RD AN No. 3909 (4274-D)
October 27, 2003

SUBJECT: Intermediary Relending Program
Transfers and Assumptions

TO: State Directors, Rural Development

ATTN: Business Programs Directors

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify under what conditions and circumstances an Intermediary Relending Program (IRP) loan can be transferred to another intermediary during a subsequent fiscal year, and emphasize IRP terms and repayment of IRP loans.

COMPARISON WITH PREVIOUS AN:

This AN replaces RD AN No. 3797 (4274-D) dated November 1, 2002.

IMPLEMENTATION RESPONSIBILITIES:

Examples of cases to provide guidance and a clear direction in the approval of future IRP Transfers and Assumptions are as follows:

Loans Approved, Obligated, Not Closed or Funds Disbursed

Where an IRP loan has been approved, funds obligated, and the loan has not been closed, RD Instruction 4274-D, section 4274.355(b), sets out the criteria where an IRP loan may be transferred to another (substituted) intermediary.

EXPIRATION DATE:
October 31, 2004

FILING INSTRUCTIONS:
Preceding RD Instruction 4274-D

A close and genuine relationship to the original borrower as required by 7 CFR 4274.355(b)(2) is one in which the substituted borrower is not a new and independent entity. 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.

Another example would be when 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.

The Administrator's exception authority cannot be used to waive any of the conditions cited above. 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 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.

If all conditions of RD Instructions 4274-D, section 4274.355(b) cannot be met, the IRP loan must be deobligated.

Loans Obligated, Closed, and Funds Not Fully Disbursed

When the IRP loan has been approved, obligated, and closed and IRP funds to the ultimate recipient partially disbursed, as set forth under RD Instruction 4274-D, section 4274.355(b), or as noted under RD Instruction 1951-R, section 1951.889, a transfer and assumption can be completed only for the funds disbursed. However, a transfer and assumption cannot be completed for the obligated but undisbursed funds unless the substitute intermediary bears a "close and genuine relationship" as noted under RD Instruction 4274-D, section 4274.355(b).

If a "close and genuine relationship" does not exist, the undisbursed funds will be deobligated.

Loans Obligated, Closed, Funds Fully Disbursed

When the IRP loan has been approved, obligated, closed, and all loan funds disbursed, a transfer and assumption can occur in accordance with RD Instruction 1951-R, section 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 ultimate recipients and the projects must be similar to the types of projects outlined by the original intermediary.

IRP Terms

In accordance with RD Instruction 4274-D, section 4274.320, no loan to an intermediary will be extended for a period exceeding 30 years. This requirement is interpreted to mean that, for any loan transaction to a substitute intermediary(s) or rescheduling of payments with the same intermediary, the loan terms will not exceed 30 years from the date of the original promissory note. The initial principal payment may be deferred (during the period before the facility becomes income producing) by the Agency, but not for more than 3 years. Deferment of principal payment is not permitted when a rescheduling of payments is completed.

Use of IRP Funds, Payments on IRP Loans

In accordance with RD Instruction 4274-D, section 4274.338(b)(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. If 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…"

During the maximum 3-year principal deferral, 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 will be billed to the Borrower by the Government at least 30 days in advance of the payment due date and shall be based on the full amortized loan amount owed to the Government.

The intermediary should be reminded at the time of the deferral that the maximum 3-year principal deferral period is designed to allow it sufficient time to lend the funds and receive regular installment payments from the ultimate recipients, so that the intermediary can make fully amortized payments to the Agency in the future, and that 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.

As a note, when payments are rescheduled or a transfer and assumption executed, IRP loan terms will not exceed 30 years from the date of the original promissory note.

If we can be of further assistance, please contact Cindy Mason, Loan Specialist, Specialty Lenders Division Servicing Branch, (202) 690-1433.

(Signed by John Rosso)

JOHN ROSSO
Administrator
Rural Business-Cooperative Service