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Part III

Department of Agriculture

Rural Business—Cooperative Service

7 CFR Part 4280

**Rural Microentrepreneur Assistance
Program; Proposed Rule**

DEPARTMENT OF AGRICULTURE**Rural Business—Cooperative Service****7 CFR Part 4280**

RIN 0570-AA71

Rural Microentrepreneur Assistance Program**AGENCY:** Rural Business-Cooperative Service, USDA.**ACTION:** Proposed rule.

SUMMARY: The Food, Conservation, and Energy Act of 2008 (the Act), which amends Section 6022 of the Farm Security and Rural Investment Act of 2002, established the Rural Microentrepreneur Assistance Program. The program will provide technical and financial assistance in the form of loans and grants to qualified Microenterprise Development Organizations to support microentrepreneurs in the development and ongoing success of rural microenterprises. The Agency proposes to implement the program to meet the goals and requirements of the Act.

DATES: Comments on the proposed rule must be received on or before November 23, 2009 to be assured of consideration. The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through December 7, 2009.

ADDRESSES: You may submit comments to this proposed rule by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments electronically.
- *Mail:* Submit your written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue, SW., Washington, DC 20250-0742.

- *Hand Delivery/Courier:* Submit your written comments via Federal Express mail, or other courier service requiring a street address, to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Lori Washington, Loan Specialist, Business Programs, Specialty Programs Division, USDA, Rural Development, Rural Business—Cooperative Service, Room 6868, South Agriculture Building, Stop

3225, 1400 Independence Avenue, SW., Washington, DC 20250-3225,
Telephone: (202) 720-9815, E-mail:
lori.washington@wdc.usda.gov.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

- I. Background
 - A. Statutory Authority
 - B. Nature of the Program
- II. Discussion of Public Meeting and Request for Comments
- III. Discussion of the Proposed Rule
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I. Background**A. Statutory Authority**

Title VI, Section 6022 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246 established the Rural Microentrepreneur Assistance Program (RMAP). The Act mandates that the Secretary of Agriculture establish a program to make loans and grants to microenterprise development organizations (MDOs) to support microentrepreneurs in the development and ongoing success of rural microenterprises. The Act further mandates that, under this program, MDOs will use funds borrowed from the Agency to make fixed interest rate microloans of not more than \$50,000 to microentrepreneurs for startup and growing rural microenterprises.

The Secretary shall also make annual grants to borrower MDOs to provide marketing management and other technical assistance (TA) to microentrepreneurs that have received or are seeking a microloan from an MDO under this program. Such grants will be in an amount equal to not more than 25 percent of the total outstanding balance of microloans made by the MDO, under this program, as of the date the grant is awarded or \$100,000, whichever is less.

The Secretary shall also make grants to MDOs to provide training or other operational enhancement activities or services for MDOs that serve rural microentrepreneurs. Maximum grant amounts for these enhancement grants will be announced annually and will be based on appropriations and consideration of program needs. In all cases, the maximum enhancement grant funding awarded to a single MDO will not exceed \$25,000 or ten percent of the available funding, whichever is less, in any given year.

In making loans to MDOs, the Act requires the Agency to make direct loans to MDOs to provide fixed rate microloans for startup and growing microenterprises. In making grants to MDOs, the Act requires the Agency to place an emphasis on MDOs serving microentrepreneurs located in rural areas that have suffered significant outmigration. The Agency shall also ensure, to the maximum extent practicable, that grant recipients include MDOs of varying sizes and that serve racially and ethnically diverse populations. MDOs will be eligible to receive TA grants to provide assistance to microentrepreneurs who have received, or are seeking, a microloan from the MDO under this program.

The following section describes the proposed RMAP.

B. Nature of the Program

This subpart contains the provisions and procedures by which the Agency will administer the Rural Microenterprise Assistance Program (RMAP). The purpose of the program is to support the development and ongoing success of rural microentrepreneurs and microenterprises (businesses generally with ten employees or fewer and in need of financing in the amount of \$50,000 or less). To meet this purpose, the program will make financial assistance, business based training, and technical assistance available to startup and growing microenterprises in rural areas, including agricultural producers that meet the definition of a microenterprise. Loans and training will be delivered to microenterprises via a

network of microenterprise development organizations (MDOs).

An MDO is an organization that provides access to capital and business-based training services to very small (micro) businesses. A microentrepreneur is an owner and operator, or prospective owner and operator, of a rural business with not more than 10 full-time equivalent employees who is unable to obtain sufficient training, technical assistance, or credit. The definition of a Microenterprise Development Organization and a microentrepreneur is included in the rule at § 4280.302.

In addition to assisting microenterprises, MDOs may also receive grant funding to improve their own capabilities for providing services to their microborrowers.

Microenterprises will not receive funds directly from the government. Rather, microlenders (*i.e.*, MDOs that have been approved for participation in this program) will receive direct loans and grants. Direct loans will be used to capitalize rural revolving loan funds for the exclusive purposes of making microloans in rural areas, accepting payments from microborrowers, and repaying the Agency as required in their loan agreements. Grants will be used to fund business-based training and technical assistance, which will be provided to microenterprises by or in concert with the microlender that has provided one or more microloans to the microborrower seeking training.

In following these guidelines, the Agency hopes to help build stronger rural communities by supporting rural microentrepreneurship, keeping and creating jobs, lessening outmigration, and working toward universal inclusion in the business sector.

The Act provides mandatory funding for the program during years 2009 through 2011 in the amount of \$4 million dollars per fiscal year and also provides for \$3 million of mandatory funding for FY 2012, plus such other funding as may be appropriated. During any of those years, additional funding may be appropriated. The number of loans and grants will vary from year to year, based on availability of funds and the quality of applications. The maximum annual loan and grant amounts a microlender may receive in any given year will also vary based on the availability of funds and will be announced annually in the **Federal Register**. The maximum loan amount to any one microlender will never exceed \$500,000.

Neither TA grant funds nor enhancements grant funds can be used

by microlenders to repay their Agency loans.

MDOs seeking to become microlenders under this program will submit application materials to USDA Rural Development through their local or state Rural Development Business Programs office. Microenterprises seeking financial or technical assistance under this program will submit application materials directly to their local microlender.

A list of local microlenders will be made available at the State Rural Development, Business Programs office and will be made available on the USDA Rural Development Web site.

II. Discussion on Public Meeting and Request for Comments

Prior to the development of this proposed rule, USDA published in the **Federal Register** a notice of public meeting [January 21, 2009, 74 FR 3550] inviting interested parties to attend and present their ideas and opinions regarding the proposed program. The meeting was held on January 26, 2009 in Washington, DC. Eight speakers presented comments on the authorizing provisions of the Act regarding program development and operation. USDA considered that input when developing this proposed rule. The comments received during the meeting will be included with those received during the public comment period for proposed rule. All comments and USDA's responses to those comments will be summarized and considered during the development of the final rule.

As a part of today's proposed rulemaking, the Agency is requesting comments on the program being proposed. The Agency is specifically seeking input in the following areas:

1. The scoring section as it applies to administrative funds.
2. The provisions for a maximum loan amount to any one single microlender and a maximum cap of \$2.5 million over time as provided in § 4280.311(e)(1).

The Agency will balance comments, where possible, with the need to establish requirements that meet the goals and rules of the program.

Applicants and the Agency must meet all applicable laws, regulations and executive orders. Applicants must provide the Agency with appropriate information so that all compliance issues can be evaluated in a fair and objective process.

Submit comments to the Agency as indicated in the **DATES** and **ADDRESSES** sections above. The Agency will consider all comments during development of the final rule.

III. Discussion of the Proposed Rule

The following paragraphs present a discussion of the provisions of each section of the proposed rule in the order that they appear.

A. Purpose and Scope (§ 4280.301)

This section describes the purpose, scope and applicability of the program and applies to all potential MDO applicants. An MDO selected to receive a direct loan will be automatically eligible to receive a TA grant. As such, RMAP applications will include all information necessary to make a loan and grant determination. Grant dollars will be disbursed as microloans are distributed. The amount of a TA grant may be equal to no more than 25 percent of the total outstanding balance of microloans made by an MDO under this program or \$100,000, whichever is less.

B. Definitions and Abbreviations (§ 4280.302)

This section presents program specific definitions. Some of these definitions are included in the statute. Others are proposed for use by the Agency to more clearly implement the program.

Statutorily defined terms. The Act defines several terms that are used in this document. Because the terms are defined by statute, the Agency cannot change the definitions. These terms are:

- Indian tribe,
- Microenterprise development organization,
- Microentrepreneur,
- Microloan,
- Program, and
- Rural microenterprise.

For the purposes of this rule, rural microentrepreneur and microentrepreneur are synonymous.

Proposed non-statutory terms herein include:

- Administrative expenses,
- Agency personnel,
- Award,
- Business incubator,
- Default,
- Delinquency,
- Enhancement grant,
- Facilitation of capital,
- Indian tribal government employee,
- Loan loss reserve fund,
- Microlender,
- Military personnel,
- Rural microloan revolving fund,
- Rural or rural area,
- Significant outmigration,
- Technical assistance and training,

and

- Technical assistance grant.
- With regard to the definition of Agency personnel, the Agency is

proposing the following definition: "Individuals employed by the United States Department of Agriculture-Rural Development Agency, who are more than 6 months from separating from the Agency." While the Agency does not want to allow the program to provide assistance to Agency personnel, the Agency at the same time wants to ensure that a person retiring or leaving the Agency and wishing to pursue self employment can obtain the services he or she needs to be ready for self employment at the time of separation. Therefore, the Agency is proposing that the definition of Agency personnel ends at 6 months prior to the expected date of separation in order to allow for pre-separation preparation and to allow these individuals to be considered as non-agency personnel. The Agency is also proposing a similar condition for the definition of military personnel.

C. Exception Authority (§ 4280.303)

This section explains the Administrator's limited authority to make exceptions to regulatory requirements, or provisions. It specifically excludes permissions to make exceptions for applicant or project eligibility, the rural area definition, to accept applicants that would not score at an acceptable level, and to accept applicants that have not successfully completed. Further, it requires that any exceptions be in the best financial interest of the Federal government and that exceptions not be in conflict with any applicable laws.

D. Review or Appeal Rights and Administrative Concerns (§ 4280.304)

This section provides the legal basis by which an unsuccessful applicant may request an Agency review or file an appeal with the USDA National Appeals Division, in accordance with 7 CFR part 11. This section also provides contact information for microborrowers that have any concerns over the implementation of this program.

E. Compliance With Other Federal Laws (§ 4280.305)

Applicants and the Agency must meet all applicable laws, regulations and executive orders including, but not limited to, the Equal Employment Opportunities Act of 1972, the Americans with Disabilities Act, the Equal Credit Opportunity Act, and the Civil Rights Act of 1964. Applicants must provide the Agency with appropriate information so that all compliance issues can be evaluated in a fair and objective process.

