

UNNUMBERED LETTERS ISSUED FOR THE APRIL OF 2011

Dated	Subject	Distribution
04-04-11	On-Line Homeownership Education	S/D
04-05-11	Guaranteed Community Facilities Loans for Recreational Projects	S/D
04-11-11	Implementation and Monitoring of the U.S. Small Business Administration and the U.S. Department of Agriculture Memorandum of Understanding	S/D
04-12-11	Interest Rate Changes for Housing Programs and Credit Sales (Nonprogram)	S/D, RDM & AD
04-12-11	Interim Guidance for Feasibility Analysis of Health Care Facilities	S/D
04-13-11	Single Family Housing Guaranteed Loan Program Electronic Loan Closing Pilot	S/D
04-14-11	Retention of Documentary Materials for Litigation in the Case of <i>Cantu v. United States</i> (Hispanic Farmers and Ranchers) Response Required by April 20, 2011	S/D
04-21-11	Funding of Section 523 Mutual Self-Help Housing Grants for Fiscal Years 2011	S/D

April 4, 2011

TO: State Directors
Rural Development

ATTN: Program Directors
Single Family Housing

FROM: Chad Parker (Signed by Chad Parker)
Acting Deputy Administrator
Single Family Housing

SUBJECT: On-Line Homeownership Education

On March 24, 2010, an unnumbered letter was published regarding eHome America being nationally approved as an online homeownership education provider for the Section 502 Direct Loan Program. It has been determined that the online course offered by eHome America continues to meet the Agency's needs as a provider for on-line homeowner education.

Since this course includes an online assistance feature and a personal counseling session, it also meets the intent of the Handbook preference for classroom or one-on-one training. As such, it may be included on the State's list of approved local homeowner education providers.

Customers who are interested in taking this particular course should be referred to the local non-profit agency for the area if one exists in the local area. If there is not a local organization serving the area where the customer resides, the customer may take the course online directly through eHome America. To find participating organizations affiliated with eHome America's course, visit eHome America's website at www.eHomeAmerica.org.

Although the Agency has approved eHome America as an online homeownership education provider, we are not an affiliate of eHome America or the course itself. As such, we are not in a position to provide technical assistance to customers regarding course instruction and/or procedures. ***Field Office staff should not refer customers to the National Office for instructions on how to utilize the course.*** Applicants should be referred to either the eHome America website or their technical support line at 1-800-299-0267.

EXPIRATION DATE:
March 31, 2012

FILING INSTRUCTIONS
Housing Programs

It is important to note that the agency does not have a preference regarding classroom training and or the eHome online course. This unnumbered letter should not be construed as a requirement to take any one particular course over the other. Both methods will be accepted.

Field and State Office staff should continue to familiarize themselves with the eHome course. To help assist field staff, a Frequently Asked Questions document, along with other eHome America information has been posted to SharePoint at the following path:

[Single Family Housing](#) > [Single Family Housing Information](#) > [Direct Program Information](#) > National Office Approved On-line Homeownership Education Providers

Field and State office staff that have questions regarding online homeownership education, should contact the National Office Single Family Housing staff by sending an email to: SFHDIRECTPROGRAM@WDC.USDA.GOV .

Sent by Electronic Mail on 04/04/11 at 10:15 a.m. by Single Family Housing Direct Loan Division.

April 5, 2011

TO: All State Directors
Rural Development

FROM: Tammye Treviño (Signed by Tammye Treviño)
Administrator
Housing and Community Programs

SUBJECT: Guaranteed Community Facilities Loans for Recreational Projects

The purpose of this unnumbered letter is to clarify the Agency's position as it relates to recreational facilities. Rural Development (RD) and its predecessor agencies have experienced a history of facility failures for recreational facilities that were supported entirely by fees or membership dues for use of the facility. In particular, golf courses, swimming pools, skiing, ice skating rinks, and sports venues have not performed well and losses have been excessive.

RD Instruction 3575-A, section 3575.47 states that "All projects financed under the provisions of this section must be based on taxes, assessments, revenues, fees, or other sources of revenue in an amount sufficient for facility operation and maintenance, a reasonable reserve and debt payment. Other sources of revenue or guarantors are particularly important in considering the feasibility of recreation-type loans."

When RD determines that the sources of revenue are insufficient for "facility operation and maintenance, a reasonable reserve and debt payment," then an RD approved assured revenue source, such as tax revenues or an unconditional letter of credit from a bank, or guarantee(s) must be secured before RD can guarantee the loan. The RD approved assured revenue source or guarantee(s) must be sufficient to cover projected shortfalls for the life of the loan.

EXPIRATION DATE:
April 30, 2012

FILING INSTRUCTIONS:
Community/Business Programs

RD Instruction 3575-A, section 3575.47(c) also addresses the requirement for a financial feasibility analysis on community facility type projects. The financial feasibility analysis should address the adequacy of equity, cash-flow from reliable sources, security, history, management ability, need for the facility, competition, significant community support and location.

Recreational projects should be able to demonstrate the following:

- The local community's planning process that determined that there is a need for the project in the local community.
- Evidence of a well developed fund raising campaign by a professional or experienced fund raising staff.
- Local fund raising efforts to raise sufficient funds to acquire the land and pay start-up expenses needed to cover expenses prior to opening of the facility.
- The local area demographic information that supports a need for the facility and estimates the potential usage. Using visitor demographics to support feasibility will require greater scrutiny by RD.
- The location and distance to similar competitive facilities that provide the same recreational opportunities must be clearly identified. The local service area should only include the geographic area and population that would be closest to the proposed facility than to a competing facility.
- The feasibility study should demonstrate that a majority of its service population has sufficient income to afford and utilize the facility.

Given the history of losses the Community Facilities Guaranteed Loan Program has experienced on recreational loans, especially loans related to golf courses, the National Office is looking very closely at loans of this type. In an effort to protect the safety and soundness of the Community Facilities Guaranteed Loan Portfolio, the National Office will be reviewing recreational type loans on a case by case basis. Generally, due to the high risk nature of recreational facilities, loan guarantees may not exceed 50%. Guaranteed loan applications for recreational facilities must be subject to greater scrutiny and be able to demonstrate assured repayment.

Should you have any questions, please contact Kendra Doedderlein, Community Programs Specialist at (202)720-1503.

April 11, 2011

TO: State Directors, Rural Development

ATTN: Business Programs Directors

FROM: Judith A. Canales
Administrator
Business and Cooperative Programs

SUBJECT: Implementation and Monitoring of the U.S. Small Business Administration and
the U.S. Department of Agriculture Memorandum of Understanding

On April 22, 2010, Secretary Vilsack signed a Memorandum of Understanding (MOU) between the U.S. Small Business Administration (SBA) and U.S. Department of Agriculture (USDA). The purpose of the MOU is to enhance rural economic development through greater collaboration between SBA and USDA.

The MOU specifies that “RBS and SBA intend to coordinate delivery of their respective programs to rural areas.” The MOU also describes activities in the following areas of collaboration: (1) marketing and outreach; (2) use of technology; (3) agency cross training; (4) joint lending engagements; (5) local/regional food supply network lending; (6) harmonizing loan program and forms; and (7) program management and review.

Rural Business and Cooperative Service (RBS) seeks to ensure consistent implementation and monitoring of our progress towards the goals identified in the MOU. Attached is a copy of the MOU and survey questions. The survey will be used to monitor progress towards meeting the objectives in the MOU. Survey data will be collected semiannually from each RBS program office at the state and national levels on April 15th and October 15th until the MOU expires. However, for the first report please go to the Oversight Resources Coordination Staff (OCS) tab on the SharePoint site at <https://rd.sc.egov.usda.gov/teamrd/BP/default.aspx> and complete this survey by April 29, 2011.

