Appendix A - Community Facility Loans

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Appendix A - Community Facility Loans

§1823.1 General.

This Appendix A sets forth Farmers Home Administration (FmHA) policies and requirements pertaining to loans for community facilities. It provides applicants with guidance for use in proceeding with their application. FmHA shall cooperate fully with appropriate state agencies in the making of loans in a manner which will assure maximum support of the state's strategies for development of rural areas. State and substate A-95 agencies may recommend priorities for applications. FmHA will fully consider all A-95 agency review comments and priority recommendations in selecting applications for funding. Applicants will find additional requirements and guides in Appendixes B and C of this Instruction.

§1823.2 Applicant eligibility and priority.

Facilities financed by FmHA shall primarily serve rural residents. The terms "rural" and "rural area" shall not include any area in any city or town having a population in excess of 10,000 inhabitants according to the latest decennial census of the United States.

(a) Applicants eligible for loans include but are not limited to municipalities, counties and other political subdivisions of a state, such as districts and authorities, and associations, cooperatives, and corporations operated on a not-for-profit basis, Indian tribes on federal and state reservations and other federally recognized Indian tribes, and existing private corporations which are unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms; and have or will have the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan, even though organized under the general profit corporation laws, may come within this definition if they actually will be operated on a not-for-profit basis under such charter, bylaws, mortgage, or supplementary agreement provisions as may be required as a condition of loan approval. FmHA shall require an agreement that if at any time it shall appear to the Government that the borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such action as may be required in connection with such loan.

(1) Preference for available loan funds will normally be given to public bodies. When this is not practicable:

(i) Loans for facilities providing a utility type service such as water and sewer systems, natural gas distribution systems, and cable TV may be made to other than public body type organizations, when operated on a not-for-profit basis. Security for such loans will be obtained in accordance with §1823.6(a). (Revised 5-15-74 - PN 413.)

transportation; traffic control; community, social, cultural, and recreational benefits; supplemental and supporting structures for rural electrification or telephone systems or facilities such as headquarters and office buildings, storage facilities, and maintenance shops only when they are not eligible for Rural Electrification Administration financing; industrial parks including utilities and access ways but not improvements erected on the land such as business industrial buildings. (Revised 1-7-76 - PN 499.)

(c) For items relating to those facilites in paragraphs (a) and (b) of this section as follows:

(1) Fees, services, and costs such as legal, engineering, fiscal advisory, recording, planning, establishing or acquiring rights through appropriation permit, agreement, or condemnation. Fees for "loan finding" are not an eligible cost item.

(2) Paying interest installments in connection with loans to be repaid from facility revenue when such installments cannot be deferred until such time as the facility in generating sufficient revenue to be self supporting. Ordinarily, this will be limited to an amount sufficient to pay not more than 3 years interest after the estimated loan closing date. Funds may be included for interest installments for loans secured by general obligation bonds through the period when taxes are available for payment, ordinarily not to exceed two years.

(3) Purchase existing facilities when it is determined that the purchase is necessary to provide efficient service through a community owned and operated facility and a satisfactory agreement between buyer and seller is reached and receives FmHA concurrence.

(4) Construct buildings and works of modest design, size, and cost, essential to the successful operation or protection of authorized community facilities and secondary facilities such as gas or electric service lines to convey fuel or energy for, or utilities for, primary facilities.

(5) Construct or relocate roads, bridges, utilities, fences, and other public improvements, or relocate roads, bridges, utilities, fences, and other private improvements. (Revised 5-15-74 - PN 413.)

(6) Acquire interest in land, rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control which are necessary for development of the facility.

(ii) Loans for services and facilities basic to social, culutral, recreational needs, public health and safety, such as fire and rescue facilities, hospitals and health clinics, community and other public buildings, and similar facilities may be made to other than public body-type organizations when (A) such facilities are fully available to the public, (B) it is not practicable for the public entity they serve to finance them, and (C) the proposal meets appropriate security requirements of Section 1823.6. (Revised 5-15-74 - PN 413.)

(b) In selecting projects, FmHA shall give due consideration to state development strategies, clearinghouse comments and priority recommendations and assign priorities in accordance with the following:

(1) Water and sewer system applications from any municipality or other public agency (including an Indian tribe on a federal or state reservation or other federally recognized Indian tribal group) in a rural community having a population not in excess of 5,500 having an inadequate water or sewer system.

(2) Those projects which will enlarge, extend, or otherwise modify existing facilities to provide service to additional rural residents.

(3) Those projects which involve the merging of ownership, management, and operation of smaller facilities thereby providing for more efficient management and economical service to more rural communities and residents and more orderly development of the rural area in which the facilities are located.

§1823.3 Eligible loan purposes.

Funds may be used:

(a) To construct, enlarge, extend, or otherwise improve community water, sanitary sewerage, solid waste disposal, and storm waste water disposal facilities.

(b) To construct, enlarge, extend, or otherwise improve community facilities providing essential service to rural residents. Such facilities include but are not limited to those providing or supporting overall community development such as fire and rescue services.

(7) Purchase or rent equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(8) Initial operating expenses for a period ordinarily not exceeding one year when the borrower is unable to pay such expenses.

(9) Refinancing debts incurred by or on behalf of a community prior to an application for a loan when all of the following conditions exist:

(Added 1-7-76 - PN 499.)

(i) The debts were incurred for the facility or part thereof or service to be installed or improved with the loan.

(ii) Arrangements cannot be made with the creditors to extend or modify the terms of the debt so that a sound basis will exist for making a loan.

(10) Paying obligations for construction incurred before loan approval. Construction work should not be started and obligations for such work or materials should not be incurred before the loan is approved. However, if there are compelling reasons for proceeding with construction before loan approval, applicants may request FHA approval to pay such obligations. If upon receipt of such request FHA determines that:

(i) A necessity exists for incurring obligations before loan approval;

(ii) The obligations will be incurred for authorized loan purposes;

(iii) Contract documents have been approved by FHA;

(iv) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic's, materialmen's, or other liens that may attach to the security property, FHA may authorize payment of such obligations at the time of loan closing. FHA's authorization to pay such obligations however, is on the condition that it is not committed to make the loan; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan approval requirements. The applicant request and FHA authorization for paying such obligations shall be written.

(11) FHA loan funds may be used in connection with funds provided by the applicant or from other sources. FHA loan funds may also be used to finance that portion of a project serving rural areas when the project is to serve both rural and urban areas. Since "matching funds" are not a requirement for FHA loans, shared revenues may be used with such loans for project construction. Applicants expecting funds from other agencies for use in completing projects being partially financed with FHA funds will present evidence that funds from such other agencies will be available at the time needed for construction of the project before closing the FHA loan.

§1823.4 Facilities for public use.

All facilities financed under the provisions of this subpart shall be for public use.

(a) Facilities providing a utility type service such as water and waste disposal will be installed so as to afford service to all users living within the area which logically should be served by the central system unless State or local law or ordinance precludes such service.

(b) In no case will boundaries for the proposed service area be chosen in such a way that any user or area will be excluded because of race, color, or national origin.

(c) This does not preclude financing or construction of:

(1) Projects in phases when it is not practical to finance or construct the entire project at one time, and

(2) Facilities where it is not economically feasible to serve the entire area provided economic feasibility is determined on the basis of the entire system, not by considering the cost of separate extensions to or parts thereof; the applicant publicly announces a plan for extending service to areas not initially receiving service from the system; and those families living in the areas not to be initially served receive written notice from the applicant that service will not be provided until such time as it is economically feasible to do so.

(3) Extensions to serve industrial areas when service is made available to users located along the extension.

(d) The applicant will be required to notify each potential user of the availability of the service.

(1) If a mandatory hookup ordinance will be adopted, the required bond ordinance or resolution advertisement will be considered adequate nofitication.

(2) When any portion of the income will be derived from user fees and a mandatory hookup ordinance will not be adopted, each potential user will be afforded an opportunity to request service by signing a Users Agreement. Those declining service will be

afforded an opportunity to sign a statement to such effect. FmHA has guides available for these purposes in all FmHA offices.

§ 1823.5 Rates and Terms.

(a) Loans will bear interest at the rate of 5% on the unpaid principal balance.

(b) Loans will ordinarily be scheduled for repayment on terms similar to those used in the State for financing such facilities but in no case shall they exceed 40 years from the date of the note(s) or bond(s) or the life of the facility whichever is less.

(1) If the borrower will be retiring other debts represented by bonds or notes, the repayment on such bonds may be considered in developing the repayment schedule for the FmHA loan.
(Renumbered 11-27-74 - PN 441.)

(2) Principal payments may be deferred in whole or in part for a period not to exceed the end of the third full year after the estimated date of loan closing. If for any reason it appears necessary to permit a longer period of deferment, the State Director may authorize such deferment with the prior approval of the National Office. Deferments of principal will not be used to:
(Revised and Renumbered 11-27-74 - PN 441.)

(i) Postpone the levying of taxes or assessments.

(ii) Delay the collection of the full rates which the borrower has agreed to charge users for its services as soon as major benefits or the improvements are available to those users.

(iii) Create reserves for normal operation and maintenance.

(iv) Make any capital improvements except those approved by FmHA determined to be essential to the repayment of the loan or to the obtaining of adequate security therefore.

(v) Accelerate the payment of other debts.

§1823.6 Security.

Loans will be secured in a manner which will adequately protect the interest of FmHA during the repayment period of the loan. Specific requirements for security for each loan will be included in a letter of conditions.

(a) Other-than-public bodies. Loans to other-than-public body applicants will be secured as follows: (Revised 10-27-76 - PN 541.)

(1) Loans to borrowers operating utility-type facilities such as water and sewer systems, natural gas distribution systems, cable TV, will be secured by (Revised 10-27-76 - PN 541.)

(i) assignments of borrower income taken and perfected by filing, if legally permissible; and (Added 10-27-76 - PN 541.)

(ii) A lien taken on the interest of the applicant in all land, easements, rights-of-way, water rights, and similar property rights, including leasehold interest, used, or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds. In unusual circumstances where it is not feasible to obtain a lien on such land rights (such as land rights obtained from Federal or Local Government agencies, and from railroads) and the FmHA State Director determines that the interest of FmHA otherwise is secured adequately, the lien requirement may be omitted as to such land rights. It will be the responsibility of the applicant to obtain and record such releases, consents, subordinations to such property rights from holders of outstanding liens, or other instruments, as it determines, with the advice of its attorney, are necessary for the construction, operation, and maintenance of the facility. (Added 10-27-76 - PN 541.)

(A) When the loan is approved for the acquisition of real property subject to an outstanding lien indebtedness, the next highest priority lien obtainable will be taken. (Added 10-27-76 - PN 541.)

(B) When easements, rights-of-way, or leases only are obtainable on sites for structures such as reservoirs and pumping stations, release, consents, or subordinations may be required by FmHA. (Added 10-27-76-PN 541.)

