

(2) The loan is not otherwise available on reasonable (i.e., usual and customary) rates and terms from private sources or other Federal, State, or local programs.

(3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(d) At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary must be citizens of the United States or reside in the United States after being legally admitted for permanent residence.

(e) An outstanding judgment against the proposed intermediary obtained by the United States in a Federal court (other than in the United States Tax Court), which has been recorded, shall cause the proposed intermediary to be ineligible to receive any loan until the judgment is paid in full or otherwise satisfied. Agency loan funds may not be used to satisfy the judgment.

#### **§ 1948.104 Eligibility requirements—Ultimate recipients.**

(a) Ultimate recipients may be individuals, public or private organizations, or other legal entities, with authority to incur the debt and carry out the purpose of the loan.

(b) To be eligible to receive loans from the IRP revolving loan fund:

(1) At least 51 percent of the outstanding membership or ownership of the ultimate recipient must be either citizens of the United States or residents of the United States after being legally admitted for permanent residence.

(2) Must be located in a rural area.

(3) Must be unable to finance the proposed project from its own resources or through commercial credit or other Federal, State, or local programs at reasonable rates and terms.

(c) An outstanding judgment against the proposed ultimate recipient obtained by the United States in a Federal court (other than in the United States Tax Court), which has been recorded, shall cause the proposed ultimate recipient to be ineligible to receive a loan from Agency IRP loan funds until the judgment is paid in full or otherwise satisfied. Agency IRP loan funds may not be used to satisfy the judgment.

#### **§§ 1948.105–1948.108 [Reserved]**

#### **§ 1948.109 Loan purposes.**

(a) *Intermediaries.* Agency IRP loan funds must be placed in the intermediary's IRP revolving fund and used by the intermediary to provide direct loans to eligible ultimate recipients.

(b) *Ultimate recipients.* Loans from the intermediary to the ultimate recipient using the IRP revolving fund must be for community development projects, the establishment of new businesses, expansion of existing businesses, creation of employment opportunities, and/or saving existing jobs. Such loans may include, but are not limited to:

(1) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(2) Business construction, conversion, enlargement, repair, modernization, or development.

(3) Purchase and development of land, easements, rights-of-way, buildings, facilities, leases, or materials.

(4) Purchase of equipment, leasehold improvements, machinery, or supplies.

(5) Pollution control and abatement.

(6) Transportation services.

(7) Start-up operating costs and working capital.

(8) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(9) Feasibility studies.

(10) Debt refinancing.

(i) A complete review will be made by the intermediary to determine whether the loan will restructure debts on a schedule that will allow the ultimate recipient to operate successfully rather than merely take over an unsound loan. The intermediary will obtain the proposed ultimate recipient's complete debt schedule which should agree with the proposed ultimate recipient's latest balance sheet; and

(ii) Refinancing debts may be allowed only when it is determined by the intermediary that the project is viable and refinancing is necessary to create new or save existing jobs or create or continue a needed service; and

(iii) On any request for refinancing of existing secured loan(s), the intermediary is required, as a minimum, to obtain the previously held collateral as security for the loan(s) and must not pay off a creditor in excess of the value of the collateral. Additional collateral will be required when refinancing of unsecured loans is unavoidable to accomplish the necessary strengthening of the ultimate recipient's position.

(11) Reasonable fees and charges only as specifically listed in this paragraph. Authorized fees include loan packaging fees, environmental data collection fees, and other fees for services rendered by professionals. Professionals are generally persons licensed by States or accreditation associations, such as

Engineers, Architects, Lawyers, Accountants, and Appraisers. The maximum amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.

(12) Aquaculture including conservation, development, and utilization of water for aquaculture. Aquaculture is defined as the culture or husbandry of aquatic animals or plants by private industry for commercial purposes including the culture and growing of fish by private industry for the purpose of granting or augmenting publicly-owned or regulated stocks of fish.

(13) Tourist and recreational facilities except as prohibited by § 1948.110 of this subpart.

#### **§ 1948.110 Ineligible loan purposes.**

Agency IRP loan funds may not be used for payment of the intermediary's own administrative costs or expenses. The IRP revolving fund may not be used for:

(a) Assistance in excess of what is needed to accomplish the purpose of the ultimate recipient's project.

(b) Distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(c) Charitable and educational institutions, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(d) Assistance to government employees, military personnel or principals or employees of the intermediary or organizations for which such persons are directors or officers or have major ownership (20 percent or more).

(e) A loan to an ultimate recipient which has an application pending with or a loan outstanding from another intermediary involving an IRP revolving fund.

(f) Any line of credit.

(g) Agricultural production, which means the cultivation, production (growing), harvesting, either directly or through integrated operations, of agricultural products (crops, animals, birds, and marine life, either for fiber or food for human consumption, and disposal or marketing thereof, and the raising, housing, feeding, breeding, hatching, control, and/or management of farm and domestic animals). Exceptions to this definition are:

(1) Aquaculture as identified under § 1948.109(b) of this subpart.