

PART 3570 Community Programs

Subpart B - Community Facilities Grant Program

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PART 3570 - Community Programs

Subpart B - Community Facilities Grant Program

§ 3570.51 General.

(a) This subpart contains Rural Housing Service (RHS) policies and authorizations and establishes procedures for making Community Facilities Grants (CFG) authorized under section 306(a)(19) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(19)).

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by federally recognized Indian tribes within a State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indian tribes must have equal opportunity along with other rural residents to participate in the benefits of this program.

(c) Federal statutes provide for extending RHS financial assistance without regard to race, color, religion, sex, national origin, age, disability, and marital or familial status. To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture (USDA), Washington D.C. 20250, or call 1-800-245-6340 (voice) or (202)730-1127 (TDD). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202)720-2600 (voice and TDD).

(d) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to Agency employees, members of their families, close relatives, or business or close personal associates is subject to the provisions of RD Instruction 1900-D. Applications for assistance are required to identify any relationship or association with an RHS employee.

(e) Copies of all forms referenced in this subpart are available in the Agency's National office or any Rural Development field office.

(f) An outstanding judgment obtained against an applicant by the United States in a Federal Court (other than in the United States Tax Court), shall cause the applicant to be ineligible to receive any grant or loan until the judgment is paid in full or otherwise satisfied. Grant funds may not be used to satisfy the judgment.

(g) Grants made under this subpart will be administered under, and are subject to, 2 CFR part 400, as appropriate. (Revised 07-08-21, SPECIAL PN.)

(h) The income data used to determine median household income must be that which accurately reflects the income of the population to be served by the proposed facility. The median household income of the service area and the nonmetropolitan median household income for the State will be determined using income data from the most recent decennial Census of the United States. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, this will be documented and the applicant may furnish, or the Agency may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State, or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may be updated on a national basis by the National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census or other reliable sources. Bureau of the Census areas would include areas such as counties, cities, towns, villages, townships, boroughs, and other places.

(i) Rural Development officials will maintain liaison with officials of other Federal, State, regional, and local development agencies to coordinate related programs to achieve rural development objectives.

(j) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 on December 26, 2013. In 2 CFR part 400.1, the Department adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as the Departments' policies and procedures for uniform administrative requirements, cost principles, and audit requirements for federal awards. As a result this regulation contains references to 2 CFR part 200 as it has regulatory effect for the Department's programs and activities. (Revised 07-08-21, SPECIAL PN.)

(k) CFG funds can be used for up to 75 percent of the cost to develop the facility notwithstanding that other contributions may be from other Federal sources.

§ 3570.52 Purpose.

The purpose of the CFG program is to assist in the development of essential community facilities in rural areas. The Agency will authorize grant funds on a graduated basis. Eligible applicants located in small communities with lower populations and lower median household incomes may receive a higher percentage of grant funds. The amount of CFG funds provided for a facility shall not exceed 75 percent of the cost of developing the facility.

§ 3570.53 Definitions.

Agency. The Rural Housing Service (RHS), an agency of the U.S. Department of Agriculture, or a successor agency.

Approval official. An official who has been delegated loan or grant approval authorities within applicable programs, subject to certain dollar limitations.

CF. Community Facilities.

CFG. Community Facilities Grant.

Essential community facilities. Essential community facilities are those public improvements requisite to the beneficial and orderly development of a community that are operated on a nonprofit basis. (See § 3570.62(a)(1).) An essential community facility must:

- (1) Serve a function customarily provided by a local unit of government;
- (2) Be a public improvement needed for the orderly development of a rural community;
- (3) Not include private affairs or commercial or business undertakings (except for limited authority for industrial parks) unless it is a minor part of the total facility;
- (4) Be within the area of jurisdiction or operation for the public bodies eligible to receive assistance or a similar local rural service area of a nonprofit corporation; and
- (5) Be located in a rural area.

Facility. The physical structure financed by the Agency or the resulting service provided to rural residents.

Grantee. An entity with whom the Agency has entered into a grant agreement under this program.

Instructions. Agency internal procedures available in any Rural Development office and variously referred to as Rural Development Instructions, RD Instructions.

Minor part. No more than 15 percent of the total floor space of the proposed facility.

Nonprofit Corporations. Any corporation that is not organized or maintained for the making of a profit and that which meets the eligibility requirements for RHS financial assistance in accordance with § 3570.61(a)(2).

Processing office. The office designated by the State program official to accept and process applications for CF projects.

Project cost. The cost of completing the proposed facility. (Facilities previously constructed will not be considered in determining project costs.) Total project cost will include only those costs eligible for CFG assistance.

