



**United States Department of Agriculture
Rural Development
Idaho State Office**

Idaho AN No. 1815

August 23, 2011

SUBJECT: SFH Loans to “Sole and Separate” Applicants

TO: Area Directors
Single Family Housing Specialists
USDA Rural Development, Idaho

PURPOSE/INTENDED OUTCOME:

This AN is being issued to provide clarification and updated guidance on the consideration of single family housing loans in Idaho to married applicants applying as “sole and separate.” Due to the community property laws of the State of Idaho, loans to “sole and separate” applicants must meet different criteria than those of non-community property states. This Administrative Notice supplements RD Instruction 1980-D, RD AN 4543 dated October 14, 2010, and HB-1-3550, Chapter 4.

On September 3, 2010, Rural Development in Idaho provided an administrative notice regarding loans to “sole and separate” applicants. This administrative notice will clarify the criteria for considering loans to “sole and separate” applicants.

COMPARISON TO PREVIOUS AN:

This AN provides additional guidance regarding the relationship of the Equal Credit Opportunity Act (“ECOA”), Regulation B to Idaho Rural Development’s policy on loans to “sole and separate” applicants, and will allow for “sole and separate” applications to be submitted based on the criteria and guidelines outlined in the following sections.

ECOA does not require RD to disregard Idaho’s community property laws. Both the Act, and Regulation B, which implements ECOA, allow for the application of state law.

9173 West Barnes Drive, Suite A1, Boise, ID 83709-1574
Phone: (208) 378-5606 • Fax: (208) 378-5643 • Web: <http://www.rurdev.usda.gov/id>

Committed to the future of rural communities.

“USDA is an equal opportunity provider, employer and lender.”
To file a complaint of discrimination write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W.,
Washington, DC 20250-9410 or call (800)795-3272 (voice) or (202) 720-6382 (TDD).

As a general rule, Idaho law assumes that property acquired with the proceeds of a loan obtained by one spouse during marriage is community property. In addition, when community funds are used to improve or enhance the value of separate property, such enhancement is considered community property. If the home purchased with RD funds were to be considered community property, creditors of either spouse would be able to reach that property to satisfy a debt.

In practical terms, this means that if any community funds are used to make mortgage payments, taxes or insurance on the property or improve the property (e.g., through renovations or repairs); the property loses its separate character. Idaho law generally considers income earned during marriage to be community property.

A spouse's premarital debts often have a significant impact on the borrower's ability to repay a SFH loan. Because both spouses have full legal control over community property, including the income of either spouse, the existence of pre-marital debts may reduce the amount of income or other property available to repay the RD loan.

IMPLEMENTATION RESPONSIBILITIES:

When a married individual applies as a "sole and separate" applicant, the following circumstances may be the reason:

- 1) Non-purchasing spouse has credit that would disqualify them for a SFH loan.
- 2) Non-purchasing spouse is not a U.S. Citizen, non-citizen national or "qualified alien" and would not be eligible for an RD Single Family Housing loan or guarantee.

RD and approved lenders will consider the totality of circumstances in making decisions regarding the above situations. If the applicant can meet the following criteria, applications may be submitted to RD for approval.

- 1) The purchasing spouse can establish that all funds used to purchase the property will be separate funds and that the non-purchasing spouse will not contribute to the purchase. This would include the down payment, if any; earnest money, closing costs, etc.
 - a. Under Idaho law, the burden is on the applicant to establish that he/she has met these criteria.
 - b. Acceptable documentation of such separate property assets as required above could include a recorded prenuptial agreement. If other documentation exists, it will need to be submitted to RD for approval prior to submission of the loan package to RD.
- 2) All debts of the non-purchasing spouse are included in the debt ratios. This will include minimum payments calculated at 5 percent of the balance on all outstanding collection accounts, and judgments, in addition to all other credit

as outlined in RD Instruction 1980-D and RD Instruction HB-1-3550, Chapter 4.

- 3) Applicant will be eligible for a RD loan or loan guarantee if they can meet repayment ratios based on above criteria or have adequate compensating factors for exceeding the ratios.

