REPORT TO THE SUBCOMMITTEES ON RURAL DEVELOPMENT AND ON AGRICULTURAL CREDIT AND RURAL ELECTRIFICATION COMMITTEE ON AGRICULTURE AND FORESTRY UNITED STATES SENATE

Regulations For The Business And Industrial And Community Facility Assistance Programs Authorized By The Rural Development Act Of 1972

B-114873

Farmers Home Administration
Department of Agriculture

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

APRIL 15, 1974

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-114873

The Honorable Dick Clark, Chairman
Subcommittee on Rural Development
Committee on Agriculture and Forestry
United States Senate

Dear Mr. Chairman:

This is our report on the Department of Agriculture's regulations for implementing the business and industrial loan and grant programs and the community facility loan program authorized by the Rural Development Act of 1972.

We reviewed these regulations pursuant to your request and that of Senator George S. McGovern, Chairman, Subcommittee on Agricultural Credit and Rural Electrification, Senate Committee on Agriculture and Forestry, dated July 24, 1973. Also as requested, we are reviewing the Department's regulations for implementing the rural development research and education programs under title V of the act and we will send you our report thereon when our review is completed.

As agreed, we discussed this report with Department officials responsible for developing the regulations on and for implementing the business and industrial loan and grant and community facility loan programs and have incorporated their comments in the report.

We are sending this report also to Senator McGovern. As agreed, we are sending copies to the Secretary of Agriculture.

We do not plan to distribute this report further unless you or Senator McGovern agree or publicly announce its contents.

Sincerely yours,

Comptroller General
of the United States

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Contents

ABBREVIATIONS

EDA	Economic Development Administration
FHA	Farmers Home Administration
GAO	General Accounting Office
OMB	Office of Management and Budget
SBA	Small Business Administration
USDA	U.S. Department of Agriculture

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ON RURAL DEVELOPMENT AND
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Farmers Home Administration
Department of Agriculture
B-114873

D I G E S T

WHY THE REVIEW WAS MADE

GAO made this review at the request of the Subcommittee Chairmen. It was directed to regulations issued by the Farmers Home Administration (FHA) for implementing the business and industrial loan and grant programs and the community facility loan program authorized by the Rural Development Act of 1972.

FINDINGS AND CONCLUSIONS

The Rural Development Act of 1972 amended the Consolidated Farm and Rural Development Act to authorize the Secretary of Agriculture to make business and industrial loans for improving, developing, or financing business, industry, and employment and improving the economic and environmental climate in rural communities.

The 1972 act also authorizes the Secretary to make business and industrial grants to facilitate the development of private business enterprises and community facility loans to provide rural areas with essential community facilities. FHA regulations for implementing these programs were published in the Federal Register on October 18, 1973.

The 1972 act provides that community facility loan applications be submitted to State and sub-State clearinghouse agencies for review and comments but is silent on whether the Congress intended such reviews for business and industrial loan and grant applications.

FHA's regulations--for both the business and industrial loan and grant programs and the community facility loan program--provide that loan and grant applications be submitted to State and sub-State clearinghouse agencies for their review, comments, and priority recommendations.

Both regulations also require that FHA fully consider clearinghouse agencies' comments and priority recommendations in selecting projects for funding.

Strict adherence to these priority recommendations might be inconsistent with the intent of a 1973 amendment to the consolidated act which prohibits loans or grants under that act from being subject to the prior approval of any officer, employee, or agency of any State.

FHA officials said that, although FHA would fully consider State and sub-State clearinghouse agencies'

priority recommendations, it was not bound to adhere to those priority recommendations in selecting projects for funding. FHA's regulations, however, do not specifically state that FHA is not bound by such recommendations. (See pp. 8 and 29.)

FHA's regulations also:

--Permit loans to finance the acquisition of businesses and industries. If such an acquisition is not conditioned on some type of improvement in the economic or environmental climate, it could result in merely shifting ownership from one party to another without providing jobs, increasing business income, or encouraging rural industrialization. (See p. 15.)

--Limit loans for the acquisition of housing development sites to projects in communities with populations not over 10,000, although the 1972 act authorized such loans for projects in communities with populations of less than 50,000. (See p. 17.)

--Require that cooperatives submit loan applications to banks for cooperatives for a determination of availability of credit although the 1972 act provides that guaranteed loans be made without regard to whether the applicants can obtain credit elsewhere. (See p. 18.)

--Limit insured business and industrial loans to public bodies to community facility-type projects, although the 1972 act indicates that such loans can be made for any business or industrial purpose. (See p. 20.)

--Subject loans to public bodies, nonprofit associations, and Indian tribes to finance community facility-type projects to interest rates which could exceed 5 percent, although the consolidated act subjects such loans to a maximum 5-percent interest rate. (See p. 22.)

FHA's business and industrial loan and grant regulations do not specify the requirements and conditions for joint financing of private business enterprises with Federal and State agencies and with private and quasi-public financial institutions (see p. 13). Nor do the regulations give veterans the preference over nonveterans for business and industrial loans set forth in the consolidated act (see p. 23).

FHA has not issued regulations to implement two small business loan programs authorized by the 1972 act to provide loans to rural residents to acquire, establish, or operate small business enterprises. (See p. 24.)

FHA's community facility loan regulations give public bodies preference for available loan funds, although such preference is not provided for by law. (See p. 27.)

RECOMMENDATIONS

The report does not contain any recommendations to the U.S. Department of Agriculture (USDA).

AGENCY ACTIONS AND UNRESOLVED ISSUES

FHA officials said that FHA's business and industrial loan regulations had been amended to provide for a maximum 5-percent interest rate on loans to public bodies for community facilities and that they would be further amended to include Indian tribes and nonprofit associations. (See p. 23.)

FHA officials said that FHA would amend its regulations to specify the conditions under which FHA will finance the acquisition of an existing enterprise. (See p. 16.)

FHA officials said also that:

--FHA was not bound to adhere to clearinghouse agencies' priority recommendations. (See pp. 11 and 31.)

--FHA's requirement for clearinghouse reviews of business and industrial loan and grant applications should insure uniformity of operations between the business and industrial loan and grant programs and the community facility loan program. (See p. 11.)

--FHA had met, and was still meeting, with other agencies to discuss joint financing and that written agreements would be developed as soon as practicable. (See p. 14.)

--FHA limited housing-site loans to projects in communities with populations not over 10,000 so that the loans would parallel FHA's housing loans. (See p. 18.)

--Requiring cooperatives to go to banks for cooperatives was not intended to be construed as requiring cooperatives to obtain credit elsewhere but would be a means for determining whether guaranteed loans were available and would enable FHA to draw on the banks' experience in making cooperative loans. (See p. 19.)

--FHA's regulations were sufficient to promote business and industrial development by public bodies but stopped short of putting public bodies in competition with private entrepreneurs. (See p. 21.)

--FHA would look into the matter of giving veterans preference over nonveterans for business and industrial loans and would make any needed changes in its regulations. (See p. 24.)

