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

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Subpart G—Environmental Program

SOURCE: 53 FR 36240, Sept. 19, 1988, unless otherwise noted.

**§ 1940.301 Purpose.**

(a) This subpart contains the major environmental policies of the Farmers Home Administration (FmHA) or its successor agency under Public Law 103–354. It also provides the procedures and guidelines for preparing the environmental impact analyses required for a series of Federal laws, regulations, and Executive orders within one environmental document. The timing and use of this environmental document within the FmHA or its successor agency under Public Law 103–354 decision-making process is also outlined.

(b) This subpart is intended to be consistent with the Council on Environmental Quality's (CEQ) Regulations

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(ii) Form RD 440–58 does not replace Truth in Lending forms. Appropriate forms listed in §1940.401 will be used for Truth in Lending purposes.

(2) Form RD 1940–59, “Settlement Statement,” will be completed as indicated in the form and FMI by the designated attorney or title company for all transactions described in paragraph (b) of this section. The purpose of this form is to provide a uniform settlement statement prescribed by RESPA.

(i) During the business day immediately preceding the date of settlement, the closing agent, if requested by the applicant, must permit the applicant to inspect the settlement statement, completed for those items which are then known to the closing agent.

(ii) A copy will be given to both the borrower and seller at the time of closing or settlement or will be mailed as soon as practicable if the borrower or seller are not present at closing.

### Subparts J–K [Reserved]

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

SOURCE: 50 FR 24180, June 10, 1985, unless otherwise noted.

### § 1940.551 Purpose and general policy.

(a) The purpose of this subpart is to set forth the methodology and formulas by which the Administrator for the Rural Business-Cooperative Service or the Administrator for the Rural Housing Service, as applicable, allocates program funds to the States. (The term *State* means any of the States of the United States, the Commonwealth of Puerto Rico, any territory or possession of the United States, or the Western Pacific Areas.) This subpart is inapplicable to Farm Service Agency, Farm Loan Programs.

(b) The formulas in this subpart are used to allocate program loan and grant funds to State Offices so that the overall mission of the Agency can be carried out. Considerations used when developing the formulas include enabling legislation, congressional direction, and administration policies. Allocation formulas ensure that program

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resources are available on an equal basis to all eligible individuals and organizations.

(c) The actual amounts of funds, as computed by the methodology and formulas contained herein, allocated to a State for a funding period are distributed to each State Office by an exhibit to this subpart. The exhibit is available for review in any Rural Development State Office. The exhibit also contains clarifications of allocation policies and provides further guidance to the State Directors on any suballocation within the State. Rural Development will publish a Notice of Availability of Rural Housing funds in the FEDERAL REGISTER each year.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988; 55 FR 29560, July 20, 1990; 56 FR 66960, Dec. 27, 1991; 72 FR 64122, Nov. 15, 2007]

### § 1940.552 Definitions.

(a) *Amount available for allocation.* Funds appropriated or otherwise made available to the Agency for use in authorized programs. On occasion, the allocation of funds to States may not be practical for a particular program due to funding or administrative constraints. In these cases, funds will be controlled by the National Office.

(b) *Basic formula criteria, data source and weight.* Basic formulas are used to calculate a basic state factor as a part of the methodology for allocating funds to the States. The formulas take a number of criteria that reflect the funding needs for a particular program and through a normalization and weighting process for each of the criteria calculate the basic State Factor (SF). The data sources used for each criteria is believed to be the most current and reliable information that adequately quantifies the criterion. The weight, expressed as a percentage, gives a relative value to the importance of each of the criteria.

(c) *Basic formula allocation.* The result of multiplying the amount available for allocation less the total of any amounts held in reserve or distributed by base or administrative allocation times the basic State factor for each State. The basic formula allocation (BFA) for an individual State is equal to:

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BFA = (Amount available for allocation – NO reserve – Total base and administrative allocations) × SF.

(d) *Transition formula.* A formula based on a proportional amount of previous year allocation used to maintain program continuity by preventing large fluctuations in individual State allocations. The transition formula limits allocation shifts to any par-

ticular State in the event of changes from year to year of the basic formula, the basic criteria, or the weights given the criteria. The transition formula first checks whether the current year's basic formula allocation is within the transition range (+ or –percentage points of the proportional amount of the previous year's BFA).

$$\text{Transition range} = 1.0 \pm \frac{\text{Maximum 20\%}}{100} \times \frac{\text{Amount available for allocation this year}}{\text{Amount available for allocation previous year}} \times \text{State previous year BFA}$$

If the current year's State BFA is not within this transition range, the State formula allocation is changed to the amount of the transition range limit closest to the BFA amount. After having performed this transition adjustment for each State, the sum of the funds allocated to all States will differ from the amount of funds available for BFA. This difference, whether a positive or negative amount, is distributed to all States receiving a formula allocation by multiplying the difference by the SF. The end result is the transition formula allocation. The transition range will not exceed 40% (±20%), but when a smaller range is used it will be stated in the individual program section.

(e) *Base allocation.* An amount that may be allocated to each State dependent upon the particular program to provide the opportunity for funding at least one typical loan or grant in each Rural Development State, District, or County Office. The amount of the base allocation may be determined by criteria other than that used in the basic formula allocation such as agency historic data.

(f) *Administrative allocations.* Allocations made by the Administrator in cases where basic formula criteria information is not available. This form of allocation may be used when the Administrator determines the program

objectives cannot be adequately met with a formula allocation.

(g) *Reserve.* An amount retained under the National Office control for each loan and grant program to provide flexibility in meeting situations of unexpected or justifiable need occurring during the fiscal year. The Administrator may make distributions from this reserve to any State when it determined necessary to meet a program need or agency objective. The Administrator may retain additional amounts to fund authorized demonstration programs. When such demonstration programs exist, the information is outlined in exhibit A of this subpart (available in any FmFA State Office).

(h) *Pooling of funds.* A technique used to ensure that available funds are used in an effective, timely and efficient manner. At the time of pooling those funds within a State's allocation for the fiscal year or portion of the fiscal year, depending on the type of pooling, that have not been obligated by the State are placed in the National Office reserve. The Administrator will establish the pooling dates for each affected program.