RBS will analyze the results semiannually and use the data to report internally and externally on our progress toward greater collaboration with SBA. The information will also help us effectively cultivate partnerships with other organizations that complement our efforts to build vibrant and sustainable rural economies.

It is important to note that although RBS is grateful to the 17 states that initially implemented the MOU; the MOU applies to all USDA National and State offices. Thank you for your continued commitment to the future of rural areas. For additional information, please contact Kristen Grifka, OCS, Business Analysis and Financial Review Specialist at (202) 720-0786 or Kristen.grifka@wdc.usda.gov.

Attachments

Rural Business Service and Small Business Administration Collaboration Survey

- 1) Do you coordinate outreach with SBA?
- 2) Do you advise borrowers/grantees about SBA's programs?
- 3) Does your website link to their website(s)?
- 4) How many borrowers have you referred to SBA/their resource partners within the last year?
- 5) Do you encourage your resource partners to make referrals to SBA/their resource partners?
- 6) Do you exchange training schedules with SBA/their resource partners?
- 7) How many joint training events have you conducted with SBA/their resource partners?
- 8) How many projects have you funded jointly with SBA/their resource partners?
- 9) What is your leverage ratio associated with these joint projects?
- 10) How many jobs were saved or created because of the joint projects?
- 11) Have you discussed ways to increase financial assistance to clients involved in the local food supply chain?
- 12) Have you explored ways to make RD and SBA's financial programs more complimentary?
- 13) Have you and SBA and/or their resource partners explored opportunities to leverage your respective strengths?
- 14) Describe barriers to USDA/SBA collaboration, if applicable.
- 15) Has the State Director met with their SBA counterpart within the last 6 months?
- 16) Has the State Director identified at least one special joint project to work on with SBA over the next year?
- 17) Has the State Director designated a senior staff member to implement special SBA projects and/or coordinate service delivery?
- 18) Provide any additional information that you would like to share.

Memorandum of Understanding
between the
U.S. Small Business Administration
and the
U.S. Department of Agriculture

Memorandum of Understanding
between the
U.S. Small Business Administration
and the
U.S. Department of Agriculture

PURPOSE

The U.S. Small Business Administration (SBA) and the U.S. Department of Agriculture (USDA), acting through the Rural Business-Cooperative Service (RBS or Rural Development) (together the "Agencies" or the "Parties"), believe that there are people and places in rural areas and small communities with underserved financial needs, especially current and prospective small businesses owned by minorities, women, and veterans, that would benefit from a joint effort by the Agencies to encourage sustainable growth and development financed by loans guaranteed by SBA and by loan guarantees, loans, and grants by RBS. The Agencies intend to coordinate their programs to assist small businesses in underserved rural areas. Each Agency will apply its expertise and experience according to its legislative mandate.

The Agencies enter into this Memorandum of Understanding (MOU) to better serve rural areas by:

1. Improving opportunities for small businesses to start and grow;
2. Coordinating the delivery of development programs;
3. Increasing the number of small business loans guaranteed by SBA and RBS;
4. Developing relationships with Federal, State, county, and local agencies; private organizations; and commercial and financial institutions to facilitate and support the development of strong rural businesses; and
5. Fostering and supporting sustainable development, livable wage jobs, and quality of life objectives and principles.

The Agencies intend to first begin the cooperative efforts discussed in this MOU within the 10 States listed in Attachment A. The Agencies will meet every 3 months to measure progress under this MOU, including results and best practices and to roll-out this initiative nationwide.

BACKGROUND

Department of Agriculture (USDA)

RBS is one of the Agencies reporting to the Under Secretary for Rural Development. RBS offers many programs ("Business Programs") to promote small business development, including direct and guaranteed loans and grant assistance. These programs are authorized under the Consolidated Farm and Rural Development Act, the Food Security Act of 1985, and the Rural Electrification Act of 1936.

RBS administers the Business Programs through a network of State Offices and field offices. Rural Development State Directors administer the Business Programs in the individual States. One such program is the Business and Industry Guarantee Loan Program (B&I) which guarantees quality loans made by lending institutions.

Small Business Administration (SBA)

SBA acts under the Small Business Act of 1953, as amended, and the Small Business Investment Act of 1958, as amended, to aid, counsel, assist, and protect the interests of small business. SBA guarantees loans and provides business development assistance to small businesses. SBA administers its programs through district offices throughout the United States. SBA provides additional services through its network of resource partners; the Small Business Development Centers (SBDC), SCORE, U.S. Export Assistance Centers (USEAC), Women's Business Centers (WBC), and Veterans Business Outreach Centers (VBOC).

SCOPE

Many rural parts of the country have suffered decades of poverty reflected in unemployment and underemployment rates in excess of 20 percent. Shifting demand, global competition, and changing demographics have escalated the conditions that cause pockets of persistent poverty, loss of jobs, and declining population and investment capital in many rural areas. SBA and RBS intend to work together to stimulate small business creation and expansion in rural areas.

SBA and Rural Development each intend to use their respective resources to provide small businesses in rural areas with loan guarantees and technical assistance in an effort to help build diverse and sustainable economies, reverse population decline, create and sustain jobs, and improve quality of life. When possible, the Agencies will coordinate efforts with State, county, and local agencies; private organizations; financial institutions; industry associations; and local organizations, such as Chambers of Commerce and community development organizations. SBA resource partners, universities including Historically Black Colleges and Universities, and other education institutions may be asked to participate in various ways as SBA and RBS work together to help rural businesses start and grow.

Through the cooperation outlined in this MOU, the Agencies will support smart growth strategies to enhance the livability and sustainability of rural communities, combat sprawl, and promote growth that strengthens and diversifies rural economies.

Both Agencies realize that some joint training and outreach activities contemplated in this MOU may be subject to additional negotiation and a separate signed agreement pursuant to SBA's cosponsorship authority (15 U.S.C. § 633(h)).

AREAS OF COLLABORATION

RBS and SBA intend to coordinate delivery of their respective programs to rural areas by joint activities which may include, but are not limited to, the following:

Marketing and Outreach

1. Each Agency's field offices intend to advise potential small business borrowers of the other Agency's credit programs that may support all or a portion of the small business' financing needs. RBS and SBA field offices will exchange promotional and reference materials, including brochures and training schedules, and will distribute the other Agency's information to its field network and its potential applicants when appropriate.
2. Each Agency's field offices intend to coordinate referrals of small business applicants to one another when appropriate and consistent with each Agency's mission.
3. Each Agency intends to coordinate its outreach to local and national financial institutions to increase awareness of the relevant SBA and RBS programs of the Agencies and the special characteristics of and potential for economic development in areas, subject to availability of funds.
4. Both RBS and SBA will encourage their networks of resource partners to refer rural businesses to the other Agency's resources, where appropriate. Rural Development's network includes National and State Rural Partnership Councils, State and sub-State Offices, and Appropriate Technology Transfer to Rural Areas. SBA's network includes Small Business Development Centers, SCORE Chapters, U.S. Export Assistance Centers, Veteran Business Outreach Centers and Women's Business Centers. By mutual agreement, USDA and SBA may identify pairings of State and district offices to explore mutual best practices available to serve clients.
5. The Agencies intend to develop working relationships with other Federal, State, county, and local agencies; private organizations; and educational and financial institutions to facilitate and support the development of strong rural businesses.

Use of Technology

6. The Agencies will link to each other's Internet Home Pages. Each Agency will ensure that the locations and addresses of the other Agency's field offices may be accessed from its Web site. To the extent available and practicable, other technology links will be explored and implemented by mutual consent.

Agency Cross Training

7. Each Agency, to the extent practical and to the extent funds are available, intends to develop joint field training seminars and provide representatives to explain programs, credit analysis techniques, and processing and servicing policies to the staff of the other Agency during these training seminars.

