

PART 4274 - DIRECT AND INSURED LOANMAKING

Subpart D - Intermediary Relending Program (IRP)

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PART 4274 - DIRECT AND INSURED LOANMAKING

Subpart D - Intermediary Relending Program (IRP)

§ 4274.301 Introduction.

(a) This subpart contains regulations for loans made by the Agency to eligible intermediaries and applies to borrowers and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. The servicing and liquidation of such loans will be in accordance with part 1951, subpart R, of this title.

(b) The purpose of the program is to alleviate poverty and increase economic activity and employment in rural communities, especially disadvantaged and remote communities, through financing targeted primarily towards smaller and emerging businesses, in partnership with other public and private resources, and in accordance with State and regional strategy based on identified community needs. This purpose is achieved through loans made to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community developments in a rural area.

(c) Proposed intermediaries are required to identify any known relationship or association with a United States Department of Agriculture (USDA) Rural Development employee. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to USDA Rural Development employees, members of their families, close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. (Revised 09-22-04, PN 379.)

(d) Copies of all forms, regulations, and Agency procedures referenced in this subpart are available in the National Office or any Rural Development State Office. *Any portion of this Instruction appearing in italicized type is considered by the Agency to be administrative procedure and has not been published in the Federal Register as part of the regulation.*

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§ 4274.302 Definitions and abbreviations.

(a) General definitions. The following definitions are applicable to the terms used in this subpart:

Agency. The Federal agency within the USDA with responsibility assigned by the Secretary of Agriculture to administer IRP. At the time of publication of this rule, that Agency was the Rural Business-Cooperative Service (RBS).

Agency IRP loan funds. Cash proceeds of a loan obtained from the Agency through IRP, including the portion of an IRP revolving fund Directly provided by the Agency IRP loan. Agency IRP loan funds are Federal funds. (Revised 03-19-15, PN 475.)

Agricultural production or agriculture production. The cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals, or birds, either for fiber, food for human consumption, or livestock feed.

Initial Agency IRP loan. The first IRP loan made by the Agency to an intermediary.

Intermediary. The entity requesting or receiving Agency IRP loan funds for establishing a revolving fund and relending to ultimate recipients.

IRP revolving fund. A group of assets, obtained through or related to an Agency IRP loan and recorded by the intermediary in a bookkeeping account or set of accounts and accounted for, along with related liabilities, revenues, and expenses, as an entity or enterprise separate from the intermediary's other assets and financial activities.

Principals of intermediary. Members, officers, directors, and other individuals or entities directly involved in the operation and management (including setting policy) of an intermediary.

Processing office or officer. The processing office for an IRP application is the office within the Agency administrative organization with assigned authority and responsibility to process the application. The processing office is the primary contact for the proposed intermediary and maintains the official application case file. The processing officer for an application is the person in charge of the processing office. The processing officer is responsible for ensuring that all regulations and Agency procedures are complied with in regard to applications under the office's jurisdiction.

§ 4274.302(a) (Con.)

Revolved funds. The cash portion of an IRP revolving fund that is not composed of Agency loan funds, including funds that are repayments of Agency IRP loans and including fees and interest collected on such loans. (Revised 01-29-15, PN 474.)

Rural or Rural area. As described in 7 U.S.C. 1991(a)(13), as amend. (Revised 01-29-15, PN 474.)

Servicing office or officer. The servicing office for an IRP loan is the office within the Agency administrative organization with assigned authority and responsibility to service the loan. The servicing office is the primary contact for the borrower and maintains the official case file after the loan is closed. The servicing officer for a loan is the person in charge of the servicing office. The servicing officer is responsible for ensuring that all regulations and Agency procedures are complied with in regard to loans under the office's jurisdiction.

State. Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subsequent IRP loan. An IRP loan from the Agency to an intermediary that has received one or more IRP loans previously.

Technical assistance. A function performed for the benefit of an ultimate recipient or proposed ultimate recipient, which is a problem solving activity. The Agency will determine whether a specific activity qualifies as technical assistance.

Ultimate recipient. An entity or individual that receives a loan from an intermediary's IRP revolving fund.

Underrepresented group. U.S. citizens with identifiable common characteristics, that have not received IRP assistance or have received a lower percentage of total IRP dollars than the percentage they represent of the general population. *The Agency interprets identifiable common characteristics to include, but are not limited to, minorities, elderly, persons with disabilities, women, etc.* (Revised 08-19-05, SPECIAL PN.)

United States. The 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

(b) Abbreviations. The following are applicable to this subpart:

B&I - Business and Industry

IRP - Intermediary Relending Program

OGC - Office of the General Counsel

OIG - Office of Inspector General

OMB - Office of Management and Budget

RBS - Rural Business-Cooperative Service, or any successor agency

RDLF - Rural Development Loan Fund

USDA - United States Department of Agriculture

§ 4274.303 [Reserved]

§ 4274.304 Prior loans.

Any loan made under this program prior to September 2, 2014 may submit to the Agency a written request for an irrevocable election to have the loan serviced in accordance with this subpart. (Revised 01-29-15, PN 474.)

(a) An intermediary may agree, by amendment to the loan agreement, to have its loan serviced under new regulations effective on February 6, 1998. The intermediary must accept the entire revised regulation. It may not pick portions of one regulation and portions of another. Exhibit D provides standard language that may be used to amend loan agreements to bring old loans under new regulations. All intermediaries with loans closed prior to February 6, 1998 should be offered the opportunity and encouraged to amend their loan agreements to bring the loans under the regulations that became effective on February 6, 1998.

§ 4274.304 (Con.)

(b) If an intermediary's loan agreement requires assignment of promissory notes and collateral documents to the Agency, the servicing officer may return to the intermediary all original promissory notes and assignment documents held by the Agency and stop obtaining such documents for future loans to ultimate recipients, provided:

- (1) the repayment status of the intermediary's loan is current;*
- (2) the intermediary is in compliance with the loan agreement and work plan for the intermediary's loan; and*
- (3) the intermediary officials are doing an adequate job of servicing their loans.*

§§ 4274.305 - 4274.306 [Reserved]

§ 4274.307 Eligibility requirements - Intermediary.

(a) The types of entities which may become intermediaries are:

- (1) Private nonprofit corporations.**
- (2) Public agencies - Any State or local government, or any branch or agency of such government having authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this subpart. If the Intermediary is a State Agency, at the time of submission of an application, a thorough review of the Organization's Articles of Incorporation and Bylaws and our legal documents should be completed to avoid possible conflicting problems. (Revised 08-19-05, SPECIAL PN.)**
- (3) Indian groups - Indian tribes on a Federal or State reservation or other federally recognized tribal groups.**
- (4) Cooperatives - Incorporated associations, at least 51 percent of whose members are rural residents, whose members have one vote each, and which conduct, for the mutual benefit of their members, such operations as producing, purchasing, marketing, processing, or other activities aimed at improving the income of their members as producers or their purchasing power as consumers.**

§ 4274.304 (Con.)

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§ 4274.307 (Con.)

(b) The intermediary must:

(1) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan. *Agency field staff should be aware that this requirement is met when the nonprofit corporation or cooperative's organizational documents, such as its charter or bylaws, provide the nonprofit or cooperative sufficient legal authority to participate in the IRP program including carrying out the proposed loan purposes and borrowing, obtaining, giving security for, and repaying the proposed loan. The governing body of the nonprofit corporation or cooperative may delegate some or all of its authority to a committee (e.g. loan committee) or staff member in accordance with its organizational documents. Most nonprofit corporations or cooperatives, who do not initially meet this requirement, can usually amend their organizational documents to do so. (Revised 03-19-15, PN 475.)*

(2) Have a proven record of successfully assisting rural business and industry, or, for intermediaries that propose to finance community development, a proven record of successfully assisting rural community development projects of the type planned.

(i) Except as provided in paragraph (b)(2)(ii) of this section, such record will include recent experience in loan making and servicing with loans that are similar in nature to those proposed for the IRP and a delinquency and loss rate acceptable to the Agency.

(ii) The Agency may approve an exception to the requirement for loan making and servicing experience provided:

(A) The proposed intermediary has a proven record of successfully assisting (other than through lending) rural business and industry or rural community development projects of the type planned; and

(B) The proposed intermediary will, before the loan is closed, bring individuals with loan making and servicing experience and expertise into the operation of the IRP revolving fund.

(3) Have the services of a staff with loan making and servicing expertise acceptable to the Agency.

- (4) Have capitalization acceptable to the Agency.
- (c) No loans will be extended to an intermediary unless:
- (1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the proposed intermediary.
 - (2) The loan is not otherwise available on reasonable (i.e., usual and customary) rates and terms from private sources or other Federal, State, or local programs.
 - (3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.
- (d) At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary must be composed of citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence.

(1) Agency reviewers should consider the following when determining eligibility of an Intermediary: (Added 03-19-15, PN 475.)

(i) Applicant with entity member(s). For intermediary applicants with entity members, citizenship under this section shall be determined by examining the citizenship of individual members or the individuals who ultimately own the entity. For entities with entity members, this will require burrowing through any intervening entities until reaching individual members or owners and then determining whether the applicant meets the citizenship requirement based on the citizenship of the individual members or owners and their respective interest in the applicant. If an entity owner is a corporation traded on a major U.S. stock exchange it shall be presumed to be owned by U.S. citizens. (Added 03-19-15, PN 475.)

(ii) Non-member Organization. Agency will consider citizenship of the board of directors and determine if the board meets the requirement under this section. In this case, if at least 51 percent of the voting interests of the board of directors are U.S. citizens, then the organization meets the citizenship requirements. (Added 03-19-15, PN 475.)

§ 4274.307 (Con.)

(e) Any delinquent debt to the Federal Government by the intermediary or any principal of the intermediary shall cause the Intermediary to be ineligible to receive any IRP loan. Agency loan funds may not be used to satisfy the debt.

§ 4274.308 Eligibility requirements - Ultimate recipients.

(a) Ultimate recipients may be individuals, public or private organizations, or other legal entities, with authority to incur the debt and carry out the purpose of the loan.

(b) To be eligible to receive loans from the IRP revolving loan fund, ultimate recipients;

(1) Must be citizens of the United States or reside in the United States after being legally admitted for permanent residence. In the case of an organization, at least 51 percent of the outstanding membership or ownership must be either citizens of the United States or residents of the United States after being legally admitted for permanent residence.

(2) Must be located in a rural area of a State.

(3) Must be unable to finance the proposed project from its own resources or through commercial credit or other Federal, State, or local programs at reasonable rates and terms.

(3) Must be unable to finance the proposed project from its own resources or through commercial credit or other Federal, State, or local programs at reasonable rates and terms. *Reviewing officials should be aware of the following and ensure that Intermediaries understand the following when considering ultimate recipient loans:* (Revised 03-19-15, PN 475.)

§ 4274.308(b)(3) (Con.)

(i) While denial or turn-down letters are not required from other sources, the intermediary must document their Ultimate Recipient case file and state why the Ultimate Recipient is unable to access other credit. In some cases, the Ultimate Recipient may be able to obtain a commercial loan to meet part of their capital needs and access the IRP loan to fill the gap in funding. Reviewing officials should make sure the intermediary is knowledgeable of the credit standards of commercial lenders serving their service area and knowledgeable of Federal, State, or local programs serving their service area. The intermediary's documentation should address commercial lending credit standards such as collateral requirements, debt service requirements, debt-to-equity, etc. (Added 03-19-15, PN 475.)

(4) Must, along with its principal officers (including their immediate family) hold no legal or financial interest or influence in the intermediary. Also, the intermediary and its principal officers (including immediate family) must hold no legal or financial interest or influence in the ultimate recipient. However, this paragraph shall not prevent an intermediary that is organized as a cooperative from making a loan to one of its members. It is important that the Agency assure elimination of any conflict of interest in relation to ultimate recipient loans. Consider the following: (Revised 03-19-15, PN 475.)

(i) Lending to Members/Employees. For the purpose of this instruction "Excluded Employees" includes members of governing bodies, boards, committees, contractors, and immediate family members. A public body or Indian tribe that applies for and administers a Revolving Loan Fund (RLF) is not precluded from lending to one of its members or one of its employees unless the employee is an Excluded Employee. Excluded Employees may not hold any legal or financial interest or influence in the third party recipient. (Added 03-19-15, PN 475.)

(A) To meet the requirements of the regulations, the reviewing official should make sure a public body or Indian tribe that applies for an RLF program loan describes its organizational structure and its structure for the administration of the RLF. The reviewing official should insure that the intermediary has a distinct lending committee and list of dedicated employees by position who would all be Excluded Employees. These Excluded Employees cannot be the third party recipient. (Added 03-19-15, PN 475.)

6B

(Added 03-19-15, PN 475)

(02-06-98) SPECIAL PN

(B) As an example, the tribe or public body may have an economic development authority or business development department organized under the tribe or public body to administer the RLF. The detailed description of the structure of the authority or department should be included in the approved Lender's Manual, and include policies and procedures and separation of duties to ensure no conflicts of interest. An employee of a department, separate from the administration of the RLF, such as the forestry department and their immediate family, may be eligible third party recipients. An employee of the financial department responsible for collection of RLF loan payments and their immediate family would be ineligible third party recipients. (Added 03-19-15, PN 475.)

(ii) Lending to Tribal Entities. The reviewing official could approve an intermediary/grantee organized as an Indian tribe making RLF loans to entities owned by its tribe only if the entity is organized and governed independently from the tribe. An example of a tribal entity that is an eligible third party recipient is a business organized as a corporation, incorporated and wholly-owned by the tribe and the corporation's board of directors is appointed by the tribe, but governed by the corporation independently of the tribe. However the reviewing official could not approve a tribal entity governed under the Tribal Government as an eligible third party recipients of an RLF administered by its tribe. (Such entities may be eligible third party recipients of the RLF administered by other intermediaries/grantees). (Added 03-19-15, PN 475.)

(iii) Work plan Documentation. Best practices include that the Agency's delegated authority should review the intermediary/grantee organizational documents and the work plan or lending manual as they relate to the oversight and administration of the RLF, to ensure the proper separation of duties. Agency offices should require applicants to provide, to the Agency's office's satisfaction, evidence on how the applicant will avoid potential conflicts. Agency Offices should require agency prior written approval before these measures are modified. This documentation may be included as a revision to the existing work plan. (Added 03-19-15, PN 475.)

§ 4274.308 (Con.)

(c) Any delinquent debt to the Federal Government, by the ultimate recipient or any of its principals, shall cause the proposed ultimate recipient to be ineligible to receive a loan from Agency IRP loan funds. Agency IRP loan funds may not be used to satisfy the delinquency.

§§ 4274.309 - 4274.312 [Reserved]

§ 4274.313 Administrative responsibility.

(a) *Except as provided in this section, the processing and servicing office for an IRP application or loan is the State Office for the State where the intermediary's headquarters is located.*

(b) *State Directors may delegate in writing processing and servicing office responsibility to District Offices, provided that the State Director determines the District Office staff has had adequate training on the IRP.*

(c) *The processing and servicing office for intermediaries headquartered in the District of Columbia is the National Office.*

§ 4274.314 Loan purposes.

(a) **Intermediaries.** Agency IRP loan funds must be placed in the intermediary's IRP revolving fund and used by the intermediary to provide direct loans to eligible ultimate recipients. Agency field staff should ensure that Intermediaries have a basic understanding of participation loans. In a loan participation, a loan is made by multiple lenders to a single ultimate recipient. Several lenders may fund one loan by purchasing part of the loan, with one of the lenders taking the role of the lead lender. The lead lender typically originates the loan, services the loan, collects loan repayment, and works directly with the borrower. The purchase of a participation in a loan shall be considered a loan to an ultimate recipient for the purposes of IRP. It is the Agency position that an Intermediary may sell a participation or purchase a participation in a loan as defined in this subpart as long as the loan is otherwise eligible. (Revised 03-19-15, PN 475.)

