

## **CHAPTER 12: FARM LABOR HOUSING LOANS AND GRANTS**

### **12.1 INTRODUCTION**

This chapter describes the loan and grant origination process for Farm Labor Housing projects. While the origination process for loans and grants to these projects has many similarities to the process for Section 515 loans, there are several important differences. This chapter will highlight the additional requirements and procedures that are specific to the process of making Farm Labor Housing loans and grants.

When processing Farm Labor Housing loan or grant applications, Loan Originators will follow the basic procedures presented in Chapters 4 and 5. While these chapters focus on the procedures for processing Section 515 loan applications, these procedures also apply to farm labor housing. This chapter supplements this guidance by describing how these procedures apply to farm labor housing.

Section 1 discusses the loan and grant origination process for Off-Farm Labor Housing projects, including the selection of applications through a Notice of Funding Availability (NOFA) process, the awarding of funding on a ranking basis, and the processing of applications through State Offices.

Section 2 details the procedures for processing applications for On-Farm Labor Housing loans, including the award of funds through the National Office on a first-come, first-served basis, and the review and processing of applications by the Field Office.

### **SECTION 1: OFF-FARM LABOR HOUSING LOANS AND GRANTS**

#### **12.2 OVERVIEW**

Off-Farm Labor Housing projects are designed to increase the supply of affordable housing for farm laborers regardless of the farm where they work. Loans, grants, or both may finance these projects. Developers of these projects may apply for Agency rental assistance contracts. In addition, under Section 516(i) of the Housing Act of 1949 (42 U.S.C. 1486(i)), the Agency may award technical assistance grants to eligible private and public nonprofit agencies to encourage the development of farm labor housing.

Off-farm labor housing is normally developed by broad-based nonprofit organizations or public bodies that see a need for labor housing as a specific market area. It is not restricted by the designated places requirement that applies to Section 515 loans and may be constructed in either urban or rural areas so long as the applicant can justify the need. Each year the Agency establishes a specific allocation of funding for the development of off-farm labor housing.

Announcement of this allocation is published annually through a NOFA. Interested applicants may then submit project applications to their Field Office to seek funding. Just like Section 515

projects, applications are selected for further processing, and later, applicants must submit final applications.

For Section 514 and 516 programs, farm labor is a service or services in connection with cultivating the soil or raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in the unprocessed stage, without respect to the source of employment (but not self-employed), any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity in its unprocessed stage. For a more complete description of farm labor, see **Attachment 12-A**.

### **12.3 APPLICANT ELIGIBILITY FOR OFF-FARM LABOR HOUSING** *[7 CFR 3560.555]*

#### **A. Eligible Applicants for Farm Labor Housing Loans**

To be eligible for a Section 514 Farm Labor Housing loan, the applicant must meet the eligibility requirements as described in Section 3 of Chapter 4, and the requirements established under 7 CFR 3560.555. Applicants must be one of the following to be eligible:

- A broad-based nonprofit organization. A nonprofit entity must meet the requirements for nonprofit organizations established in Section 3 of Chapter 4, and have a membership that reflects a variety of interests of the area where the housing will be located.
- A limited partnership with a nonprofit general partner. This type of limited partnership must meet the requirements established under 7 CFR 3560.55(d).
- A nonprofit organization of farmworkers. A nonprofit organization of farmworkers must have representation on the Board of Directors from the area where the housing is located. Directors may be elected who are not members of the organization but are experienced in such fields as real estate management, finance, or related businesses provided member directors represent a majority of the board.
- A Federally recognized Indian tribe.
- An agency or political subdivision of State or local government.

#### **B. Eligible Applicants for Farm Labor Housing Grants**

To be eligible for a Section 516 Farm Labor Housing grant, the applicant must also meet the following requirements:

- A broad-based nonprofit organization. A local nonprofit entity must meet the requirements for nonprofit organizations established in Section 3 of Chapter 4, and have a membership that reflects a variety of interests of the area where the project will be located.
- A nonprofit organization of farmworkers. A nonprofit organization of farmworkers must have representation on the Board of Directors from the area where the housing is located. If member directors represent a majority of the Board, directors who are not members of the organization may be elected, but they must be experienced in such fields as real estate management, finance, or related businesses.
- A Federally recognized Indian tribe.
- An agency or political subdivision of State or local government.

### ***1. Maximum Grant Amount***

The maximum grant amount is limited to no more than 90 percent of the total development cost (TDC) of the project or that portion of the TDC that exceeds the sum of any amount provided by the applicant from their own resources plus the amount of any loans approved for the applicant, considering the capacity of the applicant to amortize the loan. The remaining portion must be available at the time of loan closing and may come from a variety of sources, including an Off-Farm Labor Housing loan. If a Farm Labor Housing loan is needed, the applicant will file an application for a combination loan and grant at the same time.

### ***2. Documented Need for the Project***

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

## **12.4 TECHNICAL ASSISTANCE GRANTS**

The Agency may award technical assistance grants to eligible private and public nonprofit agencies. These grant recipients will, in turn, assist other organizations to obtain loans and grants for the construction of farm labor housing.

