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Department Of Labor's Practice
Of Obtaining Labor Union
Comments In Making Certifications
Required By The Consolidated
Farm And Rural Development Act

B-174873

Department of Agriculture
Department of Labor

BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

REO-75-292

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

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The Honorable Clifford P. Hansen
United States Senate

Dear Senator Hansen:

Pursuant to your request of May 28, 1974, and our meeting with you on June 14, 1974, we have reviewed several matters relating to the Department of Labor's practice of obtaining labor union comments in making certifications required by the Consolidated Farm and Rural Development Act. Under that act, the Department of Labor certifies ~~that the Department of Agriculture's business and industrial loan and grant programs will not result in~~

--the transfer of employment or business activity from one area to another or

--the overproduction of goods, materials, or commodities or the overavailability of services or facilities in an area.

This report contains essentially the same information as the briefing document used during our presentation to you on October 3, 1974.

As discussed at that meeting, the Department of Justice should be consulted on questions about whether the Department of Labor's solicitation of labor union comments violated the law--18 U.S.C. 1905--relating to disclosure of confidential proprietary information.

We discussed the matters presented in the report with officials of the Departments of Agriculture and Labor and considered their views in preparing the report but, as you requested, we did not obtain written comments from them.

As agreed with your office, we are sending copies of this report
c2 p2 to Senator Russell Long and Congressman Bill Alexander, the Secretaries
of Agriculture and Labor, and the House and Senate Committees on
c4.5 Government Operations and on Appropriations. <156.0
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By sending the report to the Secretary of Labor and to the four committees, the requirements of section 236 of the Legislative Reorganization Act of 1970 will be set in motion. Section 236 requires the head of a Federal agency to submit a written statement on actions taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

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

Sincerely yours,



Comptroller General
of the United States

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ABBREVIATIONS

AFL-CIO American Federation of Labor and Congress of
Industrial Organizations

EDA Economic Development Administration

FmHA Farmers Home Administration

GAO General Accounting Office

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COMPTROLLER GENERAL'S REPORT TO
THE HONORABLE CLIFFORD P. HANSEN
UNITED STATES SENATE

DEPARTMENT OF LABOR'S PRACTICE
OF OBTAINING LABOR UNION COMMENTS
IN MAKING CERTIFICATIONS REQUIRED
BY THE CONSOLIDATED FARM AND
RURAL DEVELOPMENT ACT

1 2 Departments of Agriculture and Labor 42, 9
B-114873

D I G E S T

WHY THE REVIEW WAS MADE

GAO was asked to review the Department of Labor's practice of obtaining labor union comments in making certifications required by the Consolidated Farm and Rural Development Act.

Under the act, Labor is required to certify that assistance under the Department of Agriculture's Farmers Home Administration (FmHA) business and industrial loan and grant programs will not likely result in

- transfer of employment or business activity from one area to another or
- overproduction of goods, materials, or commodities or the overavailability of services or facilities in an area.

The business and industrial loan and grant programs and the requirement for Labor's certifications were added to the Consolidated Farm and Rural Development Act by the Rural Development Act of 1972.

Major matters GAO reviewed were:

- Labor's use of the American Federation of Labor and Congress of Industrial Organizations' (AFL-CIO) comments in making certifications.
- Labor's denial of certifications on the basis of labor union comments.
- Labor's compliance with the 60-day statutory limit for processing certification requests.
- Labor's use of unions, other than AFL-CIO or its affiliates, and other non-Government sources.
- AFL-CIO criteria for commenting on businesses and industries pending certification.
- Possible violations of 18 U.S.C. 1905, relating to the disclosure of confidential proprietary information.
- Public review of Labor's certification procedures.

FINDINGS AND CONCLUSIONS

Labor began processing certifications in October 1973. Through

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August 31, 1974, Labor had received certification requests involving 919 applicants, businesses, and industries.

As of August 31, 1974, Labor had approved certifications for 791 of these, denied 8, and was still processing 104. Certification requests for the remaining 16 applicants or businesses had been withdrawn. (See p. 3.)

The Rural Development Act's legislative history is silent on whether the Congress intended Labor to solicit labor union comments when making certifications. At AFL-CIO's request, Labor began to solicit AFL-CIO comments in February 1974. An AFL-CIO official told GAO that the union made the request because it was concerned that Federal financing might be used to transfer employment from one area to another. (See p. 4.)

Through July 10, 1974, Labor sent the AFL-CIO information on 679 businesses and industries on which FmHA had requested certification.

Labor assumed that AFL-CIO or its affiliated unions did not object to certification unless comments were received within 2 weeks. As of July 31, 1974, AFL-CIO affiliated unions had commented negatively in 22 of the 679 cases.

Comments generally related to increasing capacities in already-depressed industries,

transferring employment from one area to another, and giving businesses to be assisted the unfair competitive advantage of Federal financing. (See p. 4.)

As of July 31, 1974, Labor had provided certifications in 17 of the 22 cases and denied certification in one case. The remaining four cases were pending. (See p. 5.)

GAO concluded that AFL-CIO approval was not a prerequisite to Labor's certification on the basis of

--statements made by officials with the 17 businesses, on which Labor had provided certifications despite negative union comments, that they had not made any concessions to any labor union to try to obtain union approval of Labor certifications and

--Labor's actions in the cases on which union comments were received. (See p. 5.)

Labor suspended its practice of soliciting AFL-CIO comments in August 1974. Instead, it plans to publish in the Federal Register a list of applicants, businesses, and industries--other than those to be routinely approved--pending certification, asking for comments from all interested parties within 2 weeks.

Labor's plan was included in its proposed new certification

procedures published in the Federal Register on October 23, 1974. (See p. 5.)

In the case in which the union commented negatively and Labor denied certification, Labor had not thoroughly investigated the union's allegations or directly communicated with the business.

Although Labor asked FmHA to resolve the union's allegations, Labor did not consider the response adequate and denied the business certification.

After GAO inquired into this matter, Labor obtained further information showing the union's allegations misleading. A Labor official said that Labor would reevaluate the business for possible certification if the case was resubmitted. (See p. 6.)

In one of the 17 cases in which Labor provided certification despite union comments, it had originally denied certification without thoroughly investigating the union's comments.

After FmHA told the business it had been denied certification, the business sent Labor a letter justifying its position and negating the union's allegations. Labor then revoked its denial and approved a certification for this business. (See p. 8.)

In investigating the union comments in these two cases, Labor gave the businesses an

opportunity to respond to union comments through FmHA. However, these attempts were unsuccessful because of a communications breakdown between Labor and FmHA.

Although Labor considered including direct communication with applicants and businesses in its proposed certification procedures, Labor rejected this approach because FmHA already had established communications with them. (See pp. 6 to 8.)

Labor's proposed procedures would require Labor to advise FmHA in writing of any comments which could lead to Labor's denying a certification, so that FmHA could give applicants and businesses an opportunity to respond.

Although FmHA had been advised in writing of negative union comments in the case in which Labor had denied certification, a Labor official said that he did not believe that the misunderstanding experienced on that case would occur again. (See p. 8.)

GAO believes that it is Labor's responsibility, in making certifications pursuant to the Consolidated Farm and Rural Development Act, to thoroughly investigate the accuracy of the information it uses to deny or approve certifications.