Poverty line. The level of income for a family of four as defined by section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Public body. Any State, county, city, township, incorporated town or village, borough, authority, district, economic development authority, or other federally recognized Indian tribes in rural areas.

Reasonable rates and terms. Those rates and terms customarily charged public and nonprofit type borrowers in similar circumstances in the ordinary course of business and are subject to Agency review.

RHS. The Rural Housing Service, an agency of USDA, or a successor agency.

Rural and rural area. The terms "rural" and "rural area" mean a city, town, or unincorporated area that has a population of 20,000 inhabitants or less and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H) and (I). The population figures are obtained from the most recent decennial Census of the United States (decennial Census). (Revised 07-11-22, SPECIAL PN.)

Rural Development. A mission area within USDA which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service.

§ 3570.53 (Con.)

RUS. The Rural Utilities Service, an agency of USDA or a successor agency.

Service area. The area reasonably expected to be served by the facility.__

State. The term "State" means each of the 50 States, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.

State Director. The term "State Director" means, with respect to a State, the Director of the Rural Development State Office.

State nonmetropolitan median household income. The median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population. (Added 11-17-04, SPECIAL PN.)

State strategic plan. A plan developed by each State for Rural Development initiatives and the type of assistance required. Plans shall identify goals, methods, and benchmarks for measuring success.

§§ 3570.54 - 3570.56 [Reserved]

§ 3570.57 Authorities, delegations, and redelegation.

The approval official is responsible for implementing the authorities contained in this subpart. Authorities may be redelegated to appropriate employees. Grant approval authorities are contained in RD Instruction 1901-A.

§§ 3570.58 - § 3570.60 [Reserved]

§ 3570.61 Eligibility for grant assistance.

The essential community facility must primarily serve rural areas, be located in a rural area, and the median household income of the population to be served by the proposed facility must be below the higher of the poverty line or the eligible percentage (60, 70, 80, or 90) of State nonmetropolitan median household income (see § 3570.63(b)).

- (a) Eligible applicant. An applicant must be a:
- (1) Public body, such as a municipality, county, district, authority, or other political subdivision of a State;
 - (2) Nonprofit corporation or association. Applicants other than utility-type applicants must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas. Ties may be evidenced by items such as:
 - (i) Association with, or controlled by, a local public body or bodies, or broadly based ownership and control by members of the community; or
 - (ii) Substantial public funding through taxes, revenue bonds, or other local government sources or substantial voluntary community funding, such as would be obtained through a community-wide funding campaign.
 - (3) Federally recognized Indian tribe in a rural area.
- (b) Eligible facilities. Essential community facilities must be:
- (1) Located in rural areas, except for utility-type services, such as telecommunications or hydroelectric, serving both rural and nonrural areas. In such cases, RHS funds may be used to finance only that portion serving rural areas, regardless of facility location.
 - (2) Necessary for orderly community development and consistent with the State Strategic Plan.
- (c) Credit elsewhere. The approval official must determine that the applicant is unable to finance the proposed project from its own resources, or through commercial credit at reasonable rates and terms, or other funding sources without grant assistance under this subpart. The applicant must certify to such status in writing.

§ 3570.61 (Con.)

(d) Economic feasibility. All projects financed under the provisions of this section must be based on satisfactory sources of revenues as outlined in § 1942.17(h) of RD Instruction 1942-A and § 1942.116 of RD Instruction 1942-C. The amount of Community Facilities grant assistance must be the minimum amount sufficient for feasibility purposes which will provide for facility operation and maintenance, reasonable reserves, and debt repayment. The applicant's available excess funds must be used to supplement eligible project costs.

(e) Legal authority and responsibility. Each applicant must have, or will obtain, prior to the grant award, the legal authority necessary to own, construct, operate, and maintain the proposed facility. The applicant shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be the applicant's even though the facility may be operated, maintained, or managed by a third party under contract or management agreement. If an applicant does not have the authority to borrow funds, but owns, operates, and maintains the facility, the applicant is eligible for CFG funds.

(f) Facilities for public use. All facilities shall be for the benefit of the public at large without discrimination as to race, color, religion, sex, national origin, disability, and marital or familial status.

§ 3570.62 Use of grant funds.

Grants of up to 75 percent of the cost of developing essential community facilities may be used to supplement financial assistance authorized in accordance with RD Instructions 1942-A, 1942-C, and 3575-A. Eligible CFG purposes are those listed in paragraphs (a), (b), (c), and (d) of this section. Funding for the balance of the project may consist of other CF financial assistance, applicant contributions, or loans and grants from other sources. CFGs may be used to:

(a) Construct, enlarge, extend, or otherwise improve essential community facilities providing essential service primarily to rural residents and rural businesses. Rural businesses include facilities such as educational and other publicly owned facilities.