(b) **Ultimate recipients.** Loans from the intermediary to the ultimate recipient using the IRP revolving fund must be for community development projects, the establishment of new businesses, expansion of existing businesses, creation of employment opportunities, or saving existing jobs. Such loans may include, but are not limited to:

- (1) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

- (2) Business construction, conversion, enlargement, repair, modernization, or development.
- (3) Purchase and development of land, easements, rights-of-way, buildings, facilities, leases, or materials.
- (4) Purchase of equipment, leasehold improvements, machinery, or supplies.
- (5) Pollution control and abatement.
- (6) Transportation services.
- (7) Start-up operating costs and working capital.
- (8) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.
- (9) Feasibility studies.
- (10) Debt refinancing.
 - (i) A complete review will be made by the intermediary to determine whether the loan will restructure debts on a schedule that will allow the ultimate recipient to operate successfully and pay off the loan rather than merely take over an unsound loan. The intermediary will obtain the proposed ultimate recipient's complete debt schedule which should agree with the proposed ultimate recipient's latest balance sheet; and
 - (ii) Refinancing debts may 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
 - (iii) On any request for refinancing of existing secured loans, the intermediary is required, at a minimum, to obtain the previously held collateral as security for the loans and must not pay off a creditor in excess of the value of the collateral. Additional collateral will be required when the refinancing of unsecured loans is unavoidable to accomplish the necessary strengthening of the ultimate recipient's position.

(11) Reasonable fees and charges only as specifically listed in this paragraph. Authorized fees include loan packaging fees, environmental data collection fees, management consultant fees, and other fees for services rendered by professionals. Professionals are generally persons licensed by States or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. The maximum amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.

(12) Hotels, motels, tourist homes, bed and breakfast establishments, convention centers, and other tourist and recreational facilities except as prohibited by § 4274.319.

§ 4274.314(b) (Con.)

(13) Educational institutions.

(14) Revolving lines of credit: Provided,

(i) The portion of the intermediary's total IRP revolving fund that is committed to or in use for revolving lines of credit will not exceed 25 percent at any time;

(ii) All ultimate recipients receiving revolving lines of credit will be required to reduce the outstanding balance of the revolving line of credit to zero at least one time each year;

(iii) All revolving lines of credit will be approved by the intermediary for a specific maximum amount and for a specific maximum time period, not to exceed 2 years;

(iv) The intermediary will provide a detailed description, which will be incorporated into the intermediary's work plan and be subject to Agency approval, of how the revolving lines of credit will be operated and managed. The description will include evidence that the intermediary has an adequate system for:

(A) Interest calculations on varying balances, and

(B) Monitoring and control of the ultimate recipients' cash, inventory, and accounts receivable; and

(v) If, at any time, the Agency determines that an intermediary's operation of revolving lines of credit is causing excessive risk of loss for the intermediary or the Government, the Agency may terminate the intermediary's authority to use the IRP revolving fund for revolving lines of credit. Such termination will be by written notice and will prevent the intermediary from approving any new lines of credit or extending any existing revolving lines of credit beyond the effective date of termination contained in the notice.

§§ 4274.315 - 4274.318 [Reserved]

§ 4274.319 Ineligible loan purposes.

Agency IRP loan funds may not be used for payment of the intermediary's administrative costs or expenses. The IRP revolving fund may not be used for:

- (a) Assistance in excess of what is needed to accomplish the purpose of the ultimate recipient's project.
- (b) 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.
- (c) Charitable institutions that would not have revenue from sales or fees to support the operation and repay the loan, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.
- (d) Assistance to government employees, military personnel, or principals or employees of the intermediary or organizations for which such persons are directors or officers or in which they have ownership of 20 percent or more.
- (e) 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).
- (f) Agricultural production.
- (g) The transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.
- (h) Community antenna television services or facilities.
- (i) Any illegal activity.
- (j) Any project that is in violation of either a Federal, State, or local environmental protection law or regulation or an enforceable land use restriction unless the assistance given will result in curing or removing the violation.
- (k) Lending and investment institutions and insurance companies.
- (l) Golf courses, race tracks, or gambling facilities.

§ 4274.320 Loan terms.

(a) No loan to an intermediary shall be extended for a period exceeding 30 years. Interest and principal payments will be scheduled at least annually. The initial principal payment may be deferred (during the period before the facility becomes income producing) by the Agency, but not more than 3 years. *The term of any loan made by the Agency to an intermediary shall not exceed 30 years from the date of the original promissory note. In the event of any changes to the original loan agreement (i.e., restructuring of debt, restructuring of payments, change in debtor, and so forth) the maturity date of the loan shall not be extended beyond 30 years from the original Note date. Similarly, the deferment period of any loan made by the Agency to an intermediary shall not exceed three years. Therefore, in the event of any changes to the original loan agreement as above, there shall be no deferral of principal after the third anniversary of the original Note date.*
(Revised 12-07-05, PN 392.)

(b) Loans made by an intermediary to an ultimate recipient from the IRP revolving fund will be scheduled for repayment over a term negotiated by the intermediary and ultimate recipient. The term must be reasonable and prudent considering the purpose of the loan, expected repayment ability of the ultimate recipient, and the useful life of collateral, and must be within any limits established by the intermediary's work plan.

§§ 4274.321 - 4274.324 [Reserved]

§ 4274.325 Interest rates.

(a) Loans made by the Agency pursuant to this subpart shall bear interest at a fixed rate of 1 percent per annum over the term of the loan.

(b) Interest rates charged by intermediaries to ultimate recipients on loans from the IRP revolving fund shall be negotiated by the intermediary and ultimate recipient. The rate must be within limits established by the intermediary's work plan approved by the Agency. The rate should normally be the lowest rate sufficient to cover the loan's proportional share of the IRP revolving fund's debt service costs, reserve for bad debts, and administrative costs.

§ 4274.326 Security.

(a) Intermediaries. Security for all loans to intermediaries must be such that the repayment of the loan is reasonably assured, when considered along with the intermediary's financial condition, work plan, and management ability. It is the responsibility of the intermediary to make loans to ultimate recipients in such a manner that will fully protect the interests of the intermediary and the Government.

(1) Security for such loans may include, but is not limited to:

(i) Any realty, personalty, or intangible capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of the Agency; and

(ii) Any realty, personalty, or intangible capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of the Agency.

(2) Initial security will consist of a pledge by the intermediary of all assets now in or hereafter placed in the IRP revolving fund, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. Except for good cause shown, The Agency will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary will covenant that, in the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, the intermediary will provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request to protect the Agency's interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to the Agency. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients must be **assignable**. *Review officials should note the "Sample Agency-approved Participation Agreement[s]" that has been used before and may be adopted by Intermediaries in their discretion. This also includes the intermediary's interest in participation loans. The Agency Loan Agreement requires the intermediary secure the Agency's IRP loan by pledging the IRP revolving loan fund including its portfolio of investments derived from the IRP revolving loan fund and other rights and interests as the Agency may require. Reviewing officials should ensure that the Participation Agreements are assignable. (Revised 03-19-15, PN 475.)*

§ 4274.326(a) (Con.)

(3) In addition to normal security documents, a first lien interest in the intermediary's revolving fund account will be accomplished by a control agreement satisfactory to RBS. The control agreement does not have to require RBS signature for withdrawals. The depository bank shall waive its offset and recoupment rights against the depository account to RBS and subordinate any liens it may have against the IRP depository bank account. The use of Form RD 402-1, "Deposit Agreement," or similar form developed by the State Regional Office of the General Counsel are acceptable. (Added 08-19-05, SPECIAL PN.)

(b) ultimate recipients. Security for a loan from an intermediary's IRP revolving fund to an ultimate recipient will be negotiated between the intermediary and ultimate recipient, within the general security policies established by the intermediary and approved by the Agency.

§§ 4274.327 - 4274.330 [Reserved]

§ 4274.331 Loan limits.

(a) Intermediary.

(1) No loan to an intermediary will exceed the maximum amount the intermediary can reasonably be expected to lend to eligible ultimate recipients, in an effective and sound manner, within 1 year after loan closing.

(2) The initial Agency IRP loan as defined in § 4274.302(a) will not exceed \$2 million.

§ 4274.331(a) (Con.)

(3) Intermediaries that have received one or more IRP loans may apply for and be considered for subsequent IRP loans provided:

(i) At least 80 percent of each of an intermediary's IRP loans, except those earmarked for special purposes, must have been disbursed to eligible ultimate recipients or the subsequent loan will serve a geographic area not included in an area currently served. (Revised 08-19-05, SPECIAL PN.)

(ii) The intermediary is promptly relending all collections from loans made from its IRP revolving fund in excess of what is needed for required debt service, reasonable administrative costs approved by the Agency, and a reasonable reserve for debt service and uncollectible accounts. The intermediary provides documentation to demonstrate that funds for relending do not exceed the greater of \$150,000 or the total amount of loans closed during a calendar quarter on average, over the last 12 months. (Revised 12-29-15, PN 474.)

(iii) The outstanding loans of the intermediary's IRP revolving fund are generally sound; and

(iv) The intermediary is in compliance with all applicable regulations and its loan agreements with the Agency.

(4) Subsequent loans will not exceed \$1 million each and not more than one loan will be approved by the Agency for an intermediary in any single fiscal year unless the request is from an IRP earmark. (Revised 08-19-05, SPECIAL PN.)

(5) Total outstanding IRP indebtedness of an intermediary to the Agency will not exceed \$15 million at any time.

(b) Ultimate recipients. Loans from intermediaries to ultimate recipients using the IRP revolving fund must not exceed the lesser of:

(1) \$250,000; or

(2) Seventy five percent of the total cost of the ultimate recipient's project for which the loan is being made.

(3) *The reviewing official should make sure Intermediaries are aware that two or more intermediaries may co-fund an ultimate recipient with each intermediary making and holding their own separate loans. In that case, and in accordance with § 4274.319(e), the above limits apply to the total of the IRP loans. (Added 03-19-15, PN 475.)*

(c) **Portfolio.** No more than 25 percent of an IRP loan approved may be used for loans to ultimate recipients that exceed \$150,000. This limit does not apply to revolved funds.

§ 4274.332 **Post award requirements.**

(a) **Applicability.** Intermediaries receiving loans under this program shall be governed by these regulations, the loan agreement, the approved work plan, security interests, and any other conditions which the Agency requirement on loans made from the "IRP revolving fund," such requirement shall apply to all loans made by an intermediary to an ultimate recipient from the intermediary's IRP revolving fund for as long as any portion of the intermediary's IRP loan from the Agency remains unpaid. Whenever this subpart imposes a requirement on loans made by intermediaries from "Agency IRP loan funds," without specific reference to the IRP revolving fund, such requirement shall apply only to loans made by an intermediary using Agency IRP loan funds, and will not apply to loans made from revolved funds.

(b) **Maintenance of IRP revolving fund.** For as long as any part of an IRP loan to an intermediary remains unpaid, the intermediary must maintain the IRP revolving fund. All Agency IRP loan funds received by an intermediary must be deposited into an IRP revolving fund. The intermediary may transfer additional assets into the IRP revolving fund. All cash of the IRP revolving fund shall be deposited in a separate bank account or accounts. No other funds of the intermediary will be commingled with such money. All moneys deposited in such bank account or accounts shall be money of the IRP revolving fund. Loans to ultimate recipients are advanced from the IRP revolving fund. The receivables created by making loans to ultimate recipients, the intermediary's security interest in collateral pledged by ultimate recipients, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the IRP revolving fund are a part of the IRP revolving fund.

(1) The portion of the IRP revolving loan fund that consists of Agency IRP loan funds, on a last-in-first-out basis, may only be used for making loans in accordance with § 4274.314 of this subpart. The portion of the IRP revolving fund which consists of revolved funds may be used for debt service, reasonable administrative costs, or reserves in accordance with this section, or for making additional loans.

(2) The intermediary must submit an annual budget of proposed administrative costs for Agency approval. The annual budget should itemize cash income and cash outflow. Projected cash income should consist of, but is not limited to, collection of principal repayment, interest earnings on deposits, fees, and other income. Projected cash outflow should consist of, but is not limited to, principal and interest payments, reserve for bad debt, and an itemization of administrative costs to operate the IRP revolving fund. Proceeds received from the collection of principal repayment cannot be used for administrative expenses. The amount removed from the IRP revolving fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the IRP revolving fund, including loan servicing and providing technical assistance, and must not exceed the amount approved by the Agency in the intermediary's annual budget. (Revised 01-29-15, PN 474.)

§ 4274.332(b) (Con.)

(3) A reasonable amount of revolved funds must be used to create a reserve for bad debts. Reserves should be accumulated over a period of years. The total amount should not exceed maximum expected losses, considering the quality of the intermediary's portfolio of loans. Unless the intermediary provides loss and delinquency records that, in the opinion of the Agency, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 3 years and then maintained.

(4) Any cash in the IRP revolving fund from any source that is not needed for debt service, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients. Funds may not be used for any investments in securities or certificates of deposit of over 30-day duration without the concurrence of Rural Development. If funds in excess of \$250,000 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. (Revised 01-29-15, PN 474.)

(5) All reserves and other cash in the IRP revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses will be deposited in accounts in banks or other financial institutions. Such accounts will be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations, and must be interest bearing. Any interest earned thereon remains a part of the IRP revolving fund. *Agency field staff should communicate the following changes to Intermediaries regarding its revolving loan fund accounts. In the past, intermediaries choosing to establish a noninterest-bearing transaction account at one institution would be covered by the Transaction Account Guarantee Program (TAG) for amounts exceeding \$250,000. Therefore the accounts were fully covered and no collateral pledge was necessary. This authority expired and intermediaries must now return to collateralizing amounts exceeding \$250,000 maintained at one institution. The Agency's position is that if the cost to maintain interest-bearing accounts is more than the interest earned, because of the minimal interest offered on accounts in today's environment, a non-interest bearing account may be utilized, understanding that any balance in excess of \$250,000 must be collateralized.* (Revised 03-19-15, PN 475.)

§ 4274.332(b)(5) (Con.)

(i) The reviewing official may also permit collateralization by following RD Instruction 1902-A, section 1902.7 which explains the process for pledging collateral for funds deposited in supervised bank accounts. Even though revolving fund accounts are not considered supervised bank accounts, the process for pledging collateral to the Treasury V-408 account located in the Federal Reserve Bank is the same. The servicing official should complete RD Form Letter 1902-A-2 "Designated Financial Institution - Collateral Pledge." The letter should be either faxed to Linda Price at (202) 260-6225 or e-mailed to linda.price@wdc.usda.gov. When using this approach, the reviewing official should ensure the amount to be collateralized is either the highest average daily balance for the past 6 months or the outstanding loan balance, whichever is less. (Added 03-19-15, PN 475.)

(6) If an intermediary receives more than one IRP loan, it need not establish and maintain a separate IRP revolving loan fund for each loan; it may combine them and maintain only one IRP revolving fund, unless the Agency requires separate IRP revolving funds because there are significant differences in the loan purposes, work plans, loan agreements, or requirements for the loans. The Agency may allow loans with different requirements to be combined into one IRP revolving fund if the intermediary agrees in writing to operate the combined revolving funds in accordance with the most stringent requirements as required by the Agency.

(i) Review officials should make special note of this when an Intermediary considers combining IRP loans. When the reviewing official approves an intermediary combining multiple IRP loans into one IRP revolving fund, the reviewing official may permit the intermediary reporting its ultimate recipient loan information and IRP revolving fund information in a combined report after all of the Agency IRP loan funds are disbursed. Unfortunately, the Lender Interactive Network Connection/Guaranteed Loan System (LINC/GLS) on-line reporting system, at this time, will not allow for the consolidation of the Agency IRP loan into a combined report and the total balance of its IRP loans owed to the Agency will not be included on the combined fund report, aka, fund balance sheet. (Added 03-19-15, PN 475.)

§§ 4274.333 - 4274.336 [Reserved]

§ 4274.337 Other regulatory requirements.

(a) Intergovernmental consultation. The IRP is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The approval of a loan to an intermediary will be the subject of intergovernmental consultation. For each ultimate recipient to be assisted with a loan from Agency IRP loan funds and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Single Point of Contact must be notified. Notification, in the form of a project description, must be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the Agency loan funds for the ultimate recipient. Prior to the Agency's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. (See RD Instruction 1970-I (available in any Rural Development State Office)). (Revised 01-18-12, SPECIAL PN.)