(iii) Promissory notes from individuals, stock or membership subscription agreements, individual member's liability agreements, or other evidences of debt, as well as mortgages or other security instruments encumbering the private property of members of the association may be pledged or assigned to FmHA as additional security in any case in which the interest of FmHA will not be otherwise adequately protected. (Added 10-27-76 - PN 541.)

(iv) In those cases where there is a substantial number of other than full-time residents and facility costs result in a higher than reasonable rate for such full-time residents, the loan will be secured by an assignment or pledge of general obligation bonds, taxes or assessments from public bodies or other organizations having the authority to issue bonds, taxes, or assessments. (Added 10-27-76 - PN 541.)

(2) Loans for solid waste projects may be secured by a pledge of solid waste disposal revenue, only when the revenue pledged includes that from the solid waste project plus revenue from other facilities of the applicant with tie-in

enforcement rights, or by the taxing power of participating local governement.

(3) Loans for other community facilities such as social, cultural, recreational needs, public health and safety, may be secured through assignments of assured income which will have permanency for the life of the loan, from sources such as insurance premium rebates, or commitments from industries or public bodies. Additional security may be taken as determined necessary by the State Director (Revised 10-27-76 - PN 541.)

(i) In those cases where an assignment of assured income is not available, a loan may be considered provided the organization and facilities have: (Added 10-27-76 - PN 541.)

(A) Been in existence and are able to present evidence of financially successful operation of a similar facility for a period of time sufficient to indicate project success and have available real and chattel property which has a present market value, determined by a qualified appraiser, equal to or exceeding the amount of the loan to be obtained plus any other indebtedness on the proposed security property. National Office concurrence is required for those applications in which the applicant has been in existence for less than five years and/or has not operated on a financially successfull basis for at least the last five years. (Added 10-27-76 - PN 541.)

(B) Such loans will be secured by liens on real and chattel property, used in connection with the facility, an assignment of income and any other security the State Director determines necessary for a sound loan. If the State Director determines that the loan will be adequately secured, with liens on either real estate or chattel property having a present market value equal to or exceeding the indebtedness, he may delete the lien requirements on either the real estate or chattel property. (Added10-27-76-PN 541.)

(ii) In those exceptional cases where the proposal does not meet the requirements outlined in paragraph (a) (3) of this section such proposals may be considered only: (Added 10-27-76 - PN 541.)

(A) When the applicant is a new organization or one that has not operated the type of facility being proposed. (Added 10-27-76 - PN 541.)

(B) When there is a demonstration of exceptional community support such as substantial financial contributions, and aggressive leadership in the formation of the organization and proposed project which indicates a commitment of the entire community. (Added 10-27-76 - PN 541.)

(C) After the State Director has determined that adequate and dependable revenues will be available to meet all operation expenses, debt repayment, and the required reserve. (Added 10-27-76 - PN 541.)

(D) When the security requirements by paragraph (a) (3) (i) (B) of this section is available. (Added 10-27-76 - PN 541.)

(E) With prior National Office review and concurrence. (Added 10-27-76-PN 541.)

(b) Public bodies. Loans to such borrowers will be evidenced by notes, bonds, warrants, or other contractual obligations as may be authorized by relevant state statutes and by borrowers' documents, resolutions, and ordinances.

(1) Loans to borrowers operating utility type facilities such as water and sewer systems, natural gas distribution systems, cable TV, may be secured by: (Revised 5-15-74 - PN 413.)

(i) The full faith and credit of the borrower when the debt is evidenced by general obligation bonds.

(ii) Pledges of taxes or assessments.

(iii) General obligation bonds, taxes, or assessments. In those cases involving water and waste disposal projects where there is a substantial number of other than full-time residents and facility costs result in a higher than reasonable rate for such full-time residents, the loan will be secured by an assignment or pledge of general obligation bonds, taxes, or assessments from public bodies or other organizations having the authority to issue bonds, taxes, or assessments. (Added 7-16-75 - SPECIAL PN.)

(iv) Pledges of facility revenue. (Renumbered 7-16-75 - SPECIAL PN.)

(v) Liens on real and personal property when such liens are permitted by state law. (Renumbered 7-16-75 - SPECIAL PN.)

(2) Loans for solid waste projects may be secured by bonds pledging solid waste disposal revenue, only when the revenue pledged includes that from the solid waste project plus revenue from other facilities of the applicant with tie-in enforcement rights, or by the taxing power of participating local governments.

(3) Loans for other community facilities such as social, cultural, recreational needs, and public health and safety and the like will be secured by one or a combination of the following: (Revised 11-27-74 - PN 441.)

(i) General obligation bonds. (Added 11-27-74 - PN 441.)

(ii) Assessments. (Added 11-27-74 - PN 441.)

(iii) Bonds which pledge other taxes. (Added 11-27-74 - PN 441.)

(iv) Bonds pledging revenues of the facility being financed when such bonds provide for the mandatory levy and collection of taxes in the event revenues later become insufficient to properly operate and maintain the facility and to retire the loan. (Added 11-27-74 - PN 441.)

(v) Assignment of assured income which will have permanency for the life of the loan from sources such as insurance premium rebates, commitments from industries or other public bodies. Additional Security may be taken as determined necessary by the State Director. (Revised 10-27-76 - PN 541.)

(4) In those cases where security is not available in accordance with paragraph (b) (3) of this section, a proposal may be considered provided the organization and facilities have: (Revised 2-12-75 - PN 452.)

(i) Been in existence and are able to present evidence of financially successful operation of a similar facility for a period of time sufficient to indicate project success. National Office concurrence is required for those applications in which the applicant has been in existence for less than five years and/or has not operated on a financially successful basis for at least the last five years; and (Revised 10-27-76 - PN 541.)

(ii) Such loans will be secured by an assignment of income and liens on real and/or personal property, having a present market value equal to or exceeding the indebtedness. If State law precludes securing the loan in such manner, the loan will be secured in the best possible manner consistent with State law and customary security taken by private lenders in the State such as revenue bonds and any other security the State Director determines necessary for a sound loan.
(Revised 10-27-76 - PN 541.)

(5) In those exceptional cases where the proposal does not meet the requirements outlined in paragraphs (b) (3) and (4), of this section proposals may be considered in accordance with paragraph (a) (3) (i) of this section except that liens will be taken on real and personal property when legally permissiable (Revised 10-27-76 - PN 541.)

(c) Public bodies and other than public bodies.

(1) Title for right-of-way or easement. When a lien will be taken on a site for structures such as a reservoir or pumping station, and the applicant is able to obtain only a right-of-way or easement on such site rather than a fee simple title, the applicant will furnish a title report thereon by the applicant's attorney showing the ownership of the land and all mortgages or other liens,

defects, or encumbrances, if any. Consents, releases, or subordinations will be obtained from the holders of outstanding liens or mortgages as may be necessary to give FmHA the required security. The applicant will take such title clearance steps as may be required by FmHA.

(2) Water rights. When an assignment will be taken on water rights owned or to be acquired by the applicant the following will be furnished as applicable:

(i) A statement by the applicant's attorney regarding the nature of the water right owned or to be acquired by the applicant (conveyance of title, appropriation and decree, application and permit, public notice and appropriation and use, and so forth).

(ii) A copy of any contract with another company or municipality to supply water or stock certificates in another company representing right to receive water.

(3) Membership authorization. For organizations other than public bodies, the membership will authorize the project and its financing except that the State Director may, with the concurrence of OGC, waive such membership authorization when state statutes and the organization's charter and bylaws do not require such authorization; and: (Added 2-12-75 - PN 452.)

(i) The organization is well established and is operating with a sound financial base; or (Added 2-12-75 - PN 452.)

(ii) The members of the organization have all signed an enforceable user agreement with a penalty clause and have made the required meaningful user cash contribution, except for members presently receiving service or when state statutes or local ordinances require mandatory use of the facility. (Added 2-12-75 - PN 452.)

§1823.7 Economic feasibility requirements.

All projects financed under the provisions of this Appendix must be based on taxes, assessments, revenues, fees, or other satisfactory sources in an amount sufficient to provide for facility operation and maintenance, a reasonable reserve, and debt payment. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the FmHA staff and approval official. (Revised 11-19-75 - PN 492.)

(a) Applicants for loans for service type utility facilities dependent on user fees for debt payment shall base their income and expense forecast on realistic user estimates in accordance with the following:

(1) In estimating the number of users and establishing rates or fees on which the loan will be based for new systems and for extensions to existing systems, consideration should be given to the following:

(i) An estimated number of maximum initial users should not be used when setting user fees and rates since it may be several years before all residents in the community will need the services provided by the system. In establishing rates a realistic number of initial users should be employed.

(ii) User agreements from individual vacant property owners will not be considered when determining project feasibility unless: (Revised 6-23-76 - PN 523.)

(A) The owner has plans to develop the property in a reasonable period of time and become a user of the facility; and (Added 6-23-76 - PN 523.)

(B) The owner agrees in writing to make a monthly payment at least equal to the proportionate share of debt service attributable to the vacant property until the property is developed and the facility is utilized on a regular basis; and (Added 6-23-76 - PN 523.)

(C) A bond or escrowed security deposit is provided to guarantee the monthly payment required by paragraph (a) (1) (ii) (B) of this section and to guarantee an amount at least equal to the owners proportionate share of construction costs. If a bond is provided, it must be executed by a surety company that appears on the Treasury Department's most current list (circular 570, as amended) and be authorized to transact business in the State where the project is located. The guarantee shall be payable jointly to the borrower and the Farmers Home Administration; and (Added 6-23-76 - PN 523.)

(D) Such guarantees will mature not later than 4 years from the date of execution and will be finally due and payable upon default of a monthly payment or at maturity, unless the property covered by the guarantee has been developed and the facility is being utilized on a regular basis. (Added 6-23-76 - PN 523.)

(iii) Income from vacant property owners other than those authorized by paragraph (a) (1) (ii) of this section will be conisdered only as extra income. (Added 6-23-76 - PN 523.)

(2) In order to establish realistic user estimates, the following are required:

(i) Meaningful potential user cash contribution. Contributions shall be high enough to indicate sincere interest on the part of the potential user but not so high as to preclude service to low-income families. Contributions ordinarily shall be an amount approximating one year's minimum use fees and shall be paid in full before loan closing of the commencement of construction, whichever occurs first. User cash contributions are required except for users presently receiving service, when user agreements below are not required, or in those cases where FmHA determines that users cannot make a cash contribution. (Revised 11-27-74 - PN 441).

(ii) Except for users presently receiving service an enforceable user agreement with a penalty clause is required unles State statutes or local ordinances require mondatory use of the system and the applicant agrees in writing to enforce such statutes or ordinances, or an exception is otherwise approved by FmHA.

(3) User connection program. In those cases where all or part of the borrower's debt payment ability revenues will come from user fees, applicants must provide a positive program to encourage connection by all users as soon as service is available for review and approval by FmHA before loan closing. Such a program shall include:

(i) An aggressive information program to be carried out during the construction period. The borrower should send written notification to all signed users at least three weeks in advance of the date service will be available, stating the date users will be expected to have their connections completed, and the date user charges will begin.

