the effective date of this regulation that such labor housing borrowers will be:

- (1) Requested to sign a loan agreement;
- (2) Required to report tenant occupancy, at least annually (reference Exhibit K-1 of this subpart); and
- (3) Provided with Exhibit K-1 of this subpart.

(i) The above action need not be completed: If there is existing servicing action where a management agreement exists and such agreement is sufficient to satisfy the notification items, or; If there is a pre-existing loan agreement, and paragraphs (b)(2) and (3) of this section are addressed. If the existing loan agreement does not include annual occupancy reporting, then the borrower must be notified in accordance with paragraphs (b)(2) and (3) of this section.

(ii) Refusal of the borrower to participate in the regulatory change should be documented. It shall be the responsibility of the State Director to determine if compliance reviews should be increased from the minimum required by procedure. Additional servicing guidance may be found in Subpart N of Part 1951 and Subpart B (with special emphasis on Exhibit F) of Part 1965 of this chapter.

(c) All special servicing needs for LH loans to farm borrowers should be incorporated in a management agreement in addition to a loan agreement. Examples of special servicing needs are: When the housing is temporarily not needed for farm laborers; When rent is being charged; When occupied by ineligible, or; When farmers share housing costs with the borrower in exchange for the occupant(s) labor. The use of a management agreement is not limited to the examples cited.

Whenever the management agreement is for a purpose unrelated to agriculture, the farmer should understand that the housing should be returned to the original loan purpose as soon as practical. A final consideration in loan servicing should be to sell the Labor Housing outside of the program when the farmer can no longer use the housing in his farming operation.

§1944.182 Rental assistance.

Rental assistance may be provided to eligible tenants in LH projects in accordance with Exhibit E of Subpart C of Part 1930 of this chapter. Income will be verified for LH tenants requesting rental assistance from all easily identifiable sources by using Form RD 1910-5, "Request for Verification of Employment." Income or portions of income from sources that are not known or not easily contacted will be verified from the best information obtainable. This may include copies of payroll records, tenant's own records, contacts with individual who may be knowledgeable of the tenant's income, or, if no other verifiable data is available, a notarized affidavit from the tenant attesting to his/her previous year's income. The borrower and tenant will execute Form RD 1944-8, "Tenant Certification." The borrower will be expected to certify only that the income is correctly stated based on the best information available. The borrower will be expected to have the tenants that occupy the project year round and do not have easily verifiable income report monthly income to enable accurate income certification at the end of one year of occupancy. (Revised 10-1-86, SPECIAL PN.)

§1944.183 Exception authority.

The Under Secretary of Rural Development may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, the immediate health or safety of the tenants, or the community. The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data: demonstrating the adverse impact; identifying the particular requirement involved; showing proper alternative courses of action; and, identifying how the adverse impact will be eliminated.

§§1944.184 - 1944.199 [Reserved]

§1944.200 OMB control number. (Added 01-19-93, SPECIAL PN.)

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0045. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 150 hours per response, with an average of 11 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575-0045), Washington, D.C. 20503.

Attachments: Exhibits A, A-1, A-2, A-3, A-4, A-5, B, C, D, E, F, G, H, I, J, K, K-1, L, and M.

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LABOR HOUSING LOAN AND GRANT

APPLICATION HANDBOOK

Introduction

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

Payments for technical assistance incurred by a nonprofit group or public body applicant entity for developing and packaging an application will be reimbursed with loan and grant funds. If the services are performed, the proceeds will be limited and must be documented. The reimbursable costs should be negotiated and approved by the Agency in advance of the applicant entity's process of packaging and developing a preapplication. Based upon what is typical in the area, the Agency will respond in writing approving the packaging plan and a range of costs in advance.

Applicants should also be aware that rental assistance (RA) subsidies are available to eligible projects to reduce rents for very low- and low-income farmworkers. RA may be used in conjunction with LH grants to develop feasible LH projects to meet local farmworker housing needs. When at all possible, applicants should consider the use of RA in lieu of a full 90% grant for LH projects with year-round occupancy.

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Information to be Submitted by Organizations and
Associations of Farmers for Labor Housing Loan or Grant

I The following information should be submitted with SF 424.2 (for preapplication submission) (Revised 04-11-90, SPECIAL PN.)

A Eligibility:

1 Financial Statement - A current, dated, and signed financial statement showing assets and liabilities with information on the repayment schedule and status of all debts. If the applicant is an association of farmers, a current financial statement will also be required from each member who holds an interest in the association in excess of 10 percent. If the applicant is a limited partnership, financial statements are required from each general partner who holds an interest in the organization, and from each limited partner who will have 10 percent or more ownership. The financial statement must reflect sufficient financial capacity to meet the initial operating capital requirements. Loan or grant funds may be used to provide the required initial operating capital for nonprofit entities and State or local public agencies. If the applicant is a limited partnership, the financial statement must also demonstrate sufficient capacity to meet the applicant's equity contribution. (Revised 06-07-99, SPECIAL PN.)

2 All applicants, except State and local public agencies, must provide evidence that they are unable to obtain credit from other sources. Letters from credit institutions who normally provide real estate loans in the area should be obtained and these letters should indicate the rates and terms upon which a loan might be provided.

3 If a Labor Housing (LH) grant is requested, the applicant should provide a statement on their projected use of Rental Assistance (RA) and their need for a LH grant. This statement should include preliminary estimates of the rents required with and without a grant and the relative need for a grant if RA is provided to supplement market rents for eligible farmworkers. [LH grants and RA are not available to associations of farmers; LH grants are not available to limited partnerships.] (Revised 06-07-99, SPECIAL PN.)

4 A statement of the applicant's experience in operating LH or other rental housing. If the applicant's experience is limited, additional information should be provided to indicate how the applicant plans to compensate for this limited experience. (i.e., obtaining assistance and advice of a management firm, non-profit group, public agency, or other organization which is experienced in rental management and will be available on a continuous basis).

5 A brief statement explaining the applicant's proposed method of operation and management. This does not have to be a full-fledged management plan as outlined by Exhibit B of this subpart; however, it should generally explain how the applicant proposes to operate the facility. (i.e., on-site manager, contracting for management services, etc.).

6 Applicants must provide a copy of or an accurate citation to the special provisions of State law under which the applicant is or is to be organized, a copy of the applicant's charter, Articles of Incorporation,

bylaws, and other basic authorizing documents; names, occupations, and addresses of the applicant's members, directors, and officers; and, if a member or subsidiary of another organization, its name, address, and principal business.

B Need and demand.

A preliminary survey should be conducted to identify the supply and demand for LH in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. The applicant must provide documentation to justify need within the intended market area. The market survey should address or include the following items: (Revised 06-07-99, SPECIAL PN.)

1 The annual income level of farmworker families in the area and the probable income of those farm workers who are most apt to occupy the proposed unit.

2 A realistic estimate of the number of farmworkers who are home-based in the area and the number of farmworkers who normally migrate into the area. Information on migratory workers should indicate the average number of months the migrants reside in the area and an indication of what type of family groups are represented by the migrants (i.e., single individuals as opposed to families). Much of this information may be available from the local office of the Rural Manpower Services section of the Department of Employment Services.

3 General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers (i.e., prospects for mechanization, etc.). Information may be available from the local U.S. Department of Agriculture (USDA) Cooperative, State, Research, Education and Extension Service office or from the Farm Service Agency.
(Revised 06-07-99, SPECIAL PN.)

4 The overall occupancy rate for comparable rental units in the area and rents charged and customary rental practices for these units (i.e., will they rent to large families, do they require annual leases, etc.). This information may be available from census data, local planning organizations, or local housing authorities.

5 The number, condition, adequacy, ownership, and rental rates for units currently used or available to farmworkers. This information may be available from local farmworker advocacy groups, Rural Manpower Services, or social service agencies.

6 A description of the units proposed, including number, type, size, rental rates, amenities such as carpets and drapes, related facilities such as a laundry room or community room and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants such as a health clinic or day care facility; estimated development timeline; estimated total development cost and applicant contribution. If the application includes leveraged funds, include documentation of the dollar amount, source, and commitment status.
(Revised 06-07-99, SPECIAL PN.)

Note: The market survey is one of the most important determinates of the overall feasibility of the proposed project. Therefore, the applicant may wish to do a more detailed study of the market in accordance with item II J below. Endorsement of the proposal by community leaders will not be required.

C Environmental Information.

The applicant will complete Form RD 1940-20, "Request for Environmental Information," along with a description of anticipated environmental issues or concerns. (Revised 06-07-99, SPECIAL PN.)

D Affirmative Fair Housing Marketing Plan.

Each applicant will prepare and submit HUD 935.2, "Affirmative Fair Housing Marketing Plan," where they propose developing five (5) or more units. The plan will reflect that occupancy is not limited to their employees and they will not discriminate on the basis of race, color, sex, age, handicap, marital or familial status, or National origin in regard to the occupancy of these units. (Revised 02-22-90, SPECIAL PN.)

E Additional information. (Revised 06-07-99, SPECIAL PN.)

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

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

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

RD Instruction 1944-D
Exhibit A-1
Page 6
(Revision 5)

II Information to be Submitted with SF 424.2 (for application submission).
(Revised 04-11-90, SPECIAL PN.)

A After the applicant has received the signed Form AD-622 authorizing the applicant to proceed to develop a final application, the applicant and the applicant's architect should meet with the RHS architect/engineer and other officials responsible for loan processing. During this preprocessing meeting, RHS will discuss the services which the applicant's architect will be expected to provide and will also explain the items needed to complete the final application, such as Form RD 1940-20, "Request for Environment Information," if not previously submitted by the applicant during the preapplication stage.
(Revised 10-19-88, SPECIAL PN.)

If after the preprocessing meeting the applicant believes that the Labor Housing (LH) project can be developed within the guidelines required by the Agency, the following information should be submitted with SF 424.2:
(Revised 04-11-90, SPECIAL PN.)

B If applicable, evidence of compliance with 7 CFR, part 3015 Subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." (See RD Instruction 1940-J, available in any Agency Office.)
(Revised 12-23-83, SPECIAL PN.)

C Proposed contracts for architectural, engineering, and legal services as applicable. The Agency approval of these contracts should be obtained before execution of the contract.

D A plot plan and detailed preliminary drawings and specifications prepared in accordance with subpart A of part 1924. Exhibit A-3 provides general philosophy and standards concerning the construction of LH facilities.

E A detailed cost breakdown of the project for items such as land purchase, right-of-ways, building construction, equipment, utility connections, on-site improvements, architectural and/or engineering services, and legal services. Also, if applicable, the cost breakdown should include the costs incurred for the development and packaging of its own application. These costs may range from 2 to 4 percent of total development cost (excluding initial operating and capital expenses) and should reflect costs that are reasonable and typical for the area. Costs in excess of 4 percent will not be reimbursed. The cost breakdown should itemize labor and material unit costs. If a LH grant is proposed, construction will be subject to the provisions of the Davis-Bacon and other related Acts. LH grant applicants should, therefore, obtain a copy of the Department of Labor regulations (29 CFR, parts 1, 3, and 5), which contain the applicable labor standards provisions.
(Revised 10-30-96, PN 267.)

F Satisfactory evidence of review and approval of the proposed housing, including compliance with zoning requirements by State or local officials, as required by applicable State or local laws, ordinances, or regulations.