Technical assistance services may not be funded under both this paragraph and under 7 CFR 3560.53(o). In addition, technical assistance will not be funded by the Agency when an identity-of-interest (IOI) exists between the technical assistance provider and the loan or grant applicant.

## **12.5 PROJECT ELIGIBILITY**

For a project application to be eligible to receive a loan or grant under the Off-Farm Labor Housing program, it must meet specific project eligibility requirements. These requirements include site requirements and design requirements.

### **A. Site Requirements [7 CFR 3560.558]**

Off-Farm Labor Housing projects must comply with the site requirements developed in 7 CFR 3560.558 with the exception of the requirement that the property be located in a designated place. Farm labor housing may be developed in both urban and rural areas.

Off-Farm Labor Housing project applications will not be considered for funding when:

- RHS has selected another Farm Labor Housing loan/grant request in the same market area for further processing;
- A previously approved Agency, U.S. Department of Housing and Urban Development (HUD), or other assisted Multi-Family Housing project or similar project in the same market area in which farmworkers are eligible tenants has not been completed, has not reached its projected occupancy level, or is experiencing high vacancy levels;
- A Special Note Rent (SNR) or similar servicing tool in the same market area is pending or in effect; or
- The need in the market area is for additional rental assistance or similar subsidy, not for additional housing units.

### **B. Design Requirements [7 CFR 3560.559]**

Applications for Off-Farm Labor Housing loans and grants must meet the design requirements established in 7 CFR 3560.559.

#### ***1. Interior/Exterior Washing Facilities***

Applications should consider incorporating interior and exterior washing facilities for tenants, as necessary to protect the asset and the tenants from excess dirt and chemical exposure. Such facilities might include a boot washing station, hose bibs, or bathroom within the dwelling unit that is accessible to the dwelling entrance, depending on the type of work that farmworkers in the local area perform. Applicants should include documentation of the type of work that proposed tenant laborers will perform, as well as what outdoor washing facilities will accommodate the project's needs as part of the application.

## ***2. Seasonal Labor Housing***

Seasonal farm labor housing that will be occupied for 8 months or less per year by migrant farmworkers while they are away from their residence may be constructed in accordance with RD Instruction 1924-A, Exhibit I, as opposed to RD Instruction 1924-C. The application should clearly document the standards under which the applicant proposes to develop the housing.

### **12.6 LOAN AND GRANT FUND USES**

#### **A. Eligible Uses of Funds [7 CFR 3560.53(k) and (o)]**

In addition to the eligible uses of loan funds listed in **Attachment 4-B**, loan and grant funds may also be used to provide:

- Reimbursement for technical assistance received from another nonprofit organization, including legal, technical, and professional fees of up to 4 percent of TDC to assist in the organization's formation and in the development and packaging of a loan application;
- Initial operating expenses of up to 2 percent of the development cost for any type of applicant except an individual farm owner, family farm corporation or partnership, an association of farmers, or a limited partnership;
- Tenant-related facilities that the applicant can document are necessary, such as daycare facilities and computer learning centers; and
- Facilities for seasonal or temporary use with appropriate furnishings and equipment.

#### **B. Prohibited Uses of Funds [7 CFR 3560.554]**

Loan and grant funds may not be used for any purpose prohibited by 7 CFR 3560.554, the same prohibitions that apply to Section 515 loans, except that Section 514/516 funds may be used to finance the development of housing to serve primarily temporary and transient residents (see **Attachment 4-C**).

### **12.7 SUBMISSION AND PROCESSING OF INITIAL APPLICATIONS**

#### **A. Content of Initial Applications**

Initial applications for off-farm labor housing have the same basic submission requirements as Section 515 project applications (see Exhibits 4-6 and 4-7).

## **B. Completeness Review**

Loan Originators must review initial applications for completeness in accordance with the instructions in Section 2 of Chapter 4.

## **C. Eligibility Review**

In reviewing an application for eligibility, a loan originator should ensure that the request for funds is in compliance with Paragraphs 12.3 through 12.6, and in accordance with Chapter 4. Loan Originators need to remember that the designated places requirements do not apply to farm labor housing, and applications should not be removed from processing because of failure to be located in a designated place.

## **D. Scoring and Ranking of Initial Applications**

State Offices will then score and rank initial applications for Farm Labor Housing loans and grants in accordance with the requirements of the NOFA and the procedures described in Chapter 4, Section 2. A Loan Review Committee must review the scoring and the ranking of the applications prior to forwarding them to the National Office for selection for funding.

## **E. National Ranking and Selection of Initial Applications**

### ***1. Ranking of Initial Applications on the National Level***

The Agency will review, score, and rank loan and grant applications according to criteria periodically published in the NOFA.

Once the ranking and scoring process has been completed in each State, State Offices must forward all eligible applications to the National Office for selection through the national funding process.

Each year the National Office will notify State Offices of the deadline for submitting applications for consideration in the national funding selection process.

### ***2. Selection of Initial Applications by the National Office***

Off-Farm Labor Housing applications will be ranked on a national basis according to the scoring awarded to each application on the local level. Funds will then be awarded to the top-scoring applications.

