



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

7/26/2018 12:27:30 PM

Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Agriculture TITLE-SERIES: 61-33
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 61-33 Rural Rehabilitation Loan Program

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §19-1-11

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The Commissioner has statutory authority §19-1-11 to promulgate emergency and legislative rules to establish minimum requirements and qualifications for the loan committee, prohibit dept employees, loan committee members, and immediate family members from receiving program loans, establish minimum financial requirements for receiving loans, requiring loans be used for agricultural purposes, establish application process, applicable interest rates, delinquencies, refinancing, collection proceedings, collateral requirements, and establishing advertisement procedures

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/26/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/26/2018

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Establishes requirements of the RR Loan Committee, financial requirements for receiving a loan, requirements for loan usage, sufficient collateral, application process, refinancing, delinquencies, collection proceedings, advertising, and sets applicable interest rates. Amendments include definitions, restructuring the purposes for the loans, changing delinquencies and collection proceedings, refinancing, defining distressed loans.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The rule defines the Rural Rehabilitation Loan Program, sets requirements for the loan committee, sets minimum requirements for receiving loans, requirements for loan usage, sufficient collateral, application process, refinancing, delinquencies, restructuring distressed loans, collection proceedings, requirements for advertising the program and sets forth applicable interest rates.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed changes to this rule would have little, if any impact to program expenditures. All program revenue fund established solely for the purpose of accumulating all revenue and expenditures related to this program's ongoing operations. The impact on revenue of the proposed changes cannot be reasonably estimated at this time either. Future revenue is dependent on factors such as repayment of current and future loan awards, interest rates and terms of future and/or refinanced current loans, and collections or write-offs of bad debt.

Language relating to distressed loans and applications for restructuring has been added in order to give borrowers opportunity for repayment in a manner that supports ongoing financial interests of the program. Impact of this measure on revenue cannot be estimated as it is dependent on the circumstances surrounding each restructuring request. Additionally, language relating to monthly late fees assessed on new loans for delinquent payments has been added to the rule; however, the impact on program revenue is expected to be minimal.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The proposed changes to this rule would have little, if any impact to program expenditures. All program revenue fund established solely for the purpose of accumulating all revenue and expenditures related to this program's ongoing operations. The impact on revenue of the proposed changes cannot be reasonably estimated at this time either. Future revenue is dependent on factors such as repayment of current and future loan awards, interest rates and terms of future and/or refinanced current loans, and collections or write-offs of bad debt.

Language relating to distressed loans and applications for restructuring has been added in order to give borrowers opportunity for repayment in a manner that supports ongoing financial interests of the program. Impact of this measure on revenue cannot be estimated as it is dependent on the circumstances surrounding each restructuring request. Additionally, language relating to monthly late fees assessed on new loans for delinquent payments has been added to the rule; however, the impact on program revenue is expected to be minimal.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jodee F Martin -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 61
Legislative Rule
DEPARTMENT OF AGRICULTURE

SERIES 33
Rural Rehabilitation Loan Program

§61-33-1. General.

1.1. **Scope.** -- The Rural Rehabilitation Loan Program is a program administered by the West Virginia Department of Agriculture. This legislative rule defines the Rural Rehabilitation Loan Program, establishes requirements for the Rural Rehabilitation Loan Committee, the minimum financial requirements for receiving a loan, requirements for loan usage, sufficient collateral, an application process, refinancing, delinquencies, restructuring distressed loans, collection proceedings, requirements for advertising the program and sets forth applicable interest rates.

1.2. **Authority.** -- ~~WV~~ Va. Code §19-1-11.

1.3. **Filing Date.** -- ~~April 14, 2015~~

1.4. **Effective Date.** -- ~~June 1, 2015~~

1.5. **Sunset Date.** -- This rule shall terminate and have no further effect ten years from the effective date.

§61-33-2. Definitions.