This section also presents USDA's policy of prohibiting discrimination in all its programs and activities.

F. Program Requirements for Microenterprise Development Organizations (§ 4280.310)

This section explains the basic criteria for applicant eligibility that apply to all applicants. Requirements specific to direct loan applicants (potential microlenders), grants to enhance the capabilities of the microlender (referred to as enhancement grants) and grants to assist microentrepreneurs (TA grants to microlenders) are also explained. This section also describes eligibility issues, and application qualification issues.

G. Loan Provisions for Agency Loans to MDOs (§ 4280.311)

This section explains, in detail, provisions specific to the direct loan program, including loan purposes; eligible and ineligible activities; the requirement for making microloans and loan terms and conditions for MDO borrowers. Loan funds must be used to capitalize rural microloan revolving funds. The account containing the funds may only be used to make microloans to rural microentrepreneurs and rural microenterprises; to accept repayments from those borrowers, and to repay the Agency. The Agency will require MDOs to report regularly on the status of their microloan portfolios using aging reports and narrative information. Sanctions may be imposed on non-performing lenders deemed to be in either performance or financial default under the program to include loan funds being called immediately due and payable and grant funds being held. Interest rates may be raised on funding that has not been disbursed to microborrowers. Restrictions regarding limitations on microloans are discussed in § 4280.322.

Loan funding limitations are defined in this section. The minimum loan amount from the Agency to any microlender will be \$50,000. The maximum loan amount to any microlender will be announced annually based on the availability of funds, but will never exceed \$500,000. The Agency believes that setting minimum and maximum loan amounts will best serve rural communities and allow for greater program participation. Loans made to microlenders must be fully supported by the ability to relend the money in accordance with § 4280.311 and with the ability to repay the loan over an 18-year amortization. Because the minimum loan to a microlender is equal to the maximum loan amount for a microloan, and to ensure that rural microloan revolving

funds are not exposed to danger of collapse based on a single microloan, no microloan will be made for an amount that is equal to more than \$50,000 or 20 percent of the amount loaned to the microlender under a single capitalization, whichever is less.

This section also discusses protection against losses, presenting loan loss reserve fund (LLRF) requirements and Agency oversight. The Agency is requiring quarterly reporting and provision of evidence that the sum of the unexpended amount in the RMRF, plus the amount in the LLRF, plus debt owed by the microborrowers is equal to or greater than 105 percent of the amount owed by the MDO to the Agency. The Agency will hold first lien position on the RMRF account, the LLRF, and all notes receivable from microloans.

H. Grant Provisions (§ 4280.312)

This section presents the requirements for technical assistance and microlender enhancement grants. General provisions include cost share and matching requirements. The Federal share of the cost of any project under this program will not exceed 75 percent. Oversight includes quarterly reporting. To help ensure that MDOs can cover the cost of administering this program, and to ensure that Agency grant funds are used to support rural microenterprise development, the Agency allows each MDO to utilize up to 10 percent of any TA grant received to be used to pay administrative expenses, consistent with the statute. However, the Agency is reserving the right to deny the 10 percent and to fund administrative expenses at a lower percentage. No part of an enhancement grant will be used for administrative expenses. The purpose of these grants is to assist the microlender with obtaining training to improve internal organizational efficiency, lending and training capacity, and skills to better serve microentrepreneurs and microenterprises. Because the enhancement grants do not directly assist these clients, no lending or training administrative costs are associated with the grant.

Ineligible grant purposes include application costs, project costs incurred prior to application date, and those purposes prohibited by law.

In this section, we also describe the purposes, selection criteria and award amounts for grants, which must be used to support rural microenterprise development through the provision of training or other operational improvement services to MDOs. Microlender enhancement grants are to

be used to allow MDOs to seek out training and other enhancement services to strengthen their own organizations.

To the extent practicable, the Agency will place an emphasis on providing financial assistance to MDOs of various sizes, that serve microentrepreneurs in rural areas suffering significant outmigration; and that serve racially and ethnically diverse populations.

Maximum amounts for enhancement grants will be determined and announced annually by the Agency based on program needs and the availability of funds. In all cases, the maximum enhancement grant funding awarded to a single MDO will not exceed \$25,000 or ten percent of the available funding, whichever is less, in any given year.

The statute requires the Agency to make technical assistance (TA) grants to MDOs to provide marketing, management and other technical assistance to microentrepreneurs that have received a loan from the MDO under this program. Applicant MDOs seeking a direct loan under this program must submit Standard Forms 424, "Application for Federal Assistance"; 424A, "Budget Information—Non-construction Programs"; and 424B, "Assurances—Non-construction Programs" as a part of the application. An organization selected to become a microlender will be eligible to receive a TA grant in an amount less than or equal to 25 percent of the total outstanding balance of program funded microloans made by that organization or \$100,000, whichever is less.

This section also discusses grant administration issues such as determination of grant amount and grant disbursement.

I. MDO Application and Submission Information (§ 4280.315)

This section explains those loan application requirements that will be regulatory. Submission details such as dates, times, and locations will be announced annually in the **Federal Register**. Forms that are required to be submitted with each application are listed in this section of the proposed rule. Form submissions may vary based on the type of assistance being sought.

J. Application Scoring (§ 4280.316)

This section discusses documentation that applicants must provide to meet eligibility requirements for loans and grants. Applicants must clearly indicate the category of funding for which they are applying. These categories are microlenders with 3 or more years experience, microlenders with less than 3 year experience, and MDOs seeking

enhancement grant funding. Scoring requirements vary for each category.

This section also provides details regarding the scoring criteria, which is divided into four subsections. Subsection (a) applies to all applicants. Subsections (b) and (c) apply to MDOs seeking to be microlenders depending on the number of years of their experience. Subsection (b) describes the additional information that will be scored for MDOs with three or more years experience, while subsection (c) describes the additional information that will be scored for MDOs with less than three years experience.

Because a successful microlending program integrates training and technical assistance prior to, during, and after the loan making process, MDOs selected to participate as microlenders must include in their applications, along with other required documentation, a description of their technical assistance and training program. This information, along with the applicable Standard Form 424, will be considered the grant application so that a separate application package will not be required for the TA grant. While the maximum TA grant amount is 25 percent of the loan amount or \$100,000, whichever is less, grant amounts may be adjusted downward based on information provided in the application.

Subsection (d) describes the additional criteria by which any MDO seeking funding for enhancement grants will be scored. Additionally, the dollar amount of TA grants will be based on the loan amount made to the MDO, in accordance with the statute, and the program microloan portfolio owed to the MDO.

Lastly, subsection (e) describes optional application provisions for microlenders who have participated in this program for at least five years. The optional application provisions reduce the amount of paperwork required to apply for future funding under this program.

K. Selection of Applications for Funding (§ 4280.317)

This section further explains the selection process by which funds will be awarded. Applications from microlenders with 3 or more years experience and applications from microlenders with less than 3 years experience will be ranked together. Enhancement grant applications will be ranked separately from the microlender applications. Subject to the availability of funds, the highest scoring applications will be funded in descending order.

Given the current funding level, during the initial year of operations, applications will be submitted to the State Offices for initial review, intergovernmental review, and comments. The applications will be submitted by the Rural Development State Offices to the Rural Development National Office for final scoring and selection. Applications will be accepted in the National Office on a quarterly basis using Federal Fiscal Quarters. The Agency reserves the right, as funding for the program increases, to update this method of program administration in future years, including managing the program through Rural Development's state offices.

L. Grant Administration (§ 4280.320)

Discusses the quarterly reporting, site visits, and inspection of records that the Agency will utilize to provide oversight of any organization receiving a grant under this program. Also explains that the Agency will make grant payments not more often than on a quarterly basis.

M. Loan and Grant Servicing (§ 4280.321)

Presents a listing of other regulations that will be applicable for servicing loans and grants made to MDOs.

N. Loans From the MDOs to the Microentrepreneurs and Microenterprises (§ 4280.322)

Discusses requirements for microloans from the MDO to the microborrowers. Presents information on the maximum microloan amounts, terms and conditions, insurance requirements, the appeal of MDO lending decisions, and eligible microloan purposes.

O. Ineligible Microloan Purposes (§ 4280.323)

Describes those activities for which Agency microloan funds may not be used.

IV. Administrative Requirements

A. Executive Order 12866

This proposed rule has been reviewed under Executive Order (EO) 12866 and has been determined significant by the Office of Management and Budget. The EO defines a "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise

interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO.

The Agency conducted a cost-benefit analysis to fulfill the requirements of Executive Order 12866. The Agency has identified potential benefits to prospective program participants and the Agency that are associated with improving the availability of microlevel business capital, business-based training and technical assistance, and enhancing the ability of microlenders to service the microentrepreneurs to whom they are making their microloans.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development must prepare, to the extent practicable, a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. With certain exceptions, section 205 of UMRA requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

C. Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

D. Executive Order 12988, Civil Justice Reform

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. Except where specified, all State and local laws and regulations that are in direct conflict with this rule will be preempted. Federal funds carry Federal requirements. No person is required to apply for funding under this program, but if they do apply and are selected for funding, they must comply with the requirements applicable to the Federal program funds. This rule is not retroactive. It will not affect agreements entered into prior to the effective date of the rule. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

E. Executive Order 13132, Federalism

It has been determined, under Executive Order 13132, Federalism, that this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in the proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-602) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute. If an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, this analysis is not required. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, Rural Development has determined that this action will not have a significant economic impact on a substantial number of small entities for the reasons discussed below. While, the majority of MDOs expected to participate in this Program will be small businesses, the average cost to an MDO is estimated to be approximately 1 percent of the total mandatory funding available to the program in fiscal years 2009 through 2012. Rural Development estimates that most of the administrative costs incurred by MDOs participating in the program will be covered by the interest

rate spread between the one percent loan from Rural Development and the interest rate on loans made to the microentrepreneur by the MDO. Further, this regulation only affects MDOs that choose to participate in the program.

G. Executive Order 12372, Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation will occur for the assistance to MDOs in accordance with the process and procedures outlined in 7 CFR part 3015, subpart V. Assistance to rural microenterprises will not require intergovernmental review.

Rural Development will conduct intergovernmental consultation using RD Instruction 1940-J, "Intergovernmental Review of Rural Development Programs and Activities," available in any Rural Development office, on the Internet at <http://www.rurdev.usda.gov/regs>, and in 7 CFR part 3015, subpart V. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following Web site: <http://www.whitehouse.gov/omb/grants/spoc.html>.

H. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, the proposed rule is not subject to the requirements of Executive Order 13175.

I. Programs Affected

Catalog of Federal Domestic Assistance (CFDA) Number. This program is listed in the Catalog of Federal Domestic Assistance under Number 10.870.

J. Paperwork Reduction Act

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for clearance. In accordance with the

Paperwork Reduction Act of 1995, USDA Rural Development will seek standard OMB approval of the reporting requirements contained in this proposed rule and hereby opens a 60-day public comment period.

