Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Housing Service and Community Development

Rural Business and Cooperative Development Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1944

RIN 0575–AB93

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

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

ACTION: Proposed rule.

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

DATES: Written comments on this Proposed Rule must be received on or before March 8, 1996.

ADDRESSES: Submit written comments, *in duplicate,* to the Office of the Chief, Regulation Analysis and Control Branch, Rural Housing Service, U.S. Department of Agriculture, Ag Box 0743, 14th Street and Independence Avenue, S.W., Washington, D.C. 20250. All written comments will be available for public inspection at the above address during normal working hours.

FOR FURTHER INFORMATION CONTACT: Linda Armour, Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, USDA, Room 5349—South Building, Ag Box 0781, Washington, D.C. 20250, telephone (202) 720–1608.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not-significant for purposes of Executive Order 12886 and therefore has not been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

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

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with Sub-title H of Title II of Pub. L. 103–354 must be exhausted before bringing suit in court challenging action taken under this rule.

Unfunded Mandate Reform Act

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

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

National Performance Review

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

Programs Affected

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

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

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

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Background/Discussion

RHS utilizes a point-score system to prioritize rural areas according to their potential need for RRH assistance, based on statutory requirements and preferences. Priority points ranging from

0 to 40 are assigned to rural counties and places based on their rural median household income compared to the state's rural median income; priority points ranging from 0 to 40 are similarly assigned based on the county's or place's percentage of substandard housing compared to the state's percentage. In addition, points are used to accomplish two preferences required by statute: (1) Section 515(z) of the Housing Act of 1949 (7 U.S.C. 1485(z)) requires the Secretary to give preference to any project that will serve the needs of a rural community located 20 or more miles from an urban area. Twenty-five points are given for this purpose. (2) Section 515(j) of the Housing Act of 1949 (7 U.S.C. 1485(j)) requires that, ''For the purpose of achieving the lowest cost in providing units in newly constructed projects assisted under this section, the Secretary shall give a preference in entering into contracts under this section for projects which are to be located on specific tracts of land provided by states, units of local government, or others if the Secretary determines that the tract of land is suitable for such housing, and that affording such preference will be cost effective.'' Five points are given to accomplish this preference.

Recent findings indicate that the priority point system is not always effective in directing RRH funds to rural areas with the greatest need for affordable housing. One reason cited for this is that, by awarding 25 points for proposals located 20 or more miles from an urban area, other eligible rural communities with equal or higher scores for income and substandard housing, and with comparable or greater demand, have been excluded from successfully competing for funds. The large number of points given for the mileage preference has also led, in some cases, to the development of units in remote areas with insufficient demand, resulting in slow rent-up and/or vacancy problems. Another concern is the overdevelopment of these high-pointed areas because of the competition to submit preapplications with the highest point score.

Recent regulatory revisions have addressed the latter concern. Effective October 1, 1993, (58 FR 44255) the Agency implemented its ''build and fill'' policy which prohibits the authorization of RRH units in communities where similar-type units are already approved, under construction, or have not achieved their projected occupancy level; or where similar-type units are experiencing vacancy problems or have a Servicing Market Rate Rent (SMR) pending or in effect. This policy has been effective in deterring overdevelopment of high-pointed areas and will continue to be followed by the Agency.

To address concerns that the large number of points awarded to proposals located 20 or more miles from urban areas has excluded other eligible rural areas, we propose to reduce the number of points for this factor. This will enable more areas to compete on the basis of income and substandard housing.

The Agency will continue to award 5 points for proposals with donated land. However, we propose to modify this section to award 5 points for proposals with donated land or proposals that provide grants for at least 10 percent of the total development cost.

A recent legislative amendment contained in H.R. 3838 and S. 2049 in FY 95 which would have allowed the Secretary to discontinue the priority point system and, instead, select rural areas for RRH assistance based on objective criteria, failed to be enacted. The Agency supports and continues to seek this statutory authority, which would give RHS more flexibility in directing Section 515 funds to rural areas of greatest need. The regulatory revisions in this proposed rule partially address concerns raised over the priority point system. To fully address these concerns, statutory changes are needed. The proposed revisions represent an improved system based upon significant input from the public and RHS field employees.

In addition to the revisions to the priority point system, we are proposing modifications to the market analysis requirements and the market review process. The changes are intended to improve the Agency's ability to evaluate market demand and reduce the risk of developing units in areas with insufficient demand.

In recent years Section 515 funding levels have been severely reduced while the need and demand for affordable rental units in rural areas continues to grow. To develop as many RRH units as possible, it has become increasingly important to develop partnerships with state and local communities and other parties with an interest in developing low-income housing. The proposed rule includes guidance on loan proposals in which the Agency is participating with other funding sources.

1. The following revisions are proposed to the priority point system:

a. The Agency plans to award 10 points for proposals that will serve rural communities 20 or more miles from an urban area. Ten points gives preference to truly rural areas but is not so great that it excludes other rural communities from competing.

b. The Agency is proposing to award priority points for loan requests in areas with the highest share or percentage of rural renter households at or below 60 percent of the county median income who are paying in excess of 30 percent of their household income for rent. Along with income and substandard housing, this is a statistically measurable indicator of potential need for affordable housing. A further consideration, however, is whether the need is for additional units or for additional subsidies to make existing units more affordable. The Agency's build and fill policy prohibits development of new units if the need is for rent subsidies and not for additional units. If this option is implemented, points will be calculated in a manner consistent with the method used for income and substandard housing.