If, after award, an applicant chooses not to proceed to the next stage or is not successful in completing the project, then the next highest-ranked application will be eligible to use the funds reserved for the unsuccessful project.

## **F. Notification of Initial Applications Selection**

The National Office will inform each State Office of the initial applications that have been selected from the State for funding. The State Office, in turn, will notify the applicants selected by the National Office and invite them to submit a final application in accordance with Chapter 4. All applicants should receive one of three types of letters. Any letter that the Agency sends for any reason other than to invite an application, must include the standard ECOA notice, a copy of which is provided in **Attachment 1-A**.

### ***1. Handbook Letter 106 (3560), Notice of Pre-application Review Action***

This letter would go to all applicants who were selected for further processing in the national competition.

### ***2. Handbook Letter 107 (3560), A Letter Informing the Applicant of the Lack of Funds***

This letter is sent to all applicants who were not awarded funds in the national competition. The letter should advise the applicant that if one of the selected applications does not proceed to the next stage, the applicant's application could be funded.

### ***3. Handbook Letter 108 (3560), Letter Denying Funding due to Ineligibility***

This letter would be sent to any applicant who was not considered for funding because of ineligibility. Ineligibility would normally be determined before the application is submitted for funding consideration either on the State or national level.

## **12.8 FURTHER PROCESSING OF INITIAL APPLICATIONS**

For the Off-Farm Labor Housing program, the further processing of initial applications should be performed in accordance with Chapters 4 and 5. However, because there are additional requirements for Off-Farm Labor Housing projects, some procedures for reviewing initial applications are different. These procedures are covered below.

### **A. Project Eligibility**

When reviewing initial applications for project eligibility, Loan Originators must address the following considerations.

- Inform applicants that the proposed project does not have to be located in a rural location or meet the designated places criteria;
- Confirm that the applicant adequately provided for exterior washing facilities in the project budget; and
- Check that the applicant adequately addressed whether the project will be used year-round or seasonally and to what standards the housing will be built.

## **B. Applicant Eligibility**

When determining applicant eligibility, the Loan Originator must consider the following items:

- The applicant must qualify as one of the five eligible entities listed in Paragraph 12.3.
- If applicants are also requesting grant funding, they must have demonstrated or documented that:
  - ◇ The organization is a permanent one with the purpose of providing low-income housing for farmworkers;
  - ◇ The source of the balance of the total development costs for the project that would not be paid for with grant funds; and
  - ◇ The pressing need for the project and that such a need cannot be fulfilled without grant funding.

## **C. Project Feasibility**

The applicant must demonstrate in the initial application a need for affordable farm labor housing in the market area as described in Paragraph 4.18. Applicants should provide the following analysis with their initial application to justify project feasibility:

- Current and projected future levels of agricultural activity in the market area; and
- Current and projected future levels of need for farmworkers that meets the program eligibility requirements. The market study must exclude those that are not eligible (e.g., farmworkers who are not citizens of the United States or legally admitted for permanent residence).

## **D. Calculation of the Allowable Grant Amount**

The State Office will calculate the allowable grant amount, using an automated cash flow analysis tool and project economic data furnished by the applicant. Final loan/grant levels will be determined by assessing area rents, operating and maintenance expenses, rental assistance availability, the resources of the applicant, and the ability of the applicant to repay the loan.

# **12.9 SUBMISSION AND PROCESSING OF FINAL APPLICATIONS**

## **A. Security Value and Borrower Contributions**

Loan Originators should follow the processing procedures outlined in Chapter 5 for Off-Farm Labor Housing projects. A key exception to consider in processing the final loan applications is that the amount of any grant may not exceed the lesser of 90 percent of the TDC or that portion of the TDC that exceeds the sum of any amount provided by

the applicant from their own resources plus the amount of any loans approved for the applicant, considering the capacity of the applicant to amortize the loan.

### ***1. Determining the Security Value of the Loan***

In determining the security value of the Farm Labor Housing project, the Loan Originator must take into account the total amount of both the loan and the grant proposed for the project.

### ***2. Determining the Contribution of the Borrower***

- **For projects requesting only a Section 514 loan.** The equity contribution of the borrower will be determined in accordance with Section 3 of Chapter 5.
- **For projects requesting grant funds.** The borrower must comply with 7 CFR 3560.555(b) and ensure that the difference between the grant amount and the TDC will be covered either from the borrower's own or other resources. This variance could be fulfilled in the form of a Section 514 Farm Labor Housing loan.

### ***3. Setting Loan and Grant Rates and Terms [7 CFR 3560.566]***

For Off-Farm Labor Housing projects, the interest rate is set at 1 percent. The term of any loan is 33 years. The term of any grant is for as long as there is a need for the housing.

### **B. Establishing a Profit Base on Initial Investment Return**

In the case of a limited partnership using tax credits with an equity position, a return is permissible in accordance with Paragraph 5.12 A through D.

## **12.10 LOAN/GRANT APPROVAL AND CLOSING [7 CFR 3560.571]**

Off-Farm Labor Housing loans and grants will be approved and closed in accordance with the procedures in Chapters 5 and 8. However, the following additional loan closing documents will be required.