G If not already provided in the preapplication submittal, a map of the proposed site showing the location of the site in relation to available facilities such as schools, shopping, churches, hospitals, etc. In addition, supporting information should be provided indicating that essential utilities such as sewer, water, electricity, etc., will be available to the project. (See Exhibit A-3 for general requirements for location of LH facilities.)

H A description of and justification for any related facilities such as community or multi-purpose type buildings, cafeterias, dining halls, infirmaries, child care facilities, etc. To be included for funding by the Agency, the facilities should not be of extravagant design and their size must be commensurate with the needs of the farm workers who will occupy the housing facility. Any long-term agreements which are contemplated with other agencies for services such as manpower training, migrant health services, child care, and education programs should be explained and included as justification for the related facilities.

I A detailed market analysis addressing in detail the preapplication information required under item I B above, "Need and Demand," should be conducted in accordance with the following:

1 The market area (i.e., the area from which tenants can reasonably be drawn for the project) should be clearly identified.

2 Adequate existing units which are currently available or which could become available should be surveyed and information obtained and recorded in a format similar to Exhibit A-4.

3 Individual farmworkers and farmworker groups should be contacted and their ideas obtained concerning the type of housing which would gain the greatest acceptance. (This information may not seem important at the outset of the loan if there is a pressing need for LH, however, to assure a long-term demand for the project consideration should be given to the views of the prospective tenants).

4 The above items should then be correlated to arrive at a realistic estimate of the total need for units, type of units, estimated occupancy, maximum rental rates which can be charged for the units, and the type of amenities or related facilities which should be provided.

J Proposed, detailed operating budgets for: (1) the first year of operation, and (2) a typical year's operation. The overall percentage of occupancy should be based upon the data collected in the market analysis. Operating costs should be realistic and should reflect somewhat higher than normal maintenance costs and an allowance for the establishment of a reserve as required by the loan agreement. The budget should be prepared in a format similar to Exhibit A-5.

K A management plan which includes the applicable items of Exhibit B.

L When the loan is to be secured by a junior real estate lien, certain agreements will be required from prior lien holders. The local or State Rural Development official will provide the applicable agreements.

M An option to purchase or other evidence of ability to purchase or evidence of ownership for the proposed site.

III Submission of final application.

When the final application is assembled it should be submitted to the local Rural Development District Office for review and submission to the State Office. As soon as a final decision to approve the loan is reached, the applicant will be notified and advised to proceed with the preparation of final plans and specifications, contract documents, and other items needed to close the loan. The applicant should not proceed with bid advertisement or contract awards until advised to proceed by Rural Development.

Information to be Submitted by Individuals, Farmowners and
Family Farm Corporations or Partnerships for Labor Housing Loans

I. Information to be submitted with SF 424.2 (for preapplication submission). (Revised 4-11-90, SPECIAL PN)

A. Financial Statement. Show assets and liabilities of the applicant, each individual farmer, and each farming partnership or corporation of which the individuals are members. Each statement must be signed and dated. Financial statements of family farm corporation or partnership members with less than a ten percent corporate or partnership interest need not be submitted to Rural Development.

B. Other Credit. All applicants must provide evidence that they are unable to obtain credit from other sources. Applicants should attach letters showing what rates, terms and conditions are available for the project from private credit sources. In seeking other credit, the assets and personal liability of each of the members must be offered if the applicant is a family farm corporation or partnership.

C. Experience. Describe the experience of each member in owning or operating labor or rental housing. If limited, describe other business experience.

D. Operation. Describe the proposed operation of the housing and its relationship to the farm operation. Include the proposed method of tenant selection, unit maintenances, determining rental charges (if any), payment of utilities, etc.

E. Need. Describe the farming operations in which the laborers to be housed in the units will be used. Include acreages of each crop or details of other operations. Discuss present laborers and their living arrangements and the number and condition of labor housing now provided.

F. Continuing Need. Discuss any possible changes in mechanization or shifts to other farm products that might decrease the need for labor housing in the future.

G. Proposed Security. If a mortgage is not being given on the entire farm, explain why not and describe the sites proposed as security. Attach a map showing the site locations, shopping areas, schools, doctors, hospitals, nearest public water and sewer system, and school bus stop.

H. Proposed Project. Describe the housing proposed to be brought or built (specify which) and the estimated cost. If building sites are to be purchased, show the cost of each. Attach any options available. List any other expenses expected. Show the total cost, the loan requested, and the applicant contribution.

I. Environmental Information. The District Office will advise the applicant of the applicability of Rural Development's environmental requirements under Subpart G of part 1940 of this chapter which are primarily based on the size of the proposed project. If the preapplication must go to the National Office for approval, the applicant will complete Form RD 1940-20, "Request for Environmental Information." The District Office will provide assistance and guidance to the applicant in completing this form.

J. Affirmative Fair Housing Marketing Plan. Each applicant will prepare and submit HUD 935.2, "Affirmative Fair Housing Marketing Plan," where they propose developing five (5) or more units. The plan will reflect that occupancy is limited to their employees and that they will not discriminate on the basis of race, color, sex, age, handicap marital or familial status or National origin. (Revised 2-22-90, SPECIAL PN)

II. Information to be submitted with SF 424.2 (for application submission). (Revised 4-11-90, SPECIAL PN)

A. Supplemental. Any information requested to clarify or augment information supplied earlier with the preapplication.

B. Site. Options to purchase or a copy of deeds and mortgages on sites already owned.

C. Surveys. When needed to identify the site, a current survey showing boundaries, geographical features, access to public roads, and public utility location.

D. Plans, Specifications, and Proposed Contracts. Attach one copy of each complete set of building plans and specifications and a bid or contract for construction. A complete site plan is also required.

E. Environmental Information. If not submitted with the preapplication, the applicant will complete Form RD 1940-20, "Request for Environmental Information."

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Labor Housing Construction Guidelines

I Introduction: This Exhibit provides Rural Development's general guidelines and policies concerning the planning, location, and construction of housing for farmworkers. The type of housing should be in accordance with the needs of the prospective tenants. Multi-family type units are encouraged whenever possible; however, when planning units for farmworker families, lower density building design and layout is normally desirable. Housing should be designed in such a manner that it will be decent, safe, sanitary, and modest in size and cost. Actual plans, specifications, and contract documents should be prepared in accordance with Subpart A of Part 1924 of this chapter.

II Types of housing and appropriate standards:

a Single-family type housing is defined as an individual or a group of individual single family detached dwelling units. These type units should meet the following standards:

1 All sites shall be planned and constructed in accordance with Subpart C of Part 1924 of this chapter.

2 All planning and construction other than seasonal farm labor housing and housing to be occupied more than six months but less than year-round shall be in conformance with the applicable development standard as required by §1924.4(d)(1) of Subpart A of Part 1924 of this chapter and applicable state and local codes.

b Multi-family type housing is defined as a project or a number of projects encompassing a building or buildings contained more than one dwelling unit and may include mixtures of detached and multi-unit structures in a project. These type units should meet the following standards:

1 All housing designed for year-round occupancy will be planned in compliance with the applicable development standard and will be compatible with conventional rental type housing.

2 Housing for seasonal occupancy (less than six months) shall be designed and constructed in accordance with Exhibit I to Subpart A of Part 1924 of this chapter.

3 Housing to be occupied more than six months but less than year-round shall be designed and constructed in substantial conformance with and be easily converted to the applicable development standard requirements for year-round housing.

4 All planning and construction should be in conformance with applicable state and local codes.

STATEMENT OF BUDGET AND CASH FLOW

Name of Borrower _____
 Address _____
 Project Location _____
 Kind of Loan _____ Term of Loan _____ Interest Rate _____ Amount \$ _____

	1st Year	Typical Year	Typical Yr w/ Grant	Typical Yr w/o Grant
1. Total Operation and Maintenance Expense (From Reverse)	_____	_____	_____	_____
2. Transfer to Reserve	_____	_____	_____	_____
3. RD Payment	_____	_____	_____	_____
4. Return to Ownership@-%	_____	_____	_____	_____
5. Other Authorized Payments	_____	_____	_____	_____
6. Authorized Capital Improvements	_____	_____	_____	_____
7. Total Income Needed (Add lines 1-6) Other Income	_____	_____	_____	_____
8. Laundry	_____	_____	_____	_____
9. Interest	_____	_____	_____	_____
10. Other (Specify)	_____	_____	_____	_____
11. Total Other Income	_____	_____	_____	_____
12. Rental Income Needed <u>Rental Income</u>	_____	_____	_____	_____
13. _____ Units@ _____ month, week	_____	_____	_____	_____
14. _____ Units@ _____ month, week	_____	_____	_____	_____
15. _____ Units@ _____ month, week	_____	_____	_____	_____
16. _____ Units@ _____ month, week	_____	_____	_____	_____
17. Vacancy Allowance	_(_____)_	_(_____)_	_(_____)_	_(_____)_
18. Rental Income (Add lines 13-16 less 17)	_____	_____	_____	_____
19. Excess of (Deficit) (lines 18 less 12)	_____	_____	_____	_____

Certified Correct

_____ by _____
 date Applicant's or Borrower's
 signature

OPERATION AND MAINTENANCE
 EXPENSES:

1.	<u>Salaries and Wages</u>	\$ _____	\$ _____	\$ _____	\$ _____
	Caretaker	\$ _____	\$ _____	\$ _____	\$ _____
	Manager	\$ _____	\$ _____	\$ _____	\$ _____
2.	<u>Utilities</u>	\$ _____	\$ _____	\$ _____	\$ _____
	Water	\$ _____	\$ _____	\$ _____	\$ _____
	Sewer	\$ _____	\$ _____	\$ _____	\$ _____
	Gas	\$ _____	\$ _____	\$ _____	\$ _____
	Electricity	\$ _____	\$ _____	\$ _____	\$ _____
	Heating	\$ _____	\$ _____	\$ _____	\$ _____
	Garbage and Trash Removal	\$ _____	\$ _____	\$ _____	\$ _____
	Telephone	\$ _____	\$ _____	\$ _____	\$ _____
	Other	\$ _____	\$ _____	\$ _____	\$ _____
3.	<u>Maintenance</u>	\$ _____	\$ _____	\$ _____	\$ _____
	Janitor's Supplies	\$ _____	\$ _____	\$ _____	\$ _____
	Repairs	\$ _____	\$ _____	\$ _____	\$ _____
	Building Equipment Repairs	\$ _____	\$ _____	\$ _____	\$ _____
	Exterminating	\$ _____	\$ _____	\$ _____	\$ _____
	Decorating	\$ _____	\$ _____	\$ _____	\$ _____
	Grounds Maintenance	\$ _____	\$ _____	\$ _____	\$ _____
	Furniture & Furnishing				
	Replacements	\$ _____	\$ _____	\$ _____	\$ _____
	Other	\$ _____	\$ _____	\$ _____	\$ _____
4.	<u>Insurance</u>	\$ _____	\$ _____	\$ _____	\$ _____
	Fire and Extended Coverage	\$ _____	\$ _____	\$ _____	\$ _____
	Liability	\$ _____	\$ _____	\$ _____	\$ _____
	Compensation	\$ _____	\$ _____	\$ _____	\$ _____
	Other	\$ _____	\$ _____	\$ _____	\$ _____
5.	<u>Taxes</u>	\$ _____	\$ _____	\$ _____	\$ _____
	Real Estate	\$ _____	\$ _____	\$ _____	\$ _____
	Social Security	\$ _____	\$ _____	\$ _____	\$ _____
	Special Assessments	\$ _____	\$ _____	\$ _____	\$ _____
	Income	\$ _____	\$ _____	\$ _____	\$ _____
	Other	\$ _____	\$ _____	\$ _____	\$ _____
6.	<u>Other Expenses</u>	\$ _____	\$ _____	\$ _____	\$ _____
	Accounting	\$ _____	\$ _____	\$ _____	\$ _____
	Legal	\$ _____	\$ _____	\$ _____	\$ _____
	Advertising	\$ _____	\$ _____	\$ _____	\$ _____
	Interest (RD)	\$ _____	\$ _____	\$ _____	\$ _____
	Other Interest	\$ _____	\$ _____	\$ _____	\$ _____

7. Total Operation and
Maintenance Expenses (Add
Section 1 thru 6) (Total
to Line 12 Front Side)

\$===== \$===== \$===== \$=====

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MANAGEMENT PLANS

The management of a rental Project, regardless of the type of tenants, is one of the most, if not the most, important determinants of the success or failure of a proposed Project.