2.1. "Agricultural or related purpose" means to use for starting, purchasing, or expanding a farm operation; to assist farmers who have suffered financial setbacks from natural disasters, or who need additional resources with which to redirect or maintain profitable farming operations; or for any other agricultural purpose determined important by the Commissioner.

2.2. "Application" means a request form for a loan submitted to the West Virginia Department of Agriculture Rural ~~Rehab~~ Rehabilitation Loan Committee.

2.3. "Application for restructuring" means a written request from a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower, accompanied by sufficient financial information and repayment projections to support a sound credit decision.

~~2.3. "At large member" means a member who has some standing authority with an organization, but no official responsibility.~~

2.4. "Collateral" means security that is pledged for a loan.

2.5. "Collection proceedings" means proceedings to demand payment of a loan.

2.6. “Commissioner” means the Commissioner of the West Virginia Department of Agriculture or his or her designee.

2.7. “Delinquency” and “Delinquencies” ~~means~~ mean a failure to pay back a loan; neglecting to pay back a loan in a timely manner.

2.8. “Department employee” means a person who is currently employed by the West Virginia Department of Agriculture.

2.9. “Distressed loan” means a loan that the borrower does not have the financial capacity to pay according to its terms, that presents a high probability of loss to the Rural Rehabilitation Loan Program, and that exhibits one or both of the following characteristics:

2.9.a. The borrower is experiencing documented financial adversity; or

2.9.b. The loan is delinquent or past due under the terms of the loan contract.

~~2.9.2.10.~~ “Immediate family” means a spouse, parent, grandparent, ~~child~~ children, grandchild~~grandchildren~~, siblings, and similarly related in-laws, and adopted, half and step members of families.

~~2.10. “LIBOR” means an average interest rate estimated by leading banks in London that average leading bank would be charged if borrowing from other banks.~~

2.11. “Loan” means the lending of money secured by collateral, that may be in the form of a traditional loan with an interest rate attached to the terms of the loan, a guarantee of a loan, or a portion of a loan to assist with ~~agriculture~~ agricultural or related purposes.

2.12. “Refinance” and “refinancing” mean to renew, modify, replace, reschedule or reorganize the terms of an existing loan in good standing under the Rural Rehabilitation Loan Program. “Refinance” and “refinancing” do not include restructuring of distressed loans.

2.13. “Restructure” and “restructuring” include rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, and/or the taking of any other action to modify the terms of, or forbear on, a loan in any way that will make it probable that the operations of the borrower will become financially viable.

~~2.12-2.14.~~ “Rural Rehabilitation Loan Committee” is a committee appointed by the Commissioner of Agriculture.

~~2.13-2.15.~~ “Rural Rehabilitation Loan Program” or “Program” is a loan program, administered by the West Virginia Department of Agriculture, to promote investment in the agriculture industry in the state.

2.16. “Significant financial contributions” means the expenditure of an applicant’s monetary resources toward the real or personal property purchased with the loan in an amount large enough relative to the loan request to indicate a sincere interest in the purpose of the loan. In judging the significance of financial contributions, the Rural Rehabilitation Loan Committee shall consider, among

other factors, the total amount of the loan request, the financial resources of the applicant, and industry standards and expectations. For purposes of this definition, a contribution of one hundred dollars (\$100.00) or less shall never be significant and a contribution of ten thousand dollars (\$10,000.00) or more shall always be significant.

~~2.14-2.17.~~ “Wall Street Journal prime rate” means a measure of the ~~U.S.~~ U.S. prime rate ~~and that~~ is the base rate on corporate loans posted by at least 70% of the 10 largest U.S. banks.

§61-33-3. Rural Rehabilitation Loan Committee.

3.1. The ~~West Virginia Department of Agriculture~~ Commissioner shall establish a loan committee consisting of the following five (5) members:

3.1.a. One current employee of the West Virginia Department of Agriculture; and

3.1.b. Four public members as follows:

3.1.b.1. One member with agricultural experience;

3.1.b.2. One member with business loan experience; and

3.1.b.3. Two at large members.