### **A. Loan Resolution or Loan Agreement**

An organization must have its Board of Directors adopt an Agency-approved loan resolution and furnish a certified copy for the loan docket before loan approval. All other loan applicants will execute an Agency-approved loan agreement in accordance with Chapter 5.

### **B. Labor Housing Grant Agreement and Resolution**

A Farm Labor Housing grant agreement, prepared and authorized by the Agency, must be dated and executed by the applicant on the date of grant closing. The form of resolution to be adopted by the applicant must contain policy and procedural

requirements that should be read and be fully understood by the applicant's Board of Directors and officers. Included in the resolution will be provisions authorizing the Agency to prescribe requirements regarding the operation of the housing and related facilities and other provisions including the following:

- The rents charged tenants must not exceed such amounts as are approved by the Agency after considering the income of the occupants and the necessary costs of operation, debt service, and adequate maintenance of the housing;
- The housing will be maintained at all times in a safe and sanitary condition in accordance with standards prescribed by State and local law, and as required by the Agency; and
- In granting occupancy of the housing, an absolute priority will be given at all times to domestic farm labor.

The obligations incurred by the applicant, as a condition of accepting the grant, will be in accordance with the Farm Labor Housing grant agreement.

### **C. Restrictive-Use Provisions**

All Farm Labor Housing loans made pursuant to a contract entered into on or after the effective date of 7 CFR part 3560 are subject to the restrictive-use provisions contained in 7 CFR 3560.72(a)(2). All other Off-Farm Labor Housing loans are subject to the restrictive-use provisions contained in their loan documents and as outlined in Chapter 15 of HB-3-3560.

## **12.11 CONSTRUCTION FINANCING**

The requirements established in 7 CFR 3560.71 apply to all Farm Labor Housing loans and grants. In addition, the following requirements apply:

- Equity contributions being made by a borrower or grantee must be contributed and disbursed prior to any disbursement of interim loan funds and any loan or grant funds from the Agency; and
- If the Agency is providing both loan and grant funds, loan funds must be fully released and expended prior to the release of grant funds by the Agency.

Construction financed with the assistance of a Section 516 grant will be subject to the provisions of the Davis-Bacon Act (40 U.S.C. 276a – 276a-5 and 276a-7), and the implementing regulations published by the U.S. Department of Labor in 29 CFR Parts 1, 3, and 5.

## **12.12 MONITORING CONSTRUCTION AND PROJECT LEASE-UP**

Construction monitoring and project lease-up oversight will be conducted in accordance with Chapters 8 and 9.

## SECTION 2: ON-FARM LABOR HOUSING LOANS

### 12.13 OVERVIEW

On-Farm Labor Housing projects are designed to increase the supply of affordable housing for farmworkers and are specific to the farm where those laborers work. Loans funds are provided to farmowners and associations of farmers who wish to provide housing to the farmworkers they employ.

On-farm labor housing is also not restricted by the designated places requirements and may be constructed in either urban or rural areas, on or off the farm, so long as the applicant can justify the need. Each year the Agency establishes a specific allocation of funding for the development of on-farm labor housing. Field Offices are notified of this allocation through RD Instruction 1940-L, which is published in the *Federal Register*. Interested applicants may then submit information to their Field Office to determine their likelihood for funding. Applications are funded on a first-come, first-served basis from National Office funds.

### 12.14 APPLICANT ELIGIBILITY [7 CFR 3560.605]

To be eligible for a Section 514 Farm Labor Housing loan, the applicant must meet the same eligibility requirements as Section 515 applicants and the additional requirements established under 7 CFR 3560.605 and described below. In addition to the applicant eligibility requirements described in Section 3 of Chapter 4, applicants must also meet the following requirements to be eligible.

- The borrower entity must be a farmowner, a family farm partnership, a family farm corporation, or an association of farmers whose farming operations demonstrate a need for farm labor housing;
- The borrower entity must be engaged in agricultural or aquacultural farming operations and must own the housing and operate it on a nonprofit basis;
- The borrower entity must intend to use the housing for labor employed in its farming operations or the farming operations of its members;
- The applicant must certify that the farmworkers for whom the housing is intended are currently involved in agricultural or aquacultural farming operations; and
- The applicant must, as determined by the Agency, be unable to provide the necessary housing from the applicant's own resources and be unable to obtain credit from any other source upon terms and conditions that the applicant could reasonably be expected to fulfill.
  - ◇ If the applicant is an association of farmers or family farm corporation or partnership, the individual members, individually and jointly, must be unable to provide the necessary housing by utilizing their own resources and be unable, by

pledging their personal liability, to obtain other credit that would enable them to provide housing for farmworkers at rental rates they can afford to pay.

- ◇ The individual resources of family farm corporation or partnership members with less than a 10 percent corporate or partnership interest should not be considered when determining if the applicant can obtain credit elsewhere.

The Agency might make an exception to the requirement that an applicant be unable to obtain the necessary credit elsewhere [7 CFR 3560.55(a)(2)] when all of the following conditions exist:

- There is a need in the area for housing for migrant farmworkers, and the applicant will provide such housing; and
- There are no qualified State or political subdivisions or public or private nonprofit organizations currently available or likely to become available within a reasonable period of time who are willing and able to provide the housing.