--FHA's business and industrial loan authority was broad enough to permit FHA to make small business loans without the limitations or restrictions associated with the small business loan programs authorized by the 1972 act. (See p. 26.)

--FHA's community facility loan regulations give public bodies preference because FHA believes public bodies best serve the needs of the communities but did not exclude other applicants from obtaining loans if project revenues were sufficient to repay the loans. (See p. 28.)

MATTERS FOR CONSIDERATION BY THE SUBCOMMITTEES

The Subcommittees may wish to insure that FHA's regulations are amended to:

--Specify the requirements and conditions for jointly financing businesses with other Federal and State agencies and private and quasi-public financial institutions. (See p. 14.)

--Specify the conditions for financing the acquisitions of existing enterprises. (See p. 17.)

--Provide for a maximum 5-percent interest rate on loans to nonprofit associations and Indian tribes for community facilities. (See p. 23.)

--Give veterans the preference for business and industrial loans set forth in the consolidated act. (See p. 24.)

The Subcommittees may also wish to:

--Clarify whether business and industrial loan and grant applications should be submitted to clearinghouse agencies for review and comments. (See p. 12.)

--Request USDA to amend FHA's business and industrial loan and grant and community facility loan regulations to make it clear that FHA is not bound to adhere to clearinghouse agencies' priority recommendations in selecting projects. (See pp. 12 and 32.)

--Review the reasonableness of FHA's limiting housing-site loans to projects in communities with populations not over 10,000, to determine the acceptability of FHA's limitation. (See p. 18.)

--Request USDA to amend FHA's regulations to make it clear that requiring cooperatives to submit their guaranteed loan applications to banks for cooperatives is not to be used as a test for determining the availability of credit elsewhere. (See p. 20.)

--Request USDA to amend FHA's regulations to permit public bodies to obtain insured loans to equip and operate businesses. (See p. 22.)

--Request USDA to implement the small business loan programs authorized by the 1972 act as two programs separate and distinct from the business and industrial loan program and to issue appropriate regulations. (See p. 26.)

--Request USDA to amend FHA's community facility loan regulations so as not to extend preference to public bodies but to limit such preference to those provided by law. (See p. 29.)

CHAPTER 1

INTRODUCTION

The Chairmen of the Subcommittees on Rural Development and on Agricultural Credit and Rural Electrification, Senate Committee on Agriculture and Forestry, requested GAO to review the regulations of the U.S. Department of Agriculture (USDA) for implementing the Rural Development Act of 1972 (7 U.S.C. 1921 note (supp. II)). In subsequent meetings with our representatives, it was agreed that our review should be limited to USDA's regulations on:

--Business and industrial loan and grant programs and the community facility loan program under title I (7 U.S.C. 1924, 1926, 1932, 1942 (supp. II)).

--Rural development and small farm research and education programs under title V (7 U.S.C. 2661 et seq. (supp. II)).

--Pollution prevention and abatement grants under title VI (16 U.S.C. 590 g, h, and o (supp. II)).

This report covers our review of the regulations of USDA's Farmers Home Administration (FHA) for implementing the business and industrial loan and grant programs and the community facility loan program. We will issue a report on our review of the regulations on the rural development research and education programs later. USDA does not plan to implement the small farm research and education program under title V or pollution prevention and abatement grants under title VI and therefore will not issue regulations on these provisions of the act.

SCOPE OF REVIEW

We reviewed FHA regulations for implementing the business and industrial loan and grant programs and the community facility loan program as published in the Federal Register (38 Fed. Reg. 29025 (DI)) on October 18, 1973, to determine whether they were consistent with (1) the statement made by Senator Herman E. Talmadge in presenting the conference report on House bill 12931 to the Senate (118 Congressional Record Aug. 17, 1972, S13928) and (2) other expressions of congressional intent in the legislative history of the Rural Development Act of 1972, such as:

--House Report 92-835, Committee on Agriculture, February 16, 1972.

--House consideration of House bill 12931 (118 Congressional Record Feb. 23, 1972, H1330).

--Senate Report 92-734, Committee on Agriculture and Forestry, April 7, 1972, on Senate bill 3462.

--Senate consideration of Senate bill 3462 and House bill 12931 which was amended in lieu of Senate bill 3462 (118 Congressional Record Apr. 19 and 20, 1972, S6419 and S6530).

--Two versions of House bill 12931, one as passed by the House and the other as amended and passed by the Senate.

--House Report 92-1129 (conference report), June 14, 1972.

--Congressman W. R. Poage's statements to the House in presenting the conference report (118 Congressional Record July 27, 1972, H6979).

--Committee print entitled "The Rural Development Act of 1972--Analysis and Explanation--Public Law 92-419," Senate Committee on Agriculture and Forestry, October 3, 1972.

In addition, we considered the amendments made to the Consolidated Farm and Rural Development Act[1] (7 U.S.C. 1921 note (supp. II)) by the Agriculture and Consumer Protection Act of 1973 (approved Aug. 10, 1973, Public Law 93-86, 87 Stat. 221) and the related legislative history of those amendments. We also discussed the regulations and this report with USDA officials responsible for implementing these new programs.

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[1]The Rural Development Act of 1972 amended the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1921 et seq.) to authorize business and industrial loans and grants and community facility loans and changed the name of that act to the Consolidated Farm and Rural Development Act.

CHAPTER 2

BUSINESS AND INDUSTRIAL LOAN AND GRANT PROGRAMS

Sections 118, 102, and 121 of the Rural Development Act of 1972 (7 U.S.C. 1932, 1924, 1942 (supp. II)) amended the Consolidated Farm and Rural Development Act by adding sections 310B, 304(b), and 312(b), respectively. Section 310B(a) authorizes the Secretary of Agriculture to make and insure loans to profit or nonprofit public, private, or cooperative organizations; Indian tribes on Federal and State reservations or other federally recognized Indian tribal groups; or individuals, for improving, developing, or financing business, industry, and employment and improving the economic and environmental climate in rural communities, including pollution abatement and control (business and industrial loan program).

Section 310B(b) authorizes the Secretary to make grants to eligible applicants for pollution abatement and control projects in rural areas, and section 310B(c) authorizes him to make grants to public bodies for measures designed to facilitate development of private business enterprises, including the development, construction, or acquisition of such items as land, buildings, access streets and roads, and water supply and waste disposal facilities (business and industrial grant program). Section 310B(d) authorizes the Secretary to participate with Federal and State agencies and with private and quasi-public financial institutions in the joint financing of businesses and industries in rural areas.

Section 304(b) authorizes the Secretary to make or insure loans to rural residents to acquire or establish small business enterprises in rural areas, to provide such residents with essential incomes.

Section 312(b) authorizes the Secretary to make loans to rural residents to operate small business enterprises in rural areas, to provide such residents with essential incomes.