The management plan, therefore, as the primary management charter should constitute a comprehensive description of the detailed Policies and procedures to be followed in managing the Project and should as a minimum address the following items:

1 Staffing.

The number, qualifications required, and duties of all personnel who will be hired to operate the project. Equal employment opportunity should be provided and special consideration should be given to hiring Spanish-speaking persons if warranted by the expected occupancy. Roles and responsibility's of owner and of manager should be specified.

2 Marketing.

The marketing efforts or techniques which will be used to obtain initial rent up and occupancy of future vacancies (i.e. advertisement, contacts with social service agencies, local farmers, etc.). Definite dates for opening and closing of the project will be spelled out for projects constructed for seasonal purposes.

3 Tenant selection.

Domestic farm workers must be given absolute priority in renting available units. Other selection criteria should be specifically outlined in the management plan. Arbitrary restrictions as to family size, age of children, or other similar items are prohibited, however, the size of unit assigned to a family should be commensurate with its needs. Rejected tenant applications should be maintained for a minimum of 1 year and applicants must be advised in writing of the reasons for rejection.

4 Ineligible tenants.

Units can be rented to other than farm workers when they are not needed by farm workers (i.e., during the off season), however, the leases must be on a short-term basis, normally not exceeding 30 days, and ineligible tenants must be advised that they will have to vacate the units if an eligible farm worker becomes available. To avoid future problems, occupancy by ineligibles should be avoided if at all possible. Written permission to rent to ineligibles must be obtained from the District Director before allowing the ineligible tenant to occupy LH projects.

5 Lease or occupancy agreement.

A copy of any proposed lease or occupancy agreement should be submitted with the plan. The lease or occupancy agreement should clearly outline the responsibilities of the tenant and landlord.

6 Counseling services.

Pre- and post-occupancy counseling services, which will be provided to tenants by borrowers to acquaint them with the project or otherwise assist them should be thoroughly explained.

7 Collection of rent.

The system which will be used in the collection of rent must be outlined including proper provisions for the internal control and security of cash collections, followup on overdue accounts, persons responsible for collections, recordkeeping, and conditions for the return of security deposits, if required.

8 Evictions.

The plan should spell out the specific reasons which warrant eviction and the steps which will be taken to resolve problems before eviction, including provisions for appeal. Voluntary compliance with the lease or occupancy agreement should be emphasized and every effort should be made to utilize the benefits available through local social service agencies and other community organizations.

9 Maintenance and repairs.

A schedule for preventive maintenance and the procedure for handling service requests from individual tenants, including procedures for the handling of emergency repairs on a 24-hour basis should be outlined. Management plans for projects constructed for seasonal occupancy will include provisions for off-season maintenance and security.

(Revised 6-16-82, PN 835.)

10 Records and reports.

The type of recordkeeping system which will be established and the person or persons who will be responsible for keeping records and submitting required reports to Rural Development. Subpart C of Part 1930 of this Chapter outlines the reports required and the formats for these reports. This Instruction is available from the local District Office.

(Revised 10-27-80, SPECIAL PN.)

11 Fidelity bonds.

Bonding should be provided for all persons entrusted with the receipt, custody, and disbursement of funds and custody of other negotiable or readily salable personal property. The amount of the bond should be at least equal to the maximum amount of money or property which the individual will have control of at any one time.

12 Tenant councils.

Tenant councils should be encouraged and should be given an input into proposed changes in lease agreements, staff selection, eviction, and in some cases tenant selection and other management decisions which have a bearing on the tenant's overall situation. Provisions should also be outlined for the democratic election of tenant councils.

13 Rent increases.

Requested or proposed rent increases should be handled in accordance with Exhibit C of Subpart C of Part 1930 of this chapter.

(Revised 08-30-93, SPECIAL PN.)

14 Non-discrimination.

The plan should address the policy of non-discrimination in tenant selection and employee hiring in accordance with Form RD 400-4, "Assurance Agreement," and the affirmative action planned in the recruitment of employees and tenants. (Revised 08-30-93, SPECIAL PN.)

15 Other items.

Any other items which have a bearing on the operation and management of the project.

16 The management plan must be signed and dated by the borrower or the borrower's authorized representative.

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(LH Insured Loan to Nonprofit Corporation)

LOAN RESOLUTION OF _____, 19_____

RESOLUTION OF THE BOARD OF DIRECTORS
OF _____ PROVIDING FOR
BORROWING \$_____ TO FINANCE HOUSING AND RELATED FACILITIES FOR
DOMESTIC FARM LABOR, THE COLLECTION, HANDLING, AND DISPOSITION OF INCOME, THE
ISSUANCE OF INSTALLMENT PROMISSORY NOTE AND REAL ESTATE SECURITY INSTRUMENT,
AND RELATED MATTERS

Whereas _____ (herein
referred to as "Corporation") is a nonprofit corporation duly organized and
operating under _____
_____ (authorizing State statute)
_____;

The Board of Directors of the Corporation (herein referred to as the "board") has
decided to provide certain housing and related facilities for domestic farm labor;

The board has determined that the Corporation is unable to provide such housing
and facilities with its own resources or to obtain from other sources for such
purpose sufficient credit upon terms and conditions which the Corporation could
reasonably be expected to fulfill;

BE IT RESOLVED:

1 Application for Loan. The Corporation shall apply for and obtain a
domestic farm labor housing loan (herein called "the loan") of \$_____ through the facilities of the United States of America acting through Rural Development, United States Department of Agriculture (herein called "the Government") pursuant to title V of the Housing Act of 1949. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government, in order to provide housing and relate facilities for domestic farm labor. Such housing and facilities and the land constituting the site are herein called "the housing."

2 Execution of Loan Instruments. To evidence the loan the Corporation shall issue a promissory note (herein referred to as "the note"), signed by its President and attested by its Secretary, with its corporate seal affixed thereto, for the amount of the loan, payable in installments over a period of _____ years, bearing interest at the rate of 1 percent per annum, and containing other terms and conditions prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, the President and Secretary are hereby authorized to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Corporation as the Government shall
(10-3-79) PN 694

require, including an assignment or security interest in the rents and profits as collateral security to be enforceable in the event of any default by the Corporation, and containing other terms and conditions prescribed by the Government. The President and Secretary are further authorized to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Corporation under the note, the related security instruments, and any related agreements are herein called the "loan obligations."

3 Equal Opportunity and Nondiscrimination Provisions. The borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Form RD 400-1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause," to be incorporated in or attached as a rider to each construction contract the amount of which exceeds \$10,000 and any part of which is paid for with funds from the loan, (c) Form RD 400-4, entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part hereof, and any other undertakings and agreements required by the Government pursuant to lawful authority.

4 Supervised Bank Account. The proceeds of the note and the amount of \$_____ to be contributed by the Corporation from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government. 1/ Amounts in the supervised bank account exceeding \$100,000 shall be secured by the financial institution in advance in accordance with the U. S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the Corporation shall be made only on checks signed by the _____ of the Corporation and countersigned by the County Supervisor of Rural Development, and only for the specific loan purposes approved in writing by the Government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in the supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of Rural Development, and the supervised bank account shall be closed. (Revised 7-6-81, SPECIAL PN.)

5 Accounts for Housing Operations and Loan Servicing. The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by Section 9.

The Treasurer of the Corporation shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution.

6 General Fund Account. By the time the loan is closed the Corporation shall from its own funds deposit in the General Fund Account the amount of \$_____. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in section 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan obligations.

7 Operation and Maintenance Account. Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account, sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes and insurance, normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

8 Debt Service Account. Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by the Corporation in trust for the Government as security therefor.

9 Reserve Account. (a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used
(10-3-79) PN 694

shall be held by the Corporation in trust as security for the loan obligations. Transfers at a rate not less than \$_____ 2/ annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of \$_____ 3/ and shall be resumed at any time when necessary, because of disbursements from the Reserve Account, to restore it to said sum. Of such sum, at least 50 percent shall be maintained on a cash basis, referred to herein as the "cash reserve." After the cash reserve reaches the required 50 percent of said sum, all or any portion of the balance of said sum may, at the option of the Corporation, consist of an amount, referred to herein as the "prepayment reserve," by which the Corporation is "ahead of schedule" as defined in the regulations of Rural Development. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by the Corporation--

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by the Corporation which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection (a), and is not agreed between the Corporation and the Government to be used for purposes authorized in subsection 9 (b) shall be applied promptly on the loan obligations.

10. Regulatory Covenants. So long as the loan obligations remain unsatisfied, the Corporation shall--

(a) Impose and collect such fees, assessments, rents, and charges that the income of the Corporation will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the Corporation's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit to the Government regular and special reports concerning the housing or the Corporation's financial affairs.

(d) Unless the Government gives prior consent--

(1) Not use or permit use of the housing for any purpose other than as housing and related facilities for domestic farm labor.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit voluntary dissolution of the Corporation, nor merge or consolidate with any other organization, nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise, nor engage in any other new business, enterprise, or venture than operation of the housing.

(4) Not cause or permit the issuance or transfer of any stock, borrow any money, nor incur any liability aside from current expenses as defined in section 7.

(e) Submit the following to the Government for Prior review and approval nor less than _____ days before the effective dates, unless approval is waived by the Government:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements.

(4) Rates of compensation to officers and employees of the Corporation payable from or chargeable to any account provided for in this resolution.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Corporation in connection with the loan.

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan obligations, or the security.

11 Refinancing of Loan. If at any time it appears to the Government that he corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12 General Provisions.

(a) It is expressly understood and agreed that any loan made will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the loan, enforce such limitations, and protect the Government's financial interest in the loan and the security.

(b) The provisions of this resolution are representations to the Government to induce the Government to make a loan to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any provision of this resolution or any requirement made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable, and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Upon request by the Government the Corporation will permit representatives of the Government to inspect and make copies of any of the records of the Corporation pertaining to this loan. Such inspection and copying may be made during regular office hours of the Corporation, or any other time the Corporation and, the Government finds convenient.

(d) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone, or agreed to in amended form, by the Government initially.

(e) Any notice, consent, approval, waiver, or agreement must be in writing.