Title: Rural Microentrepreneur Assistance Program.

Type of Request: New Collection.

Abstract: The collection of information is vital to Rural Development to make decisions regarding the eligibility of projects and loan and grant recipients in order to ensure compliance with the regulations and to ensure that the funds obtained from the Government are being used for the purposes for which they were awarded. Microdevelopment organizations seeking funding under this program will have to submit applications that include specified information, certifications, and agreements. This information will be used to determine applicant eligibility and to ensure that funds are used for authorized purposes. Applications for continued participation in the program will include primarily any needed updates to the information submitted with the initial application.

Once an MDO has been approved for participation in the program, it must submit additional documents, reports, and certifications to the Agency. For MDOs receiving loans, the necessary documents are required around loan closing. For MDOs receiving grant funds, the MDO must submit a financial status report and request for advancement or reimbursement. In addition, all MDOs that are awarded funds under this program must submit quarterly reports to the Agency to provide information on their performance. Some grantees will also be required to submit other reports on occasion in the event of poor performance or other such occurrences that require more than the usual set of reporting information. Lastly, grantees that plan to spend technical assistance grant funds on administrative expenses must submit an annual budget of proposed administrative expenses for Agency approval.

In summary, this collection of information is necessary in order to implement this program.

The following estimates are based on the anticipated average over the first three years the program is in place.

Estimate of Burden: Public reporting for this collection of information is estimated to average 2 hours per response.

Respondents: Microenterprise development organizations (nonprofit

entities, Indian tribes, and public institutions of higher education).

Estimated Number of Respondents: 66.

Estimated Number of Responses per Respondent: 36.

Estimated Number of Responses: 2,379.

Estimated Total Annual Burden (Hours) on Respondents: 4,462.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch at (202) 692-0043.

Comments

Comments are invited regarding: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of Rural Development's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250-0742. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

K. E-Government Act Compliance

USDA is committed to complying with the E-Government Act of 2002 (Pub. L. 107-347, December 17, 2002), to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

List of Subjects in 7 CFR 4280

Business programs, Grant programs, Loan programs, Microenterprise development organization, Microentrepreneur, Rural development, Small business, Rural areas.

For the reasons set forth in the preamble, part 4280 of title 7 of the Code of Federal Regulations is proposed to be amended as follows:

PART 4280—LOANS AND GRANTS

1. The authority citation for part 4280 is revised to read as follows:

Authority: 7 U.S.C. 1989(a), 7 U.S.C. 2009s.

2. Part 4280 is amended by adding a new subpart D to read as follows:

Subpart D—Rural Microentrepreneur Assistance Program

Sec.

- 4280.301 Purpose and scope.
- 4280.302 Definitions and abbreviations.
- 4280.303 Exception authority.
- 4280.304 Review or appeal rights and administrative concerns.
- 4280.305 Nondiscrimination and compliance with other Federal laws.
- 4280.306–4280.309 [Reserved]
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Subpart D—Rural Microentrepreneur Assistance Program

§ 4280.301 Purpose and scope.

(a) This subpart contains the provisions and procedures by which the Agency will administer the Rural Microenterprise Assistance Program (RMAP). The purpose of the program is to support the development and ongoing success of rural microentrepreneurs and microenterprises (businesses generally with ten employees or fewer and in need of financing in the amount of \$50,000 or less). To meet this purpose, the program will make financial assistance, business based training, and technical assistance available to microenterprises in rural areas and will deliver direct loans and technical assistance (TA) grants to Microenterprise Development Organizations (MDOs). These funds will be used by MDOs to assist microentrepreneurs by provision of integrated financial assistance, business training, and technical support. The program will also provide enhancement grants to enhance the capabilities of MDOs to support rural microenterprise development. In addition, program funds will be used to support other such activities as deemed appropriate by the

Secretary to ensure the development and ongoing success of rural microenterprises.

(b) The Agency will make direct loans to microlenders, as defined in § 4280.302, to capitalize microloan revolving funds to provide fixed interest rate microloans to microentrepreneurs for startup and growing microenterprises. Technical assistance grants will be awarded to microlenders to provide technical assistance to microentrepreneurs who have received one or more microloans from the MDO under this program.

(c) To ensure that MDOs are able to provide appropriate training to microentrepreneurs, operate efficiently, and stay up-to-date on business training practices, the Agency will make enhancement grants to microlenders that have successfully completed the application scoring process for such grants, whether or not they receive other funding under this program, to enhance their ability to provide training, operational support, business planning, market development assistance, and other related services to rural microentrepreneurs.

§ 4280.302 Definitions and abbreviations.

(a) *General definitions.* The following definitions apply to the terms used in this subpart.

Administrative expenses. Those expenses incurred by an MDO for the operation of services under this program. Not more than 10 percent of TA grant funding may be used for such expenses.

Agency. USDA Rural Development, Rural Business-Cooperative Service or its successor organization.

Agency personnel. Individuals employed by the United States Department of Agriculture-Rural Development Agency, who are more than 6 months from separating from the Agency.

Applicant. The eligible legal entity, also referred to as a microenterprise development organization or MDO, submitting the application.

Application. The forms and documentation submitted by an MDO for acceptance into the program.

Award. The written documentation, executed by the Agency after the application is approved, containing the terms and conditions for provision of financial assistance to the applicant. Financial assistance may constitute a loan or a grant or both.

Business incubator. An organization that provides temporary premises, and also provides technical assistance, advice, use of equipment, and may provide access to capital, or other

facilities or services to microentrepreneurs and microenterprises starting or growing a business.

Default. Default may be monetary or performance based.

(i) Monetary default is failure by a participating MDO to meet any financial obligation or term of a loan or grant. An MDO will be considered in monetary default if it fails to make 3 or more scheduled loan payments in a row; if it misuses grant funding; or if it has less than a total of 105 percent of the dollars lent to it under this program and still owed to the Agency in a combination of the Rural Microloan Revolving Fund (RMRF), the Loan Loss Reserve Fund (LLRF), and the total outstanding balance of microloans made.

(ii) Performance default is failure by a participating MDO to meet any regulatory requirement or any requirement in program guidance.

Delinquency. Failure by an MDO to make a scheduled loan payment by the due date or within any grace period as stipulated in the promissory note and loan agreement.

Enhancement grant. A grant whose funds are used to improve the internal operations of a microlender participating under this program in a manner that allows the microlender to improve their capabilities in delivering training, operational support, business planning, market development assistance, and other related services to rural microentrepreneurs

Facilitation of capital. For purposes of this program, facilitation of capital means assisting a technical assistance client in obtaining a microloan whether or not the microloan is wholly or partially capitalized by funds provided under this program.

Fiscal year (FY). Fiscal year means the 12-month period beginning October 1 of any given year and ending on September 30 of the following year.

Full-time equivalent employee (FTE). The Agency uses the Bureau of Labor Statistics definition of full-time jobs as its standard definition. For purposes of this program, a full-time job is a job that has at least 35 hours in a work week. As such, one full-time job with at least 35 hours in a work week equals one FTE; two part-time jobs with combined hours of at least 35 hours in a work week equals one FTE, and three seasonal jobs equals one FTE. If an FTE calculation results in a fraction, it should be rounded up to the next whole number.

Indian tribal government employee. An individual currently employed by its Indian tribal government with more than 6 months remaining in his/her contract or other agreement to remain a

paid, full-time employee of the tribal government. If no written agreement exists, then there must be an understanding with the tribe that the employee is expected to remain employed on a full-time basis with the tribe for 6 months or more.

Indian tribe. The term “Indian tribe” as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)—means “any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”

Loan loss reserve fund (LLRF). An interest-bearing deposit account an MDO must establish to pay any shortage in the rural microloan revolving fund caused by delinquencies or losses on microloans. The LLRF account must be maintained in an amount equal to at least 5 percent of the outstanding balance of funds owed to the Agency by the MDO under this program. The Agency will hold a security interest in the account and all funds therein, until the MDO has repaid its debt to the Agency under this program.

Microenterprise development organization (MDO). An organization that:

(i) Is a non-profit entity; an Indian tribe (the government of which tribe certifies that no MDO serves the tribe and no RMAP exists under the jurisdiction of the Indian tribe); or a public institution of higher education; and

(ii) Provides training and technical assistance to rural microentrepreneurs; and

(iii) Facilitates access to capital or another related service; and

(iv) Has a demonstrated record of delivering services to rural microentrepreneurs, or an effective plan to develop a program to deliver such services.

Microentrepreneur. An owner and operator, or prospective owner and operator, of a rural microenterprise who is unable to obtain sufficient training, technical assistance, or credit other than under this section, as determined by the Secretary. For purposes of this regulation, rural microentrepreneur and microentrepreneur are synonymous. All microentrepreneurs assisted under this regulation must be located in rural areas. Microenterprises include businesses employing 10 people or

fewer than are in need of \$50,000 or less in business financing and/or in need of business based technical assistance and training. Such businesses may include any type of legal business that meets local standards of decency. Business types may also include agricultural producers provided they meet the stipulations in this definition.

Microlender. An MDO that has been approved by the Agency for participation under this subpart.

Microloan. A business loan of not more than \$50,000 with a fixed interest rate that is provided to a rural microentrepreneur for startup and growing rural microenterprises.

Military personnel. Individuals, regardless of rank, currently enlisted in active military service with more than 6 months remaining in their service requirement.

Nonprofit entity. An entity, determined by State Law, to be conducting business so as to be defined as a nonprofit entity and that has applied for or received such designation from the U.S. Internal Revenue Service.

Program. The Rural Microentrepreneur Assistance Program (RMAP).

Rural microenterprise. The term 'rural microenterprise' means:

- (i) A sole proprietorship located in a rural area; or
- (ii) A business entity with not more than 10 full-time-equivalent employees located in a rural area.

Rural microloan revolving fund (RMRF). An interest-bearing account into which an MDO shall deposit loan funds received from the Agency, from which loans shall be made by the MDO to microentrepreneurs, and from which repayments to the Agency shall be made. The Agency will hold a security interest in the RMRF account and on any funds therein until such time as the MDO repays its debt to the Agency under this program.

Rural or rural area. For the purposes of this program, the terms 'rural' and 'rural area' are defined as any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States; and the contiguous and adjacent urbanized area.

(i) For purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State.

(ii) Notwithstanding any other provision of this paragraph, within the areas of the County of Honolulu, Hawaii, and the Commonwealth of

Puerto Rico, the Secretary may designate any part of the areas as a rural area if the Secretary determines that the part is not urban in character, other than any area included in the Honolulu census designated place (CDP) or the San Juan CDP.

Significant outmigration. The movement of population, other than migrant worker populations, away from a defined area at a rate of 15 percent or higher based on the three most recent decennial censuses as demonstrated by data supplied by the U.S. Census Bureau.