(1) "Essential community facilities" are those public improvements requisite to the beneficial and orderly development of a community operated on a nonprofit basis including, but not limited to:

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- (i) Fire, rescue, and public safety;
- (ii) Health services;
- (iii) Community, social, or cultural services;
- (iv) Transportation facilities such as streets, roads, and bridges;
- (v) Hydroelectric generating facilities and related connecting systems and appurtenances, when not eligible for RUS financing;
- (vi) Telecommunications equipment as it relates to medical and educational telecommunications links;
- (vii) Supplemental and supporting structures for other rural electrification or telephone systems (including facilities such as headquarters and office buildings, storage facilities, and maintenance shops) when not eligible for RUS financing;
- (viii) Natural gas distribution systems; and
- (ix) Industrial park sites, but only to the extent of land acquisition and necessary site preparation, including access ways and utility extensions to and throughout the site. Funds may not be used in connection with industrial parks to finance on-site utility systems, or business and industrial buildings.

(2) "Otherwise improve" includes, but is not limited to, the following:

- (i) The purchase of major equipment (such as solid waste collection trucks, telecommunication equipment, necessary maintenance equipment, fire service equipment, X-ray machines) which will in themselves provide an essential service to rural residents; and
- (ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

(b) Construct or relocate public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

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(c) Relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(d) Pay the following expenses, but only when such expenses are a necessary part of a project to finance facilities authorized in paragraphs (a), (b), and (c) of this section:

(1) Reasonable fees and costs such as legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archeological surveys and possible salvage or other mitigation measures, planning, establishing or acquiring rights.

(2) Costs of acquiring interest in land; rights, such as water rights, leases, permits, and rights-of-way; and other evidence of land or water control necessary for development of the facility.

(3) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(4) Obligations for construction incurred before grant approval. Construction work should not be started and obligations for such work or materials should not be incurred before the grant is approved. However, if there are compelling reasons for proceeding with construction before grant approval, applicants may request the Agency's approval to pay such obligations. Such requests may be approved if the Agency determines that:

(i) Compelling reasons exist for incurring obligations before grant approval;

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

(iii) Contract documents have been approved by the Agency;

(iv) All environmental requirements applicable to RHS and the applicant have been met; and

(v) 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, material, or other liens that may attach to the security property. The Agency may authorize payment of such obligations at the time of grant closing. The Agency's authorization to pay such obligations, however, is on the condition that it is not committed to make the grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all grant approval requirements. The applicant's request and the Agency's authorization for paying such obligations shall be in writing. If construction is started without Agency approval, post approval in accordance with this section may be considered.

§ 3570.63 Grant limitations.

(a) Grant funds may not be used to:

- (1) Pay initial operating expenses or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses (unless a CF loan is part of the funding package);
- (2) Construct or repair electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale;
- (3) Refinance existing indebtedness;
- (4) Pay interest;
- (5) Pay for facilities located in nonrural areas, except as noted in § 3570.61(b) (1);
- (6) Pay any costs of a project when the median household income of the population to be served by the proposed facility is above the higher of the poverty line or eligible percent (60, 70, 80, or 90) of the State nonmetropolitan median household income (see § 3570.63(b));
- (7) Pay project costs when other loan funding for the project is not at reasonable rates and terms;
- (8) Pay an amount greater than 75 percent of the cost to develop the facility;

§ 3570.63(a) (Con.)

(9) Pay costs to construct facilities to be used for commercial rental unless it is a minor part of the total facility;

(10) Construct facilities primarily for the purpose of housing State, Federal, or quasi-Federal agencies; and

(11) Pay for any purposes restricted by § 1942.17(d)(2) of RD Instruction 1942-A.

(b) Grant assistance will be provided on a graduated scale with smaller communities with the lowest median household incomes being eligible for projects with a higher proportion of grant funds. Projects that do not qualify for certain eligibility criteria must drop to the next appropriate level. Grant assistance is limited to the following percentages of eligible project costs:

(1) 75 percent when the proposed project is:

(i) Located in a rural community having a population of 5,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 60 percent of the State nonmetropolitan median household income.

(2) 55 percent when the proposed project is:

(i) Located in a rural community having a population of 12,000 or less; and

(ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 70 percent of the State nonmetropolitan median household income.

(3) 35 percent when the proposed project is:

(i) Located in a rural community having a population of 20,000 or less; and

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§ 3570.63(b) (3) (Con.)