(b) Environmental requirements. Actions taken under this subpart must comply with 7 CFR part 1970, as specified in § 1970.51(a)(3) for multi-tier actions. Intermediaries and ultimate recipients must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment. Intermediaries must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations. (Revised 04-01-16, SPECIAL PN.)

(c) Equal opportunity and nondiscrimination requirements.

(1) In accordance with title V of Pub. L. 93-495, the Equal Credit Opportunity Act, and section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, neither the intermediary nor the Agency will discriminate against any employee, proposed intermediary or proposed ultimate recipient on the basis of sex, marital status, race, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Agency loan funds are involved.

(2) The regulations contained in subpart E of part 1901 of this title apply to this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, Title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000d-4, Section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, the Age Discrimination Act of 1975, and the Americans with disabilities Act. *If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Civil Rights Staff.*

(4) *Civil rights compliance reviews should be conducted by the Agency within the first year after loan closing and thereafter at intervals of not more than 3 years until the Agency IRP loan funds have all been loaned to ultimate recipients. The results of the review should be documented on Form RD 400-8, "Compliance Review (Nondiscrimination by Recipients of Financial Assistance through Farmers Home Administration)," and appropriate documentation attached to substantiate findings of compliance or noncompliance. The original Form RD 400-8 should be maintained in the case file with copies forwarded to the Rural Development State Civil Rights Coordinator. If the intermediary is not in compliance, copies should also be immediately forwarded to the Director, Civil Rights Staff, with a recommendation for action to be taken.*

(d) Seismic safety of new building construction.

(1) The Intermediary Relending Program is subject to the provisions of Executive Order 12699 that requires each Federal agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings to assure appropriate consideration of seismic safety.

(2) All new buildings financed with Agency IRP loan funds shall be designed and constructed in accordance with the seismic provisions of one of the following model building codes or the latest edition of that code providing an equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Programs (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions):

(i) 1991 International Conference of Building Officials (ICBO) Uniform Building Code;

(ii) 1993 Building Officials and Code Administrators International, Inc. (BOCA) National Building Code; or

(iii) 1992 Amendments to the Southern Building Code Congress International (SBCCI) Standard Building Code.

(3) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications shall be evidence of compliance with the seismic requirements of the appropriate code.

§ 4274.338 Loan agreements between the Agency and the intermediary.

A loan agreement or supplement to a previous loan agreement must be executed by the intermediary and the Agency at loan closing for each loan. The loan agreement will be prepared by the Agency using Form RD 4274-4, "Intermediary Relending Program Loan Agreement," or Form RD 4274-5, "Intermediary Relending Program Supplemental Loan Agreement," and reviewed by the intermediary prior to loan closing.

(a) The loan agreement will, as a minimum, set out:

(1) The amount of the loan;

(2) The interest rate;

§ 4274.338(a) (Con.)

(3) The term and repayment schedule;

(4) The provisions for late charges. The intermediary shall pay a late charge of 4 percent of the payment due if payment is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed. Any unpaid late charge shall be added to principal and be due as an extra payment at the end of the term. Acceptance of a late charge by the Agency does not constitute a waiver of default;

(5) The disbursement procedure. Disbursement of loan funds by the Agency to the intermediary shall take place after the loan agreement and promissory note are executed, and any other conditions precedent to disbursement of funds are fully satisfied. For purposes of computing interest, the date of each draw down shall constitute the date the funds are advanced under the loan agreement;

(i) The intermediary may initially draw up to 25 percent of the loan funds or, the intermediary must have at least one ultimate recipient loan application ready to close. Upon requesting a disbursement, the intermediary must provide documentation showing that its equity contribution has been deposited into the IRP revolving loan fund account. The initial draw must be deposited in an interest bearing account in accordance with § 4274.332(b)(5) until needed and must be used for loans to ultimate recipients before any additional Agency IRP loan funds may be drawn by the intermediary. Any funds from the initial draw that have not been used for loans to ultimate recipients within 1 year from the date of the draw must be returned to the Agency as an extra payment on the loan. Agency IRP loan funds must not be used for administrative expenses; (Revised 08-19-05, SPECIAL PN.)

(ii) After the initial draw of funds, an intermediary may draw down only such funds as are necessary to cover a 30-day period in implementing its approved work plan. Advances must be requested by the intermediary in writing. *The intermediary may use Form RD 440-11, "Estimate of Funds Needed for 30-day Period Commencing _____," to request the funds.*

(iii) If it is necessary to return funds to the Agency in accordance with paragraph (a)(5)(i) of this section, the returned funds will be applied to the intermediary's loan according to the provisions of the promissory note for extra payments. Such returned funds will not be available to draw again. (Added 12-01-99, PN 313.)

(6) The provisions regarding default. On the occurrence of any event of default, the Agency may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan agreement or any other instruments securing or relating to the loan and in accordance with the applicable law and regulations. Any of the following may be regarded as an "event of default" in the sole discretion of the Agency:

(i) Failure of the intermediary to carry out the specific activities in its loan application as approved by the Agency or comply with the loan terms and conditions of the loan agreement, any applicable Federal or State laws, or with such USDA or Agency regulations as may become applicable;

(ii) Failure of the intermediary to pay within 15 calendar days of its due date any installment of principal or interest on its promissory note to the Agency;

(iii) The occurrence of;

(A) The intermediary becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors, or;

(B) Proceedings for the appointment of a receiver, trustee, or liquidator of the intermediary, or of a substantial part of its assets, being authorized or instituted by or against it;

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to USDA or the Agency in connection with the financial assistance awarded hereunder which is false, incomplete, or incorrect in any material respect; or

§ 4274.338(a)(6) (Con.)

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policymaking body) arising since the date of the Agency's award of assistance hereunder, which condition was an inducement to Agency's original award.

(7) The insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient's project funded from the IRP revolving fund in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption,

§ 4374.338(a)(7)(i) (Con.)

explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary's interest in the insurance will be assigned to the Agency, upon the Agency's request, in the event of default by the intermediary.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient funded from the IRP revolving fund and will be assigned or pledged to the intermediary and subsequently, in the event of request by the Agency following default by the intermediary, to the Agency. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with the State law.

(iv) Flood insurance. The intermediary is responsible for determining if an ultimate recipient funded from the IRP revolving fund is located in a special flood or mudslide hazard area. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with subpart B of part 1806 of this chapter (RD Instruction 426.2).

(v) Intermediaries will provide fidelity bond coverage for all persons who have access to intermediary funds. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and officials. The Agency may also require the intermediary to carry other appropriate insurance, such as public liability, workers compensation, and property damage.

(A) The amount of fidelity bond coverage required by the Agency will normally approximate the total annual debt service requirements for the Agency loans;

(B) Other types of coverage may be considered acceptable if it is determined by the Agency that they fulfill essentially the same purpose as a fidelity bond;

(C) Intermediaries must provide evidence of adequate fidelity bond and other appropriate insurance coverage by loan closing. Adequate coverage in accordance with this section must then be maintained for the life of the loan. It is the responsibility of the intermediary to assure and provide evidence that adequate coverage is maintained. This may consist of a listing of policies and coverage amounts in reports required by paragraph (b)(4) of this section or other documentation;

(b) The intermediary will agree in the Loan Agreement:

(1) Not to make any changes in the intermediary's articles of incorporation, charter, or by-laws without the concurrence of the Agency;

(2) Not to make a loan commitment to an ultimate recipient to be funded from Agency IRP loan funds without first receiving the Agency's written concurrence;

(3) To maintain a separate ledger and segregated account for the IRP revolving fund; *Agency field staff should make it clear to Intermediaries that the IRP RLF must be separate and distinct from any other funds/programs that it administers. Agency field staff must insure that the IRP revolving fund is separate from the intermediary's general fund and other program funds. The IRP regulation does not require separate bank accounts for loss reserve, administrative funds, etc. This allows an intermediary to maintain its IRP revolving loan fund on a ledger. (Revised 03-19-15, PN 475.)*

(4) To Agency reporting requirements by providing:

(i) An annual audit;

(A) Dates of audit report period need not necessarily coincide with other reports on the IRP. Audit reports shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant. An acceptable audit will be performed in accordance with Generally Accepted Government Auditing Standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. The Agency does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement;

§ 4274.338(b)(4)(i) (Con.)

(B) It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work should be done in connection with these audits. Intermediaries covered by OMB Circular A-133 should submit audits made in accordance with that circular; (Revised 08-19-05, SPECIAL PN.)

(ii) Quarterly or semiannual reports (due 30 days after the end of the period);

(A) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been advanced to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's IRP revolving fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(B) These reports shall contain information only on the IRP revolving loan fund, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP revolving fund from the Agency a separate report shall be made for each of the IRP revolving funds.

(C) The reports will include, on a form provided by the Agency, (*Form RD 1951-4, "Report of IRP/RDLF Lending Activity"*) information on the intermediary's lending activity, income and expenses, financial condition and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(iii) Annual proposed budget for the following year; and

(iv) Other reports as the Agency may require from time to time.

(5) Before the first relending of Agency funds to an ultimate recipient, to obtain written Agency approval of;

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments;

(ii) Intermediary's policy with regard to the amount and form of security to be required;

(6) To obtain written approval of the Agency before making any significant changes in forms, security policy, or the work plan. The servicing officer may approve changes in forms, security policy, or work plans at any time upon a written request from the intermediary and determination by the Agency that the change will not jeopardize repayment of the loan or violate any requirement of this subpart or other Agency regulations. The intermediary must comply with the work plan approved by the Agency so long as any portion of the intermediary's IRP loan is outstanding. *Review officials have some latitude in approving changes to workplans, etc. Such changes may include changes to and expansion of the intermediary's IRP service area. There is no regulatory limitation to the size of an intermediary's IRP service area. The State Director (or delegated approval official) is authorized to approve minor changes to an approved plan of work or scope of work when the Agency's IRP loan funds have not been fully disbursed. "Minor changes" are those that do not result in a lesser priority score. There is no such restriction after Agency IRP loan funds are fully disbursed. (Revised 03-19-15, PN 475.)*

(i) If the intermediary's IRP revolving fund work plan does not address participation loans, reviewing officials may permit the intermediary to submit an amended work plan for the Agency's approval in accordance with section 4274.338(b)(6). Please be reminded that changes may be approved if the Agency determines such changes will not jeopardize repayment of the loan or violate any requirement of Agency regulations. Concerns or issues relating to the participation loan or Participation Agreement that might elevate risk of the intermediary's repayment to the Agency include, but are not limited to: (Added 03-19-15, PN 475.)

§ 4274.338(b)(6) (Con.)

(ii) *Participation at other than par value, nonrecourse, or on a pari passu basis.* (Added 03-19-15, PN 475.)

(iii) *Participation in loans that are not a fixed dollar amount or are subject to future increases, such as cost overruns on construction loans.* (Added 03-19-15, PN 475.)

(iv) *Participation in loans where 50 percent or more of the loan funds are for refinancing of a lead lender's existing loans to the borrower. The Agency does not consider take out or terming out a construction loan as refinancing.* (Added 03-19-15, PN 475.)

(v) *The IRP intermediary lacking authority to be the controlling holder, that is, the right to consent to all substantive/material decisions made in connection with the loan. The reviewing official must ensure that participation agreements contain a list of such decisions. Examples include, but are not limited to, modifications to loan documents, waiver of non-monetary default, subordination of collateral, additional debt, release of guarantor, foreclosure, etc.* (Added 03-19-15, PN 475.)

(vi) *The IRP intermediary lacking enforcement rights with the lead lender, such as the right to compel the lender to prosecute a foreclosure of the loan collateral.* (Added 3-19-15, PN 475.)

(vii) *The Agency considers a Participation Agreement that is on a pari passu (equal risk) basis to be an example of an acceptable Participation Agreement.* (Added 03-19-15, PN 475.)

(7) To secure the indebtedness by pledging the IRP revolving fund, including its portfolio of investments derived from the proceeds of the loan award, and pledging its real and personal property, and other rights and interests as the Agency may require;

(8) In the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, to provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request, to protect the Agency's interest or to perfect a security interest in any assets, including physical delivery of assets and specific assignments; and

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(Added 03-19-15, PN 475)

(02-06-98) SPECIAL PN

(9) If any part of the loan has not been used in accordance with the intermediary's work plan by a date 3 years from the date of the loan agreement, the Agency may cancel the approval of any funds not yet delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds delivered to the intermediary that have not been used by the intermediary in accordance with the work plan. The Agency, at its sole discretion, may allow the intermediary additional time to use the loan funds by delaying cancellation of the funds by not more than 3 additional years. When reviewing officials are approving extensions to use funds, the intermediary must provide a clear justification for the extension beyond the 3 years to the Agency. The justification should include time frames to lend the funds, the issues that resulted in the delay of lending the funds, and the remedies developed to ensure lending the balance of the funds. This decision is within the authority of the State Director, and the documentation of support or non support will be maintained in the file. Exhibit E should be executed and attached to the Loan Agreement. If any loan funds have not been used by 6 years from the date of the loan agreement, the approval will be canceled of any funds that have not been delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds it has received and not used in accordance with the work plan. In accordance with the **Intermediary Relending Program promissory note** (Form RD 4274-3, "Intermediary Relending Program Promissory Note"), regular loan payments will be based on the amount of funds actually drawn by the intermediary. Agency field staff receiving requests for extensions beyond 6 years may be considered in accordance with Section 4274.381, Exception Authority. Requests sent to the National Office, must include, in addition to the documentation required in Section 4274.381, a very clear justification for any extension including reasons why the previous extension did not result in lending the balance of Agency IRP loan funds, any roadblocks such as management changes, credit policy changes, etc., and an annual budget. Field staff must ensure that the budget shows that the intermediary has adequate revenues to pay the administrative expenses of operating the IRP and repay the Agency IRP loan. In accordance with Form RD 4274-3 "Intermediary Relending Program Promissory Note", regular loan payments will be based on the actual amount then owed to the Government. This means that payments are based on the total principal sum of the Note. Only plans that clearly provide a deadline to lend the balance of the funds will be approved by Agency officials. If there is not clear justification, the remaining funds should be deobligated.) (Revised 03-19-15, PN 475.)

§ 4274.338(b)(9) (Con.)

(i) During the maximum deferral period, the intermediary should ensure that all funds are advanced to ultimate recipients. After the approved deferral period, the servicing office will, as required by the executed "Promissory Note," ensure that payments are billed to the intermediary by the Government at least 30 days in advance of the payment due date and that payments shall be based on the full amortized loan amount owed to the Government. (Added 12-07-05, PN 392.)

(ii) The intermediary should be reminded at loan closing that the deferral period is designed to allow it sufficient time to re-lend its funds, and develop its portfolio to the extent that repayments from its ultimate recipients will fund the intermediary's repayments to the Government. Failure on the part of the intermediary to sufficiently re-lend its funds, may result in the intermediary being required to immediately return the unused funds. Any delay in fully amortizing the IRP loan, after the maximum 3-year principal deferral, will increase the principal portion of the loan payment in subsequent years. (Added 12-07-05, PN 392.)

(iii) Agency field staff should monitor portfolio to ensure that Intermediary funds are expended in a timely manner. In those cases where the intermediary is unable to prudently lend the full loan amount and needs to deobligate the undisbursed portion of the loan funds, the field office will process, deobligate, and reamortize the remaining loan balance. It is the Finance Office's responsibility to maintain complete accounting records for each intermediary. To do so, the Finance Office will need the Form RD 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation", Form RD 1951-33, "Reamortization Request" and the IRP Reamortization Agreement. A new Promissory Note will not be required. In order to process the reamortization, the loan must be fully disbursed, so the deobligation must be for the entire undisbursed portion of the loan and must be processed first. (Added 03-19-15, PN 475.)

(10) For IRP intermediaries, IRP funds in excess of \$250,000 that have not been used to make loans to ultimate recipients for 6 months or more 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. The following process allows up to 18 months for a noncompliant intermediary to relend the revolved funds and avoid cash recapture. (Revised 04-26-18, SPECIAL PN.)