Technical assistance and training. The provision of education, guidance, or instruction to one or more microentrepreneur(s) to prepare them for self-employment; to improve the state of their current microbusiness; to increase their capacity in a specific technical aspect of the subject business; and, to assist the microentrepreneur(s) in achieving a degree of business preparedness and/or functioning that will allow them to obtain, or have the ability to obtain, one or more microloans of \$50,000 or less whether or not from program funds.

Technical assistance grant. A grant whose funds are used to provide technical assistance and training, as defined in this section.

(b) **Abbreviations.** The following abbreviations apply to the terms used in this subpart:

FTE—Full-time employee.

LLRF—Loan loss reserve fund.

MDO—Microenterprise development organization.

RMAP—Rural microentrepreneur assistance program.

RMRF—Rural microloan revolving fund.

TA—Technical assistance.

§ 4280.303 Exception authority.

The Administrator may make limited exceptions to the requirements or provisions of this subpart. Such exceptions must be in the best financial interest of the Federal government, such as agreeing to the terms of a new repayment agreement to ensure repayment by a defaulted microlender. No exceptions may be made regarding applicant eligibility, project eligibility, or the rural area definition. In addition, exceptions may not be made:

(a) To accept an applicant into the program that would not normally be accepted under the scoring system;

(b) To fund an interested party that has not successfully competed for funding in accordance with the regulations.

§ 4280.304 Review or appeal rights and administrative concerns.

(a) **Review or appeal rights.** An applicant MDO may seek a review of an Agency decision under this subpart from the appropriate Agency official that oversees the program in question, or appeal to the National Appeals Division in accordance with 7 CFR part 11.

(b) **Administrative concerns.** If a microborrower has any questions or concerns regarding the administration of the program, including action of the microlender, contact: Business Programs, Specialty Programs Division, USDA, Rural Development, Rural Business—Cooperative Service, Room 6868, South Agriculture Building, Stop 3225, 1400 Independence Avenue, SW., Washington, DC 20250-3225 or the USDA Rural Development State Office in the State in which the microborrower is located.

§ 4280.305 Nondiscrimination and compliance with other Federal laws.

(a) Applicants must comply with other applicable Federal laws, including the Equal Employment Opportunities Act of 1972, the Americans with Disabilities Act, the Equal Credit Opportunity Act, the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and 7 CFR part 1901-E.

(b) The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). Any applicant that believes it has been discriminated against as a result of applying for funds under this program should contact: USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD) for information and instructions regarding the filing of a Civil Rights complaint. USDA is an equal opportunity provider, employer, and lender.

(c) A pre-award compliance review will take place at the time of application

when the applicant completes Form RD 400-8, "Compliance Review" (or successor form). Post award compliance reviews will take place once every three years after the beginning of participation in the program and until such time as a microlender leaves the program.

§§ 4280.306-4280.309 [Reserved]

§ 4280.310 Program requirements for MDOs.

(a) *Eligibility requirements for applicant MDOs.* To be eligible for a direct loan or grant award under RMAP, an applicant must meet each of the criteria set forth in paragraphs (a)(1) through (8) of this section, as applicable.

(1) *Type of applicant.* The applicant must meet the definition of an MDO under this program.

(2) *Citizenship.* To be eligible to apply for status as an MDO, the applicant must be at least 51 percent controlled by persons who are either:

(i) Citizens of the United States, the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, American Samoa, or the Commonwealth of Puerto Rico; or

(ii) Legally admitted permanent residents residing in the U.S.

(3) *Legal authority and responsibility.* The applicant must have the legal authority necessary to carry out the purpose of the award.

(4) *Direct loans.* The applicant will be considered for a direct loan to capitalize a revolving loan fund if it submits an application that scores sufficiently to indicate that the applicant is appropriately qualified to perform under this program and will use program funding exclusively for making and administering a microloan revolving fund in one or more rural areas; and

(i) Has demonstrated experience in the management of a revolving loan fund; or

(ii) Certifies that it, or its employees, have received education and training from a qualified microenterprise development training entity to the extent that it has the capacity to manage such a revolving loan fund; or

(iii) Is actively and successfully participating as an intermediary lender in good standing under the U.S. Small Business Administration (SBA) Microloan Program or other similar loan programs as determined by the Administrator.

(5) *Grants to support rural microenterprise development (enhancement grants).* Any microlender participating in the program will be considered eligible to apply for an enhancement grant. Such grants must be

used to improve the internal operations of the microlender so that they can improve their ability to deliver training, operational support, business planning, market development assistance, and other related services to rural microentrepreneurs. Other related services include improvement in the microlender's ability to make and service loans, arrive at sound lending decisions, improve operational efficiency, improve their marketing strategies so as to reach an increased number of potential microborrowers, enhance record keeping and data gathering, and penetrating new markets as they develop such as sustainable small farming, the greening of existing businesses, development of new green businesses, and other sectors yet to be developed. Any microlender that receives an enhancement grant to pursue an internal enhancement project must enter into an agreement with a trainer/service provider within 90 days of notification of the grant award. If the microlender does not enter into such agreement within these 90 days, the enhancement grant will be forfeited.

(6) *Grants to support microentrepreneurs (TA grants).* The capacity of the applicant MDO to provide an integrated program of microlending and technical assistance will be evaluated during the scoring process. Therefore, an applicant MDO will be considered eligible to receive TA grant funding if it receives funding to provide microloans under this program, and agrees to use TA grant funding exclusively for providing technical assistance and training to eligible microentrepreneurs, with the exception that up to 10 percent of the grant funds may be used to cover administrative expenses, except as may be reduced as provided under § 4280.312(a)(5). The following limitations will apply to TA grant funding:

(i) Administrative expenses should be kept to a minimum. As such, the applicant MDO is required, in the application materials, to provide an administrative budget plan indicating the amount of funding it will need for administrative purposes.

(ii) While operating the program, the selected microlender will be expected to adhere to the estimates it provides in the application. If for any reason, the microlender cannot meet the expectations of the application, it must contact the Agency in writing to request a budget adjustment.

(iii) Budget adjustments will be considered and approved on a case by case basis.

(7) *Ineligible applicants.* An applicant will be considered ineligible if it does

not meet the definition of an MDO as provided in § 4280.302; if it is debarred, suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs. The applicant will also be considered ineligible if it has an outstanding judgment against it, obtained by the United States in a Federal Court (other than U.S. Tax Court), is delinquent in meeting U.S. Internal Revenue Service (IRS) requirements, or cannot meet the requirements of paragraph (a)(6) of this section.

(8) *Delinquencies.* No applicant will be eligible to receive a loan if it is delinquent on a Federal debt. (**Note:** See 31 U.S.C. 3720B, an applicant is still eligible for a grant if they are delinquent on a Federal debt; however, see 28 U.S.C. 3201, Federal judgment debtors (other than tax debts) are ineligible for Federal loans and grants).

(b) *Application eligibility.* An application will be considered eligible for funding if it is submitted by an eligible MDO and will qualify for funding based on the results of review, scoring, and other procedures as indicated in this subpart, and will either:

(1) Establish, or add capital to, an RMRF originally capitalized under this program; or

(2) Establish or continue a training and TA program for rural microentrepreneurs as defined.

(c) *Business incubators.* Because the purpose of a business incubator is to provide business-based technical assistance and an environment in which micro-level, very small, and small businesses may thrive, a microlender that owns and operates a small business incubator, as described, will be considered eligible to apply. In addition, a business incubator selected to participate as a microlender may use RMAP funding to lend to an eligible microenterprise tenant, without imposing a conflict of interest on itself.

§ 4280.311 Loan provisions for Agency loans to microlenders.

(a) *Purpose of the loan.* Loans will be made to eligible and qualified microlenders to capitalize RMRFs. An RMRF will be an exclusive account, from which fixed interest rate microloans will be made to microentrepreneurs and microenterprises; into which payments from microborrowers and reimbursements from the LLRF will be deposited; and from which payments will be made by the microlender to the Agency. Interest earnings accrued by the RMRF will become part of the RMRF and may be used only for the purposes

stated above. However, with advance written approval by the Agency, the microlender may increase the funding in its LLRF with interest earnings from the RMRF. The Agency will hold first lien position on the RMRF account, the LLRF, and all notes receivable from microloans.

(b) *Eligible activities.* Microlenders may make microloans for qualified business activities as specified in § 4280.322 and may use Agency loan funds only for the purposes stated in § 4280.322.

(c) *Ineligible activities.* Microlenders may not use Agency loan funds for administrative costs or expenses and may not make microloans under this program for ineligible purposes as specified in § 4280.323.

(d) *Loan terms and conditions for microlenders.* Loans will be made to microlenders under the following terms and conditions:

(1) Funds received from the Agency will be deposited into an interest bearing account that will be the RMRF account.

(2) The RMRF account may be used to make microloans, to accept repayments from microborrowers, to repay the Agency and, with the advance written approval of the Agency, to supplement the LLRF with interest earnings from the RMRF. The Agency will only approve the use of interest earning the RMPF account to supplement the LLRF in those cases where the microlender's portfolio is highly performing, where the RMRF account is at an appropriate level to guarantee the ability to repay, and the microlender's repayment history has been highly satisfactory.

(3) The term of a loan made to a microlender will not exceed 20 years and may be less, as determined by the Agency.

(4) Loan repayments will be made in equal monthly installments to the Agency beginning on the last day of the 24th month of the life of the loan.

(5) A microlender may make partial or full repayment of its debt to the Agency at any time without penalty.

(6) The microlender is responsible for full repayment of its loan to the Agency regardless of the performance of its microloan portfolio.

(7) The Agency may call the entire loan due and payable prior to the end of the 20-year period, due to non-performance, delinquency, or default.

(8) Each loan made to a microlender will automatically receive a 2-year deferral during which time no repayment will be due to the Agency.

(i) Interest will accrue during the deferral period on funds drawn down from (disbursed by) the Agency.

(ii) The deferral period will begin on the day the loan to the microlender is closed.

(9) Loan closing between the microlender and the Agency must take place within 60 days of loan approval or funds will be forfeited.

(10) Microlenders will be eligible to receive a disbursement of up to 25 percent of the total loan amount at the time of loan closing. Interest will accrue on all funds disbursed to the microlender beginning on the date of disbursement.

(11) A microlender must make one or more microloans within 30 days of any disbursement it receives from the Agency.

(12) Microlenders may receive additional disbursements not more than quarterly, until the full amount of the loan to the microlender is disbursed, or until the end of the thirty sixth month of the loan, whichever occurs first. To ensure that microlenders utilize their funding in an appropriate manner, requests for disbursement must be accompanied by a description of the incoming microloan pipeline. Requests for funding should generally be in the amount of the incoming pipeline plus 20 percent of that amount. Requests in excess of that amount must be explained.