As part of that investigation, Labor should communicate all negative comments directly to

the affected applicants or businesses for their response.

Direct communication with applicants and businesses could

- minimize misunderstandings and
- expedite the certification process by avoiding unnecessary delays. (See p. 8.)

Labor has not been able to process all certification requests within the 60-day statutory limit. Requests requiring over 60 days to process have included ones with and without union comments.

To expedite processing, Labor has

- proposed new certification procedures providing for its routinely certifying loans and grants for certain kinds of projects, such as those involving a change of ownership or the refinancing of an existing loan;
- requested five additional personnel in its supplementary appropriations for fiscal year 1975; and
- plans to continue monitoring its certification process to identify other expediting actions which can be taken.

These proposed actions, if properly implemented, should help expedite the certification

process. As noted above, direct communications with applicants and businesses could also help. (See p. 8.)

AFL-CIO was the only labor union from which Labor directly solicited comments but, pursuant to Labor's instructions, State employment security commissions were to solicit comments from competitors and local unions.

Also, the Economic Development Administration, which assisted Labor with some of its certifications, sometimes obtained information from trade associations and local chambers of commerce. (See p. 11.)

AFL-CIO did not have any written criteria for commenting on pending certification requests.

An AFL-CIO official said, however, that AFL-CIO and its affiliated unions reviewed the requests to determine that

- jobs and incomes of employed workers would be protected,
- employment would not be transferred from one area to another, and
- production would not be increased in an industry having excess capacity and significant unemployment. (See p. 11.)

In soliciting AFL-CIO comments between February and August 1974, Labor routinely sent AFL-CIO a list showing the name of the

applicant or business pending certification, the proposed location of the plant, and the products to be involved.

Labor officials did not believe this practice violated the provisions of 18 U.S.C. 1905 relating to the disclosure of confidential proprietary information.

Although Labor suspended its practice of directly soliciting AFL-CIO comments in August 1974, Labor plans to publish information similar to that formerly provided to AFL-CIO in the Federal Register asking for comments from all interested parties.

Questions or allegations about violations of 18 U.S.C. 1905, a criminal statute, are for resolution by the Department of Justice; GAO has no jurisdiction in such matters. (See p. 12.)

Labor officials told GAO that the certification procedures Labor was using were interim procedures and that final procedures were being developed in cooperation with FmHA.

Labor published its proposed new certification procedures in the Federal Register for public review and comment on October 23, 1974. (See p. 12.)

RECOMMENDATIONS

GAO is recommending to the Secretary of Labor that Labor communicate all negative comments which could lead to Labor's denial of certification directly to the applicant or business for its response. (See p. 8.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

As requested by Senator Hansen, GAO did not obtain written comments from Labor or the Department of Agriculture on this report. GAO did, however, discuss the matters in the report with officials of both Departments and considered their views in preparing the report.

CHAPTER 1

INTRODUCTION

We reviewed the Department of Labor's practice of obtaining labor union comments before certifying that assistance under the Department of Agriculture's Farmers Home Administration's (FmHA's) business and industrial loan and grant programs will not likely result in

- the transfer of employment or business activity from one area to another or
- the overproduction of goods, materials, or commodities or the overavailability of services or facilities in an area.

The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 note (supp. II)) authorizes both the loan and grant programs and Labor's certifications.

The major matters reviewed were:

- Labor's use of the American Federation of Labor and Congress of Industrial Organizations' (AFL-CIO) comments in making certifications.
- Labor's denial of certifications on the basis of labor union comments.
- Labor's compliance with the 60-day statutory limit for processing certification requests.
- Labor's use of unions, other than AFL-CIO or its affiliates, and other non-Government sources.
- AFL-CIO criteria for commenting on businesses and industries pending certification.
- Possible violations of 18 U.S.C. 1905, relating to disclosure of confidential proprietary information.
- Public review of Labor's certification procedures.

PROGRAM AUTHORIZATION AND ADMINISTRATION

Section 118 of the Rural Development Act of 1972 amended the Consolidated Farm and Rural Development Act by adding section 310B (7 U.S.C. 1932 (supp. II)). Section 310B authorizes the Secretary of Agriculture to make, insure, and guarantee loans for improving, developing, or financing business, industry, and employment and for improving the economic and environmental climate in rural communities, including pollution abatement and control. Also it authorizes the Secretary to make grants to public bodies for measures designed to help development of private business enterprises.

According to section 310B, this assistance cannot be extended unless the Secretary of Labor certifies that it is not likely to result in (1) transferring any employment or business activity of the applicant from one area to another or (2) increasing the production of goods, materials, or commodities or the availability of services or facilities in the area when there is not sufficient demand.

The act requires that the Secretary of Labor complete his certification within 60 days from receipt of the request for certification from the Secretary of Agriculture. The Conference Report¹ on the act stated that, except in unusual circumstances, the Secretary of Labor should act within 30 days.

The Secretary of Agriculture delegated his authority for making business and industrial loans and grants to FmHA. During fiscal year 1974, FmHA had obligated about \$200 million for 399 business and industrial loans and about \$10 million for 136 business and industrial grants. Because of Senator Hansen's interest in FmHA's procedures for processing business and industrial loans, a summary of these procedures are included in appendix I.

Labor has been following interim procedures in making certifications. It has not described these procedures in writing except in instructions issued to its regional offices. These interim procedures, discussed below in relation to specific matters reviewed for Senator Hansen, are summarized in appendix II. On October 23, 1974, Labor published its proposed certification procedures in the Federal Register (39 Fed. Reg. 37650(C1)) and invited public review and comments thereon.

¹ House Report No. 92-1129, June 14, 1972.

Labor began making certifications in October 1973. Through August 31, 1974, its records showed that it had received certification requests involving 919 applicants, businesses, and industries. Labor's records showed that, as of August 31, 1974, it had approved certifications for 791 of these, denied certifications for 8, and was still processing certifications for 104. Certification requests for the remaining 16 applicants or businesses had been withdrawn.

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CHAPTER 2

LABOR'S PRACTICE OF OBTAINING LABOR UNION COMMENTS IN MAKING CERTIFICATIONS

Between February and August 1974, Labor, generally on a weekly basis, sent a list of businesses and industries pending certification to the AFL-CIO's Research Department in Washington for comment. The name of the business or industry, the proposed location of the project, and the products involved were listed. The Research Department, in turn, relayed this information to AFL-CIO affiliated unions having an interest in a particular business or industry. Unless comments were received within 2 weeks, Labor assumed that there were none.

The Rural Development Act's legislative history is silent on whether the Congress intended the Secretary of Labor to get labor union comments when making certifications. Labor officials said that Labor's practice of soliciting AFL-CIO comments was initiated in February 1974 at the union's request.

An AFL-CIO official said that the request was made because the union was concerned that Federal financing might be used to transfer employment from one area to another which occurred, in some instances, under Federal area redevelopment and manpower training programs. He said also that, during consideration of the Rural Development Act, AFL-CIO was led to believe that an opportunity to make inputs into the decisionmaking process would be provided.

LABOR'S USE OF LABOR UNION COMMENTS

In a May 16, 1974, letter Labor told Senator Hansen that AFL-CIO comments were used as an information source and that AFL-CIO approval was not a prerequisite to Labor's certification. An AFL-CIO official said that it was never intended that AFL-CIO would have a veto power over certifications. Our analysis of Labor's records and actions confirmed these statements.