(ii) Positive steps to assure that installation services will be available. These may be provided by the contractor installing the system, local plumbing companies, or local contractors.

(iii) Aggressive action to see that all signed users can finance their connections. This might require collection of sufficient user contributions to finance connections. Extreme cases might necessitate additional loan funds for this purpose; however, loan funds should be used only when absolutely necessary and when approved by FmHA prior to loan closing.

(b) Facilities for new or developing communities or areas. Private developers are normally expected to provide essential community facilities in new or developing areas and such facilities shall be installed in compliance with appropriate State statutes and regulations. FmHA financing will be considered in such cases when failure to complete development would result in an adverse economic condition for the rural area (not the community being developed); the proposal is necessary to the success of an area development plan; and loan repayment can be assured by:

(1) The applicant already having sufficient assured revenues to repay the loan; or

(2) Developers providing a bond or escrowed security deposit in accordance with paragraph (a) (1) (ii) of this section, sufficient to meet expenses attributable to the area in question until a sufficient number of the building sites are occupied and connected to the facility to provide enough revenues to meet operating, maintenance, debt service, and reserve requirements; or (Revised 6-23-76 - PN 523.)

(3) Developers paying cash for the increased capital cost and any increased operating expenses until the developing area will support the increased costs.

(4) The full faith and credit of a public body where the debt is evidenced by general obligation bonds; or (Added 11-27-74 - PN 441).

(5) The loan is to be public body evidenced by a pledge of taxes or assessments; or (Added 11-27-74 - PN 441.)

(6) The user charges can become tax lien upon the property being served and income from such lien can be collected in sufficient time to be used for its intended purposes. (Added 11-27-74 - PN 441.)

§1823.8 Reserve Requirements.

Provision for the accumulation of necessary reserves over a reasonable period of time will be included in the loan documents and in assessments, tax levies, or rates charged for services. In those cases where statutes providing for extinguishing assessment liens of public bodies when properties subject to such liens are sold for delinquent State of local taxes, special reserves will be established and maintained for the protection of the borrower's lien of assessment.

(a) General obligation or special assessment bonds. Ordinarily, the requirements for reserves will be considered to have been met if general obligation or other bonds which pledge the full faith and credit of the political subdivision are used, or special assessment bonds are

(Added 6-23-76 - PN 523.)

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used, and if such bonds provide for the annual collection of sufficient taxes or assessments to cover debt service, operation and maintenance, and a reasonable amount for emergencies and to offset the possible nonpayment of taxes or assessments by a percentage of the property owners, or a statutory method is provided to prevent the incurrence of a deficiency.

(b) Other than General Obligations or Special Assessment bonds. Each borrower will be required to establish and maintain reserves sufficient to assure that loan installments will be paid on time, to pay for emergency maintenance, and for extensions to facilities. It is expected that borrowers issuing bonds or other evidences of debt pledging facility revenues as security will ordinarily plan their reserve program to provide for a total reserve in amount equal, at least, to one average loan installment. It is also expected that ordinarily such reserve will be accumulated at the rate of at least one-tenth of the total each year until the desired level is reached. (Revised 10-27-76 - PN 541.)

§1823.9 General requirements.

(a) Planning, bidding, contracting, constructing. See Appendix B of this Subpart, §§1823.21 to 1823.33.

(b) Insurance and bonding. Property insurance, workmen's compensation insurance, liability insurance, and fidelity bond requirements will not normally be over and above those proposed by the borrower provided the coverage is found to be adequate, and in accordance with the following:

(1) Property insurance. Fire and extended coverage may be required on all aboveground structures, including borrower-owned equipment and machinery housed therein, usually in the amount of their value. This does not apply to water reservoirs, standpipes, elevated tanks, and other noncumbustible materials used in treatment plants, clearwells, clarification units, filters, and the like. Where lift stations are properly ventilated, property insurance is not required except for the value of the pumping equipment and electrical equipment therein.

(2) Workmen's compensation. The borrower will carry suitable workmen's compensation insurance for all of its employees in accordance with applicable State laws.

(3) Liability and property damage insurance. Requirements for liability insurance will be carefully and thoroughly considered in connection with each project financed. Public liability and property

damage insurance amounts will be established accordingly. If the borrower owns trucks, tractors, or other vehicles that are driven over public highways public liability and property damage insurance will be required.

(c) Fidelity bonds. The borrower will provide fidelity bond coverage for the positions of officials entrusted with the receipt and disbursement of its funds and the custody of valuable property. The amount of the bond will be at least equal to the maximum amount of money that the borrower will have on hand at any one time exclusive of loan funds deposited in a supervised bank account. Unless prohibited by State law, the United States will be named as co-obligee in the bond. Corporate fidelity bonds will be obtained except that in unusual circumstances FmHA may give prior approval to cash bonds. Form FmHA 440-24, "Position Fidelity Schedule Bond," may be used.

(d) Purchasing land rights, and existing facilities. Applicants are required to assure that prices paid for land, rights, and facilities are reasonable and fair. FmHA may require an appraisal by an independent appraiser, or appraise the property itself.

(e) Notes and bonds. Notes and bonds will be completed on the date of loan closing except for the entry of subsequent multiple advances where applicable. The amount of each note or bond will be in multiples of $100.

(1) Form FmHA 440-22, "Promissory Note (Association or Organization)," will ordinarily be used for loans to nonpublic bodies.

(2) Appendix C of this Subpart, §§1823.41 to 1823.48, contains instructions for preparation of notes and bonds evidencing indebtedness of public bodies.

(f) Environmental impact statements. The need for an environmental impact statement will be determined by FmHA. The applicant will provide any information required.

(g) Health Care Facilities. Applicants will provide a statement from the appropriate State Agency certifying that the proposed health care facility is consistent with the State Medical Facilities Plan as approved by the Secretary, Department of Health Education and Welfare (HEW) and any other standards or criteria adopted pursuant to the State capital expenditures review program or Section 1122 of the Social Security Act.

In addition, a statement from the appropriate State agency or regional HEW engineer will be provided certifying that the proposed facility will meet the minimum standards for design and construction contained in the Public Health Service, Health Resources Administration (PHS/HRA), HEW Publication "Minimum Requirements of Construction and Equipment for Hospitals and Medical Facilities," or any subsequent codes that may be designated by the Secretary of HEW. The statement will also contain a certification stating that the facility will comply with the life/safety aspects of the National Fire Protection Association (NFPA) 101 Life Safety Code and other conditions of participation as required to be eligible for full medicare/medicaid benefits. Any exceptions to this subsection must have prior National Office concurrence. (Added 10-27-76 - PN 541.)

§1823.10 Other Federal, State and local requirements.

Each application shall contain the comments, necessary certifications and recommendations of appropriate regulatory or other agency or institution having expertise in the planning, operation and management of similar facilities. Proposals for facilities financed in whole or in part with FHA loans will be coordinated with appropriate Federal, State, and local agencies in accordance with the following:

(Added 10-27-76 - PN 541.)

(a) Compliance with special laws and regulations. Applicants will be required to comply with Federal, State, and local laws and any regulatory commission rules and regulations pertaining to:

(1) Organization of the applicant and its authority to construct, operate, and maintain the proposed facilities;

(2) Borrowing money, giving security therefor, and raising revenues for the repayment thereof;

(3) Land use zoning;
and with the following unless an exception is granted by FHA:

(4) Health and sanitation standards;

(5) Design and installation standards.

(b) State Pollution Control or Environmental Protection Agency standards. Water and waste disposal facilities will be designed, installed, and operated in such manner that they will not result in the pollution of water in the State in excess of established standards and that any effluent will conform with appropriate State and Federal Water Pollution Control Standards.

(c) Consistency with other development plans. FHA financed facilities will not be inconsistent with any development plans of State, multijurisdictional area, counties, or municipalities in which the proposed project is located.

(d) State agency regulating water rights. Each FHA financed facility will be in compliance with appropriate State agency regulations which have control of the appropriation, diversion, storage and use of water and disposal of excess water. All of the rights of any landowners, appropriators, or users of water from any source will be fully honored in all respects as they may be affected by facilities to be installed.

(e) National historic preservation. All projects will be in compliance with the provisions of the National Historic Preservation Act of 1966 pursuant to 7 CFR 1890r.

(f) Civil Rights Act of 1964. All borrowers are subject to, and facilities must be operated in accordance with, Title VI of the Civil Rights Act of 1964 pursuant to 7 CFR 1816.

§1823.11 Professional services and contracts related to the facility.

(a) Professional services. Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Professional services of the following may be necessary: engineer, architect, attorney, bond counsel, accountant, auditor as defined in §1823.14 (e) (3) (i), and financial advisory or fiscal agent (if desired by applicant). Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to FHA concurrence. Form FHA 442-19, "Agreement for Engineering Services," may be used when appropriate. Guide 14 may be used in the preparation of the legal services agreement.

(b) Contracts for other services. Contracts or other forms of agreements for other services including management, operation, and maintenance will be developed by the applicant and presented to FHA for review and approval.

(c) Fees provided for in contracts or agreements required by paragraphs (a) and (b) of this section shall be reasonable. They shall be considered to be reasonable if not in excess of those ordinarily charged by the profession for similar work when FHA financing is not involved.

§1823.12 Applying for FHA loans.

(a) Preapplication. Applicants desiring loans will file Form AD-621, "Preapplication for Federal Assistance," which is available at all FHA offices with the appropriate FHA County Office. They will also file written notice of intent and a request for priority recommendation with the appropriate A-95 clearinghouse agencies.

(b) Preapplication review. Upon receipt of the preapplication, FHA will tentatively determine eligibility including the likelihood of credit elsewhere at reasonable rates and terms and availability of FHA loan funds. The determination as to availability of other credit will be made after considering present rates and terms available for similar proposals (not be based upon 5% interest and 40-year repayment terms); the repayment potential of the applicant; long-term cost to the applicant; and average user or other charges.

(1) In those cases where FHA determines that loans at reasonable rates and terms should be available from commercial sources, FHA will notify the applicant so that it may apply for such

financial assistance. Such applicants may be reconsidered for FmHA loans upon their presenting satisfactory evidence of inability to obtain commercial financing at reasonable rates and terms.

(2) Applicants should not proceed with planning nor obligate themselves for expenditures until authorized by FmHA.

(c) Applicants are:

(1) Responsible for completing their applications in accordance with guidance from FmHA.

(2) Responsible for assembling their applications. They may utilize their professional technical representatives or other competent sources to assist in assembling their applications.

(d) Application conference. Before starting to assemble the application and after the applicant selects its professional and technical representatives, it should arrange with FmHA for an application conference to provide a basis for orderly application assembly. FmHA will provide applicants with a list of documents necessary to complete the application.

(e) Review of Decision. If an application is rejected, the applicant may request a review of this decision from the Administrator of FmHA. The address is: Administrator, Farmers Home Administration, United States Department of Agriculture, Washington, D. C. 20250. The request for review must be in writing and must be accompanied by supporting information and documentation. A copy of the request and supporting material must be sent by the requesting party to the State Director at the same time such party forwards the original to the Administrator.