2. The Agency is inviting comments on the following additional factors which are being considered for inclusion in the priority point system. These changes are not included in the proposed rule text; however, the Agency is interested in comments, for and against the proposed changes, and may include some form of the changes in the final rule.

a. To maximize program funds, encourage partnerships with states and local communities, and provide service to areas and/or households that are underserved, we are considering awarding points for proposals that are partially funded from other sources. Proposals would be subject to specific conditions: (1) The total debt service would need to be comparable to that of a RHS loan; (2) For limited profit borrowers, the profit base for determining return to owner would be made in accordance with § 1944.215(n). The borrower contribution would be based on the total development cost or security value and could not exceed the 3 or 5 percent borrower contribution required by § 1944.213 (b), except as permitted by § 1944.215 (n); (3) The total of all loans and grants could not exceed the amount needed to make the project affordable; and (4) Construction would be subject to the cost containment provisions of § 1944.215(a).

b. To ensure that underserved areas receive consideration, the Agency is considering awarding points to projects located in underserved counties identified by the Secretary using specific, objective criteria. Points awarded under this provision would be retained even if the preapplication is not authorized in the fiscal year the area was designated underserved. This factor would not be implemented if the set aside for targeted areas is included in the program reauthorization in the future.

c. We are soliciting comments on the merits of modifying the present method of awarding points for income and substandard housing. The Agency presently awards points for income based on the county's or area's rural median income compared to the State's rural median income. The method under consideration awards points for income based on the place's or county's share of rural households with incomes at or below 60 percent of the county rural median income. The place's or county's share would be based on one of three different approaches, which produce different results in point scores. The first approach calculates the percentage of rural households at or below the county rural median income as a percentage of the place's or county's total rural households. For example, in County 1, Place A has 1,600 households, of which 450 are at or below 60 percent of the county rural median income. Place A has a percentage of 28 for income (450/1,600). Place B, with 9,000 households and 450 households at or below 60 percent of the county rural median income, has a percentage of 5 for income (450/9,000). Using this approach, although both places have the same number of households at or below 60 percent of county rural median, Place A would receive the higher number of priority points for income. The second approach calculates the place's percentage of rural households at or below 60 percent of the county rural median income as a percentage of the county's total rural households at or below 60 percent of the county rural median income. Using the same two places as an example, if County 1 has a total of 1,200 rural households that are at or below 60 percent of the county rural median income, both Place A and Place B would have a percentage for income of 37.5 (450/1,200) and would score the same number of priority points for income. The county's percentage would be calculated as a percentage of the State's total. The third approach calculates the percentage of the place's or county's rural households at or below 60 percent of the county rural median income as a percentage of the State's total rural households at or below 60 percent of the county rural median income. Continuing with the same example, if the State has a total of 200,000 households that are at or below 60 percent of the county rural median income, Place A and Place B would again have the same percentage of the total (450/200,000) and score the same number of priority points. However, Place C in County 2, with a population of 8,000 and 800 households at or below 60 percent of the county rural median income, has a higher percentage of the State's total than Places A and B and scores a higher number of priority points. The Agency would like comments on the merits of considering the place's or county's share of households at or below 60 percent of the county rural median income and, if implemented, which of the three approaches should be used as the basis for calculating the place's and county's percentage. The third approach, which calculates the place's or county's percentage as a percentage of the State's total, has the potential of directing points to larger rural communities or counties but would reach the largest numbers of households that are at or below 60 percent of the county rural median income. Based on the comments received, the Agency will decide if the proposed method should be implemented and, if so, which of the three approaches for calculating points should be used. The method and approach that is used to award points for income will also be used to award points for substandard housing and for rent overburden if the rent-overburden option is implemented. Again, the three approaches for calculating percentages for income, substandard housing, and rent-overburden are: (1) as a percentage of the place's or county's total households; (2) as a percentage of, respectively, the county's total rural households at or below 60 percent of the county rural median income, the county's total rural households in substandard housing, or the county's total rural households at or below 60 percent of income paying in excess of 30 percent of their income for rent; and (3) as a percentage of, respectively, the State's total rural households at or below 60 percent of county rural median income, the State's total rural households in substandard housing, or the State's total rural households at or below 60 percent of county rural median income who are paying in excess of 30 percent of their income for rent.

3. The Agency is considering implementing a preliminary preapplication stage and/or preliminary market analysis process. The objective is to require sufficient information to enable the Agency to make a preliminary determination of eligibility and feasibility, while reducing the cost to the applicant for proposals that lack sufficient priority for funding, as well as reducing Agency review time. Proposals that appear to be eligible and feasible, and have sufficient priority to be potentially funded within 24 months, would be invited to submit a full preapplication and/or market study. No further preapplications would be considered for the market area pending receipt of the complete preapplication and/or market study within a specified timeframe. Further processing would be based on a full eligibility and feasibility review.

We are considering: (1) A simplified preliminary preapplication stage, including a simplified preliminary market analysis, or (2) A full preapplication with a simplified market analysis. If the second option is implemented, a full market analysis will be required for the eligibility and feasibility determination.

Information required at the preliminary preapplication stage would include:

a. A description of the proposed project: type; number and bedroom size of units; related facilities, if any; loan amount; number of RA units requested; and number of units that will be targeted for Low-Income Housing Tax Credits (LIHTC).

b. Site information: site plan; evidence of site control; evidence that the site is, or will be, appropriately zoned; evidence of existing, or soon to be available, utilities; and location map showing relationship to facilities and services.

c. Preliminary budget and construction cost figures.

d. Preliminary applicant eligibility information: draft organizational papers and financial statements for each principal.

e. Preliminary plans and specifications.

f. Preliminary market information:

(1) A description of the community (population growth or decline, current economic conditions, types of employment, services and facilities).