The records showed that, through July 10, 1974, Labor had sent AFL-CIO information on 679 businesses and industries on which FmHA had requested certification. The records also showed that, as of July 31, 1974, AFL-CIO affiliated unions had commented negatively on 22 of these businesses (see app. III), or about 3 percent, and had no comments on the remaining 657 businesses or industries.

According to the comments in the 22 cases, AFL-CIO affiliated unions believed the businesses should be denied certification because Federal aid to these businesses would result in:

- The inefficient use of existing capacity in certain industries already depressed because of imports, declines in Department of Defense purchases, gasoline shortages, declines in home building, or insufficient demand.
- The transfer of employment or business activity from one area to another because of conditions prevalent in some industries or result in unemployment in those areas these businesses now operate.
- Some businesses having an unfair advantage over competitors because of the cost advantages made available by Federal financing.

As of July 31, 1974, Labor had approved certifications for 17 of these 22 businesses despite the negative union comments. It originally denied certification for 1 of the 17 businesses because of union comments but later certified this business after receiving a letter which justified the business's position and negated the union's comments. Labor denied certification to one of the remaining five businesses and four were pending. (See app. III.) (Labor had denied certification to four other businesses as of July 31, 1974, but none of these involved union comments.)

Officials with the 17 businesses for which Labor had approved certifications despite negative union comments said that they had not made any concessions to any labor union to obtain union approval of Labor's certification. Most of the officials said that they were not even informed of the union's comments.

On the basis of the officials' statements and Labor's actions in the cases in which union comments were received, we concluded that AFL-CIO approval was not a prerequisite to certification.

Labor officials said Labor suspended its practice of soliciting AFL-CIO comments in August 1974 pending implementation of its proposed new certification procedures. (See p. 2.) Labor will, under its proposed procedures, publish weekly in the Federal Register a list of applicants, businesses, and industries--other

than those to be routinely approved (see p. 10)--pending certification, asking for comments from all interested parties within 2 weeks. Although this procedure was described in Labor's August 6, 1974, instructions to its regional offices (see app. II), an official said that this would not be implemented until procedures were finalized.

CERTIFICATIONS DENIED BY LABOR
ON THE BASIS OF LABOR UNION COMMENTS

As of July 31, 1974, Labor had formally denied certifications to two businesses because of union comments. One business, the Lady Wrangler Division of Blue Bell, Inc., was a prospective occupant of an industrial park to be financed by an FmHA grant to the city of Oakdale, Louisiana.

The International Ladies Garment Workers' Union, an AFL-CIO affiliate, told Labor that Blue Bell's annual reports showed that Lady Wrangler had closed one of its plants in Mississippi in 1973 and it expressed its concern that certification would result in the transfer of employment from one area to another. Labor told FmHA of the union's comments and asked FmHA to have the city of Oakdale resolve this matter. In a letter to FmHA which was forwarded to Labor, the city stated that Lady Wrangler had only one plant in Mississippi. According to a Labor official, it did not consider the city's reply responsive and it formally denied Lady Wrangler certification. Labor did certify the city for a grant, provided that for 3 years, all project occupants be certified by Labor.

Labor records showed that a special Security and Exchange Commission inquiry of the union's allegation revealed that, although a Lady Wrangler plant had been closed in Mississippi, a new plant was simultaneously opened in the same city. A Labor official said that this information was not considered because Labor's inquiry with the Commission revealed that the information was obtained from Lady Wrangler and that there was no information in the Commission's files to document this.

According to information we obtained from the Mississippi Research and Development Center, Lady Wrangler, and the Community Foundation of Tupelo, Mississippi, Lady Wrangler had operated five plants in Mississippi. Two plants, located in the city of Tupelo, were consolidated into one in 1973, reducing the number of plants in Mississippi from five to four. Lady Wrangler said that no loss of employment resulted from the consolidation.

When the Lady Wrangler certification request was processed, Labor's instructions to its regional offices provided only for the State employment security commission in the State in which the proposed project was to be located to report on a certification request. Labor revised these instructions on August 6, 1974, to provide for the State employment security commission in each State in which the applicant or occupant operates a plant producing products similar to those to be produced in the proposed plant to report on a certification request. Had these revised instructions been in effect when Labor processed the Lady Wrangler certification, a report from the Mississippi State Employment Security Commission might have helped resolve the union's allegation before Lady Wrangler was denied certification.

To verify the information we obtained, Labor asked the Mississippi State Employment Security Commission to look into this matter. The Mississippi commission confirmed that the reduction in plants was the result of consolidation. A Labor official said that Labor would reevaluate Lady Wrangler for possible certification if resubmitted.

Labor also formally denied certification because of negative union comments to Kern Manufacturing, Inc. in this case, Labor later revoked its denial. The International Ladies Garment Workers' Union had alleged that Kern was a subcontractor for Maidenform, Inc., and that this relationship had resulted in layoffs at Maidenform plants in Perth Amboy and Bayonne, New Jersey.

A Labor official said that he attempted to resolve this problem with FmHA before formally denying Kern certification on June 21, 1974. The president of Kern said that he was not aware that Labor or the union had a problem until FmHA told him of the denial. He said that, after he was told of the denial, he sent Labor a letter denying that Kern was a subcontractor for Maidenform. FmHA resubmitted the certification request and, on July 17, 1974, Labor revoked its denial and formally approved the certification.

In discussing the Kern and Lady Wrangler cases with Labor officials, we proposed that, to avoid similar future problems, Labor should communicate such information directly to the affected businesses for their response.

A Labor official said that Labor had considered including in its proposed new certification procedures (see p. 2) direct communications with those businesses affected by negative comments

but rejected this because FmHA already had established communications with applicants and businesses through its State and county offices. He said that, under Labor's proposed procedures, FmHA would be advised in writing of any negative comments which could lead to Labor's denying a certification, so that FmHA could give applicants and businesses an opportunity to respond. Although he recognized that FmHA had been advised in writing about Lady Wrangler, he said that this was one of the first cases in which FmHA had been advised in writing and that he did not believe that such a misunderstanding would occur again.

Although FmHA establishes communications with an applicant or business well before the Labor certification process begins, the Certificate of Non-relocation and the Market and Capacity Information Report (Forms FmHA 449-22 and 449-23) forwarded to Labor with the certification request, contain the name, address, and telephone number of the applicant or business, thus Labor can easily communicate with them if any questions arise.

Conclusions

It is Labor's responsibility, in making certifications pursuant to the Consolidated Farm and Rural Development Act, to thoroughly investigate the accuracy of the information it uses to deny or approve certifications. As part of its investigation, Labor should communicate all negative comments, which could lead to its denial of certifications, directly to the applicants or businesses for their response. This would further minimize misunderstandings and could help to expedite the certification process by avoiding unnecessary delays.

Recommendation to the Secretary of Labor

We recommend that Labor communicate all negative comments which could lead to the denial of certification directly to the applicant or business for its response.

LABOR'S COMPLIANCE WITH 60-DAY STATUTORY LIMIT FOR PROCESSING CERTIFICATION REQUESTS

In many instances Labor has not processed certifications within the 60-day statutory limit. Some of the requests which required

more than 60 days to process had been commented on by labor unions; others had not.

