

U.S. Department of Agriculture

Rural Development

REPORT ON THE DEFINITION OF “RURAL”

Office of the Secretary

United States Department of Agriculture
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United States Department of Agriculture

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Addenda

1. USDA Rural Development Program Authorities
2. February 15, 2011, Testimony on Rural Definition
3. Questions and Answers to February 15, 2011 Hearing on Rural Definition
4. Filtering Criteria Examples
5. Requests For Rural In Character Determinations

Abbreviations and Acronyms

ANPR – Advanced Notice of Proposed Rulemaking
BIP – Broadband Initiatives Program
ConAct – Consolidated Farm and Rural Development Act
EPA – Environmental Protection Agency
ERS – Economic Research Service
HHS – United States Department of Health and Human Services
HRSA – U.S. Health Resources and Services Administration
HUD – United States Department of Housing and Urban Development
NOFA – Notice of Funding Availability
PDA – Pennsylvania Department of Agriculture
RD – USDA Rural Development
RBS – Rural Business – Cooperative Service
REAP – Rural Energy for America Program
RHS – Rural Housing Service
RUCC – Rural/Urban Continuum Codes
RUCA – Rural/Urban Commuting Area
RUS – Rural Utilities Service
SEARCH – Special Evaluation Assistance for Rural Communities and Households
USDA – United States Department of Agriculture

Introduction

The impetus for Rural Development (RD) programs is that equivalent National programs and private investors and lenders shut out rural areas due to lack of capacity and the need for highest returns. To address the unmet needs of rural America, Congress authorized and targeted funds to rural areas by limiting eligibility based on total population.

As population and economies continue to shift within and between states, eligibility criteria based on total population warrant a second look. In an effort to identify alternatives, Section 6018(b) of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) required the Secretary of Agriculture to report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate responding to four specific areas. Per that directive, this document —

1. Assesses the various definitions of the term “rural” and “rural area” that are used with respect to programs administered by the Secretary;
2. Describes the effects that the variations in those definitions have on those programs;
3. Makes recommendations for ways to better target funds provided through rural development programs; and
4. Determines the effect of the amendment made by subsection (a) on the level of rural development funding and participation in those programs in each State.

While this report emphasizes programs authorized through the Farm Bill process, the reporting requirement is not exclusive to those programs, which are under the jurisdiction of the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition and Forestry. Accordingly, as appropriate, programs administered by the Secretary but authorized in the Housing Act of 1949 under the jurisdiction of the House Committee on Financial Services and the Senate Committee on Banking are discussed.

Authorizing statutes currently rely almost exclusively on total population as measured in the most recent decennial census as the sole indicator rural. With the Census Bureau having released all necessary data, USDA has determined that it will begin to use 2010 figures for total population beginning on March 28, 2013.

1. Assessment of Various Definitions of the Term “Rural” And “Rural Area” That Are Used With Respect To Programs Administered By the Secretary

Of the many programs administered by the Secretary of Agriculture across the Department's seven Mission Areas, only those of the Rural Development Mission Area¹ have geographic limitations that restrict eligibility in most cases to "rural areas". Rural Development staff never reach analysis of an application's benefits, the management skill of a business owner, the repayment ability of a home mortgage applicant, or the economic feasibility of a project unless an eligibility determination can be made first.

In testimony before the House Agriculture Subcommittee on Rural Development, Research, Biotechnology, and Foreign Agriculture on February 15, 2011, USDA provided the Subcommittee a matrix of current definitions for the 40-plus Rural Development programs (Addendum 1 of this report), as well as the actual statutory language for all programs in the Rural Development mission area. This matrix provides a comprehensive understanding of the complexities associated with determining individual program eligibility. The February 15, 2011 testimony (Addendum 2), follow-up questions and answers from Members of the Subcommittee (Addendum 3), and the above referenced matrix are attached to this report as Addenda. The various program definitions also are summarized below.

In addressing the definitions and role of rurality in the 2008 Farm Bill, Congress took three concrete steps:

- For the first time, a "default" definition commonly used in business development programs was added to the Consolidated Farm and Rural Development Act, or ConAct applying to any new programs unless Congress specifically provided a different definition;
- For the first time, the Under Secretary for Rural Development was authorized to allow eligibility for business development programs in places that otherwise would not be eligible because of their proximity to municipalities of larger than 50,000 population if he determined them to be "rural in character"; and
- Following a precedent set in the 2002 Farm Bill for cooperatives of agricultural producers hoping to establish value-added processing of their commodities, Congress either provided no "rural area" eligibility requirement or waived such requirements for certain high-priority areas in renewable energy and underserved communities in terms of their limited access to fresh healthy food and lack of food security or high rates of poverty, commonly called "food deserts".

Default Definition

Section 6018(a) of the 2008 Farm Bill provided a general "default" definition of the term "rural area" for programs authorized by the ConAct. The default definition is the one commonly used for most business development programs, such as the Business & Industry Loan Guarantee

¹ Rural Business – Cooperative Service (RBS), Rural Housing Service (RHS), and Rural Utilities Service (RUS)

Program or the Rural Business Enterprise Grant Program². It then articulated two different rules for Water and Wastewater Disposal and Community Facilities programs, as follows:

SEC. 6018. DEFINITIONS.

(a) RURAL AREA.—Section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)) is amended by striking paragraph (13) and inserting the following:

“(13) RURAL AND RURAL AREA.—

“(A) IN GENERAL.—Subject to subparagraphs (B) through (G), the terms ‘rural’ and ‘rural area’ mean any area other than—

“(i) a city or town that has a population of greater than 50,000 inhabitants;

And “(ii) any urbanized area contiguous and adjacent to a city or town described in clause (i).