(2) The number of households by tenure (owner or renter) and income.

(3) A survey of existing rental units including rent structure, vacancies, and, when possible, rent-up history and extent of waiting lists. The survey must include all RHS and similar assisted multifamily units and a representative sampling of conventionally financed multifamily units.

4. The Agency intends to establish a minimum priority point score of 30 for retaining preapplications. The State Director will have the authority to establish a higher or lower threshold by state, county, or other division, which must be published in a State Instruction.

5. Section 1944.211 (a)(15) is added to include specific eligibility requirements for existing or former RHS borrowers.

6. Section 1944.213 (f)(3) is revised to clarify that the provisions of this section apply to both preapplications and applications.

7. Section 1944.231 (c)(5) is revised to permit states to use a computerized tracking system to supplement or replace Form FmHA 1905–11, ''Application and Processing Card - Association'', provided tracking requirements are met.

8. Section 1944.231 (i) is revised to clarify that the next preapplication selected for further processing is the highest ranked preapplication as of the date that processing levels permitted (i.e., as of the date that one or more loans were obligated, making sufficient funds available within authorized funding limits).

9. Section 1944.233, ''Participation with other funding sources'', is added to provide guidance on RRH loans that are funded jointly by RHS and other partners with interests in developing low-income housing. With reduced program levels, joint funding allows the Agency to develop the maximum possible number of units.

10. Section 1944.234, ''Actions prior to loan approval'', is added to clarify that eligibility and feasibility requirements must be reviewed prior to loan approval.

11. Exhibit A–7 is modified to:

a. Require documentation regarding the availability of other credit at the servicing official's discretion.

b. Allow the State Director to authorize use of a market survey for small projects of 12 or fewer units.

c. Specify that the market analysis must address need and demand for both family and elderly households. The proposed complex type (family or elderly) will be determined by the greater need of the market.

12. Revisions are proposed to Exhibit A–8, ''Outline of a Professional Market Study'', to: (1) Modify the demand forecast; (2) place more emphasis on the recommended unit mix based on an analysis of household sizes and the unit mix of existing units; (3) allow current year estimates from reliable sources, which must be identified by the analyst; and (4) require the analyst to include analytical text with the demographic data.

Summary of Proposed Changes for Comments

Following is a summary of the major changes in this rule for which comments are invited:

1. A reduction in priority points from 25 points to 10 for proposals that will be located 20 or more miles from an ineligible area.

2. A proposal to award priority points based on the area's share of the state's or county's total income-eligible households who are paying in excess of 30 percent of their household income for rent.

3. While not included in the text of the proposed rule, the Agency is inviting comments on the merits of:

a. Changing the method of awarding priority points for income from the current method of comparing the place's or county's rural median income to the state's rural median income to a method that takes into consideration the place's or county's share of households below 60 percent of the county rural median income. Three approaches are being considered for calculating the place's or county's share: as a percentage of the place's or county's total households; as a percentage of the county's total rural households below 60 percent of the county rural median income; or as a percentage of the state's total rural households below 60 percent of the county rural median income. If the revised method is implemented, the same approach selected for calculating the place's or county's percentage will be implemented for substandard housing and for rent-overburden if, based on comments received, the Agency determines that rent-overburden will be added to the priority point score system.

b. Awarding points for proposals that will be partially funded from other sources.

c. Awarding points for proposals that will be located in underserved areas identified by the Secretary.

4. Implementation of a preliminary preapplication and/or market analysis process.

5. A revision to the market analysis requirements that will permit the State Director to authorize the use of a market survey for small proposals of 12 or less units under certain conditions.

6. A requirement that the market analysis address both family and elderly need and demand, which will be used in determining the type of project that is proposed.

Implementation Proposal

The subject rule proposes changes to the manner in which preapplications are processed, including the priority point system. The Agency intends to implement the revised priority point system on October 1, 1996. As of that date, all preapplications on hand, where an AD–622 inviting a formal application has not been issued, will be subject to the revised system. All preapplications will be rerated and reranked based upon the priority point system in the final rule without regard to previous priority processing score or ranking. We do not intend to ''grandfather'' existing preapplications or have a ''phase-in'' period. RHS recognizes the impact of this action on preapplications which are in process. Potential applicants should be aware of the proposed changes when they are developing a proposal. RHS loan officials are encouraged to include information on the proposed changes to potential applicants. All other provisions of the final rule will become effective 30 days after publication of the final rule.

List of Subjects in 7 CFR Part 1944

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

Therefore, as proposed, part 1944, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

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

Authority: 42 U.S.C. 1489.

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

2. Section 1944.211 is amended by revising the introductory text of paragraph (a)(2) and adding paragraph (a)(15) to read as follows:

§ 1944.211 Eligibility requirements.

(a) * * *

(2) Be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that allow establishment of rent or occupancy charges within the payment ability of eligible tenants or members.

* * * * *

(15) The applicant, including the principals, must be in compliance with the requirements of existing RHS debts and must provide regular financial and other required reports.

(i) In unusual circumstances, an applicant or principal with an approved workout plan in effect to correct deficiencies in an existing RHS debt may be considered for eligibility if the applicant or principal has been in compliance with the provisions of the workout plan for a period of time consistent with the extent of the deficiencies; however, in no case will the period of compliance be less than 6 months. The State Director may request a waiver to this requirement for borrowers who have acted in good faith but are in non-compliance through circumstances beyond their control. The State Director will submit a request for exception to the Deputy Administrator, Multi-Family Housing, with clear documentation to support the request.

