

(a) The right of the REE Agency to disallow costs and recover funds on the basis of a later audit or other review.

(b) The obligation of the Cooperator to return any funds due as a result of later refunds, corrections, or other transactions.

(c) Audit requirements in § 550.24.

(d) Property management requirements in §§ 550.36 through 550.42.

(e) Records retention as required in § 550.56.

#### **§ 550.62 Collection of amounts due.**

(a) Any funds paid to a Cooperator in excess of the amount to which the Cooperator is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the REE Agency may in accordance with 7 CFR part 3, reduce the debt by—

(1) Making an administrative offset against other requests for reimbursements, or

(2) Withholding advance payments otherwise due to the Cooperator, or

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the REE Agency shall charge interest on an overdue debt in accordance with 31 CFR part 900, "Federal Claims Collection Standards."

#### **Gale A. Buchanan,**

*Chief Scientist, USDA, Under Secretary, Research, Education, and Economics.*

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**BILLING CODE 3410-03-P**

## **DEPARTMENT OF AGRICULTURE**

### **Rural Business-Cooperative Service**

#### **7 CFR Parts 1951 and 4274**

**RIN: 0570-AA70**

#### **Intermediary Relending Program**

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Rural Business-Cooperative Service (RBS) amends its regulations for the Intermediary Relending Program (IRP). This action is needed to address several contradictions between the servicing and processing regulations. The intended effect of this action is to incorporate consistent language in both regulations as it relates to loan limits for ultimate recipients, eligible vs. ineligible uses of funds, and include a requirement on the extent to

which ultimate recipients are assisted by the loans made. The changes will result in eliminating inconsistencies within the regulations and provide clarity and guidance that will allow the program to operate more efficiently and effectively.

**DATES:** This direct final rule is effective November 3, 2008, unless USDA Rural Development receives written adverse comments or written notice of intent to submit adverse comments on or before October 20, 2008. If USDA Rural Development receives such comments or notice, USDA Rural Development will publish a timely document in the **Federal Register** withdrawing the direct final rule.

**ADDRESSES:** You may submit adverse comments or notice of intent to submit adverse comments to this rule by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at 300 7th Street, SW., 7th Floor address listed above.

**FOR FURTHER INFORMATION CONTACT:** Lori A. Washington, Loan Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250-3225, Telephone (202) 720-9815, E-mail [lori.washington@wdc.usda.gov](mailto:lori.washington@wdc.usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Classification**

This rule has been determined to be not significant for purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

##### **Programs Affected**

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.767, Intermediary Relending Program.

#### **Intergovernmental Review**

The IRP is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. USDA Rural Development has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940-J, "Intergovernmental Review of Rural Development Programs and Activities," and in 7 CFR part 3015, subpart V.

#### **Civil Justice Reform**

This direct final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given this rule, and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

#### **Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." USDA Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

#### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA Rural Development must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of \$100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory

provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, USDA Rural Development has determined that this action would not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). USDA Rural Development made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be impacted to a greater extent than large entity applicants. Therefore, a regulatory impact analysis was not performed.

### Executive Order 13132, Federalism

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of Government.

### Paperwork Reduction Act

This rule does not revise or impose any new information collection or recordkeeping requirements.

### E-Government Act Compliance

USDA Rural Development is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### Background

A recent Management Control Review of the program identified contradictions between the processing (7 CFR part 4274, subpart D) and servicing (7 CFR part 1951, subpart R) regulations. USDA Rural Development is correcting inconsistencies in the following areas: (1) Eligible and ineligible loan purposes; (2) ineligible borrowers; and (3) the definition of "rural area." The following clarifications are being made (1) setting the level of ultimate recipient loan assistance; and (2) establishing when debt refinancing should be considered.

We are also deleting references to churches which precluded charitable and faith-based institutions from participating in the program in order to align it with current Departmental policies. We are also requiring an annual report on the extent to which increased employment, income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by an intermediary.

### List of Subjects

#### 7 CFR Part 1951

Loan programs—Agriculture, rural areas.

#### 7 CFR Part 4274

Community development, Economic development, Loan programs—Business, Rural areas.

■ For reasons set forth in this preamble, chapters XVIII and XLII, title 7, Code of Federal Regulations, are amended as follows:

## CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

### PART 1951—SERVICING AND COLLECTIONS

■ 1. The authority citation for part 1951 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932 Note; 7 U.S.C. 1989; 301 U.S.C. 3716; 42 U.S.C. 1480.

#### Subpart R—Rural Development Loan Servicing

■ 2. Section 1951.853 is amended by adding paragraph (b)(2)(xi) to read as follows:

#### § 1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(xi) Debt refinancing if the following conditions are met.

(A) Intermediary is responsible for determining whether debt restructuring is in the best interest of the revolving loan fund.

(B) Refinancing debts will be allowed only when it is determined by the intermediary that the project is viable and refinancing is necessary to create new or save existing jobs or create or continue a needed service; and

(C) On any request for refinancing of a secured loan, the intermediary must

obtain the previously held collateral as security and must not pay off a creditor in excess of the value of the collateral. Additional collateral will be required when the refinancing of an unsecured loan is unavoidable to accomplish the necessary strengthening of the ultimate recipient's position.

■ 3. Section 1951.854 is amended by removing paragraphs (b)(7) and (b)(8) and revising paragraph (a) to read as follows:

#### § 1951.854 Ineligible assistance purposes.

(a) *Intermediaries.* Intermediary loans may *not* be used by the intermediary for any of the following purposes:

(1) For payment of the intermediary's own administrative costs or expenses.