Of the 22 businesses on which Labor had received negative union comments, certification requests on the 18 approved or denied certification by Labor as of July 31, 1974, had required an average of 75 days for processing. Of these, 15 took longer than 60 days to process. The four certification requests which were still being processed on July 31, 1974, had been on hand an average of about 103 days; each had been on hand for more than 60 days. (See app. III.)

Our analysis of 34 certification requests which were submitted to Labor in March 1974 and which the union had not commented on, showed that it took an average of 60 days to approve or deny certification--21 required more than 60 days, ranging from 62 to 92 days, and 13 required less than 60 days, ranging from 30 to 58 days.

In processing certification requests, Labor solicited comments from State employment security commissions and, in some cases, from the Economic Development Administration (EDA), as well as from AFL-CIO. Those requests on which negative comments were received generally took longer to process, particularly when such comments resulted in Labor's denying certification. In addition to those requests denied certification because of union comments, Labor formally denied certification on four other requests as of July 31, 1974, because of adverse comments from either State employment security commissions or EDA. It took Labor an average of 77 days to process these requests.

Labor officials told us that many requests were not processed within 60 days because:

- The number of requests received during fiscal year 1974 was about 3 times more than the 250 requests it expected to receive from FmHA and it did not have sufficient staff to handle this volume.
- This was a new program with untested procedures and in which specific legal precedents and new issues surfaced which needed to be resolved.
- There were, on occasion, problems in getting additional information from FmHA needed to certify requests.

Labor officials said that a very large number of requests were received during April and May and that most of the cases in which requests were not processed within 60 days were during this period. They said nearly all of that backlog had been worked off during July and August using overtime assistance.

Labor records showed that, of the 104 certification requests still being processed as of August 31, 1974, only 12 had been on hand for more than 60 days.

To expedite processing, the proposed certification procedures (see p. 2) provide for Labor to routinely certify:

- Loans for projects which involve a change of ownership from one person or group to another or the refinancing of an existing loan.
- Loans of less than \$100,000 for projects which are expected to result in the employment of not more than five workers.
- Grants to public bodies for projects having no known current or future occupants. (Since March 19, 1974, DOL has been routinely certifying this type of grant (see app. II).)
- Grants to public bodies for projects in which the occupants are known but the improvement will not result in a transfer or increase in operations or employment by the occupants.

A Labor official said that Labor's supplemental appropriations request for fiscal year 1975, pending in the Office of Management and Budget, would provide five additional personnel. This official said also that Labor will continue to monitor its certification process to identify additional actions which could further expedite the certification process.

Conclusions

These proposed actions, if properly implemented, should help expedite the certification process. Also direct communications with applicants or businesses, as recommended on page 8, would help expedite the certification process.

LABOR'S USE OF UNIONS, OTHER THAN THE AFL-CIO OR
ITS AFFILIATES, AND OTHER NON-GOVERNMENT SOURCES.

A Labor official said that Labor did not solicit comments from any union other than AFL-CIO or from non-Government organizations or groups.

Under Labor's February 15, 1974, instructions to its regional offices (see app. II), State employment security commissions were to solicit comments from business competitors and local unions in reporting on certification requests forwarded to them for review. Labor revised these instructions on August 6, 1974 (see app. II), to provide that State employment security commission reports be based primarily on data available from local and State agencies and be supplemented, at the State's option, by information obtained from outside informed groups. The revised instructions limit the information that can be given out by State commissions to the name of the applicant or business, the project's location (city and State), and the principal business activity.

According to an EDA official, EDA sometimes obtained information from trade associations and local chambers of commerce in making market capacity studies for Labor.

AFL-CIO CRITERIA FOR COMMENTING ON BUSINESSES
AND INDUSTRIES PENDING CERTIFICATION

An AFL-CIO official said that AFL-CIO did not have any written criteria for commenting on businesses and industries pending Labor certification but that AFL-CIO and its affiliates reviewed the requests to determine that

- jobs and incomes of employed workers would be protected,
- employment would not be transferred from one area to another, and
- production would not be increased in an industry having excess capacity and significant unemployment.

QUESTIONS CONCERNING DISCLOSURE OF
CONFIDENTIAL PROPRIETARY INFORMATION

Federal law (18 U.S.C. 1905) generally provides for the confidentiality of proprietary information which Federal officers or employees obtain from manufacturers, businesses, and individuals through their official duties. This law provides penalties if such persons disclose proprietary information--such as trade secrets, processes, operations, identity, confidential statistical data, or pertinent financial data--in any manner or to any extent not authorized by law.

In soliciting AFL-CIO comments between February and August 1974, Labor routinely sent AFL-CIO a list showing the name of the applicant or business pending certification, the proposed location of the plant, and the products to be involved. Labor officials said that they did not believe this practice violated the provisions of 18 U.S.C. 1905.

Although Labor suspended its practice of directly soliciting AFL-CIO comments in August 1974, it plans to publish in the Federal Register information similar to that formerly provided to AFL-CIO. (See p. 5.)

Because 18 U.S.C. 1905 is a criminal statute, we have no jurisdiction. Questions or allegations concerning the violation of this statute are for resolution by the Department of Justice.

PUBLIC REVIEW OF LABOR'S CERTIFICATION PROCEDURES

On June 22, 1973, FmHA's proposed regulations for the business and industrial loan and grant programs were published in the Federal Register (38 Fed. Reg. 16375 (DI)) to give the public an opportunity to comment on the proposed regulations. Final regulations for these programs were published in the Federal Register (38 Fed. Reg. 29036 (DI)) on October 18, 1973. Both the proposed and final regulations provided for the submission of loan applications to Labor for certification in accordance with the Consolidated Farm and Rural Development Act, as amended, but they did not identify the procedures Labor was to follow.

Labor officials said that the certification procedures the Department was using were interim procedures (see app. II) and that final procedures were being developed in cooperation with FmHA. Labor published its proposed certification procedures in the Federal Register on October 23, 1974 (see p. 2), and invited public review and comments thereon.

CHAPTER 3

SCOPE OF REVIEW

We made our review at the national offices of FmHA, Labor, and EDA. We reviewed

- the Rural Development Act of 1972 and its legislative history;
- FmHA's regulations and instructions applicable to the processing of business and industrial loan and grant applications;
- Labor's certification procedures; and
- Labor and FmHA records on selected certification requests, including the 22 certification requests on which Labor had received union comments.

We interviewed FmHA, Labor, and EDA officials about their agencies' procedures and role in Labor's certifications or specific matters relating to selected applications. We also interviewed applicants, company representatives involved with these applicants, State agencies, AFL-CIO and one of its affiliated unions, and private organizations concerning matters discussed in this report.

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APPENDIXES

SUMMARY OF FmHA'S PROCEDURES FOR PROCESSING APPLICATIONS
FOR RURAL DEVELOPMENT BUSINESS AND INDUSTRIAL LOANS

Guaranteed business and industrial loans are processed in accordance with FmHA regulations (7 CFR Parts 1841 and 1842), FmHA Instructions 449.1 and 449.2, and various FmHA bulletins. FmHA Instructions 449.1 and 449.2 were revised on September 20, 1974, and revised regulations for 7 CFR Parts 1841 and 1842 were published in the Federal Register (39 Fed. Reg. 34263(D1)) on September 24, 1974. The information presented below was obtained from these documents and discussions with FmHA officials.