(1) *Mid-year:* This pooling addresses the need to partially redistribute funds based on use/demand. Mid-year pooling occurs near the midpoint of the fiscal year.

(2) *Year-end:* This pooling is used to ensure maximum use of program funds

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on a national basis. Year-end pooling usually occurs near the first of August.

(3) *Emergency*: The Administrator may pool funds at any time that it is determined the conditions upon which the initial allocation was based have changed to such a degree that it is necessary to pool funds in order to efficiently carry out the Agency mission.

(i) *Availability of the allocation*. Program funds are made available to the Agency on a quarterly basis. In the high demand programs, it is necessary that specific instructions be given to the State Offices regarding the amount which is available for obligation during each quarter.

(j) *Suballocation by the State Director*. Dependent upon the individual program for which funds are being allocated, the State Director may be directed or given the option of suballocating the State allocation to District or County Offices. When suballocating the State Director may retain a portion of the funds in a State Office reserve to provide flexibility in situations of unexpected or justified need. When performing a suballocation the State Director will use the same formula, criteria and weights as used by the National Office.

(k) *Other documentation*. Additional instructions given to field offices regarding allocations.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988]

§§ 1940.553–1940.559 [Reserved]

§ 1940.560 **Guarantee Rural Rental Housing Program.**

When funding levels are under \$100,000,000, all funds will be held in a National Office reserve and made available administratively in accordance with the Notice of Funding Availability (NOFA) and program regulations. When program levels are sufficient for a nationwide program, funds are allocated based upon the following criteria and weights.

(a) *Amount available for allocations*. See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight*. See § 1940.552(b) of this subpart.

Each factor will receive a weight respectively of 40%, 40% and 20%. The criteria used in the basic formula are:

(1) State’s percentage of National rural population,

(2) State’s percentage of the National number of rural households between 50 and 115 percent of the area median income, and

(3) State’s percentage of National average cost per unit. **The data source** for the criterion specified in paragraph (b)(1) of this section is the most recent decennial Census of the United States (decennial Census). The data source for the criterion specified in paragraph (b)(2) of this section is 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. The data source for the criterion specified in paragraph (b)(3) of this section is the cost per unit data using the applicable maximum per unit dollar amount limitations under section 207(c) of the National Housing Act, which can be obtained from the Department of Housing and Urban Development. The percentage representing each criterion is multiplied by the weight assigned and totaled to arrive at a State factor.

State Factor = (criterion No. 1 × weight of 40%) + (criterion No. 1 × weight of 40%) + (criterion No. 1 × weight of 20%)

(c) *Basic formula allocation*. See § 1940.552(c).

(d) *Transition formula*. See § 1940.552(d).

(e) *Base allocation*. See § 1940.552(e). Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations*. See § 1940.552(f). Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve*. See § 1940.552(g).

(h) *Pooling of funds*. See § 1940.552(h).

(i) *Availability of the allocation*. See § 1940.552(i).

(j) *Suballocation by the State Director*. See § 1940.552(j).

(k) *Other documentation*. Not applicable.

[63 FR 39458, July 22, 1998, as amended at 80 FR 9876, Feb. 24, 2015]

## §§ 1940.561–1940.562 [Reserved]

**§ 1940.563 Section 502 non-subsidized guaranteed Rural Housing (RH) loans.**

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552 (b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population in places of less than 2,500 population,

(3) State's percentage of the national number of rural households between 80 and 100 percent of the area median income, and

(4) State's percentage of the national number of rural renter households paying more than 35 percent of income for rent. The data source for each criterion is specified in paragraph (b)(5) of this section. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF) as follows:

$$\text{SF} = (\text{criterion 1} \times \text{weight of 30\%}) + (\text{criterion 2} \times \text{weight of 10\%}) + (\text{criterion 3} \times \text{weight of 30\%}) + (\text{criterion 4} \times \text{weight of 30\%})$$

(5) *The data source* for the criteria specified in paragraphs (b)(1) and (b)(2) of this section is the most recent decennial Census. The data source for the criteria specified in paragraph (b)(3) and (b)(4) of this section is 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data.

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for Section 502 guaranteed RH loans is plus or minus 15.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdic-

tions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. Annually, the Administrator will advise State Director's whether or not sub-allocation within the State Office jurisdiction will be required for the guaranteed Housing program.

(k) *Other documentation.* Not applicable.

[56 FR 10509, Mar. 13, 1991, as amended at 80 FR 9876, Feb. 24, 2015]

**§ 1940.564 Section 502 subsidized guaranteed Rural Housing loans.**

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population in places of less than 2,500 population,

(3) State's percentage of the national number of rural households below 80 percent of the area median income, and

(4) State's percentage of the national number of rural renter households paying more than 35 percent of income for rent. The data source for each criterion is specified in paragraph (b)(5) of this section. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF) as follows:



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SF = (criterion 1 × weight of 30%) + (criterion 2 × weight of 10%) + (criterion 3 × weight of 30%) + (criterion 4 × weight of 30%)

(5) The data source for the criteria specified in paragraphs (b)(1), (b)(2), and (b)(4) of this section is the most recent decennial Census. The data source for the criterion specified in paragraph (b)(3) of this section is 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data.

(c) Basic formula allocation. See §1940.552(c) of this subpart.

(d) Transition formula. See §1940.552(d) of this subpart. The percentage range used for section 502 guaranteed RH loans is plus or minus 15.

(e) Base allocation. See §1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) Administration allocations. See §1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) Reserve. See §1940.552(g) of this subpart.

(h) Pooling of funds. See §1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) Availability of the allocation. See §1940.552(i) of this subpart.

(j) Suballocation by the State Director. See §1940.552(j) of this subpart. Annually, the Administrator will advise State Director's whether or not sub-allocation within the State Office jurisdiction will be required for the guaranteed Housing program.

(k) Other documentation. Not applicable.

[56 FR 10509, Mar. 13, 1991, as amended at 80 FR 9877, Feb. 24, 2015]

§ 1940.565 Section 502 subsidized Rural Housing loans.

(a) Amount available for allocations. See §1940.552(a) of this subpart.

