

Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000d-2000d-4. If there is indication of noncompliance with these requirements, such facts will be reported in writing to the Administrator, ATTN: Equal Opportunity Officer.

§§ 1951.873-1951.876 [Reserved]

§ 1951.877 Loan agreements.

(a) A loan agreement will have been executed by the RDLF intermediary and OCS or HHS for each loan. The loan agreement ordinarily would contain the following provisions:

- (1) The amount of the loan.
- (2) The interest rate.
- (3) The term and repayment schedule.
- (4) The provisions for late charges.
- (5) Provisions regarding default.
- (6) Disbursement procedure.
- (7) Insurance requirements.

(i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required on every ultimate recipient 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, 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 RDLF intermediary's interest in the insurance ordinarily will be assigned to the FmHA or its successor agency under Public Law 103-354.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient and will be assigned or pledged to the RDLF intermediary and subsequently to FmHA or its successor agency under Public Law 103-354. 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 State law.

(iv) The RDLF intermediary is responsible for determining if an ultimate

recipient is located in a special flood or mudslide hazard area anytime Federal funds are involved. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided.

(b) The RDLF intermediary will agree:

(1) Not to make any changes in the RDLF intermediary's articles of incorporation, charter or bylaws without the concurrence of FmHA or its successor agency under Public Law 103-354.

(2) Not to make a loan commitment to an ultimate recipient without first receiving FmHA or its successor agency under Public Law 103-354's written concurrence in the proposed use of loan funds.

§§ 1951.878-1951.880 [Reserved]

§ 1951.881 Loan servicing.

(a) These regulations do not negate contractual arrangements that were previously made by the HHS, Office of Community Services (OCS), or the intermediaries operating relending programs that have already been entered into with ultimate recipients under previous regulations, preexisting documents control when in conflict with these regulations. The loan is governed by terms of existing legal documents of each intermediary. The RDLF/IRP intermediary is responsible for compliance with the terms and conditions of the loan agreement.

(b) Each intermediary will be monitored by FmHA or its successor agency under Public Law 103-354 based on progress reports submitted by the intermediary, audit findings, disbursement transactions, visitations, and other contract with the intermediary as necessary.

(c) Loan servicing is intended to be preventive rather than a curative action. Prompt followup on delinquent accounts and early recognition of potential problems and pursuing a solution to them are keys to resolving many problem loan cases.

(d) Written notices on payments coming due will be prepared and sent to the intermediary by the FmHA or its successor agency under Public Law 103-354 Finance Office approximately 15 days

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in advance of the due date of the payments. A copy of the notice will be sent to the FmHA or its successor agency under Public Law 103-354 Administrator or designee.

(e) If the scheduled payment is not made by the intermediary within 30 days after the due date of the payment, the Finance Office will send a past due notice to the intermediary. The notice will show the late charge amount, if applicable, and the interest amount past due. The late charge amount, if applicable, and the interest past due amount will be capitalized as principal due 30 days after the due date of the monthly payment unless existing loan documents prior to this regulation state otherwise. If the loan documents state when late charge amounts or interest accruals are to be capitalized, the loan documents will prevail.

(1) A per diem amount will be shown on the late notice sent to the intermediary. The Finance Office will send this notice to the Administrator or designee 30 days after the past due notice has been sent to the intermediary and the account remains delinquent. Thereafter, further notices by FmHA or its successor agency under Public Law 103-354 designee will be sent to the intermediary on the late payments or any further payments until the account is in a current status.

(2) The Finance Office will notify the Administrator or designee on any payments due from the delinquent intermediary. It will be the responsibility of the Administrator or designee to follow up on delinquent payments to bring the account to a current status.

(3) A copy of any correspondence or notice generated by the Administrator or designee on any delinquent loan will be sent to the Finance Office.

(4) Interest will be computed on a 365-day basis unless legal documents state otherwise.

(f) It is the responsibility of the Finance Office to maintain complete accounting records for each intermediary. The Finance Office will:

(1) Coordinate with the Administrator or designee to assure that interest and principal payments received are in accordance with the promissory notes and its companion documents, and the effective amortization sched-

ule. If the payments received appear to be incorrect, the Finance Office will advise the Administrator or designee. The Administrator or designee will take the necessary action to clear the issue and promptly advise the Finance Office of the proper accounting procedure.

(2) Send monthly statements to the National Office reflecting all payments received to date on each borrower.