(13) Each loan made to a microlender will bear an interest rate equal to the rate applicable to five-year obligations of the United States treasury, adjusted to the nearest one-eighth percent, subject to:

(i) A minimum interest rate of at least 1 percent, and

(ii) An adjustment as provided in paragraph (d) (17) of this section

(14) Each loan to a microlender will accrue interest at a rate of 1 percent during the initial deferral period. Interest accrued during this period will be capitalized as described in paragraph (d)(15) of this section.

(15) On the first day of the twenty-second month of the initial deferral period, the microlender's debt to the Agency will be calculated and amortized over an 18-year period. The first payment will be due to the Agency on the last day of the twenty-fourth month of the life of the loan. Interest accrued during the deferral period will be calculated into the payment and repaid over the 18-year payment period.

(i) A microlender requesting disbursements after the repayment calculation may inadvertently subject itself to negative amortization. Such a microlender may request to have the loan expeditiously re-amortized by the Agency.

(ii) All loans to microlenders will be automatically re-amortized at the end of the thirty-fourth month of the life of the loan.

(16) Funds not disbursed to the microlender by the end of the thirty-fourth month of the loan from the Agency will be de-obligated.

(17) All loans will receive an evaluation during the thirty-fourth month of the loan, so that:

(i) A microlender that has re-loaned all of its Agency funding to microentrepreneurs will adjust to the rate provided in paragraph (d)(13) of this section less 200 basis points for the life of the loan.

(ii) A microlender that has not fully re-loaned all of its Agency funding to microentrepreneurs, as of month twenty-four, will adjust to the rate provided in paragraph (d)(13) less 100 basis points for the life of the loan.

(18) The Agency will hold first lien position on the RMRF account, the LLRF, and all notes receivable from microloans.

(19) If a microlender makes a withdrawal from the RMRF for any purpose other than to make a microloan, repay the Agency, or, with advance written approval, transfer an appropriate amount of non-Federal funds to the LLRF, the Agency may impose a lien on the account, restricting further access to withdrawals from the account by the microlender O.

(20) In the event a microlender fails to meet its obligations to the Agency, the Agency may:

(i) Take possession of the RMRF and/or any microloans outstanding, and/or the LLRF; or

(ii) Call the loan due and payable in full; or

(iii) Enter into a workout agreement acceptable to the Agency, which may or may not include transfer or sale of the portfolio to another microlender (whether or not funded under this program) deemed acceptable to the Agency; or

(iv) Pursue any combination of actions specified in paragraphs (d)(20)(i) through (iii) on this section.

(e) *Loan funding limitations.* (1) *Minimum and maximum loan amounts.* The minimum loan amount a microlender may borrow under this program will be \$50,000 (fifty thousand dollars). The maximum any microlender may borrow in a single funding under this program will be \$500,000 provided certain limitations are met. In no case will the aggregate debt owed to the program by any single microlender exceed \$2,500,000.

(2) *Use of funds.* Loans must be used only to establish an RMRF out of which

microloans will be made, into which microloan payments will be deposited, and from which repayment will be made to the Agency. Interest earned by the microlender on these funds may, with advance written authorization from the Agency, be used to help fund the LLRF.

(f) *Loan loss reserve fund.* Each microlender that receives one or more loans under this program will be required to establish an LLRF.

(1) *Purpose.* The purpose of the LLRF is to protect the microlender and the Agency against losses that may occur as the result of the failure of one or more microentrepreneurs to repay their loans on a timely basis.

(2) *Capitalization and maintenance.* The LLRF must:

(i) Be held in a Federally-insured deposit account separate and distinct from any other fund owned by the microlender; and

(ii) Be maintained in an amount equal to not less than 5 percent of the amount owed by the microlender to the Agency under this program; and

(iii) Be capitalized using non-Federal funding; and

(iv) Remain open, appropriately capitalized, and active until such time as:

(A) All obligations owed to the Agency by the microlender under this program are paid in full; or

(B) It is used to assist with full repayment/prepayment of the microlender's debt.

(3) *Use of LLRF funds.* The LLRF must be used only to:

(i) Recapitalize the RMRF in the event of the loss and write-off of a microloan; that is, when a loss has been paid to the RMRF, from the LLRF, the microlender must refresh the LLRF to the required level from its own funding; and

(ii) Accept non-Federal deposits as required for maintenance of the fund at a level equal to 5 percent or more of the outstanding microloan balance; and

(iii) Accrue interest; interest earnings accrued by the LLRF will become part of the LLRF and may be used only for eligible purposes; and

(iv) Prepay or repay the Agency.

(4) *LLRF funded in advance.* The LLRF account must be established and partially funded by the microlender prior to the closing of the loan from the agency. Such funds must come from private sector sources. Federal funds will not be accepted as appropriate for the LLRF. At all times, the microlender must maintain the LLRF at a minimum of 5 percent of the total amount owed by the microlender, under this program, to the Agency. In the event of exhibited weaknesses on the part of a

microlender, the Agency may require additional funding be put into the LLRF; however, the Agency may never require an LLRF of more than 10 percent of the total amount owed to the microlender.

(g) *Loan approval and obligating funds.* The loan will be considered approved on the date the signed copy of Form RD 1940-1, "Request for Obligation of Funds," (or successor form(s)) is mailed to the microlender. Form RD 1940-1 authorizes funds to be obligated and may be executed by the loan approving official provided the microlender has the legal authority to contract for a loan, and to enter into required agreements, including an Agency-approved loan agreement, and has signed Form RD 1940-1.

(h) *Loan closing.* (1) Prior to loan closing, microlenders providing microloans must provide evidence that the RMRF and LLRF bank accounts have been set up and 5 percent of the initial disbursement has been deposited. USDA will have a first lien on these accounts. The evidence shall consist of:

(i) A pre-authorized debit form allowing the agency to withdraw payments from the RMRF account, and in the event of a repayment workout, from the LLRF account;

(ii) An Agency-approved automatic deposit authorization form from the depository institution providing the Agency with the RMRF account number into which funds may be deposited at time of disbursement to the microlender; and

(iii) A statement from the depository institution as to the amount of cash in the LLRF account.

(2) At loan closing, the microlender must certify that:

(i) All requirements of the letter of conditions have been met and

(ii) There have been no material adverse change(s) in the microlender or its financial condition since the issuance of the letter of conditions. If one or more adverse changes have occurred, the microlender must explain the change(s) and the Agency must review the changes to determine that the microlender remains eligible and qualified to participate as an MDO.

(iii) An Agency-approved promissory note must be executed at loan closing or prior to disbursement of funds.

(3) Agency personnel will not sign any documents other than those specifically provided for in this subpart.

(4) Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign, and return Form RD 1942-46, "Letter of Intent to Meet Conditions," (or successor form) to the Agency; or if certain conditions cannot

be met, the applicant may propose alternate conditions. The processing officer will review any requests for changes to the letter of conditions. The processing officer will approve only minor changes that do not materially affect the microlender. Changes in legal entities or where tax considerations are the reason for the change will not be approved.

(5) The microlender will provide sufficient evidence to enable the Agency to ascertain that no claim or liens of laborers, materials, contractors, subcontractors, suppliers of machinery and equipment, or other parties are against the security of the microlender, and that no suits are pending or threatened that would adversely affect the security of the microlender when the security instruments are filed.

(i) *Recordkeeping, reporting, and oversight.* Microlenders must maintain all records applicable to the program, to be made available to the Agency upon request, and must submit quarterly reports as specified in paragraphs (i)(1) through (4) of this section.

(1) On a quarterly basis, within 30 days of the end of the calendar quarter, each microlender that has an outstanding loan under this section must provide to the Agency:

(i) Quarterly reports, using an Agency-approved form, containing such information as the Agency may require, and in accordance with OMB circulars and guidance, to ensure that funds provided are being used for the purposes for which the loan to the microlender was made. At a minimum, these reports should include a discussion reconciling the microlender's actual results for the period against its goals, milestones, and objectives as previously communicated to the Agency;

(ii) SF-269, "Financial Status report (or successor form)"; and

(iii) SF-270, "Request for Advance or Reimbursement" (or successor form).

(2) Microlenders must provide evidence that the sum of the unexpended amount in the RMRF, plus the amount in the LLRF, plus debt owed by the microborrowers is equal to a minimum of 105 percent of the amount owed by the microlender to the Agency unless the Agency has established a higher LLRF reserve requirement for a specific microlender.

(3) If a microlender has more than one loan from the Agency, a separate report must be made for each unless the Agency has given authorization for the microlender to combine its RMRF accounts. The Agency will give authorization to combine RMRF accounts only if (1) the underlying loans

have the same terms and conditions and (2) if the combined report allows the Agency to effectively administer the program, including providing the same level of transparency and information for each loan as if separate reports had been prepared.

(4) The quarterly loan reports will include RD Form 1951-4, "Report of RMAP/RMRF Lending Activity," (or successor form(s)) as well as a discussion of any delinquent loans and the steps being taken to cure the delinquencies. Other reports may be required from time to time in the event of poor performance, one or more work out agreements or other such occurrences that require more than the usual set of reporting information.

(5) Because microloans made by microlenders to microborrowers are not underwritten by the Agency prior to loan making, the Agency may, at any time, choose to visit the microlender and inspect its files to ensure that program requirements are being met.

§ 4280.312 Grant provisions.

(a) *General.* The following provisions apply to both TA and enhancement grants, unless otherwise specified.

(1) *Grant amounts.* Maximum grant amounts for enhancement grants will be determined and announced annually based on the availability of funds. The maximum enhancement grant funding awarded to a single microlender will not exceed \$25,000 or ten percent of the available funding, whichever is less, in any given year. The maximum TA grant amount is 25 percent of the loan amount or \$100,000, whichever is less. The Agency may adjust the maximum TA grant amount downward based on information provided in the application.

(2) *Cost share.* The Federal share of the cost of a grant (technical assistance or enhancement) provided under this section will not exceed 75 percent.

(3) *Matching requirement.* Microlenders must provide a 10 percent non-Federal cash matching contribution against any grant awarded under this program. Microlenders must also provide a 15 percent non-Federal cash or in-kind contribution against any grant awarded under this program. The total matching requirement is 25 percent of the amount of the grant. The non-Federal match against a grant is separate and distinct from the funds required to be deposited in the LLRF. RD will be able to monitor this match based on the SF 270 which is the Request for Advance or Reimbursement form. The first disbursement will require a match of that disbursement. Using the SF 270, no second grant disbursement would be

made unless the matching funds were accounted for in advance.

(4) *Oversight.* Microlenders receiving a grant must submit reports, as specified in paragraphs (a)(4)(i) through (iv) of this section.

(i) On a quarterly basis, within 30 days after the end of the fiscal calendar quarter, a microlender that receives a grant will provide to the Agency an Agency-approved quarterly report containing such information as the Agency may require to ensure that funds provided are being used for the purposes for which the grant was made, including SF-269 or SF-272, "Federal Cash Transaction Report," (or successor form(s)), as appropriate, SF-270 (or successor form) if requesting grant funding at the time of reporting, and narrative reporting information as required by OMB circulars.

(ii) If a microlender has more than one grant from the Agency, a separate report must be made for each.

(iii) The reports will include Standard Form 270 and Standard Form 272 (or successor forms) along with a narrative report as required in OMB Circulars A-102 and A-110. This report will include information on the microlender's technical assistance, training, and/or enhancement activity, and grant expenses, milestones met, or unmet, explanation of difficulties, observations and other such information.

(iv) Other reports may be required by the Agency from time to time in the event of poor performance or other such occurrences that require more than the usual set of reporting information.

(5) *Administrative expenses.* Not more than 10 percent of a TA grant received by a microlender for a fiscal year (FY) may be used to pay administrative expenses. Microlenders must submit an annual budget of proposed administrative expenses for Agency approval. The Agency has the right to deny the 10 percent and to fund administration expenses at a lower level.

(6) *Ineligible grant purposes.* Grant funds may not be used for:

- (i) Grant application preparation costs;
- (ii) In the case of a TA grant, any costs incurred prior to the application date of the first microloan funded;
- (iii) In the case of a enhancement grant, costs incurred prior to the obligation date of the grant and capital improvements;
- (iv) Political or lobbying activities;
- (v) Assistance to any ineligible entity;
- (vi) Payment of any judgment or debt owed to the United States; and

(vii) Payment of any costs other than those allowed in paragraphs (b)(1) and (c)(1) of this section.

(b) *Grants to enhance a microlender capabilities (Enhancement Grants).*

(1) *Purpose.* The Agency will make enhancement grants to microlenders to carry out projects and activities that enhances the microlender's capabilities to provide training, operational support, business and strategic planning, and market development assistance, and other related services to assist the microlender in its ability to deliver services to rural microentrepreneurs.

(2) *Grant amounts.* The maximum enhancement grant amount will be announced annually based on the availability of funds. The maximum enhancement grant funding awarded to a single microlender will not exceed \$25,000 or ten percent of the available funding, whichever is less, in any given year. Funds cannot be used to pay off any loan amount.

(c) *Grants to assist microentrepreneurs (Technical Assistance (TA) Grants).* (1) *Purpose.* The Agency shall make TA grants to microlenders to assist them in providing marketing, management, and other technical assistance to microentrepreneurs that have received one or more microloans from the microlender.

(2) *Grant amounts.* TA grants will be limited to an amount equal to not more than 25 percent of the total outstanding balance of microloans made and active by the microlender as of the date the grant is awarded or \$100,000, whichever is less. However, the minimum TA grant amount will be no less than 15 percent of the outstanding balance of microloans owed to the microlender. Funds cannot be used to pay off the loans. During the first year of operation, the percentage will be determined based on the amount of the loan to the microlender, but will be disbursed on a quarterly basis based on the amount of microloans made. Any grant dollars obligated, but not spent, from the initial grant, will be subtracted from the subsequent year grant to ensure that obligations cover only microloans made and active.

(d) *Grant agreement.* The Agency will notify the approved applicant in writing, using an Agency-approved form (RD 4280-3, "Rural Economic Development Grant Agreement," or successor form), setting out the conditions under which the grant will be made. The form will include those matters necessary to ensure that the proposed grant is completed in accordance with the proposed project and budget, that grant funds are expended for authorized purposes, and

that the applicable requirements prescribed in the relevant Department regulations are complied with.

§§ 4280.313–314 [Reserved]

§ 4280.315 MDO application and submission information.

(a) *Initial and subsequent applications.* Applications shall be submitted in accordance with the provisions of this subpart unless adjusted by the Agency in an annual Notice for Solicitation of Applications (NOSA) or a Notice of Funding Availability (NOFA), depending on the availability of funds at the time of publication.

(b) *Content and form of submission.* Content and form requirements will differ based on the nature of the application. All applicants must provide the information specified in § 4280.316(a).

(1) An applicant with 3 or more years experience as an MDO seeking participation as a microlender must provide the additional information specified in § 4280.316(b). Such an applicant will be applying for a loan to capitalize an RMRF to be accompanied by a TA grant.

(2) An applicant with less than 3 years experience as an MDO seeking participation as a microlender must provide the additional information specified in § 4280.316(c). Such an applicant will also be applying for a loan to capitalize an RMRF to be accompanied by a TA grant.

(3) An applicant seeking enhancement grant funding for a specific enhancement project, internal to its organization, must provide the additional information specified in § 4280.316(d).

(c) *Application submission requirements.* All applicants must submit the following forms (or their successor forms) and information in order to be considered:

(1) Standard Form–424, “Application for Federal Assistance.”

(2) Standard Form–424A, “Budget Information—Non-construction Programs.”

(3) Standard Form–424B, “Assurances—Non-construction Programs.”

(4) For entities that are applying for more than \$150,000 in loan funds and/or more than \$100,000 in grant funds, only, SF LLL, “Disclosure of Lobbying Activities.”

(5) AD 1047, “Certification Regarding Debarment, Suspension, and other Responsibility Matters—Primary Covered Transaction.”

(6) Form RD 1910–11, “Certification of No Federal Debt.” Note that this form is only required for loan applicants.

(7) Evidence that the applicant organization meets the citizenship requirements.

(8) Form RD 400–8, “Compliance Review.”

(d) *Additional documentation.* The information required in this section is necessary for an application to be considered complete.

(1) *Eligibility to apply.* In addition to the forms and information required above, each applicant must demonstrate that it is eligible to apply to participate in this program by submitting documentation that the applicant is an MDO as defined in § 4280.302, as follows:

(i) Copies of the applicant’s IRS designation indicating that the applicant is legally considered a non-profit organization; or

(ii) Evidence that the applicant is a Federally recognized Indian tribe, and that the tribe neither operates, nor is served by an existing MDO; or

(iii) Evidence that the applicant is a public institution of higher education.

(iv) A Certificate of Good Standing from the applicant’s home state’s Office of the Secretary of State.

(2) *Separate applications.* Applicants must submit separate applications for loan funding and for enhancement grant funding.

(i) An entity applying for loan funding as a Microlender will be an MDO, eligible to apply based on the documentation provided under paragraph (b) of this section, that has a demonstrated history of providing microloans and technical assistance and training to rural microentrepreneurs, if it has 3 or more years of experience as an MDO or has an effective plan to develop a program for delivering services to rural microentrepreneurs if it has less than 3 years experience as an MDO. Microlenders will apply for loan funds to capitalize an RMRF, and, if selected, will automatically be eligible, though may not receive, a grant for provision of technical assistance and training to rural microentrepreneurs. It will depend on the applicant’s score and the number and scores of the other applicant’s who apply.

(ii) An entity applying for an enhancement grant must be a microlender participating in this program and must be selected through a separate application process based on the applicant’s score and the number and scores of other microlenders applying for enhancement grants.

(e) *Completed applications.* Applications that fulfill the

requirements specified in paragraphs (a) through (d) of this section will be fully reviewed, scored, and ranked in accordance with the provisions of § 4280.316. Scoring requirements will vary based on the level of the applicant’s experience as an MDO and on the type of funding sought.

§ 4280.316 Application scoring.

Applications will be scored based on the criteria specified in this section using the information submitted in the application. The total available points per application are 100. Points will be awarded as shown in paragraphs (a) through (e) of this section. Awards will be based on the ranking, with the highest ranking applications funded first subject to available funding.

(a) *Application requirements for all loan applications.* All applicants for a loan must submit the information specified in paragraphs (a)(1) through (7) of this section. This information provides a baseline for determination of capacity. Additional information are specified depending on whether the applicant has 3 or more years of experience or less than 3 years of experience. The maximum points available in this paragraph (a) is 45. All applicants must submit:

(1) An organizational chart clearly showing the positions and naming the individuals in those positions. Of particular interest to the Agency are management positions and those positions essential to the operation of microlending and TA programming. Up to 5 points will be awarded.

(2) Information indicating an understanding of microlending. For all applicants, this must be those parts of your policy and procedures manual that deal with the provision of loans, management of loan funds, and provision of technical assistance. Up to 5 points will be awarded.

(3) A succession plan to be followed in the event of the departure of personnel key to the operation of the applicant’s RMAP activities. Up to 5 points will be awarded.

(4) Resumes for each of the individuals shown on the organizational chart and indicated as key to the operation of the activities to be funded under this program. Points will be awarded based on the quality of the resumes and on the ability of the key personnel to administer the program. Up to 5 points will be awarded.

(5) Copies of the applicant’s most recent, and two years previous, financial statements. Points will be awarded based on the demonstrated ability of the applicant to maintain or grow its bottom line fund balance, its ability to manage

one or more Federal programs, and its capacity to manage multiple funding sources, restricted and non-restricted funding sources, income, earnings, and expenditures. Up to 10 points will be awarded.

(6) A copy of the applicant's organizational mission statement. The mission statement will be rated based on its relative connectivity to microenterprise development and general economic development. The mission statement may or may not be a part of a larger statement. Up to 5 points will be awarded.

(7) Information regarding the geographic service area to be served. Describe the service area. State the number of counties or other

jurisdictions to be served. Describe the demographics of the service area and whether or not it is rural, as defined; suffering from significant outmigration as defined; and enjoying a diverse population. Note that you will not be scored on the size of the service area but on the perceived ability to fully cover the service area as described as well as the needs of the service area. Up to 10 points will be awarded.

(b) *Application requirements for microlenders with 3 or more years experience seeking loans only.* In addition to the information specified in paragraph (a) of this section, applicants with 3 or more years experience as an MDO seeking a loan must provide the information specified in paragraphs

(b)(1) through (4) of this section. The total number of points available under this paragraph, in addition to the up to 45 points available in paragraph (a) of this section, is 55, for a total of 100.

(1) *History of provision of microloans.* Provide data regarding your history of making microloans for the three years previous to your application by answering the questions in paragraphs (b)(1)(i) through (vi) of this section. This information should be provided clearly and concisely in numerical format as the data will be used to calculate points as noted. Figure 1 presents an example of the format and data required. The total number of available points regarding history is 23.

FIGURE 1—EXAMPLE OF FORMAT AND DATA REQUIREMENTS

Data item	FY2006	FY2007	FY2008	Total
Total # of Microloans Made.				
Total \$ Amount of Microloans Made.				
# of Microloans Made in Rural Areas.				
Total \$ Amount of Microloans Made in Rural Areas.				
# of Microloans Made to [enter demographic group A].				
# of Microloans Made to [enter demographic group B].				
# of Microloans Made to [enter demographic group C].				
# of Microloans Made in Areas of Outmigration.				

(i) *Number and amount of microloans made during each of the three previous FYs.* Do not include current year information. If you would like, please include a narrative as a separate attachment; not in the body of the table.