(b) Basic formula criteria, data source and weight. See §1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population,

(3) State's percentage of the National rural population in places of less than 2,500 population,

(4) State's percentage of the National number of rural households between 50 and 80 percent of the area median income, and

(5) State's percentage of the National number of rural households below 50 percent of the area median income.

Data source for each of these criteria is based on the latest census data available. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF)

SF = (criterion 1 × weight of 25%) + (criterion 2 × weight of 10%) + (criterion 3 × weight of 15%) + (criterion 4 × weight of 30%) + (criterion 5 × weight of 20%)

(c) Basic formula allocation. See §1940.552(c) of this subpart.

(d) Transition formula. See §1940.552(d) of this subpart. The percentage range used for Section 502 subsidized RH loans is plus or minus 15.

(e) Base allocation. See §1940.552(e) of this subpart. Jurisdictions receiving administrative allocations do not receive base allocations.

(f) Administrative allocations. See §1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) Reserve. See §1940.552(g) of this subpart.

(h) Pooling of funds. See §1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are

available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. The State Director will suballocate funds to the District Offices and may, at his/her option, suballocate to the County Offices. The State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.565 (b) and (c) of this section. The suballocations to District or County Offices will not be reduced or restricted unless written approval is received from the National Office in response to a written request from the State Director. The State Director's request must include the reasons for the requested action (e.g., high housing inventory and/or high housing delinquency).

(k) *Other documentation.* The percentage distribution of funds to the States by income levels is based on prevailing legislation.

**§ 1940.566 Section 504 Housing Repair loans.**

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b). The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units, and

(2) State's percentage of the National number of rural households below 50 percent of area median income. The **data source** for the first criterion is the most recent decennial Census data. The data source for the second criterion is 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

$SF = (\text{criterion No. 1} \times \text{weight of 50\%}) + (\text{criterion No. 2} \times \text{weight of 50\%})$

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 504 Housing Repair Loans is plus or minus 15.

(e) *Base allocation.* Not used.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) Mid-year: If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) Year-end: Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, section 504 loan funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.566 (b) and (c) of this section.

(k) *Other documentation.* Not applicable.

[50 FR 24180, June 10, 1985, as amended at 80 FR 9877, Feb. 24, 2015]

**§ 1940.567 Section 504 Housing Repair grants.**

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart. The criteria used in the basic formula are:

(1) State's percentage of the National number of rural occupied substandard units,

(2) State's percentage of the National rural population 62 years and older, and

(3) State's percentage of the National number of rural households below 50 percent of area median income. The **data source** for the first two of these

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criteria is the most recent decennial Census data. The data source for the third criterion is the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a basic State factor (SF).

SF = (criterion No. 1 × weight of 33 1/3%) + (criterion No. 2 × weight of 33 1/3%) + (criterion No. 3 × weight of 33 1/3%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.552(d) of this subpart. The percentage range used for section 504 Housing Repair grants is plus or minus 15.

(e) *Base allocation.* Not used.

(f) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See § 1940.552(g) of this subpart.

(h) *Pooling of funds.* See § 1940.552(h) of this subpart.

(1) *Mid-year:* If used in a particular fiscal year, available funds unobligated as of the pooling date are pooled and redistributed based on the formula used to allocate funds initially.

(2) *Year-end:* Pooled funds are placed in a National Office reserve and are available as determined administratively.

(i) *Availability of the allocation.* See § 1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See § 1940.552(j) of this subpart. At the option of the State Director, section 504 grant funds may be suballocated to the District Offices. When performing a suballocation, the State Director will use the same basic formula criteria, data source and weight for suballocating funds within the State as used by the National Office in allocating to the States as described in § 1940.567 (b) and (c) of this section.

(k) *Other documentation.* Not applicable.

[50 FR 24180, June 10, 1985, as amended at 80 FR 9877, Feb. 24, 2015]

§ 1940.568 Single Family Housing programs appropriations not allocated by State.

The following program funds are kept in a National Office reserve and are available as determined administratively:

(a) Section 523 Self-Help Technical Assistance Grants.

(b) Section 523 Land Development Fund.

(c) Section 524 Rural Housing Site Loans.

(d) Section 509 Compensation for Construction Defects.

(e) Section 502 Nonsubsidized Funds.

§§ 1940.569-1940.574 [Reserved]

§ 1940.575 Section 515 Rural Rental Housing (RRH) loans.

(a) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See § 1940.552(b) of this subpart.

The criteria used in the basic formula area:

(1) State's percentage of National rural population,

(2) State's percentage of National number of rural occupied substandard units, and

(3) State's percentage of National rural families with incomes below the poverty level. The data source for the first two of these criterion is the most recent decennial Census data. The data source for the third criterion is the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight assigned and summed to arrive at a State factor (SF).

SF = (criterion No. 1 × weight of 33 1/3%) + (criterion No. 2 × weight of 33 1/3%) + (criterion No. 3 × weight of 33 1/3%)

(c) *Basic formula allocation.* See § 1940.552(c) of this subpart.

(d) *Transition formula.* See § 1940.522(d) of this subpart.

(e) *Base allocation.* See § 1940.552(e) of this subpart. Jurisdictions receiving



**RHS, RBS, RUS, FSA, USDA**

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administrative allocations do not receive base allocations.

(f) *Administrative allocations.* See §1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See §1940.552(g) of this subpart.

(h) *Pooling of funds.* See §1940.552(h) of this subpart.

(i) *Availability of the allocation.* See §1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See §1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

[53 FR 26229, July 12, 1988, as amended at 80 FR 9877, Feb. 24, 2015]

**§ 1940.576 Rental Assistance (RA) for new construction.**

(a) *Amount available for allocations.* See §1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See §1940.575(b) of this subpart.

(c) *Basic formula allocation.* See §1940.552(c) of this subpart.

(d) *Transition formula.* See §1940.552(d) of this subpart.

(e) *Base allocation.* See §1940.552(e) of this subpart.

(f) *Administrative allocations.* See §1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(g) *Reserve.* See §1940.552(g) of this subpart.

(h) *Pooling of funds.* See §1940.552(h) of this subpart.