Joint Lending Engagements

8. SBA and RBS would like to explore ways each Agency may capitalize on the strengths of the existing SBA and RBS loan program processes and procedures already established by each Agency, such as delegated lending authority and lender oversight requirements.

Local/Regional Food Supply Network Lending

9. SBA and RBS would like to exchange information and discuss ways to increase lending to food processors and other borrowers who play a role in the local food supply chain.

Harmonizing Loan Program and Forms

10. In order to serve the largest number of rural businesses as efficiently as possible, SBA and RBS will explore the possibility of making their financial programs more complementary, such as minimizing differences in program fees, and processing and closing procedures, to the extent permitted by the statutes and regulations which govern the respective programs. Any harmonization efforts will be documented through a separate written agreement.

Program Management and Review

11. At least semiannually, each SBA District Director, Branch Manager, or designee will meet with his/her counterpart Rural Development State Director or designee to review previous joint activities and outline additional cooperative efforts. They should initiate, in cooperation with local organizations, at least one special joint project each year to support the growth and development of rural businesses in their districts.

12. SBA District Directors and Rural Development State Directors will designate a senior staff member to implement the special projects under this MOU and coordinate service delivery.

13. At least annually, SBA's Associate Administrator for Field Operations, USDA's Administrator for Business and Cooperative Programs, and RBS's Deputy Administrator for

Business Programs or their designees will review the previous year's joint activities and outline additional cooperative efforts.

TERM, AMENDMENTS AND TERMINATION

This MOU will take effect on the date of execution and will remain in effect for 3 calendar years, at which time the Parties may extend the MOU for an additional 2 years by mutual written agreement. The Parties may amend this MOU at any time by mutual written agreement. Either Party may terminate this MOU upon giving 60 days written notice to the other Party. This agreement is subject to available funding and applicable statutes and regulations.


CONTACT PERSONS

For SBA, the Associate Administrator for Field Operations will be the officer responsible for this MOU. For RBS, the Deputy Administrator for Cooperative Programs will be the responsible officer.

SIGNATURES

The following individuals have authority to commit their respective Agencies to the terms of this MOU.

U.S. Small Business Administration

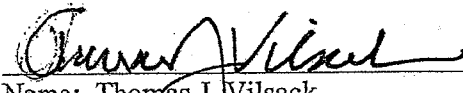


Name: Karen G. Mills
Title: Administrator

4.22.10

Date

U.S. Department of Agriculture



Name: Thomas J. Vilsack
Title: Secretary

4.21.10

Date

Attachment A

LIST OF STATES

Arkansas
Indiana
Iowa
Kansas
Louisiana
Maine
Michigan
Minnesota
New Mexico
Nevada
North Carolina
North Dakota
Ohio
Oregon
Virginia
Vermont
Washington

April 12, 2011

SUBJECT: Interest Rate Changes for Housing Programs
and Credit Sales (Nonprogram)

TO: Rural Development State Directors,
Rural Development Managers,
and Area Directors

ATTN: Rural Housing Program Directors

The following interest rates, effective May 1, 2011, are changed as follows:

<u>Loan Type</u>	<u>Existing Rate</u>	<u>New Rate</u>
ALL LOAN TYPES		
Treasury Judgement Rate	0.270%	0.260%

The new rate shown above is as of the week ending March 25, 2011. The actual judgement rate that will be used will be the rate for the calendar week preceding the date the defendant becomes liable for interest. This rate may be found by going to the Federal Reserve website for the weekly average 1-year Constant Maturity Treasury Yield (http://www.federalreserve.gov/releases/h15/data/Weekly_Friday_H15_TCMNOM_Y1.txt).

RURAL HOUSING LOANS

Rural Housing (RH) 502 Very-Low or Low	4.625	4.625
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EXPIRATION DATE:
May 31, 2011

FILING INSTRUCTIONS:
Administrative/Other Programs

Single Family Housing (SFH) Nonprogram	5.125	5.125
Rural Housing Site (RH-524), Non-Self-Help	4.625	4.625
Rural Rental Housing and Rural Cooperative Housing	4.625	4.625

Please notify appropriate personnel of these rates.

(Signed by Tammye Trevino)

TAMMYE TREVINO
Administrator
Housing and Community Facilities Programs

Sent by electronic mail on 4-21-2011 at 10:00am by PAD.
State Directors should advise other personnel as appropriate.

April 12, 2011

TO: State Directors
Rural Development

ATTN: Community Programs Directors

FROM: Tammy Treviño
Administrator
Housing and Community Facilities Programs

SUBJECT: Interim Guidance for Feasibility Analysis of Health Care Facilities

The purpose of this unnumbered letter and attachments is to provide guidance and information to Rural Development Field Offices to assist them in the financial and technical evaluations of proposals submitted by Health Care Facilities for Community Programs financing.

While this unnumbered letter is geared to Critical Access Hospitals (CAH's), the principles apply to all Health Care Facilities.

We have researched information that we believe will be helpful in several areas of financial and technical evaluations to include the following:

1. Financial Indicators (also referred to as ratios)

Based on a number of dockets reviewed by the National Office for concurrence, it was concluded that the overall quality of the financial feasibility reports was less than desirable and would not suffice as the financial feasibility analysis.

EXPIRATION DATE:
April 30, 2012

FILING INSTRUCTIONS:
Community/Business Programs

Understanding a loan applicant's strengths, weaknesses and competition is vital when making key financial decisions. Financial analysis is part of the financial decision making process. As a decision maker, you must be able to use the analytical techniques of financial analysis. Most hospitals, health systems and other healthcare organizations routinely evaluate their financial condition by calculating various ratios and comparing the values to those for previous periods, looking for differences that could indicate a meaningful change in financial condition. Many healthcare organizations also compare their own ratio values to those of similar organizations, looking for differences that could indicate weaknesses or opportunities for improvement.

Critical Access Hospitals

Comparisons with other organizations are only as useful as the degree to which the organizations are similar. Contrasting the financial positions for a Critical Access Hospital (CAH) with that of a major teaching hospital is not informative because the two hospitals have vastly different missions. Therefore, one key element in financial statement analysis is the collection of financial data for similar hospitals.

The Flex Monitoring Team, which is comprised of the staff from The Rural Health Research Centers at the Universities of Minnesota, North Carolina at Chapel Hill and Southern Maine, conducted a study that developed and disseminated comparative financial indicators specifically for CAH's using Medicare Cost Report (Healthcare Report Information System) data. Among the identified 114 financial ratios that have proven useful for assessing financial conditions, only 20 indicators deemed appropriate for assessment of a CAH's financial condition were chosen. These 20 indicators were selected based on the following financial performance dimensions:

Profitability
Liquidity
Capital
Revenue
Cost
Utilization

Attachment 1 further describes the 20 indicators and performance dimensions. Attachment 2 rates the usefulness of each of the 20 indicators. These indicators can also be applied to other Health Care Facilities. While some ratios may not be applicable to all Health Care Facilities, the same principles apply.

CAH's face a set of challenges disparate from non-CAH hospitals, so the development of financial indicators specific to their environment is critical in performance assessment. Because these hospitals tend to have a higher risk of financial insolvency, assessing their financial performance is key to ensuring their long term financial survival. The study attempted to provide CAH administrators with a set of comparative financial indicators designed specifically for small, Medicare cost-based reimbursed hospitals. The study is a genuine collaboration between a university-based research team and practitioners with experience and expertise in the financial management of CAH's. Together both parties worked to produce financial indicators that CAH boards and management can use to improve the financial management of their organizations. The full report may be viewed or downloaded from the Flex Monitoring Team website at http://flexmonitoring.org/documents/BriefingPaper7_FinancialIndicators.pdf.