(ii) *Number and amount of microloans made in rural areas.* From the data provided above, please indicate the number and amount of microloans made in rural areas in each of those years. If the history of providing microloans in rural areas shows:

(A) More than the three consecutive years immediately prior to this application, 4 points will be awarded;

(B) At least two of the years but not more than the three consecutive years immediately prior to this application, 2 points will be awarded;

(C) Less than the one year immediately prior to this application, 1 point will be awarded.

(iii) *Percentage of number of loans made in rural areas.* Calculate and enter the percentage of the total portfolio of microloans that have made in rural areas for the past three FYs. If the percentage of the total portfolio of microloans made in rural areas is:

(A) 75 percent or more, 4 points will be awarded;

(B) At least 50 percent but less than 75 percent, 2 points will be awarded;

(C) At least 25 but less than 50 percent, 1 point will be awarded.

(iv) *Percent of dollar amount of loans made in rural areas.* Enter the dollar

amount of the total portfolio of microloans you have made in rural areas in the previous three FYs. If the dollar amount of the microloans you made in rural areas is:

(A) 75 percent or more of the total amount, 4 points will be awarded;

(B) At least 50 percent but less than 75 percent, 2 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(v) *Diversity of microloan portfolio.* Each MDO shall compare the diversity of its microloan portfolio to the demographic makeup of its service area (as determined by the U.S. Census found in the latest decennial census) based on the number of microloans made to microentrepreneurs during the three years preceding applying for a loan under this program. Demographic groups shall include gender, race, ethnicity, disability, and socio-economic status. Points will be awarded on the basis of how close the MDO's microloan portfolio matches the demographic makeup of its service area. A maximum of 7 points will be awarded.

(A) If at least one loan is made to each demographic group and if the percentage of loans made to each demographic group is each within 5 or fewer percentage points of the demographic makeup, 7 points will be awarded.

(B) If at least one loan is made to each demographic group and if the

percentage of loans made to each demographic group is each within 10 or fewer percentage points of the demographic makeup, 4 points will be awarded.

(C) If at least one loan is made to each demographic group and if the percentage of loans made to one or more of the demographic groups is greater than 10 percentage points of the demographic makeup OR if no loans are made to one of the demographic groups and if the percentage of loans made to each of the other demographic groups is each within 10 or fewer percentage points of the demographic makeup, 2 points will be awarded..

(D) If no loans have been made to two or more demographic groups, no points will be awarded.

(vi) *Percentage of the total portfolio of microloans made to microentrepreneurs in areas of outmigration for the previous three FYs.* If the percentage of the total portfolio of microloans made to microentrepreneurs in areas of outmigration is:

(A) 75 percent or more, 4 points will be awarded;

(B) At least 50 percent but less than 75 percent, 2 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(2) *Portfolio management.* Each applicant's ability to manage its portfolio will be determined based on

the data provided in response to paragraphs (b)(2)(i) and (ii) of this section and scored accordingly. Total available points will be 8.

(i) Enter the total number of your microloans paying on time for the three previous FYs. If the total number of microloans paying on time at the end of each year over the prior three FYs is:

(A) 95 percent or more, 4 points will be awarded;

(B) At least 85 percent but less than 95 percent, 2 points will be awarded;

(C) Less than 85 percent, 0 points will be awarded.

(ii) Enter the total number of microloans 30 to 90 days in arrears or that have been written off at year end for the three previous FYs. If the total number of these microloans is:

(A) 5 percent or less of the total portfolio, 4 points will be awarded;

(B) More than 5 percent, 0 points will be awarded.

(3) *History of provision of technical assistance to microentrepreneurs.* Each applicant's history of provision of technical assistance to microentrepreneurs and/or microborrowers, and their ability to reach diverse communities and microborrowers, will be scored based on the data specified in paragraphs (b)(3)(i) through (vi) of this section. The maximum number of points available will be 15.

(i) Provide the total number of rural microentrepreneurs that received both microloans and TA services for each of the previous three FYs.

(ii) Provide the percentage of the total number of rural microentrepreneurs that received both microloans and TA services for each of the previous three FYs (calculate this as the total number of rural microloans made divided by the total number of loans made during the past three FYs). If provision of both microloans and technical assistance to rural microentrepreneurs is demonstrated at a rate of:

(A) 75 percent or more, 4 points will be awarded;

(B) At least 50 percent but less than 75 percent, 2 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iii) Provide the percentage of the total number of rural minority, socially-disadvantaged, or disabled microentrepreneurs that received both microloans and TA services for each of the previous 3 FYs. If the demonstrated provision of microloans and technical assistance to these rural microentrepreneurs is at a rate of:

(A) 75 percent or more, 7 points will be awarded;

(B) At least 50 percent but less than 75 percent, 4 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(iv) Enter the percentage of the total number of microentrepreneurs that received both microloans and TA services, for each of the previous three FYs, who were located in areas of outmigration. Demonstration of provision of microloans and technical assistance to microentrepreneurs located in areas of outmigration at a rate of:

(A) 75 percent or more, 4 points will be awarded;

(B) At least 50 percent but less than 75, 2 points will be awarded;

(C) At least 25 percent but less than 50 percent, 1 point will be awarded.

(4) *Ability to provide technical assistance to microentrepreneurs.* In addition to providing a statistical history of their provision of technical assistance to microentrepreneurs and microborrowers, applicants must provide a narrative of not more than five pages describing the teaching and training method(s) used by the applicant organization and discussing the outcomes of their endeavors. Technical assistance is defined in § 4280.302. The narrative will be scored as specified in paragraphs (b)(4)(i) through (iv) of this section and the maximum number of points available will be 5 and:

(i) Applicants that have used more than one method of training and technical assistance (such as classroom training, peer-to-peer discussion groups, individual assistance, distance learning) will be awarded 2 points.

(ii) Applicants that provide success stories to demonstrate the effects of technical assistance on their clients will be awarded 1 point.

(iii) Applicants that provide evidence that they require evaluations by the clients of their training programs and indicate that the level of evaluation scores is "good" or higher will be awarded 1 point.

(iv) Applicants that present their narrative information clearly and at a level expected by trainers and teachers will be awarded 1 point.

(5) *Proposed administrative expenses to be spent from TA grant funds.* The maximum total number of points under this criterion is 4. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than 5 percent of the TA grant funding, 4 points will be awarded;

(ii) Between 5 percent and 8 percent, but not including 8 percent, 2 points will be awarded; and

(iii) Between 8 percent up to and including 10 percent, 0 points will be awarded.

(c) *Application requirements for microlenders with less than 3 years experience seeking loans only.* In addition to the information required under paragraph (a) of this section, an applicant with less than 3 years experience as an MDO seeking a loan must submit the information specified in paragraphs (c)(1) through (7) of this section. The total number of points available under this paragraph, in addition to the up to 45 points available in paragraph (a) of this section, is 55, for a total of 100.

(1) The applicant must provide a narrative work plan that clearly indicates its intention for the use of funding. Provide goals and milestones for planned activities. In relation to the information requested in paragraph (a) of this section, the applicant must describe how it will incorporate its mission statement, utilize its employees, and maximize its human and capital assets to meet the goals of this program. The applicant must provide its strategic plan and organizational development goals and clearly indicate its lending goals for the five years after the date of application. The narrative work plan should be not more than 7 pages in length. Up to 13 points will be awarded.

(2) The applicant will provide the date that it opened its doors for business as an MDO or other provider of business education and/or facilitator of capital. "In business" means licensed to do business, in good standing with the Secretary of State in which it is registered to do business, and having regular paid staff to conduct business on a daily basis. If you have been in business for:

(i) More than 2 years but less than 3 years, 4 points will be awarded;

(ii) At least 1 year, but not more than 2 years, 2 points will be awarded;

(iii) At least 6 months, but not more than 1 year, 1 point will be awarded;

(iv) Less than 6 months, or more than 3 full years, 0 points will be awarded.

(3) The applicant must describe in detail any microenterprise development organization training received by it as a whole, or its employees as individuals, to date. The training received will be rated on its topical variety, the quality of the description, and its relative value to the narrative requested above, and to the organization's strategic plan. Do not submit training brochures or conference announcements. Up to 9 points will be awarded.

(4) The applicant must indicate its current number of employees, those that concentrate on microentrepreneurial development, and the current average caseload for each.

Indicate how the caseload ratio does or does not optimize the ability to perform the services described in the work plan and how Agency funding will be used to assist with program delivery. Up to 4 points will be awarded.

(5) The applicant must indicate any training organizations with which it has a working relationship. Provide contact information which will be used as references regarding the applicant's capacity to perform the work plan provided. If the recommendations received from references are:

(i) Generally excellent, 9 points will be awarded;

(ii) Generally above average, 6 points will be awarded;

(iii) Generally average, 3 points will be awarded;

(iv) Generally less than average, 0 points will be awarded.

(6) Describe any plans for continuing training relationship(s), including ongoing or future training plans and goals, and the timeline for same. Up to 4 points will be awarded.

(7) The applicant will describe its internal benchmarking system for determining client success, reporting on client success, and following client success for up to 5 years after completion of a training relationship. Up to 9 points will be awarded.

(8) The application will identify their proposed administrative expenses to be spent from TA grant funds. The maximum total number of points under this criterion is 4. If the percentage of grant funds to be used for administrative purposes is:

(i) Less than 5 percent of the TA grant funding, 4 points will be awarded;

(ii) Between 5 percent and 8 percent, but not including 8 percent, 2 points will be awarded; and

(iii) Between 8 percent up to and including 10 percent, 0 points will be awarded.

(d) *Application requirements for microlenders seeking enhancement grants only.* Enhancement grants may be provided to microlenders seeking assistance with specific or general operational issues based on the strength of the application and the availability of funds. An applicant seeking an enhancement grant must submit the information specified in paragraphs (d)(1) through (8) of this section. The total number of points available is 100.

(1) A fully completed Standard Form (SF)424 with attachments as appropriate. If the form and attachments are satisfactorily completed, 5 points will be awarded.

(2) A discussion of the internal self-evaluation plan that led the microlender to determine that external assistance

would be helpful. Up to 15 points will be awarded.

(3) A statement of the internal issue(s) to be overcome, why grant funding is necessary, and the ultimate goal of the enhancement project. Up to 15 points will be awarded.

(4) A project description statement of how the grant will be used to overcome the issue. Such statement must include the names of the potential trainers or service providers that will be used by the microlender for the described project. Up to 15 points will be awarded.

(5) A clear benchmarking plan delineating progress expectations, an anticipated timeline, and an anticipated completion date. Up to 15 points will be awarded.

(6) A discussion of how the trainer/service provider will be or has been selected. Up to 15 points will be awarded.

(7) A discussion of which employees will be directly involved in the project and how they fit into the microlender organization. Up to 10 points will be awarded.

(8) A letter, if available from the potential trainer/service provider describing their role in helping the microlender reach its enhancement goals. Up to 10 points will be awarded based on the description. If no letter is submitted, 0 points will be awarded.

(e) *Application requirements for microlenders with more than 5 years experience as an MDO under this program.* (1) Generally, microlenders develop success patterns over time which will be evidenced in the submitted quarterly reports. To take advantage of these patterns, to fully utilize the data available, to help ensure efficiency, and to ensure that any paperwork burden for the microlender is kept to a minimum, microlender applicants with more than 5 years of experience as an MDO under this program may choose to submit a shortened loan/grant application. For these microlenders to apply for subsequent funding, they will be required to submit:

(i) A letter of request for funding stating the amount needed,

(ii) An indication of the loan and grant amounts being requested accompanied by a completed SF 424 and any pertinent attachments,

(iii) An indication of the number of businesses to which loans were made that have been made that remained in business for two years or more after loan repayment, and

(iv) A recent resolution of the applicant's Board of Directors approving the application for debt.

(2) The Agency, using this request, and data available in the reports submitted under previous fundings, will review the overall program performance of the applicant to determine its eligibility for subsequent funding. Benchmarks will include:

(i) A default rate of 5 percent or less over the previous 5 years,

(ii) A pattern of delinquencies of 10 percent or less,

(iii) A pattern of successful use of TA dollars,

(iv) A pattern of long term success of program microborrowers (two years or more) after loan repayment,

(v) A pattern of appropriate reporting, and

(vi) Other such issues as deemed appropriate.

(3) Abridged applications will be rated on a pass or fail basis. Passing scores will be assigned a score of 90 percent and will be ranked accordingly in the quarterly competitions.

§ 4280.317 Selection of applications for funding.

All applications received will be scored using the scoring criteria specified in § 4280.316. Applications from microlenders with 3 or more year experience and applications from microlenders with less than 3 years experience will be ranked together. Enhancement grant applications will be ranked separately from the microlender applications. Subject to the availability of funds, the highest scoring applications will be funded in descending order.

(a) *Availability of funds.* If an application is received, scored, and ranked, but insufficient funds remain to fully fund it, the Agency may elect to fund an application requesting a smaller amount that has a lower score. Before this occurs, the Agency, as applicable, will provide the higher scoring applicant the opportunity to reduce the amount of its request to the amount of funds available. If the applicant agrees to lower its request, it must certify that the purposes of the project can be met, and the Agency must determine that the project is financially feasible at the lower amount.

(b) *Applicant notification.* The National Office will be responsible for notifying the appropriate State Offices of the outcome of the competition. State Offices will be responsible for notification of applicants regarding selection or non-selection, provision of appeal rights, closing the loans and grants to awardees, and notifying the National Office for obligation purposes.

(c) *Regarding successful applications.* The National Office will transfer funds

to the appropriate State office for obligation of successful awards. Awardees unable to complete closing for obligation within the stated timeframe will forfeit their funding. Such funding will revert back to the Agency for later use.

(d) *Regarding unsuccessful applications.* If your application is unsuccessful, the National Office will provide a copy of the final score sheet to the appropriate State Office for inclusion in the notification of non-selection. The National Office may use the score sheet to provide a debriefing to any unsuccessful applicant.

(e) *Regarding the timing and submission of applications.* (1) All applications must be submitted as a complete application, in one package.

(2) Applications will be accepted on a quarterly basis using Federal Fiscal Quarters. Deadlines and specific instructions will be published annually.

(3) Applications received will be reviewed, scored, and ranked quarterly. The Agency will retain unsuccessful applications for consideration in subsequent reviews, through a total of four quarterly reviews.

§§ 4280.318–319 [Reserved]

§ 4280.320 Grant administration.

(a) *Oversight.* Any organization receiving a grant under this program is subject to oversight. Quarterly reporting as described in § 4 280.312(a)(5) and in accordance with OMB circular A–102 and A–110 will be required. That is, on a quarterly basis, each grantee will submit SF 269 and/or 272 (or successor forms) as appropriate and other information as required in § 4280.312(a)(5). Accompanying the Standard Forms will be a narrative report discussing milestones and benchmarks; whether or not they were met; if not, why not; successes, and concerns. Site visits and inspection of records will occur at the discretion of the Agency.

(b) *Payments.* The Agency will make grant payments not more often than on a quarterly basis. The first payment may be made in advance and will equal no more than one fourth of the grant award. Payment requests must be submitted on an SF270 and will only be paid if reports are up to date and approved.

§ 4280.321 Loan and grant servicing.

In addition to the ongoing servicing in regard to oversight of the microlender:

(a) *Grants.* Grants will be serviced in accordance with:

(1) Department of Agriculture regulations including, but not limited to 7 CFR, Part 1951, Subparts E and O,

(2) Department of Agriculture regulations including but not limited to 7 CFR Parts 3015, 3016, 3017, 3018, 3019, and 3052; and

(3) Office of Management and Budget regulations including, but not limited to, 2 CFR 215, 220, 230, and Circulars A–110 and A–133.

(b) *Loans.* Revolving loan funds will be serviced in accordance with the following:

(1) Department of Agriculture regulations 7 CFR Part 1951, Subparts E, R, and O, and

(2) Other Department of Agriculture regulations as may be applicable,

(3) Office of Management and Budget Circular A–129.

§ 4280.322 Loans from the microlenders to the microentrepreneurs and microenterprises.

The primary purpose of making a loan to a microlender is to enable that microlender to make microloans, as defined, to end user microentrepreneurs and microenterprises. It is the responsibility of each microborrower to repay the microlender in accordance with the terms and conditions agreed to with the microlender. It is the responsibility of each microlender to make microloans in such a fashion that the terms and conditions of the microloan will support success for microborrowers while enabling the microlender to repay the Federal Government.

(a) *Maximum microloan amount.* The maximum amount of a microloan made under this program will be \$50,000.

(b) *Microloan terms and conditions.* The terms and conditions for microloans made by microlenders will be negotiated by the microborrower and the microlender, with the following limitations:

(1) The maximum margin a microlender may impose on a microborrowers is 7.5 percent over the microlender's cost of funds;

(2) The cost of funds to the microborrower will be established at the closing of the loan from the Agency to the microlender; and

(3) No microloan may have a term of more than 10 years.

(c) *Microloan insurance requirements.* The requirement of hazard, key personnel, and other insurance will be at the discretion of the microlender except that no insurance requirement should be of a nature to make the payment, combined with the microloan payment, or the coverage excessive.

(d) *Credit elsewhere test.* Microborrowers will be subject to "credit elsewhere" test so that the microlender will make loans only to

those borrowers that cannot obtain business funding of \$50,000 or less at affordable rates and on acceptable terms. Each microborrower file must contain evidence that the microborrower has sought credit elsewhere and has been turned down (e.g., a turn down letter) or that the rates and terms available within the community at the time were outside the range of the microborrower's ability to be a successful borrower from another source of funding (e.g., a comparison of rates for other funding sources compared to the microlender rates offered to the microborrower). It is not the intent to require denial letters from other lenders. It is the intent to ensure that program funds are loaned in a way to ensure that funds go to those businesses traditionally lacking in access to capital.

(e) *Fair credit requirements.* To ensure fairness, microlenders must publicize their rates and terms on a regular basis. Microlenders are also subject to Fair Credit lending laws as discussed in § 4280.305.

(f) *Eligible microloan purposes.*

Microlenders may make microloans under this program for qualified business activities including:

- (1) Working capital,
- (2) The purchase of furniture, fixtures, supplies, inventory or equipment, and
- (3) The purchase or lease of real estate that is already improved and will be used for the location of the subject business only, provided no demolition or construction will be accomplished with program funding. Interior decorating is not considered to be demolition or construction.

§ 4280.323 Ineligible microloan purposes.

Agency loan funds may not be used for the payment of administrative costs or expenses and microlenders may not make microloans under this program for any of purposes identified as ineligible in paragraphs (a) through (g) of this section.

(a) Construction costs.

(b) Any amount in excess of that needed by the microborrower to accomplish the immediate business goal.

(c) Assistance that will cause a conflict of interest or the appearance of a conflict of interest including but not limited to:

(1) Financial assistance to principals, directors, officers, or employees of the microlender, or their families (including parents, children, sisters, brothers, aunts, uncles, first cousins, or grandparents),

(2) Financial assistance to any entity the result of which would appear to

benefit the microlender or its principals, directors, or employees, in any way other than the normal repayment of debt.

(d) Distribution or payment to the microentrepreneur or his/her family members when such will use any portion of the microloan for other than the purpose for which it was intended.

(e) Charitable institutions not gaining revenue from sales or fees to support the operation and repay the microloan.

(f) Fraternal organizations.

(g) Any microloan to an applicant that has an RMAP funded microloan application pending with another microlender or that has an RMAP-funded microloan outstanding with another microlender that would cause the applicant to owe more than \$50,000 under this program.

(h) Assistance to USDA Rural Development (Agency) employees, or their families.

(i) Assistance to military personnel, except that a microloan may be made by a microlender to any otherwise qualified microenterprise owned in whole or in part by one or more members of the National Guard or the reserve services who are not on active duty with longer than 6 months until their anticipated termination of active duty status, or members of the regular service, who are within 6 months of their anticipated separation date and who are, or plan to

be, small business owners. This provides microlenders the opportunity to make microloans to:

(1) Any microenterprise owned in whole or in part by one or more individuals, regardless of rank; and

(i) Who are enlisted in the National Guard or reserve services, or are non-Agency employees or their families; and

(ii) That have recently been deactivated from regular service, but are considered to be in reserve in the event of national need or emergency.

(2) Military personnel who plan to leave active military service within 6 months and who, upon leaving, plan to be self-employed and are in need of business continuation, expansion, or startup capital or of technical assistance.

(j) Assistance to employees of Native American tribal governments when the employer is the tribal government MDO from which the microentrepreneur is seeking funding except that, a microloan may be made to such employee without danger of a conflict of interest when the tribal government employee:

(1) Is a part-time employee with reasonable expectation of capacity to operate a successful microenterprise while working part-time, and

(2) Does not have access to another lending MDO, and

(3) Is the person who will operate the funded business, and

(4) Will be required by the tribal government MDO to participate in

technical assistance and training to help ensure the success of the business, and

(5) Due to an impending change of tribal government leaders, can expect to leave his or her job within six months of applying for the microloan.

(k) Any illegal activity.

(l) Any project that is in violation of either a Federal, State, or local environmental protection law, regulation, or enforceable land use restriction unless the microloan will result in curing or removing the violation.

(m) Lending and investment institutions and insurance companies.

(n) Golf courses, race tracks, gambling facilities or swimming pools.

(o) Any purpose deemed to be of a prurient sexual nature as determined by local standards,

(p) Any purpose, not already stated, that would contribute to a conflict of interest or the appearance of a conflict of interest.

(q) Any lobbying activities as described in 7 CFR 3018.

§§ 4280.324–4280.400 [Reserved]

Dated: September 30, 2009.

Judith A. Canales,

Administrator, Rural Business—Cooperative Service.

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