(i) *Availability of the allocation.* See §1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See §1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

[53 FR 26229, July 12, 1988]

**§ 1940.577 Rental Assistance (RA) for existing projects.**

(a) *Amount available for allocations.* See §1940.552(a) of this subpart. RA appropriated for existing projects will first be used to replace contracts expiring each fiscal year and for the first few months of the following fiscal year. This is done to assure continued RA funding. RA units not needed for replacement purposes will be used for ex-

isting multiple family housing projects experiencing servicing problems.

(b) *Basic formula criteria, data source and weight.* No formula or weighted criteria is used to allocate replacement RA. The basic allocation for replacement RA will be made based on the following:

(1) *Criteria.* This allocation is based on the estimated need to replace RA contracts expiring from the depletion of funds.

(2) *Date source.* The most accurate and current information available from Rural Development computerized data sources.

(c) *Basic formula allocation.* While no formula will be used, the basic allocation will be made to each State according to the need determined using the basic criteria.

(d) *Transition formula.* Not applicable.

(e) *Base allocation.* Not applicable.

(f) *Administrative allocation.* Not applicable.

(g) *Reserve.* See §1940.552(g) of this subpart. The National Office maintains a reserve adequate to compensate for the differences between actual and projected replacement activity. Units will be administratively distributed for existing housing to either satisfy previously unidentified replacement needs or address servicing situations. Units will be distributed to any State when the Administrator determines that additional allocations are necessary and appropriate.

(h) *Pooling of funds.* See §1940.552(h) of this subpart. Units will be pooled at the Administrator's discretion.

(i) *Obligation of the allocation.* See §1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* See §1940.552(j) of this subpart.

(k) *Other documentation.* Not applicable.

[49 FR 3727, Jan. 30, 1984, as amended at 53 FR 26229, July 12, 1988]

**§ 1940.578 Housing Preservation Grant (HPG) program.**

(a) *Amount available for allocations.* See §1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See §1940.575(b) of this subpart.

(c) *Basic formula allocation.* See §1940.552(c) of this subpart.

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(d) *Transition formula.* See §1940.552(d) of this subpart.

(e) *Base allocation.* See §1940.552(e) of this subpart.

(f) *Administrative allocations.* See §1940.552(f) of this subpart.

(g) *Reserve.* See §1940.552(g) of this subpart.

(h) *Pooling of funds.* See §1940.552(h) of this subpart. Funds may be pooled after all HPG applications have been received and HPG fund demand by State has been determined. Pooled funds will be combined with the National Office reserve to fund eligible projects. Remaining HPG funds will be available for distribution for use under the Section 504 program.

(i) *Availability of the allocation.* See §1940.552(i) of this subpart.

(j) *Suballocation by the State Director.* Not applicable.

(k) *Other documentation.* Funds for the HPG program will be available for a limited period each fiscal year. Due to the requirements by law to allocate funds on a formula basis to all States and to have a competitive selection process for HPG project selection, Rural Development will announce opening and closing dates for receipt of HPG applications. After the closing date, Rural Development will review and evaluate the proposals, adjust State allocations as necessary to comply with the law and program demand, and redistribute remaining unused HPG resources for use under Section 504 (as required by statute).

[53 FR 26229, July 12, 1988]

§ 1940.579 **Multiple Family Housing appropriations not allocated by State.**

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

(a) Section 514 Farm Labor Housing Loans.

(b) Section 516 Farm Labor Housing Grants.

[64 FR 24480, May 6, 1999]

§§ 1940.580–1940.584 [Reserved]

§ 1940.585 **Community Facility loans.**

(a) *Amount available for allocations.* See §1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See §1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State’s percentage of national rural population—50 percent.

(ii) State’s percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State’s percentage of national nonmetropolitan unemployment—25 percent.

(2) The **data source** for the first criterion is the most recent decennial Census data. The data source for the second criterion is the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. The data source for the third criterion is the most recent Bureau of Labor Statistics data. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed 0.05.

$$SF = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

(c) *Basic formula allocation.* See §1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* See §1940.552(d) of this subpart. The percentage range for the transition formula equals 30 percent (±15%).

(e) *Base allocation.* See §1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See §1940.552(f) of this subpart. States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See §1940.552(g) of this subpart. States may request funds by forwarding a completed copy of guide 26 of subpart A of part 1942 of this chapter (available in any Rural Development office), to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds to obligate the loan requested.

(h) *Pooling of funds.* See §1940.552(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See §1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by the State Director.* See §1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

[50 FR 24180, June 10, 1985, as amended at 58 FR 54485, Oct. 22, 1993; 80 FR 9877, Feb. 24, 2015]

§§ 1940.586–1940.587 [Reserved]

**§ 1940.588 Business and Industry Guaranteed and Direct Loans, Rural Business Enterprise Grants, Rural Business Opportunity Grants, and Intermediary Relending Program.**

The Agency will allocate funds to the States each Federal fiscal year for the programs identified in this section using the procedures specified in paragraph (a) of this section. If the Agency determines that it will not allocate funds to the States for a program identified in this section in a particular Federal fiscal year, the Agency will announce this decision in a notice published in the FEDERAL REGISTER. The conditions under which the Agency will not allocate a program's funds to the States are identified in paragraph (b) of this section.

(a) *Procedures for allocating funds to the States.* Each Federal fiscal year, the Agency will use the amount available to the program and the procedures identified in paragraphs (a)(2) through (10) of this section to determine the amount of program funds to allocate to each of the States. The Agency will make the allocation calculation each Federal fiscal year.

(1) *Amount available for allocations.* See §1940.552(a) of this subpart.

(2) *Basic formula criteria, data source and weight.* See §1940.552(b) of this subpart.

(i) The criteria used in the basic formula are:

(A) State's percentage of national rural population.

(B) State's percentage of national rural population with incomes below the poverty level.

(C) State's percentage of national nonmetropolitan unemployment.

(ii) The **data sources** for each of the criteria identified in paragraph (a) of this section are:

(A) For the criterion specified in paragraph (a)(2)(i)(A), the most recent decennial Census data.

(B) For the criterion specified in paragraph (a)(2)(i)(B), 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data.

(C) For the criterion specified in paragraph (a)(2)(i)(C), the most recent Bureau of Labor Statistics data.