(3) Send to the Administrator or designee a monthly summary of all intermediary loans as follows:

(i) Number and amount of all loans.

(ii) Total advanced on all loans.

(iii) Total interest and principal received on the loans.

(iv) Total outstanding balance on all loans.

(4) Prepare reamortization schedules needed as a result of restructuring any loans and send to the Administrator or designee.

(5) Furnish in writing to the Administrator or designee a per diem amount on the actual interest amount due when requested by the Administrator.

(g) It is the responsibility of the Administrator or designee to:

(1) Review and analyze the semi-annual report of the intermediaries and reconcile same to the annual audits.

(2) Review the annual audits of intermediaries.

(3) Review the semiannual reports of the intermediaries and take appropriate action when necessary.

(4) Follow up on delinquent intermediaries to bring the account current.

(5) Notify the Finance Office in writing when a loan is determined to be uncollectible in order for the Finance Office to make provisions for an appropriate timely entry to the loss account.

(6) Furnish to the Finance Office the necessary information to produce reamortization schedules.

(7) Provide the Finance Office a copy of any correspondence in regard to the restructuring of the loans.

(8) Review reamortization schedules, the schedule will then be forwarded to the intermediary.

(9) Confirm account balances. Payment history of loans and any other related matter will be furnished to the requesting party, (i.e. third party auditing firms) if warranted and proper.

If there are discrepancies in any loan balances being confirmed, the Finance Office should be consulted before the Administrator or designee writes the requested parties.

(10) Furnish upon request by the Finance Office, the information necessary to help reconcile account balances, obtain evidence of payments made by the borrower, and any other related data necessary to keep the financial records correct and in balance.

(11) Answer Congressional and other correspondence.

(12) Review intermediary's plans, cash flow projections, balance sheets, and operating statements.

§ 1951.882 Field visits.

(a) During or in preparation for field visits to RDLF/IRP intermediaries by FmHA or its successor agency under Public Law 103-354 personnel, the following loan servicing activities are to be performed:

(1) Review what is being done to inform eligible applicants of the program's existence.

(2) Obtain current and proper financial information and analyze for trends on all RDLF/IRP intermediaries. Also determine if there is a sufficient interest rate spread between the interest rate charged the intermediary and the interest rate charged the ultimate recipients to cover the administrative costs, including bad debts of operating the program.

(3) Include in the writeups of the field visit any issues or problems not resolved from the last visitation in the agenda.

(4) Review credit elsewhere information (has the ultimate recipient been refused funds by other sources?) to determine if this information is in the files.

(5) Observe collateral and its condition, maintenance, protection and utilization by the intermediary or ultimate recipient.

(6) Review the process for handling loan proceeds to assure they are deposited in an interest-bearing account or time deposit in a bank or other financial institution fully protected by Federal or State insurance.

(7) Review materials to determine if the purpose of the program is being ful-

filled; i.e., loan funds are being used in accordance with FmHA or its successor agency under Public Law 103-354 policies, procedures, the approved work plan and the Loan Agreement.

(8) A report of the visit will be made on "RDLF/IRP Review Summary Sheet," or otherwise documented and included in the loan file in the format of the "RDLF/IRP Review Summary Sheet." The report should include an opinion on the financial condition of the intermediary based upon the review of the annual audited financial statement, periodic financial statements, and observations made during the visit and other sources.

(9) Determine if the ultimate recipients' files are complete, organized, and current.

(10) Any instructions, directions, or corrective action should be confirmed by letter to the intermediaries.

(b) All intermediaries are required to provide an annual audited financial statement as well as a summary sheet of their lending program on each ultimate recipient receiving Federal funds. The summary sheet of their lending program on each ultimate recipient should include but not be limited to: the borrower's name and address, type of business, use of loan funds, loan amount, date of note, outstanding balance, date of final payment, interest rate, amount and type of collateral, insurance information, loan status, and the date of FmHA or its successor agency under Public Law 103-354 approval, if applicable.

(c) The intermediary should perform an analysis on its ultimate recipients and follow up in writing on any servicing action required. A copy of the analysis will be provided to FmHA or its successor agency under Public Law 103-354 for those ultimate recipients having Federal funds.

§ 1951.883 Reporting requirements.

(a) Intermediaries are to provide FmHA or its successor agency under Public Law 103-354 with reports as required in their respective loan agreements, applicable statutes and as required by FmHA or its successor agency under Public Law 103-354. The report shall include the following: