

SUBJECT: Rural Business-Cooperative Service  
Civil Rights Program Compliance

TO: State Directors, Rural Development

ATTN: Business Programs Directors and State Civil Rights Coordinators/Managers

**PURPOSE/INTENDED OUTCOME:**

The purpose of this Administrative Notice (AN) is to provide guidance to field staff concerning Rural Business-Cooperative Service (RBS) Business Programs compliance with the applicable civil rights laws, Executive Orders, and program requirements.

**COMPARISON WITH PREVIOUS AN:**

This AN replaces RD AN 3876, which expired June 30, 2004.

**IMPLEMENTATION AND RESPONSIBILITIES:**

It is the policy of the Department of Agriculture (USDA) and Rural Development that: No person shall be discriminated against on the grounds of race, color, religion, sex, national origin, age, marital status, familial status, parental status, political beliefs, sexual orientation, disability, or protected generic information. This policy must be communicated to the public through all appropriate channels, in English and other languages when appropriate, and in mediums that reach persons with disabilities, when requested, to provide a meaningful opportunity to participate in programs.

The stated purpose of revolving loan fund (RLF) programs is to “. . . alleviate poverty and increase economic activity and employment in rural communities . . .” see RD Instruction 4274-D, section 4274.301(b). The intended beneficiaries of the program are the communities at large and employees who will work in the funded businesses.

EXPIRATION DATE:  
October 31, 2005

FILING INSTRUCTIONS:  
Preceding RD Instruction 1901-E

In accordance with 7 CFR part 15 and RD Instruction 1901-E, each recipient receiving Federal financial assistance from RBS is required to sign an Assurance Agreement,<sup>1</sup> Form RD 400-4. Under Title VI,<sup>1</sup> a recipient is the entity “. . . to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assignee, or transferee thereof, but such a term does not include any ultimate beneficiary under such program.” (see 7 CFR 15.2(e)). In each RLF program, the intermediary, as the primary recipient, receives direct assistance from RBS in the form of a loan or grant. The intermediary then relends or distributes the assistance to the ultimate recipient (or sub-recipient) for the benefit of the employees who are hired as a result of the assistance. The fact that the financial assistance is distributed through an RLF operated by an intermediary lender does not alter the applicability of Title VI requirements. With respect to loans and grants from RBS to the intermediary, the Title VI obligations on both the intermediary and the ultimate recipient do not end after the loan is repaid. In accordance with Form RD 400-4, the assistance is considered ongoing as long as the RLF is used for the original or similar purpose for which the assistance was intended.

The Assurance Agreement and Letter of Conditions require that the intermediaries shall keep records and submit to the Agency, upon request, timely, complete, and accurate compliance reports as the Agency may determine to be necessary to ascertain compliance with Civil Rights laws and program regulations. The businesses created are ultimate recipients of Federal financial assistance through a loan or grant from the intermediary. In addition, because the primary objective of the assistance program is to provide employment, the ultimate recipient may not discriminate in its employment practices. This is applicable for all intermediaries and ultimate recipients under the Intermediary Relending Program (IRP), Rural Economic Development Loan and Grant (REDLG) Program, Rural Business Enterprise Grant (RBEG) Program, Rural Business Opportunity Grant (RBOG) Program, Rural Cooperative Development Grant (RCDG) Program, Cooperative Agreement Program, and the 1890s Land Grant Program. (Attached is a sample Letter of Conditions which contains the civil rights language that must be included for all recipients.)

In order to ensure that all program requirements are met, the Agency is obligated to complete Civil Rights Compliance Reviews before a loan is closed and every 3 years thereafter on all relending programs. In order for the Agency to obtain this data for review, State Office staff must inform the intermediaries of this requirement (provide a copy of the “Compliance Review,” Form RD 400-8).

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<sup>1</sup>Title VI is used as shorthand for all of the applicable statutes. With respect to the definition of recipients and beneficiaries and what constitutes Federal financial assistance, the law applying to Title VI is generally applicable to later statutes based on Title VI, namely, Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681 et seq; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794; and the Age Discrimination Act of 1975, 42 U.S.C. Section 6101 et seq. Thus, entities subject to Title VI are also subject to Section 504, Title IX, and the Age Discrimination Act.