(iii) Each criterion is assigned a specific weight factor according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at State Factor (SF). The SF cannot exceed 0.05. The Agency may elect to use different weight factors than those identified in this paragraph by publishing a timely notice in the FEDERAL REGISTER.

$$\text{SF} = (\text{criterion (a)(2)(i)(A)} \times 25 \text{ percent}) \\ + (\text{criterion (a)(2)(i)(B)} \times 50 \text{ percent}) \\ + (\text{criterion (a)(2)(i)(C)} \times 25 \text{ percent})$$

(iv) The Agency will recalculate, as necessary, each criterion specified in paragraph (a)(2)(i) of this section each year. In making these recalculations, the Agency will use the most recent data available to the Agency as of October 1 of the fiscal year for which the Agency is making State allocations. Each criterion's value determined at the beginning of a fiscal year for a program will be used for that entire fiscal year, regardless of when that fiscal year's funding becomes available for the program.

(3) *Basic formula allocation.* See §1940.552(c) of this subpart.

(4) *Transition formula.* The transition provisions specified in §1940.552(d) of

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this subpart apply to the programs identified in this section except as follows:

(i) The transition formula will be used only when the weight factors identified in paragraph (a)(2)(iii) of this section are modified; and

(ii) When the transition formula is used, there will be no upper limitation on the amount that a State's allocation can increase over its previous year's allocation and the maximum percentage that funding will be allowed to decrease for a State will be 10 percent from its previous year's allocation.

(5) *Base allocations.* See § 1940.552(e) of this subpart.

(6) *Administrative allocations.* See § 1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive administrative allocations.

(7) *Reserve.* See § 1940.552(g) of this subpart.

(8) *Pooling of funds.* See § 1940.552(h) of this subpart.

(9) *Availability of allocation.* See § 1940.552(i) of this subpart.

(10) *Suballocation by the State Director.* Suballocation by the State Director is authorized for each program covered by this section.

(b) *Conditions for not allocating program funds to the States.* The Agency may elect to not allocate program funds to the States whenever one of the conditions identified in paragraphs (b)(1) or (b)(2) of this section occurs.

(1) Funds allocated in a fiscal year to a program identified in this section are insufficient, as provided for in § 1940.552(a) of this subpart.

(2) The Agency determines that it is in the best financial interest of the Federal Government not to make a State allocation for any program identified in this section and that the exercise of this determination is not in conflict with applicable law.

[79 FR 56218, Sept. 19, 2014]

EDITORIAL NOTE: At 79 FR 55967, September 18, 2014, § 1940.588 was amended by revising paragraph (i); however, paragraph (i) was not found in the section.

§ 1940.589 Rural Energy for America Program.

The Agency will allocate funds to the States each Federal fiscal year for re-

newable energy system and energy efficiency improvement projects under the Rural Energy for America Program (REAP) using the procedures specified in paragraph (a) of this section. If the Agency determines that it will not allocate funds to the States for REAP in a particular Federal fiscal year, the Agency will announce this decision in a notice published in the FEDERAL REGISTER. The conditions under which the Agency will not allocate the program's funds to the States are identified in paragraph (b) of this section.

(a) *Procedures for allocating funds to the States.* Each Federal fiscal year, the Agency will use the amount available to the program and the procedures identified in paragraphs (a)(2) through (10) of this section to determine the amount of program funds to allocate to each of the States. The Agency will make this calculation each Federal fiscal year.

(1) *Amount available for allocations.* See § 1940.552(a) of this subpart.

(2) *Basic formula criteria, data source, and weight.* See § 1940.552(b) of this subpart.

(i) The criteria used in the basic formula are:

(A) State's percentage of national rural population.

(B) State's percentage of national rural population with incomes below the poverty level.

(C) State's percentage of energy cost.

(ii) The **data sources** for each of the criteria identified in paragraph (a)(2)(i) of this section are:

(A) For the criterion specified in paragraph (a)(2)(i)(A), the most recent decennial Census data.

(B) For the criterion specified in paragraph (a)(2)(i)(B), 5-year income data from the American Community Survey (ACS) or, if needed, other Census Bureau data.

(C) For the criterion specified in paragraph (a)(2)(i)(C), the most recent U.S. Energy Information Administration data.

(iii) Each criterion is assigned a specific weight factor according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at State Factor (SF). The SF cannot exceed 0.05. The Agency



may elect to use different weight factors than those identified in this paragraph by publishing a timely notice in the FEDERAL REGISTER.

$$\text{SF} = (\text{criterion (a)(2)(i)(A)} \times 25 \text{ percent}) \\ + (\text{criterion (a)(2)(i)(B)} \times 50 \text{ percent}) \\ + (\text{criterion (a)(2)(i)(C)} \times 25 \text{ percent})$$

(iv) The Agency will recalculate, as necessary, each criterion specified in paragraph (a)(2)(i) of this section each year. In making these recalculations, the Agency will use the most recent data available to the Agency as of October 1 of the fiscal year for which the Agency is making State allocations. Each criterion's value determined at the beginning of a fiscal year for a program will be used for that entire fiscal year, regardless of when that fiscal year's funding becomes available for the program.

(3) *Basic formula allocation.* See §1940.552(c) of this subpart.

(4) *Transition formula.* The transition provisions specified in §1940.552(d) of this subpart apply to the program(s) identified in this section except as follows:

(i) The transition formula will be used only when the weight factors identified in paragraph (a)(2)(iii) of this section are modified; and

(ii) When the transition formula is used, there will be no upper limitation on the amount that a State's allocation can increase over its previous year's allocation and the maximum percentage that funding will be allowed to decrease for a State will be 10 percent from its previous year's allocation.

(5) *Base allocations.* See §1940.552(e) of this subpart.

(6) *Administrative allocations.* See §1940.552(f) of this subpart. Jurisdictions receiving formula allocations do not receive initial administrative allocations.

(7) *Reserve.* See §1940.552(g) of this subpart.

(8) *Pooling of funds.* See §1940.552(h) of this subpart.

(9) *Availability of the allocation.* See §1940.552(i) of this subpart.

(10) *Suballocation by the State Director.* Suballocation by the State Director is authorized for this program.