Section 128 of the Rural Development Act of 1972 (7 U.S.C. 1991 (supp. II)) amended section 343 of the Consolidated Farm and Rural Development Act to provide that the word "insure" also means to guarantee the payment of a loan originated, held, and serviced by a private financial agency or other lender approved by the Secretary. Pursuant to section 129 of the Rural Development Act of 1972 (7 U.S.C. 1992 (supp. II)), the Secretary's guarantee was to extend to not more than 90 percent of any loss sustained on a guaranteed loan.

Although not specifically defined in the Consolidated Farm and Rural Development Act, insured loans are those loans that are made and held by the Secretary and used to secure certificates of beneficial ownership which are sold on an insured basis in the central money markets of the Nation. If an insured loan is not available to the borrower, the Secretary can make a direct loan.

FHA is to implement the business and industrial loan and grant programs. On June 22, 1973, FHA's proposed regulations for these programs were published in the Federal Register (38 Fed. Reg. 16375 (DI)). FHA's final regulations were published in the Federal Register (38 Fed. Reg. 29036 (DI)) on October 18, 1973. The final regulations consisted of three parts.

--Part 1823, subpart O, which concerns business and industrial grants. (38 Fed. Reg. 29036 (DI)).

--Part 1841 which contains general provisions applicable to guaranteed loans including guaranteed business and industrial loans. (38 Fed. Reg. 29039 (DI)).

--Part 1842 which contains more specific provisions applicable to only guaranteed and insured business and industrial loans. (38 Fed. Reg. 29047 (DI)).

REVIEW AND PRIORITY RECOMMENDATIONS BY A-95 CLEARINGHOUSE AGENCIES

The Rural Development Act of 1972 and its legislative history are silent on whether the Congress intended business and industrial loan and grant applications to be submitted to State and sub-State A-95 clearinghouse agencies--agencies designated under Office of Management and Budget (OMB) Circular A-95--for their review and comments. FHA's business and industrial loan regulations, however, provide that loan and grant applications be submitted to State and sub-State A-95 clearinghouse agencies for their review, comments, and priority recommendations. The regulations also require that FHA fully consider clearinghouse agencies' comments and priority recommendations in selecting projects for funding.

Strict adherence to State and sub-State A-95 clearinghouse agencies' priority recommendations might be inconsistent with the intent of a 1973 amendment to the Consolidated Farm and Rural Development Act. This amendment, included in section 1(27) of the Agriculture

and Consumer Protection Act of 1973 (87 Stat. 241), prohibited loans or grants under that act from being subject to the prior approval of any officer, employee, or agency of any State.

Sections 1842.1 and 1842.31(c)(1) and (2) of FHA's business and industrial loan regulations provide that preapplications for loans be submitted to State and sub-State A-95 clearinghouse agencies for their review, comments, and priority recommendations. These sections provide also that FHA fully consider all A-95 clearinghouse agencies' comments and priority recommendations in selecting projects and assigning priorities. Sections 1823.450 and 1823.459(a) and (b) of FHA's regulations on grants to public bodies for facilitating the development of private business enterprises under section 310B(c) of the Consolidated Farm and Rural Development Act contain similar provisions.

OMB established the A-95 clearinghouse procedures, in part, to implement section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)) which provides that:

> " * * * The President shall * * * establish rules and regulations governing the formation, evaluation, and review of Federal programs and projects having a significant impact on area and community development * * * ."

The A-95 clearinghouse procedures provide for:

--Establishing a project notification and review system to facilitate coordinated planning on an intergovernmental basis for certain Federal assistance programs.

--Coordinating direct Federal development programs and projects with State, regional, and local planning and programs.

--Securing the comments and views of State and local agencies which are authorized to develop and enforce environmental standards on certain Federal or federally assisted projects affecting the environment.

Neither the Rural Development Act of 1972 nor its legislative history indicated that business and industrial loan and grant applications were to be submitted to State and sub-State A-95 clearinghouse agencies for review and comments. However, neither the act

nor its history indicated that these applications were to be exempt from A-95 clearinghouse procedures or from the requirements of the Intergovernmental Cooperation Act of 1968. We noted that other Federal business and industrial loan programs operated in rural areas by the Economic Development Administration (EDA) and the Small Business Administration (SBA) do not require that applications be submitted to A-95 clearinghouse agencies for review and comments.

FHA's June 1973 proposed regulations provided for (1) processing an application only after its approval by the State Governor or his designee and (2) barring any technical difficulties, FHA's approving applications on the basis of the order of priority determined by the Governor.

Subsequent to the publication of the proposed regulations, the Congress, in section 1(27) of the Agriculture and Consumer Protection Act of 1973, amended section 310B(d) of the Consolidated Farm and Rural Development Act to provide that no grant or loan authorized under that act require or be subject to the prior approval of any officer, employee, or agency of any State. Senator Curtis introduced this amendment in the Senate (119 Congressional Record June 6, 1973, S10505). In explaining the intent of his amendment (hearings before the Subcommittee on Rural Development, Senate Committee on Agriculture and Forestry, July 19, 1973, on implementation of the Rural Development Act, part 2, 93d Cong., 1st sess. 7), Senator Curtis, in a statement inserted in the record, said:

> " * * * I have proposed an amendment to prohibit prior approval by any offices or employee of a state as a prerequisite to FHA granting a guaranteed or insured business or industrial loan.
>
> "It is my intent, and I believe the intent of this committee, this type of loan be on a 'first come, first serve basis' and only be subject to normal lending requirements based on repayment ability."

Although Senator Curtis' amendment was restricted to business and industrial loans, the conferees (H. Rept. 93-427, p. 42) broadened this provision to apply to all loans and grants under the Consolidated Farm and Rural Development Act.

The President, upon signing the Agriculture and Consumer Protection Act of 1973, said:

"I also opposed those provisions of this act which precluded State approval of loans and grants under the Rural Development Act. The effect and intent of precluding State participation is once again to centralize decisionmaking authority in the Federal Government rather than in the States and localities where it belongs. Though I respect the wishes of the Congress on this point and will adhere to this legal prescription, I plan to administer these new Rural Development Act programs in a way which will give the fullest possible consideration to State rural development goals and the local priorities expressed in those goals." (Underscoring supplied.)

In its final regulations, FHA deleted references to prior approval by the Governors or their designees and inserted those provisions referred to on page 9.

Although the 1973 amendment makes it clear that projects are not to be subject to prior approval of any officer, employee, or agency of any State, the A-95 clearinghouse agencies, by the nature of their creation, are State or sub-State agencies. Although these A-95 clearinghouse agencies are not responsible for approving specific projects under the A-95 procedures, FHA's regulations require FHA to fully consider A-95 clearinghouse agencies' comments and priority recommendations in selecting projects.

FHA comments and our evaluation

FHA officials told us that A-95 clearinghouse agencies' reviews were required for community facility loans under section 306(a)(1) of the Consolidated Farm and Rural Development Act (see p. 29) and that such reviews were being required for business and industrial loans and grants to insure uniformity of operations.

The officials said that FHA's solicitation of priority recommendations would help insure that the projects it funds were in tune with State development strategies and priorities. They emphasized that FHA was not bound to adhere to A-95 clearinghouse agencies' priority recommendations and that it had no intention of circumventing the 1973 amendment. The officials said also that FHA's project selections were the FHA State director's responsibility and this had been emphasized by FHA at its training sessions.