### **12.15 PROJECT ELIGIBILITY [7 CFR 3560.605]**

For an application to be eligible to receive a loan under the On-Farm Labor Housing program, it must meet specific project eligibility requirements. These requirements are designed not only to meet the immediate need of specific farmers to provide housing for their laborers, but to ensure that in the event the market shifts or the farmer no longer desires to remain in the farming industry, this housing may be used for other eligible populations. The Agency has established the following site and design requirements for On-Farm Labor Housing projects:

- Housing that is being designed for seasonal occupancy, whether single-family or multi-family type housing, may be located on the farm as long as it is not located near farm service buildings. Seasonal housing may be constructed in accordance with Exhibit I of RD Instruction 1924-A. If constructed in accordance with Exhibit I, the housing must be suitable to allow for conversion to full-year occupancy if the need for migrant farmworkers in the area declines.
- Single-family type housing is defined as an individual or a group of individual single-family detached dwelling units. All sites shall be planned and constructed in accordance with RD Instruction 1924-C.
- On-Farm Labor Housing sites must provide access to road frontage, when feasible.
- Manufactured housing is not required to meet the contiguous lot requirement established in 7 CFR 3560.70. Manufactured housing may be proposed as a single unit.
- On-farm labor housing that consists of buildings with less than three units is not subject to the requirement that 5 percent of the units be constructed as fully accessible

units, as described in 7 CFR 3560.60(d). This does not, however, eliminate any other accessibility requirements.

## **12.16 LOAN FUND USES**

### **A. Eligible Uses of Funds [7 CFR 3560.603]**

In addition to the eligible uses of loan funds listed in **Attachment 4-B**, loan funds may also be used to provide facilities for seasonal or temporary use with appropriate furnishings and equipment.

### **B. Prohibited Uses of Funds [7 CFR 3560.604]**

Loan funds may not be used for any purpose prohibited by 7 CFR 3560.554. These are the same prohibitions that apply to Section 515 loans, except that Section 514 funds may be used to finance the development of housing to serve primarily temporary and transient residents (see **Attachment 4-C**).

For On-Farm Labor Housing projects, loan funds may not be used to provide housing for the applicant or members of the immediate family of the applicant when the applicant is an individual farmowner, family farm corporation or partnership, or an association of farmers. Immediate family in this instance includes mother, father, brothers, sisters, sons, and daughters of applicant(s) and spouse.

## **12.17 PRIORITIES FOR FUNDING**

There are no priorities for funding for On-Farm Labor Housing applications. Applications are funded on a first-come, first-served basis.

## **12.18 SUBMISSION AND PROCESSING OF INITIAL APPLICATIONS**

For the On-Farm Labor Housing program, the submission and processing of initial applications should be performed in accordance with Chapter 4. There are several areas where additional information should be considered prior to requesting the submission of a final application for processing.

### **A. Project Eligibility**

When reviewing initial applications for project eligibility, Loan Originators must address the following considerations:

- The proposed project does not have to be located in a rural location or meet the designated places criteria;
- The applicant adequately provided for interior and exterior washing facilities in the project budget; and

- The applicant adequately addressed whether the project will be used year round or seasonally and to what standards the housing will be built.

### **B. Applicant Eligibility**

When determining applicant eligibility, the Loan Originator must consider the following items.

- The applicant must qualify as an eligible entity as outlined in Paragraph 12.3.
- If applicants are also requesting a waiver of the “necessary credit elsewhere test” [7 CFR 3560.55(a)(2)], proper documentation must be provided. The interest rate of such loans is in accordance with 7 CFR part 1810, subpart A (RD Instruction 440.1).

### **C. Project Feasibility**

The applicant must demonstrate a need for on-farm labor housing in the market area. This can be done by documenting their employees’ need for housing.

## **12.19 SUBMISSION AND PROCESSING OF FINAL APPLICATIONS**

Loan Originators should follow the processing procedures outlined in Chapter 5, for On-Farm Labor Housing projects. Some key exceptions to consider in processing the final loan applications follow:

### **A. Determining Loan Limits, Rates, and Terms [7 CFR 3560.612 and 616]**

#### ***1. Maximum Loan Amount***

The amount of the loan may not exceed 100 percent of the allowable TDC of on-farm labor housing as described in Paragraph 12.16 or the value of the security for the loan as determined by an appraisal, less the unpaid principal balance, plus past due interest of any prior liens that will or will likely exist against the security after the loan is closed.

#### ***2. Determining the Security Value of the Loan***

The security value of the loan will be determined in accordance with Section 3 of Chapter 5.

#### ***3. Setting Loan Rates and Terms***

For On-Farm Labor Housing projects, the effective interest rate will be 1 percent, except for those borrowers determined eligible under 7 CFR 3560.67. In the latter situation, the interest rate will be calculated in accordance with RD Instruction 440.1. The amortization period for each loan will be scheduled on an annual basis, but the maximum term for the On-Farm Labor Housing loan will not exceed 33 years.