- (ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 80 percent of the State nonmetropolitan median household income.
- (4) 15 percent when the proposed project is:
 - (i) Located in a rural community having a population of 50,000 or less; and
 - (ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the State nonmetropolitan median household income.
- (5) 60 percent when the proposed project is:
 - (i) Located in a rural community having a population of 20,000 or less; and
 - (ii) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the State non-metropolitan median household income. The 60 percent grants are only available to communities impacted by a catastrophic natural disaster that has resulted in a loss of 60 percent of the community's population and is located in a county designated as a major disaster area by the President. (Added 03-19-08, SPECIAL PN.)
- (6) Grant assistance cannot exceed the higher of the applicable percentages contained in this section which the applicant is eligible to receive and may be further limited due to availability of funds or by the maximum grant assistance allowable determined in accordance with § 3570.66. (Revised and renumbered 03-19-08, SPECIAL PN.)

§ 3570.64 Applications determined ineligible.

If at any time an application is determined ineligible, the processing office will notify the applicant in writing of the reasons. The applicant will be advised that it may appeal the decision. (See 7 CFR part 11.)

§ 3570.65 Processing preapplications, applications, and completing grant dockets.

For combination proposals for loan and grant funds, only one preapplication package and one application package should be prepared and accordance with applicable portions of § 1942.2 of RD Instruction 1942-A, § 1942.104 of RD Instruction 1942-C, and § 3575.52 of RD Instruction 3575-A.

(a) Preapplications. Applicants will file an original and one copy of SF-424.2, "Application for Federal Assistance (For Construction)," with the appropriate Agency office. The preapplication and supporting documentation are used to determine applicant eligibility and priority for funding.

- (1) All preapplications shall be accompanied by:
 - (i) Evidence of applicant's legal existence and authority;
and
 - (ii) Appropriate clearinghouse agency comments;

(2) Upon receipt of a preapplication, the processing office will:

(i) Review and evaluate the preapplication and accompanying documents to determine the applicant's eligibility and priority for CFG funding;

(ii) Unless directed otherwise by the Regional Attorney, request an opinion from the Regional Attorney on the applicant's legal existence and authority to perform the proposed activity. For public bodies, the approval official may accept a letter from the applicant's legal representative in lieu of requesting a determination from the Regional Attorney; and

(iii) Respond to the applicant within 45 days using Form AD-622, "Notice of Preapplication Review Action," indicating the action taken on the preapplication.

(3) Applicants whose preapplications are found to be ineligible will be given notice by use of Form AD-622 and advised of their appeal rights under 7 CFR part 11.

(4) Applicants that are eligible for funding which have the necessary priority within the available funds will be provided forms and instructions for filing a complete application. Applicants should be advised against incurring obligations which cannot be fulfilled without Agency funds.

(b) Application processing. Upon notification on Form AD-622 that the applicant is eligible for CFG funding, the applicant will be provided forms and instructions for filing a complete application. The forms required for a complete application, including the following, will be submitted to the processing office by the applicant:

(1) Updated SF-424.2.

(2) Financial feasibility report, as appropriate.

(c) Application priority. The application package will be reviewed by the processing office for the amount of grant funds allowable and scored for selection priority. Applicants who are found eligible, but their applications cannot be funded with available grant assistance, should be advised by the State Director that grant assistance is not available and request whether they wish to have their application considered for other available RHS financial assistance.

RD Instruction 3570-B
§ 3570.65 (Con.)

(d) Meeting with applicant. When practical, Agency staff members should meet with prospective applicants before an application is filed to discuss eligibility requirements, and processing procedures. Throughout grant processing, Agency staff members should confer with applicant officials, as needed, to ensure that applicant officials understand the current status of the processing of their application, what steps or determinations are necessary, and what is required from them.

(e) Discontinuing the processing of the application. If the applicant fails to submit the application and related material by the date shown on Form AD-622 (normally 60 days from the date of Form AD-622), the Agency may discontinue consideration of the application.

(f) Grant dockets. Grant dockets will be prepared in accordance with this subpart and applicable portions of RD Instructions 1942-A and C and 3575-A. Grant dockets should include Forms RD 3570-1, "Project Selection Priorities," 3570-2, "Worksheet for Computing Maximum Grant Assistance," 3570-3, "Community Facilities Grant Agreement," and supporting documentation required in § 3570.71(b).

§ 3570.66 Determining the maximum grant assistance.

(a) Responsibility. State Directors are responsible for determining the applicant's eligibility for grant assistance. Form RD 3570-2 will be used to record the maximum allowable grant for each CF project and placed in the casefile for future reference.

(b) Maximum grant assistance. Grant assistance cannot exceed the lower of:

(1) Qualifying percentage of eligible project cost determined in accordance with § 3570.63(b);

(2) Minimum amount sufficient to provide for economic feasibility as determined in accordance with § 3570.61(d); or

(3) Either 50 percent of the annual State allocation or \$50,000, whichever is greater, unless an exception is made by the RHS Administrator in accordance with § 3570.90 of this subpart.