*(i) The State Office will document the entire process in the Document Case File. This includes but is not limited to:
(Added 04-26-18, SPECIAL PN.)*

(A) Correspondence between intermediary and RD. (Added 04-26-18, SPECIAL PN.)

(B) Correspondence between National and Field Offices of RD. (Added 04-26-18, SPECIAL PN.)

(ii) Starting in October 2018 the National Office will semi-annually provide the State Office a LINC generated report that identifies IRP intermediaries that are potentially non-complaint with inactive revolved fund accounts with "Restricted Cash" in excess of \$250,000. (Added 04-26-18, SPECIAL PN.)

(iii) The State Office will: (Added 04-26-18, SPECIAL PN.)

(A) Confirm accuracy of the report by checking data integrity, unreported lending activity, or committed cash. Inaccuracies must be promptly corrected as appropriate. (Added 04-26-18, SPECIAL PN.)

(B) Encourage the relending of the revolved funds to meet the Program purpose. Provide intermediary a first written notification of the account status indicating potential recapture of idle funds currently at risk and request a written corrective action plan. (Added 04-26-18, SPECIAL PN.)

(C) Submit a written request to the National Office for approval consideration of an exception to the requirements. (Added 04-26-18, SPECIAL PN.)

(D) Monitor next reports generated 6 and 12 months later by the National Office, to see if the intermediary continues to be noncompliant. (Added 04-26-18, SPECIAL PN.)

(E) Continue engagement with the intermediary to modify the written corrective plan to improve results by next reporting period. (Added 04-26-18, SPECIAL PN.)

(F) After 12 months of concurrent inactive account, send the intermediary a second notification of intent to recapture inactive revolved funds. (Added 00-00-00, PN)

(G) After 18 months, the grace period to cure before the recapture of funds ends; if the intermediary continues to have no progress in relending and no exception approved, the State Office will provide Specialty Programs Division (SPD) notice of no improvements during the three 6-month reporting cycles. (Added 04-26-18, SPECIAL PN.)

(iv) SPD prepares for Administrator approval a Final Notice to Recapture Funds with Appeal Rights. SPD will send approved letter to the State Office to forward to the intermediary. (Added 04-26-18, SPECIAL PN.)

(v) The State Office will prepare a cover letter and issue the Administrator's formal recapture letter to the intermediary. The State cover letter will include directions to the intermediary of where to issue payment as per RD Instruction 1951-B: Collections. (Added 04-26-18, SPECIAL PN.)

(vi) State Office works with Finance Office to process the funds recapture in accordance with RD Instruction 1951-B: Collections. Recaptured funds will be applied to the intermediary's loan balance to the Agency as an extra payment. The intermediary may reamortize the outstanding balance for payment through the remaining loan term. (Added 04-26-18, SPECIAL PN.)

§§ 4274.339 - 4274.342 [Reserved]

§ 4274.343 Application.

(a) The application will consist of:

(1) An application form provided by the Agency (*Form RD 4274-1, "Application for Loan (Intermediary Relending Program)"*).

(2) A written work plan and other evidence the Agency requires to demonstrate the feasibility of the intermediary's program to meet the objectives of this program. The plan must, at a minimum:

(i) Document the intermediary's ability to administer IRP in accordance with the provisions of this subpart. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Agency review, and the terms of the contract and its duration must be sufficient to adequately service the Agency loan through to its ultimate conclusion. If the Agency determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved;

(ii) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of IRP. This should include a statement of the sources of non-Agency funds for administration of the intermediary's operations and financial assistance for projects;

(iii) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients it has on hand to justify Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for IRP, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

(iv) Include a list of proposed fees and other charges it will assess the ultimate recipients;

(v) Demonstrate to Agency satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations;

(vi) Provide evidence to Agency satisfaction that the intermediary has a proven record of obtaining private or philanthropic funds for the operation of similar programs to IRP;

(vii) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide the Agency with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management are some of the items that must be addressed by the intermediary's relending plan;

(viii) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms such as jobs created for low-income area residents or self empowerment opportunities funded, and should relate to the purpose of IRP (see § 4274.301(b)); and

§ 4274.343(a)(2) (Con.)

(ix) Provide specific information as to whether and how the intermediary will ensure that technical assistance is made available to ultimate recipients and potential ultimate recipients. Describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary;

(x) *Reviewing officials should practice due diligence in ensuring that Intermediary application is complete and thoroughly documented. For participation loans, verify that the work plan adequately documents the intermediary's qualifications and experience to administer participation loans, in accordance with § 4274.343(a)(2)(i). Also, in accordance with § 4274.343(a)(2)(vii), the reviewing official must ensure that work plans include the complete mechanics of how participation loans will be made. All other requirements of this subpart and RD Instruction 1951-R must be met. (Added 03-19-15, PN 475.)*

(3) Except for 7 CFR 1970.53 actions that are determined by the primary recipients to not have extraordinary circumstances, an agreement in writing to the environmental requirements in accordance with 7 CFR part 1970. (Revised 04-01-16, SPECIAL PN.)

(4) Comments from the State Single Point of Contact, if the State has elected to review the program under Executive Order 12372;

(5) A pro forma balance sheet at start-up and projected balance sheets for at least 3 additional years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the IRP revolving fund only and a separate set of projections that shows the proposed intermediary organization's total operations. Also, if principal repayment on the IRP loan will not be scheduled during the first 3 years, the projections for the IRP revolving fund must extend to include a year with a full annual installment on the IRP loan;

- (6) A written agreement of the intermediary to the Agency audit requirements;
 - (7) An agreement on a form provided by the Agency (*Form RD 400-4, "Assurance Agreement,"*) assuring compliance with Title VI of the Civil Rights Act of 1964;
 - (8) Complete organizational documents, including evidence of authority to conduct the proposed activities;
 - (9) Evidence that the loan is not available at reasonable rates and terms from private sources or other Federal, State, or local programs;
 - (10) Latest audit report, if available;
 - (11) A form provided by the Agency (*Form RD 1910-11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts"*) in which the applicant certifies its understanding of the Federal collection policies for consumer or commercial debts;
 - (12) A Department of Agriculture form containing a certification regarding debarment, suspension, and other responsibility matters for primary covered transactions (*Form AD-1047, "Certification Regarding Debarment, Suspension, and other Responsibility Matters - Primary Covered Transactions."*); and
 - (13) A statement on a form provided by the Agency (*Exhibit A-1 of RD Instruction 1940-Q*) regarding lobbying, as required by 7 CFR part 3018.
- (b) Applications from intermediaries that already have an active IRP loan may be streamlined as follows:
- (1) The requirements of paragraphs (a)(6), (a)(8), and (a)(10) of this section may be omitted;
 - (2) A statement that the new loan would be operated in accordance with the work plan on file for the previous loan may be submitted in lieu of a new work plan; and
 - (3) The financial information required by paragraph (a)(5) of this section may be limited to projections for the proposed new IRP revolving loan fund.

§ 4274.343(a) (Con.)

§ 4274.344 Filing and processing applications for loans.

(a) Intermediaries' contact. Intermediaries desiring assistance under this subpart may file applications with the state office for the state in which the intermediary's headquarters is located. *This means that reviewing officials can approve the Intermediary working across State lines. However, the IRP revolving loan fund will be administered by the "home State" where the applicant's headquarters is located.*

Intermediaries headquartered in the District of Columbia may file the application with the National Office, Rural Business-Cooperative Service, USDA, Specialty Lenders Division, STOP 1521, 1400 Independence Avenue SW, Washington, DC 20250-1521. (Revised 03-19-15, PN 475.)

§ 4274.344 (Con.)

(b) Filing applications. Intermediaries must file the complete application, in one package. Applications received by the Agency will be reviewed and ranked quarterly and funded in the order of priority ranking. The Agency will retain unsuccessful applications for consideration in subsequent reviews, through a total of four quarterly reviews.

(c) Loan priorities. A point system will be used to determine an eligible applicant's priority for available loan funds. Points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (c)(1) through (c)(6) of this section. If an application does not fit one of the categories listed, it receives no points for that paragraph or subparagraph.

(Revised 08-19-05, SPECIAL PN.)

(1) Other funds. Points allowed under this paragraph are to be based on documented successful history or written evidence that the funds are available. Agency field staff should evaluate the Intermediary's ability to obtain a bank loan, funds from ultimate recipient equity contribution (cash only) or funds from a State agency. The priority score calculation for this provision should be based on the average of all ultimate recipients' total project cost projected to be financed based on history or other evidence that funds are available. If the IRP loan is approved, the reviewing official may permit some projects being financed below the average, as long as others exceed the average and the average of all ultimate recipient projects are met as projected in the IRP loan application.

(Revised 03-19-15, PN 475.)

(i) The intermediary will obtain non-Federal loan or grant funds to pay part of the cost of the ultimate recipients' projects. The amount of funds from other sources will average:

(A) At least 10% but less than 25% of the total project cost - 5 points;

(B) At least 25% but less than 50% of the total project cost - 10 points; or

(C) 50% or more of the total project cost - 15 points.

(ii) The intermediary will provide loans to ultimate recipients from its project contribution funds to pay part of the costs of ultimate recipient projects. Project contribution funds must be separate and distinct from any loan or grant dollars provided to the intermediary under the IRP as well as the intermediary's equity contribution. When evaluating an application for initial or supplemental funding, the Agency will consider the level of the applicant's project contribution and award points as follows: (Revised 08-19-05, SPECIAL PN.)

(A) At least 10% but less than 25% of the total project costs - 5 points;

(B) At least 25% but less than 50% of total project costs - 10 points; or

(C) 50% or more of total project costs - 15 points.

(2) Employment. For computations under this paragraph, income data should be from the latest decennial census of the United States, updated according to changes in the consumer price index. The poverty line used will be as defined in section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). Unemployment data used will be that published by the Bureau of Labor Statistics, U.S. Department of Labor.

(i) The median household income in the service area of the proposed intermediary equals the following percentage of the poverty line for a family of four:

(A) At least 150% but not more than 175% - 5 points;

(B) At least 125% but less than 150% - 10 points; or

(C) Below 125% - 15 points.

(ii) **The following percentage of the loans the intermediary makes from Agency IRP loan funds will be in counties with median household income below 80 percent of the statewide non-metropolitan median household income.** *Agency field staff should evaluate the Intermediary's ability to commit program income, fees, etc. from other programs it administers. Reviewing officials should not apply this criterion to loans made from the Intermediary's equity contribution or revolved funds. The calculation is based on the number of loans made from Agency IRP loan funds. (To receive priority points under this category, the intermediary must provide a list of counties in the service area that have qualifying income):* (Revised 03-19-15, PN 475.)

- (A) **At least 50% but less than 75% - 5 points;**
- (B) **At least 75% but less than 100% - 10 points; or**
- (C) **100% - 15 points.**

(iii) **The unemployment rate in the intermediary's service area equals the following percentage of the national unemployment rate:**

- (A) **At least 100% but less than 125% - 5 points;**
- (B) **At least 125% but less 150% - 10 points; or**
- (C) **150% or more - 15 points.**

(iv) **The intermediary will require, as a condition of eligibility for a loan to an ultimate recipient from Agency IRP loan funds, that the ultimate recipient certify in writing that it will employ the following percentage of its workforce from members of families with income below the poverty line:** *Reviewing officials should ensure that this is documented in the Agency-approved workplan. Reviewing officials should apply this criterion to only Ultimate Recipient loans made from Agency IRP loans funds and not to loans made from the intermediary's equity contribution or revolved funds. The reviewing official should also ensure that the criterion is applied to each Ultimate Recipient loan made from Agency IRP loan funds.* (Revised 03-19-15, PN 475.)

§ 4274.344(c)(2)(iv) (Con.)

(A) At least 10% but less than 20% of the workforce - 5 points;

(B) At least 20% but less than 30% of the workforce - 10 points; or

(C) 30% of the workforce or more - 15 points.

(v) The intermediary has a demonstrated record of providing assistance to members of underrepresented groups, has a realistic plan for targeting loans to members of underrepresented groups, and, based on the intermediary's record and plans, it is expected that the following percentages of its loans made from Agency IRP loan funds will be made to entities owned by members of underrepresented groups: *Reviewing officials should ensure that underrepresented groups meet the definition as defined in § 4274.302. Reviewing officials should apply this criterion to only ultimate recipient loans made from Agency IRP loan funds and to loans made from the intermediary's equity contribution or revolved funds. The reviewing official should base this calculation on the expected number of loans made from Agency IRP loan funds. (Revised 03-19-15, PN 475.)*

(A) At least 10% but less than 20% - 5 points;

(B) At least 20% but less than 30% - 10 points; or

(C) 30% or more - 15 points.

(vi) The population of the service area according to the most recent decennial census was lower than that recorded by the previous decennial census by the following percentage:

(A) At least 10 percent but less than 20 percent - 5 points;

(B) At least 20 percent but less than 30 percent - 10 points; or

(C) 30 percent or more - 15 points.

(3) Intermediary contribution. All assets of the IRP revolving fund will serve as security for the IRP loan, and the intermediary will contribute funds not derived from the Agency into the IRP revolving fund along with the proceeds of the IRP loan. The amount of non-Agency derived funds contributed to the IRP revolving fund will equal the following percentage of the Agency IRP loan:

Reviewing officials should ensure the applicant understands that the intermediary's contribution to the IRP revolving loan fund must be a permanent asset of the fund and used for authorized purposes in accordance with §§ 4274.314 and 4274.319. Contributions must be made prior to disbursement of Agency IRP loan funds or prorated with Agency IRP loan funds and cannot come from other IRP loan funds.
(Revised 03-19-15, PN 475.)

- (i) At least 5% but less than 15% - 15 points;
- (ii) At least 15% but less than 25% - 30 points; or
- (iii) 25% or more - 50 points.

(4) Experience. The intermediary has actual experience in making and servicing commercial loans, with a successful record, for the following number of full years:

- (i) At least 1 but less than 3 years - 5 points;
- (ii) At least 3 but less than 5 years - 10 points;
- (iii) At least 5 but less than 10 years - 20 points; or
- (iv) 10 or more years - 30 points.

(5) Community representation. The service area is not more than 14 counties and the intermediary utilizes local opinions and experience by including community representatives on its board of directors or equivalent oversight board. For purposes of this section, community representatives are people, such as civic leaders, business representatives, or bankers, who reside in the service area and are not employees of the intermediary. Points will be assigned as follows:

- (i) At least 10% but less than 40% of the board members are community representatives - 5 points;

§ 4274.344(c) (Con.)

(ii) At least 40% but less than 75% of the board members are community representatives - 10 points; or

(iii) At least 75% of the board members are community representatives - 15 points.

(6) Administrative. The Administrator may assign up to 35 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section. The items that may be considered are the amount of funds requested in relation to the amount of need; a particularly successful business development record; a service area with no other IRP coverage (15 points may only be awarded where it is the intermediary's initial application and/or there are no other intermediaries in the targeted service area, and 5 points may be awarded only if the intermediary has demonstrated that the service area has expanded since its prior application and must be documented in the workplan); a service area with severe economic problems, such as communities that have remained persistently poor over the last 60 years or have experienced long-term population decline or job deterioration; a service area with emergency conditions caused by a natural disaster or loss of a major industry; a work plan that is in accord with a strategic plan, particularly a plan prepared as part of a request for an Empowerment Zone/Enterprise Community designation; or excellent utilization of a previous IRP loan. *An assignment of points by the Administrator will be based on Exhibit A, Attachment 1 of RD Instruction 1940-L and written justification stating the Administrator's reasons, and will be maintained in the files of the National Office.* (Revised 08-19-05, SPECIAL PN.)

§§ 4274.345 - 4274.348 [Reserved]

§ 4274.349 Agency evaluation of application.

(a) Within 5 days of receipt of an IRP application, the Processing Officer must notify the National Office, Specialty Lenders Division, by e-mail of the date the application was received, the name and address of the proposed intermediary and the amount of loan requested. A priority scoresheet must be completed, along with Exhibit A, Attachment 1 of RD Instruction 1940-L and e-mailed to arrive in the National Office, Specialty Lenders Division, no later than the last day of the month prior to the first day of the quarter to be considered during the quarter for an allocation of funds. (Revised 08-19-05, SPECIAL PN.)