## **B. Establishing a Profit Base on Initial Investment Return**

For On-Farm Labor Housing loans, no profit base will be permitted as a return on a borrower's investment. All on-farm labor housing must be operated in a nonprofit manner with no return to the borrower.

### **12.20 LOAN APPROVAL AND CLOSING [7 CFR 3560.621]**

Loans will be closed in accordance with Chapters 5 and 8. However, for On-Farm Labor Housing loans, the following additional loan closing documents are required:

#### **A. Loan Resolution or Loan Agreement [7 CFR 3560.571]**

The organization must have its Board of Directors adopt an Agency-approved loan resolution and furnish a certified copy for the loan docket before loan approval. All other loan applicants will execute an Agency-approved loan agreement in accordance with Chapter 5.

#### **B. Security Documents [7 CFR 3560.610]**

Loan Originators must confirm that the following documents have been properly prepared for the project:

- When feasible, the On-Farm Labor Housing will be located on a tract of land that is surveyed such that, for security purposes, it is considered separate and distinct from the farm. The security for the loan must have adequate value to protect the Federal Government's interest. The Agency will seek a first or parity lien position on Agency-financed property in all instances, however, the Agency may accept a junior lien position if the Federal Government's interests are adequately secured.
- If necessary to provide adequate security for the loan, the Agency may require that any household furnishings purchased with loan funds also be secured.
- Personal liability will be required of the members of an association of farmers.

### **12.21 CONSTRUCTION MONITORING**

Construction monitoring oversight will be conducted in accordance with Chapter 9.

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## ATTACHMENT 12-A

### CLARIFYING THE DEFINITION OF “FARM LABOR”

#### Background

The purpose of the Rural Housing Service's (RHS) Farm Labor Housing (FLH) program is to provide decent, safe, and sanitary housing for “domestic farm labor.” The Housing Act of 1949, which authorizes the FLH program, provides the following definition of *domestic farm labor*:

“...any person (and the family of such person) who receives a substantial portion of his or her income from **primary production of agricultural or aquacultural commodities or the handling of such commodities in the unprocessed stage**, without respect to the source of employment, except that (A) such person shall be a citizen of the United States or a person legally admitted for permanent residence; (B) such term includes any person (and *the family of such person*) who is retired or disabled, but who was domestic farm labor at the time of retirement or becoming disabled;...”

This statutory definition requires that one of two requirements be met concerning a person's income. They must receive a substantial portion of their income from either the “primary production of agricultural or aquacultural commodities” or from “the handling of such commodities in the unprocessed stage.” Further guidance is provided by 7 CFR 3560.11. It defines “farm labor” as follows:

*“Farm labor. Services in connection with cultivating the soil, raising or harvesting any agriculture or aquaculture commodity; or in catching, netting, handling, planting, drying, packing, grading, storing, or preserving in the unprocessed stage, without respect to the source of employment (but not self-employed), any agriculture or aquaculture commodity; or delivering to storage, market, or a carrier for transportation to market or to processing any agricultural or aquacultural commodity in its unprocessed stage.”*

The difficulty with these definitions is that they require determinations to be made concerning which activities are considered to be the handling of commodities in the unprocessed stage and which activities go beyond that and, therefore, would not be considered as farm labor.

The definition of “farm labor” contains the following three components and all 3 must be met for the activities to be considered as farm labor: All of the components of the definition focus on the nature of the work being done. There is no restriction on who employs the farm laborer. Thus, a farm laborer may be working for a farmer, a farm labor contractor, a custom agricultural service provider, a large vertically integrated corporation, etc. The nature of the worker’s job is what makes him or her a farm laborer and not necessarily the nature of the employer.

1. “Services in connection with...”
2. One of three specific classes of work:

- a. “cultivating the soil, raising or harvesting”; or
  - b. “catching, netting, handling, planting, drying, packing, grading, storing, or preserving in its unmanufactured state”; or
  - c. “delivering to storage, market, or a carrier for transportation to market or to processing”
3. “Any agricultural or aquacultural commodity.”

It also needs to be underscored that the definition does not restrict farm labor to work done on a farm. Paragraphs 2.b. and 2.c. expand it to include work in handling and transporting the commodity beyond the field’s edge to market or to processing. There are restrictions on the types of post-harvest work included, however. Paragraph 1 limits the worker to “services.” By this, it is understood that farm labor is not employed in the manufacturing of products – i.e., the conversion of the raw agricultural commodities into a processed product. Paragraph 3 further confirms this, by limiting the work to services relating directly to an agricultural “commodity.” Finally, paragraph 2.b. of the definition clearly encompasses only types of labor on a commodity that leave the commodity “in its unmanufactured state.”

A good way to understand the definition is to bear in mind the sequence of activities in the agricultural economy. Fundamentally, it consists of five stages:

1. The raising of the commodity on the farm;
2. The commodity’s transportation after harvest;
3. The commodity’s post-harvest handling, storage, and packaging;
4. The delivery to market; and, finally,
5. The market itself – which may either be a wholesale or retail market (if the commodity is a fresh market commodity) or a food processing manufacturer (if the commodity is a processing commodity).