“(B) WATER AND WASTE DISPOSAL GRANTS AND DIRECT AND GUARANTEED LOANS.—For the purpose of water and waste disposal grants and direct and guaranteed loans provided under paragraphs (1), (2), and (24) of section 306(a), the terms ‘rural’ and ‘rural area’ mean a city, town, or unincorporated area that has a population of no more than 10,000 inhabitants.

“(C) COMMUNITY FACILITY LOANS AND GRANTS.—For the purpose of community facility direct and guaranteed loans and grants under paragraphs (1), (19), (20), (21), and (24) of section 306(a), the terms ‘rural’ and ‘rural area’ mean any area other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants.

Exceptions to the default definition

Section 6018(a) of the 2008 Farm Bill further amended Section 343(a)(13) of the ConAct with new subparagraphs (D) and (E), which provide administrative exception authority to the Under Secretary. This authority extends only to programs that employ the default definition of “rural area” which, in addition to excluding applications from cities or towns with greater than 50,000 population also excludes communities adjacent and contiguous to those cities or towns regardless of those communities’ own total population. In certain cases, those otherwise excluded areas still might be eligible rural areas. The results of this flexibility are discussed in greater detail in report Section 4 and Addendum 5.

² One notable exception in RBS is the Intermediary Relending Program, where an application can be accepted from anywhere except a city or town greater than 25,000 total population.

Because exclusion by reason of proximity to a larger city or town applies only to the default definition, which is used solely by Rural Business – Cooperative Service (RBS) for most of its programs, the exceptions to exclusion also are limited in practice to RBS programs. There is no administrative exception authority for the 10,000 threshold in the Water and Waste Disposal Program administered by Rural Utilities Service (RUS) or the 20,000 threshold in the Community Facilities Program administered by Rural Housing Service (RHS).

The exceptions fall into two categories. There is statutory language limiting exclusion of whole municipalities when there are areas that appear as narrow “strings” of development at the outskirts of urbanized areas, often extending along highways. And, there is statutory language retaining eligibility for areas that remain “rural in character”.

For the “strings” exception, Section 6018(a) of the 2008 Farm Bill provided: “Notwithstanding any other provision of this paragraph, in determining which census blocks in an urbanized area are not in a rural area . . . , the Secretary shall exclude any cluster of census blocks that would otherwise be considered not in a rural area only because the cluster is adjacent to not more than 2 census blocks that are otherwise considered not in a rural area under this paragraph.” In other words, once a string of development narrows to the point that it is only two census blocks wide, the string should be “snipped”, allowing areas beyond it to be considered eligible for business development programs even if adjacent and contiguous.

For the “rural in character” exception, Section 6018(a) of the 2008 Farm Bill provided:

AREAS RURAL IN CHARACTER.—

(i) APPLICATION.—This subparagraph applies to—

(I) an urbanized area described in subparagraphs (A)(ii) and (F) that—
(aa) has 2 points on its boundary that are at least 40 miles apart; and
(bb) is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or an urbanized area of such city or town; and

(II) an area within an urbanized area described in subparagraphs (A)(ii) and (F) that is within 1/4-mile of a rural area described in subparagraph (A).

(ii) DETERMINATION.—Notwithstanding any other provision of this paragraph, on the petition of a unit of local government in an area described in clause (i) or on the initiative of the Under Secretary for Rural Development, the Under Secretary may determine that a part of an area described in clause (i) is a rural area for the purposes of this paragraph, if the Under Secretary finds that the part is rural in character, as determined by the Under Secretary.

(iii) ADMINISTRATION.—In carrying out this subparagraph the Under Secretary for Rural Development shall—

(I) not delegate the authority to carry out this subparagraph;

(II) consult with the applicable rural development State or regional director of the Department of Agriculture and the governor of the respective State;

(III) provide to the petitioner an opportunity to appeal to the Under Secretary a determination made under this subparagraph;

(IV) release to the public notice of a petition filed or initiative of the Under Secretary under this subparagraph not later than 30 days after receipt of the petition or the commencement of the initiative, as appropriate;

(V) make a determination under this subparagraph not less than 15 days, and not more than 60 days, after the release of the notice under subclause (IV);

(VI) submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an annual report on actions taken to carry out this subparagraph; and

(VII) terminate a determination under this subparagraph that part of an area is a rural area on the date that data is available for the next decennial census conducted under section 141(a) of title 13, United States Code.

In other words, the law recognizes that there might be very limited instances in which pockets of rurality still exist within a municipality that otherwise would be excluded because of being adjacent and contiguous to a city or town greater than 50,000. But, those cases are limited to two fact patterns: one for large urbanized areas that could encompass multiple municipalities, but is not proximate to any city larger than 150,000 total population; the other for places within an urbanized area that are within one-quarter mile of an eligible rural area. The decisions, and the disposition of any appeals of the decisions, are made solely by the Under Secretary for Rural Development who is expressly precluded from delegating the matter to anyone else.

The “rural in character” concept also appears outside of the ConAct in the Housing Act of 1949. In general, programs authorized by Title V are available in any town, village, city, or place (including the immediately adjacent densely settled area) that is not part of or associated with an urban area, and that:

- Is rural in character with a population of less than 10,000; or
- Is not contained within a Metropolitan Statistical Area (MSA) and has a serious lack of mortgage credit with a population between 10,000 and 20,000.