§1823.13 Closing loans and fund delivery.

(a) Loan resolutions. Loan resolutions will be adopted by both public and other-than-public bodies using Forms FmHA 442-47, "Loan Resolutions, (Public Bodies)," and FmHA 442-9, "Association Loan Resolution (Security Agreement)," respectively. These resolutions will supplement or add to provisions included elsewhere in this subpart. The association will agree: (Revised 2-2-77 - PN 555.)

(1) To indemnify the Government for any payments made or losses suffered by the Government on behalf of the association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legally permissible source. (Added 2-2-77 - PN 555.)

(2) To comply with applicable local, State and Federal laws, regulations and ordinances. (Added 2-2-77 - PN 555.)

(3) To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, establishment of adequate reserves and to continually operate and maintain the facility in good condition. No free service or use of the facility will be permitted. (Added 2-2-77 - PN 555.)

(4) To acquire and maintain such insurance coverage, including fidelity bonds, as may be required by the Government. (Added 2-2-77 - PN 555.)

(5) To establish and maintain such books and records relating to the operation of the facility and its financial affairs and to provide for required audit thereof in such a manner as may be required by the Government to provide the Government without its request, a copy of each such audit and to make and forward to the Government such additional information and reports as it may, from time to time, require. (Added2-2-77 - PN 555.)

(6) To provide the Government, at all reasonable times, access to all books and records relating to the facility and access to the property of the system so that the Government may ascertain that the association is complying with the provisions hereof and instruments incident to the making or insuring of the loan. (Added 2-2-77 - PN 555.)

(7) To serve any applicant within the service area who desires services and can be feasibly and legally served, and to obtain the concurrence of the FmHA prior to refusing services to such applicant. Upon the failure to provide such services which are feasible and legal, such applicant shall have a direct right of action against the association under this agreement. (Added 2-2-77 - PN 555.)

(8) To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds or notes or other lien instruments containing such items and in such form as are required by State statutes and as are agreeable and acceptable to the Government. (Added 2-2-77 - PN 555.)

(9) To refinance the unpaid balance, in whole or in part, of its bonds or notes upon the request of the government if at any time it should appear to the Government that the association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms. (Added 2-2-77 - PN 555.)

(10) To provide for, execute, and comply with Form FmHA 400-4, "Non-discrimination Agreement," and Form FmHA 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in or attached as a rider to each construction contract and subcontract involving an amount in excess of $10,000. (Added 2-2-77 - PN 555.)

(11) To place the proceeds of the loan on deposit in an account in a bank and in a manner approved by the Government. (Added 2-2-77 - PN 555.)

(12) Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof or interest therein, not to permit others to do so without the prior written consent of the Government. (Added 2-2-77 - PN 555.)

(13) Not to borrow any money from any source, enter into any contract agreement, or incur any other liabilities in connection with making enlargements, improvements or extensions to, or for any other purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government, if such undertaking would involve the source of funds pledged to pay the debt to FmHA. (Added 2-2-77 - PN 555.)

(14) That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government, at its option, may: (Added 2-2-77 - PN 555.)

(i) Declare the entire principal amount then outstanding and accrued interest, due and payable. (Added 2-2-77 - PN 555.)

(ii) For the account of the association (payable from the source of funds pledged to pay the bonds or notes or any other legally permissible source), incur and pay reasonable expenses for repair maintenance, and operation of the facility, and such other reasonable expenses as may be necessary to cure the cause of default; and/or (Added 2-2-77 - PN 555.)

(iii) Take possession of the facility, repair, maintain and operate, rent or otherwise dispose of the facility. Default under the provisions of the resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the association, and default under any such instrument may be construed by the Government to constitute default hererunder. (Added 2-2-77 - PN 555.)

(b) Interim financing. In all loans, exceeding $50,000, where it is possible for funds to be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA funds. When interim commercial financing is used, the application will be processed, including obtaining construction bids, to the stage where the FmHA loan would normally be closed, that is immediately prior to the start of construction. When the interim financing funds have been expended, the FmHA loans will be closed. Multiple advances may be used in conjunction with interim commerical financing when the applicant is unable to obtain sufficient funds through interim commercial financing in an amount equal to the loan. The FmHA loan proceeds (including advances) will be used to retire the interim commercial indebtedness. Before the FmHA loan is closed, the applicant will be required to provide FmHA with statements from the contractor, engineer, architect, and attorney that they have been paid to date in accordance with their contracts or other agreements and, in the case of the contractor, that he has paid his suppliers and subcontractors. If such statements cannot be obtained, the loan may be closed provided: (Revised 2-2-77 - PN 555.)

(1) Statements to the extent possible are obtained; (Revised 2-2-77-PN 555.)

(2) The interest of FmHA can be adequately protected and its security position is not impaired; (Revised 2-2-77 - PN 555.)

(3) Adequate provisions are made for handling the unpaid accounts by withholding or escrowing sufficient funds to pay such claims. (Revised 2-2-77 - PN 555.)

(c) Multiple advances. In the event interim commercial financing is not legally permissible or not available, multiple advances of FmHA loan funds are required. Multiple advances will be used only for loans in excess of $50,000. Advances will be made only as needed to cover disbursements required by the borrower over a 30-day period. Advances should not exceed 24 in number nor extend longer than two years beyond loan closing. Normally, the retained percentage withheld from the contractor to assure construction completion will be included in the last advance. (Revised 2-2-77 - PN 555.)

(1) Appendix C of this Subpart, §§1823.41 to 1823.48 contains instructions for meeting advances to public bodies.

(2) Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, rights-of-way and land, legal, engineering, interest, and other expenses as needed. The applicant will prepare Form FmHA 440-11, "Estimate of Funds Needed During the 30-day Period." Form AD-627, "Report of Federal Cash Transactions," will be prepared and submitted with each Form FmHA 440-11 after the initial advance of funds is made. (Added 2-2-77 - PN 555.)

(d) Applicant contribution. Applicants contributing funds toward the project cost shall deposit these funds in its construction account on or before loan closing or start of construction, whichever occurs first. Project costs, paid prior to the required deposit time, with applicant funds shall be appropriately accounted for. (Added 2-2-77 - PN 555.)

(e) Supervised bank account. Loan funds and any funds furnished by the applicant may be deposited in a supervised bank account in a bank having Federal Deposit Insurance Corporation (FDIC) coverage. Funds placed in a supervised bank account are public monies under Title 12, U.S.C. 265, and therefore any amount which exceeds the FDIC coverage will require a collateral pledge pursuant to Treasury Circular No. 176. If a supervised bank account is not used, arrangements will be agreed upon for the prior approval by FmHA of the bills, or vouchers upon which warrants will be drawn so that the necessary control of payments from loan funds can be maintained and FmHA records can be kept current. Periodic audits of nonsupervised accounts shall be made by FmHA at such times and in such manner as the FmHA State Director prescribes in the conditions of loan approval. Mandatory State Laws regulating the depositories to be used shall be complied with. (Revised 2-2-77 - PN 555.)

(f) Payment for construction. Payment for construction will be made in accordance with the construction contract in amounts approved on Form FmHA 424-18, "Partial Payment Estimate." Advances for contract retainage will not be made until such retainage is due and payable under the terms of the contract. Form AD-629, "Outlay Report and Request for Reimbursement for Construction Programs," will be used to account for funds expended in the last 30-day period. Each payment estimate must be approved by the governing body of the borrower. The review and acceptance of partial payment estimates by FmHA does not attest to the correctness of the quantities shown or that the work has been performed in accordance with the plans and specifications. A final Form AD-627 will be submitted to FmHA to include the final advance and all other advances not later than 90 days after the final advance has been made. (Revised 2-2-77 - PN 555.)

(g) Funds remaining after construction is completed. Should loan funds remain available, including obligated funds not advanced after all costs incident to the basic project have been paid or provided for, such funds may be used for needed extensions, enlargements and improvements of the project with the prior permission of the FmHA State Director. If the additional work is to be undertaken by the contractor(s) already engaged in the construction of the project, the additional work may be authorized by a change order. Remaining project funds not needed for authorized extensions, enlargements, or improvements shall be returned to FmHA as a repayment on the loan in a proportionate amount of the FmHA loan to the total planned project cost, unless other disposition is required by the bond ordinance or resolution or by State statutes. (Added 2-2-77 - PN 555.)

(h) Obtaining insurance and fidelity bonds. Required property insurance policies, liability insurance policies, and fidelity bonds will be obtained by the time of loan closing or start of construction, whichever shall occur first. (Added 2-2-77 - PN 555.)

(i) Distribution of recorded documents. The originals of the recorded deeds, easements, permits, certificates of water rights, leases, or other contracts and similar documents which are not to be held by FmHA will be returned to the borrower. The original mortgage(s) and water stock certificates, if any, if not required by the recorder's office will be retained by FmHA. (Added 2-2-77 - PN 555.)

§1823.14 Borrower accounting, financial reporting, auditing, and bank accounts.

(a) Requirements. Each applicant shall provide and obtain FmHA concurrence as to its accounting financial reporting systems including an agreement with its accountant and an agreement with its auditor, if an auditor is required prior to loan closing or commencing with construction, whichever shall occur first.

(Added 2-2-77 - PN 555.)

(b) Records. Each borrower shall keep and safely preserve its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish full information as to any items included in any account. Such supporting data shall be kept for at least three years. Each entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto.

(c) Accounting systems. Borrowers shall maintain their accounting systems on an accrual basis and close their accounting records at the end of their fiscal year unless State statutes or regulations prescribe otherwise.

(1) Accounting systems may be maintained by borrower personnel, a bookkeeping service, a computer service, or other arrangements satisfactory to the borrower and FmHA.

(2) Accounting systems required by a State or regulatory agency for public entities may be acceptable provided they contain the information required by FmHA.

(3) Borrowers operating water and waste disposal systems may use the appropriate Uniform System of Accounts for Water Utilities published by the National Association of Regulatory Utility Commissioners.

(4) Borrowers with small operations may use Form FHA 430-5, "Soil and Water Association Record Book."

(5) FmHA will provide a "Minimum Chart of Accounts" for those applicants desiring it.

(d) Management reports. The following minimum required reports will furnish the governing body with a means of evaluating prior decisions and serve as a basis for planning the future operations and financial conditions of the borrower. In those cases where revenues from both water and sewer systems are pledged as security for an FmHA loan and only one set of accounting records is maintained, one management report will suffice. In those cases where FmHA loans are secured by general obligation bonds or assessments and the borrower combines revenues from all sources, a management report treating all such revenues will suffice. Management reports will consist of the following:

(1) Form FmHA 442-1, "Forecast of Cash Receipts and Disbursements (Operating Budget)." The forecast shall be prepared and adopted by the borrower governing body prior to the beginning of each fiscal year. Two copies of Form FmHA 442-1 will be submitted to the FmHA County Supervisor not later than 20 days after the beginning of the borrower's new fiscal year.