(b) *Conditions for not allocating program funds to the States.* The Agency

may elect to not allocate REAP program funds to the States whenever one of the conditions identified in paragraphs (b)(1) or (b)(2) of this section occurs.

(1) Funds allocated in a fiscal year to REAP are insufficient, as provided for in §1940.552(a) of this subpart.

(2) The Agency determines that it is in the best financial interest of the Federal Government not to make a State allocation for REAP and that the exercise of this determination is not in conflict with applicable law.

[79 FR 56219, Sept. 19, 2014]

#### § 1940.590 [Reserved]

#### § 1940.591 Community Program Guaranteed loans.

(a) *Amount available for allocations.* See §1940.552(a) of this subpart.

(b) *Basic formula criteria, data source and weight.* See §1940.552(b) of this subpart.

(1) The criteria used in the basic formula are:

(i) State's percentage of national rural population—50 percent.

(ii) State's percentage of national rural population with incomes below the poverty level—25 percent.

(iii) State's percentage of national nonmetropolitan unemployment—25 percent.

(2) The **data source** for the first criterion is the most recent decennial Census data. The data source for the second criterion is the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. The data source for the third criterion is the most recent Bureau of Labor Statistics data. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF). The SF cannot exceed 0.05.

$$\text{SF} = (\text{criterion (b)(1)(i)} \times 50 \text{ percent}) \\ + (\text{criterion (b)(1)(ii)} \times 25 \text{ percent}) \\ + (\text{criterion (b)(1)(iii)} \times 25 \text{ percent})$$

(c) *Basic formula allocation.* See §1940.552(c) of this subpart. States receiving administrative allocations do not receive formula allocations.



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(d) *Transition formula.* The transition formula for Community Program Guaranteed loans is not used.

(e) *Base allocation.* See §1940.552(e) of this subpart. States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See §1940.552(f) of this subpart. States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See §1940.522(g) of this subpart. States may request funds by forwarding a request following the format found in guide 26 of subpart A of part 1942 of this chapter to the National Office. Generally, a request for additional funds will not be honored unless the State has insufficient funds from the State's allocation to obligate the loan requested.

(h) *Pooling of funds.* See §1940.522(h) of this subpart. Funds are generally pooled at mid-year and year-end. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See §1940.552(i) of this subpart. The allocation of funds is made available for States to obligate on an annual basis although the Office of Management and Budget apportions it to the Agency on a quarterly basis.

(j) *Suballocation by State Director.* See §1940.552(j) of this subpart. State Director has the option to suballocate to District Offices.

(k) *Other documentation.* Not applicable.

[55 FR 11134, Mar. 27, 1990, as amended at 58 FR 54486, Oct. 22, 1993; 80 FR 9877, Feb. 24, 2015]

## § 1940.592 Community facilities grants.

(a) *Amount available for allocations.* See §1940.552(a).

(b) *Basic formula criteria, data source, and weight.* See §1940.552(b).

(1) The criteria used in the basic formula are:

(i) State's percentage of National rural population—50 percent.

(ii) State's percentage of National rural population with income below the poverty level—50 percent.

(2) The **data source** for the first criterion is the most recent decennial

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Census data. The data source for the second criterion is the 5-year data from the American Community Survey (ACS) or, if needed, other Census Bureau data. Each criterion is assigned a specific weight according to its relevance in determining need. The percentage representing each criterion is multiplied by the weight factor and summed to arrive at a State factor (SF).

SF (criterion (b)(1)(i) × 50 percent) + (criterion (b)(1)(ii) × 50 percent)

(c) *Basic formula allocation.* See §1940.552(c). States receiving administrative allocations do not receive formula allocations.

(d) *Transition formula.* The transition formula for Community Facilities Grants is not used.

(e) *Base allocation.* See §1940.552(e). States receiving administrative allocations do not receive base allocations.

(f) *Administrative allocation.* See §1940.552(f). States participating in the formula base allocation procedures do not receive administrative allocations.

(g) *Reserve.* See §1940.552(g).

(h) *Pooling of funds.* See §1940.522(h). Funds will be pooled at midyear and yearend. Pooled funds will be placed in the National Office reserve and will be made available administratively.

(i) *Availability of the allocation.* See §1940.552(i).

(j) *Suballocation by State Director.* See §1940.552(j).

(k) *Other documentation.* Not applicable.

[62 FR 16468, Apr. 7, 1997, as amended at 80 FR 9877, Feb. 24, 2015]

## § 1940.593 Other Rural Business-Cooperative Service programs.

If the Agency determines that it is in the best interest of the Federal government to allocate funds to States for existing RBS programs other than those identified in §§1940.588 and 1940.589 of this subpart and for programs new to RBS (e.g., through new legislation), the Agency will use the process identified in paragraph (a) or (b) of this section.

(a) If the Agency determines that one of the State allocation procedures in §1940.588 and §1940.589 is appropriate for the program, the Agency will publish a FEDERAL REGISTER notice identifying

the program and which State allocation procedure will be used for the program.

(b) If the Agency determines that none of the procedures specified in §1940.588 and §1940.589 is appropriate for the program, the Agency will implement the following steps:

(1) The Agency will either develop a preliminary state allocation formula and administrative procedures specific to the requirements of the new program or use whichever of the procedures in §1940.588 and §1940.589 the Agency determines most closely matches the purpose of the program. The Agency will publish in the FEDERAL REGISTER the State allocation formula and administrative procedures that it will use initially for the new program.

(2) The Agency will develop a State allocation formula and administrative provisions specific to the new program and publish them as a proposed rule change to this part in the FEDERAL REGISTER for public comment.

(3) Until the program's State allocation formula and administrative requirements are finalized, the Agency will use the preliminary State allocation formula established under paragraph (b)(1) of this section to make State allocations and administer the new program.

[79 FR 56220, Sept. 19, 2014]

#### §§ 1940.594–1940.600 [Reserved]

EXHIBIT A TO SUBPART L OF PART 1940  
[RESERVED]

#### EXHIBIT B TO SUBPART L OF PART 1940— SECTION 515 NONPROFIT SET ASIDE (NPSA)

I. *Objective*: To provide eligible nonprofit entities with a reasonable opportunity to utilize section 515 funds.

II. *Background*: The Cranston-Gonzalez National Affordable Housing Act of 1990 established the statutory authority for the section 515 NPSA funds.