A “grandfather” clause allows communities with populations greater than 10,000 but not more than 25,000 to remain eligible after becoming part of an MSA if they are still “rural in character”. In the Housing Act programs, the determination of “rural in character” is made by the respective state director for Rural Development, who is tasked by regulation with looking at population changes and eligibility impacts at least every five years, and every three years in rapid growth areas. By contrast, the “rural in character” provisions of the 2008 Farm Bill limit the determination to the Under Secretary for Rural Development.

No “rural in character” or other administrative flexibility exists for the Water & Waste Disposal Program of RUS or the Community Facilities Program of RHS. If a municipality or unincorporated area exceeds the 10,000 or 20,000 threshold respectively by even one person, it is not eligible absent further action by Congress. Historically, this further action has taken the form of a general provision in appropriations legislation declaring the municipality an eligible rural area until the Agency adopts data of the next decennial census.

For the Telecommunications Program, Section 201 of the Rural Electrification Act of 1936 gives preference to applicants operating in rural areas, defined in Section 203(b) as anywhere except an incorporated or unincorporated area with a total population in excess of 5,000. An updated definition reflecting current market conditions for these larger utility loans was included in the American Recovery and Reinvestment Act for broadband loans, grants, and loan guarantees, as follows:

For an additional amount for the cost of broadband loans and loan guarantees, as authorized by the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) and for grants (including for technical assistance), \$2,500,000,000: Provided, That the cost of direct and guaranteed loans shall be as defined in section 502 of the Congressional Budget Act of 1974: Provided further, That, notwithstanding title VI of the Rural Electrification Act of 1936, this amount is available for grants, loans and loan guarantees for broadband infrastructure in any area of the United States: Provided further, That at least 75 percent of the area to be served by a project receiving funds from such grants, loans or loan guarantees shall be in a rural area without sufficient access to high speed broadband service to facilitate rural economic development, as determined by the Secretary of Agriculture: Provided further, That priority for awarding such funds shall be given to project applications for broadband systems that will deliver end users a choice of more than one service provider: Provided further, That priority for awarding funds made available under this paragraph shall be given to projects that provide service to the highest proportion of rural residents that do not have access to broadband service (Emphasis added.)

Section 13 of the Rural Electrification Act defines “rural” for the Electric programs of RUS by linking to the ConAct’s definition for the Community Facilities program of RHS and preserving eligibility of existing borrowers, as follows:

(3) RURAL AREA.—Except as provided otherwise in this Act, the term “rural area” means the farm and nonfarm population of—
(A) any area described in section 343(a)(13)(C) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)(13)(C)); and

(B) any area within a service area of a borrower for which a borrower has an outstanding loan made under titles I through V as of the date of enactment of this paragraph.

Thus, while any new Rural Electric Cooperative activity would be subject to the 20,000 population cap, existing co-ops follow a “once rural, always rural” standard that allows for new lending to maintain generation, distribution and transmission facilities. Further, Section 6108 of the 2008 Farm Bill, in an effort to encourage adoption of renewable energy technologies, authorized the sale of renewable energy financed by RUS into urban as well as rural markets, opening the door to placing infrastructure and equipment into non-rural areas.

No “Rural Area” Requirement

In amendments to Title IX of the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill) contained in Title IX of the 2008 Farm Bill, Congress placed no statutory rural area eligibility requirement in the newly-authorized programs, recognizing that proximity to transportation hubs and consumer markets very well could make projects far more successful and far more beneficial to farmers, rural entrepreneurs, and consumers than siting projects solely in rural locations. RBS’ rulemaking for the Biorefinery Assistance Program (Section 9003, interim final rules were effective March 16, 2011), Repowering Assistance Program (Section 9004, interim final rules were effective March 14, 2011), and the Bioenergy Program for Advanced Biofuels (Section 9005, interim final rules were effective March 14, 2011) was consistent with legislative intent that there not be a “rural area” eligibility criterion.

The original renewable energy program authorized in 2002, the Rural Energy for America Program (Section 9007, or REAP, interim final rules effective April 14, 2011), does have rural area eligibility definition requirements for non-farm rural businesses and RBS has chosen to apply the general definition for rural area applicable to business programs under the Con Act. However, the 2008 bill amended that requirement to allow agricultural producers to be eligible irrespective of where their operations are located.

RUS also received new authority to reach beyond rural areas with renewable energy. Section 6108 of the 2008 Farm Bill amended Section 317(b) of the Rural Electrification Act, authorizing RUS loans for electric generation from renewable energy resources for resale to rural and non-rural residents.

Congress addressed “food deserts” in Section 6015 of the farm bill, which amended Section 310B of the ConAct to create a target for local and regional food systems³ within the Business & Industry Loan Guarantee Program. The target provided for at least five percent of available budget authority to be used for such purposes, reserving funds for the first six months of a fiscal year. Within the target, priority was given to local and regional food system applications that would benefit rural, tribal, or urban underserved communities.

³ Local or regional food systems are defined by Section 6015 as within a 400-mile radius or within the same state.

Giving priority to projects benefiting food deserts wherever they are follows on the heels of a provision of the 2002 Farm Bill, which for the first time allowed certain businesses whose lenders were seeking a Business & Industry Loan Guarantee to site their projects in metropolitan areas under certain conditions. The applicants must be farmer-owned cooperatives whose members are from within an 80-mile radius of the proposed site, the purpose of the project must be adding value to agricultural commodities, and the jobs created must go primarily to rural people. *See* Section 7 USC 310B(g)(3)(A)(i) of the Con Act. Staying in the labor vein, RHS programs to assist migrant and seasonal farm workers with finding decent housing also provide flexibility in where projects are constructed.