(Added 2-2-77 - PN 555.)

(2) Form FHA 442-2, "Statement of Income and Expenses." Two copies of Form FHA 442-2 will be forwarded to the FHA County Supervisor at the end of each quarter unless FHA requires more frequent submission.

(3) Form FHA 442-3, "Balance Sheet." The balance sheet shall be prepared as often as needed by the governing body. Two copies of the Form FHA 442-3, prepared as of the end of the fiscal year, will be forwarded to the FHA County Supervisor not later than 20 days after the end of the fiscal year. A "Balance Sheet" prepared by a certified public accountant or a licensed public accountant containing the information included on Form FHA 442-3 may be submitted in lieu of this form.

(4) Machine-type reports. Borrowers using a machine accounting system may submit print-out type reports provided they furnish the information required by FHA. Also, borrowers desiring to submit more detailed information than required by FHA forms may attach such detail to the related FHA form.

(5) Additional reports. Each borrower shall provide FHA within 20 days following the end of the fiscal year:

(i) A letter showing the name, address, and term of office for each member of the governing body and for those providing a public utility-type service, the number of residential users and the number of commercial users as of the end of the fiscal year.

(ii) Evidence that required property and liability insurance, workmen's compensation, and fidelity bond premiums have been paid.

(e) Audits and audit reports.

(1) Borrowers are required to have their accounts audited when the annual gross income of the FHA financed facility exceeds the amount shown below:

(i) Organizations providing utility-type services	$100,000
(ii) Recreation facility borrowers	50,000
(iii) Others as required by FHA regardless of the amount	

(2) Public body borrower audit reports prepared in accordance with State statutes or regulations are acceptable provided they contain the financial information necessary and are prepared on a frequency sufficient to furnish borrowers with management assistance guidance and FHA the information for proper loan analysis.

(3) Borrowers other than public bodies and public bodies in those cases where the State has no audit requirements, are required to have their records audited at least biennially by an independent public accountant. If such audit reports do not contain the necessary information for proper loan analysis FHA may require additional information.

(i) Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants or by independent licensed public accountants, licensed on or before December 31, 1970, who are certified or licensed by a regulatory authority of a State or other political subdivision of the United States.

(ii) Audits will be prepared in accordance with the requirements of the handbook, "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees," available at FHA offices.

(4) The borrower shall submit a copy of the audit report to FHA as soon as it is received and in no case later than 90 days following the end of the period covered by the report.

(5) Borrowers whose annual gross income for a full year of operation is less than that shown above and which do not have an annual audit made by an independent public accountant, will within 60 days following the end of each fiscal year, furnish the FHA with an annual report, consisting of a verification of the organization's balance sheet and statement of income and expense by a committee of the members not including any officer, director or employee. Such committees will be appointed by the borrower's governing body and will certify to its examination of the accounts and records. The final "Statement of Income and Expense," Form FHA 442-2, for the year and the "Balance Sheet," Form FHA 442-3, will be used.

(f) In those cases where FHA loans are secured by the general obligation of a public body or assessments in an amount equal to 100 percent of the debt service requirements plus an amount equivalent to an average of delinquencies in tax collectioj for the three years prior

to submission of their application, FHA may require an annual audit of operations of the facility in lieu of the other management reports mentioned in this Section 1823.14.

(g) Maintenance of Facilities. When facilities are to be maintained by any jurisdiction other than the borrower, it shall be performed under a written agreement with the other entity. The other entity shall furnish evidence of its capability to perform the required maintenance.

§1823.15 Closing development grants approved under previous regulations.

Such grants will be considered closed when Form FHA 442-31, "Development Grant Agreement," has been executed by the grantee and FHA. Both FHA County Supervisors and State Directors are authorized to execute the grant agreement on behalf of FHA.

(a) Grant funds shall be delivered in amounts not to exceed those needed in a 30-day period except that when the amount of the grant or the remaining amount undelivered does not exceed $20,000, such funds may be drawn in one advance.

(b) Grant checks, fund distribution, and grant cancellations will be processed in a manner similar to that set forth for loans in this Appendix.

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STATE OF WYOMING

CHAPTER I ONLY

FARM LOANS

RULES AND REGULATIONS
of the
WYOMING FARM LOAN BOARD

BOARD MEMBERS

Governor, President
Secretary of State
State Auditor
State Treasurer
Superintendent of Public Instruction
Farm Loan Commissioner Secretary to the Board

Office

COMMISSIONER OF FARM LOANS
41 State Capitol Building Phone (307) 777-7309 Cheyenne, Wyoming 82002

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WYOMING FARM LOAN BOARD

CHAPTER I

FARM LOANS

Section 1. Authority. These Rules and Regulations of the Wyoming Farm Loan Board are adopted pursuant to W.S. 11-609 through 11-643.

Section 2. Definitions. As used in this chapter:

a. "Act" means the Wyoming Farm Loan Board Act, W.S. 11-609 to 11-643.

b. "Agricultural products" means annual crops and/or livestock produced from the cultivation and/or management of the soil.

c. "Board" means the Wyoming Farm Loan Board.

d. "Equipment" means any mechanical device, the use of which is principally agricultural.

e. "Fertilizer" means all substances, chemicals and compounds, commonly known as commercial fertilizers, and all manures, whether natural or artificial.

f. "Improvements" means any addition, modification or alteration appurtenant to the agricultural land of the applicant and which is principally for the agricultural betterment of the land. The following improvements shall not be considered as constituting improvements within this definition:

(1) Private residential dwellings not situated on the mortgaged land or the applicant's other agricultural land.

(2) Any improvements which the Board, in the reasonable exercise of its discretion, determines not to constitute farm and agricultural improvements.

g. "Qualified loan applicant", except as provided in W.S. 11-136, means any adult or "individual" who is a resident of the State of Wyoming and who is at the time of application, or shortly thereafter to become, engaged in the cultivation and development of the farm land mortgaged, provided that such mortgaged farm land held as security for the entire loan lies within the boundaries of the State of Wyoming.

"Individual" is defined as any person, corporation, joint venture, association, partnership or any group, family or association of persons or other legal entities engaged in the business of agriculture or a single farming or ranching operation in this State.

Section 3. Purpose. It shall be the purpose of the farm loan system to foster and encourage agriculture, dairying and livestock raising in the State of Wyoming, and the development and improvement of farm lands. The purposes for which a farm loan will be made must be strictly agricultural. If a farm loan is to be made to liquidate an indebtedness of the owner of the farm land mortgaged, then such indebtedness must have been incurred originally in the furtherance of strictly agricultural purposes.

Section 4. Disbursement of loan proceeds. The proceeds of a loan granted by the Board under this Chapter shall not be disbursed to the applicant until such time as the applicant can show a mature obligation, the satisfaction or partial satisfaction of which will result from the applications of the loan proceeds. The applicant shall use

the proceeds of any farm loan exclusively for the purpose or purposes set out in the application.

Section 5. Duties of the Board. In exercising its obligations, the Board shall:

a. When necessary foreclose or renew any installment payment of farm loan by approving refinancing of farm loans;

b. Receive and evaluate applications for farm loans and approve only those applications that demonstrate that the applicant is qualified under W.S. 11-620 and that the funds will be used for a purpose specified by the W.S. 11-619;

c. Acquire and dispose of such property, real and personal, as may be necessary or convenient for the transaction of its business, and accept assignments of interest in any real or personal property; provided that such properties shall be taken as additional security or collateral to pre-existent debts or approved loans;

d. Exercise all incidental power as shall be necessary to carry on the business herein described;

e. Furnish the mortgagor with a proper release or satisfaction of the mortgage when the mortgage securing a loan is fully paid by the mortgagor or his or her successor in interest, such release shall be executed by the President of the Board and attested by the Secretary of the Board. The mortgage papers, including the abstract of title and assigned insurance policies, shall be returned to such person;

f. Set rates of interest on all farm loans according to current rates of interest, however, no such rates of interest shall be less than four percent (4%) per year, nor more than eight percent (8%) per year;

Section 6. Application for farm loans. All applications for farm loans under this Chapter shall be made on the form furnished by the Board for that purpose. Only fully completed forms may be considered by the Board. Such form shall include:

a. A statement by the applicant of the purpose for which the loan proceeds will be used:

(1) If the loan is to be used for the purchase of property, the applicant must include statements and estimates of how the property is to be put to an agricultural use, its expected yield per acre and the expected operating costs of such use;

(2) If the loan is to be used for the construction of farm buildings or improvements relating to the agricultural operation of the property, the applicant must submit with the application the estimated cost of the proposed construction, estimated dates of construction and completion;

(3) If a loan for the purchase of equipment, fertilizers or livestock is applied for, the applicant must also furnish with the application, estimates as to the value of such purchases;

(4) If a loan is to be used to liquidate a present indebtedness of the applicant, the applicant must demonstrate on the application that the indebtedness to be liquidated would have qualified as a loan that the Board could have granted originally under W.S. 11-619 (a) through (c).

b. A statement by the applicant that he agrees to be bound by statements and representations of the application and an acknowledgement of the fact that the application as completed shall be incorporated into any final loan agree-

ment made between the applicant and the Board.

c. A statement by the applicant that he or she is an adult resident of the State of Wyoming.

d. A deposit of one hundred dollars ($100.00), the unused portion of which shall be returned to the unsuccessful applicant, or, if the loan is approved, retained by the Board and deposited in the general fund.

e. A statement by the applicant that he or she agrees to keep insured to the satisfaction of the Board, all buildings situate on the mortgaged land, and that the insurance proceeds from any loss shall be payable to the State of Wyoming, Wyoming Farm Loan Board.

Section 7. Review of Applications. No fewer than three members of the Board shall approve all applications for a farm loan. The Board shall determine that all applications so approved meet all the standards and requirements imposed by Wyoming law and these Rules and Regulations.

Section 8. Nature of the State's security. All farm loans under this Chapter shall be secured by a duly recorded first mortgage on the farm lands of the mortgagor as defined by W.S. 11-609. Such mortgage shall include and expressly encumber both the surface and mineral estate of the mortgaged land.

The Board, at its discretion, may reappraise the mortgage security and may grant an additional loan by granting additional money by refinancing at the Board's prevailing rate of interest if such reappraisal may warrant, provided that the total indebtedness remains within the provisions of Section 12 of this Chapter.

No loan shall be made in an amount in excess of fifty

percent (50%) of the appraised value of the mortgaged land, such appraisal to be made by the Board and to be based upon actual productivity of the land. The Board shall consider in any such appraisal, the amount of any existing liens, charges or assessments for drainage, reclamation or irrigation purposes to which the mortgaged land is subject.

Section 9. Evidence of title. The mortgagor shall furnish evidence of title to the Board by one or both of the following methods:

a. A title insurance policy in the full amount of the mortgage issued by a title insurance company authorized to do business in the State of Wyoming.

b. An abstract of title certified by a duly bonded abstractor qualified to prepare abstracts under the laws of the State of Wyoming.