We believe that FHA's requirement that project applications be submitted to State and sub-State A-95 clearinghouse agencies for review and comments has merit. It not only should insure uniformity of operations between the business and industrial loan and grant programs and the community facility loan program but also should help further the objectives of the Intergovernmental Cooperation Act of 1968 and the related procedures set forth in OMB Circular A-95.

We believe also that A-95 clearinghouse agencies' review, comments, and priority recommendations, if used to help insure that the projects FHA funds are consistent with State development strategies and priorities, would be one way to further the objectives of section 603(b) of the Rural Development Act of 1972 (7 U.S.C. 2204 (supp. II)). Section 603(b) requires the Secretary to assume responsibility for coordinating a nationwide rural development program utilizing the services of executive departments and agencies, including those within USDA, in coordination with rural development programs of State and local governments.

Although FHA said it was not bound to adhere to A-95 clearinghouse agencies' priority recommendations, FHA regulations do not specifically state so.

Matters for consideration by the Subcommittees

The Subcommittees may wish to clarify whether business and industrial loan and grant applications should be submitted to A-95 clearinghouse agencies for review and comments, considering that

--the legislative history of the Rural Development Act of 1972 is silent on this matter,

--such reviews help further the objectives of the Intergovernmental Cooperation Act of 1968 and the related procedures set forth in OMB Circular A-95,

--such reviews are consistent with FHA's procedures for community facility loans, and

--rural business loans under the SBA and EDA business loan programs are not covered by A-95 procedures.

If such reviews are acceptable, the Subcommittees may also wish to request USDA to amend FHA's business and industrial loan and grant regulations, in view of FHA's comments, to make it clear that FHA is

not bound to adhere to A-95 clearinghouse agencies' priority recommendations in selecting projects.

JOINT FINANCING

The Rural Development Act of 1972 authorizes USDA to participate in the financing of private business enterprises with Federal and State agencies and with private and quasi-public financial institutions through joint loans and grants. FHA's regulations, however, do not specify how FHA plans to participate in the financing of these enterprises or under what conditions or requirements such loans will be made.

The enabling legislation clearly shows that the Congress intended USDA to participate in the joint financing of private business enterprises. Section 310B(d) of the Consolidated Farm and Rural Development Act provides that:

> "The Secretary may participate in joint financing to facilitate development of private business enterprises in rural areas with the Economic Development Administration, the Small Business Administration, and the Department of Housing and Urban Development and other Federal and State agencies and with private and quasi-public financial institutions, through joint loans to applicants eligible under subsection (a) * * * or through joint grants to applicants eligible under subsection (c) * * * ."

In presenting House bill 12931 to the House of Representatives, Congressman Poage (118 Congressional Record Feb. 23, 1972, H1333) stated:

> "We encourage joint participation with other Federal agencies such as HUD /Department of Housing and Urban Development/, SBA, and EDA. * * *
>
> "We encourage additional participation of local banks and other financing institutions in these loans. This participation is needed and will be helpful to all concerned."

The conference report (p. 27) shows that the conference substitute bill adopted the language of the House bill with only technical amendments not relevant to the definition of joint loans. Although the conference report does not discuss the meaning of the term, the report does place the word "joint" within quotation marks.

The intent to provide for joint financing was also manifested in Senator Talmadge's statement in presenting the conference report to the Senate.

> " * * * In making such loans the Secretary of Agriculture is authorized to make full use of the grant and credit resources of Economic Development Administration, Small Business Administration, and the Department of Housing and Urban Development, as well as those of other Federal departments and agencies, of State agencies, and private and quasi-public financial institutions, including the institutions supervised by the Farm Credit Administration.
>
> " * * * the same is true with respect to loans and grants available from Small Business Administration, Economic Development Administration, Department of Housing and Urban Development, and the Environmental Protection Administration. We seek here not to duplicate or supercede /sic/ these other programs but to supplement and strengthen them. The bill specifically provides for cooperative participation in joint loans and grants with these other agencies."

Section 1842.2(d) of FHA's regulations defines "joint financing" as the making of separate loans by two or more public or private lenders (or any combinations of such lenders) to supply the funds required by one applicant. This provision and other provisions of the regulations, however, are silent with respect to how FHA plans to participate with others in financing business enterprises through joint loans and grants or under what conditions such loans or grants will be made.

FHA comments

FHA officials told us that FHA believed it best to process several applications involving joint financing so as to draw on this experience in formulating regulations. The officials stated also that FHA had met, and was still meeting, with other agencies to discuss joint financing and that written agreements would be developed as soon as practicable.

Matter for consideration by the Subcommittees

The Subcommittees may wish to insure that FHA's business and industrial loan and grant regulations are amended to specify the

requirements and conditions for jointly financing businesses with Federal and State agencies and private and quasi-public financial institutions.

ACQUISITION OF EXISTING ENTERPRISES

Pursuant to the Rural Development Act of 1972, business and industrial loans can be made to finance the acquisition of existing business enterprises. The legislative history of the act, however, indicated that such loans should be made only when needed to attract new businesses, attract or retain expanding businesses, provide jobs, increase business incomes, or otherwise improve the economic and environmental climate in rural areas. Although FHA's regulations authorize loans for acquiring existing enterprises, the regulations do not specify the conditions under which such acquisitions can be made and financed through FHA.

Section 310B(a) of the Consolidated Farm and Rural Development Act authorizes loans for "improving, developing, or financing business, industry, and employment and improving the economic and environmental climate in rural communities * * * ." In summarizing this provision in its October 1972 committee print, the Senate Committee on Agriculture and Forestry stated that the act:

> " * * * Authorizes FHA to make loans and grants for the acquisition, expansion or operation of business and industrial enterprises (large or small * * *) and to facilitate the development of such enterprises through industrial parks, pollution control, access streets and roads, water and utility extensions and similar industrial requirements. * * *
>
> "Such loans may be advanced for any business or industrial purpose or for community facility-type supporting systems or installations, including the acquisition, development, construction, rehabilitation, refinancing, and improvement of real estate and buildings, equipment, working capital, and production expenses as well as service fees. * * * "

Also, in presenting the conference report to the Senate, Senator Talmadge, with respect to section 310B(a) loans and section 310B(c) grants, stated:

" * * * These loans and grants may be used for measures designed to facilitate development of private business enterprise, including the development, construction, or acquisition of land, buildings, plants, equipment, access streets and roads, parking areas, utility extensions, necessary water supply and waste disposal facilities, refinancing, services, and fees to the extent that these may be needed to attract or hold new or expanding industrial and other business enterprises. * * * "

Although these statements indicated that business and industrial loans could be used to acquire existing businesses, Senator Talmadge's statement indicated that such acquisitions were permitted when "needed to attract or hold new or expanding industrial and other business enterprises." Senator Talmadge stated that the principal thrust of the act "is toward providing jobs and increased business income * * * through encouragement of rural industrialization and increased business activity and income."