(f) This resolution may be cited in the security instrument and any other instruments or agreements as the "Loan Resolution of _____ 19____."

(date of this resolution)

CERTIFICATE

The undersigned, _____, the Secretary of the Corporation identified in the foregoing Loan Resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors on _____ 19____, which has not been altered, amended, or repealed.

(Date)

(Secretary)

(SEAL)

1/ Only loan funds, and borrower's funds to be used for an eligible loan purpose, may be deposited in the supervised bank account.

2/ In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence and indicated by footnote 3.

3/ The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

oOo

LOAN AGREEMENT
(LH Insured Loan to Individual)

1 Parties and Terms Defined. This agreement dated _____ of the Undersigned _____, herein called "Borrower" whether one or more, whose post office address is _____, with the United States of America acting through Rural Development, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Borrower in the amount of \$_____ made or insured, or to be made or insured by the Government pursuant to title V of the Housing Act of 1949 to provide housing and related facilities for domestic farm labor. Such housing and related facilities, together with the site, may be referred to herein as "the housing." The indebtedness and other obligations of Borrower under the note evidencing the loan, the related security instrument, and any related agreement are herein called the "loan obligations."

2 Equal Opportunity and Nondiscrimination Provisions. The borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Executive Order 11063 regarding nondiscrimination in the use and occupancy of housing, (b) Form RD 400-1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds \$10,000 and any part of which is paid for with funds from the loan, (c) Form RD 400-4, entitled "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part hereof, and any other undertakings and agreements required by the Government pursuant to lawful authority.

3 Supervised Bank Account. The proceeds of the note and the amount of \$_____ to be contributed by the borrower from its own funds and used for eligible loan purposes shall be deposited in a "supervised bank account" as required by the Government. 1/ Amounts in the supervised bank account exceeding \$100,000 shall be secured by the financial institution in advance in accordance with U.S. Treasury Department Circular No. 176. As provided therein shall, until duly expended, collaterally secure the loan obligations. Withdrawals from the supervised bank account by the borrower shall be made only on checks signed by the _____ of the borrower and countersigned by a representative of the Rural Development, and only for the specific loan purposes approved in writing by the Government. The borrower's share of any liquidated damages or other monies paid by defaulting contractors or their sureties shall be deposited in the supervised bank account to assure completion of the project. When all approved items eligible for payment with loan funds are paid in full, any balance remaining in the supervised bank account shall be applied on the note as an "extra payment" as defined in the regulations of Rural Development, and the supervised bank account shall be closed. (Revised 7-6-81, SPECIAL PN.)

4 Accounts for Housing Operations and Loan Servicing. Borrower shall establish on his books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: A General Fund Account, an operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 8 (a).

5 General Fund Account. By the time the loan is closed Borrower shall from his own funds deposit in the General Fund Account the amount of \$_____. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. Borrower may also in his discretion at any time deposit therein other funds, not otherwise provided for by this agreement, to be used for any of the purposes authorized in section 6, 7, or 8. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by Borrower in trust for the Government as security for the loan obligations.

6 Operation and Maintenance Account. Not later than the 15th of each month out of the General Fund Account shall be transferred to the Operation and Maintenance Account sufficient amounts to enable Borrower to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes, insurance, and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan or income or revenue from the housing.

7 Debt Service Account. Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 6, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations and, until so used, shall be held by Borrower in trust for the Government as security therefor.

8 Reserve Account.

(a) Immediately after each transfer to the Debt Service Account as provided in section 7, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this agreement and until so used shall be held by the Borrower in trust as security for the loan obligations. Transfers at a rate not less than \$_____ 1/ annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of \$_____ 2/ and shall be resumed at any time when necessary, because of disbursements from the Reserve Account, to restore it to said sum. Of such sum, at least 50 percent shall be maintained on a cash basis, referred to herein as the "cash reserve." After the cash reserve reaches the required 50 percent of said sum, all or any portion of the balance of said sum may, at the option of Borrower, consist of an amount, referred to as the "prepayment reserve," by which Borrower is "ahead of schedule" as defined in the regulations of Rural Development. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by Borrower--

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 6.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by Borrower which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(5) For any purpose desired by Borrower, provided Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 8 (a) to be accumulated by that time, and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

(c) Any amount in the Reserve Account which exceeds the aggregate sum specified in subsection 8 (a) and is not agreed between the borrower and the Government to be used for purposes authorized in subsection 8 (a) shall be applied promptly on the loan obligations.

9 Regulatory Covenants. So long as the loan obligations remain unsatisfied, Borrower shall--

(a) Impose and collect such fees, assessments, rents, and charges that his income will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to his financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or Borrower's financial affairs.

(d) Unless the Government gives prior consent--

(1) Not use the housing for any purpose other than as labor housing and related facilities for domestic farm laborers.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit the transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(e) Submit the following to the Government for prior review and approval not less than _____ days before the effective dates.

(1) Annual budgets and operating plans, including proposed rents and charges and other terms of rental agreements for occupancy and compensation to employees chargeable as operating expenses of the housing.

(2) Statements of management policy and practice, including eligibility criteria and implementing rules for occupancy of the housing.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Do other things as may be required by the Government in connection with the operation of the housing or with any of Borrower's operations or affairs which may affect the housing, the loan obligations, or the security.

10 Refinancing of Loan. If at any time it appears to the Government that Borrower is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, Borrower will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

11 General Provisions.

(a) It is understood and agreed by Borrower that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the loan, enforce such limitations, and protect the Government's financial interest in the loan and the security.

(b) Borrower shall also comply with all covenants and agreements set forth in the note, security instrument, and any related agreements executed by Borrower in connection with the loan.

(c) The provisions of this agreement are representations to the Government to induce the Government to make or insure a loan to Borrower as aforesaid. If Borrower should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant hereto, such failure shall constitute default as fully as default in payment of amounts due on the loan. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(d) Upon request by the Government the Borrower will permit representative, of the Government to inspect and make copies of any of the records of the Borrower pertaining to this loan. Such inspection and copying may be made during regular office hours of the Borrower, or any other time the Borrower and the Government finds convenient.

(e) Any provisions of this agreement may be waived by the Government, or changed by agreement between the Government and Borrower to any extent such provisions could legally have been foregone, or agreed to in any amended form, by the Government initially. Any notice, consent, approval, waiver, or agreement must be in writing.

(f) This agreement may be cited in the security instrument and other instruments or agreements as the "Loan Agreement of _____
_____ 19____." (date of this agreement)

Witness

Borrower

Witness

Borrower

1/ In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence as indicated by footnote 2/.

2/ The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan.

(LABOR HOUSING LOAN AND GRANT TO A NONPROFIT
CORPORATION)

LOAN AND GRANT RESOLUTION OF _____, 19____

RESOLUTION OF THE BOARD OF DIRECTORS OF _____
PROVIDING FOR OBTAINING FINANCIAL ASSISTANCE IN THE AMOUNT \$_____
TO AID IN FINANCING FEDERALLY DEFINED LOW-RENT HOUSING AND RELATED
FACILITIES FOR LOW-INCOME DOMESTIC FARM LABOR, AND RELATED MATTERS.

Whereas _____
(herein referred to as the "Corporation") is organized and operating under
_____ and the board of
_____ (authorizing State statute)
directors of the Corporation has determined that--

- (a) The Corporation should provide low-rent housing and related facilities for low-income domestic farm labor, as defined in title V of the Housing Act of 1949.
- (b) The estimated total cash development cost of such housing and facilities amounts to \$_____.
- (c) For such purpose the Corporation is able to furnish from its own resources \$_____.
- (d) The Corporation will need financial assistance in the amount of \$_____ which the Corporation is unable to obtain from other sources for such purpose upon terms and conditions which the Corporation could reasonably be expected to fulfill.
- (e) Of such amount of needed financial assistance the Corporation will be able to repay, with interest at 1% per annum, the amount of \$_____ over a repayment period of _____ years, if the balance of \$_____ is made available to the Corporation as a grant.
- (f) The housing and related facilities will fulfill a pressing need in the area in which they are or will be located.
- (g) The housing and facilities cannot be provided without the aid of a grant in the amount stated above:

THEREFORE BE IT RESOLVED:

1 Application for Loan and Grant. The Corporation shall apply to the United States of America, acting through Rural Development, United States Department of Agriculture (herein called "the Government") for a loan of \$_____ and a grant of \$_____, pursuant to Title V of the housing Act of 1949. Such loan may be insured by the Government. The loan and the grant shall be used only for the specific eligible purposes approved by the Government, in order to provide low-rent housing and related facilities for low-income domestic farm labor. Such housing and facilities and the land constituting the site may be referred to herein as the "housing."

2 Execution of Loan and Grant Instruments. To evidence the loan the Corporation shall issue a promissory note (herein referred to as "the Note"), signed by its President and attested by its Secretary, with its corporate seal affixed thereto, for the amount of the loan, payable in installments over a period of _____ years, bearing interest at a rate not to exceed ____ percent per annum, and containing other terms and conditions prescribed by the Government. To evidence the obligations of the grant, the Corporation shall execute an instrument in the form attached hereto entitled "Labor Housing Grant Agreement" and referred to herein as the "Grant Agreement," evidencing terms and conditions upon which the grant is made by the Government and the obligations of the Corporation with respect thereto. To secure the note and/or all other obligations and agreements of the Corporation with respect to the loan and the grant, as required by the Government, the President and the Secretary are hereby authorized to execute a security instrument giving a lien upon or security interest in the housing and such other property as the Government shall require, including an assignment of or security interest in the rents and profits as collateral security to be enforceable in the event of any default by the Corporation. The President and the Secretary are further authorized to execute any other security and other instruments, agreements, and documents required by the Government for the loan or grant. The indebtedness and other obligations of the Corporation under the note, Grant Agreement, this resolution, the security instrument, and any other instruments and agreements related to the loan or grant are herein called the "loan and grant obligations."

3 Equal Employment Opportunity under Construction Contracts and Nondiscrimination in the Use of Occupancy and Housing and in Any Other Benefits of the Loan or Grant. The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation (a) any undertakings and agreements

required by the Government regarding nondiscrimination in the use and occupancy of housing, (b) Form RD 400-1, "Equal Opportunity Agreement," involving an Equal Opportunity Clause to be incorporated in or attached as a rider to each construction contract which exceeds \$10,000 in amount and is paid for in whole or in part with loan or grant funds, and (c) Form RD 400-4, "Nondiscrimination Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part hereof.

4 Supervised Bank Account. The proceeds of the loan and grant and the amount of \$_____ to be contributed by the Corporation from its own fund and used for approved eligible purposes shall be deposited in a "supervised bank account" as required by the Government. 1/ Amounts in the supervised bank account exceeding \$100,000 shall be secured by the financial institution in advance in accordance with U. S. Treasury Department Circular No. 176. As provided by the terms of the agreement creating the supervised bank account, all funds therein shall, until duly expended, collaterally secure the loan and grant obligations. Withdrawals from the supervised bank account by the Corporation shall be made only on checks signed by the _____ of the Corporation and countersigned by the County Supervisor or other authorized official of Rural Development, and only for the specific eligible purposes approved in writing by the Government. The Corporation's share of any liquidated damages or other monies paid by defaulting contractors of their sureties shall be deposited in the supervised bank account to assure completion of the project. When all approved items eligible for payment with loan or grant funds are paid in full, any balance remaining in the supervised bank account shall be treated as a refund of loan and grant funds in the same ratio as that between the amounts of the loan and grant, and the supervised bank account shall be closed. (Revised 7-6-81, SPECIAL PN.)