(ii) Applicants or principals, including former borrowers or principals, with serious violations such as fraud, embezzlement, or consistent fair housing violations will not meet eligibility requirements regardless of compliance with existing workout plans. Fair housing violations include, but are not limited to: racial or other discrimination or segregation in tenant selection, project location, maintenance of units, amenities, handicap accessibility, recreational facilities, or management services; failure to maintain units in a safe and sanitary condition; failure to maintain and utilize a current and meaningful Affirmative Fair Housing Marketing Plan; unacceptable Compliance Reviews.

* * * * *

3. Section 1944.213 is amended by revising paragraph (f)(3) to read as follows:

§ 1944.213 Limitations.

* * * * *

(f) * * *

(3) *Status.* When a loan proposal or project exists in the market area which meets any of the criteria established in paragraph (f)(2) of this section, loan requests in the same market area will be processed in accordance with this paragraph (f)(3) and § 1944.231 of this subpart. This does not affect the processing of loan requests in other market areas. Deferred loan requests will be kept on file subject to the same time restrictions contained in § 1944.231 (c) of this subpart.

(i) For preapplications, a preliminary eligibility and feasibility determination will be made if the priority point score warrants. If the proposal does not appear eligible and/or feasible, the preapplication will be rejected. If the proposal appears eligible and feasible but the market meets any of the conditions of paragraph (f)(2) of this section, the applicant will be informed that the preapplication appears eligible and feasible but further processing is deferred until the conditions of paragraph (f)(2) of this section no longer apply.

(ii) For applications to finance new units, if the market meets any of the conditions of paragraph (f)(2) of this section, further processing of the application will be deferred until the conditions of paragraph (f)(2) of this section no longer apply.

* * * * *

4. Section 1944.215 is amended by revising paragraphs (n)(1) and (n)(2) to read as follows:

§ 1944.215 Special conditions.

* * * * *

(n) * * *

(1) Cash contributions made by the applicant, which, when added to the loan and grant amounts from all sources, does not exceed the security value of the project.

(2) The value of the building site or essential related facilities contributed by the applicant up to the amount which, when added to the loan and grant amounts from all sources, is not in excess of the security value of the project. An appraisal will be done by an RHS employee authorized to make appraisals or an RHS authorized representative in accordance with applicable RHS regulations. Value of the applicant's contribution will be determined on an ''as is'' basis less any amount owed on the property.

* * * * *

5. Section 1944.221 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1944.221 Security.

(a) *Mortgage.* Each loan will be secured in a manner that adequately protects the financial interest of the Government. A first mortgage will be taken on the property purchased or improved with the loan, except as indicated in paragraphs (a)(1) and (a)(3) of this section and, for projects that are funded jointly by RHS and other sources, as indicated in § 1944.233 (b) of this subpart.

* * * * *

6. Section 1944.231 is amended by revising the heading and the introductory text, the introductory text of paragraph (c)(5), paragraphs (d)(3), (d)(4), (e)(1), (i)(1)(i), (i)(2)(i), (i)(3)(i), (i)(4)(i), and (k)(5); and by adding a new paragraph (d)(5), to read as follows:

§ 1944.231 Processing loan requests.

Loan requests will be processed in accordance with this section to assure that program intent is achieved and loan funds are utilized expeditiously and prudently. A 2-stage application process is used. A preapplication is used to determine the applicant's eligibility, project feasibility, and potential priority for loan funds, thereby eliminating proposals which have little to no chance of success or funding. Selected preapplications will be invited to submit a formal application in accordance with this section. The State Director is responsible to coordinate efforts with HUD in accordance with Exhibit K (available in any RHS office) to determine if HUD is considering a similar request for funding or has funded a similar proposal. The State Director will provide the state agency responsible for administering LIHTC with information on projects that are allocated LIHTC, in accordance with Exhibit A–10 of this subpart. Paragraphs (a), (c)(5), (c)(6), (c)(7), (d), and (e) of this section do not apply to RCH loan requests.

* * * * *

(c) * * *

(5) The servicing official will rate the complete preapplication in accordance with the priority point system contained in paragraph (d) of this section. The priority point score, and any annotation, will be utilized for ranking purposes. In the event multiple preapplications of the same priority point score are received on the same day, they will be considered to be received at the same time. The order of receipt will be determined by the type of applicant and by random drawing if necessary, as follows:

* * * * *

(d) * * *

(3) *Projects which will serve the needs of rural communities located at least 20 miles from the RHS eligibility line around urban areas (regardless of state boundaries) considered ineligible for RHS housing loans as determined by § 1944.10 of subpart A of part 1944 of this chapter.* Ten points will be granted for complexes which are at least 20 miles from an ineligible area line over normally traveled roads. Mileage will not be rounded up or down to the nearest whole mile. In cases where the preapplication covers development of units on sites in different locations, points will be awarded based upon the location of the site in which the majority of the units will be developed. In cases of equal number of units in different locations, the distances will be averaged:

Miles	Points
20.0 or more	10
Less than 20.0	0

(4) *Projects in which a specific tract of land will be donated in accordance with § 1944.215 (r)(4) of this subpart or projects that include grants equal to at least 10 percent of the total*

development cost (TDC). Five points will be distributed as follows:

Complexes with donated land or grants of at least 10 percent of TDC.	5 points.
Complexes without donated land or grants of at least 10 percent of TDC.	0 points.