2. Description of Effects Various Definitions Have on Rural Development Programs

Every loan, grant, or loan guarantee application received by Rural Development staff undergoes three initial tests: whether the individual or entity applying is eligible for a particular program; whether the activity proposed is an eligible purpose for that particular program; and whether the location of the activity proposed in the application is eligible for that particular program. After an eligibility analysis is done, staff can begin to evaluate the merits of the application and the applicant's ability to repay any financing.

Applicant eligibility is relatively simple. The Community Facilities Program, for example, is available only to municipalities, tribal governments, and non-profit organizations. Direct loans for single family home mortgages are available only to those whose income is below 80% of county median income.

Similarly, eligible purposes are articulated in statutes and regulations. For example, the Business and Industry Loan Guarantee Program generally cannot finance agricultural production.

The focus of this report is on the relatively complex question of whether the location of the proposed activity is eligible for a grant or loan. The many different population thresholds have the following effects:

- Arbitrary barriers to regional strategies, perpetuating community isolation and less cost-effective economic and community development practices;
- Inability of RD to provide comprehensive, integrated program delivery in any community or group of communities larger than the smallest population threshold;
- State-defined municipalities complicating nationwide definitions relying on “cities,” “towns,” and “unincorporated areas”; and

- Periods of uncertainty and disruption of program delivery following each decennial census.

Arbitrary barriers to regional strategies, perpetuating community isolation and less cost-effective economic and community development practices

Both of the last two Farm Bills and section 725 of the 2012 Appropriations law included provisions attempting to reposition Rural Development to work on a more multi-jurisdictional basis rather than making every decision in the isolation of the particular municipality from which an application arises.

In some places, multi-jurisdictional planning and development requires acknowledging the role of more populous areas in providing market opportunities for goods and services provided by rural people and job opportunities for rural people willing to commute. For example, regional food systems to regional transportation systems depend on fully understanding and taking advantage of the interface between rural and more urban communities. Being limited to lending solely in “rural areas” which are defined in multiple ways makes putting these strategies into practice far more difficult.

To be sure, some state offices of Rural Development have had success with regional approaches to services like public water and sewer, but only when every community in the regional project was under the cap for that program. If a regional sewer project encounters a municipality of greater than 10,000 population, for example, that community cannot be part of the Rural Development financing application no matter how much sense it might make to project engineers geographically and no matter what the impact of including the larger community might have had on end user rates as fixed costs got spread over a larger number of end users.

Many times Rural Development programs have been implemented without regard to regional planning. The result is individual communities applying for financing for their own sewage treatment plants, their own critical access hospitals, their own emergency services, and so forth, rather than partnering with neighboring communities.

Inability of RD to provide comprehensive, integrated program delivery in any community or group of communities larger than the smallest population threshold

The real art in what Rural Development’s staff do is how they do it – through a distributed network of state and area offices providing comprehensive “one-stop” service for technical and financial assistance in community and economic development.

Rural communities often are led by volunteer local elected officials who have few if any paid staff beyond perhaps a road supervisor. They do not have professional grant writers or professional engineers on staff to write their applications for them, and they rely on Rural Development loan officers, engineers, architects, and partners receiving Rural Development’s technical assistance financing, such as the National Rural Water Association or the Rural

Community Assistance Partnership, for help through an application's life cycle. Over time, the authorities have been approached on an individual ad hoc basis. Communities and individuals apply for assistance on a program by program basis. If population definitions were broader, rural communities would have the ability to approach the programs in a more coordinated way.

With multiple "rural area" eligibility standards, Rural Development employees are challenged to provide comprehensive financial assistance beyond communities of 10,000 or less, the general threshold for housing and water and sewer programs. Instead, they also must be able to bring other Federal and state agencies to a project to fill in the gaps left by varying eligibility standards for Rural Development's programs.

State-defined municipalities complicating nationwide definitions relying on "cities", "towns", and "unincorporated areas"

Section 6018(a) of the 2008 Farm Bill provides Section 343(a)(13)(G) of the ConAct making special provisions for Puerto Rico and Hawaii where the standards established earlier in that section simply do not fit their municipal structures. Use of the words "city" or "town" can create certain challenges elsewhere, too. Common sense suggests that "city" or "town" could be interpreted as any incorporated municipality, but had Congress intended to mean any incorporated municipality, the statutory language also simply could have said so. A literal interpretation could exclude nearly all of Pennsylvania, with its 1,000 boroughs and 1,400 townships in addition to its 57 cities and exactly one town, even though a large majority of those boroughs and townships have fewer than 10,000 residents.

While the majority of states began as unincorporated territories now dotted with incorporated municipalities, many Colonial states are entirely incorporated but are dotted with unincorporated population clusters within otherwise incorporated municipalities. Several northeastern states – notably, Massachusetts, New York, and Pennsylvania – still recognize in state law the concept of a "village", an unincorporated population cluster lying wholly within an incorporated municipality. In MA and NY, villages lie within incorporated towns. In PA, villages lie within incorporated townships.

Through the 1990s, these unincorporated population centers within incorporated municipalities in the northeast region were treated the same as completely unincorporated areas elsewhere in the country – namely, if a water or sewer project actually would serve fewer than 10,000 people, or the fire department would serve fewer than 20,000 people, the respective Water & Waste Disposal or Community Facilities application could proceed. Thus, a village of fewer than 10,000 people, where centralized services like water or sewer were more necessary than in the outlying farmland, could apply for financing even if the total population of the town or township in which the village was located exceeded 10,000.