Moreover, in connection with the antipiracy provision of section 310B, Senator Talmadge stated:

" * * * rural development cannot succeed unless it results in a major net addition to the jobs and business opportunities in the national economy. It cannot succeed merely by shifting jobs and business activity around from one part of the country to another."

Section 1842.13(a) of FHA's regulations authorizes loans to finance the acquisition of businesses and industries--which could include existing ones--but does not specify the conditions under which such acquisitions can be made. If such an acquisition is not conditioned on some type of improvement in the economic or environmental climate, it could result in merely shifting ownership from one party to another without providing jobs, increasing business income, or encouraging rural industrialization.

FHA comments

FHA officials told us that FHA would amend section 1842.13(a) of its regulations to specify the conditions or criteria that must be met before FHA will finance the acquisition of an existing enterprise.

Matter for consideration by the Subcommittees

The Subcommittees may wish to insure that, in accordance with the intent of the Congress in enacting the Rural Development Act of 1972, the amended regulations specify that FHA will finance acquisitions of existing enterprises only if they provide jobs, increase business incomes, attract new businesses, attract or hold expanded industries, or otherwise improve the economic and environmental climate in rural areas.

ACQUISITION OF HOUSING DEVELOPMENT SITES

The Rural Development Act of 1972 authorizes loans for any business or industrial purpose which includes the acquisition of housing development sites--land for housing development and subsequent resale--provided such projects are located in communities with populations of less than 50,000. FHA's regulations, however, limit the financing of such acquisitions to projects in communities with populations not over 10,000.

Section 310B(a) of the Consolidated Farm and Rural Development Act authorizes loans for improving, developing, or financing businesses, industries, and employment and improving the economic and environmental climate in rural communities. In summarizing this provision of the act, the Senate Committee on Agriculture and Forestry stated:

> "Such loans may be advanced for any business or industrial purpose or for community facility-type supporting systems or installations, including the acquisition, development, construction, rehabilitation, refinancing, and improvement of real estate and buildings * * * ." (Underscoring supplied.)

Section 109 of the Rural Development Act of 1972 (7 U.S.C. 1926(a) (7) (supp. II)) provides that, for loans and grants for private business enterprises under section 310B of the Consolidated Farm and Rural Development Act, the terms "rural" and "rural area" may include all territory of a State, the Commonwealth of Puerto Rico, and the Virgin Islands that is not within the outer boundary of any city having a population of 50,000 or more and its immediate adjacent urbanizing areas with a population density of more than 100 persons per square mile. The act provides also for giving special consideration for private business enterprise loans and grants to areas other than cities having populations of more than 25,000.

In presenting the conference report to the Senate, Senator Talmadge stated that, for rural industrialization and business loan and grant purposes, rural areas include all the open countryside, villages, towns, and small cities up to 50,000 in population--except for the urbanized and urbanizing suburbs of cities larger than 50,000--with special consideration to be given to applications from such areas with populations less than 25,000.

Section 1842.13(c) of the regulations provides that business and industrial loans can be used to finance the purchase of housing development sites, but specifically limits such purchases to open country or to towns or villages with populations not over 10,000.

FHA comments

FHA officials told us that FHA limited housing-site loans to projects in communities with populations not over 10,000 so that housing-site loans would parallel FHA's housing loans which are limited, by law, to communities with populations not over 10,000. The officials said that housing-site loans for larger communities were available from the Department of Housing and Urban Development and that removing this limitation from FHA's regulations would not do much for rural development.

Matter for consideration by the Subcommittees

The Rural Development Act of 1972 authorizes business and industrial loans to be made in communities with populations under 50,000, but FHA believes there is merit in limiting such loans for housing-development sites to projects in communities with populations not over 10,000. The Subcommittees may therefore wish to review this matter to determine the acceptability of FHA's limitation.

SUBMISSION OF LOAN APPLICATIONS FROM COOPERATIVES TO BANKS FOR COOPERATIVES

The Rural Development Act of 1972 provides that guaranteed business and industrial loans can be made without regard to whether the applicants can obtain credit elsewhere. FHA regulations, however, require that cooperatives submit their loan applications to banks for cooperatives[1] for a determination of availability of

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[1]The 13 privately owned, federally chartered banks included in the cooperative farm credit system which is supervised by the Farm Credit Administration.

credit from these banks. The regulations are unclear as to whether this requirement pertains to guaranteed or insured loans.

Section 333(a) of the Consolidated Farm and Rural Development Act provides that, in making; insuring; and, in conjunction with section 343 of the act, guaranteeing loans, the Secretary require

> " * * * the applicant to certify in writing, and the Secretary shall determine, that he is unable to obtain sufficient credit elsewhere to finance his actual needs at reasonable rates and terms * * * ."

Section 310B(a) of that act provides, however, that guaranteed business and industrial loans can be guaranteed without regard to the credit-elsewhere provisions of section 333(a).

Section 1842.31(a) of FHA's regulations requires that cooperatives submit their loan applications to the banks for cooperatives for a determination of availability of credit from these banks but does not state whether this applies to guaranteed or insured loans or both.

Section 129 of the Rural Development Act of 1972 (7 U.S.C. 1992 (supp. II)) added section 344 to the Consolidated Farm and Rural Development Act. Section 344 provides that, except for loans to public bodies, nonprofit associations, and certain Indian tribes or tribal groups for community facilities, business and industrial loans cannot be made as insured loans unless the Secretary determines that no other lenders--which would include banks for cooperatives--are willing to make guaranteed loans and to assume 10 percent of any losses that might be sustained thereon.

Before FHA insures such loans, proper implementation of section 344 would require giving the banks for cooperatives opportunities to make the loans with FHA guarantees.

FHA comments and our evaluation

FHA officials told us that this provision of the regulations was not intended to be construed as requiring cooperatives to obtain credit elsewhere. The officials stated that FHA was requiring cooperatives to go to these banks only to determine whether FHA-guaranteed loans were available. They stated also that the banks for cooperatives were astute lenders that understood cooperatives and knew what was necessary for their success.

The officials said that requiring cooperatives to go to these banks for guaranteed loans was also good for FHA, because it enabled FHA to draw on the banks' experience. The officials stated that, should one of these banks not be able to finance the loan with an FHA guarantee, the bank would tell FHA the reasons. These reasons would be useful to FHA in evaluating whether it should make an insured loan.

We recognize that FHA could benefit by drawing on the experience of the banks for cooperatives, and, as noted on page 19, FHA can require cooperatives to go to these banks for guaranteed loans before insuring such loans. For guaranteed loans, however, such a requirement has the effect of giving the banks for cooperatives an exclusive preference for making guaranteed loans although other lenders are also eligible to participate in the program. Although it was not FHA's intent, we believe section 1842.31(a) of FHA's regulations can be construed as a requirement for cooperatives to submit their guaranteed-loan applications to a credit-elsewhere determination. We believe this provision should be amended to make it clear that this provision is not to be used as a test for determining the availability of credit elsewhere on guaranteed loans.