(b) The Processing Office will input the necessary data via terminal screens into the Rural Community Facility Tracking System. If the Processing Officer so desires, a Form RD 2033-34, "Management System Card - Business and Industry," may be prepared in accordance with RD Instruction 2033-F.

(c) Applications will be organized in a loan file in accordance with RD Instruction 2033-A. The intermediary's Internal Revenue Service tax number preceded by State and county code numbers will constitute the case number to be used on all Agency forms.

(d) The Processing Office will complete Form RD 4274-2, "IRP Project Summary," evaluate the application, complete an environmental assessment, and make a determination whether: the intermediary is eligible; the proposed loan is for an eligible purpose; there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity; there are any unresolved intergovernmental consultation issues; and the proposed loan complies with all applicable statutes and regulations. If the Agency determines it is unable to provide the loan, the intermediary will be informed in writing. Such notification will include the reasons for denial of the loan.

§ 4274.350 Letter of conditions.

If the Agency is able to make the loan, it will provide the intermediary a letter of conditions listing all requirements for the loan. Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary should complete, sign and return the form provided by the Agency indicating the intermediary's intent to meet the conditions (Form RD 1942-46, "Letter of Intent To Meet Conditions,"). If certain conditions cannot be met, the intermediary may propose alternate conditions to the Agency. The Agency loan approval official must concur with any changes made to the initially issued or proposed letter of conditions prior to acceptance.

(a) Requirements listed in letters of conditions will ordinarily include: maximum amount of loan which may be considered, terms of loan, description of the use of loan funds, verification requirements, disbursement of funds, security requirements, and audit reports required.

(b) The letter of conditions will contain the following paragraphs:

"This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in project cost, source of funds, project scope, or any other significant changes in the project or intermediary must be reported to and approved by USDA by written amendment to this letter. Any changes not approved by USDA shall be cause for discontinuing processing of the application."

"This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed \$_____."

The intermediary's attorney will provide an opinion, satisfactory to RBS, that RBS has a first lien position on the borrower's IRP depository bank account. (Added 08-19-05, SPECIAL PN.)

"You must certify at loan closing that since the Agency's issuance of the letter of conditions there has been no material changes in your financial condition nor any other material change in the intermediary."

"The loan will be considered approved on the date a signed copy of Form RD 1940-1, "Request for Obligation of Funds," is mailed to you."

"Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application."

"If the conditions set forth in this letter are not met within _____ days from the date hereof, the Agency reserves the right to discontinue the processing of the application. You will be notified, in writing, by the Agency of any such discontinuance."

§ 4274.350 (Con.)

(c) If at any time prior to loan approval it is decided that favorable action will not be taken on an application, the Processing Officer will notify the proposed intermediary in writing of the reasons why the request was not favorably considered. The notification to the proposed intermediary will state that a review or appeal of this decision by the Agency may be requested by the proposed intermediary in accordance with USDA appeal regulations.

§§ 4274.351 - 4274.354 [Reserved]

§ 4274.355 Loan approval and obligating funds.

The loan will be considered approved on the date the signed copy of the obligation of funds document (*Form RD 1940-1*) is mailed to the intermediary. The approving official may request an obligation of funds when available and according to the following:

(a) The obligation of funds document (*Form RD 1940-1*) may be executed by the loan approving official providing the intermediary has the legal authority to contract for a loan and to enter into required agreements, and has signed the obligation of funds document (*Form RD 1940-1*).

(b) An obligation of funds established for an intermediary may be transferred to a different (substituted) intermediary provided:

(1) The substituted intermediary is eligible to receive the assistance approved for the original intermediary; (*The Agency should investigate options that would prevent Rural Development from losing deobligated IRP funds. The Agency prefers to have the intermediary do a transfer and assumption instead of deobligating the unused IRP funds and perform a reamortization of the remaining loan balance.*) (Revised 03-19-15, PN 475.)

(2) The substituted intermediary bears a close and genuine relationship to the original intermediary; *An example of where a close and genuine relationship could exist is when a corporation and partnership are controlled by the same individuals and the original borrower wishes to transfer the loan to the other entity.* (Added 08-19-05, SPECIAL PN.) and

(3) The need for and scope of the project and the purposes for which Agency IRP loan funds will be used remain substantially unchanged.

(4) *Examples of cases to provide guidance and a clear direction in the approval of future IRP Transfers and Assumptions are as follows:* (Added 12-07-05, PN 392.)

(i) *Loans approved, obligated, not closed or funds disbursed. A close and genuine relationship to the original intermediary is one in which the substituted organization is not a new and independent entity.*

(A) For example, if an entity were organized under a single umbrella with two subsidiary arms, one arm could transfer the intermediary status to the other, provided the receiving entity met eligibility and qualification standards.

4274.355(b)(4) (Con.)

(B) In another example, if the original grant application was jointly filed by two applicants, one applicant was selected, and, upon the inability of the selected applicant to continue, the second applicant could be substituted.

(C) The Administrator's exception authority cannot be used to waive any of the conditions cited in this section. By its terms, the Administrator's exception authority is not available when its use is contrary to any applicable law or provided the Administrator cannot determine that application of the requirement or provision would not adversely affect the U.S. Department of Agriculture's interest. Use of the Administrator's exception authority to waive the requirement that the substitute bear a close and genuine relationship to the original intermediary would violate applicable appropriations law.

(D) If all conditions cannot be met, the IRP loan must be deobligated.

(ii) Loans obligated, closed, and funds partially disbursed. Once an IRP loan has been closed and funds have been partially disbursed to one or more to the ultimate recipients, as set forth under RD Instruction 1951-R, § 1951.889, a transfer and assumption of intermediary status and debt can be completed only for the funds disbursed. If a "close and genuine relationship" does not exist, the undisbursed funds will be deobligated. However, if the substitute intermediary bears a "close and genuine relationship" a transfer and assumption of the entire obligation, including disbursed and undisbursed funds may take place.

(iii) Loans obligated, closed, funds fully disbursed. In the event that an IRP loan has been closed, and all loan funds disbursed to ultimate recipients, a transfer and assumption can occur in accordance with RD Instruction 1951-R, § 1951.889. The substituted intermediary is not required to meet the requirement of a "close and genuine relationship" to the original intermediary, but the substitute intermediary must be servicing the same geographic area and the projects must be similar to the types of projects outlined by the original intermediary.

(c) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of Form RD 1940-1.

§ 4274.355 (Con.)

(d) *The approving official will request an obligation of loan funds, after signing Form RD 1940-1, via the Agency field office terminal system. The requesting official will record the date and time of request, and initial on the original Form RD 1940-1.*

(e) *The obligation date and date the intermediary is notified of loan approval by mailing the Form RD 1940-1 is 6 working days from the date funds are reserved unless an exception is granted by the National Office.*

(f) *Immediately after verifying that funds have been reserved, utilizing the Agency field office terminal system status inquiry function, the Processing Officer will notify the Legislative Affairs Staff in the National Office as required by RD Instruction 2015-C.*

(g) *The Processing Officer will record the date of intermediary notification on the original of Form RD 1940-1 and include it as a permanent part of the official file.*

(h) *If a transfer of obligation of funds is necessary, complete Form RD 450-10, "Advice of Borrower's Change of Address, Name, Case Number, or Loan Number," and mail a copy to the Finance Office.*

§ 4274.356 Loan closing.

(a) **At loan closing, the intermediary must certify to the following:**

(1) **No major changes have been made in the work plan except those approved in the interim by the Agency.**

(2) **All requirements of the letter of conditions have been met.**

(3) **There has been no material change in the intermediary nor its financial condition since the issuance of the letter of conditions. If there have been changes, they must be explained. The changes may be waived, at the sole discretion of the Agency.**

(4) **That no claim or lien of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties are pending against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.**

§ 4274.356 (Con.)

(b) The Processing Officer will approve only minor changes which do not materially affect the project, its capacity, employment, original projections, or credit factors. Changes in legal entities or where tax consideration are the reason for change will not be approved.

(c) Loan closing documents will normally include, but are not limited to, Form RD 4274-3, Form RD 4274-4, (or Form RD 4274-5) a financing statement, a security agreement, and an IRP revolving loan fund agreement.

(d) To ensure the provisions of the loan agreement conform with the current regulations, Form RD 4274-5 should only be used when the borrower has a previous loan agreement on Form RD 4274-4. If the borrower's only previous IRP loan was closed with a loan agreement in a format other than Form RD 4274-4, Form RD 4274-4, rather than Form RD 4274-5, should be used for the subsequent loan. Form RD 4274-5 should always refer to a previous loan agreement on Form RD 4274-4. (Added 12-01-99, PN 313.)

(e) After the loan has been approved, the Processing Office will prepare the promissory note and loan agreement for review by the Regional OGC and the intermediary. (Renumbered 12-01-99, PN 313.)

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(Added 12-07-05, PN 392)

(02-06-98) SPECIAL PN

§ 4274.356 (Con.)

(f) The Processing Office will forward the appropriate loan docket items to the OGC office in the region in which the borrower is located for review. For the purpose of this paragraph, the District of Columbia is considered to be in Maryland. After an administrative review, the Processing Office will include with the docket a letter with recommendations and indicating any special items, documents, or problems that need to be addressed specifically which may have a significant impact upon the loan or may be contrary to the regulation. The docket will be assembled for OGC review and indexed and tabbed. OGC will review the docket, furnish advice on noted deficiencies, and issue closing instructions. Loans will be closed by the Processing Office with such assistance of the Regional Attorney as is needed.

(Renumbered 12-01-99, PN 313.)

(g) In all cases, the Processing Officer will conduct a review before the loan is closed to assure that all requirements of the application, letter of conditions, and loan agreement have been met including required certifications, and will provide such verification in the loan file, including arrangements for annual audit reports.

(Renumbered 12-01-99, PN 313.)

(h) Reviewing officials cannot approve a loan being closed until the intermediary has at least one recipient loan application approved. Agency personnel shall not sign any documents other than those specifically provided for in this Instruction. (Revised 03-19-15, PN 475.)

(i) When the loan has been closed the Processing Officer will submit the security instruments, other documents used in closing, and a statement that administrative requirements have been met to the Regional Attorney. The Regional Attorney will review the submitted material and determine whether all legal requirements have been met.

(Renumbered 12-01-99, PN 313.)

§§ 4274.357 - 4274.360 [Reserved]

§ 4274.361 Requests to make loans to ultimate recipients.

(a) An intermediary may use revolved funds to make loans to ultimate recipients in accordance with §4274.314(b) without obtaining prior Agency concurrence. Prior concurrence is required when an intermediary proposes to use Agency IRP loan funds to make a loan to an ultimate recipient. (Revised 01-29-15, PN 474.)

(b) A request for Agency concurrence in approval of a proposed loan to an ultimate recipient must include:

(1) Certification by the intermediary that:

(i) The proposed ultimate recipient is eligible for the loan;

(ii) The proposed loan is for eligible purposes;

(iii) The proposed loan complies with all applicable statutes and regulations;

(iv) The ultimate recipient is unable to finance the proposed project through commercial credit or other Federal, State, or local programs at reasonable rates and terms; and

(v) The intermediary and its principal officers (including immediate family) hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest or influence in the intermediary except the interest and influence of a cooperative member when the intermediary is a cooperative;

(2) Except for 7 CFR 1970.53 actions that are determined by the primary recipients to not have extraordinary circumstances, required environmental documentation in accordance with 7 CFR part 1970.
(Revised 04-01-16, SPECIAL PN.)

(3) All comments obtained in accordance with § 4274.337(a), regarding intergovernmental consultation;

(4) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow the Agency to determine the:

(i) Name and address of the ultimate recipient;

(ii) Loan purposes;

(iii) Interest rate and term;

(5) Such other information as the Agency may request on specific cases.

RD Instruction 4274-D
§ 4274.361(b)(5) (Con.)

- (iv) Location, nature, and scope of the project being financed;
- (v) Other funding included in the project; and
- (vi) Nature and lien priority of the collateral.

(c) Upon receipt of a request for concurrence in a loan to an ultimate recipient from Agency IRP loan funds the Agency will:

(1) Review the material required by paragraph (b) of this section for completeness and compliance with regulations;

(2) Complete an environmental review in accordance with 7 CFR part 1970, including public notice requirements and provisions for mitigation measures as appropriate. (Revised 04-01-16, SPECIAL PN.)

(3) Consider any comments received through the intergovernmental consultation process in accordance with RD Instruction 1970-I; (Revised 01-18-12, SPECIAL PN.)

(4) When all requirements have been met, issue a letter concurring in the loan; and

(5) If the Agency determines it is unable to concur in the loan, the intermediary will be notified in writing and given the reasons for denial.

(d) Requests for concurrence in a loan to an ultimate recipient and all directly related material should be filed in four or eight position continuation folders with one folder position devoted to each ultimate recipient.

§§ 4274.362 - 4274.372 [Reserved]

§ 4274.373 Appeals.

Any appealable adverse decision made by the Agency which affects the intermediary may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11.

§§ 4274.374 - 4274.380 [Reserved]

§ 4274.381 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law, provided the Administrator determines that application of the requirement or provision would adversely affect USDA's interest. Requests for exceptions must be in writing by the State Director. Requests must be supported with documentation to explain the adverse effect on the Agency's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 4274.382 Exhibits.

The following documents may be used in connection with this subpart;

- (a) Exhibit A, "Checklist - Intermediary Relending Program Loan to Intermediary."
- (b) Exhibit B, "Checklist - Intermediary Relending Program Loan to Ultimate Recipient."
- (c) Exhibit C, "Priority Scoresheet."
- (d) Exhibit D, "Sample Loan Agreement Amendment."
(Added 08-05-98, PN 294.)
- (e) Exhibit E, "Sample Loan Agreement amendment to extend disbursement period." (Added 03-19-15, PN 475.)
- (f) Exhibit F, "Sample IRP Reamortization Agreement." (Added 03-19-15, PN 475.)
- (g) Exhibit G, "Sample Agency-approved Participation Agreement[s]." (Added 03-19-15, PN 475.)

§§ 4274.383 - 4274.399 [Reserved]

§ 4274.400 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570-0021 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Attachments: Exhibits A, B, C, D, E, F and G.

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(Added 03-19-15) PN 475

(02-06-98) SPECIAL PN

CHECKLIST
INTERMEDIARY RELENDING PROGRAM LOAN TO INTERMEDIARY

Intermediary:

Loan Processing

Item No.	Document/Action	Form/Reference/Comments
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1	Application For Loan (Intermediary Relending Program)	Form RD 4274-1
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2	Work Plan	§ 4274.343(a)(2)
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[Work plans should address the following items:
Ability to administer/personnel _____
Financial resources _____
Need for funds _____
Fees and charges _____
Commitments of financial support _____
Record of obtaining funds _____
Detailed relending plans _____
Goals, strategies, anticipated outcome _____
Technical assistance _____]

3	Environmental Checklist for Categorical Exclusions	Form RD 1970-1
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4	Intergovernmental comments	§ 4274.343(a)(4)
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5	Financial statements and projections	§ 4274.343(a)(5)
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6	Audit agreement	§ 4274.343(a)(6)
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7	Assurance Agreement	Form RD 400-4
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8	Organizational documents	§ 4274.343(a)(8)
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9	Other credit documentation	§ 4274.343(a)(9)
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Loan Processing (Con.)