PREAPPLICATION PROCESSING

An applicant for a guaranteed business and industrial loan can apply either to an FmHA county or State office or to an approved lender. If the applicant applies to FmHA and the applicant appears to be qualified for an FmHA loan, FmHA provides the applicant with a list of approved lenders in the proposed project area. Since January 7, 1974, applicants, except public bodies and cooperatives, requesting a guaranteed loan of \$350,000 or less have been encouraged to apply for assistance through the Small Business Administration.

The applicant, with the assistance of the lender, prepares and submits a preapplication letter to the FmHA State or county office. This letter includes the names of the applicant and proposed lender; the loan amount requested; a brief description of the proposed project, including an estimate of the type and number of employment opportunities to be generated; and the amount of the applicant's equity. Along with the preapplication, the applicant may send FmHA copies of available feasibility studies, financial statements, or other pertinent information.

Since July 5, 1974, FmHA has required feasibility studies for only those projects involving a loan request of \$1 million or more. However, FmHA may require a feasibility study for a loan request for less than \$1 million if it determines that the proposed project has a weak market or is of questionable feasibility. In accordance with the revised regulations and instructions, feasibility studies may not be required for those loan requests of \$1 million or more if credit factors indicate that a feasibility study is not necessary.

BEST DOCUMENT AVAILABLE

APPENDIX I

FmHA then makes a preliminary review of the preapplication. Some of the matters reviewed are eligibility of applicant and loan purpose, approval of the lender for program participation, and rural location of the proposed project.

The preapplication and the data accompanying it are then referred to the FmHA State Director who determines whether further processing is warranted. If it is, the preapplication is assigned to a Business and Industrial Loan Specialist who assists the lender and applicant in assembling and processing the application. The FmHA county office generally is the point of communication between FmHA and the applicant and lender.

APPLICATION PROCESSING

After the preapplication is approved, the applicant is requested to prepare, for submission to the State office, a Certificate of Non-Relocation and a Market and Capacity Information Report (Forms FmHA 449-22 and 449-23) which are to be accompanied by supplementary information as to the loan amount and the number of persons expected to be employed, by occupation and wage rate, as a result of the loan. This data is sent to the FmHA national office which forwards it to Labor along with FmHA's request for certification. The FmHA national office will advise the State office of the results of Labor's certification. Also at this time, the applicant prepares a Statement of Personal History (Form FmHA 449-4) which is submitted to the national office through the State office for review by the Department of Agriculture's Office of Investigation.

An application conference is then held, and the Business and Industrial Loan Specialist, lender, applicant, county supervisor, and other appropriate parties attend. If eligible with respect to area location, credit, type of project, loan purpose, loan amount, and project priority, the applicant must prepare and submit to the lender an Application for Loan and Guarantee (Form FmHA 449-1); Statement of Collateral (Form FmHA 449-2); and if construction is to cost more than \$10,000, an Equal Opportunity Agreement (Form FmHA 400-1). After these forms are reviewed and completed by the lender, they are submitted to the FmHA State office for further processing along with the Applicant's Environmental Impact Evaluation (Form FmHA 449-10); feasibility study, if not previously submitted with the preapplication; and other pertinent information.

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The Business and Industrial Loan Specialist at the State office evaluates the application and accompanying information and forwards it to the national office for review. Prior to July 5, 1974, only the preapplication, project profile, and feasibility study were submitted to the national office for review.

If the loan request is in excess of \$100,000 or of significant impact, it is submitted for review and priority recommendations to State and sub-State clearinghouse agencies designated under Office of Management and Budget Circular A-95. According to the revised regulations, small loans with no significant economic or environmental impact outside the community are exempt from the A-95 review process but the A-95 agency is to be advised of the proposed project.

In addition, each application is reviewed by an FmHA review board consisting of the State Director; the Business and Industrial Loan Specialist; and either the Community Programs Chief, Rural Housing Chief, or Farmer Programs Chief, as appropriate, to determine project feasibility and compliance with FmHA regulations and procedures. The board may call on experts for additional information if necessary.

FmHA also determines whether an environmental impact statement is needed. This determination is made in accordance with 7 CFR 1824 and FmHA Instruction 442.10.

ISSUANCE OF CONTRACT OF GUARANTEE

If the project is acceptable, the State Director submits a Record of Actions (Form FmHA 440-3) to the FmHA finance office requesting an obligation of loan guarantee authority for the project. After obligation, the State office issues a Conditional Commitment for Guarantee (Form FmHA 449-14) to the lender. This form advises the lender that the proposed loan will be guaranteed and an FmHA Contract of Guarantee (Form FmHA 449-17) issued, if the conditions and requirements contained in the conditional commitment and in FmHA's regulations are met.

Upon receipt of the Conditional Commitment for Guarantee, the lender and the applicant review the conditions and requirements therein to determine their acceptability. If any of the terms are not acceptable, the lender or applicant can convey recommended revisions and the reasons for the revisions to FmHA for further

APPENDIX I

consideration. The applicant, lender, and FmHA discuss and agree on any changes in the conditions and requirements.

FmHA issues a Contract of Guarantee when all requirements in the conditional commitment and in FmHA's regulations are met.

If at any time during the processing of an application Labor formally denies certification, the FmHA State office advises the lender that the loan cannot be guaranteed because of the reasons cited by Labor. The revised instructions do not state that the FmHA State office must advise the lender of the reasons cited by Labor for denial but, according to an FmHA official, FmHA will continue to advise the lender of the reasons cited by Labor for certification denials. FmHA generally does not get copies of comments made by AFL-CIO, EDA, or State employment security commissions but such comments are summarized in Labor's transmittal letter to FmHA if they are the basis for denial.

If FmHA determines that it cannot execute a Contract of Guarantee, it informs the lender in writing of the reasons. Both FmHA and Labor will reconsider adverse decisions if warranted by new or additional information.

SUMMARY OF LABOR'S CERTIFICATION PROCEDURES RELATING
TO RURAL DEVELOPMENT BUSINESS AND INDUSTRIAL
LOANS AND GRANTS

Labor has been processing certification requests under interim procedures. Except for instructions issued to its regional offices (see pp. 22 and 24), Labor's interim procedures were not documented in any regulations, memorandums, or other formal written form. On October 23, 1974, Labor published its proposed new certification procedures in the Federal Register (39 Fed. Reg. 37650(DI)) for public review and comment. Labor plans to finalize these procedures in November 1974. The information presented below on Labor's interim certification procedures was primarily obtained from Labor officials.

INITIAL PROCESSING

FmHA's national office initiates the certification process by sending Labor a letter of request, along with the applicant's Certificate of Non-Relocation (Form FmHA 449-22) and Market and Capacity Information Report (Form FmHA 449-23). Since April 1974, FmHA has also forwarded to Labor information on the amount and purpose of the loan and on the number of workers, by occupation and wage rate, expected to be employed.

Upon receipt of FmHA's request, a Labor control clerk assigns the case a control number and reviews the request and forms to insure that all needed information has been provided.

Since March 19, 1974, all requests have been screened by one of Labor's professional staff employees. If the request involves a grant to a public body for projects having no known current or future occupant, Labor routinely provides certification without further review.