2. Formats

Generally, an independent financial feasibility study is required for replacement or renovation of Health Care Facilities. Based on a number of dockets reviewed by the National Office for loan approval concurrence, many of the financial feasibility reports submitted do not meet the

requirements of the regulations and suffice as the analysis. Exhibit A of RD Instruction 3575-A is an outline that may be used as a guide for the preparation of financial feasibility reports. The guide is a basic format that contains minimal guidelines and the report's writer is expected to fully disclose and analyze all significant factors that may have a favorable or adverse effect on the financial success of the proposed facility. Attachment 3 is a detailed format that contains guidelines for preparing feasibility studies for Health Care Facilities. The format offers sufficient documentation to determine economic feasibility as well as financial viability.

3. Technical Feasibility

Guide 6 to RD Instruction 1942-A contains an outline used as a guide when preparing preliminary architectural reports. A CAH prototype is available and technical staff is encouraged to utilize the CAH prototype as a guide to provide appropriate designs and help control project costs when reviewing proposals for CAH's and other Health Care Facilities. The prototype is available on the Health Resources and Services Administration (HRSA) website and can be viewed at <http://www.hrsa.gov/ruralhealth/resources/criticalaccess/criticalaccessreplacement.html>. It is important that program staff work closely with technical support staff when working with applicants to assist in the preparation of a sound architectural study.

4. Predevelopment Cost

Based on discussions with lenders, other agencies and state offices, a major issue is assessing the ability of Health Care Facilities to provide funds for predevelopment costs. These are usually:

- Preliminary architectural feasibility study
- Financial feasibility study
- Environmental analysis
- Land and rights costs
- Legal costs

In some cases the applicant has sufficient reserves. In other cases short-term financing or grants from other sources are obtained. It is important in early discussions with perspective applicants to discuss the requirement and sources of payment of predevelopment costs.

The overriding consideration should be that Rural Development funding for Health Care Facilities will result in financially and technically feasible projects that have substantial community support and are within the means of a community to successfully own and operate the facility.

Attachments

CAH FINANCIAL INDICATORS

Attachment 1

Performance Dimension and Indicator	Significance and Definition	Median
Profitability Indicators Measure the organization's ability to make a profit		
Total margin	Net income/Total revenues	2.33
Cash flow margin	((Net income - (contributions, investments and appropriations)) + depreciation + interest) / (Net patient revenue + other income - (contributions, investments and appropriations))	3.12
Return on equity	Net income / Fund balance	5.72
Liquidity Indicators Measure the organization's capacity to pay its debts in a timely manner		
Current ratio	Current assets / Current liabilities	1.9
Days cash on hand	(Cash + marketable securities + unrestricted investments) / [(Total expenses-depreciation)/Days in period]	41.74
Net days revenue in accounts receivable	(Net patient accounts receivable) / (Net Patient service revenue / Days in period)	59.31
Capital Structure Indicators Measure the extent to which an organization uses debt and equity financing		
Equity financing	Fund balance / Total assets	62.99
Debt service coverage	(Net Income + depreciation + interest) / (Current portion of long-term debt + interest expense)	2.77
Long-term debt to capitalization	Long-term debt / (Long-term debt + fund balance)	20.65
Revenue Indicators Measure the amount and mix of different sources of revenue		
Outpatient revenues to total revenues	Total outpatient revenue / Total patient revenue	0.57
Patient deductions	(Contractual allowances + discounts) / Gross total patient revenue	23.40
Medicare inpatient payer mix	Medicare inpatient days / (Total inpatient days - Nursery bed days - Skilled Nursing Facility (SNF) swing bed days)	78.86
Medicare outpatient payer mix	Outpatient Medicare charges / Total outpatient charges	37.38
Medicare outpatient cost to charge	Outpatient Medicare costs / Outpatient Medicare charges	60.35
Medicare revenue per day	Medicare revenue / (Medicare days - Nursing Facility (NF) swing bed days)	1283.98
Cost Indicators Measure the amount and mix of different types of costs		
Salaries to total expenses	Salary expense / Total expenses	45.65
Average age of plant	Accumulated depreciation / Annual depreciation expense	12.32
Full Time Employees (FTEs) per adjusted occupied bed	(Number of FTEs / (((Inpatient days - NF swing days - nursery days) (total patient revenues / (Total inpatient revenue - NF revenue - other Long Term Care (LTC) revenue))) / Days in period]	6.17
Utilization Indicators Measure the extent to which fixed assets (beds) are fully occupied		
Average daily census swing-SNF beds	Inpatient swing bed SNF days / Days in period	1.51
Average daily census acute beds	Inpatient acute care bed days / Days in period	2.87

Which indicators are most useful? Which indicators are least useful?

Performance Dimension and Indicator	Most Useful (%)	Least Useful (%)
Profitability Indicators		
Total margin	95	7
Cash flow margin	94	4
Return on equity	75	12
Liquidity Indicators		
Current ratio	81	5
Days cash on hand	89	5
Net days revenue in accounts receivable	99	5
Capital structure Indicators		
Equity financing	67	16
Debt service coverage	71	16
Long-term debt to capitalization	69	14
Revenue Indicators		
Outpatient revenues to total revenues	80	3
Patient deductions	78	8
Medicare inpatient payer mix	89	8
Medicare outpatient payer mix	83	9
Medicare outpatient cost to charge	79	7
Medicare revenue per day	77	11
Cost Indicators		
Salaries to total expenses	89	8
Average age of plant	73	20
FTEs per adjusted occupied bed	96	10
Utilization Indicators		
Average daily census - swing/SNF beds	73	12
Average daily census - acute beds	71	8

Guidelines for Preparation of Financial Feasibility Studies
Healthcare Type Facilities

Section I – Signed and Dated Opinion Letter

Section II – Historic and Forecasted Financial Statements and Schedule of Ratios

- Historical and Forecasted Statements of Activities and Changes in Net Assets
- Historical and Forecasted Statements of Financial Position
- Historical and Forecasted Statements of Cash Flows
- Schedule of Historic and Forecasted Ratios
 - See Attachments 1 & 2 for a listing of ratios that may be included and how to calculate ratios. The ratio analysis is included as Table 3 to the feasibility studies.
 - Calculate each ratio for 5 historical years and each year of the feasibility study.
 - For each ratio, show the median value (if available) for the overall hospital performance in the State (for the most recent year available). **NOTE: Hospital management should be aware that all ratios indicating subpar performance by the hospital will require a satisfactory explanation during the application review process. Therefore, hospital management should include explanations for all ratios that are significantly lower than the Statewide medians (e.g., all ratios below the quartile value for the worst 25% of hospitals in the State).**

Section III – Summary of Significant Financial Forecast Assumptions and Accounting Policies

Basis for Assumptions

- Provide an overview of what is included in the financial forecast

General Description of the Hospital and the Surrounding Health Care Market

- Description of organization structure (e.g., non-profit/501(c)(3)). Overview of the services offered in the hospital (including inpatient, outpatient and long-term care services).
- List and description of all affiliated organizations (including all subsidiaries, parent organizations/holding companies, and joint ventures) and describe basis for affiliation. Include an organization chart clearly showing the linkages with all subsidiary/parent/related organizations.
- Description of governance structure.
- Listing of key management personnel (including at a minimum: Chief Executive Officer (CEO), Chief Operating Officer (COO) (if applicable), Chief Financial Officer (CFO), Medical Director, Nursing Director).

Project Description

- Provide objectives to be accomplished as a result of the project.
- Provide a breakdown of construction expenses.
- Summarize changes to structural components of service areas as a result of the project.
- Provide timeframes for completing the project, including forecasted start and completion dates.

- Provide Certificate of Need (CON) information, where applicable (date the CON was approved by the State or status of CON application if approval has not yet been obtained).