Each of the first 4 stages meet the regulatory definition of “farm labor” but the fifth stage does not.

### **An Important Distinction – Post-Harvest Handling vs. Manufacturing**

There has been some confusion over whether certain jobs are in Stage 3 (and therefore eligible) or in Stage 5 (and therefore ineligible) because of the mention of “drying, packing, grading, storing, or preserving” in paragraph 2.b. Although these types of activities do occur in both stages, the definition does not include the processing of commodities into products that occurs in Stage 5. Rather, paragraphs 1, 2.b., and 3 plainly restrict farm labor from being involved in the “manufacturing” of a product. The type of activities included in paragraph 2.b. are post-harvest, pre-market handling and preservation activities only – wherein the commodity is sorted and then safely held for subsequent delivery to processing or market.

To distinguish between post-harvest handling and manufacturing, it is often helpful to consider the condition that the commodity is in when the laborer does his or her work. If the commodity is in an “*unmanufactured state*”, the associated work is probably farm labor; if it is in a “*manufactured state*”, it is not.

A commodity in an “unmanufactured state” is essentially raw produce in its natural state – still “the way that nature made it.” Implicit in paragraph 2.b. is that produce can remain in this unmanufactured state even though it has been handled, dried, graded, packed, stored, and preserved. This is because all of these activities do not necessarily change the fundamental nature of the commodity. Thus, activities of the following three types are included in farm labor:

1. Sorting produce and placing it in containers. When it is harvested and transported from the field, a commodity must be containerized in some fashion. Frequently, commodities go through several sequential stages of sorting, grading, and packing. However, the mere fact that a commodity is in a particular container or package does not change the nature of the commodity itself. Produce in a bag, tray, basket, bunch, box, bin, or wrap is still unmanufactured.
2. Handling to preserve the commodity. Actions such as cleaning, washing, and waxing fruits and vegetables; drying grain or prunes for safe storage; and holding produce in control atmosphere storage – all are examples of services that do not change the essentially unmanufactured state of the commodity. They merely allow the commodity to be stored safely and preserved.
3. Handling to extract the commodity, without acting on the commodity itself. Actions such as removing the hull from almonds and walnuts, or the tops from carrots are examples. In these cases, extraneous parts of the commodity are removed, but the commodity itself is unchanged and unmanufactured.

On the other hand, “manufacturing” a commodity means acting on the commodity itself, usually with tools, so as to change the fundamental nature of the commodity from that which it had when it was taken from the farm. Examples of manufacturing activities include crushing, cutting, chopping, dicing, slicing, pitting, blending, pureeing, juicing, drying, dehydrating, freeze-drying, expressing, flavoring, heating, freezing, cooking, steaming, roasting, slaughtering, butchering, pasteurizing, and churning. Thus, canneries, wineries, slaughterhouses, creameries, frozen food plants, salad mix plants, and other such food processing plants all convert the raw commodity into a manufactured state. Workers at these facilities are not performing farm labor as defined in 7 CFR 3560.11. They are food processing workers.

### **Other Distinctions**

Another distinction is that “farm labor” ceases once the unmanufactured commodity is delivered “to market or to processing.” Once a commodity is delivered to the premises of a food processor, “manufacturing” of the commodity begins. All work performed there is directed toward the manufacturing of the end product. Thus, the factory’s receiving gate is where farm labor ends. All workers at a food processing plant – regardless of how early in the manufacturing process they handle the raw agricultural commodity – are engaged in processing and not in farm labor. Just as farm labor is not involved in manufacturing, it is not involved in wholesaling or retailing. If the market destination of a commodity is a produce wholesaler’s warehouse or a retail grocery store’s produce department, then this is the point where non-farm labor takes over.

When dealing with vertically-integrated farm operations (where the same firm both raises, harvests, handles, stores, and then processes and/or markets the crop), it may be necessary to determine the specific job that the worker does. Many times, one worker within a company or

facility may be classified under the definition as a farmworker and another employee working in the same facility is not. Support personnel who may work in a facility with farmworkers but do not perform “farm labor” duties are not eligible. For example, a custodian who sweeps the floor of a packing house and performs no work directly with the commodity would not be defined as a farmworker, whereas his coworkers who sort, clean, pack, or load the commodity would.

As additional guidance, Exhibit A provides a number of general work categories. A further discussion of “farm labor” on a commodity-by-commodity basis is provided by Exhibit B.

There are, of course, a number of other FLH eligibility factors besides the mere involvement of a worker in “farm labor.” These are covered in detail in 7 CFR part 3560, subparts L and M. Should you encounter problems or have questions, please contact the Rural Housing Service staff in the National Office.