5 Accounts for Housing Operations and Loan Servicing. The Corporation shall establish on its books the following accounts, which shall be maintained so long as the loan or grant obligations continue: A General Fund Account, an Operation and Maintenance Account, a Debt Service Account, and a Reserve Account. Funds in said accounts shall be deposited in a bank or banks insured by the Federal Deposit Insurance Corporation, except for any portion invested in readily marketable obligations of the United States as authorized by section 9. The Treasurer of the Corporation shall execute a fidelity bond, with a surety company approved by the Government, in an amount not less than the estimated maximum amount of such funds to be held in said accounts at any one time. The United States of America shall be named as co-obligee, and the amount of the bond shall not be reduced without the prior written consent of the Government. The Corporation in its discretion may at any time establish and utilize additional accounts to handle any funds not covered by the provisions of this resolution

1/ Only loan or grant funds, and borrower's funds to be used for an eligible loan or grant purpose, may be deposited in the supervised bank account.
(10-3-79) PN 694

6 General Fund Account. By the time the loan and grant are closed the Corporation shall from its own funds deposit in the General Fund Account the amount of \$_____. All income and revenue from the housing shall upon receipt be immediately deposited in the General Fund Account. The Corporation may also in its discretion at any time deposit therein other funds, not otherwise provided for by this resolution, to be used for any of the purposes authorized in section 7, 8, or 9. Funds in the General Fund Account shall be used only as authorized in said sections and, until so used, shall be held by the Corporation in trust for the Government as security for the loan and grant obligations.

7 Operation and Maintenance Account. Not later than the 15th of each month, out of the General Fund Account shall be transferred to the Operation and Maintenance Account, sufficient amounts to enable the Corporation to pay from the Operation and Maintenance Account the actual, reasonable, and necessary current expenses, for the current month and the ensuing month, of operating and maintaining the housing not otherwise provided for. Current expenses may include, in addition to expenses occurring or becoming due monthly, monthly accumulations of proportionate amounts for the payment of items which may become due either annually or at irregular intervals, such as taxes and insurance and normal repair and replacement of furnishings and equipment reasonably necessary for operation of the housing. Current expenses may also include initial purchase and installation of such furnishings and equipment with any funds deposited in and transferred from the General Fund Account which are not proceeds of the loan and, unless the Government gives prior written consent, are not income or revenue from the housing.

8 Debt Service Account. Each month, immediately after the transfer to the Operation and Maintenance Account provided for in section 7, or after it is determined that no such transfer is called for, any balance remaining in the General Fund Account, or so much thereof as may be necessary, shall be transferred to the Debt Service Account until the amount in the Debt Service Account equals the amount of the next installment due on the loan. Funds in the Debt Service Account shall be used only for payments on the loan obligations while they continue and, until so used, shall be held by the Corporation in trust for the Government as security for the loan and grant obligations.

9 Reserve Account. (a) Immediately after each transfer to the Debt Service Account as provided in section 8, any balance in the General Fund Account shall be transferred to the Reserve Account. Funds in the Reserve Account may be used only as authorized in this resolution and until so used shall be held by the Corporation in trust as security for the loan and grant obligations. Transfers at a rate not less than \$_____ 2/ annually shall be made to the Reserve Account until the amount

2/ In most cases this figure should be one-tenth of the aggregate sum specified later in the sentence as the total amount of the Reserve Account.

in the Reserve Account reaches the sum of \$_____ ^{3/} and shall be resumed at any time when necessary, because of disbursements from the Reserve Account, to restore it to said sum. Of such sum, at least 50 percent shall be maintained on a cash basis, referred to herein as the "cash reserve." After the cash reserve reaches the required 50 percent of said sum, all or any portion of the balance of said sum may, at the option of the Corporation, consist of an amount, referred to herein as the "prepayment reserve," by which the Corporation is "ahead of schedule" as defined in the regulations of Rural Development. Funds in the cash reserve shall be deposited in a separate bank account or accounts insured by the Federal Deposit Insurance Corporation or invested in readily marketable obligations of the United States, the earnings on which shall accrue to the Reserve Account.

(b) With the prior consent of the Government, funds in the Reserve Account may be used by the Corporation - -

(1) To meet payments due on the loan obligations in the event the amount in the Debt Service Account is not sufficient for the purpose.

(2) To pay costs of repairs or replacements to the housing caused by catastrophe or long-range depreciation which are not current expenses under section 7.

(3) To make improvements or extensions to the housing.

(4) For other purposes desired by the Corporation which in the judgment of the Government likely will promote the loan or grant purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(c) Any amount in the Reserve Account which exceeds the sum specified in subsection (a), and is not agreed between the Corporation and the Government to be used for purposes authorized in subsection (b) shall be applied promptly on the loan obligations.

10. Regulatory Covenants. So long as the loan or grant obligations continue, the Corporation shall - -

^{3/} The amount to be inserted will usually be about 10 percent of the value of the buildings and related facilities financed wholly or partially with the loan and grant.

(a) Impose and collect such fees, assessments, rents, and charges that the income of the Corporation will be sufficient at all times for operation and maintenance of the housing payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the Corporation's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan or grant obligations, and submit to the Government regular and special reports concerning the housing or the Corporation's financial affairs, including any information required by the Government regarding income of the occupants of the housing.

(d) Unless the Government gives prior consent - -

(1) Not use or permit use of the housing for any purpose other than as low-rent housing and related facilities for low-income domestic farm labor, as those terms are defined by the Government.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan or grant obligations.

(3) Not cause or permit voluntary dissolution of the Corporation, nor merge or consolidate with any other organization, nor transfer or encumber title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or other conveyance or encumbrance, nor engage in any other new business, enterprise, or venture than operation of the housing.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in Section 7.

(e) Submit the following to the Government for prior review not less than _____ days before the effective dates:

(1) Annual budgets and operating plans.

(2) Statements of management policy and practice including eligibility criteria and implementing rules for occupancy of the housing.

(3) Proposed rents and charges and other terms of rental agreements for occupancy of the housing.

(4) Rates of compensation to officers and employees of the Corporation payable from or chargeable to any account provided for in this resolution.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under this resolution, the note, Grant Agreement, security instrument, and any related agreement executed by the Corporation in connection with the loan or grant

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan and grant obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan or grant obligations, or the security.

11 Refinancing of Loan. If at any time it appears to the Government that the Corporation is able to obtain a loan upon reasonable terms and conditions to refinance the loan obligations then outstanding, upon request from the Government, the Corporation will apply for, take all necessary actions to obtain, and accept such refinancing loan and will use the proceeds for said purpose.

12 General Provisions.

(a) It is understood and agreed by the Corporation that any loan or grant will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole

discretion to carry out the purposes of the loan and grant, enforce such limitations, and protect the Government's financial interest in the loan and grant and the security.

(b) The provisions of this resolution are representations of the Corporation to induce the Government to make or insure a loan or make a grant to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any of its loan or grant obligations, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of default, the Government at its option may declare the entire amount of the loan and grant obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Upon request by the Government the corporation will permit representatives of the Government to inspect and make copies of any of the records of the corporation pertaining to the financial assistance. Such inspection and copying may be made during regular office hours of the corporation, or any other time the corporation and the Government finds convenient.

(d) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone, or agreed to in amended form, by the Government initially.

(e) Any notice, consent, approval, waiver, or agreement must be in writing.

(f) This resolution may be cited in the security instrument and elsewhere as the "Loan and Grant Resolution of _____19____." (date of this resolution)

CERTIFICATE

The undersigned, _____, the Secretary of the corporation identified in the foregoing resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors on _____ 19____, which has not been altered, amended, or repealed.

(Date)

(Secretary)

(SEAL)

oOo

LABOR HOUSING GRANT AGREEMENT

THIS AGREEMENT dated _____, 19____, between

_____ which is organized and operating under _____

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through Rural Development, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement and/or capital improvement of a Labor Housing Project to serve domestic farm laborers at an estimated cost of \$_____ and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$_____ of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable rental rate.

Said sum of \$_____ has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$_____ subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 516 of the Housing Act of 1949 for the purpose only of defraying a part not to exceed _____ percent of the development costs, as defined by applicable Rural Development instructions.

GRANTEE AGREES THAT GRANTEE WILL:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the project, including these units if less than the whole of said project, continuously in an efficient and economic manner.

D. Make services of said project available within its capacity to all domestic farm laborers in borrowers/grantees service area without discrimination because of race, color, religion, sex, age, handicap, marital or familial status, or National origin at reasonable rental rates, whether for one or more types of units, adopted by resolution dated _____19__, as may be revised from time to time by Grantee. The initial rental rate must be approved by the Grantor. Thereafter, Grantee may not make changes to the rental rate structure without prior authorization from the Grantor.
(Revised 02-22-90, SPECIAL PN.)

E. Adjusts its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

G. To execute Form RD 400-1, "Equal Opportunity Agreement," and to execute Form RD 400-4, "Assurance Agreement," and to execute any other agreements required by Grantor which Grantee is legally authorized to execute. If any such form has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.
(Revised 02-22-90, SPECIAL PN.)

H. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The Provisions of this Grant agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the

terms of this Grantee Agreements or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

I. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

J. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions.

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the Grantee is authorized or required to sell the property, proper

sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

K. Abide by the following conditions pertaining to nonexpendable personal property which is furnished by the Grantor or acquired wholly or in part with grant funds. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

1. Use of nonexpendable property.

(a) The Grantee shall use the property in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the property in connection with its other Federally sponsored activities, if any, in the following order of priority:

- (1) Activities sponsored by the Rural Development.
- (2) Activities sponsored by other Federal agencies.

(b) During the time that nonexpendable personal property is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the property was originally acquired. First preference for such other use shall be given to Rural Development sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of nonexpendable property. When the Grantee no longer needs the property as provided in paragraph (a) above, the property may be used for other activities in accordance with the following standards:

(a) Nonexpendable property with a unit acquisition cost of less than \$1000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) Nonexpendable personal property with a unit acquisition cost of \$1000 or more. The Grantee may retain the property for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original grantor agency.

The Grantor agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within the agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the property exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share \$100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the property elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the property, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for nonexpendable personal property shall also include:

(a) Property records which accurately provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage (at the end of budget year) of Federal participation in the cost of the project for which the property was acquired; location, use and condition of the property and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(e) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described nonexpendable property (use continuation sheets as necessary).

L. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

M. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

N. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

O. Provide an audit report prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

P. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

Q. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item J above.

R. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

S. Pay all laborers and mechanics employed by contractors and subcontractors wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a - 276a-5).

T. In construction contracts in excess of \$2,000 and in other contracts in excess of \$2,500 which involve the employment of mechanics or laborers, to include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

U. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. §1875C-9) and Section 308 of the Water Pollution Control Act specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. Such regulations and guidelines can be found in 40 CFR 15.4 and 40 FR 17126 dated April 16, 1975. In so doing the Contractor further agrees:

1. As condition for the award of contract to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant,

agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

GRANTOR AGREES THAT IT:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$_____ which it will advance to Grantee to meet not to exceed _____ percent of the development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without available consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

TERMINATION OF THIS AGREEMENT.

This agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

IN WITNESS WHEREOF Grantee on the date first above written has caused these
presence to be executed by its duly authorized _____
_____ and attested and its corporate
seal affixed by its duly authorized _____

ATTEST: _____

By _____

By _____

(Title)

(Title)

UNITED STATES OF AMERICA
RURAL DEVELOPMENT

By _____

(Title)

LEGAL SERVICE AGREEMENT

Agreement made this _____ day of _____, 19____ between the _____, hereinafter called the owners, and _____, hereinafter called the attorney, witnesseth:

Whereas the owners intent to form a corporation, hereinafter called the corporation, to construct and operate a labor housing project in

(Town) (County) (State)
and to obtain a loan from Rural Development to finance the construction, and the attorney agrees to perform all legal services necessary to incorporate the Corporation, and to perform all other customary legal services necessary to the organization, financing, construction, and initial operation of the proposed rural rental housing project, such services to include but not to be restricted to the following:

1 Prepare and file necessary incorporating papers and supervise and assist in taking other necessary or incidental actions to create the Corporation and authorize it to finance, construct, and operate the proposed housing project.

2 Prepare for, and furnish advice and assistance to the owners, and to the Board of Directors and officers of the Corporation, in connection with (a) notices and conduct of meetings; (b) preparation of minutes of meetings; (c) preparation and adoption of necessary resolutions in connection with the authorization, financing, construction, and initial operation of a rural rental housing project; (d) necessary construction contracts; (e) preparation of adoption of bylaws and related documents; (f) any other action necessary for organizing the Corporation or financing, constructing, and initially operating the proposed housing project.

3 Review of construction contract, bid-letting procedure, and surety and performance bonds.

4 Examination of real estate titles and preparation, review, and recording of deeds and any other instruments.

5 Cooperation with the architect employed by the owners or the Corporation in connection with preparation of survey sheets, easements, and any other necessary title documents, construction contracts, and other instruments.

6 Rendering of legal opinions as required by the owners or the Corporation or Rural Development, United States Department of Agriculture.

7 Owners agree to pay to the attorney for professional services in accordance with this agreement, as follows:

The fees to be payable in the following manner and at the following times:

The attorney states and agrees that of the above total fees, _____ represents fees for services in connection with the organization and incorporation of the Corporation.

The owners and the attorney further covenant and agree that, if upon organization and incorporation the Corporation fails or refuses to adopt and ratify this Agreement by appropriate resolution within _____ days, this Agreement shall terminate and owners shall be liable only for payment for legal services rendered in connection with such organization and incorporation.

Signed this _____ day of _____, 19____.

Attorney: _____

Owners: _____

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

This Exhibit includes information for use by public body applicants in the preparation and issuance of evidences of debt ("bonds" or "debt instruments"). This information is made available to applicants as appropriate for application processing and loan docket preparation.

(1) Policies.

(i) This Exhibit outlines the policies of Rural Development with respect to preparation and issuance of evidences of debt (hereinafter sometimes referred to as "bonds" or "debt instruments").

(ii) Preparation of the bonds and the bond transcript documents will be the responsibility of the applicant. Public body applicants will obtain the services and opinion of recognized Bond Counsel with respect to the validity of a bond issue. The applicant normally will be represented by a local attorney who will obtain the assistance of a recognized Bond Counsel firm which has had experience in municipal financing with such investors as investment dealers, banks, and insurance companies.

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

(iv) At the option of the applicant and with the prior approval from the National Office of Rural Development, for issues of \$50,000 or less, the applicant need not use Bond Counsel if:

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

(B) There is a significant cost saving to the applicant particularly with reference to total legal fees after determining what Bond Counsel would charge as compared with what the local attorney will charge without Bond Counsel:

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

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

(E) All bonds will be prepared in accordance with this regulation and will conform as nearly as possible to accepted methods of preparation of similar bonds in the area.

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

(2) Bond transcript documents. Any questions with respect to Rural Development requirements should be discussed with local Rural Development representatives. Bond Counsel is required to furnish at least two complete sets of the following to the applicant, who will furnish one complete set to Rural Development:

(i) Copies of all organizational documents.

(ii) Copies of general incumbency certificate.

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

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

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

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

(vii) Specimen bond, with any attached coupons.

(viii) Attorney's no-litigation certificate.

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

(x) Any additional or supporting documents required by Bond Counsel.

(xi) For loans involving multiple advances of Rural Development loan funds, a preliminary approving opinion of Bond Counsel if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered on or before the first advance of loan funds and state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan subject only to changes during the advance of funds such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates.

(xii) Preliminary approving opinion, if any, and final unqualified approving opinion of recognized Bond Counsel including opinion regarding interest on bonds being exempt from Federal and any State income taxes. On approval of the Administrator, a final opinion may be qualified to the extent that litigation is pending relating to Indian Claims that may affect title to land or validity of the obligation

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

(4) Permanent instruments for Rural Development loans to repay interim commercial financing. Such loans will be evidenced by one of the types of instruments in the order of preference shown in paragraph (a) (5) of this Exhibit.

(5) Multiple advances of Rural Development funds using permanent instruments. Where interim financing from commercial sources is not available, Rural Development loan proceeds will be disbursed on an "as needed by borrower" basis in amounts not to exceed the amount needed during 30-day periods. Rural Development loans will be evidenced by the following types of instruments chosen in accordance with the following order of preference:

(i) First preference - Form 1944-52. If legally permissible, use Form RD 1944-52. "Multiple Family Housing Promissory Note." (Revised 5-1-85, SPECIAL PN.)

(ii) Second preference - single instrument with amortized installments. If Form RD 1944-52 is not legally permissible, use single instrument showing on the face the full amount of the loan and providing for amortized installments with provisions for entering the date and amount of each Rural Development advance on the reverse thereof or an attachment to the instrument. Form RD 1944-52 should be followed to the extent possible. The first amortized payment will be due one amortized payment period following the AED. See the FMI for RD 1944-52 for specific instructions. (Revised 5-1-85, SPECIAL PN.)

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

(A) The repayment terms described in paragraph (a) (5) (ii) of this Exhibit "Second preference" apply.

(B) The instruments shall contain in substance the following provisions:

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

(2) Payments made on indebtedness evidenced by this instrument, regardless of when made, shall be applied first to interest due through the date of payment and next to principal except that payments made from security depleting sources shall, after payment of interest to the payment date, be applied to the principal last to become due under the instrument and shall not affect the obligation of the borrower to pay the remaining installments as scheduled.

(iv) Fourth preference. If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be delivered in the order of their numbers. Such bonds will conform with the minimum requirements of paragraph (7) of this Exhibit. Rules for application of payments on serial bonds will be the same as those for principal installment single bonds as set out in the preceding paragraph (5) (iii) of this Exhibit.

(6) Multiple advances of Rural Development funds using temporary debt instrument. When none of the instruments described in paragraph (5) of this exhibit are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used.

The debt instrument will provide for multiple advance of Rural Development loan funds and will be for the full amount of the Rural Development loan. The instrument will be prepared by Bond Counsel and approved by the State Director and OGC. At the same time Rural Development delivers the last advance, the borrower will deliver the permanent bond instrument to Rural Development to replace the temporary debt instrument and the canceled temporary instrument will be delivered to the borrower. The approved debt instrument will show at least the following:

- (i) The date from which each advance will bear interest.
- (ii) The interest rate.
- (iii) A payment schedule providing for interest on outstanding principal at least annually.
- (iv) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instrument(s).

(7) Minimum bond specifications. The provisions of paragraph (7) are of this Exhibit minimum specifications only, and must be followed to the extent legally permissible.

(i) Type and denominations. Bond resolutions or ordinances will provide that the instrument(s) be either a bond representing the total amount of the indebtedness or Serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than \$1,000). Single bonds may provide for either repayment of principal plus interest or amortized installments; amortized installments are preferable from the standpoint of Rural Development. Coupon bonds will not be used unless required by statute.

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

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

(iv) Date of bonds. Bonds will be dated as of the day of delivery.

(v) Payment date. Insofar as loan payments are consistent with income availability, applicable State statutes, and commercial customs in the preparation of bonds or other evidence of indebtedness, they should be scheduled on a monthly basis either in the bond or other evidence of indebtedness or through the use of a supplemental agreement. Such requirements will be accomplished not later than the time of loan closing. When monthly payments are required, such payments will be scheduled beginning one full month following the date of loan closing or the end of any approved deferment period. Subsequent monthly payments will be scheduled each full month thereafter. In those cases where evidence of indebtedness calls for annual or semiannual payments, they will be scheduled beginning six or twelve full months, respectively following the date of loan closing or the end of any approved deferment period. Subsequent payments will be scheduled each sixty or twelfth full month respectively, thereafter. When the evidence of indebtedness is dated the 29th, 30th, or 31st day of a month, the payment date will be scheduled the 28th day of the month. Borrowers scheduled to make monthly payments will be given a monthly payment card jacket at the time of loan closing. These borrowers will submit payment directly to the Finance Office.

(vi) Place of payment. Payments on bonds purchased by Rural Development should be submitted to the Rural Development Finance Office by the borrower.

(vii) Redemptions. Bonds should contain customary redemption provisions, subject, however, to unlimited right of redemption without premium of any bonds held by Rural Development except to the extent limited by the provisions under the "Third Preference" and "Fourth Preference" in paragraph (5) of this Exhibit.

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

outstanding principal indebtedness. Junior and subordinate bonds may be issued without restriction.

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

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

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

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

(8) Bidding by Rural Development. Where a public bond sale is required by State statutes, Rural Development will not normally submit a bid at the advertised sale unless State statutes require a bid to be submitted. Preferably, Rural Development will negotiate the purchase with the applicant subsequent to the advertised sale if no acceptable bid is received. In those cases where Rural Development is required to bid, the bid will be made at the applicable Rural Development interest rate.

GUIDE LETTER FOR USE IN INFORMING INTERIM LENDER
OF RURAL DEVELOPMENT'S COMMITMENT

(Name and Address of Private Lender)

Dear _____:

(For Organizations)

Reference is made to a request from the (Smith Housing Assoc.) through (John Smith) its President, for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

(For Individuals)

Reference is made to a request from (John Jones) for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

This letter is to confirm certain understandings on behalf of Rural Development.

Final drawings, specifications, and all other contracts documents have been prepared and approved, and the applicant is prepared to commence construction. It has been determined by the applicant and Rural Development that the conditions of loan closing can be met. Funds have been obligated for the project, as evidenced by the attached copy of Form RD 1944-57. "Multiple Family Housing Acknowledgment of Obligated Funds/Check Request." (Revised 5-1-85, SPECIAL PN.)

The applicant has been required by Rural Development to deposit \$_____ with your firm to be utilized prior to any interim loan funds. The applicant has proposed and Rural Development has agreed that you may first advance any applicant funds on deposit, and then advance the proceeds of the interim loan in accordance with the terms and conditions stated in your attached letter, as needed to pay for construction and other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper statements and partial payment estimate prepared by the builder, and approved for payment by the consulting architect, the applicant, and the Rural Development District Director.