§ 3570.67 Project selection priorities.

Applications are scored on a priority basis. Form RD 3570-1 should be used to score each application to determine which applications have the highest priority. Points will be distributed as follows: (A copy of the score sheet, Form RD 3570-1, should be placed in the casefile for future reference.)

(a) Population priorities. The proposed project is located in a rural community having a population of:

- (1) 5,000 or less - 30 points;
- (2) Between 5,001 and 12,000, inclusive - 20 points;
- (3) Between 12,001 and 20,000, inclusive - 10 points; or
- (4) Between 20,001 and 50,000 inclusive, when applicable - 5 points.

(b) Income priorities. The median household income of the population to be served by the proposed project is below the higher of the poverty line or:

- (1) 60 percent of the State nonmetropolitan median household income - 30 points;
- (2) 70 percent of the State nonmetropolitan median household income - 20 points;
- (3) 80 percent of the State nonmetropolitan median household income - 10 points; or
- (4) 90 percent of the State nonmetropolitan median household income - 5 points.

(c) Other priorities. Points will be assigned for one or more of the following initiatives:

- (1) Project is consistent with, and is reflected in, the State Strategic Plan - 10 points;
- (2) Project is for health care - 10 points; or
- (3) Project is for public safety - 10 points.

(d) Discretionary.

(1) The State Director may assign up to 15 points to a project, in addition to those that may be scored under paragraphs (a) through (c) of this section. These points are to address unforeseen exigencies or emergencies, such as the loss of a community facility due to an accident or natural disaster or the loss of joint financing if Agency funds are not committed in a timely fashion. In addition, the points will award projects benefiting from the leveraging of funds in order to improve compatibility and coordination between the Agency and other agencies' selection systems and for those projects that are the most cost effective. A written justification must be prepared and placed in the project file each time the State Director assigns these points.

(2) In selecting projects for funding at the National Office level, additional points will be awarded based on the priority assigned to the project by the State Office. These points will be awarded in the manner shown below. Only the three highest priority projects for a State will be awarded points. The Administrator may assign up to 30 additional points to account for geographic distribution of funds, emergency conditions caused by economic problems, natural disasters, or leveraging of funds.

<u>Priority</u>	<u>Points</u>
1	5
2	3
3	1

§ 3570.68 Selection process.

Each request for grant assistance will be carefully scored and prioritized to determine which projects should be selected for further development and funding.

(a) Selection of applications for further processing. The approval official will, subject to paragraph (b) of this section, authorize grant assistance for those eligible preapplications with the highest priority score. When selecting projects, the following circumstances must be considered:

§ 3570.68(a) (Con.)

- (1) Scoring of project and scores of other applications on hand;
- (2) Funds available in the State allocation; and
- (3) If other CF financial assistance is needed for the project, the availability of other funding sources.

(b) Lower-scoring projects.

(1) In cases when preliminary cost estimates indicate that an eligible, high-scoring application is not feasible, or would require grant assistance exceeding 50 percent of a State's current annual allocation, or an amount greater than that remaining in the State's allocation, the approval official may instead select the next lower-scoring application for further processing provided the high-scoring applicant is notified of this action and given an opportunity to review the proposal and resubmit it prior to selection of the next application.

(2) If it is found that there is no effective way to reduce costs, the approval official, after consultation with the applicant, may request an additional allocation of funds from the National Office using RD Form Letter 3570-B-1. The request must be submitted during the fiscal year in which the obligation is anticipated. Such request will be considered along with all others on hand. A written justification must be prepared and placed in the project file.

§ 3570.69 Environmental review requirements, intergovernmental review, and public notification.

Grants awarded under this subpart, including grant-only awards, must be in compliance with the environmental review requirements in accordance with 7 CFR part 1970, to the intergovernmental review requirements of 7 CFR 3015, subpart V and RD Instruction 1970-I, "Intergovernmental Review," and the public information process in 7 CFR 1942.17(j) (9). (Revised 04-01-16, SPECIAL PN.)

§ 3570.70 Other considerations.

Each application must contain the comments, necessary certifications, and recommendations of appropriate Federal or State regulatory or other agency or institution having expertise in the planning, operation, and management of similar facilities as required by RD Instructions 1942-A, 1942-C, and 3575-A. Proposals for facilities financed in whole or in part with Agency funds will be coordinated with appropriate Federal, State, and local agencies as required by the following: (Revised 03-19-03, PN 357.)

RD Instruction 3570-B
§ 3570.70 (Con.)