CALCULATING INCOME FOR 'SOLE AND SEPARTATE' APPLICANTS.

The income and assets of the non-purchasing spouse cannot be included for purposes of determining repayment ability, ***but must be included for determining the income-eligibility of the household.*** There must be full documentation of the non-purchasing spouse's income. This is in keeping with RD policy of including all adult members of a household, whether married or not, in income-eligibility determinations.

Income received by the applicant and all adult members of the household is considered in the calculation of annual income. In order for the Agency to confirm that the household is eligible for assistance the file must thoroughly document all relevant information used to make the determination. In addition, if any adult member of the household is not presently employed but has a history of employment, that person's income will be considered in annual income for qualifying purposes, unless the applicant/borrower ***and*** the person involved sign a statement that the person is not presently employed and does not intend to resume employment in the foreseeable future.

The burden is on the applicant to establish that he/she has met these criteria.

SFH LOAN GUARANTEES USING GUS

For RD guaranteed loans, the Guaranteed Underwriting System (GUS) will only retrieve a credit report for applicants. Therefore, lenders using GUS must obtain an acceptable credit report outside of GUS for the spouse of "sole and separate" applicants. On the "Asset and Liabilities" application page, lenders must enter the debt obligations of the NPS in the appropriate liability section. In the "Notes" data field lenders should identify the debt as "spousal debt" or "NPS debt." Lenders must retain a copy of the NPS's credit report in their permanent loan case file and submit a copy to Rural Development.

The income and assets of the non-purchasing spouse cannot be included for purposes of determining repayment ability, but must be included for determining the income-eligibility of the household. There must be full documentation of the non-purchasing spouse's income.

Income received by the applicant and all adult members of the household is considered in the calculation of annual income. In order for the Agency to confirm that the household is eligible for assistance under the SFHGLP, the lender's file must thoroughly document all relevant information used to make the determination. In addition, if any adult member of the household is not presently employed but has a history of employment, that

person's income will be considered in annual income for qualifying purposes, unless the applicant/borrower and the person involved sign a statement that the person is not presently employed and does not intend to resume employment in the foreseeable future as outlined in 1980.347(b).

The guidance in this Administrative Notice applies only to Single Family Housing loans (both 502 direct and Guarantee) in the State of Idaho and does not address the laws of other community property states, which may differ from those of Idaho. Even where the statutes of two or more states appear similar, these statutes may have been interpreted differently by the applicable state courts, resulting in different legal requirements in these states.

Attachment A to this Administrative Notice provides a matrix for quick reference.

Any questions regarding this Administrative Notice can be directed to the Single Family Housing staff in the Idaho State Office at 208-378-5628 or 208-378-5629.

A handwritten signature in black ink, appearing to read 'Wally Hedrick', with a large, stylized loop at the beginning.

WALLY HEDRICK
State Director

EXPIRATION DATE:
8/30/2012

FILING INSTRUCTIONS:
Preceding RD Instruction
HB-1-3550, Chapter 4, and
1980-D

Sole and Separate Matrix
Attachment 1 to Idaho AN 1815 dated August 23, 2011

	Borrower	Non-Purchasing Spouse	
Income	Full Documentation	Full Documentation	For non-purchasing spouse with history of working but not currently employed, the file must have letter signed by both applicant/borrower and non-purchasing spouse indicating NPS is not currently employed and does not intend to seek employment in the near future.
Credit	Full Documentation	Full Documentation	Must order a credit report for non-purchasing spouse. Payments on liabilities must be rolled into ratios. A minimum payment of 5% of balance on any collections or judgments must also be rolled into ratios. For GUS loans, lenders will need to order a credit report outside of GUS. A copy must be retained in the lender's permanent loan file and a copy sent to RD.
Establishment Of Separate Funds	Full Documentation		Preuptial Agreement to evidence down payment, closing costs, earnest money is separate funds. If other documentation is available it will need to be sent to RD for review and acceptance prior to the loan package being submitted to RD. This would also include the documentation that the applicant/borrower can make the mortgage payments, including taxes and insurance on the home with his/her separate funds and that none of the NPS income will be used for any property and/or home improvements.