3.2. Members of the Rural Rehabilitation Loan Committee shall serve at the will and pleasure of the Commissioner.

~~3.2-3.3.~~ The Rural Rehabilitation Loan Committee shall meet to consider loan applications, applicable interest rates, delinquencies, refinancing, collection proceedings, collateral requirements and other aspects of the Program.

~~3.3-3.4.~~ Each public member of the Rural Rehabilitation Loan Committee may receive compensation for attending official meetings or engaging in official duties not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law. A member of the Rural Rehabilitation Loan Committee may not receive compensation for travel days that are not on the same day as the official meeting or official duties.

~~3.4-3.5.~~ The ~~West Virginia Department of Agriculture~~ Commissioner may reimburse members of the Rural Rehabilitation Loan Committee for actual and necessary expenses incurred for each day or portion of a day engaged in the discharge of their official duties in a manner consistent with guidelines of the West Virginia Department of Agriculture Travel Policy.

§61-33-4. ~~Financial requirements~~ Requirements for applicants.

4.1. An applicant wanting to participate in the Program must have an acceptable credit history.

4.2. An applicant may not be delinquent on a federal or state debt, ~~or nor~~ have received forgiveness from any government-sponsored loan program.

4.3. ~~Any~~ department employee, Rural Rehabilitation Loan Committee ~~loan committee~~ member, or their immediate family members ~~are not member~~ is eligible for the loan program.

4.4. An applicant shall demonstrate adequate training, education or agricultural experience.

§61-33-5. Loans for agricultural or related purposes.

5.1. An applicant shall use ~~a loan to purchase or expand farming operations~~ loan proceeds only for agricultural or related purposes, as approved by the Rural Rehabilitation Loan Committee.

~~5.2. An applicant shall demonstrate adequate training, education or agricultural experience.~~

~~5.3.~~ 5.2. Funds shall be used to ~~promote, build, and sustain family farms in support of a thriving~~ agricultural economy.

§61-33-6. Sufficient collateral required.

6.1. ~~An applicant shall have~~ All loans shall be secured by sufficient collateral to secure a loan.

6.2. If the applicant applies for a loan, he or she shall demonstrate significant financial contributions of his or her own. This requirement may be waived if the Rural Rehabilitation Loan Committee makes a written determination that a loan does not require a financial contribution by the borrower.

6.3. If the loan proceeds are to be used for the purchase of collateral securing the loan, the applicant shall purchase all such collateral within a reasonable time period, not to exceed thirty (30) days after the date of loan closing, or as set by the Rural Rehabilitation Loan Committee.

6.4. The applicant shall cooperate with the Rural Rehabilitation Loan Committee to provide all necessary identifying information and legal documentation needed to perfect a lien against the collateral, within a reasonable time period, not to exceed thirty (30) days after the date of loan closing, or as set by the Rural Rehabilitation Loan Committee.

§61-33-7. Application.

7.1. The application shall include the ~~applicant's~~ applicant's name, address and Social Security ~~social security~~ number.

7.2. The application shall also include any additional information requested by the Commissioner ~~in order~~ to thoroughly evaluate the loan applicant's credit worthiness, current debt load, ability to repay the loan, proper collateral and other financial history.

§61-33-8. Applicable interest rates.

8.1. The ~~Commissioner~~ Rural Rehabilitation Loan Committee shall set an interest rate using Wall Street Journal Prime Rate ~~or LIBOR~~ as a guide for the appropriate interest rate at the time it votes to recommend the loan for the Commissioner's approval.

8.2. The interest rate is fixed throughout the life of the loan at the interest rate established in this section unless otherwise modified as part of an approved loan restructuring. Modifications may raise or lower the interest rate.

§61-33-9. Delinquencies and collection proceedings.

9.1. A loan is deemed delinquent when the borrower misses two (2) consecutive monthly payments, or one quarterly, semi-annual, or annual payment.