Financing Plan

- Sources and Uses of Funds for the project. Sources should clearly show Community Facility (CF) loan amount and other sources of funds.
- Date of initial closing and date that permanent financing begins to amortize.
- Time period (start and stop date) during which capitalized interest will be required.
- Interest rate for capitalized interest and interest rate on the CF loan.

Summary of Significant Accounting Policies

- Explain which organization(s) financial performance and accounts are included in the financial forecast.
- List those affiliates/subsidiaries/parent/holding company/related organizations whose financial performance and accounts do not appear in the financial forecast.
- Summarize significant accounting policies.

Net Patient Service Revenue

- Provide overview of the various payor systems under which the hospital receives patient revenues. Address each payor system that provides more than 5% of hospital revenues.

Historical and Forecasted Payor Mix – Revenues from Inpatient Services

- Provide net revenues by payor for last 5 historical years and all forecasted years.
- Separately identify all payers that provided more than 5% of the hospital's inpatient revenues.
- Provide revenue by payor mix for each new or expanded service.
- Explain reasons for changes in payor mix.

Historical and Forecasted Payor Mix – Revenues from Outpatient Services

- Provide net revenues by payor for last 5 historical years and all forecasted years.
- Separately identify all payers that provided more than 5% of the hospital's outpatient revenues.
- Provide revenue by payor mix for each new or expanded service.
- Explain reasons for changes in payor mix.

Historical and Forecasted Reimbursement Methodologies – Inpatient Services

- Provide description for each payor that provided more than 5% of the hospital's inpatient revenues. Background and information on the history and forecast for each payor should be detailed enough to understand changes in payor revenues after accounting for any changes in utilization. Information showing case mix intensity is required for all payers using case payment methodologies. Each managed care contract should be explained in sufficient detail to understand method by which payments are received and how revenues from each managed care contract were estimated and differences from historical contracts.
- All revenues received from special payment pools (developed pursuant to a hospital "tax" for charity care, etc.; or funded via legislation through appropriations; or by any other method) must be isolated and clearly described.
- Medical education payments, by payor type, must be isolated and clearly described.

Project Initiatives

- For each revenue-generating service area that is being materially realigned, expanded or reduced, and for all new services, identify and quantify increases or decreases to revenues and expenses and provide corresponding assumptions (and basis for assumptions).
- Identify all expense-center activities (not identified above) that will be consolidated or made more efficient and quantify corresponding savings to be achieved and provide corresponding assumptions (and basis for assumptions).

Other Operating Revenue

- Each source of operating revenue should be separately identified.
- Revenues received from affiliates should be separately identified.

Non-operating Revenue

- Each source of non-operating revenue should be separately identified.

Operating Expenses

- **Salaries and Wages**
 - Clearly identify number of Full-Time Employees (FTE's) for each year (excluding contracted services). Show interns and residents and salaried physicians separate from the rest of the hospital staff. If the hospital operates nursing home beds or other long-term care services, these FTE's should also be shown separate from staff for acute care services.
 - Explain all major initiatives (and the corresponding impact for each initiative) for any staffing reductions.
 - Calculate FTE's per adjusted occupied bed and compare to industry and area norms.
- **Fringe Benefits**
 - Explain historical performance and forecast assumptions.
- **Contractor Services**
 - List all services that are contracted and the annual amounts paid for each contracted service and the estimated FTE's used by the contractor in providing the service.
- **Supplies and Other Expenses**
 - All other expenses should be itemized.
 - Operating leases should be separately identified.
- **Insurance Expense**
 - Itemize all insurance expenses.
 - Assess the adequacy of the hospital's insurance coverage (and insurance reserves).
- **Interest Expense**
 - Segregate interest expenses on the CF loan and other interest expenses related to other debts, leases, etc.
- **Depreciation and Amortization Expense**
 - Show depreciation guidelines used by the hospital.

- **Provision for Doubtful Accounts/Bad Debt Expense**
 - Explain historical performance and forecast assumptions.

Balance Sheet Assumptions

- Explain historical performance and forecast assumptions for each of the following:
 - Accounts Receivable
 - Other Receivables
 - Inventories
 - Prepaid Expenses
 - Other Assets (break out all assets greater than \$100,000)
 - Due from Third Party Payors (break down by payor)
 - Pension Fund
 - Malpractice Insurance Fund, if self-insured (also, assess the adequacy of the hospital's insurance reserves)
 - Assets Limited as to Use
 - Accounts Payable and Accrued Liabilities
 - Accrued Payroll and Vacation Benefits
 - Due to Third Party Payors (break down by payor)
 - Estimated Malpractice Payable, if self-insured

Capital Expenditures

- Summarize capital expenditures in recent years (break out by capital equipment, renovation, maintenance, new construction, and capital leases).
- Explain how capital expenditure projections were derived (i.e., how does the hospital develop its capital needs program). Break out by capital equipment, renovation, maintenance and new construction.

Sensitivity Analyses

- 10 percent reduction in inpatient discharges (from the forecasted volume).
- Medicare update factor reduced (by 1 percent increments) to 0 percent. A separate analysis for the entire forecast period should be shown for each 1 percent decrease.
- All proposed changes to the reimbursement system for any payor class. Any legislation that has been passed but not yet put in place should be analyzed.
- Other sensitivity analyses, as required based on analysis.

Section IV – Summary of Significant Demand Forecast Assumptions

General Methodology

A brief statement describing how patient utilization was forecasted; discussing factors such as historical utilization patterns, length of stay, patient origin, population trends, hospital use rates, market share, capital facilities plans for the Hospital and other area health care providers, and current trends and activities of health care providers and insurers which may affect the Hospital.

Historic & Forecast of Inpatient and Outpatient Utilization

A general statement identifying the major factors that are affecting overall patient utilization. This statement will also include the major initiatives that the Hospital is taking that will affect the assumptions for the forecast.

Inpatient Utilization

A list and discussion of the factors affecting inpatient activity including such factors as population growth, use rates, market share and average length of stay.

Outpatient Utilization

A list and discussion of the factors affecting outpatient activity including such areas as the Emergency Room, Ambulatory Surgery, Clinic Visits, Renal Dialysis, Laboratory, Radiology, etc.

Service Area Definition and Patient Origin

A description of the primary and secondary service areas; how they are determined, their location, and identification according to zip codes and a map. Service areas should be separately identified for general acute care inpatient services and outpatient/ambulatory services. Additionally, if the hospital has any other specialty service (e.g., long-term care, rehabilitation care), then that service area should be separately identified if it is different than the service area for the overall inpatient general acute care services. This information may be obtained from the State Hospital Association.

Population of the Service Areas

This includes an historical (most recent census data and current year estimate) summary as well as a forecast summary of the primary and secondary service area populations by zip code. Population data should also be broken out by age group (0-17, 18-44, 45-64, 65 and over) and for females 15-44. This information can be obtained from governmental entities such as the National Planning Data Corporation.

Socioeconomic Characteristics of the Service Areas

This section will give a description of the economic health and stability of the Hospital's service area. Generally as an indication the major service categories are listed according to employers and employees in areas such as:

- Services
- Manufacturing/Mining
- Wholesale and Retail Trade
- Government
- Transportation, Public Utilities, Finance, Insurance and Real Estate
- Construction

A profile chart of the largest 10 to 20 employers should be provided. This information may be obtained from the State or Regional Industrial Management Council.

A narrative and chart displaying the historical and current unemployment information for the County, Major Statistical Area, State, and United States. This information is usually obtained from the U.S. Bureau of Labor Statistics.

A narrative and chart displaying Median Household Income for the service areas and, for comparison, by surrounding Counties, the State, and the United States. This may be obtained from the National Planning Data Corporation.

Description of the impact of the proposed project on the local economy (i.e., permanent and construction jobs created, economic and social spin-off).