(5) *Projects in areas with the highest percentage of households at or below 60 percent of the county rural median income who are paying in excess of 30 percent of their household income for rent.* For this purpose, each state will use place or county data based upon the latest published census obtained from the National Office. If no place data is available, county data will be used. The State Director may request authority from the National Office to utilize other state-wide data when it is available, reliable, and determined to be in the best interest of the Agency. Up to 25 points will be awarded for households at or below 60 percent of the county rural median income paying in excess of 30 percent of the household's income for rent as follows:

Percentage of households	Points
25 and above	25
20–24.9	20
15–19.9	15
10–14.9	10
5–9.9	5
Less than	5 0

(e) * * *

(1) The feasibility determination will include a review of feedback on the market area from:

(i) HUD (and similar lenders, if applicable), in accordance with exhibit K (available in any RHS office) and § 1944.213 (f) of this subpart.

(ii) Local RHS office(s) closest to the market area.

* * * * *

(i) * * *

(1) * * *

(i) Rated preapplications which have been reviewed for eligibility and feasibility will be ranked numerically from highest to lowest based upon points received in the priority processing system. When processing levels permit, the servicing official will review the list and select the highest ranking preapplication, as of the date processing levels permit, i.e., as of the date one or more proposals were obligated, for continued processing.

* * * * *

(2) * * *

(i) Rated preapplications which have been reviewed for eligibility and feasibility will be ranked numerically from highest to lowest based upon points received in the priority processing system. When processing levels permit, the servicing official will review the list and select the highest ranking preapplication, as of the date processing levels permit, i.e., as of the date one or more proposals are obligated, for continued processing.

* * * * *

(3) * * *

(i) The state will maintain ranking lists by district. Rated preapplications which have been reviewed for eligibility and feasibility will be ranked numerically from highest to lowest based upon points received in the priority processing system. When processing levels permit, the servicing official will review the list and select the highest ranking preapplication, as of the date processing levels permit, i.e., as of the date one or more proposals are obligated, for continued processing.

* * * * *

(4) * * *

(i) Rated preapplications which have been reviewed for eligibility and feasibility will be ranked numerically from highest to lowest based upon points received in the priority processing system. When processing levels permit, the servicing official will review the list and select the highest ranking preapplication, as of the date processing levels permit, i.e., as of the date one or more proposals are obligated, for continued processing.

* * * * *

(k) * * *

(5) A current copy of Form FmHA 1905–11 or State-approved automated processing or tracking card.

* * * * *

7. Section 1944.233 is added to read as follows:

§ 1944.233 Participation with other funding sources.

In order to develop the maximum number of affordable housing units and promote partnerships with states, local communities, and other partners with similar housing goals, participation loans are encouraged. Apartment complexes developed with participation loans may serve lower income households exclusively or may be marketed to households with mixed incomes. The following will apply:

(a) *Amount of RHS loan participation.* RHS loan participation may not be less than 25 percent of the total development costs.

(b) *Amount of RHS RA participation.* RHS RA can be provided on any unit where the debt service does not exceed what the debt service would have been on that unit if RHS had provided full financing. The number of RHS RA units available for participation loans is limited and established annually through FmHA Instruction 1940–L (available in any RHS office).

(c) *General conditions:*

(1) The total funds provided by all sources may not exceed what is necessary to make the project feasible in accordance with § 1944.213 (a) of this subpart.

(2) The total debt from all sources is limited to the State Director's approval authority unless written authorization is obtained from the National Office in accordance with § 1944.213 (b) of this subpart.

(3) Complexes that will serve only lower income households must comply with the cost containment provisions of § 1944.215 (a) of this subpart. Proposals which will also serve higher income households and include additional amenities to ensure marketability must contain a portion of units that comply with RHS cost containment standards. The number of units that comply with RHS cost standards will be determined by dividing the RHS loan amount by the state's average new construction cost per unit for units developed without participation funding. For example, on a $1 million proposal where RHS is financing $400,000 and the state's average per-unit cost on non-participation loans is $40,000, a minimum of 10 units must meet RHS cost containment standards.

(4) The minimum borrower contribution will be based on the RHS loan amount and determined in accordance with § 1944.213 (b) of this subpart.

(5) For limited profit borrowers, the return on investment (ROI) will be calculated in accordance with § 1944.215 (n) of this subpart on the amount actually contributed by the borrower (excluding loans and grants from other sources), not to exceed the limits established in § 1944.213 (b) of this subpart, i.e., a maximum of 3 or 5 percent of the total development cost or the security value, whichever is smaller.

(6) If Low Income Housing Tax Credits are anticipated on a proportion of units higher than the percentage receiving RA or similar tenant subsidy, the market study must clearly reflect a need and market for units without deep subsidy. It is not the intent of RHS to provide servicing RA in the future nor can RHS provide RA on units which have a debt service higher than those if RHS had provided full financing.

(d) *Security requirements:*

(1) RHS will take a first or parity lien in all instances where the Agency's participation is 50 percent or more.

(2) If RHS participation is less than 50 percent, every effort should be made to obtain a parity lien position. If a parity lien cannot be negotiated, RHS may consider securing its debt in second position. The State Director will submit requests to accept a second lien position to the Deputy Administrator, Multi-Family Housing with comments and recommendations.

(3) All lienholders must agree in writing that foreclosure action under their lien will not be initiated without first discussing with RHS and providing a reasonable notice.

(4) Security for a second or parity lien may not include project income or revenue.

8. Section 1944.234 is added to read as follows:

§ 1944.234 Actions prior to loan approval.

Prior to loan approval the application will be reviewed for continued eligibility. The applicant may be required to submit updated information at that time.

