

RD AN No. 4741 (4274-D, 4280-D,  
4280-A, 1942-G and 1951-R, 1951-E)

November 4, 2013

TO: State Directors, Rural Development  
ATTN: Business Programs Directors  
SUBJECT: Revolving Loan Fund Programs  
Ultimate Recipient Conflict of Interest

**PURPOSE/INTENDED OUTCOME:**

This Administrative Notice (AN) is being issued to provide guidance, as it relates to the Intermediary Relending Program, Rural Business Enterprise Grant Program, Rural Economic Development Grant Program and Rural Microentrepreneur Assistance Program, regarding the restrictions on making loans to third parties from the intermediary/grantee in cases where the intermediary/grantee is a tribal entity or public body. The outcome of this revision will clarify how to address and resolve potential conflicts of interest.

**COMPARISON WITH PREVIOUS AN:**

This AN updates and replaces RD AN No. 4690 (4274-D, 4280-D, 4280-A, 1942-G and 1951-R, 1951-E) dated September 16, 2012, with subject “Revolving Loan Fund Programs Ultimate Recipient Conflict of Interest.”

**IMPLEMENTATION RESPONSIBILITIES:**

The Agency has frequently received questions regarding the conflict of interest of Indian tribes and public body intermediaries/grantees, and making third party loans to their members, employees, and tribal business entities. This AN will address these questions and provide further clarification on intermediary/grantee lending to members and employees.

The following lists the instructional and regulatory requirements, by program, for third party loans (please note the four footnotes):

EXPIRATION DATE:  
November 30, 2014

FILING INSTRUCTIONS:  
Preceding RD Instructions 4274-D, 4280-A,  
4280-D, 1942-G and 1951-R, 1951-E

RD Instruction 4274-D, section 4274.308(b)(4) – Intermediary Relending Program<sup>1</sup>

RD Instruction 4280-D, section 4280.323(c) – Rural Microentrepreneur Assistance Program<sup>2</sup>

RD Instruction 4280-A, sections 4280.27(g) and 4280.30(a) – Rural Economic Development Grant Program<sup>3</sup>

7 CFR 3015.205(b)(7) – For nonprofits, hospitals, and institutions of higher education receiving USDA grant or cooperative assistance including from the Rural Business Enterprise Grant Program (RBEG)<sup>4</sup>

7 CFR Pt. 3015, Appendix B, Paragraph 12, For State and local government entities including those receiving RBEG, auditors are required to report any conflict of interest.

### **Lending to Members**

The cited regulations noted under the footnotes shall not prevent an intermediary that is organized as an Indian tribe or public body from making a loan to one of its members.

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<sup>1</sup> To be eligible to receive loans from the IRP RLF, ultimate recipients “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.”

<sup>2</sup> “(c) Assistance that will cause a conflict of interest or the appearance of a conflict of interest including but not limited to: (1) Financial assistance to principals, directors, officers, or employees of the microlender, or their close relatives as defined; and (2) Financial assistance to any entity the result of which would appear to benefit the microlender or its principals, directors, or employees, or their close relatives, as defined, in any way other than the normal repayment of debt.”

<sup>3</sup> 4280.27(g). Zero-interest loans will not be used: “(g) Where there is directly or indirectly a conflict of interest or the appearance of a conflict of interest in the Project; for Intermediaries this would include a situation in which the Intermediary, its officers, managers, Board of Directors, employees, their spouses, children, or close relatives, have a financial or ownership interest in the Project being funded, including its construction or development.”

4280.30(a) “Conflict of Interest. The Intermediary must not own or manage any Ultimate Recipient Project, unless the Project is acquired as a result of servicing a loan made from the Revolving Loan Fund. Conflicts of interest and all appearances of a conflict of interest are not permitted.”

<sup>4</sup> “ It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.”

**Lending to an Employee**

For the purpose of this AN “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 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.

To meet the requirements of the regulations, a public body or Indian tribe that applies for an RLF program loan, must in its application, describe its organizational structure and its structure for the administration of the RLF. The intermediary/grantee should have 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.

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 would be included in the approved Lender’s Manual, and will 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 are ineligible third party recipients.

**Lending to Tribal Entities**

An intermediary/grantee organized as an Indian tribe may make 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. Tribal entities governed under the Tribal Government are not 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).

**Work Plan Documentation**

The Agency's delegated authority should review the intermediary/grantee organizational documents and the work plan and lending manual as they relate to the oversight and administration of the RLF, to ensure the proper separation of duties. The lending manual should address the organizational structure, clarifying how the lending organization is structured and the RLF is administered. The lender's manual should provide the documentation on how the intermediary/grantee will be organized and managed to avoid a conflict of interest. Prior to loan closing, Agency offices should require applicants to provide, to the Agency office's satisfaction, evidence on how the applicant will avoid potential conflicts (with organizations principal officers, loan board, employees, and its members), such as a lender's manual. Agency offices should require Agency prior written approval before these measures are modified.

**USDA Non-Discrimination Statement**

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Washington, DC 20250-9410

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If you have any questions on the information provided, please contact the Specialty Programs Division at (202) 720-1400.

*(Signed by Lillian E. Salerno)*

Lillian E. Salerno  
Administrator  
Rural Business-Cooperative Service