In addition, State Office staff must advise the intermediary that they must set up an internal process to collect the racial/ethnic and gender data from their ultimate recipients to be able to provide this data to the Agency upon request. If the intermediary cannot provide the information upon request, the intermediary is not in compliance with Form RD 400-4, signed when the application was filed; therefore, it is not in compliance with applicable Civil Rights laws and program requirements. The intermediary must inform the ultimate recipient that a data collection process must be set up to enable the intermediary to comply with conditions of their loan/grant, Civil Rights laws, and program requirements, when requested.

For any program under which an intermediary extends Federal financial assistance to any other recipient, the ultimate recipient/sub-recipient must have an equivalent assurance agreement and submit compliance reports to the intermediary, as may be necessary, to enable the intermediary to carry out its obligations under program regulations and Civil Rights laws. The intermediary will have available, for the Agency, racial and ethnic data showing the extent to which members of minority groups are beneficiaries of Federally assisted programs, in accordance with 7 CFR Part 15, Subpart A, section 15.5(b).

Intermediaries and ultimate recipients of Federal financial assistance must comply with the following:

- Title VI of the Civil Rights Act of 1964: Title VI states that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.
- Title IX of the Education Amendments of 1972: Prohibits discrimination on the basis of sex in education programs and activities receiving Federal financial assistance.
- Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794) and 7 CFR part 15b: No qualified individual with a disability and solely by reason of their disability may be excluded from using or participating in the benefits of any facility receiving Department of Agriculture (USDA) Rural Development assistance. As the recipient of USDA financial assistance, the recipient must comply with section 504 of the Rehabilitation Act of 1973. Accessibility compliance for programs and activities are required of the intermediary or ultimate recipient.
- Age Discrimination Act of 1975: Prohibits discrimination based upon age.
- Other Equal Opportunity and Nondiscrimination Requirements: The recipient is reminded that it must comply with all additional Federal civil rights laws and requirements as applicable to the entity, service, or program.

- **Construction Contracts:** Contractors with contracts in excess of \$10,000 must comply with Executive Order 11246 that provide for equal employment opportunity without regard to race, color, religion, sex, and national origin. The recipient of Federal assistance will be required to sign Form RD 400-1, "Equal Opportunity Agreement," if construction contracts in excess of \$10,000 will be issued in conjunction with the receipt of Federal funds. The contractor who expects to finance the contract with the assistance of Rural Development or its agencies will be required to sign Form RD 400-6, "Compliance Statement."
- **Form RD 400-4, Assurance Agreement:** The intermediary and ultimate recipient must sign and agree to the conditions contained in this agreement. In accordance with Form RD 400-4, the intermediary and ultimate recipient must keep accurate records, and the intermediary must submit such information to the Agency so the Agency can ascertain that the intermediary is in compliance with this agreement. The intermediary and ultimate recipient must collect racial/ethnic and gender data of the beneficiaries (i.e., employees, Board of Directors, users, tenants). The intermediary and ultimate recipient must inform beneficiaries and others of the requirements of this agreement and inform such persons of the protection assure them against discrimination. If beneficiaries are required to complete an application for use of a facility or service that the intermediary and ultimate recipient provides, the following data must be collected by race (American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or other Pacific Islander, and White), Ethnicity (Hispanic or Latino, Not Hispanic or Latino), and sex.
- **Covenants:** Each instrument of conveyance or deed of trust for loans is subject to Title VI of the Civil Rights Act of 1964 and shall contain a covenant running with the land, assuring nondiscrimination in the use of the facility for the period the real property is used for the same or similar purpose for which the financial assistance is extended or for so long as the purchaser owns it, whichever is longer. This applies where the loan is for improvements to real estate by the ultimate recipient.
- If an ultimate recipient repays a loan in full to the intermediary and chooses to sell the property to another entity, the requirement for compliance reviews discontinues for the new owner. However, as stated previously, the new entity/owner is subject to Title VI if the property is used for the same or similar purpose.
- **Posters:** The recipient will ensure that any contractor (during construction) and the recipient (during use of the facility) or municipal office will post in a public place the appropriate USDA posters, especially "And Justice for All" and "Equal Employment Opportunity is the Law."