Exhibit A: Presence of “farm labor” in stages of the agricultural economy

Exhibit B: Presence of “farm labor” in selected agricultural enterprises

**Exhibit A**  
**Presence of “farm labor” in stages of the agricultural economy**

**Stage 1. Raising the commodity on the farm.**

Eligible activities include:

Field workers – hand work, field preparation, planting, irrigating, weeding, spraying, thinning, picking, pruning, loading, flagman, livestock caretakers, milkers  
Agricultural equipment operators – tractors, sprayers (including aerial sprays), harvesters, combines  
Professional crop services – agronomists, veterinarians, pest advisors, orchard managers

Ineligible activities include:

Support activities – mechanics, chemical handlers, bookkeepers, farm labor contractors  
Agricultural suppliers – seed, chemical, equipment, and supply dealers  
Professional support services – bookkeepers, attorneys, financial consultants

**Stage 2. Transporting the commodity after harvest.**

Eligible activities include:

Harvester/combine operators  
Truck drivers  
Loading and unloading commodities prior to processing

Ineligible activities include:

Fuel dealers  
Truck mechanics  
Truck dispatchers

**Stage 3. Post-harvest handling, storage, and packaging.**

Eligible activities include:

Boxing, crating, loading and unloading produce, hulling nuts, drying grain  
Working in a post-harvest commodity storage facility

Ineligible activities include:

Handling which constitutes marketing or manufacturing (see Stage 5 below)

**Stage 4. Delivery to market or processing.**

Eligible activities include:

Truck drivers, loading and unloading commodities prior to processing

Ineligible activities include:

Fuel dealers

Off-farm truck mechanics

Truck dispatchers

Trucking processed agricultural products

**Stage 5. Processing or marketing.**

Ineligible activities include:

Processing plant workers – canneries, salad mix, creameries, frozen foods, dried fruit, slaughterhouse Produce wholesalers and wholesale warehouse workers.

Grocery store workers – produce department Restaurant workers Auction yard workers

**Exhibit B**  
**Presence of “farm labor” in selected agricultural enterprises**

<b>Enterprise</b>	<b>Eligible activities</b>	<b>Ineligible activities</b>
Aquaculture	Seeding, care, management, or harvest of fish, shellfish, & other aquatic organisms	Seafood Distributors/Wholesalers Grocery Restaurant
Bees	Hive care and management Honey extraction	Confection manufacturing
Berries	Field work and harvest, including field pack Sorting, packing, and storage	Produce wholesalers Juicing
Cattle	Herd management Feedlot	Auction yard Slaughterhouse
Cotton	Field work and harvest Pre-gin storage	Ginning
Dairy	Milking barn Herd care and management	Creamery Cheese production
Eggs	Layer flock management Egg sorting, grading, and packing	Egg yolk separation
Fruit trees – avocados, dates	Grove operations and harvest Sorting, packing, and storage	Guacamole production
Fruit trees – citrus	Grove operations and harvest Sorting, packing, and storage	Juicing Canning
Fruit trees – figs	Orchard operations and harvest Sorting, packing, drying and storage	Fig confections
Fruit trees – olives	Orchard operations and harvest Sorting, packing, and storage	Brine operations Cannery operations
Fruit trees – apples, kiwis, peaches, pears, and plums	Orchard operations and harvest Sorting, packing, and storage	Cannery operations Freezer operations Drying operations
Fruit trees – prunes (dried plums)	Orchard operations and harvest Sorting, packing, drying and storage	Re-hydrating and processing Cannery operations
Garlic	Field work and harvest Sorting, packing, and storage	Wholesale produce operation Drying & dehydrating operations
Grain – barley, corn, oats, rice, wheat	Field work and harvest Grain drying and bulk storage	Milling
Grapes – raisins	Vineyard work, including field dry & pack Sorting, packing, and storage	Re-hydrating and processing Cannery operations

Grapes – table	Vineyard work and harvest Boxing grapes	Wholesale produce operation
Grapes – wine	Vineyard work and harvest	Grape crushing and fermenting
Hay	Hay production and harvest Hay baling, stacking, and storage Silage production by farmer	Hay compressor or pelletizer operation Feed mix preparation Hay broker Feed store
Melons	Field work and harvest, including field pack Sorting, packing, and storage	Wholesale produce operations
Nurseries	Field and greenhouse work Sorting and packing for shipment	Florists Retail nurseries and garden centers
Nut trees – almonds, Walnuts	Orchard operations and harvest Hulling	Shelling Expressing oils Roasting and making nut products
Oilseeds	Field work and harvest Storage in bulk	Oil expreser operations
Potatoes	Field work and harvest Storage in bulk in cellars Packing and bagging at potato shed	Potato chipping
Poultry	Poultry production	Hatcheries/Slaughterhouse/ Processing Plant
Seed production	Field work and harvest Sorting, packing, and storage	Seed certification
Sheep	Flock management Shearing and wool storage	Auction yard Slaughterhouse Yarn production
Sugar beets	Field work and harvest	Sugar refineries
Vegetables for fresh market (artichokes, asparagus, broccoli, carrots, cauliflower, celery, lettuce, greens, mushrooms, onions, Peppers, tomatoes)	Field work and harvest, including field pack Sorting, packing, and storage	Produce wholesalers Salad mix operations

Vegetables for processing (artichokes, asparagus, broccoli, carrots, cauliflower, celery, greens, mushrooms, onions, peppers, tomatoes)	Field work and harvest, including field pack	Cannery operations Freezer operations Drying operations
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In all cases, the trucker who hauls the agricultural commodity from the site of the eligible activity to the site of the ineligible activity is considered to be engaged in farm labor.