III. *Eligible entities*. Amounts set aside shall be available only for nonprofit entities in the State, which may not be wholly or partially owned or controlled by a for-profit entity. An eligible entity may include a partnership, including a limited partnership, that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax

credits authorized under section 42 of the Internal Revenue Code of 1986. For the purposes of this exhibit, a nonprofit entity is an organization that:

A. Will own an interest in a project to be financed under this section and will materially participate in the development and the operations of the project; and

B. Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986; and

C. Has among its purposes the planning, development, or management of low-income housing or community development projects; and

D. Is not affiliated with or controlled by a for-profit organization; and

E. May be a consumer cooperative, Indian tribe or tribal housing authority.

IV. *Nondiscrimination*. Rural Development reemphasizes the nondiscrimination in use and occupancy and location requirements of 7 CFR 3560.104.

V. *Amount of Set Aside*. See Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office):

A. *Small State Allocation Set Aside (SSASA)*. The allocation for small States has been reserved and combined to form the SSASA, as shown in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). The definition of small State is included in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

B. *Large State Allocation Set Aside (LSASA)*. The allocation for large States has been reserved in the amounts shown in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). The definition of large State is included in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

C. *NPSA Rental Assistance (RA)*. NPSA RA has been reserved in the National Office as shown in Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

VI. *Access to NPSA funds and RA*. RA is available and may be requested, as needed, with eligible loan requests. NPSA funds and RA should be requested by the State Director using a format similar to Attachment 2 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). Funds are available as follows:

A. *SSASA*: The SSASA is available to any SSASA State on a first-come-first-served basis until pooling. See Attachment 3 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office) for information regarding pooling.

B. *LSASA*: LSASA states may request LSASA funds up to the amount the state contributed to LSASA until pooling. See Attachment 3 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office) for information regarding pooling.

VII. *General Information on priority/processing of Preapplications.*

A. Preapplications/applications for assistance from eligible nonprofit entities under this subpart must continue to meet all loan making requirements of 7 CFR part 3560, subpart B.

B. A separate processing list will be maintained for NPSA loan requests.

C. The State Director may issue Form AD-622, "Notice of Preapplication Review Action", requesting a formal application to the highest ranking preapplication(s) from eligible nonprofit entities defined in paragraph III of this exhibit as follows:

1. *LSASA*. In LSASA States, AD-622s may not exceed 150 percent of the amount the State contributed to the LSASA. No single Form AD-622 may exceed the amount of funds the State contributed to LSASA.

2. *SSASA*. In SSASA States, AD-622s should not exceed the greater of \$750,000 or 150 percent of the amount the State contributed to the SSASA; except that the State Director in a SSASA State may request authorization to issue a Form AD-622, in an amount in excess of \$750,000 if additional funds are necessary to finance an average-size proposal based upon average construction costs in the state. For example, if the average size proposal currently being funded in the state is 24 units, and the average construction cost in the state is \$35,000 per unit, the state may request authorization to issue an AD-622 for \$840,000. The State Director will submit such requests to the National Office including data reflecting average size/cost projects in the State. No single Form AD-622 may exceed the amount of funds the State may receive from SSASA.

D. All AD-622s issued for proposals to be funded from NPSA will be subject to the availability of NPSA funds. Form AD-622 should contain the following or similar language: "This Form AD-622 is issued subject to the availability of Nonprofit Set-Aside (NPSA) funds."

E. If a preapplication requesting NPSA funds has sufficient priority points to compete with non-NPSA loan requests based upon the District or State allocation (as applicable), the preapplication will be maintained on both the NPSA and non-NPSA rating/ranking lists.

F. Provisions for providing preference to loan requests from nonprofit organizations is contained in 7 CFR 3560.56. Limited partnerships, with a nonprofit general partner, do not qualify for nonprofit preference.

VIII. *Exception authority.* The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements of this exhibit which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the intent of the authorizing statute and/or Rural Rental Housing program or result in an undue hardship by applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the Multi-Family Housing Processing Division. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves the right to change pooling dates, establish/change minimum and maximum fund usage from NPSA, or restrict participation in the set aside.

[58 FR 38950, July 21, 1993, as amended at 69 FR 69104, Nov. 26, 2004]

EXHIBIT C TO SUBPART L OF PART 1940—  
**HOUSING IN UNDERSERVED AREAS**

I. OBJECTIVE

A. To improve the quality of affordable housing by targeting funds under Rural Housing Targeting Set Aside (RHTSA) to designated areas that have extremely high concentrations of poverty and substandard housing and have severe, unmet rural housing needs.

B. To provide for the eligibility of certain colonias for rural housing funds.

II. BACKGROUND

The Cranston-Gonzalez National Affordable Housing Act of 1990 (herein referred to as the "Act") requires that Farmers Home Administration (FmHA) or its successor agency under Public Law 103-354 set aside section 502, 504, 514, 515, and 524 funds for assistance in targeted, underserved areas. An appropriate amount of section 521 new construction rental assistance (RA) is set aside for use with section 514 and 515 loan programs. Under the Act, certain colonias are now eligible for FmHA or its successor agency under Public Law 103-354 housing assistance.

III. COLONIAS

A. Colonia is defined as any identifiable community that:

1. Is in the State of Arizona, California, New Mexico or Texas;

2. Is in the area of the United States within 150 miles of the border between the United States and Mexico, except that the term does

not include any standard metropolitan statistical area that has a population exceeding 1 million;

3. Is designated by the State or county in which it is located as a colonia;

4. Is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and

5. Was in existence and generally recognized as a colonia before November 28, 1990.

B. Requests for housing assistance in colonias have priority as follows:

1. When the State did not obligate its allocation in one or more of its housing programs during the previous 2 fiscal years (FYs), priority will be given to requests for assistance, in the affected program(s), from regularly allocated funds, until an amount equal to 5 percent of the current FY program(s) allocation is obligated in colonias. This priority takes precedence over other processing priority methods.