The Board favors and encourages title insurance; however, an abstract of title may be accepted.

Where the mortgagor's interest in the mortgaged property includes a whole or part of the mineral estate, such whole or part shall be expressly incorporated as part of the mortgage. Any after-acquired interest in the mineral estate shall also be expressly incorporated into the mortgage agreement.

It shall be the duty of the mortgagor to pay all costs of recording the mortgage and any other papers and documents connected with the loan which may be required.

Section 10. Disbursement of loan proceeds. The proceeds of a loan authorized under this Chapter shall not be disbursed to the borrower until such time as the borrower can show to the Board a mature obligation, the

satisfaction or partial satisfaction of which will result from the application of such proceeds.

For all loans under this Chapter, the Board will establish a joint signature account with the borrower, or other arrangements will be made suitable to the Board whereby the Board will have joint control of the proceeds of the loan with the borrower. The Farm Loan Department shall inspect and verify any reports and records required by the Board and submitted by the borrower before proceeds shall be released for payment.

Section 11. Foreclosures. Any and all foreclosures shall be made in the usual manner, whether in law or equity or by advertisement as the Board may direct. The Attorney General shall render all services required in connection with such foreclosures. The Board, in its discretion, may consider each defaulted loan on its own merits and may elect to refinance with or without penalty.

If the whole or any portion of the loan is expended for a purpose other than specified in the original application, the Board may declare the whole of said loan to be due and payable forthwith. Such declaration on the part of the Board shall not preclude the Attorney General from initiating legal proceedings against the grantee for such unauthorized use of loan proceeds.

Section 12. Limits of loan amounts. No farm loan granted under this Chapter may exceed the amount of one hundred fifty thousand ($150,000.00) dollars to any one borrower, nor may any farm loan be granted for an amount less that one thousand ($1,000.00) dollars.

Section 13. Refinancing. Whenever the Board deems it advisable or necessary, they may, in order to

better protect existing mortgages, advance to a mortgagor the funds necessary to pay taxes and insurance or to otherwise protect the mortgaged property. The Board may also elect to refinance any farm loan mortgage in any manner it deems best, provided that all costs of refinancing any such loan be assessed to the mortgagor. No loan shall be refinanced where it appears that such refinancing will jeopardize the collection of the loan.

Section 14. Land purchase closing. If a loan is granted under this Chapter for the purpose of the purchase of land as set out in W.S. 11-619 (a), the closing of such transaction shall be conducted by an impartial escrow agent. Such agent shall, with all parties present, make transfers and prepare and witness the signing of all notes, mortgages and deeds as would occur during the closing of a purchase agreement in standard real estate practice. The Board, as mortgagee shall furnish the loan proceeds to the escrow agent and receive in return a note for the whole loan amount signed by the mortgagor and a mortgage agreement also signed by the mortgagor. The grantee of the loan, as mortgagor, shall sign such note and mortgage and receive a deed to the property.The seller shall furnish such deed and evidence of its merchantability and shall receive from the escrow agent the proceeds of the loan (selling price).

Section 15. Approval by Attorney General. Under no circumstances may farm loan proceeds be disbursed to the applicant under this chapter until such time as the Office of the Attorney General has reviewed all of the relevant documents and rendered its express approval evidenced in writing or by signature of a qualified attorney within that office. Such approval will be given only when the Office of

the Attorney General is assured that all liens, encumbrances and clouds on the mortgaged property have been released or otherwise completely satisfied and that the loan is completely secure.

STATE OF WYOMING

CHAPTER II ONLY

JOINT POWERS LOANS

RULES AND REGULATIONS
of the
WYOMING FARM LOAN BOARD

BOARD MEMBERS

Governor, President
Secretary of State
State Auditor
State Treasurer
Superintendent of Public Instruction
Farm Loan Commissioner Secretary to the Board

Office

COMMISSIONER OF FARM LOANS
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CHAPTER II
JOINT POWERS LOANS

Section 1. Authority. These Rules and Regulations of the Wyoming Farm Loan Board are adopted pursuant to W.S. 9-18.13 to 9-18.20.

Section 2. Eligibility.

a. Only those agencies involved in a joint powers or other cooperative agreement shall be eligible to receive a loan from the Wyoming Farm Loan Board under the provisions of W.S. 9-18.20 and this Chapter.

b. Any agency or joint powers board seeking a loan shall first submit the joint powers agreement or amendment to the Attorney General for approval. Such approval shall be a condition precedent to any consideration of the loan application by the Farm Loan Board.

Section 3. Application. The Farm Loan Board will consider, approve, or make commitments only on written applications for joint powers loans submitted to the Executive Secretary of the Farm Loan Board (the Commissioner of Public Lands) in sufficient time to be included in Board matters to be considered on the first Thursday of each month. An application must be signed by the president and attested by the secretary of the joint powers board. When an application is received from an agency, the application must be signed by the authorized officer or officers of that agency.

An application shall include:

a. A copy of the joint powers agreement.

b. Purpose of the loan and a description of the project to which the loan will be applied including an engineer's

report or statement of feasibility of the project.

c. The amount requested and how it will be repaid.

d. A statement that the debt to be incurred will not be in excess of the limits prescribed by law.

Section 4. Criteria for Making Loans.

a. The joint powers board shall bear the burden of demonstrating that all local revenue resources are being fully utilized and are insufficient to finance the project for which the loan application is made.

b. Priority will be given to initial requests over applicants previously granted joint powers funds.

Section 5. Interest. Interest rates to be applied to joint powers loans shall be reviewed by the Farm Loan Board annually in April.

Section 6. Security Interest. Upon the approval of an application and before any proceeds of the loan are paid out to the agency or joint powers board, the agency or joint powers board shall transfer title to the property upon which the facilities are to be constructed to the Farm Loan Board. In lieu of, or in addition to, the transfer of title requirement, the agency or joint powers board may transfer whatever interest it possesses in the property upon which facilities are to be constructed, to the Farm Loan Board. In either case, the value of such property or interest so transferred shall be at least equal to the amount of the joint powers loan. All such titles and interest transferred to the Board shall be secured by title insurance, the cost of which shall be paid by the agency or joint powers board. The Farm Loan Board shall be named as primary beneficiary of all such title insurance policies. Upon repayment of the loan, such interest or title shall be reconveyed to the agency or

joint powers board. Where the transfer of title or interest in the property would preclude the obtaining of federal grants, or where such transfer of title or interest is prohibited by or would be in violation of existing grant-in-aid agreements, the Farm Loan Board may waive the requirements of transfer of title or transfer of any interest in the property, and substitute therefor such other security of sufficient value as it deems necessary.

Section 7. Disbursement of loan proceeds. The proceeds of a loan authorized under this Chapter shall not be disbursed to the borrower until such time as the borrower can show to the Farm Loan Board a mature obligation, the satisfaction or partial satisfaction of which will result from the application of such proceeds.

For all loans under this Chapter, the Farm Loan Board will establish a joint signature account with the borrower, or other arrangements will be made suitable to the Farm Loan Board whereby the Farm Loan Board will have joint control of the proceeds of the loan with the borrower. The Farm Loan Department shall inspect and verify any reports and records required by the Farm Loan Board and submitted by the borrower before any proceeds shall be released for payment.

a. Before any money is given to a joint powers board, it must submit an itemized statement of expenditures to the Commissioner of the Farm Loan Board.

b. For projects which are to be repaid from revenues generated, disbursement of loan funds is contingent upon the passage of ordinances supporting the requisite fee structure set forth in the application.

c. Approval by Attorney General. Under no circumstances may joint powers loan proceeds be disbursed to the applicant under this Chapter until such time as the Office of the Attorney General has reviewed all of the relevant documents and rendered its express approval evidenced in writing or by signature of a qualified attorney within that office. Such approval will be given only when the Office of the Attorney General is assured that all liens, encumbrances and clouds on the property have been released or otherwise completely satisfied and that the loan is completely secure.

Section 8. Termination.

a. Any joint powers commitment will be terminated within two years if project operations have not commenced.

b. The Farm Loan Board may require that a joint powers loan be converted to a WCDA loan or a loan from another lender before a coal tax grant will be approved for repayment of the project for which the joint powers loan was authorized.

Section 9. Bidding of contracts. All contracts for purchases of property or construction of public improvements which exceed $1,500 shall be advertised for bid in accordance with W.S. 15.1-13, when a city or town is a party to the joint powers agreement.

Section 10. Duties of the joint powers board. After the joint powers board transfers title or its interest in the property to the Farm Loan Board as security, the joint powers board shall:

a. Continue to insure the property;

b. Be liable for all taxes and assessments;

c. Refrain from making major alterations that destroy

the value of the security, unless the Farm Loan Board gives approval.

Section 11. Audit. The Farm Loan Board shall have the authority to call at any time for an audit of the books and records of the borrower and shall have the authority to monitor the construction or other operation of the project for which the loan is to be made, said audit to be made at the expense of the Farm Loan Board.

STATE OF WYOMING

CHAPTER III ONLY

IMPACT EMERGENCY ACCOUNT FUND LOANS

RULES AND REGULATIONS
of the
WYOMING FARM LOAN BOARD

BOARD MEMBERS

Governor, President
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State Auditor
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Farm Loan Commissioner Secretary to the Board

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CHAPTER III

IMPACT EMERGENCY ACCOUNT FUND LOANS

Section 1. Authority. These Rules and Regulations of the Wyoming Farin Loan Board are adopted pursuant to W.S. 9-580.1 through 9-580.3.

Section 2. Definitions.

a. "Impacted area" means a political subdivision or district in which either sudden or prolonged population growth has caused both social and economic stress of such a nature that the total present resources available are not sufficient to resolve them properly and effectively.

b. "Emergency" means an unforeseen occurrence or combination of circumstances which calls for an immediate action or remedy and which deprives the public subdivision involved of the ability to provide minimum educational facilities or opportunities.

Section 3. Purpose. The Board, when acting as the Impact and Emergency Assistance Board, shall loan funds from the impact and emergency account for the sole purpose of emergency construction and operation of public educational facilities and public roads, and for the operation and construction of such facilities in impacted areas.

STATE OF WYOMING

CHAPTER IV ONLY

EMERGENCY SCHOOL CONSTRUCTION ALLOCATION

RULES AND REGULATIONS
of the
WYOMING FARM LOAN BOARD

BOARD MEMBERS

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CHAPTER IV
EMERGENCY SCHOOL CONSTRUCTION ALLOCATION

Section 1. Authority. These Rules and Regulations of the Wyoming Farm Loan Board are adopted pursuant to W.S. 21.1-244 through 21.1-252.

Section 2. Eligibility. To be eligible for an allocation under this Chapter, a school district must be able to demonstrate that:

a. The bonded indebtedness, or the indebtedness authorized by the electors of the district, has exceeded ninety-five percent (95%) of the constitutional or statutory limitation at any time within the three years prior to the date of application; and

b. A school building emergency exists which is beyond the financial capacity of the district through other available means. "Building" shall include all fixtures and appurtenances thereto.