(10-3-79) PN 694

We have scheduled Rural Development loan to be closed when construction to be financed with loan funds is substantially complete in accordance with the Rural Development approved contract documents, drawings and specifications, (except for minor punch list items), and the applicant provides evidence indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the Rural Development loan amount will be available to pay off the amount of loan advances your lending institution has made for authorized approved purposes, including accrued interest to the date of closing.

Rural Development cannot provide you with an unconditional letter of commitment guaranteeing Rural Development loan closing. Factors such as noncompletion, default, unacceptable workmanship, and marked deviation from approved drawings and specifications could prevent the Rural Development loan from being closed.

These problems can be minimized by making a thorough review of the (contract documents,)* drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance.

The following are additional safeguards to help assure Rural Development loan closing:

1. We invite you or your representatives to accompany Rural Development personnel during construction inspections so that at least 3 or 4 joint inspections at critical points during construction, (including the final inspection), can be made to help assure that construction is proceeding in accordance with the Rural Development approved drawings and specifications.

2. Rural Development will maintain its commitment in the amount of the obligated loan funds for a reasonable period of time after the expiration of any specified completion dates, provided work on the project is progressing satisfactorily and any identified problems have been resolved.

3. Rural Development will not arbitrarily abandon your lending institution in the event of default. Should the contractor default, Rural Development will attempt to provide financial assistance to the applicant in accordance with our administrative procedures and lending requirements, provided a new contractor can complete the project for a total cost within the security value of the project. If this is not possible, or should the Rural Development loan applicant become unable or unwilling to continue such the project, Rural Development also will attempt to provide financial assistance to any eligible applicant (subject

to the availability of funds, our administrative procedures, and our lending requirements), to purchase the completed project from your lending institution.

4. Rural Development is aware that circumstances, such as subsurface ground condition and change orders necessitated by required changes in the work to be performed may cause cost increases after Rural Development loan approval and the obligation of Rural Development loan funds. It is a general practice for Rural Development to make subsequent loans when necessary to help cover these eligible costs, provided additional loan funds are available, the change orders were approved by Rural Development, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value.

Your assistance to the applicant is appreciated.

Sincerely,

State Director

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FEDERAL REGIONAL INCOME LIMITS FOR HIRED FARMWORKERS

Region I-- (\$4800) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

Region II-- (\$3600) New Jersey and New York. (Includes Puerto Rico and the USVI)

Region III- (\$4000) Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Region IV-- (\$4100) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee

Region V-- (\$4200) Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region VI-- (\$4600) Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Region VII- (\$4800) Iowa, Kansas, Missouri, and Nebraska.

Region VIII- (\$4900) Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region IX- (\$5900) Arizona, California, Hawaii, and Nevada

Region X- (\$4700) Alaska, Idaho, Oregon, and Washington.

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LOAN AGREEMENT
(LH Insured Loan to Farm Borrowers
to Provide Housing for
the Farm Borrower's Farming Operations)

A. General Provisions:

1. This agreement is entered into on _____ (Date).

2. This agreement is between _____

_____ (borrower's
name whether one or more), whose mailing address is

_____, and the United States of America,
acting through Rural Development, United States Department of Agriculture (the
Government).

3. This agreement is made in return for receiving Labor Housing (LH) loan
assistance from the Government totaling \$_____ as evidenced by
a Promissory Note dated _____. This assistance is made with the
understanding that housing is to be provided to Domestic Farm Laborers on a rent
free basis. Any rents collected without the written consent of the Government are
the responsibility of the borrower and shall be refunded by the borrower to the
tenants.

4. The borrower agrees to comply with Government regulations governing the LH
loan program.

5. This agreement is in addition to any other agreements entered into with the
Government, such as any promissory note, mortgage or deed of trust, loan approval
requirements, etc.

B. Rent and Occupancy.

Occupancy of the housing will be limited to domestic farmworkers or migrant
farmworkers as defined by the Government, unless the Government gives prior
written approval for other occupancy, except that in no case will a member of the
borrower's immediate family occupy the housing.

The borrower agrees:

1. To meet the LH loan objectives by providing decent, safe, and sanitary housing
for eligible tenants;

(01-19-93) SPECIAL PN

2. To provide the housing rent free to eligible farmworker tenants;
3. To get the Government's prior approval before collecting utility charges (i.e. electricity, fuel, water, waste disposal, etc.) or requiring a refundable damage deposit or cleaning fee from tenants;
4. To get the Government's prior approval if there is a need to permit occupancy by tenants who are not working in the borrower's farming operation or not normally eligible to occupy the housing unit; and
5. To get the Government's prior approval if there is a need to charge rent to tenants or change any existing rents. To provide a management plan, which meets requirements set out in Government regulations, whenever rents are charged to tenants. The management plan will describe how the housing operation will be conducted.

C. Recordkeeping.

The borrower agrees:

1. To provide the Government financial information as required by Government regulations;
2. To provide annual verification of employment of eligible tenants as occupancy changes, not less than once per year; and
3. To keep information required by Government regulations and make the information available for Government inspection, to include tenant nonrent affidavits.

D. Compliance with Federal, State, and Local Laws and Regulations.

The borrower agrees to comply with applicable Federal, State, and local laws and regulations, including but not limited to, the following:

1. To provide equal housing opportunities to tenants;
2. To operate the housing in a safe environment;
3. To maintain comprehensive property insurance on the property taken as security;
4. To pay taxes and assessments on the property taken as security; and
5. To make the security property available for inspection by the Government.

E. Disposition of LH Security Property.

The borrower agrees:

1. Not to sell or otherwise dispose of property taken as security for the LH loan without the Government's prior written approval;
2. Not to sell or enter into any business arrangement which may potentially or actually place the housing operation under the management or control of another party without the prior approval of the Government; and
3. To prohibit any liens to be taken on the security property without the prior approval of the Government.

F. Enforcement Considerations.

The borrower understands that any violation of the terms of this agreement may enable the Government to declare the note immediately due and payable and may adversely affect the borrower's ability to obtain other Government loans or grants.

G. General Provisions.

This agreement may be cited in the security instrument and other instruments or agreements as the "Loan Agreement of

_____ 19____." (date of this instrument)

H. Signature(s).

Signature of Borrower Witness

Signature of Borrower Witness

oOo

Date_____

SUBJECT: Verification of Domestic Farm Labor and Occupancy in Rent Free
Housing

(borrower's name or the farm's business name)

On _____, 19____, I/We became the occupant(s) of the rent free dwelling owned by the above named borrower. The dwelling is provided as a condition of my farm labor employment.

If the rent free status changes, I/we will notify Rural Development at:

_____ Office

_____ Phone number

_____, occupant

Distribution:

Original to occupant.

1 copy for borrower's records to be kept available for inspection upon request by Rural Development for all current tenants.

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(01-19-93) SPECIAL PN

Test for Self-employed Farm Workers
Employer-Employee Relationship

I PURPOSE: This exhibit provides a guide to be used in determining farm worker eligibility for occupancy in Domestic Farm Labor Housing. The guide provides the Rural Development State Directors or District Directors Common Law Rules factors or elements to be used as needed or in those instances where there is a question about a farm worker being self-employed.

II GUIDE: The following guide is reproduced from the Internal Revenue Manual, Part IV - Audit and Investigation, Exhibit 4640-1 Employer-Employee Relationship, dated May 6, 1986:

Exhibit 4640-1 Employer-Employee Relationship

Introduction

For FICA, FUTA, and income tax withholding purposes the term "employee" (Secs. 3121(d), 3306(i), and 3401(c)) Includes any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

The Common Law Rules-Factors

Under the common law test, a worker is an employee if the person for whom he works has the right to direct and control him in the way he works both as to the final results and as to the details of when, where, and how the work is to be done. The employer need not actually exercise control. It is sufficient that he has the right to do so.

If the relationship of employer and employee exists, it is of no consequence whether the employee is designated as a partner, coadventurer, agent, independent contractor, or the like. Furthermore, all classes or grades of employees are included within the relationship of employer and employee. Thus, superintendents, managers, and other supervisory personnel are employees.

The factors or elements that show control are described below in the following 20 items. Any single fact or small group of facts is not conclusive evidence of the presence or absence of control.

These common law factors are not always present in every case. Some factors do not apply to certain occupations. The weight to be given each factor is not always constant. The degree of importance of each factor may vary depending on the occupation and the reason for existence. Therefore, in each case the agent will have two things to consider: First, does the factor exist; and second, what is the reason for or importance of its existence or nonexistence.

(07-22-91) SPECIAL PN

Exhibit 4640-1 Employer-Employee Relationship (con.)

Instructions. A person who is required to comply with instructions about when, where, and how he is to work is ordinarily an employee. Some employees may work without receiving instructions because they are highly proficient and conscientious workers. However, the control factor is present if the employer has the right to require compliance with the instructions. The instructions which show how to reach the desired result may be oral or written (manuals or procedures).

Training. Training a person by an experienced employee working with him, by correspondence, by required attendance at meetings, and by other methods indicates that the employer wants the services performed in a particular method or manner. This is especially true if the training is given periodically or at frequent intervals. An independent contractor ordinarily uses his own methods and receives no training from the purchaser of his services. In fact, it is usually his methods which bring him to the attention of the purchaser.

Integration. Integration of the person's services into the business operations generally shows that he is subject to direction and control. In applying the integration test, first determine the scope and function of the business and then whether the services of the individual are merged into it. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the people who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

Services Rendered Personally. If the services must be rendered personally, presumably the employer is interested in the methods as well as the results. He is interested in not only the result but also the worker.

Hiring, Supervising, and Paying Assistants. Hiring, supervising, and paying assistants by the employer generally shows control over the men on the job. Sometimes one worker may hire, supervise, and pay the other workmen. He may do so as the result of a contract under which he agrees to provide materials and labor and under which he is responsible for only the attainment of a result. In this case he is an independent contractor. On the other hand, if he hires, supervises, and pays workmen at the direction of the employer, he may be an employee acting in the capacity of a foreman for or representative of the employer (Rev. Rul. 70-440' 1970-2 C.B. 209).

Continuing Relationship. A continuing relationship between an individual and the person for whom he performs services is a factor which indicates that an employer-employee relationship exists. Continuing services may include work performed at frequently recurring though somewhat irregular intervals either on call of the employer or whenever the work is available. If the arrangement contemplates continuing or recurring work, the relationship is considered permanent even if the services are part-time, seasonal, or of short duration.

Exhibit 4640-1 Employer-Employee Relationship (con.)

Set Hours of Work. The establishment of set hours of work by the employer is a factor indicating control. This condition bars the worker from being master of his own time, which is the right of the independent contractor. If the nature of the occupation makes fixed hours impractical, a requirement that the worker work at certain times is an element of control.

Full Time Required. If the worker must devote his full time to the business of the employer, the employer has control over the amount of time the worker spends working and impliedly restricts him from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he chooses. Full time does not necessarily mean an 8-hour day or a 5- or 6-day week. Its meaning may vary with the intent of the parties, the nature of the occupation, and customs in the locality. These conditions should be considered in defining "full time."

Full-time services may be required even though not specified in writing or orally. For example, to produce a required minimum volume of business may compel a person to devote all of his working time to that business; or he may not be permitted to work for anyone else, and to earn a living he necessarily must work full time.