<i>Item No.</i>	<i>Document/Action</i>	<i>Form/Reference/Comments</i>
10	<i>Audit report, if available</i>	<i>§ 4274.343(a)(10)</i>
11	<i>Applicant Certification Federal Collection policies for Consumer or Commercial Debt</i>	<i>Form RD 1910-11</i>
12	<i>Certification Regarding Debarment, Suspension, and Other Responsibility Matters</i>	<i>Form AD-1047</i>
13	<i>Certification regarding lobbying</i>	<i>Exhibit A-1 to RD Instruction 1940-Q</i>
14	<i>IRP Project Summary</i>	<i>Form RD 1948-2</i>
15	<i>Environmental Report or Assessment (if applicable)</i>	
16	<i>Priority Scoresheet</i>	<i>Exh. C to this Instruction</i>
17	<i>Allocation of funds</i>	<i>Call/Memo from National Office</i>
18	<i>Letter of Conditions</i>	<i>§ 4274.350</i>
19	<i>Letter of Intent to Meet Conditions</i>	<i>Form RD 1942-46</i>
20	<i>Request for Obligation of Funds</i>	<i>Form RD 1940-1</i>
21	<i>LPAS Report</i>	<i>RD Inst. 2015-C</i>

Loan Closing

<i>Item No.</i>	<i>Document/Action</i>	<i>Form/Reference/Comments</i>
1.	<i>Request for closing instructions</i>	§ 4274.356(e)
2.	<i>Promissory Note</i>	<i>Form RD 4274-3</i>
3.	<i>Loan Agreement</i>	<i>Form RD 4274-4 or Form RD 4274-5</i>
4.	<i>Collateral documents</i>	§ 4274.356(c)
5.	<i>Revolving Fund Agreement</i>	§ 4274.356(c)
6.	<i>Other</i>	
7.	<i>Receipt of closing instructions</i>	§ 4274.356)(e)
8.	<i>Certification, no change in work plan</i>	§ 4274.356(a)(1)
9.	<i>Certification, letter of conditions</i>	§ 4274.356(a)(2)
10.	<i>Certification, adverse change</i>	§ 4274.356(a)(3)
11.	<i>Fidelity bond coverage</i>	§ 4274.338(a)(7)(v)
12.	<i>Post closing, OGC</i>	§ 4274.356(h)

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CHECKLIST
INTERMEDIARY RELENDING PROGRAM LOAN TO ULTIMATE RECIPIENT

INTERMEDIARY:

ULTIMATE RECIPIENT:
NAME:

LOCATION:

TYPE OF BUSINESS:

USE OF FUNDS: PURPOSE	IRP FUNDS	OTHER FUNDS
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTAL	_____	_____

SOURCE OF OTHER FUNDS: _____

SECURITY: _____

INTEREST RATE: _____ TERM: _____

INTERGOVERNMENTAL REVIEW COMMENTS: RECEIVED? _____

ADVERSE COMMENTS? _____ (if yes, attach explanation)

ENVIRONMENTAL REVIEW:
COMPLETED? _____

LEVEL: Exclusion _____ Class I _____ Class II _____

DETERMINED NO SIGNIFICANT ADVERSE IMPACT? _____

CERTIFICATIONS BY INTERMEDIARY (§ 4274.361(a)(2)):

Eligible recipient _____, Eligible purpose _____,
Complies with statutes and regulations _____, Other credit _____,
No conflict of interest _____.

PRIORITY SCORESHEET

Applicant:

State:

List the maximum points the applicant is eligible for in each category, in accordance with § 4274.344(c) of this Instruction.

(1) Other Funds:

(i) Outside loan and grant funds.
Percent _____ Points _____

(ii) Intermediary funds.
Percent _____ Points _____

Total other funds points (Max.
25)....._____

(2) Employment:

(i) Updated median household income, service area _____
Poverty line, family of four _____
Percent _____ Points _____

(ii) Income within State.
Percent _____ Points _____

(iii) Unemployment rate, service area _____
Unemployment rate, National _____
Percent _____ Points _____

(iv) Low-income families
Percent _____ Points _____

(v) Underrepresented groups
Percent _____ Points _____

(vi) Outmigration
Percent _____ Points _____

Total employment points
(Max.90)....._____

(3) *Intermediary contribution:*
Percent _____ *Points (Max.*
50)....._____

(4) *Experience:*
Years _____ *Points (Max.*
30)....._____

(5) *Community representation:*
Percent _____ *Points (Max.*
15)....._____

(6) *Administrative:* *Points (Max.*
35)....._____

TOTAL
POINTS....._____

SAMPLE LOAN AGREEMENT AMENDMENT

This amends the loan agreement executed by the (insert name of intermediary) and the United States Department of Agriculture (USDA) on (insert date of original loan agreement) for an Intermediary Relending Program (IRP) Loan in the amount of (insert original amount of IRP loan).

Effective from this date forward, the loan referenced above will be covered by and serviced according to the rules and regulations governing the IRP (as they may be amended) located at 7 CFR part 4274, subpart D, and such regulations will, for the above referenced loan, supersede the regulations governing the IRP located at 7 CFR 1948, subpart C, that were in effect when the original loan agreement was signed. Any provisions of the loan agreement in conflict with the later regulation are hereby amended to conform to such regulation.

INTERMEDIARY

(INSERT NAME OF INTERMEDIARY)

BY: _____
(INSERT PRINTED OR TYPED NAME)

TITLE: _____

DATE: _____

USDA

BY: _____
(INSERT PRINTED OR TYPED NAME)

TITLE: _____

DATE: _____

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Addendum #1 to: Intermediary Relending Program/Rural Microentrepreneur Assistance
Program Loan Agreement

Dated: _____

In the amount of: \$ _____

Intermediary: _____

Section 6.4(a) is amended to read as follows:

For IRP Intermediaries, Intermediary will strive to use the proceeds of this loan promptly in accordance with the work plan. If any part of the loan has not been used by () (not to exceed 6 years from the date of the Loan Agreement), USDA may cancel the approval of any funds not yet delivered to the Intermediary and demand the return, as an extra payment on the loan, of any funds delivered to the Intermediary that have not been used by the Intermediary in accordance with the work plan.

This addendum is to be made part of the above-referenced Loan Agreement. All other provisions of the Loan Agreement remain in force.

IN WITNESS WHEREOF, USDA and Intermediary have executed this Agreement as of the date below.

INTERMEDIARY
BY: _____
(Signature)

(Name typed or printed)
Title: _____
Date: _____

USDA
BY: _____
(Signature)

(Name typed or printed)
Title: _____
Date: _____

oOo

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL BUSINESS AND COOPERATIVE SERVICE
INTERMEDIARY RELENDING PROGRAM

REAMORTIZATION AGREEMENT

BORROWER CASE NUMBER			FUND	LOAN	EFFECTIVE DATE OF REAMORTIZATION		
St.	Co.	Borrower ID	CODE	NUMBER	Month	Day	Year
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

The United States of America, acting through the Rural Business and Cooperative Service, United States Department of Agriculture (called the "Government"), is the owner and holder of a promissory note or assumption agreement (new terms) in the principal sum of _____ Dollars (\$ _____), plus interest on the unpaid principal of _____ Percent (_____ %) per year, which was made or assumed by _____ and _____ ("Borrower") dated _____, 20____, and payable to the order of the Government. The unpaid principal balance (including advances) is \$ _____. The unpaid accrued interest to date is \$ _____. The total debt to date is \$ _____, which now is principal.

The Government agrees to reamortize this loan and the Undersigned agree to make payments as follows:

- (1) The first installment in the amount of \$ _____, will be due and payable on _____, 20____, which will not exceed 1 year from the date of the reamortization agreement.
- (2) Thereafter, regular installments, each in the amount of \$ _____, will be due and payable on the _____ of each _____ until the principal and interest are paid, except that the final installment of the entire debt, if not paid sooner, will be due and payable on _____, not to exceed 30 years From the date of the original Note.

Nothing in this agreement affects any of the terms or conditions of the note or assumption agreement, or the instruments securing it, other than the payment schedule (which includes the due date of the final installment).

Upon default in the payment of any one of the above installments or in case of a failure to comply with any of the conditions and agreements contained in the above-described note or assumption agreement or the instruments securing it, the Government at its option may declare the entire debt immediately due and payable and may take any other action authorized therein.

(Date)

(Borrower)

(Borrower)

UNITED STATES OF AMERICA
RURAL BUSINESS AND
COOPERATIVE SERVICE

By: _____
Title: _____
Date: _____

PARTICIPATION AGREEMENT

AGREEMENT, made as of the ____ day of _____, between _____, a
duly organized New York banking corporation with offices at _____,
_____ (hereinafter "Lead Bank") and _____,
with offices at _____, (hereinafter "Participant"), [Lead
Bank and Participant(s) are collectively referred to herein as "Banks".]

WITNESSETH

WHEREAS, Lead Bank has made a [construction and] permanent mortgage loan in the
amount of _____ (hereinafter "Loan") to _____,
a New York _____ with an office at _____
(hereinafter "Borrower") pursuant to a commitment letter dated _____
("Commitment") as accepted; and

WHEREAS, the Borrower has on _____ executed its note to Lead Bank to
secure payment of such Loan (the "Note") and executed its first mortgage to be recorded in the
_____ County Clerk's Office (the "Mortgage") to secure such Note (the Note and Mortgage,
together with all other documents executed in connection with the Loan including the building
loan agreement referred to herein are collectively referred to herein as "Loan Documents") on
property known as Section _____, Block _____, Lots _____ upon which
Borrower has constructed a _____

_____ (such property is sometimes referred to herein as "Project" and
"Mortgaged Premises");

WHEREAS, the proceeds of the Loan will be disbursed by Lead Bank, which shall act as lead bank pursuant to the terms of the [Building Loan Agreement and the] Note and Mortgage, between Lead Bank and Borrower all dated _____, and pursuant to the terms of this Participation Agreement (hereinafter referred to as the "Agreement");

[WHEREAS, the proceeds of the Loan are to be used by Borrower to construct and expand the Project;]

WHEREAS, Participant wishes to acquire and Lead Bank wishes to provide for the acquisition by Participant of a participating interest in the Loan and Loan Documents so that Banks will each have undivided interests in Loan and Loan Documents, all in accordance with the terms of this Agreement;

WHEREAS, Lead Bank and Participant wish to set forth the manner of Participant's acquisition of such participating interest; and

WHEREAS, Lead Bank and Participant wish to prescribe the manner of the ownership, management, control and servicing of the Loan.

NOW, THEREFORE, in consideration of the premises and the sum of TEN (\$10.00) DOLLARS, lawful money of the United States of America and other good and valuable consideration by each of the parties to the other in hand paid, receipt whereof is hereby acknowledged, that each Bank mutually covenants and agrees as follows:

1. Each Bank has reviewed and approved each Loan Document.
2. Lead Bank shall sell and Participant shall purchase an undivided interest in the Loan and Lead Bank shall retain an undivided interest (the "Retained Interest") therein, in the proportions and amounts herein set forth. Subject to the terms and conditions of the Agreement, each Bank hereby agrees that Banks each shall have an undivided interest in the Loan and in all repayments and income therefrom, in Loan Documents and any other collateral securing said

Loan, all of which is encompassed in the term "Loan". Each Bank shall advance up to the following amounts at such time as and if the Loan is fully disbursed:

	<u>Interest</u>	<u>Maximum Amount to be advanced:</u>
Lead Bank	_____ %	_____
Participant	_____ %	_____

Participant shall advance its pro-rata portion of the proceeds of Loan to Lead Bank immediately before an advance is made by Lead Bank to Borrower, notice of which advance shall be given to Participant at least three (3) days before the date of the advance in the manner hereinafter provided. All funds received by Lead Bank from Participant pursuant to this Agreement in advance of Lead Bank funding the Loan shall be held in trust by Lead Bank in a segregated account for the benefit of Participant until the pro-rata advances of the Loan by both Participant and Lead Bank are disbursed by Lead Bank to Borrower as herein provided. The advances shall be evidenced by participation certificates (in the form attached hereto as Exhibit A), executed and delivered at the time of the request for an advance by Lead Bank to Participant, which participation certificate shall evidence a sale by Lead Bank to each Participant of an undivided interest ("Participation Loan Share") in the Loan and Loan Documents, all proceeds thereof and collections thereon, all such Participation Loan Shares to be in proportion to the sums actually advanced by Banks. The proceeds of Loan will be disbursed by Lead Bank only in compliance with this Agreement, and the Loan Documents.

Each Participant hereby irrevocably designates and appoints Lead Bank as agent of such Participant to act as Lead as specified herein and in the other Loan Documents, and each such Participant hereby irrevocably authorizes Lead Bank to take such actions, exercise such powers

and perform such duties as are expressly delegated to or conferred upon Lead Bank by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Lead Bank agrees to act as such upon the express conditions contained in this Agreement. Lead Bank shall not have any duties or responsibilities except those expressly set forth herein or in the other Loan Documents, nor shall it have any fiduciary relationship with any Participant, and no implied covenants, responsibilities, duties, obligations or liabilities shall be read into this Loan Agreement or otherwise exist against Lead Bank. The provisions of this Agreement are solely for the benefit of Lead Bank and the Participants, and the Borrower shall not have any rights as a third party beneficiary of any of the provisions hereof. Lead Bank shall be responsible for administering the Loan on a day-to-day basis. In the exercise of such administrative duties, Lead Bank shall use the same diligence and standard of care that is customarily used by Lead Bank with respect to similar loans held by Lead Bank solely for its own account (the "Standard of Care Obligation").

Each Participant delegates to Lead Bank the full right and authority on its behalf to take the following specific actions in connection with its administration of the Loan:

- (i) to fund Loan in accordance with the provisions of the Loan Documents, but only to the extent of immediately available funds provided to Lead Bank by the respective Participants for such purpose together with Lead Bank's pro-rata share of such funds;
- (ii) to receive all payments of principal, interest, fees and other charges paid by, or on behalf of, the Borrower and, except for fees to which Lead Bank is solely entitled pursuant to the Commitment and Loan Documents or otherwise, to distribute all such funds to the respective Participants as provided for hereunder;
- (iii) to keep and maintain complete and accurate files and records of all material matters pertaining to the Loan, and make such files and records available for inspection

and copying by each Participant and its respective employees and agents during normal business hours upon reasonable prior notice to Lead Bank; and

(iv) to do or omit doing all such other actions as may be reasonably necessary or incident to the implementation, administration and servicing of the Loan and the rights and duties delegated hereinabove.

Lead Bank may execute any of its duties under this Agreement or any other Loan Document by or through its agents or attorneys-in-fact, and shall be entitled to the advice of counsel concerning all matters pertaining to its rights and duties hereunder or under the Loan Documents. Lead Bank shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

Neither Lead Bank nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates shall be liable for any action lawfully taken or omitted to be taken by it or them under or in connection with this Agreement or the other Loan Documents, except for its or their gross negligence or willful misconduct. Neither Lead Bank nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates shall be responsible for or have any duty to ascertain, inquire into, or verify (i) any recital, statement, representation or warranty made by the Borrower or any of its officers or agents contained in this Agreement or the other Loan Documents or in any certificate or other document delivered in connection therewith; (ii) except for the Standard of Care Obligation the performance or observance of any of the covenants or agreements contained in, or the conditions of, this Agreement or the other Loan Documents; (iii) the state or condition of any properties of the Borrower or any other obligor under the Loan Documents constituting collateral for the obligations of the Borrower under Loan, or any information contained in the books or records of the Borrower; (iv) the validity, enforceability,

collectibility, effectiveness or genuineness of this Agreement or any other Loan Document or any other certificate, document or instrument furnished in connection therewith; or (v) the validity, priority or perfection of any lien securing or purporting to secure the Loan obligations or the value or sufficiency of any of the collateral.

Lead Bank shall be entitled to rely, and shall be fully protected in relying, upon any notice, consent, certificate, affidavit, or other document or writing reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper person or persons, and upon the advice and statements of legal counsel (including, without limitation, counsel to the Borrower), independent accountants and other experts selected by Lead Bank. Lead Bank shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Banks holding at least 51% of the Participation Loan Shares hereunder (herein the "Required Lenders") or it shall first be indemnified to its satisfaction by the Participants against any and all liability and expense which may be incurred by it by reason of the taking or failing to take any such action. Lead Bank shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with any written request of the Required Lenders, and each such request of the Required Lenders, and any action taken or failure to act by Lead Bank pursuant thereto, shall be binding upon all of the Participants; provided, however, that Lead Bank shall not be required in any event to act, or to refrain from acting, in any manner which is contrary to the Loan Documents, advice of counsel or to applicable law.

Lead Bank shall not be deemed to have knowledge or notice of the occurrence of any default or event of default unless Lead Bank has actual knowledge of the same or has received such notice from a Participant or the Borrower referring to this Agreement, describing such

default or event of default and stating that such notice is a "notice of default". In the event that Lead Bank obtains such actual knowledge or receives such a notice, Lead Bank shall give prompt notice thereof to each of the Participants. Lead Bank shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders. Unless and until Lead Bank shall have received such direction, Lead Bank may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such default or event of default as it shall deem advisable in the best interest of the Participants.