Matter for consideration by the Subcommittees

Because the Congress provided that business and industrial loans could be guaranteed without regard to whether the applicants could obtain credit elsewhere, the Subcommittees may wish to request USDA to amend section 1842.31(a) of FHA's regulations to make it clear that this provision is not to be used as a test for determining the availability of credit elsewhere on guaranteed loans.

INSURED LOANS TO PUBLIC BODIES FOR COMMUNITY FACILITIES

The Rural Development Act of 1972 indicates that business and industrial loans to public bodies can be made not only for community facilities but also for any business or industrial purpose. FHA's regulations, however, provide that insured business and industrial loans to public bodies be used only to finance community facilities.

Section 310B(a) of the Consolidated Farm and Rural Development Act authorizes the Secretary to make business and industrial loans to public organizations (public bodies). Neither the act nor the

legislative history of the Rural Development Act of 1972 indicates that business and industrial loans to public bodies are to be restricted to only community facility-type projects.

As noted on page 15, business and industrial loans are authorized for any business or industrial purpose or for community facility-type supporting systems. Such purposes include the acquisition, development, construction, rehabilitation, refinancing, and improvement of real estate and buildings; equipment; working capital; and production expenses. Also as noted on page 15, Senator Talmadge stated that section 310B(a) business and industrial loans, as well as section 310B(c) business and industrial grants to public bodies, may be used to develop, construct, or acquire land, buildings, plants, and equipment.

Under section 1842.61(a) of FHA's regulations, insured business and industrial loans to public bodies would be limited to community facilities needed for developing private business enterprises. FHA's regulations do not describe or define what FHA considers to be "community facilities." FHA could therefore preclude public bodies from obtaining insured loans for projects otherwise eligible for financing under the section 310B(a) business and industrial loan program by not recognizing such projects as community facilities.

For example, under section 310B(a) of the Consolidated Farm and Rural Development Act, insured business and industrial loans can be made to construct, equip, and operate businesses. However, if FHA does not recognize such projects as community facilities, public bodies would be precluded, under FHA's regulations, from obtaining insured loans for such purposes.

FHA comments and our evaluation

FHA officials told us that the purpose of the act was to stimulate private enterprise and that FHA's regulations were directed toward the private entrepreneur. The officials said that the regulations were sufficient to promote business and industrial development by public bodies which could obtain loans to acquire sites and build shell buildings but not to equip and operate businesses. The officials said that to make such loans would be unfair to private entrepreneurs because lower interest rates available to public bodies would give such bodies unfair competitive advantage.

Although FHA's position has merit, the Rural Development Act of 1972 did not provide for excluding public bodies from obtaining loans to equip and operate businesses.

Matter for consideration by the Subcommittees

The Subcommittees may wish to request USDA to amend section 1842.61(a) of FHA's regulations to permit public bodies to obtain insured loans to equip and operate businesses.

INTEREST RATES

The Consolidated Farm and Rural Development Act provides for a maximum annual interest rate of 5 percent on loans to public bodies, nonprofit associations, and Indian tribes for community facilities. Under FHA's regulations, the interest rate for such loans could exceed 5 percent.

Before it was amended by the Rural Development Act of 1972, section 307(a) of the Consolidated Farm and Rural Development Act provided for a 5-percent maximum annual interest rate for certain loans made or insured under subtitle A of title I of that act. Section 113 of the Rural Development Act of 1972, in amending section 307(a), retained the 5-percent maximum rate but provided exceptions for section 304(b) small business enterprise loans, section 306(a)(1) community facility loans, and section 310B business and industrial loans. The amendment stated:

> " * * * loans (other than loans to public bodies or nonprofit associations (including Indian tribes * * *) for community facilities, or loans of a type authorized by section 306(a)(1) prior to its amendment by the Rural Development Act of 1972) made or insured under section 304(b), 306(a)(1), or 310B shall -
>
> "(1) when made other than as guaranteed loans, bear interest at a rate, prescribed by the Secretary, not less than a rate determined by the Secretary of Treasury * * * /formula rate/; and
>
> "(2) when made as guaranteed loans, bear interest at such rate as may be agreed upon by the borrower and the lender /negotiated rate/."

Accordingly, loans to public bodies, nonprofit associations, and Indian tribes for community facilities are excluded from the formula- and negotiated-rate provisions and should be insured or guaranteed at interest rates not to exceed 5 percent.

FHA's regulations, however, do not provide for a maximum 5-percent interest rate on insured or guaranteed business and industrial loans to public bodies, nonprofit associations, and Indian tribes for community facilities. Section 1842.61(b) of the regulations provides for computing interest rates for all insured business and industrial loans on the basis of the formula prescribed by the Rural Development Act of 1972. As of December 18, 1973, this rate was 9 percent. For a guaranteed loan, sections 1841.13(a) and 1842.23 of the regulations provide that the interest rate be negotiated between the lender and the borrower.

FHA comments

FHA officials told us that FHA had amended its regulations to provide for a maximum 5-percent interest rate on loans to public bodies for community facilities and that it would further amend its regulations to include nonprofit associations and Indian tribes.

Matter for consideration by the Subcommittees

The Subcommittees may wish to insure that FHA further amends its business and industrial loan regulations as indicated.

VETERANS PREFERENCE

Section 333(e) of the Consolidated Farm and Rural Development Act provides for giving veterans preference over nonveterans in connection with any loan applications under subtitles A or B of the act that are on file in any county or area office at the same time. Business and industrial loans were included in the act under subtitle A.

FHA regulations for business and industrial loans do not give veterans the preference set forth in section 333(e).

FHA comments

FHA officials told us that FHA would look into this matter and would make any needed changes.

Matter for consideration by the Subcommittees

The Subcommittees may wish to insure that FHA amends its business and industrial loan regulations to give veterans the preference set forth in section 333(e).

SMALL BUSINESS LOANS

The Rural Development Act of 1972 authorizes two programs to provide loans to rural residents to acquire, establish, or operate small business enterprises. FHA has not issued regulations to implement these small business loan programs because it believes that section 310B(a) of the Consolidated Farm and Rural Development Act is broad enough to include this small business loan authority.

Section 304(b) of the Consolidated Farm and Rural Development Act authorizes the Secretary to make; insure; and, in conjunction with section 343 of that act, guarantee loans to rural residents to acquire or establish small business enterprises in rural areas to provide such residents with essential incomes. Section 312(b) of that act authorizes the Secretary to make direct small business operating loans in rural areas to provide residents in those areas with essential incomes.

The small business loan programs and the section 310B(a) business and industrial loan program, although similar in some respects, differ with respect to loan purposes; applicant's eligibility; loan types; requirements for credit elsewhere, mandatory refinancing, and county certifications; and loan amounts.