Section 3. General provisions. The Board shall act on all recommendations of the State Board of Education on loans to school districts under this Chapter.

Section 4. Security. The board of trustees of any school district, whose application for an allocation under this Chapter is approved, shall convey to the Farm Loan Board title to the school property listed in the application and considered as a basis for making the allocation.

Section 5. Terms of Rental Payments. The board of trustees of every school district receiving funds under this Chapter shall annually remit three percent (3%) of the allocation received as rental charges and an additional one-fourth of one percent (¼ of 1%) of the allocation received

to be applied to the repurchase of the school property for the first ten-year period, after which, the school district shall annually remit three percent (3%) of the allocation received as rental charges and an additional seven percent (7%) of the allocation received to be applied to the repurchase of the school property.

In the event of default of any rental payments said rental payments shall be deducted from any State aid. If any school district receiving funds under this Chapter shall issue any bonds or incur any indebtedness for capital expenditures, it must first provide for repurchase from the board.

In the event a proven emergency arises, the Board shall have the authority to reduce the annual payment accordingly.

STATE OF WYOMING

CHAPTER V ONLY

WATER DEVELOPMENT LOANS

RULES AND REGULATIONS
of the
WYOMING FARM LOAN BOARD

BOARD MEMBERS

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CHAPTER V

WATER DEVELOPMENT LOANS

Section 1. Authority. These Rules and Regulations of the Wyoming Farm Loan Board are adopted pursuant to W.S. 11-654 through 11-658.

Section 2. Definitions. As used in this Chapter:

a. "Individual" means any person, corporation, joint venture, association, partnership or any group, family or association of persons or other legal entities engaged in the business of agriculture or a single farming or ranching operation in this State.

b. "Board" means the Wyoming Farm Loan Board.

c. "Borrower" means any person, court-approved water district, agency of State or local government and corporations and associations in this State, provided that the individual is a Wyoming elector, or, when the borrower is a corporation, a majority of that corporation's outstanding shares are owned beneficially or of record by qualified Wyoming electors.

d. "Director" means the Executive Director of the Department of Economic Planning and Development.

e. "Small water development project" means any project which the loan is one hundred fifty thousand dollars ($150,000.00) or less.

f. "Large water development project" means any project for which the loan is greater than one hundred fifty thousand dollars ($150,000.00).

g. "Department" means the Department of Economic Planning and Development.

Section 3. Purpose. The purpose for which loans

may be made under this Chapter is to finance the construction of water development projects. No loans may be made for the purpose of operating expenses.

Section 4. Disbursement of loan proceeds. The proceeds of a loan authorized under this Chapter shall not be disbursed to the borrower until such time as the borrower can show to the Department a mature obligation, the satisfaction or partial satisfaction of which will result from the application of such proceeds.

For all loans under this Chapter, the Department will establish a joint signature account with the borrower, or other arrangements will be made suitable to the Department whereby the Department will have joint control of the proceeds of the loan with the borrower, throughout the term of the project. Engineers of the Department shall inspect all work completed on the project and verify any reports and records required by the Department before any such proceeds shall be released for payment to the contractor.

Large water development project loan proceeds will be advanced by the Board to the borrower and the Department on a progressive schedule, generally with monthly disbursements. The specific procedure of such disbursement shall be established for each such project by the Department and the borrower. Commencement of interest will begin on each incremental disbursement of loan proceeds. The Department shall be responsible for maintaining records of expenditures, inspections and certification of work completed. The Department shall also maintain complete records in its files of the use of all loan proceeds granted under this Chapter.

Section 5. Duties of the Farm Loan Board. It shall be the duty of the Board in regard to loans granted under this Chapter to:

a. Require a mortgage or other lien upon all property of the project and require such additional security as they, with the advice of the Department and the Attorney General, deem advisable. Such security may include, but is not limited to the security listed in Section 7 of this Chapter.

b. Set the interest rate on all irrigation, redevelopment or municipal loans at not less than four percent (4%) and no greater than six percent (6%) per year, and set a term for payment not to exceed forty (40) years.

c. Regulate the interest rate on water storage reservoir projects, provided that such rate shall not be less than four percent (4%) per year and the term of repayment shall not exceed forty (40) years.

d. Require execution of a promissory note on all loans. The Attorney General shall prepare all such notes and appropriate mortgages.

e. Require that, for the entire term of the loan, the borrower will not deny right of access to the general public for the purpose of fishing in reservoirs financed by the Board under this Chapter, in the event that a fishery is established on the project land by the Wyoming Game and Fish Department.

Section 6. Duties of the Director. It shall be the duty of the Director to:

a. Prepare, or contract to have prepared, designs and specifications for the water development projects whose applications are being considered for a loan by the Board. The Director shall approve all such designs and specifications.

b. Examine all bids that may be submitted for the construction of such water development projects and shall have the authority to accept any bid or reject any and all bids.

c. Inspect, or cause to have inspected, all construction of such water projects as the work progresses.

d. Seek and consider the advice and professional assistance of the administrator of the Water Division in formulating the recommendation to the Board.

e. Execute a "Project Agreement" along with the administrator of the Water Division and the borrower. Such Project Agreement shall define the project and designate the conditions for the approval of the loan. Such agreement shall be incorporated by reference into the mortgage agreement.

Section 7. Security. The following assignments shall be taken by the Board as security for any loan under this Chapter:

a. Individuals: A first mortgage on land within the boundaries of the State of Wyoming shall be required on sufficient acreage at present market value to cover the amount of the loan desired. Land other than the project location may be acceptable. In certain cases, the Board may accept a second mortgage on such land, but only after showing by the Department and approval of the Attorney General that the loan is otherwise adequately secured. An assignment of water rights along with a mortgage on the facility or equipment being financed is required. Proof of merchantab' le must be provided by the borrower in the

form of title insurance. Present market value of land shall be determined by local qualified appraisers and the appraisal shall be reviewed for acceptance by the Department and the Board.

b. Corporation: Corporations are categorized as individuals within this Chapter and may provide security as described in Section 7a., however, due to the special nature of corporations as grantees of loan funds, each application for a loan by a corporation under this Chapter shall be treated as a separate case by the Board and Department. The Department and the Board shall consider the present capital, number of shareholders, extent of indebtedness and the purpose of the corporation in formulating the loan agreement, the security required and the means of repayment.

c. Court-approved water districts: Court-approved water districts must provide security in the form of the assessment of the benefits against the land through the district court. A mortgage shall be provided on facilities and structures being financed, although a second mortgage may be adequate, but only if the Attorney General and the Department approve such security.

d. Contracts for water service by third parties may be considered by the Board as partial security for a loan under this Chapter, provided that the Attorney General approves the project as organized by the Department.

Section 8. Application for water development loans. All applications for water development loans shall be in the form of a letter written by the applicant to the Board indicating a desire for such a loan. The Department shall provide forms, information and assistance to aid the borrower in the application process. Review comments ar recommendation will be solicited from the Inte departmental Water Conference during plan developme in order to minimize the impact upon other resources a identify opportunities for public benefits.

Section 9. Review of applications. No fewer th three members of the Board must approve a recommen tion for a loan under this Chapter.

Section 10. Limit on loans to individuals. small water development project loan made to an individ shall exceed one hundred fifty thousand dollars ($15 000.00).

STATE OF WYOMING

CHAPTER VI ONLY

COAL EXCISE TAX LOANS AND GRANTS

RULES AND REGULATIONS
of the
WYOMING FARM LOAN BOARD

BOARD MEMBERS

Governor, President
Secretary of State
State Auditor
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Farm Loan Commissioner Secretary to the Board

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CHAPTER VI

COAL EXCISE TAX LOANS AND GRANTS

Section 1. Authority. These Rules and Regulations of the Wyoming Farm Loan Board are adopted pursuant to W.S., 39-227.11.

Section 2. Definition of coal-impacted area. An area is considered to be directly or indirectly impacted by the production of coal for the purposes of W.S. 39-227.10 when a sizeable, sudden or prolonged population growth occurs or is reasonably expected to occur as the result of mining, transporting, processing or otherwise relating to the consumption of coal.

Section 3. Applications. All applications for assistance under this chapter shall be made directly to the Board, which may refer the application to DEPAD, the Wyoming Highway Department, the Wyoming Community Development Authority or any State agency for review and recommendations.

Section 4. Form of applications. Applications for assistance under this chapter may be made in any reasonable form. All application shall set forth the following:

a. Name(s) of the political subdivision(s) requesting assistance;

b. Whether a grant, loan, pledge of future revenues, or a combination thereof is requested;

c. Adequate evidence to demonstrate either a direct or indirect impact as a result of coal production or consumption;

d. Adequate evidence to demonstrate the necessity of

the project, the planning therefor and the cost thereof;

e. Adequate evidence to demonstrate that the applicant has fully utilized or will fully utilize all local revenue sources reasonably available for financing the project;

f. Adequate evidence to demonstrate that local revenue sources are insufficient to finance the project;

g. If a loan is requested, the method of repayment and the form and sufficiency of the proposed security; and

h. If a grant is requested, what other sources of financing were investigated.

Section 5. Other methods of financing preferred.

a. Before any political subdivision may attempt to secure financing under this Chapter to remedy an impact related problem the Board may require the political subdivision to first attempt to secure a loan through the Wyoming Community Development Authority, or through some other lender.

b. Political subdivisions which are entitled to tax the constitutional maximum mill levy but are not so taxing, shall bear the burden of demonstrating that eight mills of tax is not a feasible method of diverting funds with which the proposed project may be financed or partially financed.

Section 6. Priority. Priority will be given to applicants with phased construction schedules or who pledge coal tax grant funds for debt service, so that coal excise tax loan and grants may be made to the maximum number of applicants and as equitably as possible in relation to need, and so that disbursements under the grant awards will be made over a number of years if the requested grant is of such an amount that it would substantially deplete the fund.

Section 7. Additional limitations on grants.

a. Whenever a political subdivision requests a grant, and that political subdivision has not reached the limit of its legal bonded indebtedness, it must demonstrate that financing by that method would not be the most feasible method of financing the project.

b. Although it is not a requirement that counties and municipalities have the additional one percent (1%) sales tax before they are eligible for a grant; those subdivisions which are collecting the additional one percent (1%) sales tax may be given first priority.

Section 8. Accounting required. All political subdivisions receiving assistance under this chapter must provide to the Board a full and complete accounting as to the use and distribution of the money received. Said accounting shall be done in accordance with generally accepted accounting principles, and shall be provided as required by the Board.

Section 9. Adequate security necessary to receive loan. If a loan is obtained by a political subdivision under this chapter, the Board may require any security which it deems adequate.

Section 10. Funds may be used for planning. Grants or loans received under this Chapter may be used for planning purposes, so long as the application so designates.

Section 11. Funds to be used only for impact related projects. All money received by a political subdivision under this chapter shall be used for impact related projects. It may be used to replace, repair or maintain an existing facility, so long as the maintenance, repair or

replacement is required due to coal impact and such use is so stated in the application.