(2) For assistance in excess of what is needed to accomplish the purpose of the ultimate recipient project.

(3) For distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(4) For charitable institutions, that would not have revenue from sales, fees, or stable revenue to support the operation and repay the loan, and fraternal organizations.

(5) For assistance to Federal government employees, active duty military personnel, employees of the intermediary, or any organization for which such persons are directors or officers or have 20 percent or more ownership.

(6) For relending in a non-rural area.

(7) For a loan to an ultimate recipient which has an application pending with, or a loan outstanding from, another intermediary involving an IRP revolving fund if the total IRP loans would exceed the limits established in § 4274.331(b).

(8) For any line of credit.

(9) For lending and investment institutions and insurance companies.

(10) For golf courses, race tracks, or gambling facilities.

(11) To finance more than 75 percent or more than \$250,000 of an ultimate recipient's total project cost, as described in § 4274.331(b). The total amount of RDLF funds requested by the ultimate recipient plus the outstanding balance of any existing RDLF loan(s) will not exceed \$150,000. This limit does not apply to revolved funds. Other loans, grants, or intermediary or ultimate recipient contributions or funds from other sources must be used to make up the difference between the total cost and the assistance provided with RDLF funds.

(12) For any investments in securities or certificates of deposit of over 30-day

duration without the concurrence of Rural Development. If the IRP funds have been unused to make loans to ultimate recipients for 6 months or more, those funds will be returned to Rural Development unless Rural Development provides an exception to the intermediary. Any exception would be based on evidence satisfactory to Rural Development that every effort is being made by the intermediary to utilize the IRP funding in conformance with program objectives.

**CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE**

**PART 4274—DIRECT AND INSURED LOANMAKING**

■ 4. The authority citation for part 4274 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

**Subpart D—Intermediary Relending Program (IRP)**

■ 5. Section 4274.314 is amended by revising paragraph (b)(10)(i) and by adding paragraph (b)(15) to read as follows:

**§ 4274.314 Loan purposes.**

- (b) \* \* \*
- (10) \* \* \*

(i) The intermediary is responsible for making prudent lending decisions based on sound underwriting principles when considering the restructuring of an ultimate recipient's debt; and

(15) Aquaculture-based rural small businesses.

■ 6. Section 4274.319 is amended by revising paragraphs (c) and (d) and by adding paragraphs (m) and (n) to read as follows:

**§ 4274.319 Ineligible loan purposes.**

- (c) \* \* \* \* \*

(c) Charitable institutions, that would not have revenue from sales, fees, or stable revenue to support the operation and repay the loan, and fraternal organizations.

(d) Assistance to Federal government employees, active duty military personnel, employees of the intermediary, or any organization for which such persons are directors or officers or have 20 percent or more ownership.

- (m) \* \* \* \* \*

(m) For any line of credit.

(n) For any legitimate business activity when more than 10 percent of

the annual gross revenue is derived from legalized gambling activity.

■ 7. Section 4274.338 is amended by adding paragraph (b)(4)(ii)(D) to read as follows:

**§ 4274.338 Loan agreements between the Agency and the intermediary.**

- \* \* \* \* \*

- (b) \* \* \*
- (4) \* \* \*
- (ii) \* \* \*

(D) An annual report on the extent to which increased employment, income and ownership opportunities are provided to low-income persons, farm families, and displaced farm families for each loan made by such intermediary.

Dated: September 12, 2008.

**Ben Anderson,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. E8-22003 Filed 9-18-08; 8:45 am]

**BILLING CODE 3410-XY-P**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 223**

[Regulation W; Docket No. R-1330]

**Transactions Between Member Banks and Their Affiliates: Exemption for Certain Securities Financing Transactions Between a Member Bank and an Affiliate**

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Interim final rule with request for public comment.

**SUMMARY:** In light of the continuing unusual and exigent circumstances in the financial markets, the Board has adopted, on an interim final basis, a regulatory exemption for member banks from certain provisions of section 23A of the Federal Reserve Act and the Board's Regulation W. The exemption increases the capacity of member banks, subject to certain conditions designed to help ensure the safety and soundness of the banks, to enter into securities financing transactions with affiliates.

**DATES:** The interim final rule became effective on September 14, 2008. Comments must be received on or before October 31, 2008.

**ADDRESSES:** You may submit comments, identified by Docket No. R-1330, by any of the following methods:

*Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include docket number in the subject line of the message.

*Fax:* (202) 452-3819 or (202) 452-3102.

*Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:**

Mark E. Van Der Weide, Assistant General Counsel, (202) 452-2263, Legal Division, or Norah M. Barger, Deputy Director, (202) 452-2402, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the deaf, hard of hearing, and speech impaired only, teletypewriter (TTY), (202) 263-4869.

**SUPPLEMENTARY INFORMATION:** In light of the ongoing dislocations in the financial markets, and the potential impact of such dislocations on the functioning of the U.S. tri-party repurchase agreement market, the Board has adopted on an interim basis the following exemption from section 23A of the Federal Reserve Act (12 U.S.C. 371c) and the Board's Regulation W (12 CFR part 223). The exemption will facilitate the ability of an affiliate of a member bank (such as an SEC-registered broker-dealer) to obtain financing, if needed, for securities or other assets that the affiliate ordinarily would have financed through the U.S. tri-party repurchase agreement market. The exemption is subject to several conditions designed to protect the safety and soundness of the member bank.

First, the member bank may use the exemption to finance only those asset types that the affiliate currently finances in the U.S. tri-party repurchase agreement market.

Second, the transactions must be marked to market daily and subject to daily margin maintenance requirements,