2. When the State did obligate its allocation in one or more of its housing programs during the previous 2 FYs, priority will be given to requests for assistance, in the affected program(s), from RHTSA funds, until an amount equal to 5 percent of the current FY program(s) allocation is obligated in colonias. This priority takes precedence over other processing priority methods.

C. Colonias may access pooled RHTSA funds as provided in paragraph IV G of this exhibit.

#### IV. RHTSA

A. *Amount of Set Aside.* Set asides for RHTSA, from the current FY allocations, are established in attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

B. *Selection of Targeted Counties—1. Eligibility.* Eligible counties met the following criteria: (1) 20 percent or more of the county population is at, or below, poverty level; (2) 10 percent or more of the occupied housing units are substandard; and (3) the average funds received on a per capita basis in the county, during the previous 5 FYs, were more than 40 percent below the State per capita average during the same period. Data from the most recent available Census was used for all three criteria, with criteria (2) and (3) based on the FmHA or its successor agency under Public Law 103-354 rural area definition.

2. *Selection.* The Act requires that 100 of the most underserved counties be initially targeted for RHTSA funds. In establishing the 100 counties, those with 28 percent or more of their population at, or below, poverty level and 13 percent or more of their occupied housing units substandard, have preference. If less than 100 counties meet this criteria,

the remaining counties meeting the criteria in paragraph IV B 1 of this exhibit will be ranked, based upon a total of their substandard housing and poverty level percentages. The highest-ranking counties are then selected until the list reaches 100. The remaining counties are eligible for pool funds only.

C. *State RHTSA Levels.* In the section 502, 504, and 515 programs, each State's RHTSA level will be based on its number of eligible counties, with each county receiving a pro rata share of the total funds available. In order to ensure that a meaningful amount of assistance is available to each State, minimum funding levels may be established. When minimum levels are established, they are set forth on Attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

D. *Use of Funds.* To maximize the assistance to targeted counties, allocated program funds should be used in addition to RHTSA funds, where possible. The State Director has the discretion to determine the most effective delivery of RHTSA funds among the targeted counties within his/her jurisdiction. The 100 counties listed in attachment 2 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office) are eligible for RHTSA funding consideration immediately. Colonias are also eligible for RHTSA funds as described in paragraph III of this exhibit.

E. *National Office RHTSA Reserve.* A limited National Office reserve is available on an individual case basis when the State is unable to fund a request from its regular or RHTSA allocation. The amount of the reserve, and the date it can be accessed and any conditions thereof, if applicable, are contained in attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

F. *Requests for Funds and RA.* All RHTSA funds are reserved in the National Office and requests for these funds and/or RA units must be submitted by the State Director, using the applicable format shown on attachment 4 or 5 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). The State Director is responsible for notifying the Director of Single Family Housing Processing Division (SFHPD) or Multi-Family Housing Processing Division (MFHPD) of any RHTSA funds and RA units authorized, but not obligated, by RHTSA pooling date.

G. *Pooling.* Unused RHTSA funds and RA will be pooled. Pooling dates and any pertinent information thereof are available on attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). Pooled funds will be available on a first-come, first-served basis to all eligible colonias and all counties



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listed on attachments 2 and 3 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office). Pooled RHTSA funds will remain available until the year-end pooling date.

H.-I. [Reserved]

J. *Requests for Assistance.* Requests for assistance in targeted counties must meet all loan making requirements of the applicable program Instructions, except as modified for colonias in paragraph III of this exhibit. For section 515, States may:

1. Issue Form AD-622, "Notice of Preapplication Review Action," up to 150 percent of the amount shown in attachment 1 of this exhibit (available in any FmHA or its successor agency under Public Law 103-354 State Office).

2. All AD-622s issued for applicants in targeted counties will be annotated, in Item 7, under "Other Remarks," with the following: "Issuance of this AD-622 is contingent upon receiving funds from the Rural Housing Targeting Set Aside (RHTSA). Should RHTSA funds be unavailable, or the county in which this project will be located is no longer considered a targeted county, this AD-622 will no longer be valid. In these cases, the request for assistance will need to compete with other preapplications in non-targeted counties, based upon its priority point score."

V. [RESERVED]

[57 FR 3924, Feb. 3, 1992]

### Subparts M-S [Reserved]

## Subpart T—System for Delivery of Certain Rural Development Programs

SOURCE: 57 FR 11559, Apr. 6, 1992, unless otherwise noted.

### § 1940.951 General.

This subpart sets forth Rural Development policies and procedures for the delivery of certain rural development programs under a rural economic development review panel established in eligible States authorized under sections 365, 366, 367, and 368 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), as amended.

(a) If a State desires to participate in this pilot program, the Governor of the State may submit an application to the Under Secretary for Small Community and Rural Development, U.S. Department of Agriculture, room 219-A, Administration Building, Washington, DC

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20250 in accordance with § 1940.954 of this subpart.

(b) The Under Secretary shall designate not more than five States in which to make rural economic development review panels applicable during any established time period for the purpose of reviewing and ranking applications submitted for funding under certain rural development programs. The following time periods have been established for participation in this pilot program:

First period—Balance of fiscal year (FY) 1992 to September 30, 1993;

Second period—October 1, 1993 to September 30, 1994;

Third period—October 1, 1994 to September 30, 1995; and

Fourth period—October 1, 1995 to September 30, 1996.

The State will be bound by the provisions of this pilot program only during the established time period(s) for which the State is designated. If a designated State does not remain an eligible State during the established time period(s) for which the State was designated, the State will not be eligible to participate in this program and cannot revert to the old ranking and applicant selection process.

(c) Assistance under each designated rural development program shall be provided to eligible designated States for qualified projects in accordance with this subpart.

(d) Federal statutes provide for extending Rural Development financially supported programs without regard to race, color, religion, sex, national origin, marital status, age, familial status, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts.)

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### § 1940.953 Definitions.

For the purpose of this subpart:

*Administrator.* The Administrator of Rural Business—Cooperative Service, Rural Housing Service, or Rural Utilities Service.

*Area plan.* The long-range development plan developed for a local or regional area in a State.

*Designated agency.* An agency selected by the Governor of the State to