Doing Work on Employer's Premises. Doing the work on the employer's premises in itself is not control. However, it does imply that the employer has control, especially when the work is the kind that could be done elsewhere. A person working in the employer's place of business is physically within the employer's direction and supervision. The use of desk space and telephone and stenographic services provided by an employer places the worker within the employer's direction and supervision. Work done off the premises indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. Control over the place of work is indicated when the employer has the right to compel a person to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. In some occupations services must be performed away from the premises of the employer; for example, employees of construction contractors or taxicab drivers.

Order or Sequence Set. If a person must perform services in the order or sequence set for him by the employer, it shows that the worker is not free to follow his own pattern of work but must follow the established routines and schedules of the employer. Often, because of the nature of an occupation, the employer either does not set the order of the services or sets them infrequently. It is sufficient to show control, however, if he retains the right to do so. The outside commission salesman, for example, usually is permitted latitude in mapping out his activities and may work "on his own" to

Exhibit 4640-1 Employer-Employee Relationship (con.)

a considerable degree. In many cases, however, at the direction of the employer he must report to the office at specified times, follow up on leads, and perform certain tasks at certain times. Such directions interfere with and take preference over the salesman's own routines or plans: this fact indicates control.

Oral or Written Reports. Another element of control is the requirement of submitting regular oral or written reports to the employer. This action shows that the person is compelled to account for his actions. Such reports are useful to the employer for present controls or future supervision; that is, they enable him to determine whether his instructions are being followed or, if the person has been "on his own," whether instructions should be issued.

Payment by Hour, Week, Month. Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of doing a job. The payment by a firm of regular amounts at stated intervals to a worker strongly indicates an employer-employee relationship. (The fact that payments are received from a third party, e.g., tips or fees, is irrelevant in determining whether an employment relationship exists). The firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the worker. It is also assumed in absence of evidence to the contrary that the worker, by accepting payment upon such basis, has agreed that the firm shall have such right of control. Obviously, the firm expects the worker to give a day's work for a day's pay. Generally, a person is an employee if he is guaranteed a minimum salary or is given a drawing account of a specified amount at stated intervals and is not required to repay any excess drawn over commissions earned.

Payment made by the job or on a straight commission generally indicates that the person is an independent contractor. Payment by the job includes a lump sum computed by the number of hours required to do the job at a fixed rate per hour. Such a payment should not be confused with payment by the hour.

Payment of Business and/or Traveling Expense. If the employer pays the person's business and/or traveling expenses, the person is ordinarily an employee. The employer, to be able to control expenses, must retain the right to regulate and direct the person's business activities.

Conversely, a person who is paid on a job basis and who has to take care of all incidental expenses is generally an independent contractor. Since he is accountable only to himself for his expenses, he is free to work according to his own methods and means.

Exhibit 4640-1 Employer-Employee Relationship (con.)

Furnishing of Tools, Materials. The fact that an employer furnishes tools, materials, etc., tends to show the existence of an employer-employee relationship. Such an employer can determine which tools the person is to use and, to some extent, in what order and how they shall be used.

An independent contractor ordinarily furnishes his own tools. However, in some occupational fields, e.g., skilled workmen, workers customarily furnish their own tools. They are usually small hand tools. Such a practice does not necessarily indicate a lack of control over the services of the worker.

Significant Investment. Investment by a person in facilities he uses in performing services for another is a factor which tends to establish an independent contractor status. On the other hand, lack of investment indicates dependence on the employer for such facilities and, accordingly, the existence of an employer-employee relationship.

In general, facilities include equipment or premises necessary for the work, such as office furniture, machinery, etc. This term does not include tools, instruments, clothing, etc., commonly provided by employees in their trade, nor does it include education, experience, or training.

In order for an Investment to be a significant factor in establishing that an employer-employee relationship does not exist, it must be real, it must be essential, and it must be adequate.

Is investment real? Little weight can be accorded to a worker's investment in equipment if he buys it on time from the person for whom he does the work and if his equity in the equipment is small. The same is true if the worker purchases equipment from his employer on a time basis but the employer retains title to the equipment, has the option of retaining legal ownership by paying the worker the amount of his equity in the equipment at any time before the equipment is fully paid for, requires its exclusive use in the operation of his business, and directs the worker in its use. Such investments are not "real."

Is investment essential? An investment in equipment or premises not required to perform the services in question is not essential. For example, a photographers' model may have a large investment in a wardrobe; however, if she poses for a photographer who ordinarily requires that his models wear clothing he furnishes, her investment is not essential even though the photographer lets her use her own wardrobe as a matter of indulgence. The photographer hires her only for her photogenic qualities and her ability to pose; it is not required that she furnish her own wardrobe.

Is investment adequate? Ownership by an individual of facilities adequate for the work and independent of the facilities of another points to an independent

Exhibit 4640-1 Employer-Employee Relationship (con.)

contractor relationship. Ownership of such facilities is an influential factor in letting the contract of service. The important point is the value of the investment compared to the total value of all the facilities for doing the work. An investment in facilities is not adequate if the worker must rely appreciably on the facilities of others to perform the services. For instance, an individual who is engaged to perform a machine operation on his own premises and who furnishes his own equipment of substantial value may be a self-employed subcontractor instead of an employee of the manufacturer.

Significant in determining the weight of the investment factor is ascertaining who has the right to control the facilities. Ownership of equipment or premises points toward an independent contractor status because it is inferred that the owner has the right to control their use. However, if the owner, as part of the agreement, surrenders complete dominion over the equipment or premises and the right to decide how they shall be used, "ownership" loses its significance.

Suppose an individual who owns a truck is hired by a trucking company to deliver goods and materials to business firms. The fact that he uses his own truck to perform these services is not significant if, in general, the firm uses it like its own trucks. For example, the firm sets the order and time of deliveries pays for all upkeep and repair of the individual's truck while used in its business or otherwise compensates the individual for these costs; restricts him from using the truck to perform services for others, etc.

Realization of Profit or Loss. The man who can realize a profit or suffer a loss as a result of his services is generally an independent contractor, but the individual who cannot is an employee.

"Profit or loss" implies the use of capital by the individual in an independent business of his own. Thus, opportunity for higher earnings, such as from pay on a piecework basis or the possibility of gain or loss from a commission arrangement, is not considered profit or loss.

Whether a profit is realized or loss suffered generally depends upon management decisions; that is, the one responsible for a profit or loss can use his own ingenuity, initiative, and judgment in conducting his business or enterprise. Opportunity for profit or loss may be established by one or more of a variety of circumstances, e.g.:

1. The individual hires, directs, and pays assistants.
2. He has his own office, equipment, materials, or other work facilities.
3. He has continuing and recurring liabilities or obligations, and his success or failure depends on the relation of his receipts to his expenditures.

Exhibit 4640-1 Employer-Employee Relationship (con.)

4. He agrees to perform specific jobs for prices agreed upon in advance and pay expenses incurred in connection with the work.

5. His services and/or those of his assistants establish or affect his business reputation and not the reputation of those who purchase the services.

Working for More Than One Firm at a Time. A person who works for number of persons or firms at the same time is generally independent contractor because he is usually free from control by any of the firms. It is possible, however, for a person to work for a number of people or firms and be an employee of one or all of them.

Making service Available to General Public. The fact that a person makes his services available to the general public usually indicates an independent contractor relationship. An individual may hold his services out to the public in a number of ways: he may have his own office and assistants; he may hang out a "shingle" in front of his home or office;

he may hold business licenses; he may be listed in business directories or maintain business listings in telephone directories; or he may advertise in newspapers, trade journals, magazines, etc.

Right to Discharge. The right to discharge is an important factor in indicating that the person possessing the right is an employer. He exercises control through the ever-present threat of dismissal, which causes the worker to obey his instructions. An independent contractor, on the other hand, cannot be fired so long as he produces a result which meets his contract specifications.

Right to Terminate. An employee has the right to end his relationship with his employer at any time he wishes without incurring liability. An independent contractor usually agrees to complete a specific job; he is responsible for its satisfactory completion or legally obligated to make good for failure to complete the job.

We have now covered the 20 factors; i.e., does the factor exist. We will now consider the second point: what is the reason for or importance of its existence or nonexistence.

All facts must be weighed, and the conclusion must be based on a careful evaluation of all the facts, IRS published rulings, and the presence or absence of factors which point to an employer-employee relationship or to an independent contractor status.

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Take the example of a barbershop. The shop owner may say that he does not control the hours, fix the amount charged for a haircut, or control the barber's cleanliness. However, in determining the weight of each of these factors, the agent should consider the reason for their nonexistence. He may find that the union in effect controls the hours and sets the price for haircuts and that the State Barber Board of Examiners controls the cleanliness of the shop. He correctly concludes, then that the weight to be given each of these three factors is nothing.

In the case of salesmen, it might be found that the employer does not control the hours of work because, to make a sale, the salesman may have to arrange his hours to fit the customer's hours, such as calling in the evening when the husband and wife are at home. This may be true of other occupations. The important thing is to weigh any factor being considered according to its reason for existence or nonexistence.

2.03

FICA Statutory Employee Rules

In addition to common law employees, the FICA provides for statutory employees, which include (1) agent drivers and commission drivers, (2) full-time life insurance salesmen, (3) home workers, and (4) traveling or city salesman.

MARKET RENT DETERMINATION FOR LABOR HOUSING PROJECTS

I OBJECTIVE. The objective of this exhibit is to provide guidance for a market rent determination for Labor Housing (LH) when the farmworker is not required to live on the farm (§1944.176 (d)(5) of this subpart).

II PURPOSE. When an eligible farmworker becomes ineligible because of above-moderate-income and has been granted permission to continue residing in the unit in accordance with paragraph VI B 5 or 6 of Exhibit B of Subpart C of Part 1930 of this chapter, then an appropriate rent must be formulated that must not exceed the market rent as determined in accordance with the provisions set out in this exhibit.

III DETERMINATION. Whenever a market rent determination is required for one or more LH resident(s), the market rent will be computed by using the most recently approved Form RD 1930-7, "Statement of Budget and Cash Flow," and substituting a new debt service computation based on the project's development cost. The amortization factor for the Farm Labor Housing-State Director Exception interest rate as published in RD Instruction 440.1 (available in any Rural Development office) will be used with a 33 year term. The rate used for amortization for debt service in the market rent budget should be rounded down to the nearest eighth of a percent. For example, 9.95 percent would be rounded to 9.875. The market rent is computed on a basis of the project's initial development cost and subsequent loans and grants. In contrast, the basic rent debt service is computed 1 percent loans offset by the construction grants.

The market rent determination, once set, will remain in place for the project; therefore, the determination must be recorded in a narrative statement which must be filed with the Promissory Note.

IV LIMITATIONS. If the market rent determined in the preceding paragraph is found to exceed the conventional market rents in the area (within an approximate 48 kilometer or (30 mile) radius or the effective market area or other appropriate geographical or local boundary) by more than \$20, then the LH market rent will be limited to the prevailing market rent. Prevailing market rents may be determined from such sources as recent Rural Rental Housing Market studies or recent area classified advertisements (within the last two months), documented, and adjusted for comparability. Documentation should be similar to the information found in Exhibit A-4 of this subpart, with the advertisements attached. The adjustment for comparability should consider unit size, bedroom mix, age, and amenities. This rental determination is not intended to survey housing used exclusively for farm labor rental housing, but to determine a fair conventional market rent for an above-moderate-income farmworker and family.

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