9. Exhibit A–7 of subpart E is amended by revising paragraph E of section I and by revising section II to read as follows:

Exhibits to Subpart E

Exhibit A–7—Information to be Submitted with Preapplication for a Rural Rental Housing (RRH) or a Rural Cooperative Housing (RCH) Loan

* * * * *

I. * * *

E. Evidence Concerning the Test for Other Credit—Applicants must be unable to obtain other credit at rates and terms that will allow a unit rent or occupancy charge within the payment ability of the occupants. Based upon a review of the applicant's financial condition, the servicing official may require the applicant to provide documentation regarding the availability of other credit.

* * * * *

II. Need and demand.

A. Economic justification, the number of units, and the type of facility (i.e., family, elderly, congregate, mixed, group home, or cooperative) will be based on the housing need and demand of eligible prospective tenants or members who are permanent residents of the community and its surrounding trade area. Since the intent of the program is to provide housing for the eligible permanent residents of the community, temporary residents of a community (such as college students in a college town, military personnel stationed at a military installation within the trade area, or others not claiming their current residence as their legal domicile) may not be included in determining need and project size. Similarly, homeowners may not be included in determining need and project size. The market study must include a discussion of the current market for single family houses and how sales, or the lack of sales, will affect the demand for elderly rental units. The market study may discuss how elderly homeowners may reinforce the need for rental housing, but only as a secondary market and not as the primary market. The market study must assess need and demand for both family and elderly renter households. The type of complex (family, elderly, etc.) that is proposed by the applicant must reflect the greater need and demand of the community. The bedroom mix of the proposed units must reflect the need in the market area based on renter household size. For example, if the market study shows a need for one-bedroom, two-bedroom, three-bedroom, and four-bedroom units, the preapplication must contain a corresponding percentage of each size unit. Market feasibility for the proposed units will be determined by RHS based on the market information provided by the applicant, RHS' knowledge of the market area and judgment concerning the need for new units, RHS' experience with the housing market in the State and local area, and the U.S. Department of Housing and Urban Development's (HUD's) or similar lender's analysis of market feasibility for the proposed units.

B. The applicant must provide a schedule of the proposed rental or occupancy rates and, for congregate housing proposals, a separate schedule listing the proposed cost of any nonshelter service to be provided.

C. For proposals where the applicant is requesting Low-Income Housing Tax Credits (LIHTC), the applicant must provide the number of LIHTC units and the maximum LIHTC incomes and rents by unit size. This information will determine the levels of incomes in the market area which will support the basic rents while also qualifying the borrower for tax credits.

D. For Rural Cooperative Housing (RCH) proposals, market feasibility will be evidenced by the names and addresses of prospective members who have definitely affirmed their intention of becoming cooperative members in the proposed project. In the event some persons cannot be accepted for membership for financial or other reasons, the cooperative should obtain more names than the number of proposed units in order to assure adequate feasibility coverage. The Cooperative Housing Survey form found at Exhibit A–4 of this subpart and in ''A Guide to Cooperative Housing'' may be used for this purpose.

E. For Rural Rental Housing (RRH) proposals, except as permitted by Section II. G. of this exhibit, a professional market study is required. The qualifications of the person preparing the market study should include some housing or demographic experience. The following requirements apply:

(1) A table of contents, the analyst's statement of qualifications, and a certification of the accuracy of the study must be included.

(2) The market analyst must affirm that he/she will receive no fees which are contingent upon approval of the project by RHS, before or after the fact, and that he/she will have no interest in the housing project. An analyst with an identity of interest with the developer will need to fully disclose the nature of the identity.

(3) The analyst must personally visit the market area and project site and must certify to same in the market study. Failure to do so may result in the denial of further participation by the analyst in the Section 515 program.

(4) A detailed study based upon data obtained from census reports, state or county data centers, individual employers, industrial directories, and other sources of local economic and housing information such as newspapers, Realtors, apartment owners and managers, community groups, and chambers of commerce is required. Exhibit A–8 of this subpart details the specific information which professional market studies are required to provide. The study must be presented in clear, understandable language. Negative as well as positive market trends must be disclosed and discussed. Statistical data must be accompanied by analytical text which explains the data and its significance to the proposed housing. Mathematical calculations must be expressed in actual numbers and may be accompanied by percentages. Each table or section must identify the source of the data. A brief statement of the methodology used in the study should be included in the foreword and in other sections where necessary for clarity. RHS personnel will utilize the market study checklist found at Exhibit A–12 (available in any RHS office) as a means of measuring market study credibility.

(5) The market study will include:

a. A complete description of the proposed site and its location with respect to city boundary lines, residential developments, employment centers, and transportation; the location and description of available services and facilities and their distances from the site; a discussion of the site's desirability and marketability based on its location in the community, adjacent land uses, traffic conditions, air or noise pollution, and the location of competitive housing units; and a description of the site in terms of its size, accessibility, and terrain.

b. Pertinent employment data, including the name and location of each major employer within the community and market area, its product or service, number of employees and salary range, commute times and distances, and the year the employer was established at the location. If income data cannot be obtained from individual employers, salary information for the community can be obtained from the state employment commission.

c. Population data required by Exhibit A–8, of this subpart, including population figures by year, number and percentage of increase or decrease, and population characteristics by age.

d. Household data required by Exhibit A–8, of this subpart, including number of households by year, tenure (owner or renter), age, income groups, and number of persons per household.

e. Building permits issued and demolitions by year by single unit dwelling and multiple unit dwelling. In nonreporting jurisdictions, this information may be substituted with the number of requests for electric service connections, number of water or sewer hookups, etc., obtained from local suppliers.

f. Housing stock by tenure and vacancy rates for total number of units, one-unit buildings, two- or more-unit buildings, mobile homes, and number lacking some or all plumbing facilities.

g. A survey of existing rental housing by name, location, year built, number of units, amenities, bedroom mix, type (family, elderly, etc.), rental rates, and rental subsidies if any.

h. A projection of housing need and demand and the analyst's recommendation for the number, type, and size of units, based on the number of RHS and LIHTC income-eligible renter households, the existing comparable housing supply and vacancy rates, the absorption rate of recently completed units, the number of comparable units currently proposed or under construction, and current and projected economic conditions.