- Compliance Reviews: In order for the Agency to ensure compliance by all intermediary and ultimate recipients of Federal financial assistance of all Civil Rights requirements, the Agency will perform a Compliance Review (Form RD 400-8) conducted by authorized Agency personnel. The Agency shall, to the fullest extent practicable, seek the cooperation of the recipients to obtain compliance with regulations and provide assistance and guidance to recipients to help them comply voluntarily with regulations. All intermediaries and ultimate recipients must keep and provide data on race, gender, and national origin and any such records, accounts, and other sources of information and facilities as may be pertinent for the Agency to determine whether the recipients have complied or are complying with regulations

The State Offices must notify existing intermediaries of the compliance requirement and provide guidance to assist them in meeting this requirement. The existing intermediaries must inform their ultimate recipients of the compliance requirements and their responsibilities in this process. These existing entities must be included in the 3-year cycle for future compliance reviews.

Upon completion of the Compliance Review of a grant or loan recipient, the Agency is required to enter this data into the Guaranteed Loan System (GLS). In general, recipients should have available, for the Agency, racial and ethnic data showing the extent to which members of minority groups are beneficiaries of Federal assistance programs.

In addition, State Offices are required to input into GLS the demographic information collected from previous compliance reviews performed on current loan and grant borrowers. The following steps will assist in the update process in GLS:

1. go to Business Programs Fund Request View,
2. scroll down to the Routine Servicing Actions section and select update,
3. input information, and
4. hit submit button.

This procedure will allow you to update your compliance review information for the intermediary and ultimate recipient and assist with tracking as to when future servicing actions will be required. If additional assistance is needed, please refer to the GLS Users Guide, sections 12 (servicing actions) and 13 (ultimate recipients). In addition, questions on GLS can be referred to Diane Berger, (202) 260-1508.

The reporting requirements identified in this AN will be ongoing until such time as the contractual commitment to the Agency expires; i.e., the intermediary and ultimate recipient data collection requirements shall continue as long as the intermediary owes the debt to the Agency. In the case of a

grant, when the purpose is for a feasibility study, reporting requirements cease at completion of feasibility study. A feasibility study is not an ongoing project, therefore, the conditions of the grant would be satisfied at completion, resulting in termination of the relationship with the Agency. If the purpose of the grant was for ongoing technical assistance, the reporting requirements would continue for as long as the grantee operated under the terms of the original agreement.

It is the responsibility of RBS to inform applicants/borrowers who are the recipients of Federal assistance of the requirement to comply with Civil Rights laws. This can be accomplished through pre-award compliance reviews, letters of conditions, and closing documents. If you have any questions, please contact the Special Projects/Programs Oversight Division, (202) 690-4100, or your State Civil Rights Coordinator/Manager.

*(Signed by Peter J. Thomas)*

PETER J. THOMAS  
Administrator  
Rural Business-Cooperative Service

Attachment

«name»  
«Company»  
«Address1»  
«Address2»  
«City»

Dear «title»:

As a Federal agency, we are governed by several regulatory requirements. When you filed your application, you signed Form RD 400-4, "Assurance Agreement." This assures recipients are in compliance with requirements of Title VI 2 and civil rights laws. These requirements include the following:

- ❑ Title VI of the Civil Rights Act of 1964
- ❑ Title IX of the Education Amendments of 1972
- ❑ Section 504 of the Rehabilitation Act of 1973
- ❑ Age Discrimination Act of 1975

To ensure that these requirements are met, we are obligated to complete Civil Rights Compliance Reviews (Form RD 400-8, copy attached) on all revolving loan funds (RLFs). This review is performed before the loan is closed and every 3 years thereafter, as long as the RLF is used for the original or similar purpose for which the assistance was intended.

In order to obtain this information for our review, you must provide racial/ethnic and gender data for your relending program. As the intermediary (primary recipient) for the RLF, you must set up an internal process to collect this required data from your ultimate recipients to provide to the agency

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2 Title VI is used as short-hand for all of the applicable statutes. With respect to the definition of recipients and beneficiaries, and what constitutes Federal financial assistance, the law applying to Title VI is generally applicable to later statutes based on Title VI, namely, Title IX of the Education Amendments of 1972, 20 U.S.C. section 1681 et seq; section 504 of the Rehabilitation Act of 1973, 29 U.S.C. section 794; and Age Discrimination Act of 1975, 42 U.S.C. section 6101 et seq. Thus, entities subject to Title VI are also subject to section 504, Title IX, and the Age Discrimination Act.

upon request. It is our responsibility to ensure that all RLF participants are in compliance with all applicable Civil Rights laws, conditions of loan/grant agreements, and program requirements at all times. We are required to ensure that all RLFs serve the public and under-represented groups without discrimination.