(a) Grants under this subpart are subject to the provisions of § 1942.17(k) of RD Instruction 1942-A which include Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and the regulations issued thereto. Certain housing-related projects such as nursing homes, group homes, or assisted-living facilities must comply with the requirements of the Fair Housing Act.

(b) Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free workplace are applicable to CFG grants and grantees. See 2 CFR part 180, as implemented by USDA through 2 CFR part 417, and RD Instruction 1940-M for further guidance. (Revised 07-08-21, SPECIAL PN.)

(c) Restrictions on lobbying. Grantees must comply with the lobbying restrictions set forth in 2 CFR part 418 Subpart A. (Revised 07-08-21, SPECIAL PN.)

(d) Civil Rights Impact Analysis, RD Instruction 2006-P, and RD Form 2006-38, "Civil Rights Impact Analysis Certification."

§ 3570.71 Strategic economic and community development.

Applicants with projects that support the implementation of strategic community investment plans are encouraged to review and consider 7 CFR part 1980, subpart K, which contains provisions for providing priority to projects that support the implementation of strategic community investment plans on a Multi-jurisdictional and Multi-sectoral basis. (Revised 09-29-20, SPECIAL PN.)

§ 3570.72 Application review, approval, and obligation of funds.

(a) The application and other documents will be reviewed to determine whether the proposal complies with this subpart. The appropriate application review and approval procedures outlined in § 1942.5 of RD Instruction 1942-A, § 1942.108 of RD Instruction 1942-C, and §§ 3575.53 and 3575.57 of RD Instruction 3575-A will be followed.

(b) The Program Director must verify in a statement attached to the "automated community facility project summary" documentation supporting the following: (Revised 03-19-03, PN 357.)

§ 3570.72(b) (Con.)

- (1) Grant purpose, applicant eligibility, and eligible amount of grant assistance;
- (2) Availability of other credit as required in § 3750.61(c);
- (3) Amount of grant assistance being provided meets the requirements of § 3750.61(d);

§ 3570.72(b) (Con.)

(4) Value to be added, or service to be provided, as a result of the grant. Completed project must have sufficient value to justify the Agency investment. Grant funds invested in a project should be equal to, or less than, the fair market value as determined by the approval official. If the approval official requires an appraisal, such appraisal may be performed by the Agency or an independent appraiser;

(5) Adequate income to support the proposed facility is expected; and

(6) Grant funds are not being used only to pay initial operating expenses or annual recurring costs unless a CF loan is part of the funding package.

(c) All grants made under this subpart will be approved in accordance with this subpart and exhibit B of RD Instruction 1901-A.

(d) When a grant only (no RHS loan) is being made, only those applicable provisions of review and approval procedures outlined in § 1942.5 of RD Instruction 1942-A, § 1942.108 of RD Instruction 1942-C, and § 3575.53 and § 3575.57 of RD Instruction 3575-A will apply which are necessary to ensure that:

(1) The project is completed in accordance with approved plans and specifications;

(2) Grant funds are expended for authorized purposes; and

(3) The applicant can comply with the terms of the grant agreement.

(e) A copy of the executed Form RD 1940-1, "Request for Obligation of Funds," will be sent to the applicant on the obligation date. Form 1940-3, "Request for Obligation of Funds - Guaranteed Loan," will be used for the guaranteed portion. Form RD 3570-3 shall become a permanent part of Form RD 1940-1. The following paragraph(s), as applicable, shall be entered in the comment section of Forms RD 1940-1 or 1940-3, or as an attachment:

"The grantee understands the requirements for receipt of funds under the Community Facilities Grant program. The grantee assures and certifies that it is in compliance with all applicable laws, regulations, Executive Orders, and other applicable requirements, including those set forth in Form RD 3570-3, 7 CFR parts 3015, 3016, or 3019 as subsequently modified, and the letter of conditions. The following conditions may apply if CFG funds were used to purchase equipment or obtain or improve real property:

(1) "The grantee understands that any property acquired or improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 7 CFR parts 3015, 3016, or 3019 in effect at this time and as may be subsequently modified."

(2) "The grantee understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation in the project as provided by 7 CFR parts 3015, 3016, or 3019 in effect at this time and as may be subsequently modified."

(f) Each letter of conditions involving a grant will contain the following:

(1) Paragraphs which read:

(i) "Attached is a copy of Form RD 3570-3, 'Community Facilities Grant Agreement,' for your review. You will be required to execute this agreement before grant funds are advanced."

(ii) "The applicant contribution shall be considered as the first funds expended except (insert appropriate exceptions if funds from other sources make an exception necessary). After providing for all authorized costs, any remaining RHS project funds will be considered RHS grant funds and refunded to RHS. If the amount of unused RHS project funds exceeds the RHS grant, that part would be RHS loan funds."

(iii) "The grantee understands that any property acquired or improved with Federal grant funds may have use and disposition conditions which apply to the property as provided by 7 CFR parts 3015, 3016, or 3019 in effect at this time and as may be subsequently modified."

(iv) "The grantee understands that any sale or transfer of property is subject to the interest of the United States Government in the market value in proportion to its participation in the project as provided by 7 CFR parts 3015, 3016, or 3019 in effect at this time and as may be subsequently modified."

(2) Environmental mitigation measures and other related requirements.

§ 3570.72 (Con.)

(g) Funds will be obligated and the approval announcement made in accordance with the provisions of § 1942.5(d) of RD Instruction 1942-A.

(h) Upon signing the Letter of Conditions, a copy of the Letter of Conditions, the automated Community Facilities Project Summary, and Form RD 442-7 "Operating Budget," must be submitted to the National Office, Attention: Community Programs Division, not later than 15 days after grant funds have been obligated. (Revised 03-19-03, PN 357.)

(i) Update the Rural Community Facilities Tracking System as necessary.

(j) If the grant is not approved, the applicant will be notified in writing of the reasons for rejection. The notification to the applicant will state that a review of this decision by the Agency may be requested by the applicant under 7 CFR part 11.

§§ 3570.73 - 3570.74 [Reserved]

§ 3570.75 Grantee contracts.

The requirements of §§ 1942.4, 1942.17(1), 1942.18(c) of RD Instruction 1942-A, and §§ 1942.110 and 1942.126(d) of RD Instruction 1942-C will be applicable when agreements between grantees and third parties are involved.

§ 3570.76 Planning, bidding, contracting, and construction.

Planning, bidding, contracting, and construction will be handled in accordance with §§ 1942.9 and 1942.18 of RD Instruction 1942-A, and § 1942.126 of RD Instruction 1942-C.

§§ 3570.77- 3570.79 [Reserved]

§ 3570.80 Grant closing and delivery of funds.

(a) Form RD 3570-3 will be used as the grant agreement between the Agency and the grantee and will be signed by the grantee before grant funds are advanced. The approval official, or designee, shall sign the grant agreement on behalf of the Agency. The grant will be considered closed on the obligation date.

(b) Closing instructions for grant-only projects are administrative and under normal circumstances do not require closing instructions from the Regional Attorney.

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(c) Approval officials may require applicants to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal grant funds and that use and disposition conditions apply to the property as provided by 2 CFR part 200 as adopted by USDA through 2 CFR part 400 as subsequently modified. (Revised 07-08-21, SPECIAL PN.)

(d) For grants that supplement Agency loan funds, grants do not have to be closed at the time of loan closing. When grant funds will be disbursed before loan closing, as provided in paragraph (f) of this section, the grant will be closed not later than the delivery date of the first advance of grant funds, and after the grant agreement is executed.

(e) Agency grant funds will be disbursed and monitored in accordance with § 1942.17(p) of RD Instruction 1942-A and §§ 1942.123 and 1942.127 of RD Instruction 1942-C.

(f) Grant funds will not be disbursed until they are actually needed by the applicant and all borrower, Agency, or other funds are expended except when:

- (1) Interim financing of the total estimated amount of loan funds needed during construction is arranged,
- (2) All interim funds have been disbursed, and
- (3) Agency grant funds are needed before RHS or other loan can be closed.

(g) If grant funds are available from other agencies and are transferred for disbursement by RHS, these grant funds will be disbursed in accordance with the agreement governing such other agencies' participation in the project.

§ 3570.81 [Reserved]

§ 3570.82 Grant cancellation.

The State Director may prepare and execute Form RD 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert. If the docket has been forwarded to the Office of General Council, that office will be notified of the cancellation by a copy of Form RD 1940-10. The grantee's attorney and engineer may be provided a copy of the notification to the grantee.

§ 3570.83 Audits.

(a) An audit will be conducted in accordance with 2 CFR part 200 subpart F, as adopted by USDA through 2 CFR part 400, except as provided in this section. The audit requirements apply only to the years in which grant funds are expended. (Revised 07-08-21, SPECIAL PN.)

(b) Grantees who are not required to submit an audit report will, within 60 days following the end of the fiscal year in which any grant funds were expended, furnish RHS with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense report signed by an appropriate official of the organization or other documentation as determined appropriate by the approval official. Forms RD 442-2, "Statement of Budget, Income and Equity," and RD 442-3, "Balance Sheet," may be used for this purpose.

§ 3570.84 Grant servicing.

Grants will be serviced in accordance with RD Instructions 1951-E and 1951-O and 2 CFR part 200 as applicable. (Revised 07-08-21, SPECIAL PN.)

