

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 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 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.

(3) A reasonable amount of revolved funds must be used to create a reserve for bad debts. Reserves must 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.

(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.

(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.

§§ 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 1940-J (available in any Rural Development State Office)).

(b) *Environmental requirements.* (1) Unless specifically modified by this section, the requirements of part 1940, subpart G, of this title apply to this subpart. 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. Both the intermediaries and the ultimate recipients must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations.

(2) For each application for an initial loan to an intermediary, the Agency will review the application, supporting materials, and any environmental information required from the intermediary and complete a Class II environmental assessment. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects that can be identified at this time. Neither the completion of the environmental assessment nor the approval of the application is an Agency commitment to the use of loan funds for a specific project; therefore, no public notification requirements for a Class II assessment will apply to the application. An application for a subsequent loan to an intermediary may be considered a categorical exclusion for environmental review, rather than a Class II action, provided the service area, eligibility requirements, and eligible purposes for loans to ultimate recipients will be the same for the subsequent loan as were considered in the previous environmental assessment, and the purpose of the loan is not environmentally controversial.

(3) For each proposed loan from an intermediary to an ultimate recipient

using Agency IRP loan funds, the Agency will complete the environmental review required by part 1940, subpart G, of this title including public notification requirements. The results of this review will be used by the Agency in making its decision on concurrence in the proposed loan. The Agency will prepare an Environmental Impact Statement for any application for a loan from Agency IRP loan funds determined to have a significant effect on the quality of the human environment.

(c) *Equal opportunity and non-discrimination 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, 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 non-discrimination 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.

(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.

[63 FR 6053, Feb. 6, 1998, as amended at 70 FR 38573, July 5, 2005]

§ 4274.338 Loan agreements between the Agency and the intermediary.

A loan agreement or a 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 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;
- (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.

(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;

(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,