DETAILED REVIEW

Information on those requests not routinely approved in the initial processing are submitted for review and comment to State employment security commissions; AFL-CIO (until August 1974); and, in some cases, EDA.

All requests are sent to Labor's regional office covering the area where the project is to be located. The regional office

APPENDIX II

forwards it to the appropriate State employment security commission for review and comment. The State employment security commission is given 3 weeks to review and comment on the request. According to Labor's February 15, 1974, instructions to its regional offices (see p. 22), the State commissions are to:

- Confirm the list of competitive enterprises identified in the Market and Capacity Information Report and determine whether any key competitors have been omitted.
- Check with competitors and unions to assess the impact of the proposed loan on the employment of competitors and to determine whether there are any other adverse competitive or unemployment effects.
- Summarize its findings for use by Labor's national office.

Labor revised these instructions on August 6, 1974. (See p. 24.)

Between February and August 1974, Labor routinely sent, generally on a weekly basis, a list of businesses and industries pending certification to the Research Department of AFL-CIO, Washington, D.C. This list showed the name of the applicant or business, the proposed location of the project (city and State), and the products to be involved. Labor gave the AFL-CIO 2 weeks in which to comment. In August 1974, Labor suspended its practice of soliciting AFL-CIO comments pending finalization of its proposed certification procedures. (See p. 19.)

Labor also sends information on selected requests to EDA for a market capacity study, generally when these requests involve a large loan or business. An EDA official told us that the studies made for Labor are the same as those EDA has made for several years in connection with its own programs. In making the studies, this official stated that EDA:

- Evaluates the proposed market area.
- Identifies the quantity or supply of the product or service available in the market area and the trends for that product or service. Data may also be obtained from other Government agencies, trade associations, and local chambers of commerce.
- Analyzes available information and data to determine the proposed project's effects on existing competitive enterprises.

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Since the beginning of fiscal year 1975, Labor has not submitted any requests to EDA for review because it lacks funds to reimburse EDA. Labor has requested funds for this purpose in its supplemental appropriation for fiscal year 1975 which is pending approval by the Office of Management and Budget.

For requests not referred to EDA, Labor makes its own analysis to determine what effect the proposed project will have on existing competitive enterprises. Labor does not make as comprehensive analyses as EDA, because it lacks the necessary staff and expertise. Until its revised procedures go into effect, Labor's analyses are being generally limited to a review of the Department of Commerce's publication, "U.S. Industrial Outlook for 1974--With Projections to 1980."

When the proposed procedures go into effect (see p. 19), Labor plans to publish in the Federal Register a list of applicants, businesses, and industries--other than those to be routinely approved--pending certification, to obtain comments of all interested parties. This already has been provided for in Labor's revised instructions to its regional offices (see p. 24), but Labor has not implemented this because it has not yet finalized its procedures.

If there are no adverse comments, Labor formally approves the request for certification and forwards its certification to FmHA.

DISPOSITION OF COMMENTS

Labor reviews all comments to determine whether they are substantive and warrant further review and disposition. If the comments are judged to be substantive, FmHA is advised as to the nature of comments and requested to have the applicant resolve them. If the comments are not satisfactorily resolved, Labor will formally deny certification.

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APPENDIX II

U. S. DEPARTMENT OF LABOR
MA-USES
OFFICE OF TECHNICAL SUPPORT X
4172-1-2-A-410-15444-2330-000 2/15/74
Harold Kuptzin 376-6630

ALL ASSISTANT REGIONAL DIRECTORS FOR MANPOWER
MA RECENTLY ASSIGNED RESPONSIBILITY OF IMPLEMENTING
DOL RESPONSIBILITIES UNDER SECTION 118, CONSOLIDATED FARM
AND RURAL DEVELOPMENT ACT OF 1972 (P.L. 92-419). (SEE
SECRETARY'S ORDER NO. 26-73, DATED 12/12/73.) ACT REQUIRES
DOL TO CERTIFY THAT LOANS MADE BY FARMERS HOME ADMINISTRATION
(FHA) OF AGRICULTURE DEPARTMENT FOR NEW PLANTS OR FACILITIES
IN RURAL AREAS DO NOT RESULT IN PLANT RELOCATIONS, OR ADVERSE
UNEMPLOYMENT OR COMPETITIVE BUSINESS IMPACT. DRAFT PROCEDURES
FOR CARRYING OUT MA RESPONSIBILITIES NOW BEING DEVELOPED IN
FINAL FORM WITH FHA. FM DEFINING ROLE OF REGIONS AND STATE
AGENCIES TO BE ISSUED BY MID-MARCH. IN INTERIM WE WILL REQUEST
STATE AGENCY FIELD CHECKS AS REQUIRED ON AN INDIVIDUAL CASE
BASIS, BY MEMO OR TWX, TO DEVELOP INFORMATION NEEDED BY NATIONAL
OFFICE AS BASIS FOR CERTIFICATION AS FOLLOWS: (1) CONFIRM LIST
OF COMPETITIVE ENTERPRISES SUBMITTED BY LOAN APPLICANT AND
DETERMINE WHETHER ANY KEY COMPETITORS OMITTED; (2) CHECK WITH
AFFECTED FIRMS OR UNIONS AND ASSESS IMPACT OF LOAN ON EMPLOYMENT
SITUATION OF COMPETITIVE FIRMS OR POSSIBLE OTHER ADVERSE COMPETITIVE

COPY

2

OR UNEMPLOYMENT EFFECT; AND (3) SUMMARIZE FINDINGS FOR USE BY NATIONAL OFFICE. STATES WILL GENERALLY BE REQUESTED TO PROVIDE INFORMATION WITHIN A THREE-WEEK TURNAROUND PERIOD UPON RECEIPT IN THE STATE. NATIONAL OFFICE WILL MAKE CERTIFICATION DETERMINATIONS BASED ON SESA REPORT AND OTHER RELEVANT INFORMATION. CERTIFICATION RESPONSIBILITY WILL BE CENTRALIZED INITIALLY IN NATIONAL OFFICE. WORKLOAD FOR ANY ONE REGION OR STATE EXPECTED TO BE LIGHT. NO INDICATION YET WHETHER ADDED BUDGET RESOURCES WILL BE AVAILABLE. FIELD MEMO CONFIRMING PROCEDURES WILL BE ISSUED SOON AS POSSIBLE WHEN FINAL AGREEMENT REACHED WITH FHA. IN MEANTIME, INTERIM REQUESTS FOR INFORMATION FOR DOL CERTIFICATIONS ON THIS LETTER MAY REACH YOU BY MAIL, OR IN URGENT CASES, BY TELEPHONE TO YOUR DATA SYSTEMS AND REPORTS UNIT. REPORTS, IN WRITING, SHOULD FLOW BACK THROUGH REGIONAL OFFICE. NATIONAL OFFICE RESPONSIBILITY FOR PROGRAM ASSIGNED TO OFFICE OF TECHNICAL SUPPORT, U.S. EMPLOYMENT SERVICE. NATIONAL OFFICE CONTACTS IN EVENT OF QUESTIONS ARE: HARRY KUPTZIN (202-376-6630) OR HOWARD DELLON (202-376-6583).

FLOYD E. EDWARDS
Associate Manpower
Administrator for Field
Direction and Management

MEt/HDellon/HKuptzin:co
8432 PH, 66630 or 66583
Retyped:cma 2/15/74

cc: Edwards, OFDM, Browning, Brown, Kuptzin, Dellon, File

APPENDIX II

In reply refer
to METL

U. S. DEPARTMENT OF LABOR
Manpower Administration
Washington, D. C. 20213

August 6, 1974

FIELD MEMORANDUM NO. 238-74

TO : ALL ASSISTANT REGIONAL DIRECTORS
FOR MANPOWER

SUBJECT: Certification by the Department of Labor Under Section
118 of the Consolidated Farm and Rural Development Act

1. Purpose. To provide guidelines to State employment security agencies for obtaining information necessary to assist the national office in making certifications of loan and grant applications for the Farmers Home Administration (FmHA), U. S. Department of Agriculture.

2. Background. Section 118 of the Consolidated Farm and Rural Development Act authorizes the U. S. Department of Agriculture to make loans and grants and to guarantee loans for a wide variety of rural industrialization projects. As a prior condition for the approval of such loans, guarantees, and grants, the Act further specifies that the Secretary of Labor must certify to the Secretary of Agriculture within 60 days after referral, that the loan or grant will not result in the transfer from one area to another of any employment or business activity provided by operations of the applicant and is not calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities, when there is not sufficient demand for such goods, materials, commodities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprise. Attachment 1 is a copy of the pertinent section of the Act. The Act requires that the Secretary of Labor make this certification within 60 days after referral by USDA. The legislative history clearly indicates that it is the intent of the Congress that DOL action on most applications be completed within 30 days.

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The national office has the responsibility for collecting information needed for recommending approval or denial of the loan applications submitted by the FmHA. Two basic sources of information are used:

a. The State Employment Security Agencies (SESA). The national office relies on the SESA's to furnish labor market information needed to determine local employment and possible adverse competitive effect upon workers and industry in the areas involved. Based on experience to date, the FY 1975 workload is expected to approximate 900 cases, of which only one-half to two-thirds will be forwarded to State agencies for review. The national office will screen out certain types of applications, such as grants to public authorities with no known tenants; loans involving transfer of ownership of an existing business; and loans of less than \$100,000, or involving the employment of five or fewer workers.

b. The Federal Register. The national office will arrange for the publication in the Federal Register periodically of a list of selected applications, those remaining after the national office has screened out certain applications as outlined in 2. a. above. This list will give the name, location, and principal product of the applicant. Interested parties are afforded a two-week opportunity to comment. Failure to provide comments is presumed to mean that there are no objections.

3. It is the intention of the Manpower Administration to transfer certifications to the ARDM's as quickly as guidelines can be developed. It is expected that this transfer of responsibility will begin in FY 1976.

4. Action Required

a. The above information and the attachments should be transmitted to the States in your regions.

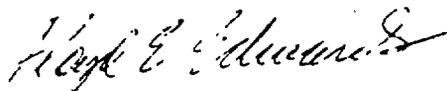
b. Each week a list of applications will be sent to the various regional offices together with copies of relevant information from the FmHA application forms. The regional offices should transmit the forms to the appropriate State agencies with a request that they obtain the required labor market information and prepare the necessary reports. Guidelines for the State reports are provided in Attachment 2.

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c. Reports are due in the national office ~~three weeks after the~~ FmHA forms are received in the regional office. In order to expedite the flow of information, the regional office may elect to authorize the State agency to write directly to the national office (Attn: MET) with copies to the regional office.

5. Inquiries. For additional information call Howard Dellon (202-376-6583).

6. Expiration Date. June 30, 1975.



FLOYD E. EDWARDS
Associate Manpower Administrator
for Field Direction and Management

Attachments

1. Section 118 of the Consolidated Farm and Rural Development Act (P. L. 92-419).
2. Guidelines for Preparing Information Needed for Certification of FmHA Loans.

APPENDIX II

Attachment 1 to FM 238-74

Pub. Law 92-419

- 6 -

August 30, 1972

66 STAT. 663

75 Stat. 315.
7 USC 1985.

technical services, and other program services, and other expenses and advances authorized in section 335(a) of this title in connection with insured loans. Such items may be paid in connection with guaranteed loans after or in connection with acquisition by the Secretary of such loans or security therefor after default, to an extent determined by the Secretary to be necessary to protect the interest of the Government, or in connection with grants and any other activity authorized in this title:

"(7) to pay the difference between interest payments by borrowers and interest to which holders of insured notes are entitled under contracts of insurance heretofore or hereafter entered into by the Secretary; and

"(8) to pay the Secretary's costs of administration of the rural development loan program, including costs of the Secretary incidental to guaranteeing rural development loans under this title.

"(h) When any loan is sold out of the Insurance Fund as an insured loan, the interest or other income thereon paid to an insured holder shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1954."

68A Stat. 5.
26 USC 1.

SEC. 117. INSURED WATERSHED AND RESOURCE CONSERVATION AND DEVELOPMENT LOANS.—Subtitle A of the Consolidated Farmers Home Administration Act of 1961 is amended by adding at the end a new section as follows:

77 Stat. 307.
7 USC 1922.

"Sec. 310A. Loans meeting the requirements of the Watershed Protection and Flood Prevention Act or title III of the Bankhead-Jones Farm Tenant Act may be insured, or made to be sold and insured, in accordance with and subject to sections 308 and 309, the last sentence of section 306(a) (1), and the last sentence of section 307 of this title."

16 USC 1001
note.
7 USC 1010.
7 USC 1928,
1929, 1926,
1927.

SEC. 118. RURAL INDUSTRIALIZATION ASSISTANCE.—(a) Subtitle A of the Consolidated Farmers Home Administration Act of 1961 is amended by adding at the end thereof, after section 310A as added by this Act, a new section as follows:

"Sec. 310B. (a) The Secretary may also make and insure loans to public, private, or cooperative organizations organized for profit or nonprofit, to Indian tribes on Federal and State reservations or other federally recognized Indian tribal groups, or to individuals for the purpose of improving, developing, or financing business, industry, and employment and improving the economic and environmental climate in rural communities, including pollution abatement and control. Such loans, when originated, held, and serviced by other lenders, may be guaranteed by the Secretary under this section without regard to subsections (a) and (c) of section 333.

Pest, p. 666.
Pollution
abatement
projects, grants.

"(b) The Secretary may make grants, not to exceed \$50,000,000 annually, to eligible applicants under this section for pollution abatement and control projects in rural areas. No such grant shall exceed 50 per centum of the development cost of such a project.

Private busi-
ness enter-
prises, grants.

"(c) The Secretary may also make grants, not to exceed \$50,000,000 annually, to public bodies for measures designed to facilitate development of private business enterprises, 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.

"(d) 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) for the purpose of improving, developing, or financing

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Attachment 1 to P1 238-74

August 30, 1972

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Pub. Law 92-419

46 STAT. 667

business, industry, and employment and improving the economic and environmental climate in rural areas or through joint grants to applicants eligible under subsection (c) for such purposes, including in the case of loans or grants 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, refining, service and fees.

(1) No financial or other assistance shall be extended under any provision of sections 301(b), 310B, and 312(b) that is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant, but this limitation shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business operations unless there is reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operation of the existing business entity in the area of its original location or in any other area where it conducts such operations.

Restrictions.
Ante, pp. 657, 658.
Post, p. 65.

(2) No financial or other assistance shall be extended under any provision of sections 301(b), 310B, and 312(b) which is calculated to or likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities, to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

(3) No financial or other assistance shall be extended under any provision of sections 301(b), 310B, and 312(b) if the Secretary of Labor certifies within 60 days after the matter has been submitted to him by the Secretary of Agriculture that the provisions of paragraph (1) and (2) of this subsection have not been complied with. The Secretary of Labor shall, in cooperation with the Secretary of Agriculture, develop a system of certification which will insure the expeditious processing of requests for assistance under this section.

(b) Section 333 of the Consolidated Farmers Home Administration Act of 1961 is amended by inserting "310B," in paragraph (c) after "310C."

SEC. 119. GUARANTEED RURAL HOUSING LOANS. Subtitle A of the Consolidated Farmers Home Administration Act of 1961 is amended by adding at the end thereof a new section as follows:

"Sec. 310C. (a) Rural Housing Loans which (1) are guaranteed by the Secretary under section 517(a)(2) of the Housing Act of 1949, (2) are made by other lenders approved by the Secretary to provide dwellings in rural areas for the applicants' own use, and (3) bear interest and other charges at rates not above the maximum rates prescribed by the Secretary of Housing and Urban Development for loans made by private lenders for similar purposes and guaranteed by the Secretary of Housing and Urban Development under the National Housing Act or superseding legislation shall not be subject to sections 501(c) and 502(b)(3) of the Housing Act of 1949."

(b) For the purposes of title V of the Housing Act of 1949, as amended, a guarantee of payment given under the color of law by the Department of Hawaiian Home Lands (or its successor in function) shall be found by the Secretary reasonably to assure repayment of any indebtedness so guaranteed."

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Guidelines for Preparing Information
Needed for Certification of FmHA Loans

For each application to be approved for rural development assistance (under Section 118 of PL 92-419) the Department of Labor is required to certify that the requested assistance will not result in the transfer of employment or business activity of the applicant from one area to another or have an adverse effect upon existing competitive enterprises in the area. To assist in this effort State employment security agencies are requested to develop labor market information needed by the national office as a basis for such certifications.

Reports should consist of one or two pages, and be based primarily upon data available in local or State agency offices. Such data may be supplemented by contacts with outside, informed groups, when necessary at State's option. When such contacts are made, information about the applicant shall be limited to the name location (city and State), and principal business activity. An outline of report content is provided below.

Reports will not be required on a number of loans, including smaller establishments where loan amount is less than \$100,000 or which are expected to employ five or fewer workers.

I. Overall Labor Market Situation in Area

Summarize overall employment and unemployment situation in the area where loan or grant is to be made. Provide an estimate of unemployment rate for latest calendar year; and latest month compared with a year earlier. Indicate to what extent unemployment data for latest month is influenced by seasonal or temporary factors. Summarize, in one or two sentences, general employment outlook for the area over the next year.

II. Area Trends in the Industry

Summarize briefly recent employment trends in the industry which includes the type of facility for which the FmHA loan is being considered. Provide any separate data available for that sector of

the industry covered by loan or grant application, and indicate whether product or service involved is usually provided by existing facilities on a local basis or for a wider market. Briefly summarize best judgment about local outlook for this industry over the next year.

III. Probable Local Competitive Impact

Assess on basis of known information on local labor market situation:

A. Whether proposed new facility is likely to cause layoffs by competitive enterprises in the area and, if possible, whether such layoffs will be (1) small, (2) moderate, or (3) sizable.

B. Ability of proposed new plant or facility to attract needed workers at generally prevailing wages without impairing capability of competitive firms to operate at usual levels.

C. Whether wages and working conditions are or are likely to be generally comparable to those at other establishments in the same industry in the area.

IV. Competitive Impact on Other Areas or States

If material transmitted from national office (via regional offices) to State agency regarding a specific loan application lists competitive enterprises in other areas of the State, or State agency knows of the existence of such competitive enterprises, then the State agency should include a separate narrative as section IV as part of this report. This section should include, for other areas involved, materials analogous to sections III A-C regarding competitive impact. If no establishments in other areas will be affected competitively by the proposed loan, section IV of report should be marked "Not Applicable."

Competitors may be located in States other than the one in which the facility is or will be located. Where the applicant provides such information, the employment security agency in the State in which the competitor is located will be requested to provide material analogous to that requested under III A-C. The agency will not be requested to provide any additional information in such instances.

In some instances, the applicant presently operates similar facilities in locations other than the one in which the proposed facility is or will be located. In such cases, State agencies in the other States will be sent copies of the application relating to the proposed new branch plant by the appropriate regional office. It will be the responsibility of the State agencies receiving such requests to ascertain and report whether there is any information to indicate that there will be a reduction or shutdown of operations in the branch facility located in their State in the near future.

V. State Employment Security Agency Recommendation. This should include the State agency's recommendation as to whether or not the loan application should be approved or denied, based on the expected employment-unemployment or competitive impact of the proposed loan or grant. If the State prefers, such a recommendation may be included in the letter transmitting this report to the national office, and omitted from the body of the report.

CERTIFICATION REQUESTS COMMENTED ON BY AFL-CIO

<u>Name of requestor</u>	Labor action as of 7-31-74	Date		Days required for processing (note a)
		Request received by Labor	Action taken by Labor	
Lady Wrangler	Denied	2-27-74	5-28-74	90
Wm. T. & Joan C. Riddle	Approved	3- 1-74	5-10-74	70
Holly Manufacturing Co.	Approved	3-14-74	6- 5-74	83
Granet Glove Corp.	Approved	3-18-74	5-31-74	74
J. P. Stevens Co.	Approved	3-18-74	5-31-74	74
Shadowline, Inc.	Approved	3-21-74	6-25-74	96
Flour Bag Fashions	Approved	3-28-74	6-25-74	89
Kern Manufacturing Co., Inc.	Approved	3-28-74	7-17-74	111
Carvell Hall	Approved	3-29-74	7-30-74	123
Oneita Knitting Mills	Approved	4- 4-74	6-13-74	70
Astrocom Company	Approved	4-15-74	6-19-74	65
LeRoy Products	Pending	4-15-74	--	107
Jockey International	Approved	4-17-74	6- 5-74	49
M-Tron	Pending	4-17-74	--	105
Town and Country	Pending	4-17-74	--	105
Tri-City Cabinets	Approved	4-18-74	6-24-74	67
Cheyenne Sioux Corp.	Approved	4-22-74	6- 3-74	42
Tricnit Industries, Inc.	Approved	4-22-74	7- 2-74	71
Floyd Elwyn Woods	Pending	4-29-74	--	93
Salley Manufacturing Co., Inc.	Approved	4-29-74	7- 2-74	64
Gllene Manufacturing Co.	Approved	5-13-74	7- 2-74	50
Industrial Components, Inc.	Approved	5-13-74	7-19-74	67

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Time elapsed from date request for certification received by Labor to date action was taken--date approved or denied. For cases pending, time elapsed from date received to July 31, 1974.

BEST DOCUMENT AVAILABLE