In the 2002 Farm Bill, Congress adjusted the definitions of "rural area" in a manner suggesting that congressional intent was to change this result. The same language was retained in 2008. Current practice looks past the unofficial borders of the unincorporated village and instead limits eligibility to places where the entire town or township in which the village is sited meets the respective eligibility threshold – 10,000 for the Water & Waste Disposal program and 20,000 for

the Community Facilities program. Since 2002, an applicant is the municipality rather than a population cluster within a municipality or even a single-purpose sewer or water district. Unlike truly unincorporated areas in states like Texas or Iowa, where the standard is still to evaluate the total population to be served by the project, unincorporated population clusters in states like Massachusetts or New York that lie within incorporated municipalities now are eligible only if the total population of the entire municipality falls below the eligibility standard.

Periods of uncertainty and disruption of program delivery following each decennial census

Most Rural Development programs have a “rural area” requirement as a fundamental test of program eligibility. The test is defined by total population based on the most recent decennial census, irrespective of population density, the predominant types of economic activity and local land uses, the extent to which the area might have become a “bedroom community” for a neighboring metropolitan area, or any other factors. RD has no authority to waive these requirements with the exception of most business programs.

In the absence of administrative waiver authority, Congress historically has created its own flexibility on a case-by-case basis by adopting general provisions on USDA appropriations legislation declaring communities that otherwise would be over the population limit still rural for purposes of a specific program. This has been true particularly with regard to the ConAct’s Water & Waste Disposal Program of RUS and the Community Facilities program of RHS.

Like “rural in character” exceptions made under the provisions of the last Farm Bill, existing general provisions from prior appropriations laws expire with the adoption of 2010 Census figures, which will happen March 28, 2013. There may be extenuating circumstances reviewed on a case-by-case basis in which it would be in the best interests of the taxpayers to continue using 2000 Census data, such as a multi-phase sewer project in which an overall project plan was approved based on 2000 figures, a majority of phases have been completed, and declaring the area ineligible now would leave the project unfinished and the community less able to repay existing indebtedness.

In general, though, hundreds of communities now face exclusion from one or more Rural Development programs either because the general provision they relied upon to remain eligible after the 2000 Census results were adopted is expiring⁴ or because the increase in their population from 2000 to 2010 has placed them for the first time above one or more population thresholds. Among them are:

- Municipalities like Pleasant Grove, AL, Batesville, AR, Garden Acres, CA, Sebring, FL, Chatham, IL, Waggaman, LA, Alexandria, MN, and Guthrie, OK⁵, which increased in population from slightly under 10,000 to slightly over 10,000. Without considering whether any other characteristics of those communities changed between 2000 and 2010,

⁴ No new general provisions providing exceptions to the 2000 Census figures were enacted in fiscal year 2011 continuing resolutions or in the 2012 appropriations legislation.

⁵ Pleasant Grove’s population increased from 9,983 in the 2000 Census to 10,110 in the 2010 Census; Batesville increased from 9,445 to 10,248; Garden Acres increased from 9,747 to 10,648; Sebring increased from 9,667 to 10,491; Waggaman increased from 9,435 to 10,015; and Guthrie increased from 9,925 to 10,191 in that time.

they will no longer be eligible for the Water & Waste Disposal Program even though public water and sewer are exactly the types of infrastructure investments that could attract new employers to those areas;

- Municipalities like Fountain, CO, Darien, CT, Junction, KS, Independence, KY, Arnold, MO, Brandon, MS, West Fargo, ND, Odessa, TX, and Waynesboro, VA⁶, which increased in population above 20,000, making them no longer eligible for the Community Facilities Program after October 1, 2012 even though Congress raised the direct loan program level four-fold this fiscal year because the subsidy rate has dropped to zero and the only cost to taxpayers are for staff salaries and related costs to administer the program; and
- Holt, MI, which saw its population more than double from 11,315 to 23,973. If local elected officials were considering meeting the needs of this growing community by applying for long-term, fixed rate Community Facilities Program financing for new schools, expanded access to health care, expanded emergency services or perhaps a new municipal airport, they would find the community is no longer eligible solely because it exceeds 20,000 total population.

Of course, the opposite effect occurs when a community loses population and falls below the arbitrary total population threshold of a particular program. Owego, NY, for example, dropped from 20,366 residents in the 2000 Census to 19,883 residents in the 2010 Census. Nothing else has changed about Owego, but under the ConAct, it will become an eligible rural area for purposes of Community Facilities financing on October 1, 2012. Similarly, the 2000 Census revealed that Harrisburg, Pennsylvania's capital, had decreased in population below 50,000, making that city eligible for business programs. Nothing else about the City of Harrisburg changed to suggest it actually had become rural, but that did not matter. Total population standards are a blunt instrument, overlooking other factors that perhaps do a better job of indicating when an area is rural, such as population density or the prominence of natural resource based businesses in the local economy. Perhaps more significantly, when Harrisburg became eligible for business programs financing following the 2000 Census, the much smaller municipalities adjacent and contiguous to Harrisburg became eligible, too.

3. Recommendations for Ways to Better Target Funds Provided Through Rural Development Programs

The current state of the law puts an inordinate amount of emphasis on the location from where an application can be received, while comparatively little statutory attention is paid to the larger question of which applications (wherever and whoever their source) get funded by Rural

⁶ Fountain's population increased from 15,197 in the 2000 Census to 25,846 in the 2010 Census; Darien increased from 19,607 to 20,732; Junction increased from 18,886 to 23,353; Independence increased from 14,982 to 24,757; Arnold increased from 19,965 to 20,808; Brandon increased from 16,436 to 21,705; Odessa increased from 17,799 to 22,707; and Waynesboro increased from 19,520 to 21,006.

Development. With about \$2.4 billion of appropriated budget authority to the Mission Area and its constituent agencies leveraging over \$37 billion in grants, loans, and loan guarantees available to the public this fiscal year, Rural Development's work is a bargain.