9.2. The Commissioner shall send borrowers of delinquent loans delinquency notices and give ~~him~~ or her such borrowers thirty (30) calendar days to resolve the delinquency by paying the past-due balances.

9.2.a. If the borrower fails to respond to or address the delinquency, the Commissioner shall issue a notice of default and right to cure giving the borrower fifteen (15) days to bring the loan current.

9.2.b. The Commissioner may take further remedial action as approved by the Rural Rehabilitation Loan Committee, including formal collection procedures, sale of assets, deed of trust sale or other allowable measure and possible foreclosure against any loan holder who is delinquent, after initial attempts to resolve the delinquency are unsuccessful.

9.3. For loans closed on or after July 1, 2019, the Commissioner shall charge a late fee of twenty-five dollars (\$25.00) fifteen (15) days after the date a loan becomes delinquent, as defined in subsection 9.1, and shall charge an additional late fee of twenty-five dollars (\$25.00) after each subsequent month the loan remains delinquent.

9.3.a. The Rural Rehabilitation Loan Committee may waive any late fees charged under this section when restructuring a distressed loan under section 15 of this rule.

§61-33-10. Refinancing.

10.1. The loan holder may ~~not~~ refinance a loan in good standing only after ~~until~~ 5 years have elapsed from the date of the loan into the loan term.

10.2. The loan holder shall submit a new application ~~in order~~ to be eligible for refinancing

10.3. The Rural Rehabilitation Loan Committee will evaluate the new application using the same criteria for initial loans and will also consider the borrower's loan repayment history.

~~10.3-10.4.~~ Any refinancing may not extend a loan term past 20 years from the date of the original loan agreement.

10.5. The limits on refinancing in this section shall not apply when restructuring distressed loans under section 15 of this rule.

§61-33-11. Advertisement.

11.1. ~~The West Virginia Department of Agriculture Commissioner~~ shall advertise the Rural Rehabilitation Loan Program to the public in both of the following manners:

11.1.a. On the West Virginia Department of Agriculture website; and

11.1.b. In the West Virginia Department of Agriculture's Market Bulletin.

§61-33-12. Competitive Bidding.

12.1. ~~The West Virginia Department of Agriculture Commissioner~~ shall seek, by use of competitive bids, the servicing of any loans provided through its program.

§61-33-13. Annual report.

13.1. The Commissioner shall file an annual report to the Joint Committee on Government and Finance regarding the loan program, including information about the loans awarded, loans repaid, loans outstanding, interest rates, delinquency and collections, and other pertinent data.

§61-33-14. Determination of distressed loans.

14.1. The Rural Rehabilitation Loan Committee shall receive reports on active loans and determine from their repayment history and any other available information if any active loans are in distress.

14.2. On a determination by the Rural Rehabilitation Loan Committee that a loan is a distressed loan, the Commissioner shall provide written notice to the borrower that the loan may be suitable for restructuring, and include with such notice all materials necessary to enable the borrower to submit an application for restructuring.

14.3. On determination that a loan is or has become a distressed loan, the Commissioner shall provide a reasonable opportunity for the borrower to personally appear before the Rural Rehabilitation Loan Committee to review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring.

§61-33-15. Consideration of applications for restructuring.

15.1. When the Rural Rehabilitation Loan Committee receives an application for restructuring from a borrower, the Rural Rehabilitation Loan Committee shall determine whether or not to recommend the Commissioner approve restructuring the loan, taking into consideration:

15.1.a. Whether the proposed restructuring plan is in the best financial interests of the Rural Rehabilitation Loan Program;

15.1.b. Whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

15.1.c. Whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

15.1.d. Whether the borrower is capable of working out existing financial difficulties, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and

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15.1.e. In the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not become delinquent.

15.2. The Rural Rehabilitation Loan Committee may modify the restructuring plan proposed by the borrower or propose a new restructuring plan.