§ 3570.85 Programmatic changes.

The grantee shall obtain prior Agency approval for any change to the objectives of the approved project. (For construction projects, a material change in approved space utilization or functional layout shall be considered such a change.) Failure to obtain prior approval of changes to the approved project or budget may result in suspension, refund, or termination of grant funds.

§ 3570.86 Subsequent grants.

Subsequent grants will be processed in accordance with the requirements contained in this subpart.

§ 3570.87 Grant suspension, termination, and cancellation.

Grants may be suspended or terminated for cause or convenience in accordance with 2 CFR part 200 as adopted by USDA through 2 CFR part 400, as applicable. (Revised 07-08-21, SPECIAL PN.)

§ 3570.88 Management assistance.

Grant recipients will be supervised to the extent necessary to ensure that facilities are constructed in accordance with approved plans and specifications and to ensure that funds are expended for approved purposes.

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§ 3570.89 State supplements and guides.

This subpart may be supplemented by State supplements and guides in accordance with § 1942.16 of RD Instruction 1942-A.

§ 3570.90 Exception authority.

An RHS official may request, and the Administrator or designee may make, in individual cases, an exception to any requirement or provision of this subpart or address any omission of this subpart if the Administrator determines that application of the requirement or provision, or failure to take action in the case of an omission, would adversely affect the Government's interest. Requests for exceptions must be made in writing by the approval official. Requests must be supported with documentation to explain the adverse effect on the Government's interest, proposed alternative courses of action, and how the adverse effect will be eliminated or minimized if the exception is granted.

§ 3570.91 Regulations.

Grants under this part will be in accordance with 2 CFR parts 200 as adopted by USDA through 2 CFR part 400, as applicable, and any conflicts between those parts and this part will be resolved in favor of applicable 2 CFR part 200 as adopted by USDA through 2 CFR part 400. (Revised 07-08-21, SPECIAL PN.)

§ 3570.92 Grant Agreement.

Form RD 3570-3 is a Grant Agreement which contains the procedures for making and servicing grants made under this part. Any property acquired or improved with CFG funds may have use and disposition conditions which apply to the property as provided by 2 CFR part 200 as adopted by USDA through 2 CFR part 400 in effect at this time and as may be subsequently modified. (Revised 07-08-21, SPECIAL PN.)

(a) Real property. If CFG funds are used to acquire or improve real property and if the facility is ever sold or is no longer needed for any reason, the Agency may have an interest in the market value of the property in proportion to the Agency's participation in the project.

(b) Equipment. If CFG funds are used to purchase equipment and when the equipment is no longer needed for any reason, certain disposition instructions apply.

§ 3570.92(b) (Con.)

(1) Equipment with a current fair market value of less than \$5,000 may be sold, retained or otherwise disposed of with no further obligation to the Agency.

(2) Equipment with a current fair market value of \$5,000 or more may be retained or sold. The Agency shall have a right to an amount calculated by multiplying the current market value or proceeds from the sale by the Federal share of the equipment.

§ 3570.93 Regional Commission grants.

(a) Grants are sometimes made by Federal Regional Commissions designated under Title V of the Public Works and Economic Development Act of 1965 for projects eligible for RHS assistance. RHS has agreed to administer such funds in a manner similar to administering RHS assistance.

(b) The transfer of funds from a Federal Regional Commission to RHS will be based on specific applications determined to be eligible for an authorized purpose in accordance with the requirements of RHS and the Regional Commission.

(c) The Appalachian Regional Commission (ARC) is authorized under the Appalachian Regional Development Act of 1965 to serve the Appalachian region. ARC grants are handled in accordance with the ARC Agreement which applies to all ARC grants administered by Rural Development. Therefore, a separate Project Management Agreement between RHS and ARC is not needed for each ARC grant.

(d) Grants by other Federal Regional Commissions are handled in accordance with a separate Project Management Agreement between the respective Regional Commission and RHS for each Commission grant, or class of grants, administered by RHS (Guide 1 of RD Instruction 1942-G). The agreement should be prepared by the RHS State Director and the appropriate Commission official when the State Director receives a notice from the Commission of the amount of the grant to be made.

(e) When the Agency has funds in the project, no charge will be made for administering Federal Regional Commission grant funds.

(f) When RHS has no loan or grant funds in the project, an administrative charge will be made pursuant to the Economy Act, as amended (31 U.S.C. § 1535). A previously agreed fee will be paid RHS by the Federal Regional Commission.

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§§ 3570.94 - 3570.99 [Reserved]

§ 3570.100 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575-0173. You are not required to respond to this collection of information unless it displays a valid OMB control number.