F. For congregate housing proposals with central dining area or housing involving a group living arrangement, a narrative statement from local, state, or federal government agencies supporting the current and long-range need for the facilities in the community and its trade area is required.

G. For RRH proposals of 12 or fewer units, the State Director may authorize the use of a market survey to establish market feasibility on a case-by-case basis. This authority may be used when there is evidence of strong market demand, for example, very low vacancy rates and long waiting lists in existing assisted or comparable rental units. The casefile must be documented accordingly. Exhibits A–2, A–3, and A–5 of this subpart may be used for the market survey.

* * * * *

10. Exhibit A–8 of subpart E is amended by revising the second, third, and fourth paragraphs of the introductory text of the exhibit and the introductory paragraph of section I; by adding an introductory sentence to section III; by revising in section III paragraphs B.3., B.7., C.2., and C.3.; and by revising section IV to read as follows:

Exhibit A–8—Outline of Professional Market Study

* * * * *

This outline is to be used by analysts in the preparation of market studies for the section 515 housing program. Need and demand for both family and elderly households must be addressed in the market study. The information will be used by the Rural Housing Service (RHS) in evaluating the feasibility of the proposed housing. The analyst must provide a statement of his/her experience and qualifications for preparing a market analysis. All segments of this outline must be addressed. Data sources and/or methodology must be identified. Charts and tables must be accompanied by text which analyzes the data and discusses its significance in relationship to the proposed housing. The market study should include a summary of the analyst's findings and recommendations, preferably at the beginning of the study.

The outline provides for the demonstration of historical trends and allows the analyst to use reliable current year estimates and project 2 years into the future. Estimates and projections made by the analyst must be supported by reliable data and methodology. The analyst must include the most recent population and household estimates and projections from the State data center, or similar data source, when available. If State or other reliable estimates are not available, the analyst must provide a statement to that effect. RHS may require additional information if estimates or projections depart from historical trends and are not supported by data from reliable sources.

The estimate of need and demand will be made for both family and elderly households in accordance with section IV of this exhibit. The estimate is based on the number of renter households in the appropriate age and/or income ranges, the existing comparable rental supply, and current or planned construction of rental units. The analyst's recommendation must take into consideration existing vacancies, economic projections, and other factors that affect demand. The analyst must discuss the number of renter households that can afford and/or would be willing (based on rental rates in the market) to pay the maximum tax credit rents without rental assistance and the number of rental assistance income eligible renter households. The analyst must also take into consideration the sources of demand in determining the number of units that are recommended, i.e., the number that can be expected to be absorbed within the normal rent-up period. The absorption rate will be slower if a large portion of the demand is expected to come from households in substandard housing rather than from household growth. Substandard housing is defined as: (1) Units lacking complete plumbing; and (2) Overcrowded (1.01 or more per room).

In addition to recommending the total number of units, the analyst must provide a recommendation for the unit mix, which must be supported by appropriate documentation, e.g., statistics on the growth rate of renter households by household size, information on the absorption rate of recently completed rental units, vacancy rates by unit size, etc.

* * * * *

I. * * *

The market area will be the community where the project will be located and only those outlying rural areas which will be impacted by the project (excluding all other established communities). The market area must be realistic. The criteria should be described by the analyst. When a difference of opinion exists in the market area determined by RHS personnel and the market analyst, the market area established by RHS will prevail. Except in specific cases of congregate housing projects where an expanded market may be justified, the market area will not include the entire county (or parish, township, or other subdivision). Any deviation from this definition must be coordinated with the servicing office. The analyst will discuss the market area in terms of its economic base and how it relates to surrounding communities, the county, and the State. For example, describe whether the market area is a small agricultural community, the county seat, a trade center, a seasonal recreational area, and so forth. A map showing the market area is required. The following is an example of a market area description:

* * * * *

III. * * *

The data presented in this section must be accompanied by analytical text which discusses the significance of the data and its relationship to the proposed housing.

* * * * *

B. * * *

3. *Households.* Provide a breakdown of households by town, market area, and county for the last 2 census years, a current year estimate, and a 2-year projection. Identify the source/method for the current year estimate and the 2-year projection.

Year	Population	In group quarters	Households	Persons per household
1980				
1990				
19___				
PROJECTED: 19___ (2 years)				

* * * * *

7. *Households by size.* Provide the number of households by household size and tenure in the town and market area. This data should be used in conjunction with the unit mix of existing comparable units (Section III. C. of this exhibit) to determine the appropriate unit mix for the proposed complex.

Household size	Total households	Owner	Renter
1 person			
2 person			
3 person			
4 person			
5 person			
6 person			
7 person			
8 person			
9 person			
10 person			

* * * * *

C. * * *

2. *Housing stock*. Provide, by tenure (owner/renter), the number of units and the vacancy rates for single family homes, mobile homes, multi-family units, and substandard units, from the 2 most recent census years.