Market Assessment of Other Health Care Providers within the Service Area

List of other area hospitals, their proximity to the Hospital, and their percent of market share in the Hospital's service area if greater than 1 percent. This information should be broken out in the same manner as the service area section (i.e. separately identify outpatient/ambulatory and other specialty services if service area are different than general acute inpatient). Obtainable from several sources including the State Hospital Association.

A description of the services provided by each of the competitor facilities, and the nature and extent of recent initiatives and future plans for each of these competitor hospitals.

Market Share by Service

A narrative and charts showing historical trends (last 5 years) for total hospital discharges and a breakdown for all major services showing the market share of the Hospital and its competitors in the primary and secondary service areas. Obtainable from several sources including the State Hospital Association.

A narrative and charts of competitive hospital utilization statistics with comparisons to the hospital in inpatient areas such as Discharges, Average Length of Stay, Percent Occupancy, Patient Days, Average Daily Census, Available Beds. Similarly, provide outpatient activity for visits and procedures in areas such as Emergency Room Visits, Ambulatory Surgery, Clinic Visits, Renal Dialysis, Laboratory Procedures, Radiology, etc. This information may be available from Blue Cross and State Supplement to the Institutional Cost Report.

Inpatient Use Rates

A narrative and charts depicting use rate for the primary and secondary service areas. Use rate measures total hospital discharges from the service area population and is expressed in discharges per 1,000 population. The historical and projected use rates should be provided for each major service (e.g., medical/surgical, obstetrics, etc.) broken down by primary and secondary service area and by fee for service patients, managed care patients and total patients. Historical (last 5 years) comparative use rates should be displayed through charts for the defined service area, City or County if appropriate, the State and the United States.

Hospital's Historical Utilization

Primarily a series of charts depicting inpatient historical (last 5 years) and forecasted utilization statistics by total and major service areas as well as by outpatient visits and procedures.

Hospital's Medical Staff

A narrative and charts that analyze the medical staff including their admissions patterns, age and specialty characteristics as well as support for the Hospital and the project. Provide a chart of the top admitters (ranked from highest to lowest total annual admissions in the most recent fiscal year and equaling at least 60 percent of total hospital admissions) showing physician specialty, age and number of admissions. Provide narrative and a summary chart of historical recruitment and turnover of physicians.

Physician Questionnaire Results

Description of and results of a survey of physicians' attitudes and perspectives regarding the Hospital and the proposed project.

Business Organization and Corporate Relationships

Describe how the Hospital is affiliated (e.g., a subsidiary, parent, affiliate, joint venture, etc.) with any other organization, indicating name, address, type of legal relationship, and nature of affiliation. Describe the Hospital's collaboration with other entities to integrate healthcare delivery as well as its relationship with existing and developing managed care organizations in its service areas.

Section V – Other Information that Feasibility Consultant Deems Appropriate.

Section VI – Evaluation of Management Team (To be prepared by feasibility consultant although not required to be included in financial feasibility study).

Appendix

April 13, 2011

TO: State Directors
Rural Development

ATTENTION: Rural Housing Program Directors,
Guaranteed Loan Coordinators,
Area Directors and Area Specialists

FROM: Tammye Treviño (Signed by Tammye Treviño)
Administrator
Housing and Community Facilities Programs

SUBJECT: Single Family Housing Guaranteed Loan Program
Electronic Loan Closing Pilot

The purpose of this unnumbered letter is to announce the continuation of the Electronic Loan Closing Pilot with Wells Fargo Bank N.A. The pilot began April 1, 2010, with implementation of Wells Fargo Bank's wholesale loans. Effective with loans funded by Wells Fargo Bank on/after March 7, 2011, Wells Fargo Bank will include all retail loans, in addition to the present wholesale loans in the pilot.

Throughout the past year, the Agency has held regular progress meetings with Wells Fargo Bank to ensure the electronic process is efficiently implemented nationwide. Wells Fargo Bank developed a standard cover sheet they utilize when requesting a Loan Note Guarantee. The cover sheet assists Agency employees to identify an electronic closing and provides consistent information for delivery of the requested Loan Note Guarantee. GLS Report 4263, "Lender Loans Closed – Pending Report" is available in GLS for use by Agency employees, to track receipt of the guarantee fee, paid via pay.gov, so issuance of the Loan Note Guarantee in accordance with Section 1980.361(a) of RD Instruction 1980-D may occur. A user guide for Agency users has been developed and posted to the Rural Development SharePoint internal website.

EXPIRATION DATE:
April 30, 2012

FILING INSTRUCTION:
Housing Programs

The following summarizes frequently asked questions and issues surrounding the pilot:

ISSUE: Field offices continue to close the loan prior to Wells Fargo Bank initiating the pay.gov and electronic loan closing.

ACTION: Wells Fargo Bank provides a cover sheet indicating the loan has been closed electronically. If a field office closes the loan in GLS, Wells Fargo cannot access it and the guarantee fee cannot be received. When a loan closing package is received, access GLS Report 4263 to confirm when the guarantee fee has processed. Once the report indicates the fee has processed, and the closing documentation is complete in accordance with the issued Form RD 1980-18, "Conditional Commitment for Single Family Housing Loan Guarantee," the Loan Note Guarantee may be issued and the field may complete the final action required of the *Add Loan Closing* page in GLS.

★ ★ ★

ISSUE: Field offices continue to require Form RD 1980-19, "Loan Closing Report" for electronic closing, refusing to issue the Loan Note Guarantee.

ACTION: Form RD 1980-19 is not required with electronic loan closings. When the lender inputs the *Add Loan Closing* page in GLS and submits the GLS page for processing, they are prompted with the certification language found on Form RD 1980-19. The electronic loan closing process automates Form RD 1980-19. **A PAPER FORM RD 1980-19 IS NOT REQUIRED.**

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ISSUE: Servicing and holding branches on the GLS *Add Loan Closing* page.

ACTION: Wells Fargo Bank will utilize branch 001, their Electronic Data Interchange (EDI) reporting branch, as the servicing branch in GLS. Ensure the branch for servicing is set to branch 001. For the holding lender, the branch number will default to the branch assigned at origination of the loan by the state in GLS. Wells Fargo Bank reportedly sells their Rural Development loans to Ginnie Mae, therefore the holding lender branch as defaulted on the *Add Loan Closing* page can remain.

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ISSUE: Partial de-obligation of funds, name changes.

ACTION: Correction of loan amounts and name changes will require Agency action prior to the lender's submittal of the *Add Loan Closing* page in GLS. Communicate and coordinate these changes as they occur.

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ISSUE: The Agency issued Form RD 1980-18, but failed to obligate the loan in GLS.

ACTION: The Agency must obligate the loan, and then coordinate the submission of the *Add Loan Closing* page with Wells Fargo Bank. Because the Agency failed to obligate the loan with issuance of Form RD 1980-18, the loan closing and maturity dates on the GLS page will coincide with the obligation date by the Agency, rather than actual settlement and maturity dates. Add Agency comments to the page confirming the actual closing and maturity date.

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ISSUE: The lender has placed a loan closing date on the *Add Loan Closing* page other than the Promissory Note date.

ACTION: The actual date of the note may/may not represent the actual closing date. Some states execute loan documents and close the loan with actual “wet” funding. Other states execute the documents to close in advance of actual funding, known as a “dry” funding. For consistency nationwide, the actual date of closing will be defined as the settlement date as it appears on the HUD-1 Settlement Statement.

★ ★ ★

ISSUE: The actual date of maturity does not coincide on the GLS *Add Loan Closing* page with the legal document.

ACTION: GLS edits require the maturity date to be no more than 30 years plus 90 days for the system to allow the submittal of the *Add Loan Closing* page.