3. Each Bank shall have an undivided interest in the Loan proportionate to its Participation Loan Share. Interest and all other amounts collected with respect to the Loan shall be apportioned, as received, between the Banks as provided herein in accordance with their Participation Loan Share.

4. All Banks' Participation Loan Shares shall at all times be equal in priority, pari passu.

5. Lead Bank shall give written notice to each Participant of each request for a Loan, by facsimile transmission, hand delivery or overnight courier, not later than 11:00 a.m. (New York time) (i) three (3) Business Days prior to any advance. Each such notice shall be accompanied by a written summary of the request for a Loan and shall specify (a) the date of the requested Loan, (b) the aggregate amount of the requested Loan and, (c) each Bank's pro rata share of the requested Loan. Each Participant shall, before 11:00 a.m. (New York time) on the date set forth in any such request for a Loan, make available to Lead Bank, at an account to be designated by Lead Bank in same day funds, each Bank's ratable portion of the requested Loan. After Lead Bank's receipt of such funds and upon Lead Bank's determination that the applicable conditions to making the requested Loan have been fulfilled, Lead Bank shall make such funds

available to Borrower as provided for in this Agreement. Within a reasonable period of time following the making of each Loan, but in no event later than ten (10) Business Days following such Loan, Lead Bank shall deliver to each Participant a copy of Borrower's request for Loan advance and such Participant's participation certificate. Promptly after receipt by Lead Bank of written request from any Bank, Lead Bank shall deliver to the requesting Bank the accompanying certifications and such other instruments, documents, certifications and approvals delivered by or on behalf of Borrower to Lead Bank in support of the requested Loan.

6. Lead Bank, as mortgagee of record, shall hold in New York State, in its storage facility where it stores documents on loans held for its own account from time to time during the term of the Loan, all Loan Documents executed and delivered in connection with said Loan including, but not limited to, the Note, Mortgage, title insurance policies and endorsements and hazard insurance policies, which shall be held by it for the benefit of and in trust for the Banks to the extent of each Participant's Participation Loan Share therein. Without the prior consent of the Bank's, Lead Bank shall not make or consent to any release of the Borrower from any liability thereunder, or waive any claim against Borrower or other obligor or guarantor under Loan Documents. Lead Bank also will not pledge, encumber, sell, transfer, assign, modify or extend the Note, Mortgage or Loan Documents, release any portion of the Mortgaged Premises from the lien of the Mortgage except in accordance with the release provisions contained in the Loan Documents (if any) nor make any advance of the Loan which is not insured by a title company. Lead Bank shall, upon request and at Participant's expense, furnish Participant prior to execution with copies of all Loan Documents.

7. Lead Bank covenants, represents and warrants to Participants that: (a) it will notify Participants if monthly payments due under the Note or Mortgage are more than thirty (30) days delinquent; (b) it will notify Participants within ten (10) days of the time of receipt of

knowledge of any default under the Loan Documents executed by Borrower; (c) Lead Bank is the owner of the Loan and has all right title and interest to sell the Participation Loan Shares to Participants and no other person or entity will have any interest in Lead Bank's position in respect of the Loan and Loan Documents other than Lead Bank without first obtaining the Required Lender's written consent not to be unreasonably refused or delayed; (d) Lead Bank will not further sell, assign, pledge or otherwise hypothecate, in whole, or part its Retained Interest or any Participant's interest in the Loan or any instrument evidencing or securing the Loan, except as permitted by this Agreement.

8. Except as hereinafter provided, Participants shall not sell or otherwise dispose of all or any part of its interest in said Loan without the prior written approval of Lead Bank, which approval shall not be unreasonably withheld but will be subject to the following conditions.

(i) Except as provided herein, each Participant may assign to one or more lending institutions, banks, investment banks or insurance companies (hereinafter an "Eligible Assignee") all or a portion of its interests, rights and obligations under this Agreement upon satisfaction of the following conditions:

- (a) Lead Bank shall have given its prior written consent to such assignment such consent will not be unreasonably withheld;
- (b) each such assignment shall be of a constant, and not a varying, percentage of all the assigning Participant's rights and obligations under this Agreement,
- (c) each assignment shall be in an amount that is at least \$1,000,000 and is a whole multiple of \$100,000,
- (d) the parties to such assignment shall execute and deliver to Lead Bank, for recording in the Register (as hereinafter defined), an assignment and acceptance, (an "Assignment and Acceptance").

Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, which effective date shall be at least five (5) Business Days after the execution thereof, (a) the assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Bank hereunder, and (b) the assigning Bank shall, to the extent provided in such assignment and upon payment to Lead Bank of the registration fee referred to hereafter, be released from its obligations under this Agreement.

(ii) By executing and delivering an Assignment and Acceptance, the parties to the assignment thereunder confirm to and agree with each other and the other parties hereto as follows:

(a) other than the representation and warranty that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim, the assigning Bank makes no representation or warranty, express or implied, and assumes no responsibility with respect to any statements,

warranties or representations made in or in connection with this

Agreement or the execution, legality, validity, enforceability, genuineness,

sufficiency or value of this Agreement, the Loan Documents or any other

instrument or document furnished pursuant hereto or the attachment,

perfection or priority of any security interest or mortgage;

(b) the assigning Bank makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower and its subsidiaries or any other person primarily or secondarily liable in respect of any of the Loan obligations, or the performance or observance by the Borrower or any other person primarily or secondarily liable in respect of any of the Loan obligations of any of their obligations under this Agreement or any of the other Loan Documents or any other instrument or document furnished pursuant hereto or thereto;

- (c) such assignee confirms that it has received a copy of this Agreement, and has reviewed copies of the most recent financial statements provided by the Borrower as required by the terms of the Loan Documents, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance;
 - (d) such assignee will, independently and without reliance upon the assigning Bank, Lead Bank or any other Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement;
 - (e) such assignee represents and warrants that it is an Eligible Assignee;
 - (f) such assignee appoints and authorizes Lead Bank to take such action as agent on its behalf and to exercise such powers as Lead under this Agreement and the other Loan Documents as are delegated to Lead Bank by the terms hereof or thereof, together with such powers as are reasonably incidental thereto;
 - (g) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Participant and/or Bank; and
 - (h) such assignee represents and warrants that it is legally authorized to enter into such Assignment and Acceptance.
- (iii) Lead Bank shall maintain a copy of each Assignment and Acceptance delivered to it and a register or similar list (the "Register") for the recordation of the names and addresses

of the Participants, the Participant's Participation Loan Share, and principal amount of the Loan owing to the Participant from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, Lead Bank and the Participants may treat each Person whose name is recorded in the Register as a Participant hereunder for all purposes of this Agreement.

The Register shall be available for inspection by the Borrower and the Participants at any reasonable time and from time to time upon reasonable prior notice. Upon each such recordation, the assigning Bank agrees to pay to Lead Bank a registration fee in the sum of \$1,000.

(iv) Each Participant may sell sub-participations to one or more banks or other financial institutions in all or a portion of such Participant's rights and obligations under this Agreement and the other Loan Documents; provided that (a) each such sub-participation shall be in a minimum amount of \$100,000, (b) each sub-participant shall meet the requirements of an Eligible Assignee, (c) any such sale or sub-participation shall not affect the rights and duties of the selling Participant hereunder to the Borrower, and (d) the only rights granted to the sub-participant pursuant to such participation arrangements with respect to waivers, amendments or modifications of the Loan Documents shall be the rights to approve waivers, amendments or modifications that would reduce the principal of or the interest rate on Loan, extend the term or increase the amount of the commitment of such Participant as it relates to such sub-participant, reduce the amount of any commitment fees to which such sub-participant is entitled or extend any regularly scheduled payment date for principal or interest.

(v) The Borrower agrees that in addition to disclosures made in accordance with standard and customary banking practices, any Participant may disclose information obtained by such Participant pursuant to this Agreement to assignees or sub-participants and potential

assignees or sub-participants hereunder; provided that such assignees or sub-participants or potential assignees or sub-participants shall agree (a) to treat in confidence such information unless such information otherwise becomes public knowledge, (b) not to disclose such information to a third party, except as required by law or legal process and (c) not to make use of such information for purposes of transactions unrelated to such contemplated assignment or sub-participation.

(vi) Any assigning Participant shall retain its rights to be indemnified with respect to any claims or actions arising prior to the date of such assignment. If any assignee is not incorporated under the laws of the United States of America or any state thereof, it shall, prior to the date on which any interest or fees are payable hereunder or under any of the other Loan Documents for its account, deliver to the Borrower and Lead Bank certification as to its exemption from deduction or withholding of any United States federal income taxes.

(vii) Anything to the contrary notwithstanding, any Participant may at any time pledge all or any portion of its interest and rights under this Agreement to any of the twelve Federal Reserve Banks organized under the Federal Reserve Act, 12 U.S.C. 341. No such pledge or the enforcement thereof shall release the pledgor Participant from its obligations hereunder or under any of the other Loan Documents.

9. So long as Lead Bank serves as Lead, the Loan will be serviced by Lead Bank at an annual charge to Participants of $\frac{1}{4}$ of 1% of the interest portion of Collections (as hereinafter defined) under the Loan for each year or portion thereof this Agreement is in force and effect, and in the performance of such servicing Lead Bank shall:

(a) Demand, and use its best efforts as provided hereinafter to collect from Borrower amounts due under the Loan as and when due;

(b) Distribute to itself and Participant promptly upon receipt, the Participation Loan Share of each Bank in all payments made with respect to the Loan by Borrower and others. Lead Bank warrants that, in its servicing of the Loan, even though it is not obligated to establish a separate account for the Loan, the funds attributable to the Loan will not be commingled with the general assets of Lead Bank other than to the extent Lead Bank may utilize a portion of its general assets to maintain minimum balances;

(c) Keep proper books of account and records reflecting the interest of the Participants in the Loan including the Register, which books and records shall be available for inspection and copying by Participant at all reasonable times during Lead Bank's regular business hours;

(d) Receive, hold and disburse pursuant to the terms of the Mortgage and Loan Documents any proceeds of fire or other insurance covering the Mortgaged Premises, or of any award for the condemnation of all or part thereof, it being understood that, to the extent permitted by the Mortgage and Loan Documents, the same shall be disbursed to the Participants in accordance with their Participation Loan Shares;

(e) Advance for the account of the Banks in accordance with their Participation Loan Shares such funds as may be necessary for hazard insurance premiums, real estate taxes, water rates and similar items, or for the preservation of the Mortgaged Premises, whenever in Lead Bank's judgment such advances shall be necessary or desirable to preserve the Mortgaged Premises or the security of the Mortgage and upon the making of such advance, Participant shall reimburse Lead Bank for its pro-rata share of such disbursements by transmitting the same by good Federal Funds promptly after receipt of the advice of payment and a copy of the bill or invoice paid.

(f) Demand of Borrower full performance of all material terms, covenants and conditions of the Note, Mortgage and other Loan Documents on the part of Borrower to be performed, granting no indulgence, waiver or extension of time beyond thirty (30) days for such performance unless Required Lenders shall otherwise consent in writing.

10. It is expressly understood and agreed that, in its administration and servicing of the Loan, Lead Bank shall be required to exercise the same standard of care that it exercises in the administration and servicing of loans for its own account.

11. Banks as far as practical shall decide by mutual consent upon the exercise of any and all rights in connection with said Loan and any legal action to be taken. Lead Bank shall, with reasonable promptness, notify Participants of any default by Borrower or any other matter which, in its best judgment, materially affects the joint or respective interests of Banks in said Loan. If Required Lenders should fail to mutually agree upon any action required to be taken within such period as the circumstances may require, or within a reasonable period, if none be prescribed or there be doubt as to the period, Banks then owning at least fifty one (51%) percent of the Loan, shall have the right to determine the question as to the others and their bona fide decision shall be binding upon the other Banks with the same force and effect as if all had concurred therein.

Notwithstanding the foregoing, the unanimous written approval of all the Banks (except for Banks in default hereunder) shall be required with respect to any proposed amendment, waiver, discharge, termination, or consent which:

- (i) has the effect of (a) extending the final scheduled maturity or the date of any amortization payment of Loan or Note, (b) reducing the rate or extending the time of payment of interest or fees thereon, (c) increasing or reducing the principal amount thereof, or (d) otherwise postponing or forgiving any indebtedness thereunder,
- (ii) releases or discharges any material portion of the collateral pledged under Loan other than in accordance with the express provisions of the Loan Documents,
- (iii) amends, modifies or waives any provisions of this paragraph 11,
- (iv) amends any of the financial covenants set forth in this Agreement,
- (v) reduces the percentage specified in the definition of Required Lenders,
- (vi) except as otherwise provided in this Agreement, changes the amount of any Bank's Participation Loan Share, or
- (vii) releases or waives any guaranty of the Loan obligations or indemnifications provided in the Loan Documents;

and provided, further, that without the consent of Lead Bank, no such action shall amend, modify or waive any provision of this Agreement or any other provision of any Loan Document which relates to the rights or obligations of Lead Bank.

With respect to any requested amendment, waiver, consent or other action which requires the approval of the Required Lenders or all of the Banks, as the case may be, in accordance with the terms of this Agreement, or if Lead Bank is required hereunder to seek, or desires to seek, the approval of the Required Banks or all of the Banks, as the case may be, prior to undertaking a particular action or course of conduct, Lead Bank in each such case shall provide each Bank with written notice of any such request for amendment, waiver or consent or any other requested or proposed action or course of conduct, accompanied by such detailed background information and explanations as may be reasonably necessary to determine whether to approve or disapprove

such amendment, waiver, consent or other action or course of conduct. Lead Bank may (but shall not be required to) include in any such notice, printed in capital letters or boldface type, a legend substantially to the following effect:

"THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. FAILURE TO RESPOND WITHIN TEN (10) CALENDAR DAYS FROM THE RECEIPT OF THIS COMMUNICATION SHALL CONSTITUTE A DEEMED APPROVAL BY THE ADDRESSEE OF THE ACTION REQUESTED BY THE BORROWER OR THE COURSE OF CONDUCT PROPOSED BY THE LEAD BANK AND RECITED ABOVE,"

and if the foregoing legend is included by Lead Bank in its communication, a Bank shall be deemed to have approved or consented to such action or course of conduct for all purposes hereunder if such Bank fails to object to such action or course of conduct by written notice to Lead Bank within ten (10) calendar days of such Bank's receipt of such notice.

12. In the event of a default by Borrower in the making of required payments or complying with any of the terms, covenants and conditions of the Loan Documents, and the continued existence of such default after the expiration of any applicable period of grace (or of any applicable period of indulgence), Lead Bank shall then give to Participant, notice of such default and shall within thirty (30) days after the expiration of such applicable period of grace, proceed upon the determination of the Required Lenders, pursuant to the procedure for reaching agreement outlined in paragraph 11, to declare the principal sum secured by the Mortgage to be due and payable and/or foreclose the Mortgage (or to acquire the Project by a deed in lieu thereof if such be acceptable in the opinion of Lead Bank's counsel), employing such counsel as Banks

may agree upon or absent such agreement such counsel as Banks having a majority of Participation Loan Shares shall agree upon. The expenses of the foreclosure proceeding or the acquisition of the Project by deed in lieu thereof shall be borne by the Banks in accordance with their Participation Loan Shares.

13. Lead Bank shall collect on behalf of Banks, the interest and principal paid on the Loan, release fees, premiums, and origination fee, condemnation awards, proceeds of title insurance and fire insurance, and all other amounts paid in respect of the Loan all of which are hereafter referred to as "Collections". Bank's Participation Loan Share of Collections received by Lead Bank as agent shall be held by it for the benefit of and in trust for each Participant until such time as actually paid over to such Participant. Within two (2) business days of receipt of Collections, Lead Bank shall pay over to each Participant its Participation Loan Share of all such Collections. If for any reason, any Bank has disbursed more or less than its pro rata share of the Loan, its share of the interest and principal will be adjusted accordingly for such period of time as its disbursements are more or less than the other Banks' pro rata share.