The following items will be reviewed for compliance:

1. Various types of racial/ethnic and gender data is required on **each ultimate loan recipient**. This is required because you use application forms to determine eligibility. This can be accomplished by revising your application to include statistical data and a disclosure statement. The statistical data should include racial/ethnic and gender data. There should be a category for a statement such as, "I do not wish to furnish this information." The disclosure statement should read, "The following information is requested by the Federal Government for certain types of loans, in order to monitor the lender's compliance with equal credit opportunity. You are not required to furnish this information, but are encouraged to do so. The law requires that a lender may neither discriminate on the basis of this information nor on whether you choose to furnish it. However, if you choose not to furnish it, under Federal regulations, this lender is required to note race/ethnicity on the basis of visual observation or surname. If you do not wish to furnish the above information, please check the box below." The lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable State law for the particular type of loan or which applied. Each application will carry the equal opportunity logo, "This is an Equal Opportunity Program. Discrimination is prohibited by Federal Law. Complaints of discrimination may be filed with the USDA, Director, Office of Civil Rights, Washington, D.C. 20250."
2. A summary of actions for each application (rejected, withdrawn, etc.). Records should be maintained on an annual basis.
3. User fees or charges for service – including reasons that certain individuals are charged different or higher rates than others.
4. Racial/ethnic and gender data of your employees, board members, and employees of the ultimate recipients. What efforts have been made to attract minority and persons with disabilities to the board of directors or similar governing body?
5. Methods used by the recipient to inform the community of the availability of services. All written materials, such as pamphlets, brochures, letterhead, handouts, newspaper articles and ads should have the non-discrimination statement printed on them. Example: "Equal Opportunity Lender/Agency".



6. Methods whereby special accommodations are made by the recipient to persons with disabilities, for example, accessible by wheelchairs or access to TDD or relay service for persons with hearing impairment. Facility should have an accessible route through common use areas to meet the American with Disabilities Act/Accessibility Guidelines (ADA/AG) or Section 504 of the Rehabilitation Act of 1973. (Refer to the Uniform Federal Accessibility Standard (UFAS) and ADA/AG, Section 4.3.)

The ADA/AG handbook may be accessed through the internet at the following address:  
[www.ada.gov](http://www.ada.gov).

7. Accessible parking spaces shall be designated as reserved for persons with disabilities by a sign showing the symbol of accessibility. A vehicle parked in the space shall not obscure such signs.
8. Facility should have a designated accessible restroom for persons with disabilities. The restroom must be accessible in accordance with the Uniform Federal Accessibility Standard (UFAS) and ADA/AG, Section 4.22.

These guidelines may be accessed through the internet at the following address:  
[www.ada.gov](http://www.ada.gov).

9. Bulletin board(s) displayed in the public area must have the “And Justice for All” and an “Equal Employment Opportunity is the Law” posters (posters attached).
10. You are reminded that, as a lender and a business, you may be subject to additional Civil Rights laws and regulations. Although Rural Development does not enforce these laws, if, in the course of a compliance review, Rural Development detects a potential violation of these laws, Rural Development is obligated to refer the potential violation to the appropriate enforcement agency.

Since we are required by law to report non-compliance in these requirements, please ensure that you have a mechanism in place to capture this required data.

In addition, all RLFs used for construction projects are subject to the Americans with Disabilities Act, Title III of 1990.

In accordance with 7 CFR Subtitle A, Section 15b.8, if your organization has not complied with items 6, 7, and 8, a self-evaluation has to be conducted with the assistance of person(s) knowledgeable of accessibility issues. The self-evaluation should address but not be limited to ramp and parking, entrance to an office, and restroom(s). A Transition Plan should be developed outlining your plan of action by which all accessibility requirements will be met. If applicable, RBS will request a Self-Evaluation and Transition Plan.

If you have any questions concerning this letter, please feel free to contact (**phone number of designated person...**)

Sincerely,

**STATE OFFICE REPRESENTATIVE**

Enclosures: Copy of Form RD 400-4 "Assurance Agreement"  
"And Justice for All" poster  
"Equal Employment Opportunity is the Law" poster