Example 1: Loan closing with pre-determined interest. Loan closing was March 16, 2011. At closing the borrower pays interest to the 1st of the following month, April 1, 2011. The first payment due for the borrower is May 1, 2011. The maturity date of the loan would be April 1, 2041. GLS edits will accept this example.

Example 2: Loan closing with an interest credit. For loans that close relatively close to the beginning of the month, it may be of financial interest to a borrower to close the loan and pay interest back to the 1st of the month prior to closing. For example, the loan closes March 5, 2011. The borrower elects to pay interest credit at settlement (pays 4 days back to March 1 – as opposed to 25 days of interest to April 1). By electing this option, the borrower has saved 25 days of pre-determined interest at closing, but the first payment in this example will be due April 1, 2011 and the maturity date would be March 1, 2041. GLS will not allow a maturity date for less than 30 years. Lenders may enter the date of March 5, 2041 (in this example) in the maturity date to allow the page to process in GLS. Add comments to the page to document the loan as an interest credit settlement with the actual maturity date. This work-around will continue until an enhancement of GLS can be implemented.

★ ★ ★

The pilot has progressed over the past year. We have been fortunate to work with a dedicated partner who has assisted the Agency in identifying the necessary enhancements to promote this pilot to a permanent feature in the Single Family Housing Guaranteed Loan program. Further roll-out to other approved lenders will require additional enhancements to the present system. We continue to work on obtaining the necessary resources to allow such enhancements.

State offices may direct questions regarding this unnumbered letter to the SFHGLP division at 202-720-1452.

April 14, 2011

TO: National Office Officials
State Directors

FROM: Clyde Thompson (Signed by Clyde Thompson)
Deputy Administrator
Operations and Management

SUBJECT: Retention of Documentary Materials for Litigation in the Case of
Cantu v. United States (Hispanic Farmers and Ranchers)
Response Required by April 20, 2011

The purpose of this memorandum is to notify you that any records which may pertain to an ongoing nationwide class action lawsuit brought by Hispanic farmers and ranchers (*Cantu v. United States*) must be preserved. The attached notification was received by the Rural Development Records Officer, Andrea Jenkins, on April 1, 2011, from the Office of the General Counsel, Civil Rights Division.

Although the attached memorandum is similar to recent litigation hold memorandums, it is not identical. Each litigation hold notice exists independently of each other, and each notice **must** be reviewed carefully.

If responsive records are available, regardless of format, please contact Andrea Jenkins, Rural Development Records Officer, at 202-692-0029 or by e-mail at andrea.jenkins@wdc.usda.gov by April 20, 2011. Negative responses are required.

Attachment

EXPIRATION DATE:
April 30, 2012

FILING INSTRUCTIONS:
Administrative/Other Programs

Sent by Electronic Mail on 4/18/2011 at 9:00 am by the Support Services Division. National Office Officials and State Directors should advise other personnel as appropriate.



United States
Department of
Agriculture

Office of the
General
Counsel

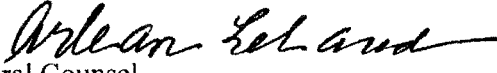
Washington,
D.C.
20250-1400

*Privileged and Confidential
Attorney Work Product*

March 31, 2011

VIA ELECTRONIC DELIVERY

MEMORANDUM FOR DALLAS TONSAGER
UNDER SECRETARY
RURAL DEVELOPMENT

FROM: Arlean Leland 
Associate General Counsel
Office of the General Counsel; Civil Rights Division

SUBJECT: Retention of Documentary Materials for Litigation in *Cantu v. United States*

The purpose of this memorandum is to advise Rural Development (RD) to preserve any documentary materials potentially relevant to litigation in *Cantu v. United States*. It is our understanding that RD may maintain or have within its control documentary materials potentially relevant to this litigation.

With respect to RD, we expect that the obligations detailed below may be met by retaining **ALL** relevant documents and records, in paper and electronic form, in its possession and placing a freeze on the transfer of records to a Federal Records Center (FRC) as well as a freeze on the scheduled destruction of any records at a FRC.

Summary of Litigation

Cantu v. United States, Civil Action No. 1:11-cv-00541-RBW (D.D.C.), is a nationwide class action lawsuit brought by Hispanic farmers and ranchers alleging violations of the Equal Protection and Due Process clauses of the Fifth amendment of the Constitution. The putative class alleges that the Women and Hispanic Farmers Claims Process, a voluntary program USDA established to provide a streamline claims resolution process for Hispanic and women farmers who allege that USDA discriminated against them in connection with its farm loan program between 1981 and 2000, is itself discriminatory. According to the plaintiffs, the new program provides less relief than afforded to similarly situated plaintiffs of different races in other lawsuits. Plaintiffs also allege that the defendants, including Secretary Vilsack, refused to negotiate a settlement with Hispanic farmers in a related lawsuit, *Garcia v. Vilsack*, Civil Action No. 1:00-cv-02445 (D.D.C.). *Garcia* was filed in 2000 by the same attorney who filed the *Cantu*

MEMORANDUM FOR DALLAS TONSAGER

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case and alleges discrimination against Hispanic farmers in USDA's farm loan and non-credit benefit programs. *Garcia* was not certified as a class action and the case is currently pending in District Court. In an effort to resolve all civil rights claims from Hispanic farmers, including but not limited to, those named in *Garcia*, Secretary Vilsack, announced the claims process to the public on February 25, 2011. USDA is currently conducting outreach to notify potential claimants about the claims process. The plaintiffs further allege that USDA failed to act on administrative complaints of discrimination they filed with USDA.

What You Must Preserve

The Federal Rules of Civil Procedure require USDA to retain and preserve all potentially relevant evidence and to put a "litigation hold" on its routine document and data retention policy and practices (e.g., the routine destruction of records after a certain number of years). (For a general discussion of litigation holds, please see USDA's Departmental Regulation 3090-001 (May 28, 2008)).

At a minimum, we request that you take immediate steps to preserve the following:

- **All documentary materials relating to the development and implementation of Women and Hispanic Farmers Claims Process, including but not limited to, notice of the claims process, outreach to potential stakeholders, and training to USDA employees in connection with the claims process.**
- **All documentary materials relating to the Call Center in connection with the Women and Hispanic Farmers Claims Process.**
- **All documentary materials relating to settlement, or other resolution, of the *Garcia* case or the individual named plaintiffs in *Garcia*.**
- **All documentary materials relating to formal or informal civil rights complaints (administrative or court) related to farm loan and non-credit benefit programs.**
- **All documentary materials relating to *Pigford v. Veneman* ("*Pigford I*"), *In re Black Farmers Discrimination Litigation* ("*Pigford II*"), and *Keepseagle v. Vilsack*.**

Please note that the litigation hold memoranda for *Garcia*, *Love v. Vilsack*, *Pigford I*, *Pigford II*, and *Keepseagle* are still in effect.

"Documentary materials" means, collectively, records and non-records, in whatever form or format, including, but not limited to, electronically stored information (ESI), data, data compilations, spreadsheets, correspondence, notes, e-mails, writings, drawings, graphs, charts, photographs, sound recordings, images, and any other materials, whether original or duplicative, drafts or final, partial or complete, informal or formal, internal or external, proprietary or nonproprietary. Thus, the litigation hold is broader than a "records freeze" – that is, it requires

MEMORANDUM FOR DALLAS TONSAGER

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the preservation of materials beyond those that constitute "records" as defined by the Federal Records Act.

Please note that the list above is not an exclusive list of materials to be preserved, as the preservation obligation applies to any documentary materials in RD's possession or control that relate to the Plaintiffs' claims. We have tried to anticipate the types of documents and information that exist related to this claim, but you must use your professional judgment to identify which individuals may be involved, what documents or other information may exist, and where such documentary materials may be located.