Subject to the terms and conditions hereof, Lead Bank shall distribute all Collections in the order and manner set forth below:

- First: To Lead Bank, towards any fees and any expenses for which it is entitled to reimbursement under this Agreement or the other Loan Documents not theretofore paid to Lead Bank.
- Second: To all in Banks accordance with their Participation Loan Share until all Banks have been reimbursed for all expenses which such Banks have previously incurred and not theretofore paid to such Bank.

Third: To all Banks in accordance with their Participation Loan Share until all Banks have been paid in full all principal and interest due to such Banks under the Loan, with each Bank applying such proceeds for purposes of this Agreement first against the outstanding principal balance due to such Bank under the Loan and then to accrued and unpaid interest due under the Loan.

Fourth: To all Banks in accordance with their Participation Loan Share until all Banks have been paid in full all other amounts due to such Banks under the Loan including, without limitation, any costs and expenses incurred directly by such Banks to the extent such costs and expenses are reimbursable to such Banks by the Borrower under the Loan Documents.

Fifth: To the Borrower or such third parties as may be entitled to claim collections.

If, after Lead Bank has paid each Bank's Participation Loan Share of any payment received or applied by Lead Bank in respect of the Loan, that payment is rescinded or must otherwise be returned or paid over by Lead Bank, whether pursuant to any bankruptcy or insolvency law, sharing of payments clause of any loan agreement or otherwise, such Bank shall, at Lead Bank's request, promptly return its proportionate share of such payment or application to Lead Bank, together with the Bank's proportionate share of any interest or other amount required to be paid by Lead Bank with respect to such payment or application.

If any Bank (including Lead Bank), acting in its individual capacity, shall exercise any right of setoff against a deposit balance or other account of the Borrower held by such Bank on account of the obligations of the Borrower under Loan Documents, such Bank shall remit to Lead Bank as Lead all such sums received pursuant to the exercise of such right of setoff, and Lead Bank shall apply all such sums for the benefit of all of the Banks hereunder in accordance with the terms of this Agreement.

If in the reasonable opinion of Lead Bank distribution of any amount received by it in such capacity hereunder or under the Note or under any of the other Loan Documents might involve any liability, it may refrain from making distribution until its right to make distribution shall have been adjudicated by a court of competent jurisdiction or has been resolved by the mutual consent of all Banks. In addition, Lead Bank may request full and complete indemnity, in form and substance satisfactory to it, prior to making any such distribution. If a court of competent jurisdiction shall adjudge that any amount received and distributed by Lead Bank is to be repaid, each person to whom any such distribution shall have been made shall either repay to Lead Bank its proportionate share of the amount so adjudged to be repaid or shall pay over to the same in such manner and to such persons as shall be determined by such court.

14. In the case of satisfaction, sale or other disposition of the Loan, Lead Bank will promptly account for and, as soon as collected, pay over to each Participant its Participation Loan Share. Participants shall have the right to an accounting for all moneys and/or other property received by Lead Bank in connection with the Loan and Lead Bank shall be deemed a trustee of each Bank's Participation Loan Share.

15. So far as the rights of Participants are concerned, the security for the Loan shall be deemed to be that hereinabove specifically described, together with any substitutions therefor agreed to by Banks.

16. In connection with the Loan, each Bank shall pay all of its own legal expenses and other expenses except to the extent that Borrower pays same. Banks agree and understand that any expenses incurred in connection with litigation (including, but not limited to, actions brought against any or all Banks by Borrower or outside parties relative to Loan) and/or foreclosure proceedings will be paid by each Bank in accordance with its Participation Loan Share.

17. In case at any time after the Loan is fully advanced, any Bank has payment or payments made to it (except by offset) on Loan in a greater proportion than such payments made on the participation held by the other Banks, the Bank so receiving such greater participation payment agrees to pay to Lead Bank the portion of such payment which exceeds the receiving Bank's Participation Loan Share thereof and Lead Bank shall distribute such payment to the Banks in such amounts as shall result in the same participation by each Bank in the aggregate principal amount of the Loan outstanding as existed immediately prior to such disproportionate payment or payments. If any Bank shall be required to refund any amounts which have been paid or received on account of Loan for its participation, then the other Banks shall repurchase their Participation Loan Share of such refund for cash from such Bank. In case such payment or payments is disturbed by legal process or otherwise, appropriate further pro rata adjustments shall be made.

18. All Loan disbursements, including all sums which may have to be paid for taxes, assessments, or similar or dissimilar items, costs, expenses, attorneys' fees and other disbursements incurred in the protection of the security for the Loan or the enforcement of Bank's rights and remedies, or for or by reason of the acquisition, completion, operation, ownership or sale of the Mortgaged Premises in the event of the acquisition of title to collateral shall be made or borne by Banks in proportion to its or their Participation Loan Share.

19. (a) In the event that any Bank receives payment of indebtedness owing by Borrower in connection with the Loan by means of an offset, then such Bank shall deliver to Lead Bank as Lead and Lead Bank shall distribute an amount of money equal to the amount of such offset between the Banks for application to the following items and in the following order of priority:

- (i) To the Bank delivering same, for reasonable expenses incurred in connection with such transaction;
- (ii) To accrued and unpaid interest on the Note;
- (iii) To reimbursement for any advances which shall have been made pursuant to this Agreement or the Mortgage; and
- (iv) To the outstanding principal balance of the Note.

(b) All funds applied pursuant to Subsections (ii), (iii) and (iv) of Section 19(a) shall be remitted to the Banks pro rata. However, if, following remittance of such money to the Bank, the offset is adjudged invalid and is set aside, then the Bank receiving such payment shall remit back to the Bank that received such offset a like amount of money.

20. Neither the execution of this Agreement, nor any sharing in the benefits and burdens of the Banks in respect of the Loan or in the proceeds and avails thereof, is intended to constitute, nor shall it be construed to constitute, the formation of a partnership or joint venture between or among the Banks, nor shall it be construed to be an extension of credit or a loan by Participant to Lead Bank or vice versa.

21. In the event foreclosure occurs or a deed in lieu thereof is delivered then title to the Project shall be taken in the name of Lead Bank as agent, assuming Lead Bank is not in default of its obligations hereunder or has not been removed as Lead, or its nominee approved by Banks and Lead Bank shall, either itself or through a managing agent selected by it (which may be an affiliate of Lead Bank), manage and operate the Project and sell the same upon such terms as hereinafter provided. All reasonable expenses of such operation shall be borne by the Banks in accordance with their Participation Loan Share. With the prior written consent of Required Lenders, Lead Bank may sell the Project at such price and upon such terms as may be approved in such written consent. Promptly after such sale the net cash proceeds shall be distributed between the Banks according to their Participation Loan Shares. Any purchase money mortgage taken in connection with such sale shall name Lead Bank and Participants or their nominees as mortgagees.

22. Should there be appointed for any Bank a receiver, conservator or trustee, or should there be any assignment of all or substantially all of the assets of any Bank (other than in its usual course of business), or should any bankruptcy or insolvency proceeding be taken by or against it under federal or state law, then the interest of such Bank (called for the purpose of this

paragraph the "Insolvent Bank"), upon demand of the others, will vest in a proportion equal to a fraction, the numerator of which will be the amount Insolvent Bank has advanced and the denominator of which will be equal to the total amount ultimately advanced under the Loan Documents. Should the Loan not be fully advanced at the time of the insolvency, Lead Bank may proceed to advance the remaining amounts to be advanced under Loan Documents, acquiring a greater proportion of Loan or it may sell the balance of the Loan remaining to another financial institution. Should Lead Bank be the Insolvent Bank, it will assign to Participants or their designee the Loan Documents and Participants shall have the right to an accounting for all money and other property received by Lead Bank in connection with the Loan. Upon assignment of the Loan under this section, Participants or its designees shall become and be the Lead under this Agreement in the place and stead of Lead Bank, with all the powers and obligations conferred or imposed by this Agreement and Loan Documents but without any obligation as to acts committed or omitted to be taken prior to such assignment.

23. Wherever the context may require, any pronouns used herein shall include the corresponding masculine, feminine and neuter forms; and the singular form of any noun or pronoun shall include the plural and vice versa.

24. All notices directed to Lead Bank or Participants shall be sent to their respective offices at the addresses set forth in the preamble.

25. This Agreement and any right or liability arising hereunder shall be construed in accordance with the laws of the State of New York.

26. This Agreement together with the Loan Documents and commitment letter, set forth the entire agreement of the parties and cannot be modified, amended or discharged, nor can any provision thereof be waived, except by written instrument signed by the party or parties against whom enforcement of any such modification, amendment, discharge or waiver is sought.

27. Upon the request of any Bank, this Agreement shall be recorded in the land records of the jurisdiction where the Project is located and upon any such request Lead Bank as Lead shall deliver to the Bank so requesting, execution counterparts of this Agreement so as to provide Participant with a fully executed counterpart hereof in recordable form.

28. No Bank makes or has made any representation (except as herein specifically set forth) or warranty to any of the others, and none assumes responsibility with respect to the legality, sufficiency, enforceability or collectibility of the Loan or any document relative thereto, or of any collateral held as security for the Loan but each Bank warrants that each has full power and authority to enter into this Agreement and to complete the transaction contemplated hereby. No Bank assumes any responsibility for the financial condition or credit worthiness of the Borrower, for the security value of any collateral, or for the performance of any obligations of the Borrower, or any other obligor or guarantor. Although Lead Bank will furnish Participant with copies of such documents as Lead Bank shall receive, Lead Bank assumes no responsibility with respect to the authenticity, validity or enforceability thereof.

Each Bank acknowledges that it has, independently and without reliance upon Lead Bank or any other Bank, and based on the financial statements prepared by the Borrower and such other documents and information as it has deemed appropriate, made its own credit analysis and investigation into the business, assets, operations, property, and financial and other condition of the Borrower and has made its own decision to enter into this Agreement and the other Loan Documents. Each Bank also acknowledges that it will, independently and without reliance upon Lead Bank or any other Bank, and based on such documents and information as it shall deem

appropriate at the time, continue to make its own credit decisions in determining whether or not conditions precedent to closing any Loan hereunder have been satisfied and in taking or not taking any action under this Agreement and the other Loan Documents.

29. The entire commitment fee payable under Loan shall be paid to and retained by Banks in the same percentage as each Bank's Participation Loan Share.

30. This Agreement may be executed in any number of counterparts, but all of such counterparts shall be deemed to constitute one instrument.

31. The Participants agree to reimburse and indemnify Lead Bank, ratably in proportion to their respective Participation Loan Shares, for (i) any amounts not reimbursed by the Borrower for which Lead Bank is entitled to reimbursement by the Borrower under this Agreement or the other Loan Documents, (ii) any other expenses incurred by Lead Bank on behalf of Banks in connection with the preparation, execution, delivery, administration, amendment, waiver and/or enforcement of this Agreement and the other Loan Documents, and (iii) any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may imposed on, incurred by or asserted against Lead Bank in any way relating to or arising out of this Agreement or the other Loan Documents or any other document delivered in connection therewith or any transaction contemplated thereby, or the enforcement of any of the terms hereof or thereof, provided that no Participant shall be liable for any of the foregoing to the extent that they arise from the gross negligence or willful misconduct of Lead Bank. If any indemnity furnished to Lead Bank for any purpose shall, in the opinion of Lead Bank, be insufficient or become impaired, Lead Bank may call for additional indemnity and cease, or not commence, to do the action indemnified against until such additional indemnity is furnished.

32. With respect to its Participation Loan Share as a Bank, Lead Bank shall have the same rights and powers hereunder and under any other Loan Document as any Bank and may exercise the same as though it were not the Lead, and the term "Bank" or "Banks" shall, unless the context otherwise indicates, include Lead Bank in its individual capacity. Lead Bank may accept deposits from, lend money to, and generally engage in any kind of banking or trust business with the Borrower or any subsidiary or affiliate of the Borrower as if it were not the Lead hereunder.

33. Lead Bank may resign as Lead at any time by giving thirty (30) days' prior written notice to the Banks and Borrower. The Required Lenders, for good cause, may remove Lead Bank as Lead at any time by giving thirty (30) days' prior written notice to Lead Bank, the Borrower and the other Banks. Upon any such resignation or removal, the Required Lenders shall have the right to appoint a successor Lead. If no successor shall have been so appointed by the Required Lenders and accepted such appointment within thirty (30) days after the retiring Lead's giving notice of resignation or the Required Lenders' giving notice of removal, as the case may be, then the retiring Lead may appoint, on behalf of the Borrower and the Banks, a successor Lead. Each such successor shall be a financial institution which meets the requirements of an Eligible Assignee. Upon the acceptance of any appointment as Lead hereunder by a successor such successor Lead shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Lead, and the retiring Lead shall be discharged from its duties and obligations hereunder and under the other Loan Documents. After any retiring Lead's resignation hereunder, the provisions of this section shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Lead hereunder.

34. If for any reason any Bank shall fail or refuse to abide by its obligations under this Agreement, including without limitation its obligation to make available to Lead Bank its pro rata share of any Loan, expenses or setoff (a "Delinquent Lender") and such failure is not cured within ten (10) days of receipt from Lead Bank of written notice thereof, then, in addition to the rights and remedies that may be available to Lead Bank, other Banks, the Borrower or any other party at law or in equity, and not at limitation thereof, (i) such Delinquent Lender's right to participate in the administration of, or decision-making rights related to, the Loan, this Agreement or the other Loan Documents shall be suspended during the pendency of such failure or refusal, and (ii) a Delinquent Lender shall be deemed to have assigned any and all payments due to it from the Borrower, whether on account of Loan, interest, fees or otherwise, to the remaining non-delinquent Banks for application to, and reduction of, their proportionate shares of Loan until, as a result of application of such assigned payments the Banks' respective pro rata shares of Loan shall have returned to those in effect immediately prior to such delinquency and without giving effect to the nonpayment causing such delinquency. The Delinquent Lender's decision-making and participation rights and rights to payments as set forth in clauses (i) and (ii) hereinabove shall be restored only upon the payment by the Delinquent Lender of its pro rata share of Loan proceeds or expenses as to which it is delinquent, together with interest thereon at the Prime Rate from the date when originally due until the date upon which any such amounts are actually paid.

The non-delinquent Banks shall also have the right, but not the obligation, in their respective, sole and absolute discretion, to acquire for no cash consideration, pro rata, based on the respective Participation Loan Shares of those Banks electing to exercise such right the Delinquent Lender's commitment to fund future loans, if any (the "Future Commitment"). Upon

any such purchase of the pro rata share of any Delinquent Lender's Future Commitment, the Delinquent Lender's share in future loans and its rights under the Loan Documents with respect thereto shall terminate on the date of purchase, and the Delinquent Lender shall promptly execute all documents reasonably requested to surrender and transfer such interest, including, if so requested, an Assignment and Acceptance. Each Delinquent Lender shall indemnify Lead Bank and each non-delinquent Bank from and against any and all loss, damage or expenses, including but not limited to reasonable attorneys' fees and funds advanced by Lead Bank or by any non-delinquent Bank, on account of a Delinquent Lender's failure to timely fund its pro rata share of Loan or to otherwise perform its obligations under the Loan Documents.

35. This agreement shall inure to the benefit of and be binding upon Banks and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

[LEAD BANK]

By: _____

[PARTICIPANT]

By: _____

Name:

Title:

STATE OF NEW YORK,)

: ss.:

COUNTY OF .)

On the day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW YORK,)

: ss.:

COUNTY OF .)

On the day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is(are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT "A"

PARTICIPATION CERTIFICATE

Certificate No. _____

Date: _____

[LEAD BANK] hereby certifies that [PARTICIPANT] has purchased an undivided participation interest in a certain mortgage loan pursuant to the terms and conditions of that certain Participation Agreement, dated _____ by and between [LEAD BANK] and [PARTICIPANT].

[LEAD BANK] certifies to the above [PARTICIPANT] that there has been advanced to date under the mortgage loan, the aggregate principal sum of \$ _____ and that Participant's Participation Loan Share (as described in the Participation Agreement) thereof is _____%.

[LEAD BANK]

By: _____

Name: _____

Title: _____