Still, both Members of Congress and the Secretary of Agriculture must be able to assure taxpayers and constituents that funds were well invested in projects that helped as many rural residents as possible as efficiently and effectively as possible. Complete reliance on arbitrary "one-size-fits-all" total population eligibility standards in the definitions section of the ConAct needs to give way to a more robust analysis of each application based on a variety of factors that lead to the greatest benefit for rural people and places. Such factors also should be flexible enough to assist in analyzing applications under authorities beyond the ConAct and should facilitate the streamlining of program applications and processes among like types of applicants, specifically rural individuals and communities on the one hand and entrepreneurs on the other. Finally, such factors should be more transparent and comprehensible to applicants and employees than the current system that has grown up over seven decades.

Note that the recommendations below apply only to those programs that are under the jurisdiction of the Committee on Agriculture for the House of Representatives and the committee on Agriculture, Nutrition, and Forestry.

Recommendation #1: Utilize a common population threshold.

Common population threshold

The current default definition of "rural area" in the ConAct begins at 50,000 total population. We recommend that Rural Development accept as location eligible an application for any program from anywhere with a total population of less than 50,000, which would allow staff to move quickly into more substantive review of the application's merits and whether it should be funded. This would require amending the ConAct, as well as the Rural Electrification Act of 1936, the Farm Security and Rural Investment Act of 2002.

This common starting point allows communities to come together on more regional infrastructure projects. It allows the Mission Area to market programs in a simple streamlined fashion, facilitating staff sharing outreach responsibilities. The common definition would also substantially reduce the number of communities affected by the decennial census, thus reducing confusion and increasing the predictability of RD programs.

Critics of this approach may suggest that the change would move the focus of some programs away from serving the most rural communities. Furthermore, some may say that the most programs are already oversubscribed, so by broadening eligibility, those communities that are currently eligible would be less likely to receive RD program support. With these concerns in mind, this proposal suggests that the definition provides the Secretary the discretion to serve areas of greatest need and where the resources can make the greatest economic impact.

Competitive application scoring to target funds

Every application should be considered on a variety of factors that drive available funding to the most rural people and places, investing where there is both greatest need for Federal resources and greatest opportunity for economic or community development.

Section 306 of the ConAct basically authorizes community-based programs in Rural Housing Service (Community Facilities loans in Section 306(a)(1) and Rural Utilities Service (Water & Waste Disposal in Section 306(a)(2)). Currently, this section of law does include targeting language for both that places the greatest emphasis for funding on the smallest communities. The section also includes consideration of poverty indicators for determining both the interest rate offered on loans and the degree to which grant funds might be made available in combination with loans to keep the total project cost affordable. Unfortunately, while trying to accomplish the same things using the same indicators, Section 306 actually uses slightly different iterations of these standards that treat these two basic community-based programs differently, needlessly adding complexity for applicants and staff.

Instead, we recommend amending Section 306 to provide Rural Development the ability to evaluate a common range of factors for all community-based applications, taking into consideration total population and awarding higher scores to less populated areas. The Secretary should also have the ability to consider in regulation:

- Population density, with higher scores awarded to less densely populated areas (see map below for examples);
- Economic conditions, comparing project area incomes to statewide or national data, with lower loan interest rates and higher grant levels awarded to projects serving those with least capacity to help themselves, as per current law;
- The degree to which the project is consistent with local or regional economic strategies;
- The degree to which the project serves a geographic area or demographic group that historically has been underserved by Rural Development;

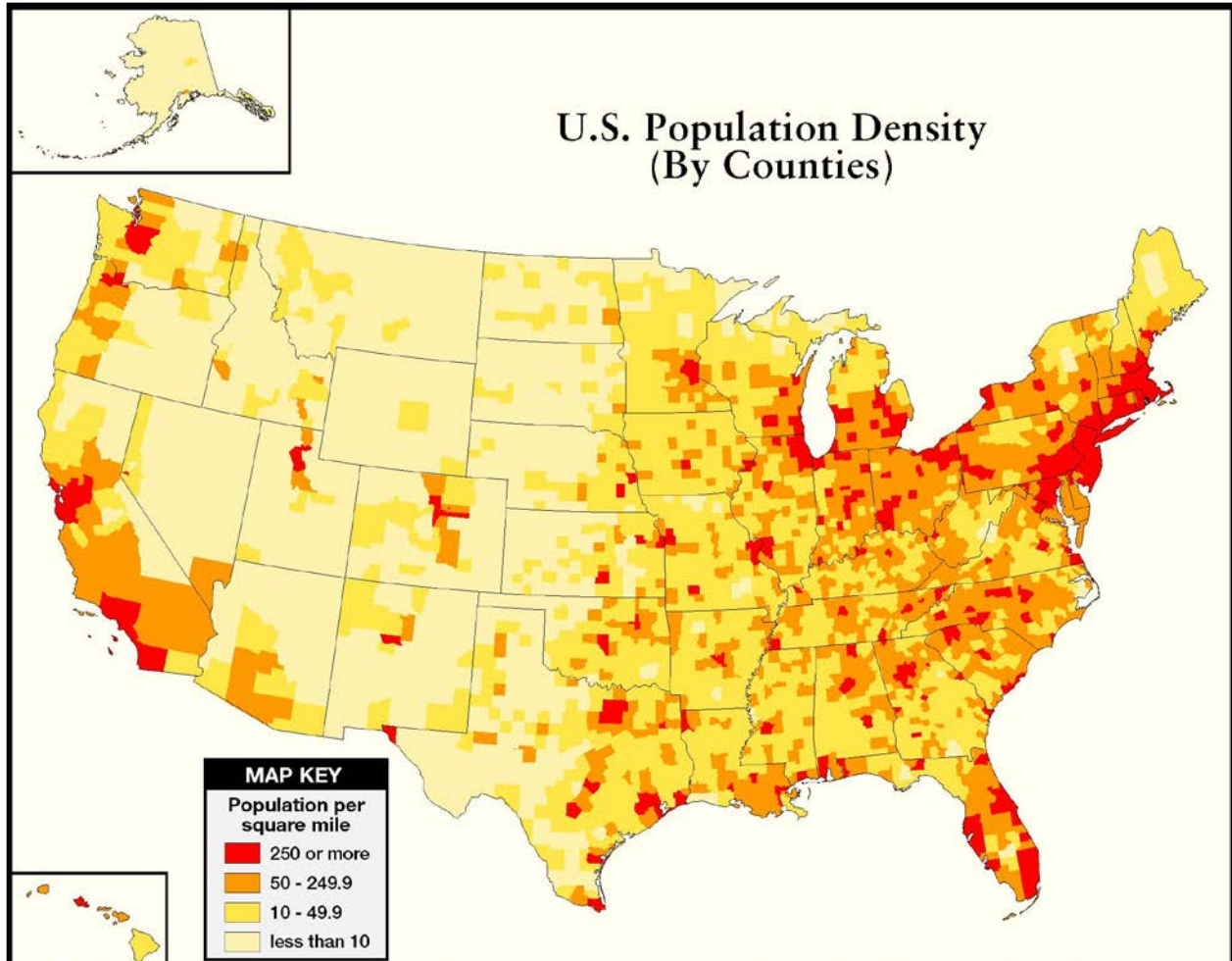
Targeting could also look to commuting patterns, which provide a more objective yardstick than the “adjacent and contiguous urbanized area” for identifying when a community has lost its independent identity. (See map below for details). Authority could also be provided to consider ecological impacts of projects, with higher scores awarded to projects that address threats to air or water quality, or redevelop existing sites rather than convert prime farmland.

RUS developed a successful model for utilizing such criteria in their application review criteria developed under the second Notice of Funds Availability (NOFA) for the Broadband Initiative Program (BIP). The first NOFA provided the highest levels of grant funding to the most remote rural areas that had been hardest to reach with prior programs that offered solely loan funds. While that objective certainly was worthwhile, reaching it required defining not just “rural” but also “remote”. By contrast, the second NOFA offered greater flexibility by considering a variety of factors to drive the greatest level of subsidy to the communities most in need. For instance by applying additional criteria such as population density, median household income and unemployment, a community could become eligible for a greater amount of grant funds. Feedback on this second approach was very supportive compared to the feedback received on the

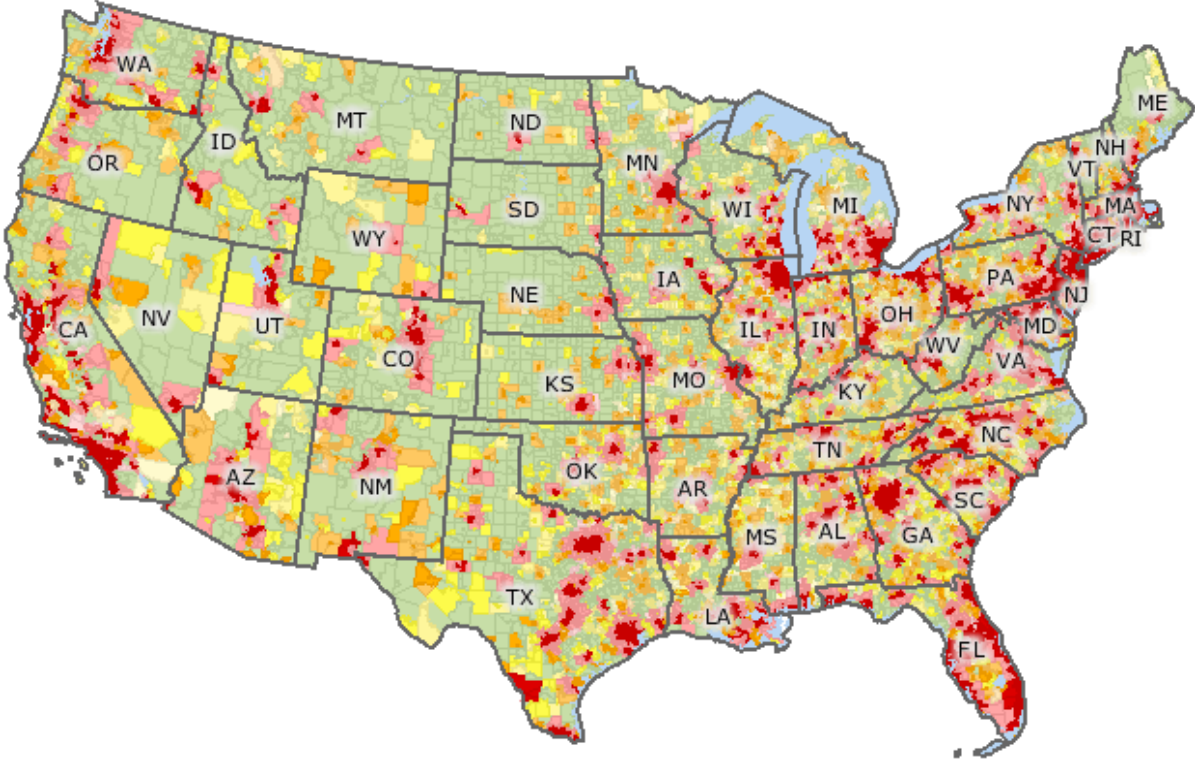
first NOFA. This same type flexibility can be applied to this recommendation to ensure the greatest support to those most in need of any Rural Development assistance.