The preservation requirement is for all potentially relevant documentary materials from 1981 to the present. An agency's ordinary document retention policies are not a reason to fail to maintain evidence pertinent to this litigation. Moreover, preservation must occur regardless of whether the information may ultimately be withheld as privileged or ultimately determined to be unreasonably burdensome to produce.

The duty to preserve does not generally depend on the *type of medium* on which the information exists. For example, the aforementioned information may exist in various forms, including paper records, hand-written notes, telephone log entries, email and other electronic communication (including voice mail messages), word processing documents (including drafts, spreadsheets, databases and calendars), telephone logs, calendars, electronic address books, personal data assistants (PDAs) (like Palm Pilots and BlackBerries), internet usage files, systems manuals, and network access information in their original format. Although some of these types of media may not have existed during the time period, the retention obligation extends to any and all information on computer systems, removable or portable electronic storage media, such as thumb drives, and at all locations. It includes information stored on personally-owned computers or electronic storage devices if used to create Department records in the performance of duty as a USDA employee or contractor. In the event someone has printed hard copies of electronically stored data, those must be preserved as well.

The ESI subject to this litigation hold includes data stored on electronic, magnetic or optical storage medium. In addition, ESI should be preserved in its "native" format -- as it was originally created and maintained -- along with its related "metadata" (i.e., the information about a particular data set which describes how, when and by whom it was collected, created, accessed or modified and how it is formatted).

Electronic data/ESI (including any relevant backup tapes that may still exist) must also be preserved until and beyond the point of the deterioration of the media. Electronic media that is in danger of deteriorating while litigation is still pending must be duplicated on new media. Further, even information that is not deemed reasonably accessible (such as data created with software that is now obsolete) must be preserved because such sources will, at the very least, need to be identified and, under compelling circumstances, may have to be produced.

MEMORANDUM FOR DALLAS TONSAGER

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With regard to electronic data, all data subject to this hold must be preserved even if it may be duplicative of data stored elsewhere, including data "work tables," data extracted from other data-bases, data sent to a centralized or shared database, and data underlying summary reports.

The litigation hold also extends to documentary materials stored on computers assigned to departing employees. When an employee retires or leaves the agency, do not recycle or otherwise destroy the computer or its contents before ascertaining whether there exists any relevant material on the computer. If the agency discovers any relevant material on a computer assigned to a departing employee, it must maintain that material in its native format until further notice from OGC.

We recognize that the obligation to preserve may impose a substantial burden on RD. If, at some point, the obligation proves to be unduly burdensome, we may be able to seek some relief, either through agreement with the Plaintiffs or through the Court. However, absent such an agreement or Court order, all necessary steps must be taken to preserve all potentially relevant information because failure to meet preservation obligations can result in sanctions against the Government or disadvantage the Government's position in litigation. It can also result in monetary or other contempt sanctions against individuals who failed to take appropriate steps to locate and segregate materials subject to a litigation hold. In extreme cases, agency performance-based action or disciplinary sanction may be warranted under 5 U.S.C. 4301, *et seq.*, or 5 U.S.C. 7501, *et seq.*

If you are uncertain whether to preserve certain information or you believe that there are certain categories of files that can be discarded, please provide OGC with a detailed description of the identified documents. OGC will then – after consultation with the Department of Justice – let RD know if the documents can be discarded under their normal retention schedule. Please do not delete or destroy any information that is potentially covered without first obtaining clearance from OGC.

Notification of Litigation Hold to Appropriate Personnel

With regard to implementation of this litigation hold memorandum, please distribute a memorandum or administrative notice to all RD personnel who are known to have, or are reasonably expected to have, potentially relevant documents and information (including those in State and local offices), to the relevant Information Technology and Records Management personnel, as well as to any third parties, such as contractors, who may possess potentially relevant materials.

RD should keep a record of who is sent the litigation hold memorandum or notice (i.e., maintain a distribution list) and ask each recipient to acknowledge receipt and compliance with it. This will permit OGC and the Department of Justice to be in the best position to show good faith and defend any motion by Plaintiffs for sanctions in the event some information is lost.

MEMORANDUM FOR DALLAS TONSAGER

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When implementing the litigation hold, it is not sufficient to simply notify all employees of the 'hold' and expect that they will then retain and produce all information related to the suit. Rather, affirmative steps must be taken to ensure that all affected employees understand *and comply with* the litigation hold and that potentially relevant information is retained.

With regard to frequency, we advise you to issue a reminder memorandum at least every six (6) months. The longer the suit continues, some personnel may mistakenly assume it has ended or that the obligation to preserve no longer exists, especially as discovery requests become less frequent.

Thank you for your cooperation on this matter. Please send Stephanie Masker, the attorney handling this matter, a confirmation e-mail at stephanie.masker@usda.gov, indicating that you received this memorandum and certify that you have begun the preservation process by April 15, 2011. If you or your staff has any questions on this matter, you may contact Stephanie Masker at (202) 720-9132 or stephanie.masker@usda.gov.

cc: Cheryl Cook, Deputy Under Secretary for Rural Development
Victor Vasquez, Deputy Under Secretary for Rural Development
Clyde Thompson, Acting Administrator for Operations and Management
Andrea Jenkins, Records Officer, Rural Development

April 21, 2011

TO: State Directors
Rural Development

ATTENTION: Housing Program Directors
Self-Help Coordinators

FROM: Tammye Treviño *(Signed by Alan Stephens)* for
Administrator
Housing and Community Facilities Programs

SUBJECT: Funding of Section 523 Mutual Self-Help Housing Grants for Fiscal Years 2011

The purpose of this memorandum is to provide guidance in the processing and funding of Section 523 Mutual Self-Help Housing Grants for Fiscal Year (FY) 2011 and Fiscal Year (FY) 2012.

Based upon our projections, demand will once again be high for Section 523 grant funds. In order to effectively manage our fund balance, we are implementing the following policies and procedures.

EXISTING PERFORMING GRANTEES

All requests for funding from existing grantees must include in their proposal either a detailed plan outlining how the organization will continue to operate their Self Help Housing Program without Rural Development funding once the two year funding cycle is completed or provide a detailed plan showing how the organization could successfully phase out their Section 523 program.

EXPIRATION DATE:
September 30, 2011

FILING INSTRUCTIONS:
Housing Programs

For grants under \$300,000 the following must be submitted to the National Office:

1. Completed Form RD 1940-1 "Request for Obligation for Funds";
2. State Office analysis and recommendation;
3. T & MA contractor review and recommendation;
4. Draft letter of conditions, if any;
5. Completed "Survey on Ensuring Equal Opportunity for Applicants";
6. Plan of operation without RD funding or self help phase out plan.

For grants of \$300,000 or more the entire case file along with the above documentation must be submitted.

As the demand for re-funding of existing grantees is anticipated to be high, subsequent grant requests will not be considered except in rare cases beyond the reasonable control of the grantee. Therefore, it is imperative that initial budgets and proposals be well developed and realistic. Any requests for a subsequent grant must be accompanied by a well-documented explanation for the need for additional funds.

New and Pre-Development Grants

Although there has been considerable demand from not-for-profit organizations to participate in the Section 523 Self Help Program, anticipated budget constraints could significantly impact consideration given for new grantees and will depend upon the availability of funds. At this time no new or pre-development grants will be funded. Should funding be available for new organizations, they must be made fully aware of the potential budget situation. Should any new organization be selected to participate in the 523 program they must comply with the requirements as outlined above.

States should continue to work with their Technical and Management Assistance Contractor and all applications for refunding should be carefully reviewed before submission. If you have any questions, please contact Akua Assata, Loan Specialist at 202-690-3832 or Carolyn Bell Branch Chief, Single Family Direct Loan Division at 202-720-1532.

Sent by Electronic Mail on 05-10-11 at 10:50 am by Single Family Housing Direct Loan Division.