The acquisition of an existing business which results only in the transfer of ownership from one party to another is, in our opinion, a questionable purpose for a section 310B(a) business or industrial loan. (See p. 16.) Such acquisitions, however, would qualify for small business loans under section 304(b) of the act by providing rural residents with essential incomes. Also sections 304(b) and 312(b) small business loans are available to rural residents, whereas section 310B(a) business and industrial loans are available to public, private, or cooperative organizations; to certain Indian

tribes; and to individuals, regardless of residency, provided the projects are in rural areas.

Section 310B(a) business and industrial loans and section 304(b) small business loans can be insured, guaranteed, or direct loans. However, pursuant to section 317 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1947 (supp. II)), which was added by section 123 of the Rural Development Act of 1972, section 312(b) small business operating loans were excluded from being insured or, in conjunction with section 343 of the act, from being guaranteed.

Pursuant to section 310B(a) of the Consolidated Farm and Rural Development Act, guaranteed business and industrial loans are excluded from the credit-elsewhere requirements of section 333(a) of that act. (See p. 18.) Guaranteed small business loans under section 304(b) of the act, however, are not excluded from the credit-elsewhere requirements of section 333(a).

Section 333(b) of the Consolidated Farm and Rural Development Act requires county committee certification that applicants (1) meet loan eligibility requirements and (2) have the character, industry, and ability to carry out the proposed operations and will honestly endeavor to carry out their undertakings and obligations. Section 333(c) of that act requires borrowers to agree to refinance their loans when the Secretary believes that the borrowers can obtain financing elsewhere at reasonable rates and terms (mandatory refinancing).

Section 333(b) of the Consolidated Farm and Rural Development Act, however, excluded business and industrial loans, but not small business loans, from county certifications. Also section 310B(a) of the act excluded business and industrial loans, but not small business loans, from the mandatory-refinancing provisions of section 333(c).

Section 305 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1925 (supp. II)), as amended by section 1(27) of the Agriculture and Consumer Protection Act of 1973 (87 Stat. 237), prohibits the Secretary's making a section 304(b) small business loan if (1) the unpaid indebtedness against the farm or other security at the time the loan is made exceeds $225,000 or the value of the farm or other security, (2) the loans under sections 302, 303, and 304 of the Consolidated Farm and Rural Development Act to any one borrower exceeds $100,000, or (3) the loan exceeds the amount certified by the county committee.

Section 313 of the Consolidated Farm and Rural Development Act prohibits the Secretary's making a small business operating loan under section 312(b) of the act if the loan (1) would cause the total principal indebtedness outstanding at any one time for certain loans made under the act and under section 21 of the Bankhead-Jones Farm Tenant Act, as amended, to exceed $50,000, (2) is for purchasing or leasing land other than for cash rent or for carrying on any land-leasing or land-purchasing program, or (3) exceeds the amount certified by the county committee.

Business and industrial loans, however, are not subject to limitations on the amount of individual loans.

FHA comments and our evaluation

FHA officials told us that FHA was not implementing the small business loan programs authorized by sections 304(b) and 312(b) of the Consolidated Farm and Rural Development Act because the broad authority under section 310B(a) of the act permits FHA to make small business loans without the limitations or restrictions associated with sections 304(b) and 312(b) loans. In addition, the officials said that FHA believed it could provide better loan service through one program rather than three programs.

We recognize that the section 310B(a) business and industrial loan program generally encompasses the small business loan authorities of sections 304(b) and 312(b). However, in enacting sections 304(b) and 312(b), the Congress apparently believed two separate and distinct programs, in addition to section 310B(a) business and industrial loan program, were needed to provide rural residents with essential incomes.

Matter for consideration by the Subcommittees

The Subcommittees may wish to consider requesting USDA to implement sections 304(b) and 312(b) small business loans as two programs separate and distinct from the section 310B(a) business and industrial loan program and to issue appropriate regulations.

CHAPTER 3

COMMUNITY FACILITY LOAN PROGRAM

The Rural Development Act of 1972 amended section 306(a)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 (supp. II)) to authorize the Secretary of Agriculture to make or insure loans for essential community facilities and to extend loan eligibility to Indian tribes on Federal and State reservations and other federally recognized Indian tribes. Under section 306(a)(1) the Secretary has the authority to make or insure loans not only for essential community facilities but also for the application or establishment of soil conservation practices; shifts in land use; the conservation, development, use, and control of water; the installation or improvement of drainage or waste disposal facilities; and recreational developments. Besides Indian tribes, eligible participants are associations, including nonprofit corporations, and public and quasi-public agencies.

FHA also will implement the community facility loan program. On October 18, 1973, FHA's regulations for community facility loans were published in the Federal Register (38 Fed. Reg. 29025 (DI)). These regulations pertained not only to the new loan purposes of section 306(a)(1)--essential community facilities--but also to water and waste disposal loans.

LOAN PREFERENCES

The Consolidated Farm and Rural Development Act does not provide for giving public bodies preference for available loan funds, except when (1) two or more applications are received for the same or similar projects for the same area and one of the applicants is a public body and (2) water or sewer systems are needed to replace inadequate water and sewer systems in communities with populations not over 5,500. FHA regulations, however, give preference to public bodies for community facility loans, except where it is not practicable.

Section 306(a)(1) of the Consolidated Farm and Rural Development Act authorizes the Secretary to make loans to associations, including nonprofit corporations; Indian tribes; and public and quasi-public agencies for various loan purposes, including essential community facilities.

As to affording public bodies preference over other applicants, section 306(a)(8) of the Consolidated Farm and Rural Development Act provides that, when two or more applications are received for projects which serve substantially the same group of residents within a single rural area and one of the applicants is a public body, financial assistance be given to the public body in the absence of substantial reasons to the contrary. Section 306(a)(12) provides that, in making loans and grants for community waste disposal and water facilities, highest priorities be afforded to public bodies and to certain Indian tribes located in rural communities with populations not over 5,500 where the community water supply systems have deteriorated or the community waste disposal systems are not adequate to meet the needs of the communities.

The Consolidated Farm and Rural Development Act does not give preference to public bodies for community facility loans, except as provided in sections 306(a)(8) and (12) of the act. Sections 1823.2(a)(1)(i) and (ii) of FHA's community facility loan regulations, however, provide for giving public bodies preference for available loan funds, except when this is not practicable. When such preferences are not practicable, the following provisions apply.

--Loans for facilities providing utility-type services may be made to other than public bodies.

--Loans for social, cultural, and recreational facilities and the like may be made to other than public bodies when (1) such facilities are fully available to the public, (2) it is not practicable for the public entities they serve to finance them, and (3) the applicants have firm sources of repayment other than, and in addition to, the revenues generated by the facilities.

FHA comments

FHA officials told us that FHA gives loan preference to public bodies because it believes that public bodies best serve the needs of the communities and because it was more economically feasible to make loans to public bodies. The officials stated also that the regulations did not exclude other applicants who would be eligible for loans when it was clearly evident that the project revenues would be sufficient to repay the loans. In addition, the officials said that FHA had not received any adverse comments on, or complaints about, this provision of the regulations from any organization.