Section 12. Reasonable fees must be charged. In the event that the proposed project will generate revenue, the charges for the service shall not be less than those which are normal and fair throughout the State.

RULES AND REGULATIONS OF

THE WYOMING FARM LOAN BOARD

CHAPTER VII.

GOVERNMENT ROYALTY IMPACT ASSISTANCE ACCOUNT GRANTS

Section 1. Authority. These Rules and Regulations of the Wyoming Farm Loan Board implement and are promulgated pursuant to W.S. 9-577.1, and supersede Rules and Regulations heretofore adopted pursuant to W.S. 9-580.1 through 9-580.3, which statutes have been repealed.

Section 2. Definitions. The following terms and phrases shall have the following meanings as used in these Rules and Regulations:

a. "Board" shall mean the Wyoming Farm Loan Board.

b. "Applicant" shall mean and include incorporated cities and towns, counties, and joint powers boards.

c. "Social or economic impact" shall mean the experience by a city, town, or county of substantial increase in population directly attributable to mineral or mineral related development. The Board shall give priority to those applicants experiencing social or economic impact as herein defined from the mining, production, processing, consumption, or transportation of coal, phosphate, sodium, potassium, oil, gas, oil shale, native asphalt, or other minerals leased by the United States pursuant to the Federal Mineral Leasing Act of 1920

d. "Project" shall mean any activity involving the planning, construction, and maintenance of public facilities, provision of public services, or equipment purchases, the necessity of which is demonstrably and directly attributable to social or economic impact as herein defined, provided, however, that "project" shall not include a request for funds for the operating expenses of the applicant.

e. "Commissioner" shall mean the Farm Loan Commissioner.

Section 3. Applications.

a. All applications for grants to finance a project under

this Chapter shall be made on a form provided by the Board. Ten (10) copies of the application shall be submitted and the applicant shall provide the following in detail:

(1) A full description of the project proposed to be funded, specifically including, but not limited to a phased construction schedule, if applicable, and a detailed budget broken into at least six (6) month intervals delineating all costs of the project proposed to be funded.

(2) A statement as to whether consideration was given to a regional rather than local project concept.

(3) A financial statement of the applicant, said statement to include, but not limited to, the assessed valuation, bonded indebtedness, local tax effort, income and expenditures for the immediate past fiscal year, and a description of all other sources of funding presently available to the applicant. If the applicant is a joint powers board, said statement shall include financial statements of the component entities.

(4) A statement as to whether the proposed project can be expected to generate user fees, charges, other revenue or income, and if so, a projection as to said income expected and the method of determining and establishing said fees or charges.

(5) If a portion of the total cost of the project is to be funded by sources other than the grant applied for, a list and description of such other sources and the portion of the cost expected to be funded from each source.

(6) A description of all pending applications for grants, loans, or other means of financing made by the applicant to any federal, state or private entity which will or could be used for the project, excluding applications under this Chapter, and a statement as to the present status of such applications.

(7) The names of persons, firms, or corporations whose business activities have caused or contributed substantially to the applicant's social or economic impact and a showing as to whether funding or other assistance has been requested, received or pledged from these sources.

(8) The names of land developers or others whose business ventures will directly benefit from the project and a showing as to whether funding or other assistance has been requested, received or pledged from such sources.

(9) A showing as to whether any of the persons, firms, corporations, land developers or others listed in para-

graphs (7) and (8) above will use the project to be funded, and if so, a showing that the charges to be made for such use are not less than those which are normal and fair throughout the state.

(10) If the project proposed is only for the purpose of planning, a statement as to whether the applicant will seek additional funds from the Board at some future date for a project implementing such planning.

b. Applications shall be made in the name of the applicant and shall be properly executed by the officers of the applicant. A copy of the resolution authorizing the filing of the application shall be attached.

Section 4. Review of applications.

a. Although the time of filing of an application does not establish priority of an applicant's request for funds, adequate review, investigation, evaluation, and recommendations must be made before such requests are approved. Applicants should file applications as far in advance of the next scheduled meeting of the Board as possible . Applications on file 60 days or more prior to a meeting will be considered for grants at that meeting. Applications on file 35 days or less prior to a meeting will not be considered for grants at that meeting. Applications on file less than 60 and more than 35 days may or may not be considered.

b. The Board shall refer each application to the Department of Economic Planning and Development for general review, investigation, and for specific evaluations as to:

(1) Whether the applicant has been socially or economically impacted;

(2) The ability of applicant to fund all or any portion of the proposed project from other sources; and

(3) The necessity for and economic feasibility of the proposed project.

c. The Board may also refer any application to the Department of Environmental Quality, the State Engineer, the Highway Department, any other State agency, or the Wyoming Community Development Authority for review, investigation, evaluation and recommendations as to matters with which that agency or the Community Development Authority is specifically concerned.

d. The Department of Economic Planning and Development and all other agencies to whom the application is referred may request any additional information of the applicant deemed rele-

vant to such department's or agency's inquiry. The Department of Economic Planning and Development and other agencies to which the application is referred shall include in their evaluation and recommendation a statement as to whether sufficient information has been provided by the applicant upon which to base said evaluation and recommendation.

e. As soon as possible, the Board shall furnish the applicant with a copy of each review, evaluation and recommendation made by the Department of Economic Planning and Development or any other State agency to which an application has been referred.

f. Within ten days after the applicant has received copies of this information, a conference may be held between representatives of the applicant and the referenced State agencies. Said conference may be held at the request of the Commissioner, the Department of Economic Planning and Development or the applicant, and shall be for the purpose of considering whether the application is complete, whether the application should be amended or modified, or whether any further investigation is necessary or desirable before the application is submitted to the Board for its consideration.

g. Within ten days after the conclusion of the conference or, if no conference is held, within ten days after the time when the conference could have been held, the Department of Economic Planning and Development shall make a written recommendation to the Board through the Commissioner who shall furnish a copy to the applicant and the Board. Said recommendation shall include the following:

(1) Whether the applicant has been socially or economically impacted;

(2) Whether the project is economically feasible;

(3) Whether the applicant is unable to fund the provision of public services or equipment purchase from existing revenue sources, or, if the application is for capital construction, whether the assessed valuation of the applicant is sufficient to fund the project through the issuance of general obligation bonds;

(4) Whether the project could be feasibly accomplished by an award of some portion, rather than all, of the funds requested;

(5) Any other information which the Department of

Economic Planning and Development deems relevant to the Board's consideration of the application.

h. Not less than ten days before each meeting of the Board for consideration of applications, the Commissioner shall recommend to the Board in writing whether or not the Board should consider each application at the next meeting of the Board and the priority and amount in which the Board should fund projects for which applications have been submitted and reviewed as provided herein. Said recommendation as to priority and amount shall be based upon the following:

(1) The amount of funds received by the Board for distribution pursuant to W.S. 9-577.1(a)(vii);

(2) The degree to which each applicant has been socially or economically impacted;

(3) The immediacy of the need for the project proposed by each applicant;

(4) The hardship which would be endured by each applicant if the funds requested are not awarded or if only part of said funds are awarded;

Section 5. Consideration and approval of applications.

a. Meetings for the purpose of considering and approving grants of funds authorized by W.S. 9-577.1(a)(vii) and (b)(i) shall be held by the Board semiannually, on the Wednesdays immediately preceding the first Thursday in the months of June and January and unless otherwise noticed shall begin at 9:00 a.m.; provided, however, that the first meeting held pursuant to these rules shall be on Wednesday, July 6, 1977.

b. At such meetings, the Board shall consider each application then pending before it. No grant of funds will be made on any application unless the Board makes the following determinations:

(1) That the application and the project embraced therein have been properly reviewed by the appropriate State agencies, and that the Board has before it sufficient information upon which to base a decision;

(2) That the applicant has been socially or economically impacted;

(3) That the applicant is unable to fund the public facilities, provision of public services, or equipment purchase

from existing revenue sources, and if the application is for a grant to fund a capital construction endeavor, that the assessed valuation of applicant is insufficient to fund the project through the issuance of general obligation bonds;

(4) That the project proposed is necessary.

c. The Board shall then consider all pending applications as to which it has made the above findings and shall determine the order of priority in which awards shall be made from the funds available. Said priority shall be based upon the relative urgency and necessity for the projects to be funded and the funds available.

d. The board shall then consider each application individually and in the order of priority established and shall determine and grant, as to each application, the amount deemed necessary to fund the project either in its entirety or until the next scheduled meeting when additional funds will be available for grants pursuant to W.S. 9-577.1(a)(vii) and (b)(i). When the total of the funds granted pursuant to this section of the rules equals the total of funds then on deposit and available for grant, the Board shall make no further grant until the next scheduled meeting. Provided, however, the Board may in its discretion make contingent grants for continuing projects out of an amount not to exceed 50% of the expected yearly receipts pursuant to W.S. 9-577.1(a)(vii); said contingent grants not to exceed a period of one year and to be contingent upon the availability of funds and an adequate showing that the applicant's position has not changed significantly in the interim.

e. All applications as to which the Board has granted funds, as to which a contingent grant was not made, and as to which the need for additional monies to fund the project is demonstrated, shall be retained as pending applications as to the balance of the funds necessary to finance the project. Said applications shall, prior to the next scheduled meeting of the Board, be again reviewed as provided in Section 4 of these Rules and submitted to the Board as provided herein.

f. All applications as to which no grant of funds was made shall be retained as pending applications and reviewed and submitted to the Board as provided by these Rules.

Section 6. <u>Grants of funds.</u>

a. Granted funds shall be disbursed to the applicant only as needed to discharge obligations incurred, and requests for disbursement shall be supported by adequate proof that such obligations have been incurred for the purpose for which the grant

was made, and are then due and owing.

b. If upon completion of the project for which funds were granted the entire amount of the funds granted has not been expended for discharge of obligations incurred for the purpose for which the grant is made, the unused portion of the grant shall be made available for other grants.

c. The Board may approve any grant made hereunder upon the express condition that specific existing sources of revenue be pledged to the funding of the project for which a grant is made, and upon the express condition that the applicant take appropriate action to assure that such sources are utilized in a manner which will produce a reasonable revenue to applicant therefrom.

d. All fees and expenses for planning, consultation, engineering, and all other ancillary expenses for services rendered shall be paid by the applicant out of the total grant funds awarded. If grant funds are awarded for a project only for the purpose of planning and the applicant will ultimately seek additional grant funds for a project to implement such planning, the amount of such planning grant previously awarded will be deducted from any funds which may be granted for said implementation grant.

e. As a condition of all grants awarded hereunder, the Board shall require the applicant to provide a full and complete accounting as to the use and distribution of the granted funds. Said accounting shall be done in accordance with generally accepted accounting principles and shall be provided the Board within a reasonable time upon request. The Board may also perform an audit or examination of the grant at any time. The Board may further require on-site visits and inspections of the project as it progresses by a representative of the Board designated for this purpose. As a further condition, all granted funds shall be received in and disbursed from a separate bank account.