Example:

Year	Single family		Vacancy rate		Multi-family	Vacancy rate	Mobile home		Vacancy rate	
	Own	Rent	Own	Rent			Own	Rent	Own	Rent
1980										
1990										

3. *Existing rental housing.* The analyst must determine where the proposed project will fit into the present housing stock. To accomplish this, the analyst will survey the existing units and discuss if the units:

(a) Are generally comparable with the proposed units in rents and amenities;

(b) Are less than desirable because of age or upkeep;

(c) Are inconveniently located;

(d) Do not provide the appropriate bedroom mix for the community need, etc.

* * * * *

IV. *Housing demand forecast.*

The analyst must provide a projection of the rental housing needs for a specified forecast period, which may not be longer than 2 years from the date the market analysis is completed or updated. *The source and method used in estimating the current number of households and projecting the number of households for the forecast period must be stated.* The analyst must include a recommendation for the number of units needed based on the low-income housing tax credit (LIHTC) rents and income limits if the applicant is applying for LIHTC; the number of units that can be supported with and without rental assistance; and the recommended bedroom mix. The recommendation for the number of units must take into consideration the expected sources of demand (i.e., household growth, households in substandard rental units), current and projected economic conditions, the absorption rates of recently completed units, and the vacancy rate of comparable units.

CALCULATION OF DEMAND

	Town	Market area
a. Total renter households based on current estimate plus 2-year projection (for elderly proposals, total age-eligible renter households)	____	____
b. RHS income eligible:		
X ____%	____	____
LIHTC income eligible:		
X ____%	____	____
RA income eligible:		
X ____%	____	____
c. Plus vacancy rate of 5 percent of:		
RHS income eligible renter households	____	____
LIHTC income eligible renter households	____	____
RA income eligible renter households	____	____
d. Total demand (RHS)	____	____
Total demand (LIHTC)	____	____
Total demand (RA)	____	____
e. Less number of comparable units	____	____
f. Less number of units under construction or in the planning stage	____	____
g. Net demand (RHS)	____	____
Net demand (LIHTC)	____	____
Net demand (RA)	____	____
h. Recommended number of units	____	____
i. Recommended number RA units	____	____
j. Recommended number of units by unit size based on the size of income eligible renter households and the existing supply of units by bedroom size:.		

CALCULATION OF DEMAND—Continued

	Town	Market area
1-Bedroom ______		
2-Bedroom ______		
3-Bedroom ______		
4-Bedroom ______		
5-Bedroom ______		
The source and/or methodology for the estimated and projected number of renter households: ______________		

Dated: January 2, 1996.

Jill Long Thompson,

Under Secretary, Rural Economic and Community Development.

[FR Doc. 96–328 Filed 1–16–96; 8:45 am]

BILLING CODE 3410–07–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 556, 560, 563, 571

[No. 96–1]

RIN 1550–AA94

Lending and Investment

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to section 303 of the Community Development and Regulatory Improvement Act of 1994 (CDRIA) and the Regulatory Reinvention Initiative of the Vice President's National Performance Review, the Office of Thrift Supervision (OTS) has reviewed each of its lending and investment regulations and related policy statements set forth in the Code of Federal Regulations (CFR) to determine whether it is necessary, imposes the least possible burden consistent with safety and soundness, and is written in a clear, straightforward manner. As a result, the OTS today is proposing to update, reorganize, and substantially streamline its lending and investment regulations and policy statements.

DATES: Comments must be received on or before April 16, 1996.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 96–1. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: For general information contact: William J. Magrini, Project Manager, Supervision Policy (202) 906–5744; Ellen J. Sazzman, Counsel (Banking and Finance), (202) 906–7133; or Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, Regulations and Legislation Division, Chief Counsel's Office. For information about preemption, contact Evelyne Bonhomme, Counsel (Banking and Finance), (202) 906–7052, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background of the Proposal

In a comprehensive review of the agency's regulations in the spring of 1995, the OTS identified numerous obsolete or redundant regulations that could be quickly repealed. On December 27, 1995, the OTS published a final rule in the Federal Register repealing these regulations.[1] This resulted in an eight percent reduction in OTS regulations.

As part of its review in the spring of 1995, the OTS also identified several key areas in its regulations for a more intensive, systematic regulatory burden review. These areas—lending and investment authority, subsidiaries and equity investments, insurance and fees, and charter and bylaws—were selected for intensive review because they are vital to thrift operations, had not been developed on an interagency basis, and had not been substantively reviewed in recent years.

Today's proposal presents the results of the review of the lending and investment regulations, the first of the subject areas the OTS has identified for intensive review. Today's proposal, if adopted in final form, will reduce the number of lending and investment regulations from 43 to 23, and result in a net reduction of 11 pages of CFR text.

We reviewed each lending and investment regulation under the following criteria:

- Is the regulation current?
- Can the regulation be eliminated without endangering safety and soundness, diminishing consumer protection, or violating statutory requirements?
- Is the regulation's subject matter more suited for a policy statement or handbook guidance?
- Is the regulation consistent with the regulations of the other federal banking agencies?
- Can the regulation be easily understood?

Today's proposal reorganizes the lending and investment regulations into a more rational, user-friendly framework. The proposal removes unnecessary detail from loan documentation regulations in favor of general safety and soundness requirements, removes unnecessary restrictions on the lending and investment powers of federal savings associations (including restrictions on certain commercial loans and community development investments), minimizes inequities between federal and state associations, and eliminates redundant or obsolete provisions.

This proposal was developed in consultation with those who use the regulations on a daily basis: the agency's regional examination staff and representatives of the thrift industry. Regional staff made recommendations

[1] 60 FR 66866 (December 27, 1995).