Matter for consideration by the Subcommittees

The Consolidated Farm and Rural Development Act does not give public bodies the preference for community facility loans that FHA's regulations give them. Sections 306(a)(8) and (12) of the act, however, do identify two specific instances in which public bodies are to be extended preference over other applicants. The Subcommittees may wish to request USDA to amend section 1823.2(a)(1) of FHA's regulations so as not to extend preference to public bodies but to limit such preference as provided for in sections 306(a)(8) and (12).

REVIEW AND PRIORITY RECOMMENDATIONS BY A-95 CLEARINGHOUSE AGENCIES

The Rural Development Act of 1972, as well as FHA's community facility loan regulations, provide that applications for community facility loans be submitted to State and sub-State A-95 clearinghouse agencies for their review and comments. The regulations also require that applicants solicit priority recommendations from these clearinghouse agencies and that FHA fully consider these priority recommendations in selecting projects for funding.

Strict adherence to State and sub-State A-95 clearinghouse agencies' priority recommendations might be inconsistent with the intent of a 1973 amendment to the Consolidated Farm and Rural Development Act. This amendment included in section 1(27) of the Agriculture and Consumer Protection Act of 1973, prohibited loans or grants under that act from being subject to the prior approval of any officer, employee, or agency of any State.

The Rural Development Act of 1972 and its legislative history indicate that the Congress intended a review of section 306 community facility loan applications by multijurisdictional sub-State areawide general-purpose planning and development districts designated as clearinghouse agencies.

Section 306(a)(3) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(3)), before it was amended in 1972, required that all applications for financial assistance under the act be submitted for review and comments to the municipal and county governments where the proposed projects were to be located. Applications for such assistance for water and sewer planning grants and water and waste disposal system loans and grants were processed according to the requirements of OMB Circular A-95.

The Rural Development Act of 1972, however, amended section 306(a)(3) to require that only section 306 applications (rather than all applications) be submitted to municipalities and counties for review and comments. The amendment also added the requirement that section 306 applications be submitted for review and comments to the multijurisdictional sub-State areawide general-purpose planning and development agencies--designated as clearinghouse agencies--which had jurisdiction over the areas in which the proposed projects were to be located. The amendment provided also that such review and comments be completed within a designated period not to exceed 30 days.

In presenting the conference report to the Senate, Senator Talmadge stated that the amendment to section 306(a)(3) required that all applications for proposed water, waste disposal, and other essential community facility projects under section 306 be submitted to the A-95 multijurisdictional sub-State areawide general-purpose planning and development districts for review. Senator Talmadge stated also that the Secretary could approve only those loans and grant applications that were consistent with the districts' areawide general-purpose development plans, if such existed.

Consistent with the amendment to section 306(a)(3) by the Rural Development Act of 1972, section 1823.12(a) of FHA's community facility loan regulations requires that loan applicants submit their applications for review and comments to the appropriate A-95 clearinghouse agency.

In section 1(27) of the Agriculture and Consumer Protection Act of 1973 (see p. 10), the Congress amended section 310B(d) of the Consolidated Farm and Rural Development Act to provide that no loan or grant authorized under the act require or be subject to the prior approval of any officer, employee, or agency of any State. Although this provision was originally restricted in the House and Senate bills to the section 310B business and industrial loan program, the conferees broadened this provision to make it applicable to all loans and grants, including section 306 community facility loans.

The President, on signing the Agriculture and Consumer Protection Act of 1973, stated that he would respect the wishes of the Congress on this point and would adhere to this legal prescription but that he planned to administer these new rural development programs in a way which would give the fullest possible consideration to State rural development goals and the local priorities expressed in those goals. (See p. 10.)

To comply with this amendment, FHA deleted from its proposed community facility loan regulations (38 Fed. Reg. 16364 (DI)) its requirement that a community facility loan be approved by the Governor or his designee. In its final regulations, however, FHA inserted in section 1823.12(a) a requirement that loan applicants request priority recommendations from the A-95 clearinghouse agencies. Sections 1823.1 and 1823.2(b) of the regulations were changed to provide that FHA, in selecting projects for funding, fully consider all A-95 clearinghouse agency comments and priority recommendations.

Although the 1973 amendment makes it clear that projects are not to be subject to prior approval of any officer, employee, or agency of any State, A-95 clearinghouse agencies, by the nature of their creation, are State or sub-State agencies. Although these clearinghouse agencies do not have responsibility for approving specific projects under the A-95 procedures, FHA's regulations require FHA to fully consider A-95 clearinghouse agencies' comments and priority recommendations in selecting projects.

In addition, the A-95 review procedures provide for a total of 60 days for reviewing each project--a 30-day initial period plus a 30-day extension. Section 306(a)(3) of the Consolidated Farm and Rural Development Act, as amended by the Rural Development Act of 1972, states specifically that such review not exceed 30 days. (See p. 30.) This requirement was also emphasized by the conferees on page 24 of their report. FHA's regulations, however, do not specify a time period for completion of A-95 reviews.

FHA comments and our evaluation

FHA officials told us that FHA was required, by law, to obtain A-95 clearinghouse agencies' comments before approving community facility loans and that FHA's solicitation of priority recommendations would help insure that the projects it funds are in tune with State development strategies and priorities. The officials said, however, that FHA was in no way bound to adhere to those priority recommendations. The officials said that FHA's project selections were the responsibility of the FHA State directors and that this had been emphasized at its training sessions. The officials stated also that FHA had no intention of circumventing the congressional intent of of the 1973 amendment.

We believe that FHA's consideration of A-95 clearinghouse agencies' priority recommendations, to help insure that the projects FHA funds are consistent with State development strategies and

priorities, is consistent with the provisions of section 306(a)(3) of the Consolidated Farm and Rural Development Act. Section 306 (a)(3) provides that A-95 clearinghouse agencies' reviews be concerned with the effect of the projects upon areawide goals and plans of such agencies. In addition, this would be one way to further the objectives of section 603(b) of the Rural Development Act of 1972 which requires the Secretary to assume responsibility for coordinating a nationwide rural development program utilizing the services of executive departments and agencies, including those within USDA, in coordination with rural development programs of State and local governments.

Although FHA said it was not bound to adhere to A-95 clearinghouse agencies' priority recommendations, FHA's regulations do not specifically state so.

With respect to the 30-day limitation, FHA officials told us that FHA's regulations were within the law and that FHA believed it was more practicable not to specifically provide for a maximum 30-day limitation. The officials said that an A-95 clearinghouse agency could get around such a limitation by furnishing comments within the 30-day period to the effect that it supported the proposed project but would like to review and comment on the final project plans at a later date.

Matters for consideration by the Subcommittees

In view of FHA's comments with respect to A-95 clearinghouse agencies' priority recommendations, the Subcommittees may wish to request USDA to amend FHA's community facility loan regulations to make it clear that FHA is not bound to adhere to A-95 clearinghouse agencies' priority recommendations in selecting projects. In addition, the Subcommittees may wish to consider requesting USDA to amend FHA's regulations to require that the final A-95 clearinghouse agencies' comments be submitted within 30 days after the date project applications are forwarded to these agencies.