Similarly, we recommend amending Section 310B of the ConAct to provide a single set of targeting tools for supporting job creation and entrepreneurship in rural areas. RD could be provided the flexibility to consider factors in regulation such as:

- Areas with lower total population;
- Economic conditions, including unemployment rates in the project area compared to statewide rates;
- General economic impacts of a project, creating high quality jobs; and
- The project's consistency with local and multi-regional strategic objectives.



Example of Rural-Urban Commuting Areas
 (provided through the Center for Applied Research and Environmental Systems)



Map Scale = 1:28326228
 0 275mi

- State Boundaries**
- Rural-Urban Commuting Areas (RUCAs) - Census Tract**
- Urban Core**
- High Commuting to Urban Core**
- Low Commuting to Urban Core**
- Large Town**
- High Commuting to Large Town**
- Low Commuting to Large Town**
- Small Town**
- High Commuting to Small Town**
- Low Commuting to Small Town**
- Rural Areas**

Recommendation #2: Further remove barriers to regional strategies by retaining the ability of by standardizing policies Congress has adopted in past Farm Bills with regard to occasionally siting a project in a metropolitan area when proximity to transportation or other infrastructure and consumer markets are needed to ensure the best results for consumers and rural applicants. For example:

- Farmers markets, food hubs, and other types of value-added agricultural activities that facilitate increasing total farm income opportunities should be permitted in metropolitan areas, whether owned by a farmer-owned cooperative as current law provides, or owned by a single farmer, farm partnership, or other farm business type. Such permission should continue to hinge on rural people benefiting from job creation, as Section 310B currently provides.

Additional clarity is needed on language in Section 6015 of the 2008 Farm Bill providing that within the process of providing Business & Industry Loan Guarantee Program funds to local and regional food system projects, “the Secretary shall give priority to projects that have components *benefitting* underserved communities.” An underserved community is defined to include urban, rural, or tribal communities that the Secretary has determined have both limited access to affordable healthy foods and a high rate of hunger or poverty. Additional language clarifying whether “benefitting” these types of urban areas includes being able to site a project in an urban area or is limited to instances such as financing a refrigerated truck to transport fresh foods produced in a rural area into an urban community.

Recommendation #3: Remove barriers to providing comprehensive, integrated program delivery by deleting the provisions of Section 6018(a)(D) and (E) of the 2008 Farm Bill. The language provides exceptions to areas “adjacent and contiguous” to cities and towns greater than 50,000 being excluded from eligibility along with the larger community. The language is sometimes difficult for applicants to follow, and all but requires that they retain some type of legal or other professional assistance to comply with the process of requesting an exception from the Under Secretary.

To ensure communities and residents in the most rural and areas of greatest need are provided priority funding consideration under the 50,000 population threshold, USDA proposes incorporating a series of scoring criteria for evaluating the merits of applications into relevant statutes and regulations (*see* Addendum 4 for additional information).

Recommendation #4: Amend Section 343(a)(13) of the ConAct replacing the words “city or town” with “any incorporated municipality”. With each state and territory defining its own municipal structure, words like “city or town” can be unintentionally limiting if taken literally. Taken with Recommendation #1, the default definition of “rural area” would become, “anywhere except an incorporated municipality or unincorporated area greater than 50,000 total population”.

4. Effect of the Amendment Made by Subsection (a) on the Level of Rural Development Funding and Participation in Those Programs in Each State

Section 6018(a) provided certain exceptions to allow Business & Industry Loan Guarantees to be made on projects in urbanized areas that might otherwise be excluded as “adjacent and contiguous” to cities and towns greater than 50,000 total population.

USDA Rural Development implemented the discretionary portion of the 2008 Farm Bill known as the “rural in character” provisions. A determination under this provision allows an area to be considered eligible for rural businesses programs, provided that the area is determined to be “rural in character” and is within: (1) an urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city town; or (2) an area within an urbanized area contiguous and adjacent to a city or town of greater than 50,000 population that is within ¼ mile of a rural area.

Rural Development also implemented language requiring that exclusions of adjacent and contiguous urbanized areas be limited as they diminish beyond two census blocks in width. Referred to as “strings,” this provision recognized that development often follows the major road out of an urban area, without extending much beyond the road frontage as the road extends into the surrounding countryside. To date, there have been 219 approved uses of this language with 33 additional requests that were not statutorily eligible. Attached is a listing of determinations made under these provisions since their adoption received to date (Addendum 5).

Conclusion

The USDA Rural Development mission area provides financial and technical assistance through 40-plus programs to support economic and community development for rural residents and their communities. Simplifying the eligibility determination for these communities is a key step in streamlining program implementation and providing a more transparent process for accessing financial and technical assistance from the Mission Area. Having a 50,000 population limit for all programs would remove confusion over what constitutes a rural area and would encourage more multi-jurisdictional collaboration. The convergence of new 2010 Census data adoption and new Farm Bill development offer a unique opportunity for a long-term solution on how best to ensure that resources appropriated to Rural Development are appropriately targeted to rural people and places of greatest opportunity and greatest need.

Submitted February 2013

Addenda

1. USDA Rural Development Program Authorities
2. February 15, 2011, Testimony on Rural Definition
3. Questions and Answers to February 15, 2011 Hearing on Rural Definition
4. Filtering Criteria Examples
5. Request For Rural In Character Determinations